

# The right to development in practice: provisional lessons learned

*High-level task force on the implementation of the right to development*

## I. Introduction

This chapter is based on the “Consolidation of findings of the high-level task force on the implementation of the right to development” (A/HRC/15/WG.2/TF/2/Add.1) submitted by the task force to the Working Group on the Right to Development at the conclusion of its mandate in 2010, pursuant to the Group’s recommendation (A/HRC/12/28, para. 44). The Working Group decided in 2012 to “pursue, at its fourteenth session (2013), its work on the consideration of the draft operational sub-criteria” (A/HRC/21/19, para. 47). The consolidation of findings summarizes the main conclusions of the task force regarding the Millennium Development Goals, social impact assessments and five areas of global partnership as defined in goal 8 (development aid, trade, access to essential medicines, debt sustainability and transfer of technology), and then makes seven more general conclusions and recommendations.

## II. Assessing global partnerships for development

After five years of applying the development framework implied by the Declaration on the Right to Development and responding to the requests of the Working Group, the task force became aware that the greatest challenge for the implementation of the right to development, in theory and practice, is to reconcile the conceptual approaches of human rights and economics; in other words, how to maintain a holistic vision of human rights, implying indivisible and inter-

dependent norms aimed at maximizing the well-being of all individuals and peoples, while introducing the concerns of development based on sound economic policies that foster growth with equity.

It is easier to assert the principle, reaffirmed in numerous United Nations resolutions, that the two areas are mutually reinforcing than to apply it to decisions on policy and resource allocation, the latter being the purview of planners and implementers for whom “development” implies establishing priorities and making trade-offs in terms of resource allocations and benefits. The overarching lesson of the experience is that the right to development requires that priorities be consistent with human rights, in terms of policy, processes and outcomes. In an increasingly interdependent world, States and non-State actors help to shape these priorities and trade-offs, with the primary responsibility for meeting priorities and ensuring enjoyment of human rights remaining with States, by means of national policy and commitments under international arrangements. These broad concepts emerge from (a) the Millennium Development Goals; (b) social impact assessments; and (c) the global partnership, as understood in goal 8.

### A. A right to development perspective on the Millennium Development Goals

The Millennium Development Goals represent a measurable set of human development milestones, the attainment of which is critical to building a more humane, inclusive, equitable and sustainable world,

as envisaged in the United Nations Millennium Declaration.<sup>1</sup> The achievement of the Goals has been variously constrained by threats to peace and security, environmental degradation, policy inadequacies and poor governance, and lack of an external environment supportive of the improvement of conditions for developing countries in terms of international trade, debt sustainability and internationally agreed levels of aid.

Four distinctive features of human rights, including the right to development, pose challenges to the implementation of the Goals: (a) specific and explicit inclusion of universally recognized and legally binding human rights standards in strategies for meeting the Goals; (b) indivisibility and interdependence of all human rights in formulating coherent policies and holistic development strategies in addressing the Goals; (c) clearly defined accountability mechanisms through judicial or other means at the national and international levels which are participatory, accessible, transparent and effective; and (d) mobilization of civil society to use the human rights framework in participating in and monitoring development efforts towards achieving the Goals in a rights-based manner.

Policymakers and development practitioners need a clear and rigorous mapping of the Goals against relevant international human rights instruments in order to mobilize, strengthen and sustain efforts to implement them at the national and international levels, taking into account the evolving understanding of extraterritorial human rights obligations.<sup>2</sup> The High Commissioner for Human Rights has focused attention on the relationship between the Millennium Development Goals and human rights by disseminating charts on the intersection of human rights and the Millennium Development Goals and has published a fairly exhaustive analysis of how human rights can contribute to the achievement of the Goals,<sup>3</sup> as have the United Nations Development Programme (UNDP)<sup>4</sup> and national development agencies.<sup>5</sup> Significant

advances in realizing the Goals and the right to development require effective action at both national and international levels to strengthen institutional capacities, bridge information gaps, address accountability failures and give them local content and national ownership.

Beyond mapping human rights obligations with the Goals, policymakers and development practitioners need practical tools, including guidelines and objective indicators, to help translate human rights norms and principles into processes like social impact assessments. In 2005, the task force examined a paper on indicators for assessing international obligations in the context of goal 8<sup>6</sup> by Sakiko Fukuda-Parr (who later joined the task force) and shared her view that the framework to monitor that goal was inadequate from the perspective of the right to development because it lacked quantitative indicators, time-bound targets, appropriate measures to address current policy challenges and ownership of the development process. A conceptual framework on indicators of human rights was needed to fill the gap, which should lead to research and advocacy groups applying human rights principles and a gender dimension to development, thereby informing and participating in the formulation and implementation of the Millennium Development Goals in the context of country development strategies, including poverty reduction strategy papers (PRSPs). The task force also encouraged a participatory approach in the allocation of social sector expenditures in public budgets.

The task force also addressed the impact of unexpected shocks on poor and vulnerable populations. In order to achieve the Goals, temporary institutional measures encompassing social safety nets, such as well-targeted transfers and subsidies, are needed. From a right to development perspective, the issue of institutional and financial capacity to support social safety nets, particularly in the context of addressing effects of external shocks on the well-being of people,

<sup>1</sup> General Assembly resolution 55/2.

<sup>2</sup> On extraterritorial obligations, see, for example, Mark Gibney and Sigrun Skogly, eds., *Universal Human Rights and Extraterritorial Obligations* (Philadelphia, University of Pennsylvania Press, 2010) and the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights of 2011, available at [www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf](http://www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf).

<sup>3</sup> *Claiming the Millennium Development Goals: A Human Rights Approach* (United Nations publication, Sales No. E.08.XIV.6).

<sup>4</sup> In 2007 the UNDP Oslo Governance Centre published a primer, *Human Rights and the Millennium Development Goals: Making the Link*, as a follow-up to a 2006 e-discussion on linking human rights and the Goals and a working group meeting on the theoretical and practical implications of linking human rights and the Millennium Development Goals.

<sup>5</sup> See, for example, Swedish International Development Agency (SIDA), *A Democracy and Human Rights-Based Approach to Development Cooperation* (Stockholm, 2001); United Kingdom Department for International

Development (DFID), *A Practical Guide to Assessing and Monitoring Human Rights in Country Programmes* (London, September 2009); German Federal Ministry for Economic Cooperation and Development (BMZ), *Human Rights in German Development Policy*, Strategy Paper 4/2011; United States Millennium Challenge Corporation (MCC), "MCC and the Millennium Development Goals", available at [www.mcc.gov/pages/activities/activity/mdgs](http://www.mcc.gov/pages/activities/activity/mdgs) and "Voice and accountability indicator", available at [www.mcc.gov/pages/selection/indicator/voice-and-accountability-indicator](http://www.mcc.gov/pages/selection/indicator/voice-and-accountability-indicator); United States Agency for International Development (USAID), *USAID Policy Framework 2011-2015* (Washington, D.C., 2011); Government of Canada, Official Development Assistance Accountability Act, in force since 28 June 2008, requiring official development assistance to contribute to poverty reduction, take into account the perspectives of the poor and be consistent with international human rights standards; Danish International Development Agency (DANIDA), "The Millennium Development Goals", available at <http://um.dk/en/danida-en/goals/mdg/>.

<sup>6</sup> "Millennium Development Goal 8: indicators for monitoring implementation" (E/CN.4/2005/WG.18/TF/CRP.2).

entails an international dimension. In such situations, the multilateral trade and development institutions should take steps to support national efforts to facilitate and sustain such measures.

