**Mandate of the United Nations Special Rapporteur on the right to development**

**Regional consultation on the practical implementation of the right to development: identifying and promoting good practices**

**Western European and Other states and Eastern European States**

**Geneva, 11-12 June 2018**

**Palais Wilson, first floor conference room**

**Outcome document**

**A human rights based approach to development policies and program design**

* Challenges:
* Institutional obstacles, cultural obstacles, operational obstacles and financial constraints were identified as major obstacles at national level while designing development policies and programs
* Combating the root causes of discrimination including gender-based discrimination, discrimination based on ethnicity, religion, racial identity, but also discrimination based on socio-economic situation, including poverty.
* There are difficulties in particular in mainstreaming disability rights into development policies; the appropriation of specific agendas by government authorities creates further problems
* The absence of multi-sectorial coordinated policies with a human rights based approach and adequate budgeting
* Funding from international financial institutions are used to support anti- rights initiatives, i.e. anti-migration security programmes remain problematic; short term projects are oriented towards immediate results
* In terms of gender, women are often envisioned as the beneficiaries of development programmes but rarely are among the decision makers or those consulted
* Four trends that will impact development going forward and which will affect all countries
  + Climate change, which is one symptom of unsustainable development policies. This now presents the question for States: How to shift energy policies in a development friendly way?
  + Technological advancement, increasingly replacing labour as an essential factor of production. How to develop social safety nets to protect those whose industries are affected?
  + Demographic change, and especially the growth of young populations in the Global South. How to ensure economies, both developing and developed, can absorb and include these populations?
  + Continued economic uncertainty, and the concurrent lack of responsiveness of financial system to the causes and consequences of financial crises. What kinds of macroeconomic measures can states take in response, especially given the potential harms of austerity measures?
* Mobilizing *domestic resources* is difficult for many countries not only because of limited resources but also if there are conditions—imposed externally—on how domestic resources should be employed (e.g., conditionalities), or when considering the irregular capital flows outside of countries
* In terms of gathering disaggregated data there may be scepticism in some countries about the reliability of data already collected by official state sources –e.g., if details of politically sensitive issues aren’t tracked or if data appears to be skewed in order to reach pre-determined or desired outcomes. In all countries, there is need for additional resources for data disaggregation.
* The erosion of civil and political rights and the closing of civic space in many countries in the region makes reliable data gathering difficult, especially in terms of assessing true perceptions of communities
* Achieving the SDGs cannot necessarily be equated with achieving the right to development. The SDG framework can actually create human rights challenges e.g. with regards to the push for public-private partnerships for SDG implementation.
* In relation to conducting human rights impact assessments:
  + While there is a proliferation of methodology and guidance for human rights impact assessments, the practice of conducting such assessments is less developed- particularly in certain areas such as trade and finance
  + In the area of business and human rights practice is more developed. However, these impact assessments are often kept confidential and not disclosed to the public.
  + Lacking willingness of States to conduct these assessments and integrate them into national regulations and policies
  + The process of HRIA often take a lot of time, financial and human resources
  + Absence of a standardized method for HRIAs: they are conducted by different actors, and often different terminology and guidance is used
  + In terms of the analysis stage it is often very difficult to establish causality between an intervention and the human rights impact
* One of the challenges identified is having independent critical research: state related universities in some parts of the world do not/cannot conduct independent research; professors dealing with human rights issues are being expelled/ experience retaliation; research is being influenced and modified to serve the purposes of the executive; Bulgaria and Romania- examples of good cooperation with EU education structures enhancing independence of universities; common cooperation projects such as Erasmus have a positive impact; research conducted with participation of communities is essential. Need to assist civil society to improve their research capacity, also to gather disaggregated data and challenge government sources.
* Another challenge is the tendency still present in the States, politicians etc. to equate development with economic growth in spite eminent experts worldwide have dismounted such a paradigm
* **Recommendations:**
* *Participation and access to information* are important – all actors, including institutions, businesses and investors—depending on who is producing information—should be providing information transparently, especially to affected communities. Civil society should be involved formally in policy design, implementation and evaluation
* Civil society in the Europe should play a greater role in raising awareness and informing the population about the right to development and what it means for their sustainable development. The role of human rights defenders as relates to development rights in all regions was identified as increasingly important but also as an additional source of reprisals including from both states and non-state actors.
* States should promote the integration of the right to development in human rights curriculums
* In the context of the right to development, states and intergovernmental organisations should recognise the role of rights defenders towards the implementation of the right to development, especially in their actions to defend access to land and safeguard natural resources
