

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

The Netherlands

The Netherlands is pleased to send a contribution in reply to OHCHR’s Note Verbale dated 20 October 2010, asking for contributions from States and other stakeholders on the following :

- (a) The right to development criteria and operational sub-criteria of the task force;
- (b) The consolidation of findings of the task force;
- (c) The conclusions and recommendations of the task force, in particular with regard to the suggestions for further action on the criteria, thematic areas of international co-operation for consideration and mainstreaming the right to development¹;
- (d) The way forward to ensure the effective implementation of the right to development.

The right to development criteria and operational sub-criteria of the task force

The Netherlands highly appreciates the work done by the High-Level Task Force on right to development criteria and operational subcriteria as contained in A/HRC/15/WG.2/TF/2/Add. 2. The Netherlands consider this a useful basis for further work on the operationalizing the right to development. We think however that further discussion and expert advise is necessary to finalise the criteria and operational subcriteria.

The Netherlands has questions with regard to the three levels of responsibility distinguished by the HLTF which form the basis for the formulated criteria, sub-criteria and indicators. We have in particular questions regarding their legal basis, their order and their relationship. In our view the 3 main levels of responsibility - namely (a) states acting collectively in global and regional partnerships (b) states acting individually as they adopt and implement policies that affect persons not strictly in their jurisdiction and (c) states acting individually as they formulate national development policies and programmes affecting persons with in their jurisdiction - should in any case be reversed since the last mentioned responsibility is states’ primary responsibility. In addition, we think the word partnerships in par (a) needs clarification. Moreover, we do not understand why under (b) ‘policies’ in general are mentioned while under (c) reference is only made to ‘development policies and programmes’.

As regards the attributes, the Netherlands holds the opinion that the participation of women in society needs more attention in attribute 2.

With regard to the right to development criteria, operational sub-criteria and indicators contained in the report of the High Level Task Force the Netherlands can also share the following additional specific comments at this stage:

- A number of criteria, subcriteria and indicators should be more precisely formulated (e.g. sub-criteria 1e iii, 1 i iv and indicators for 1 g v and 3 b ii), improved upon (e.g. in 1 d i, 1 d ii and 1f i the word ‘effective’ might be added, indicators for 1 b i, 1 e iii, 3 c ii) or reformulated (e.g. 3 a iv).
- Subcriteria and indicators should be formulated in a way that they can be applied to all states, since all human beings and peoples are subject of the right to development, not just persons in developing countries (see 3 a iv and indicators for 1 h i, 3 a iv, 3 c i)
- A number of indicators need to be improved because the proposed indicators would not permit to assess if a sub-criteria has been applied (e.g. indicators for 1 a v and 1 e iii)
- Only for part of the indicators proposed international data are available. Other indicators depend on national data or the interpretation of national data. For some indicators proposed no data at all are available. Before the right to development can be operationalised further work and research on data collection thus seems necessary.

The consolidation of findings of the task force

The Netherlands takes note of the consolidation of findings of the task force. The Netherlands holds the view that it is first necessary to reach agreement on the content of the right to development, before applying this concept in practice. Furthermore, as mentioned above, we consider that states have a primary responsibility towards the persons in their jurisdiction and still have a number of questions regarding states collective and individual responsibilities at the international level.

The conclusions and recommendations of the task force, in particular with regard to the suggestions for further action on the criteria, thematic areas of international co-operation for consideration and mainstreaming the right to development/The way forward to ensure the effective implementation of the right to development

With regard to the conclusions and recommendations, in particular regarding suggestions for further action, the Netherlands is of the opinion that many of the suggestions can be taken forward but that a step-by-step approach is necessary based on a logical sequence of the proposals for further action.

The first step should be to gather comments of all relevant actors on the criteria, sub-criteria and indicators for the right to development. Consequently, these comments should be discussed with the support of experts with a view to reaching agreement on them.

Once agreement is reached on the criteria and operational subcriteria, a comprehensive and coherent set of standards could be developed for the operationisation of the right in practice. Standards should be made operational in terms of benchmarks and indicators with regard to the obligations of states, which include the empowerment of individuals as active agents in the development process. This step of developing a set of standards could start with seeking information on existing types of instruments used in the UN to translate policy into action (e.g. guidelines, codes of conduct and practice notes).

At the same time it could then be explored to what extent existing treaty regimes could accommodate right to development issues within their legal and institutional settings, to what extent the preparation of a template for reporting would be useful and whether it would be useful to include reporting on the right to development in the UPR process.

As is well-known, the Netherlands is not in favour of a legally binding international instrument on the right to development. We think that the responsibility to create an enabling environment cannot be translated into binding obligations. Furthermore we hold the view that a legally binding instrument is not an appropriate instrument for moving the right to development from political commitment to development practice.