Social safety nets correspond to the right to an adequate standard of living, including social security, as defined in the International Covenant on Economic, Social and Cultural Rights and the relevant instruments of the International Labour Organization (ILO). In times of crisis and in the context of chronic poverty, States must ensure, with the help of international cooperation when necessary, that everyone enjoys economic, social and cultural rights. Failure to do so would be detrimental to attaining the Goals and implementing the right to development. Although the task force formulated this conclusion in December 2004,<sup>7</sup> it became even more relevant in the wake of the global financial crisis of 2008.

## B. Social impact assessments as a right to development tool

The high-level seminar on the right to development, held in 2004, stressed the need for social impact assessments in informing policy decisions and addressing the dislocative impact of new policies.<sup>8</sup> As a tool for implementing the right to development at the national and international levels, the task force considered broadening the concept and methodology of these assessments to explicitly include human rights and to identify possible complementary policies for implementing the right to development in the global context.<sup>9</sup>

Such assessments provide important methodological tools to promote evidence-based policy formulation by including distributional and social effects in the ex ante analysis of policy reforms and agreements. It is potentially useful in bringing about policy coherence at both the national and international levels and in promoting adherence to human rights standards, as required by the right to development.

Impact assessments are still evolving as a means of determining the consequences of specific interventions in a society and have only recently been

extended to examine the impact of trade agreements on people's well-being. Caution is required in undertaking such assessments, as the complex dynamics of economic transactions do not always lend themselves to clearly defined causation analysis.

Policymakers and development practitioners can only benefit from social impact assessments that have integrated human rights standards and principles into their normative framework and methodology. While several institutions have initiated work on social impact assessment methodologies, the approach of the Organisation for Economic Co-operation and Development (OECD) and the World Bank has provided a useful analytical framework, including indicators for measuring empowerment, which take human rights into account.<sup>10</sup> Assessments can only be effective if there is genuine demand, ownership and availability of appropriate quantitative data and the will of the authorities to apply the findings of relevant analysis.

From the right to development perspective, social impact assessments should identify the dislocative effects of adopted policies on the poor and most vulnerable and provide useful data to find corresponding remedial measures. States should be encouraged to undertake independent assessments of the impact of trade and investment agreements on poverty, human rights and other social aspects, and these assessments should be taken into account in the context of the Trade Policy Review Mechanism process and future trade negotiations. The appropriateness of such assessments for the World Trade Organization (WTO) is clear from the preamble to the Marrakesh Declaration establishing the WTO, which refers to the "need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development". Despite the limited experience, human rights impact assessment would add further value, given the normative content of the right to development.<sup>11</sup> States should also consider special and differential treatment provisions under the WTO agreements with a view to enhancing

<sup>7</sup> "Report of the high-level task force on the implementation of the right to development (Geneva, 13-17 December 2004)" (E/CN.4/2005/WG.18/2), paras. 38-39.

<sup>8</sup> See "High-level seminar on the right to development: global partnership for development (Geneva, 9-10 February 2004)" (E/CN.4/2004/23/Add.1).

<sup>9</sup> "Report of the high-level task force on the implementation of the right to development (Geneva, 13-17 December 2004)" (E/CN.4/2005/WG.18/2), paras. 23-24.

<sup>10</sup> See OECD, *Promoting Pro-Poor Growth: Practical Guide to Ex Ante Poverty Impact Assessment* (Paris, 2007); World Bank, *A User's Guide to Poverty and Social Impact Analysis* (Washington, D.C., 2003); and World Bank, *Social Analysis Sourcebook: Incorporating Social Dimensions into Bank-Supported Projects* (Washington, D.C., 2003).

<sup>11</sup> "The right to development is clearly also relevant in this context, but has not been the subject of any discussion in the context of impact assessment, possibly because of a lack of clarity on how to define its substantive content." (James Harrison and Alessa Goller, "Trade and human rights: what does 'impact assessment' have to offer?", *Human Rights Law Review*, vol. 8, No. 4 (2008), pp. 587-615).

their effectiveness as instruments to harmonize human rights and multilateral trade requirements. Since the task force considered this issue, human rights impact assessments have been recommended by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and the International Association of Impact Assessment and incorporated into several trade agreements.<sup>12</sup>

### C. Five critical areas of the global partnership

Millennium Development Goal 8, with its focus on international cooperation, is a framework consistent with international responsibilities outlined in articles 3, 4 and 6 of the Declaration on the Right to Development. Following the Working Group's recommendations, 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.

#### 1. Development aid

##### (a) *Mutual Review of Development Effectiveness in the context of the New Partnership for Africa's Development*

Development aid figures prominently among the means essential to attaining the Millennium Development Goals, particularly for many developing countries, and in related commitments made at the Doha Round of negotiations in 2001, the International Conference on Financing for Development (which adopted

the Monterrey Consensus) in 2002, the Gleneagles Group of Eight (G8) summit held in 2005 and the London Group of Twenty (G20) summit in 2009.

The Mutual Review of Development Effectiveness in the context of the New Partnership for Africa's Development (NEPAD), undertaken jointly by the Economic Commission for Africa (ECA) and the OECD Development Assistance Committee (OECD-DAC) broadly complies with several right to development criteria, especially regarding national ownership, accountability and sustainability, and can build upon and elaborate related processes in the context of the Cotonou Agreement between the European Union and African, Caribbean and Pacific (ACP) countries, the African Peer Review Mechanism (APRM) and Bretton Woods processes such as PRSPs.<sup>13</sup> The task force shared an independent assessment that the key challenges for African partners included lack of peace and security and economic growth, corruption, which continued to undermine socioeconomic growth and development, and capacity gaps in governance institutions.<sup>14</sup>

There is less congruence with criteria relating to the incorporation of human rights in national and international development policies. The governance component of the Mutual Review is a useful entry point, and the process should integrate regionally determined and owned human rights standard-setting instruments (African Charter on Human and Peoples' Rights and protocols thereto) and the OECD Action-Oriented Policy Paper on Human Rights and Development.<sup>15</sup> The Mutual Review should complement APRM.<sup>16</sup> It is necessary to make clear references to human rights instruments and cover all human rights, as recommended by the OECD action-oriented policy.

The process of preparing Mutual Review reports provided opportunities to improve the framework and integrate concepts derived from the right to development and rights-based approaches to development. The task force accepted the independent assessment that "action frontiers" and "performance benchmarks" should be more specific, useful to policymakers and

<sup>12</sup> See Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex), principles 18-19. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4. The International Association of Impact Assessment has included among its values "respect for human rights and human dignity should underpin all assessments" (available at [www.iaia.org/about/mission-vision-values.aspx](http://www.iaia.org/about/mission-vision-values.aspx)). Many examples may be found in Susan Ariel Aaronson, "Human rights" in *Preferential Trade Agreements Policies for Development: A Handbook*, J.-P. Chauffour and J.-C. Maur, eds. (Washington, D.C., World Bank, April 2011); Isolda Agazzi, "Human rights impact assessments in free-trade agreements", paper presented at the United Nations Conference on Trade and Development (UNCTAD) policy dialogue "Redefining the role of the Government in tomorrow's international trade," 26-27 March 2012; Harrison and Goller, pp. 587-615; Simon Walker, "Human rights impact assessments of trade-related policies", in *Sustainable Development in World Trade Law*, Markus E. Gehring and Marie-Claire Cordonier Segger, eds. (The Hague, Kluwer Law International, 2005); Gillian MacNaughton and Paul Hunt, "Health impact assessment: the contribution of the right to the highest attainable standard of health", *Public Health*, vol. 123, No. 4 (April 2009), pp. 302-305. For an example of human rights impact assessments in free trade agreements, see the Canada-Colombia Free Trade Agreement of 2010: International Centre for Trade and Sustainable Development, "Canada-Colombia FTA gets human rights amendment", available at <http://ictsd.org/i/news/bridgesweekly/73372/>.