* States and intergovernmental organisations should promote and strengthen civil society engagement in educating and raising awareness on the right to development at the regional level; develop civil society networks across the region to share good practices and information on successful projects; Create bridges between various civil society actors across various sectors including development, peace and security and human rights
* Individuals at the local level should be the ones to imagine and build the change
* A rights based approach also requires that States invest into strong institutions, building the legal framework and promoting the potential of social innovation to feed into policy design and ensure that they are achieving their intended goals of promoting human rights
* European countries should look at the issue of migration through a framework of the right to development, and not only from a security standpoint, to see migrants as agents of development and as individuals and groups who seek the realisation of their right to development.
* Governments/international organisations/institutions funding international development programmes should not impose conditionalities on receiving governments, since this can have adverse unintended effects on the population; rather donors should choose alternative partners (e.g., civil society) when seeking to initiate development programmes in countries where the government is not rights-respecting.
* States should adopt and/or implement comprehensive equality legal frameworks as a substantial basis for achieving a number of the SDGs and the related targets. States should adopt legislation and finance a range of policy measures to achieve equality
* Disaggregated data need to be collected in the process of designing policies towards the achievement of sustainable development and the right to development. Data disaggregation efforts need to draw on human rights-based approaches to data, given associated opportunities as well as potential risks for the protection of rights.[[1]](#footnote-2) Adequate efforts should be made to define process indicators which have a bearing in monitoring the human rights component of development policies
* Human rights driven budgeting should be promoted including gender budgeting but also equality budgeting
* The Special Rapporteur should consider working towards unpacking the rhetorical commitment to a rights based approach to development to come up with a common understanding of what it means. This work should be done in collaboration with development actors to come up with a common set of understanding, which would entail alignment between the new development commitments and pre-existing commitments under the human rights framework
* The Special Rapporteur should engage with UNCTAD on macro-economic conditions that are impeding the realisation of the right to development
* The EU in its role as one of the major contributors to development cooperation should continue efforts towards promoting the establishment of social protection floors which have proven to have very positive impacts
* Development policies should be *intentional*. Looking at the practice of countries which have managed to rapidly develop in spite of global crises in the past, these States have developed *intentional* development policies to which they remained committed over time, which included, among other things:
  + a specific strategy about the sectors in which the State would invest and the sequencing of that investment
  + a conscious policy commitment to social and economic inclusiveness, either through social welfare programs or investment in public services, like housing, education, social protection and health care (see Western Europe, Japan)
  + an open policy space where the policy could be revised according to what did and didn’t work and corrective measures could be taken
* *Stability is a pre-condition* for development: Thus good governance, the ability to create institutions (transparent; responsive; separation of powers) and the context of peace/conflict are all relevant factors
* There should be a focus not only on development programmes for their own sake but the *outcomes* of those programmes in terms of their *quality*:
  + One example: States sometimes provide subsidies to businesses to encourage them to establish presences in their countries with the ultimate goal of creating employment – however, there appears not to be an interrogation of whether the employment has resulted in a living wage and good working conditions for the population
  + Another: States may be encouraged to enter into public-private partnerships with the goal of implementing development projects in a more efficient or cost-saving way. However, in the Eastern European region, these projects have failed in the past due to revelations that investment of public resources in such projects ended up benefiting the private sector more than the public
* Ensure that the information related to development policies and processes are easily accessible; There’s a need to look at what is required of target populations to understand the information that is shared with them: translating technical information to language understood by laypersons, putting information online, training communities to access information by phone, translating information into local & indigenous languages etc.
* Ensure the existence and the effective work of participatory decision making mechanisms; Duty bearers: governments but also donors
* Enhance the role of independent academic research in addressing rights and development issues and increase focus on discrimination against different groups
* It is important to utilise a human rights-based approach to data (HRBAD) gathering.[[2]](#footnote-3) The aim of this approach is to evaluate not only outcomes of policies but also structures and processes. The approach incorporates a number of fundamental principles, including:
  + Inclusion / participation or the ‘nothing about us without us’ motto: data collection should actively involve the community about whom the information is being gathered
  + Self-identification, e.g. respondents should be able to self-select how they identify in terms of ethnicity, sexual orientation / gender identity, disability
  + Data privacy & reconciling it with transparency
  + Data disaggregation to enable an assessment of how policies and programmes are impacting discriminated individuals and groups
* There is a cost associated with promoting participation in data gathering and assessment exercises which should be borne in mind when designing development projects