<sup>13</sup> "Report of the high-level task force on the implementation of the right to development on its third session" (A/HRC/4/WG.2/TF/2), para. 64.

<sup>14</sup> "Report of the high-level task force on the implementation of the right to development on its second session" (E/CN.4/2005/WG.18/TF/3), para. 31.

<sup>15</sup> *DAC Action-Oriented Policy Paper on Human Rights and Development* (Paris, OECD, 2007). See also A/HRC/4/WG.2/TF/2, para. 64.

<sup>16</sup> See "Report of the high-level task force on the right to development: technical mission: ECA/OECD-DAC Mutual Review of Development Effectiveness (A/HRC/8/WG.2/TF/CRP.2), para. 14 (d). Subsequently, OECD published *The Development Dimension: Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges* (Paris, 2006).

clearly connected to existing commitments. The inclusion of benchmarks informed by human rights and other treaties could strengthen the Review's contribution to the right to development. Often, the Mutual Review framework does not appear to be informed by existing standards in the field.<sup>17</sup>

The Mutual Review could undertake evaluations of the extent to which OECD and African countries have lived up to specific commitments in each area, summarizing and providing an analysis of the existing monitoring work rather than seeking to replicate it. The Mechanism does not focus specifically on the poor and most marginalized. This defect should be remedied by integrating into its questions the Millennium Development Goals and concerns about non-discrimination and vulnerable groups, especially in disadvantaged regions and non-dominant ethnic groups, as well as rural populations, women, children and the disabled.<sup>18</sup>

The value of the Mutual Review for the right to development lies in the effectiveness of the accountability mechanism and in enhancing the negotiating position of African countries with regard to aid effectiveness. The task force remained concerned that many dimensions of the right to development, such as explicit reference to human rights, a focus on gender and priority for vulnerable and marginalized populations, were not adequately addressed. The task force also concluded that policy priorities should be revised in the light of the increased needs of African countries owing to the failure of the Doha Round and the current financial crisis.<sup>19</sup>

#### (b) *Paris Declaration on Aid Effectiveness*

The Paris Declaration on Aid Effectiveness, a non-binding document adopted in 2005 on ways to disburse and manage official development assistance more effectively, did not establish a formal global partnership, but rather created a framework for bilateral partnerships between donors and creditors, and individual aid recipient countries. It is thus indirectly relevant to goal 8. The Working Party on Aid Effectiveness, housed in and administered by OECD-DAC and supported by the World Bank, has sought to pro-

vide a mechanism to address asymmetries in power and to give more voice to developing countries and civil society representatives since the Third and Fourth High-Level Forum on Aid Effectiveness, held in Accra and Busan in 2008 and 2011.

Although human rights are not mentioned in the Paris Declaration, they are referred to twice in the Accra Agenda for Action, and some of its principles are consistent with the right to development support for ownership and accountability. However, several of the Declaration's indicators and targets prior to the Third High-Level Forum appeared to work against the right to development and erode national democratic processes. The task force welcomed the willingness of OECD to adjust these deficiencies. Human rights, including the right to development, should be explicitly included as goals in the Paris Declaration and ministerial declarations of the High-Level Forum. An additional review and evaluation framework with corresponding targets and indicators should be included, to assess the results of the Declaration in terms of its impact on the right to development, human rights and the Millennium Development Goals.<sup>20</sup>

The Paris Declaration focuses on aid effectiveness and not explicitly on development outcomes. It is therefore less useful as a framework for enhanced development effectiveness, human rights realization, gender equality and environmental sustainability.<sup>21</sup> The main causes of ineffective aid (that is, tied aid and unpredictability of aid income) are not properly addressed and pose a significant problem from a right to development perspective, particularly in the light of the ownership of partner countries and policy coherence.<sup>22</sup> Progress has been made, however, in untying aid of OECD-DAC donors since the Paris Declaration. Right to development criteria and human rights precepts and practice could reinforce the Declaration's principles of ownership and mutual accountability, to which more importance was attached by the Accra Agenda for Action. Progress in improving the predictability of aid flows (albeit considerably less than in untying aid) also deserves attention. Several major donors have recently moved to medium-term programming of their aid programmes with priority partner countries, thereby enhancing the medium-term

<sup>17</sup> Bronwen Manby, "Application of the criteria for periodic evaluation of global development partnerships, as defined in Millennium Development Goal 8, from the right to development perspective: further analysis of the African Peer Review Mechanism and the ECA/OECD-DAC Mutual Review of Development Effectiveness in the context of NEPAD" (A/HRC/8/WG.2/TF/CRP.5), para. 53.

<sup>18</sup> *Ibid.*, paras. 55-56.

<sup>19</sup> "Report of the high-level task force on the implementation of the right to development on its fifth session" (A/HRC/12/WG.2/TF/2), para. 64.

<sup>20</sup> Roberto Bissio, "Application of the criteria for periodic evaluation of global development partnerships—as defined in Millennium Development Goal 8—from the right to development perspective: the Paris Declaration on Aid Effectiveness" (A/HRC/8/WG.2/TF/CRP.7), paras. 86–87.

<sup>21</sup> "High-level task force on the right to development: technical mission report: Paris Declaration on Aid Effectiveness" (A/HRC/8/WG.2/TF/CRP.1), para. 14.

<sup>22</sup> A/HRC/4/WG.2/TF/2, para. 66.

predictability of aid commitments. Similar progress is required in the predictability of aid disbursements.

The right to development can add value to aid effectiveness by framing the debate without overemphasizing aid efficiency or introducing conditionality language.<sup>23</sup> There is considerable congruence between the principles of aid effectiveness and those underlying the right to development. By focusing on ownership and commitment, ensuring the removal of resource constraints and aid conditionalities and providing an enabling environment, the right to development helps developing countries to integrate human rights into development policies. While there is synergy between the principles of country ownership and mutual accountability and the right to development, their implementation and assessment could result in a disregard for other principles of the right to development without providing a complaint mechanism or other means of redress.<sup>24</sup>

The focus of right to development principles resonates in the Paris Declaration and increases the relevance of applying the right to development criteria to the evaluation of global partnerships. While ownership is a key principle in the Declaration, country experiences indicate the need for more progress towards aligning aid with national priorities, ensuring that aid is untied and using country systems for procurement and financial management.<sup>25</sup> The Accra Agenda took steps to remedy certain shortcomings of existing development cooperation partnerships by stressing country ownership, encouraging developing country Governments to take stronger leadership on their own development policies and to engage with their parliaments and citizens in shaping those policies. The Agenda creates space for domestic procedures and processes and is intended to reduce reliance on donor-driven systems that undermine domestic accountability in recipient countries.

### (c) *African Peer Review Mechanism*

The task force considered that article 22 of the African Charter of Human and Peoples' Rights, the only legally binding instrument on the right to development, could provide the basis for the APRM and non-APRM countries to assess periodically the realization of the right to development in the African context.<sup>26</sup>

<sup>23</sup> A/HRC/8/WG.2/TF/CRP.1, para. 19.