* Include the right to peace in the advocacy of the right to development, especially in relation to the discussion on disarmament, post-conflict reconstruction, and reallocating resources towards sustainable development efforts
* Recommendations related to conducting human rights impact assessments:
* The context of the impact assessment needs to be taken into account- meaning that the methodology has to be adaptable and flexible, taking into account factors such as time, resources and data availability and gathering.
* If they are to drive policy change, HRIA have to be part of policy making ex ante i.e. part of decision making process
* Disclosure is important- HRIAs should be made public so that people understand how the analysis has been done/ what the outcomes are
* Human rights advocates need to do a better job at convincing governments that HRIA lead to better decision making
* It is important to think about the report resulting from a human rights impact assessment not as an end in itself but as a starting point for action. The communication and messaging is very important to ensure that reports reach relevant stakeholders and lead to actual results instead of collecting dust on a shelf.
* In order to assess the quality of a HRIA, we need to examine how/to what extent recommendations have been picked up by policy makers and rights holders
* States should make the initiation of development projects dependent on a showing by the policymaking body that they have taken into account the HRIA conducted (example of good practice from the United Kingdom, where policymaking bodies must show they have done an equality impact assessment and considered its outcome before instituting a policy)
* Stakeholders undertaking development programmes should involve the same communities who are consulted as part of an HRIA process in the actual implementation of the same project that had been assessed
* Governments that have successfully implemented HRIA should share that knowledge with other governments in the region so they can learn how it is done
* **Good practices:**

**National level:**

* Cross-sectorial partnership has proven to be the most successful when agreement was built on a minimum of common interest where joint efforts can lead to results
* Issue-based parliamentary groups with mixed composition around certain rights can have positive impact
* Multi-sectorial coordination has yielded very positive outcomes at the local level, these successful models should be replicated at national levels
* Enhanced collaboration between national statistical offices and national human rights institutions will facilitate the operationalisation of human rights-based approach to data, essential to the implementation of the SDG and right to development.

**Regional level:**

* Where appropriate linking data gathering to EU accession processes
* From the EU perspective it was stressed that although there was no consensus on the right to development, the rights based approach to development was fully embraced
* The EU is currently reinforcing its policy framework, inter alia by issuing Human Rights Guidelines on water and sanitation. These guidelines will provide political and operational guidance to officials and staff of the EU Institutions and delegations for their work in third countries and in multilateral fora. They will not develop new standards, but use existing framework from the UN system, in particular from the UN Committee on Economic, Social and Cultural Rights and the Special Rapporteur on human rights to water and sanitation, as well as UNGA and HRC resolutions on the human right to water and sanitation. These guidelines will be complementary to the EU Toolbox on a Rights Based Approach in the field of water and sanitation
* The EU continues to provide financial and technical support to achieve concrete progress in this crucial area. EU support for the environment, including climate change, sustainable energy and water, represented 5.7 % of total funding for development, corresponding to €2.71 billion over the period 2007-13. EU support to land governance for improving food security, poverty reduction and inclusive development has been properly ensured for the ~~subsequent~~ period 2014-2020. This includes the EU support to education in 40 partner countries, including in fragile contexts.
* On 19 May 2017, the EU adopted a new European Consensus on Development "Our World, Our Dignity, Our Future". As the EU response to the whole of the 2030 Agenda and its SDGs, it balances the three dimensions of sustainable development, economic, social, environmental as well as peaceful and inclusive societies. Structured around the five core themes of the 2030 Agenda – people, planet, prosperity, peace, and partnership – the European Consensus defines a new and collective European development policy for EU Institutions and Member States and signals a new era of closer EU collaboration, working together with our partner countries toward the implementation of the 2030 Agenda. In the new Consensus the rights-based approach (RBA) to development cooperation is the principle and working methodology guiding EU development action. It encompasses ~~all~~ human rights for all, regardless of ethnicity, gender, age, disability, religion or belief, sexual orientation, migration status or other status and it promotes inclusion and participation, non-discrimination, equality and equity, transparency and accountability. By ensuring via the rights-based approach that no one is left behind, the EU delivers on the primary objective of EU development policy: reduction and, in the long term, eradication of poverty.
* Example of a good practice: the ‘COMPASS’ project (EU funded) - a multi-country information tool, built in part by civil society, that provides information for new residents of the Danube region (including Serbia, Austria, Hungary, Germany, etc.), on labour standards in each country in the region. The ultimate goal is economic integration of migrants in these countries, but more specifically, the promotion of fairer access to employment, work and skills enhancement.