<sup>24</sup> A/HRC/8/WG.2/TF/CRP.7, para. 85.

<sup>25</sup> A/HRC/8/WG.2/TF/CRP.1, para. 20.

<sup>26</sup> E/CN.4/2005/WG.18/TF/3, para. 79.

APRM is a unique process that enables the assessment and review of African governance through a South-South partnership. It preserves the autonomy of States and opens them to scrutiny, introducing benefits and incentives that can strengthen domestic accountability. It can provide implementable criteria for measuring development progress and considerable space for participation by civil society.

The task force acknowledged proposals to revise the Mechanism's questionnaire guiding country self-assessments and the process of reviewing reports. Such revision should aim at downsizing and making it a more efficient tool for assessment; harmonizing with other processes such as PRSPs; and explicitly incorporating human rights criteria.

The Mechanism's process could also be improved with regard to follow-up and implementation of the programme of action. The focus on making recommendations to African States and ensuring their implementation is an entry point to introduce elements of the right to development, while developing clear prioritization, measurable indicators, better integration into existing development plans, broad-based policy review and monitoring of development progress.

As part of reforms of African Union structures, more collaboration between APRM, NEPAD and the African Union would enhance policy coherence and the effective integration of work under the Mechanism with African human rights institutions, particularly the African Commission on Human and Peoples' Rights, thereby supporting the realization of the right to development under article 22 of the African Charter on Human and Peoples Rights.<sup>27</sup>

## 2. Trade: the Cotonou Agreement

The Cotonou Agreement<sup>28</sup> contains mechanisms for both positive (incentives, additional assistance) and negative (sanctions, suspending aid) measures for achieving respect for human rights within the economic partnership between the European Union and ACP States. The right to development is not mentioned explicitly in the Agreement, nor in subsequent economic partnership agreements between the European Union and regional groupings among ACP countries.

<sup>27</sup> "Report of the high-level task force on the implementation of the right to development on its fourth session" (A/HRC/8/WG.2/TF/2), para. 54.

<sup>28</sup> Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part" signed at Cotonou in June 2000, revised in 2005 and 2010.

The task force suggested that more attention should be paid to the mutually reinforcing obligations of the Cotonou Agreement and right to development criteria, and favoured monitoring benchmarks in economic partnership agreements in the process of being concluded. Continued special and differential treatment of ACP countries, and recognition of the need for country-specific adjustment, compensation and additional resources for trade capacity-building, independent monitoring and evaluation were also favoured.<sup>29</sup> Non-tariff barriers to trade, such as overly restrictive sanitary and phytosanitary measures, technical barriers and rules of origin procedures, were a matter of concern. Although the human rights clauses of the Agreement are increasingly viewed as conditionalities, punitive measures, such as the withdrawal of trade preferences, may at times be justified in response to human rights violations. A positive approach may, however, contribute structurally to realizing the right to development. Positive measures to create an enabling environment could include trade diversification, aid for trade, support for trade unions and institutional capacity-building. Even without specific provisions in individual economic partnership agreements, human rights are part of economic partnership agreements owing to the overall applicability of such provisions in the Cotonou Agreement.<sup>30</sup>

The conclusion and ratification of economic partnership agreements and the further revisions of the Cotonou Agreement should be transparent and involve parliamentary scrutiny and consultation with civil society.<sup>31</sup> Future reviews of the Agreement will present an opportunity to appraise its human rights provisions and consider proposals consistent with right to development criteria. The task force was concerned that regionalization through the economic partnership agreement risked eroding the general negotiating position of the weaker trading partners; supporting their development efforts should therefore be a priority.<sup>32</sup>

The task force noted problems of coherence among the various complex European Union and European Commission policies, particularly with regard to how to deal with human rights and transparency in the context of the political dialogue under article 8 of the Cotonou Agreement and in the conclusion of economic partnership agreements. The gen-

eral human rights provisions in the Agreement should in practice be broadened to reflect the indivisibility of human rights by extending coverage to economic, social and cultural rights, as provided in its preamble.

The Cotonou Agreement provides for impact assessments. These should ideally take into account human rights, including right to development considerations and criteria both in trade and development cooperation, thus enhancing space for development monitoring benchmarks, as suggested by ACP countries and also voiced by members of the European Parliament.<sup>33</sup> In 2010 the European Parliament requested the Commission to carry out impact studies on human rights, in addition to those on sustainable development, with comprehensible trade indicators based on human rights and on environmental and social standards.<sup>34</sup>

### 3. Access to essential medicines

#### (a) *Intergovernmental Working Group on Public Health, Innovation and Intellectual Property*

The Intergovernmental Working Group on Public Health, Innovation and Intellectual Property was established by the World Health Organization (WHO) World Health Assembly (resolution WHA59.24) in 2006 to develop a global strategy and plan of action for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries, promote innovation, build capacity, improve access and mobilize resources. It is specifically concerned with target 8.E, access to affordable drugs in development countries, of Millennium Development Goal 8. Through the global strategy and plan of action adopted by the World Health Assembly (resolution WHA61.21, annex) in 2008, it seeks to facilitate access by the poor to essential medicines and promote innovation in health products and medical devices. The incentive schemes aim to delink price from research and make health products cheaper and more easily available.<sup>35</sup>

The task force stressed the potential synergy between the global strategy and plan of action and

<sup>29</sup> A/HRC/8/WG.2/TF/2, para. 64.

<sup>30</sup> A/HRC/12/WG.2/TF/2, para. 23.

<sup>31</sup> *Ibid.*, para. 66.

<sup>32</sup> "High-level task force on the right to development: technical mission report: continued dialogue with the selected global partnerships which were reviewed at previous sessions" (A/HRC/12/WG.2/TF/CRP.2), para. 35.

<sup>33</sup> See A/HRC/12/WG.2/TF/2, paras. 66-70.

<sup>34</sup> European Parliament resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements (2009/2219(INI)) para. 19 (b). Available at [www.europarl.europa.eu/document/activities/cont/201011/20101129\\_ATTO2490/20101129ATTO2490EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201011/20101129_ATTO2490/20101129ATTO2490EN.pdf).

<sup>35</sup> A/HRC/12/WG.2/TF/2, para. 26.

the right to development.<sup>36</sup> Although these documents could not be amended, there is leeway to introduce right to development principles in the interpretation of the principles, elements and implementation of the strategy and plan.<sup>37</sup> The task force found congruence between the eight elements designed to promote innovation, build capacity, improve access, mobilize resources and monitor and evaluate implementation of the strategy itself, and the duty of States to take all necessary measures to ensure equality of opportunity for all in access to health services, pursuant to article 8 (1) of the Declaration on the Right to Development.

The task force acknowledged the reference in the global strategy and plan of action to the constitutional commitment of WHO to the right to health, but regretted that reference to article 12 of the International Covenant on Economic, Social and Cultural Rights had been deleted. It was noted with concern that the strategy and plan do not caution against adoption of Trade-Related Aspects of Intellectual Property Rights (TRIPS)-plus protection in bilateral trade agreements, or refer to the impact of bilateral or regional trade agreements on access to medicines. Nevertheless, these documents contain elements of accessibility, affordability and quality of medicines in developing countries, corresponding to the normative content of the right to health. In accordance with general comment No. 17 (2005) of the Committee on Economic, Social and Cultural Rights, States parties should ensure that their legal or other regimes protecting intellectual property do not impede their ability to comply with their core obligations under the rights to food, health and education.<sup>38</sup> Regarding accountability, the systems for monitoring, evaluation and reporting of actions of Governments, as primary duty holders, and of industry were consistent with right to development criteria, although improvements could be made to the indicators. Regarding the role of the pharmaceutical industry, the task force and WHO saw the potential of exploring with stakeholders the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines<sup>39</sup> and the right to health. On participation, provisions for web-based hearings, regional and intercountry consultations, direct participation of non-governmental organiza-

tions and experts, and funding to enable attendance of least developed countries were commended.

(b) *Special Programme for Research and Training in Tropical Diseases*

While not explicit in its vision, the WHO Special Programme for Research and Training in Tropical Diseases has an implicit commitment to human rights and the Millennium Development Goals. Its overall aim is to deliver research and implement practical solutions to many of the world's neglected diseases. Consistent with right to development criteria, recent projects are community-driven in that communities decide how a particular medicine will be used and distributed, check compliance with quality and quantity standards, and ensure record-keeping. These community-driven interventions increase the distribution of some drugs, lead to better public services and contribute to political empowerment and democratization, all contributing to the realization of the right to development.<sup>40</sup>

The impact of the programme on innovation through research and development regarding infectious diseases has been limited owing to underfunding and the high price of medicines.<sup>41</sup> Concurrently, the governance structures of newer private foundations and non-governmental organizations do not provide for accountability to the public at large. It is of concern that global efforts for financing initiatives to fight diseases of the poor depend heavily on sources outside public institutions and public accountability systems.

The task force concluded that the strategy of the Special Programme is rights-based as its core feature is empowerment of developing countries and meeting needs of the most vulnerable. Transparency and accountability could be strengthened, particularly as concerns contractual agreements with pharmaceutical companies regarding pricing and access to medicines, broadening the scope of independent reviews for mutual accountability. The Programme's efforts to design and implement relevant programmes in ways that reflect right to development principles and explicitly use a right to health framework were welcomed.

(c) *Global Fund to Fight AIDS, Tuberculosis and Malaria*

The Special Programme and the Global Fund to Fight AIDS, Tuberculosis and Malaria share a

<sup>36</sup> *Ibid.*, para. 27.

<sup>37</sup> "Technical mission to the World Health Organization, the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, the Special Programme on Research and Training in Tropical Diseases and the Global Fund to Fight AIDS, Tuberculosis and Malaria" (A/HRC/15/WG.2/TF/CRP.2), para. 11.

<sup>38</sup> E/CN.4/2005/WG.18/TF/3, para. 67; A/HRC/12/WG.2/TF/2, para. 74.

<sup>39</sup> "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (A/63/263, annex).

<sup>40</sup> "High-level task force on the right to development—technical mission report: global partnerships on access to essential medicines" (A/HRC/12/WG.2/TF/CRP.1), para. 25.

<sup>41</sup> A/HRC/12/WG.2/TF/2, para. 79.



common objective: to fight major diseases afflicting the world's poorest people. Both attempt to improve access to health and equitable development, and their procedures are generally participatory and empowering. Elements in the right to development criteria, which the task force considered particularly relevant to the work of the Global Fund, include equity, meaningful and active participation and the special needs of vulnerable and marginalized groups.<sup>42</sup>

The impact of the Global Fund on national capacity to control the three diseases was especially relevant to the context of goal 8. Transparency, commitment to good governance and sensitivity to human rights concerns were emphasized as characteristics of the Global Fund, albeit with some limitations in its programming.

The Global Fund programmes are generally consistent with right to development principles, although it does not take an explicit rights-based approach. The task force also noted the challenges of monitoring mechanisms for mutual accountability. The Fund has a vital role to play in developing a more enabling international environment for both health and development and in contributing to the policy agenda for promoting public-health, human rights and development.

#### 4. Debt sustainability

Borrowing under conditions of sustainable debt is an important form of international cooperation through which developing countries acquire appropriate means and facilities to foster their comprehensive development, pursuant to article 4 of the Declaration on the Right to Development. Target 8.D of goal 8 calls for the international community to deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.

The task force observed that the poverty afflicting the least developed countries is exacerbated by an unsustainable debt burden and that the payment of billions of dollars in servicing debt obligations diverts a large part of scarce resources from crucial programmes of education, health and infrastructure, severely limiting prospects for realizing the right to development.<sup>43</sup> A State's obligation to service national debt must balance national human development and

poverty reduction priorities consistent with its human rights obligations and the need to maintain the sanctity of contracts in the financing system.<sup>44</sup>

Heavy debt burdens pose major obstacles for a few low-income developing countries in achieving the Goals and meeting obligations on economic, social and cultural rights. While debt-relief initiatives contribute to the right to development, debt cancellation alone is insufficient, and must be accompanied by enhanced State capacity, governance, respect for human rights, promotion of equitable growth and sharing the benefits thereof.<sup>45</sup>

Debt relief provided by the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative have resulted in the writing-off of more than \$117 billion of unpayable debt, which clearly contributes to realizing the right to development, particularly articles 2 (3), 4 and 8 of the Declaration, by allowing debt service payments to be reallocated to stimulate and invest in infrastructure and a range of social purposes, assuming required resources are generated domestically or through international cooperation.<sup>46</sup> Further consideration should be given to how the right to development can be incorporated into development financing mechanisms, in particular through increased attention by both lender and borrower to the principles of participation, inclusion, transparency, accountability, rule of law, equality and non-discrimination. The task force agreed with the Bretton Woods institutions that, while debt relief frees up resources that can be used for development objectives, it needs to be complemented by additional financing if the Millennium Development Goals are to be reached.<sup>47</sup>

Giving developing countries greater voice and representation and improving democratization, transparency and accountability of international financial institutions would help realize the right to development. Policies of these institutions are determined by the same States that have committed elsewhere to the right to development (as well as to legally binding obligations on economic, social and cultural rights) and therefore have shared responsibility for acting in the global financial system in accordance with the right to development.<sup>48</sup>

<sup>42</sup> A/HRC/12/WG.2/TF/CRP.1, para. 20.

<sup>43</sup> A/HRC/12/WG.2/TF/2, para. 87.

<sup>44</sup> E/CN.4/2005/WG.18/TF/3, para. 63.

<sup>45</sup> A/HRC/12/WG.2/TF/2, para. 88.

<sup>46</sup> *Ibid.*, para. 89.

<sup>47</sup> A/HRC/15/WG.2/TF/2/Add.1 and Corr.1, para. 55.

<sup>48</sup> *Ibid.*, para. 56.

## 5. Transfer of technology

### (a) *Development Agenda of the World Intellectual Property Organization*

The assessment of the Development Agenda adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO)<sup>49</sup> highlighted the significant connections between intellectual property rights and the right to development. Comprising 45 recommendations, the Agenda is a key contemporary global initiative towards realizing the right to development. Intellectual property is a policy tool serving the important public and developmental purpose of providing incentives for investing in new technology. But it can also have a negative consequence on the diffusion of technology, since the temporary monopoly it creates can restrict the sharing of the benefits of technology. The Development Agenda does not include any reference to human rights or the right to development, but contains many provisions that could respond to the imperatives of this right. The task force supported the Agenda recommendations that intellectual property policies be considered within the context of national economic and social development priorities; that close cooperation be sought with other United Nations agencies involved in the development dimensions of intellectual property (in particular UNCTAD, the United Nations Environment Programme (UNEP), WHO, the United Nations Industrial Development Organization (UNIDO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other relevant international organizations, especially WTO); and that advice be provided on the use of flexibilities in the Agreement on TRIPS. These factors are crucial to a comprehensive and human-centred development approach. The Agenda also includes provisions for the protection of traditional knowledge and folklore, transparency, participation and accountability.