**General:**

* + The SDG provides a useful entry point and momentum for pushing the RtD agenda forward. Human rights actors should take advantage of momentum around the development agenda to advance the human rights. More bridges, and cooperation should be developed between the development sector and the human rights sector under the impetus of the 2030 Agenda for sustainable development
  + States should systematically include in their reporting to the CESCR practical examples on how their implementation of the 2030 Agenda has had a positive impact on advancing human rights

* Utilising human rights impact assessments in development processes
* HRIAs provide an objective analysis of how a policy or project affects human rights positively or negatively. As such HRIA have been recommended by a number of international human rights mechanisms.

Examples: “MAPS” (i.e., Mainstreaming, Acceleration and Policy Support) missions – these are UN interagency missions that, in addition to other things, identify ‘accelerators’ for realization of the SDGs in particular countries. In 2 different missions rights-related issues were identified as ‘accelerators’: (1) In Albania, the rule of law/human rights, green capital/economy and investment in social and human capital were all identified as accelerators for the achievement of the SDGs, (2) In Ukraine, the independence of the judiciary and the need to allow IDPs to be a part of receiving communities/granted social benefits were identified as two of the seven accelerators for achieving the SDGs.

* Compared to other type of impact assessments, HRIA have a more universal and comprehensive approach. They are based on the normative framework of international human rights law, meaning that they are informed by established human rights principles, jurisprudence etc. This means that:
  + It allows us to judge a certain development policy or project against standards that have legal weight
  + It emphasizes the need for participation and transparency at all levels
  + It means that existing human rights mechanisms can be utilized to provide guidance on the implementation and follow-up for human rights impact assessments.
* Conducting HRIAs in the context of trade, investment and finance, could be an important step to inform better decision making in these areas and to promote fairer trade practices. They could be a useful tool to fill some of the gaps by creating more democratic, participatory decision making on a global level and by bridging gaps between global and national decision making.
* Human rights impact assessments should be conducted at the very beginning (to inform policy design and programming). In many cases, these assessments take the form of perception surveys to ensure that the concerns of affected communities are taken into account. They can also be repeated periodically in order to monitor change and evaluate progress.
* Question as to whether HRIA should be stand- alone assessments or integrated into others social/environmental/regulatory impact assessments? There are benefits and challenges to both: While integrated assessments may save costs and resources, human rights aspects are often marginalised
* During the scoping stage of an assessment, the right to development may be defined as one of the main rights/priority areas that the impact assessment should focus on. However, there is no proper framework for systematically integrating the right to development in all human rights impact assessments given that so many elements of this right that may be relevant). It may therefore be useful to create a framework/guidance regarding the issues that one needs to look at when assessing a development project/policy against the right to development.
* The right to development should duly be included in development impact assessment frameworks i.e. impact assessments should include a particular RtD lens. In this regard it may be important to build the capacity of relevant stakeholders, including CSOs, to conduct such assessments with an RtD lens.
* Why is it important to integrate the right to development into HRIAs: it takes into account certain principles and issues that may otherwise be neglected (looks at individuals, groups, nations, and peoples; it pays attention to international dimensions of equality/ the fair distribution of benefits; it focuses on participation, inclusiveness, non-discrimination, indivisibility of human rights, equality of opportunity, issues of peace/security/disarmament i.e. it looks at the broader picture instead of focusing only on individual human rights)

**Accountability and access to remedies**

Provision of remedies is essential to the right to development including not only judicial remedies but also administrative remedies such as actually facilitating access to public services may be sufficient.