Implementation of the Development Agenda has advanced since the task force examined it. For example, WIPO developed a macro-level conceptual Framework for Designing National Intellectual Property Strategies for Development ("IP Strategies Framework"). This project is being implemented in order to provide development-related technical assistance to WIPO member States—in particular developing and least developed countries—to design national intellectual property strategies that meet their specific development needs and priorities in six sectors

(public-health, agriculture and rural development, industry development and trade, environment and energy, education and science, and culture).<sup>50</sup> This trend appears to be consistent with the task force recommendation that, in order to favour implementation consistent with the right to development, greater attention should be given to policy research; to developing innovative approaches to mainstreaming development objectives into intellectual property policy rather than simple transfer of intellectual property systems to developing countries; to greater collaboration with development agencies, especially those of the United Nations system and civil society; and to the development of a monitoring and evaluation system. The task force reiterated the importance of the implementation of article 66.2 of the TRIPS Agreement, which is one of the few legal obligations on developed countries to establish incentives for technology transfer to least developed countries.<sup>51</sup>

### (b) *Clean development mechanism*

The task force recognized the value of the clean development mechanism (CDM) under the Kyoto Protocol to the United Nations Framework Convention on Climate Change to the climate change dimension of the right to development and for target 8.F of goal 8 insofar as the transfer of green technology could enhance the prospects for sustainable development in developing countries. Although there is no specific reference to human rights in this mechanism, from a rights-based approach, it includes elements of equity, participation, empowerment and sustainability, which all underscore its relevance to promoting the right to development and the importance of close monitoring of these elements to ensure that it makes a positive contribution to the right.<sup>52</sup>

The criticisms levelled against CDM in the literature include its emphasis on emissions reductions without preventing or minimizing the negative impact on the human rights of peoples and communities and the inequitable distribution of mechanism projects to only a few developing countries such as Brazil, China and India, reflecting the direction of foreign direct investment flows.<sup>53</sup> The decision on the mechanism made at the meeting of the Parties to the Kyoto Protocol held in Copenhagen in 2009 also introduced steps to pro-

<sup>49</sup> Available at [www.wipo.int/ip-development/en/agenda/recommendations.html](http://www.wipo.int/ip-development/en/agenda/recommendations.html).

<sup>50</sup> See WIPO Committee on Development and Intellectual Property (CDIP), ninth session, "Management response to the external review of WIPO technical assistance in the area of cooperation for development", document CDIP/9/14 (14 March 2012).

<sup>51</sup> A/HRC/12/WG.2/TF/2, paras. 37 and 81-82.

<sup>52</sup> *Ibid.*, paras. 83 and 85.

<sup>53</sup> A/HRC/15/WG.2/TF/2 and Corr.1, para. 39.

mote equitable distribution, although further training and capacity-building activities in developing countries are required. Some CDM projects do not generate real emissions reductions. Other shortcomings from the right to development perspective include increasing delays in the rigorous approval process and lack of transparency, equity, non-discrimination, participation and accountability, although several measures have recently been taken to improve the methodology and approval process, including steps to enhance transparency. As a market mechanism, CDM has been more effective in reducing mitigation costs than contributing to sustainable development and green technology transfer.

Some human rights concerns could be addressed when adopting greenhouse gas mitigation and climate change adaptation measures, for example, through environmental and social impact assessments on outcomes of CDM projects in addition to a more transparent and participatory process through better communication with stakeholders and by providing affected stakeholders with the possibility of recourse where required procedures have not been properly followed or outcomes violate the human rights of communities.

Despite the criticisms, the Mechanism remains important for greenhouse gas mitigation and promoting sustainable development and technology transfer. It should be reinforced by enhancing its effectiveness, ensuring its social and environmental integrity and incorporating a right to development perspective. Future negotiations for a new climate change agreement will provide an opportunity to include such right to development components into the clean development mechanism.

### III. Lessons learned on moving the right to development from political commitment to development practice

While only States can move the right to development from political commitment to development practice, the task force, in its capacity as experts, was able to draw lessons for the international community from detailed examination of how this right was considered by numerous actors and processes of development. The lessons drawn relate to the strengths and weaknesses of the Millennium Development Goals, structural impediments to economic justice, the resist-

ance to addressing trade and lending from a right to development perspective, the imperative and pitfalls of measurement tools, the ambiguity of “global partnership”, the lack of policy coherence and incentives to move from commitment to practice, and the necessary balance between national and international responsibilities. These reflections provide the rationale for the suggestions for future work contained in the report on the sixth session of the task force.<sup>54</sup>

#### A. Strengths and weaknesses of the Millennium Development Goals

It has frequently been noted that, even before the global financial crisis that began in 2008, the Millennium Development Goals were not likely to be realized, especially in sub-Saharan Africa. Nevertheless, from the right to development perspective, the mobilization of resources and the political commitment of United Nations agencies and Governments were positive developments in priority-setting, indirectly relevant to the right to development but formally delinked from the Millennium Summit commitment to “making the right to development a reality for all”. It can be argued that the existence of poverty on the scale we know it today is a flagrant violation of the right to development. A breakdown of the Goals into sectoral targets is consistent with the underlying approach of the right to development which acknowledges that poverty is a concept broader than not having enough income and requires, as stated in article 8 of the Declaration on the Right to Development, “equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income”.

The task force was also aware that the Goals are divorced from a human rights framework. The High Commissioner for Human Rights has drawn attention to this gap and focused on their interrelationship by disseminating charts on the intersection and publishing an exhaustive analysis on how human rights can contribute to the Goals,<sup>55</sup> as has UNDP.<sup>56</sup> The task force completed its task as Member States and international agencies were reviewing the entire architecture of the Goals, specifically at the High-level Plenary Meeting of the General Assembly in September 2010 to review progress towards achieving them as well as other international development goals. The task force considered the summit a propitious occasion for the Governments attending the Working Group to

<sup>54</sup> *Ibid.*, paras. 71-85.

<sup>55</sup> See footnote 3 above.

<sup>56</sup> See footnote 4 above.

introduce at the High-level Plenary Meeting the concerns expressed by the task force and ensure that the new structure for the Millennium Development Goals was more consistent with the right to development. The High Commissioner issued a strong call for the summit to include human rights in its review of the Goals.<sup>57</sup> The resolution adopted at the close of the summit did make numerous references to human rights, including recognizing that successful policies and approaches in implementing the Millennium Development Goals “could be replicated and scaled up for accelerating progress, including by ... respecting, promoting and protecting all human rights, including the right to development”<sup>58</sup> and that “the respect for and promotion and protection of human rights is an integral part of effective work towards achieving the Millennium Development Goals”.<sup>59</sup>

However, the tension between macroeconomic goals and human rights cannot be resolved by a general commitment to moderating certain policies; it requires a partnership of the type envisaged by goal 8. The task force shared the view “that slow action on key initiatives in the areas of aid, trade and debt will seriously reduce the likelihood of achieving the MDGs by 2015” and that “continued inaction in these crucial areas of MDG 8 which impact on the possibility of achieving the other seven MDGs for most developing countries also casts doubt on the seriousness with which developed nations are addressing the global partnership embodied in MDG 8 and its inherent notion of mutual accountability and joint responsibility”.<sup>60</sup> Mutual accountability and joint responsibility are at the heart of the right to development, and the shortcomings in the Goals from the right to development perspective should be addressed in the new architecture to emerge after 2015.