* **Accountability mechanisms that can be employed in order to protect and promote human rights and remedy discrimination:**
* Adoption of anti-discrimination legislation, providing for a legal avenue to bring cases to national courts
* Such laws should contain proper definitions of discrimination and grounds for discrimination, including antidiscrimination laws that cover sexual orientation and gender identity, which provide sanctions and remedies for LGBTI persons who have experienced discrimination on these grounds
* Effective implementation of such laws (laws on paper are not enough, length of proceedings must allow for relief within reasonable time)
* Strengthening the standing of victims in the legal process
* Adoption of laws criminalizing hate crime, including criminalization of homophobic and transphobic hate crimes
* Challenge: legal proceedings are often not adequately equipped to solve problems related to **interdependent** **rights.** The complete fulfilment of human beings and peoples’ equality in their access to basic resources including education, health services, food, housing, employment, social protection and the fair distribution of income is strongly threatened especially with the most vulnerable groups, such as Roma
* Adoption and effective implementation of laws requiring provision of essential personal documents to all, including minorities. Absence of such leads to exposure to cumulative violations of several rights (no access to health care, education, housing, employment, social protection, but also right to vote etc.)
* Adoption and effective implementation of laws allowing the effective protection of **persons** **deprived of legal capacity**. Challenge: in many legal systems persons deprived of legal capacity have no legal options for challenging that status and having their legal capacity restored.
* **Other avenues for accountability:**
* Trial monitoring: has potential to improve access to justice and increase fair trials
* Provision of free legal aid to indigenous members of the society (what about poor people?) not only for criminal but for economic and social rights cases; state legal aid funds not to be monopolized by BAR associations, but to be open to civil society organisations
* Participatory mechanisms in decision making, involving the groups affected by the particular policy/programme/project. (Example of Country Coordination Mechanism (CCM) in Georgia - goal of the CCM as of the one national coordinating authority is to ensure coordination of the response against HIV/AIDS, Tuberculosis and Malaria on the national level; membership includes representatives of governmental, international, non-governmental and private organizations, including representatives of key affected communities
* Challenge – ensuring sustainability both for trial monitoring programmes and for participatory mechanisms, once foreign donors/international organisations cease funding.
* National Human Rights Institutions to be mandated to take up social and economic rights issues - but must be independent and have clear lines of communication and reporting
* At regional and international level- employing complaints procedures such as before the European Court for Human Rights or the UN treaty bodies (Committee for Social, Economic and Cultural Rights in particular- countries to ratify the Optional Protocol to the Covenant, allowing individual communications)
* At UN level- employing the treaty body reporting mechanisms to address human rights in development (Through a 2011 statement the CESCR committed itself to monitoring how states address the eradication of poverty, underdevelopment and the promotion of an environment favourable to the realisation of development for all without discrimination)
* Accessibility and visibility- all mechanisms must be made more visible and accessible, including to persons speaking minority languages and persons with disabilities
* **Accountability of international financial institutions (IFIs):**
* Most IFIs (all European IFIs) are public institutions; shareholders are the states; therefore banks must implement international and regional legal standards
* All IFIs have accountability mechanisms with two main 2 functions: 1) complaints mechanisms; 2) compliance review (experts check if the particular project fulfills the requirements and make recommendations for amendments)
* Complaints mechanisms should be widely advertised and used by individuals affected by development programmes/projects financed by IFIs (Examples of Serbia and Georgia producing lots of complaints – cases of evictions but also inadequate provision of social services; cases of communities affected by mining or energy producing water dams; local communities voice counting less than “experts”
* Indigenous peoples not recognized as such because the state governments do not recognize them as such and IFIs have varying definitions of indigenous, which affects their entitlement to land and natural resources
* IFIs also often have mediation mechanisms, which in some cases have provided relief to affected communities (example of a case of blind people not having proper exit from their neighborhood- resolved through mediation).
* **Social Solidarity Networks:**

Research based on the work of women’s grassroots organisations in six countries showed that production, exchange and redistribution practices based on solidarity can be found in almost all areas of economic activity. Such social and solidarity economy (SSE) practices privilege the quest for solidarity (among producers, between producers and consumers, in diverse territories and environments, etc.) over individual (or group) profit and rent seeking behaviour. Social and solidarity economy practices do not aim to replace the market nor the state, but rather to re-articulate the latter two institutions under the principles of reciprocity and solidarity. SSE economy practices make room for debate to take place, thus articulating democracy and the economy, and bringing about new ways of contesting politics, development institutions and public policies.

In the six cases studies of our research we confirmed that the frontiers between women’s productive and reproductive activities are blurred. Women’s work in SSE activities are frequently considered as a service more than as work, "naturally" carried out by women by virtue of being a woman, and "productive" activities are often presented as domestic ones. As a result, since their work is not recognized as such, women have limited or no economic and social rights as workers, and they are often not entitled to protection or support from the State.

**Recommendations:**

* Women engaged in such activities should be recognised as workers, since currently they are not getting labour and social protection
* While it is not possible to sustain solidarity initiatives without State support, either by subsidies, by promotion and protection policies or by other social policies, at the same time they cannot exist without autonomy and should not be co-opted by the state in order to preserve their *raison d'être* and provide an avenue for the voices of women belonging to these groups to be heard.

1. See for instance https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf [↑](#footnote-ref-2)
2. Ibid. [↑](#footnote-ref-3)