## B. Structural impediments to economic justice

The concern of the right to development with structural impediments to equitable development on the global scale is frequently interpreted as a push from the South for the transfer of resources from the North, often as aid flows. Failure to meet the objective for developed countries of devoting 0.7 per cent

of gross national income to official development assistance is frequently a proxy for failure to realize the right to development. These perceptions are misguided. First, OECD countries are concerned about structural impediments to development in the context of negotiated modifications of the rules governing trade, foreign direct investment, migration and intellectual property, as well as in decisions affecting the flow of capital and labour. Their active participation in “development agendas” bears witness to this shared concern. However, the stalemate of the Doha “development” round of trade negotiations is also evidence of the limits of this commitment. The right to development suffers profoundly from the entrenched positions of parties to negotiations on development agendas. Formal commitment to the right to development cannot, by itself, move these negotiations to a mutually beneficial outcome.

Along with shared commitment, the promise of the right to development depends on an honest assessment of the approach taken to aid effectiveness. The task force welcomed the statement in the Accra Agenda for Action that “gender equality, respect for human rights, and environmental sustainability are cornerstones for achieving enduring impact on the lives and potential of poor women, men, and children. It is vital that all our policies address these issues in a more systematic and coherent way” (para. 3).<sup>61</sup> The Fourth High Level Forum on Aid Effectiveness, held in 2011 in Busan, Republic of Korea, adopted the Busan Partnership for Effective Development Cooperation, which refers to “our agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability” (para. 11) and to rights-based approaches of civil society organizations, which “play a vital role in enabling people to claim their rights” (para. 22), but does not add to the human rights content of the Accra Agenda for Action or make explicit reference to the right to development. Realizing the right to development requires a systematic rethinking of aid effectiveness in the light of all the policy implications of the statement in the Accra Agenda that aid policies must address human rights “in a more systematic and coherent way” (para. 3).

Aid is a relatively small part of development; it has not placed recipient societies on a sustainable path of development and some even argue that it has done more harm than good.<sup>62</sup> Among the targets for

<sup>57</sup> Office of the United Nations High Commissioner for Human Rights, “Human rights: key to keeping the MDG promise of 2015: key human rights messages for the MDGs review summit”, available at [www.ohchr.org/Documents/Issues/MDGs/Key\\_messages\\_Human\\_RightsMDGs.pdf](http://www.ohchr.org/Documents/Issues/MDGs/Key_messages_Human_RightsMDGs.pdf).

<sup>58</sup> Resolution 65/1, para. 23 (j).

<sup>59</sup> *Ibid.*, para. 53.

<sup>60</sup> Jan Vandemoortele, Kamal Malhotra and Joseph Anthony Lim, “Is MDG 8 on track as a global deal for human development?” (UNDP, 2003), pp. 14–15.

<sup>61</sup> Documents relating to aid effectiveness are available from the OECD website ([www.oecd.org](http://www.oecd.org)).

<sup>62</sup> See Dambisa Moyo, *Dead Aid: Why Aid is Not Working and How There is a Better Way for Africa* (New York, Farrar, Straus and Giroux, 2009); William Easterly, *The White Man’s Burden: Why the West’s Efforts to Aid*

goal 8 is the call for “more generous official development assistance for countries committed to poverty reduction”, echoed by the United Nations Millennium Project<sup>63</sup> and the Gap Task Force.<sup>64</sup> The reference in the Declaration on the Right to Development to providing developing countries with appropriate means and facilities to foster their comprehensive development (art. 4) strongly supports the argument for increased aid. While acknowledging the limitations of aid, the task force stressed the importance of donor States keeping their commitments made in the Doha Round, the Monterrey Consensus, the Gleneagles G8 summit and the London G20 summit to increase assistance. The task force shared the conviction of the Third and Fourth High Level Forums on Aid Effectiveness that country ownership is a key factor. The Declaration on the Right to Development defines the appropriate national development policies, which States have the right and the duty to formulate, as those “that aim 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 the benefits resulting therefrom” (art. 2). Furthermore, “States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights” (art. 6). The implications of these norms for country ownership and “policy space” have not been adequately explored. They mean, at least, that a high level of responsibility falls on developing countries to ensure that they pursue policies consistent with the right to development and that they should be entitled to more international cooperation and assistance to the extent that their policies and practices reflect that responsibility. This interpretation should not be misconstrued as favouring “conditionality”; rather, progress in implementing this right depends on responsibilities being shared by donor and developing countries, as discussed in section G below.

### C. Resistance to addressing trade and debt from a human rights perspective

The task force was not asked to examine the principal institutional framework for an open trading

system, namely WTO itself. Furthermore, the encouragement offered by the European Commission to the task force to examine the Cotonou Agreement and economic partnership agreements was not sustained, and the initial interest of countries in the Common Market of the South (MERCOSUR) was not followed by a formal invitation to the task force to review that partnership from the right to development standpoint. Similarly, on the issue of debt, the review by the task force had to be limited to a special meeting on debt<sup>65</sup> with the purpose of collecting information, but not to pilot-test criteria. On the other hand, the World Bank suggested—but the Working Group did not agree—that the task force should evaluate the Bank’s Africa Action Plan, a comprehensive strategic framework addressing aid, trade, debt relief and the role of non-State actors supporting the development of the continent’s poorest countries.<sup>66</sup> Similarly, the task force considered the Inter-American Development Bank, which also deals with debt, regional integration, human development and the environment; however, no explicit tasks were assigned.

There are no doubt good reasons for European Community and ACP countries, MERCOSUR countries, the Inter-American Development Bank, WTO and international financial institutions to assist the task force in ways other than a dialogue on the application of right to development criteria to their own policies. The task force was frequently reminded of the legal constraints limiting potential for deeper involvement from these institutions. Such resistance did not arise with the questions of access to medicines and transfer of technology institutions.

It is in the nature of the right to development that the issues addressed touch on all aspects of the global economy and domestic policy that affect development and the constant improvement of the well-being of the entire population and of all individuals. This imperative is not without tension, and resistance is inevitable from global and regional institutions created for purposes other than human rights, and the Governments constituting those institutions. The Working Group will have to deal with this reality in its effort to ensure that the right to development has an impact on development practice. Whether in the form of guidelines or a binding international legal document, monitoring is essential and resistance (apart from some exceptions) will be an obstruction to implementation mechanisms for the right to development.

*the Rest Have Done So Much Ill and So Little Good* (New York, Penguin Press, 2006); Paul Collier, *The Bottom billion: Why the Poorest Countries are Failing and What Can Be Done About It* (Oxford and New York, Oxford University Press, 2007).

<sup>63</sup> See United Nations Millennium Development Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (New York, UNDP, 2005).

<sup>64</sup> See United Nations, *Millennium Development Goal 8: Strengthening the Global Partnership for Development in a Time of Crisis: MDG Gap Task Force Report 2009* (New York, 2009).

<sup>65</sup> A/HRC/15/WG.2/TF/2 and Corr.1, paras. 48–61.

<sup>66</sup> A/HRC/4/47, para. 27; A/HRC/4/WG.2/TF/2, paras. 86–87.

#### D. Imperative and pitfalls of measurement of progress

In its report on right to development criteria and operational sub-criteria (A/HRC/15/WG.2/TF/2/Add.2), the task force explained the evolution of its efforts to develop tools for the qualitative and quantitative evaluation of progress in implementing the right to development. Some Governments are apprehensive about “indicators”, presumably concerned that domestic actions, which are the prerogative of the State, will be judged by others. As explained, the development of indicators was not an exercise in ranking or even judging countries, but rather in providing to the Working Group operational sub-criteria in the form of a set of methodologically rigorous tools that can be used in determining where progress is occurring or stalling, and the next steps for promoting implementation of the right to development.

It is also important to underscore the limits of measurement. Undue expectations must not be placed on indicators and benchmarks, especially if they are to lead to guidelines or a legally binding standard. Any use of such indicators must be rigorous and strike a balance between selectivity and comprehensiveness, usability and attaining a complete representation of all obligations inherent in the right to development. The task force did not purport to provide a complete description of all obligations and entitlements entailed by this right, but rather an illustrative set of examples on which the Working Group could build.

The tools of measurement serve two major purposes. First, they open the way for a monitoring mechanism, informal or treaty-based. The decision regarding the preferred basis for monitoring depends on the political decisions of Governments. However, the right to development cannot be useful in altering approaches to development unless and until the actions of those responsible for development are assessed using professionally crafted tools of measurement. This is true for all development parameters, and having tools is the first step when responding to the legitimate question from development practitioners, “What do you want us to do differently?” Unless criteria and sub-criteria answer that question, the right to development is not likely to advance in the field. Second, Governments have affirmed that the right to development must be treated on a par with other human rights. Other human rights, in the practice of the treaty bodies monitoring them, are assessed using indicators. Unless the right to development is also subject to assessment using indicators, it will not be on

a par with other human rights. A similar argument applies to including this right in the universal periodic review mechanism of the Human Rights Council.

#### E. Ambiguity of “global partnership”

The Working Group requested the task force to focus mostly on the global partnership for development as used in goal 8, which is an ambiguous concept. The task force interpreted it to mean treaty regimes, arrangements and commitments, multi-stakeholder strategies and mechanisms, and multilateral institutions that epitomize global or regional efforts to address goal 8 issues. None of these was established as a direct consequence of commitment to goal 8, but they tend to see themselves as contributing to that goal. None has a mandate to promote the right to development. Nevertheless, they are among the array of right to development stakeholders and have sometimes acknowledged that this right is pertinent, but have more commonly considered it a matter of inter-agency information-sharing rather than policy guidance.

The 10 partnerships reviewed in section II.C above were selected as the result of the Working Group having requested the task force to focus on goal 8. The task force also considered other regional instruments that might be examined, such as the Charter of the Association of Southeast Asian Nations of 2007 and the Arab Charter on Human Rights, adopted in 1994 and revised in 2004 (which contains an explicit article on the right to development), but the States concerned considered this to be premature.<sup>67</sup> If the full range of pertinent duty bearers were to be considered, the Working Group would need to identify meaningful ways to have States confront their responsibilities towards their own people, persons in other countries affected by their policies, and multilateral institutions whose mandates and programmes depend on the decisions of their States members. The task force sought to clarify the diverse responsibilities of partnerships thus understood in order to engage with stakeholders not hitherto part of the dialogue.

#### F. Lack of policy coherence and incentives to move from commitment to practice

Responsibility for the right to development is further complicated by the fact that States have not translated their commitment to this right into their deci-

<sup>67</sup> A/HRC/8/WG.2/TF/2, para. 82.

sion-making in these partnerships. Of all 10 partnerships examined at the request of the Working Group, and all others considered without an explicit mandate, none referred to the right to development in its resolutions or founding documents. It is therefore difficult to expect them to introduce right to development considerations as such in their policies and programmes.

The motivation to introduce right to development concerns cannot be generated without incentives. The right may be contrasted with most other strategies for development by the lack of incentives to take far-reaching measures based on political and legal commitments to it. Where there is a legal commitment, such as in Africa, States parties have, generally, not acted in any significant way, nor have treaty bodies reported in detail on the fulfilment of legal obligations. African Governments do take their commitment to the right to development seriously. However, the African Commission on Human and Peoples' Rights has not taken any significant steps to monitor this right and hold States parties accountable, with the notable exception of one landmark decision concerning the violation of the right to development as a result of an eviction of an indigenous group from a wildlife reserve.<sup>68</sup> Institutions with a stake in promoting international cooperation in accordance with the right to development have not been able to modify their policies or the behaviour of their stakeholders based on an explicit invocation of the right. Many of their policies, such as those relating to gender equality and action on behalf of vulnerable populations, contribute to the realization of the right, but its value alone cannot be considered the motivation for such policies and programmes. In other development strategies, such as PRSPs, there are clear incentives to comply with standards and procedures, often resulting in targeted funding or debt forgiveness. The right to development can only be compelling for those who find the principles on which it is based to be compelling. The ultimate advantage of respecting this right is a more just global and national environment to ensure constant improvement of the well-being of all. However, the behaviour of development decision makers is rarely determined by the compelling long-term value of an idea. This too is a matter that the Working Group should consider when determining how to move forward.

Beyond the power of the concept of an international (moral or legal) obligation to pursue development that is comprehensive, human-centred and respectful of human rights, the incentive to take this

right seriously should be based on evidence and on the demonstrated advantage to be gained by making explicit reference to it in specific development actions and policies. The activities reviewed in the consolidated findings above have made the first step towards generating such evidence. The task force was firmly convinced that, in spite of benign tolerance and even resistance to seeing this right as useful in development practice, the more common reaction has been to acknowledge the congruence between the objectives of development policies and the normative content of the right to development. The next step is to generate evidence that policies altered in acknowledgement of the right to development make a positive difference. The task force therefore urged the Working Group to consider applying the criteria by means of context-specific reporting templates and to collect evidence of the difference, if any, of pro-right to development actions, as recommended in the main report of the task force on its sixth session.<sup>69</sup>

### G. Necessary balance between national and international responsibilities for the right to development

The final issue the task force wished to address bordered on the political, which was not its purview as an expert body. However, it had examined the history of efforts to bring clarity to the concept of the right to development and was acutely aware that balancing the national and international dimensions of this right has been at the forefront, because each dimension reflects the preference of different groups of States and because the Declaration is clear that both dimensions are essential. It was the ardent hope of the task force that these dimensions could be seen as complementary rather than conflicting. National policies must be supportive of human rights in development and of redressing social injustice nationally and internationally. Equally, the failure of many nations, especially in Africa, to benefit from significant increases in the well-being of their populations is due to the unjust structures of the global economy that must be addressed through genuine development agendas, that is, negotiated and agreed modifications in terms of trade, investment and aid allowing developing countries to overcome the disadvantages of history and draw the full benefit of their natural and human resources.

The greatest challenge that lies ahead in bringing the right to development into the realm of practice

<sup>68</sup> The *Endorois* case, discussed elsewhere in this publication. See also the *Gumne* case before the African Commission.

<sup>69</sup> A/HRC/15/WG.2/TF/2/Add.1, para. 80.

is for all States to embrace the indivisibility and interdependence of “all the aspects of the right to development” as set forth in article 9 of the Declaration on the Right to Development. Those with political reasons for favouring the international dimension and a collective understanding of the right must seek adjustments in their national policies and take the individual rights involved seriously. Similarly, those that stress, through human rights-based national policies, that this right is

essentially a right of individuals must do their part to ensure greater justice in the global political economy by agreeing to and achieving outcomes of the various development agendas consistent with the affirmation in the Declaration that, “as a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.