



General Assembly

Distr.: General
23 June 2010

Original: English

Human Rights Council

Fifteenth session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

Report of the Secretary-General and the High Commissioner for Human Rights on the right to development

Summary

The present report contains a summary of the activities undertaken by the Office of the High Commissioner for Human Rights with regard to the promotion and realization of the right to development. The activities ranged from mainstreaming the right to development, including by strengthening the global partnership for development, to providing support to the Human Rights Council and its subsidiary mechanisms related to the right to development.

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I. Introduction

1. In its resolution 64/172, the General Assembly reaffirmed its “request to the United Nations High Commissioner for Human Rights, in mainstreaming the right to development, to undertake effectively activities aimed at strengthening the global partnership for development between Member States, development agencies and the international development, financial and trade institutions, and to reflect those activities in detail in her next report to the Human Rights Council” (para. 37). The General Assembly also requested the Secretary-General to submit a report to it at its sixty-fifth session as well as an interim report to the Human Rights Council on the implementation of resolution 64/172, including efforts undertaken at the national, regional and international levels in the promotion and realization of the right to development (para. 40).

2. The present report is submitted in accordance with the above-mentioned requests and, as per the established practice, represents a consolidated report of the Secretary-General and the High Commissioner for Human Rights on the right to development.

II. Activities of the Office of the United Nations High Commissioner for Human Rights relating to the promotion and realization of the right to development

3. In its resolution 48/141, in which it established the mandate of the High Commissioner for Human Rights, the General Assembly explicitly requested the High Commissioner “to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose” (para. 4 (c)). The right to development accordingly continues to be a priority of the Office of the High Commissioner for Human Rights (OHCHR).

4. The OHCHR programme on the promotion and realization of the right to development is set out in programme 19 of the Strategic framework for the period 2010-2011¹ and guided by a multidimensional strategy in accordance with the Declaration on the Right to Development (1986), the Vienna Declaration and Programme of Action (1993), the Millennium Declaration and other relevant instruments, as well as by mandates of the General Assembly and the Human Rights Council. The implementation of this policy framework is undertaken through the High Commissioner’s Strategic Management Plan, which integrates the right to development as a cross-cutting theme in the work of the Office.

5. Consequently, OHCHR activities are aimed at ensuring the realization of the right to development across the human rights programme and by the relevant bodies of the United Nations system; enhancing substantive support to the Human Rights Council and its subsidiary mechanisms related to the right to development; building stronger partnership and collaboration with relevant actors, including Member States, multilateral institutions, civil society and non-governmental organizations as well as the private sector; encouraging the promotion and protection of the right to development in global development partnerships, as reflected in Millennium Development Goal 8, through advocacy, networking, technical advice and the establishment of partnerships; identifying obstacles to the implementation of the right to development at the international, regional and national levels; and promoting awareness about the content and importance of the right to

¹ See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 6 (A/63/6/Rev.1)*.

development, including through increased engagement, research, advocacy and informational and educational activities.

A. Mainstreaming the right to development

6. OHCHR continued to advocate to Member States, United Nations agencies, funds and programmes, regional mechanisms and institutions as well as other stakeholders, that policy decisions and programming at the national, regional and international levels should integrate the constitutive principles of the right to development: equality, equity, non-discrimination, participation, transparency, accountability and international cooperation. In this regard, OHCHR emphasized the importance and added value of the right to development approach to discussions on fairer globalization, global governance, and human rights mainstreaming, as well as in the relevant work of the United Nations system including, for example, the High-Level Committee on Programmes of the United Nations System Chief Executives Board for Coordination.

7. OHCHR advocated that the multidimensional framework of the right to development could shape policies and strategies to deal with the challenges of global governance, especially global economic governance, in an increasingly interdependent world faced with multiple global crises including climate change. OHCHR further emphasized that the right to development can address the human rights implications of globalization, by reinforcing the individual and collective responsibilities of States for the creation of a national and international environment conducive to socially just development and governance.

1. Support to the United Nations human rights mechanisms

8. OHCHR continued to provide substantive and organizational support to the open-ended Working Group on the Right to Development, established by the Commission on Human Rights through its resolution 1998/72. The Working Group is mandated to monitor and review progress made in the promotion and implementation of the right to development, providing recommendations thereon and further analysing obstacles to its full enjoyment. Considerable support was also provided by OHCHR to the high-level task force on the implementation of the right to development, established by the Commission on Human Rights through its resolution 2004/7 and mandated to provide expertise to the Working Group with regard to the implementation of the right to development.

9. The task force held its sixth session in January 2010 in Geneva. The session focused on the implementation of the recommendations made by the Working Group at its tenth session (A/HRC/12/28, paras. 44-46). The task force adopted conclusions and recommendations, including on policy coherence and striking a balance between national and international responsibilities for the right to development, on future work in thematic areas of international cooperation, further action on the criteria, and on mainstreaming the right to development. The report of the task force on its sixth session is contained in documents A/HRC/15/WG.2/TF/2 and Corr.1, and its two addenda, on the consolidation of findings and on the right to development criteria and operational sub-criteria, in documents A/HRC/15/WG.2/TF/2/Add.1 and Corr.1 and document A/HRC/15/WG.2/TF/2/Add.2, respectively.

10. The Working Group held its eleventh session in April 2010 in Geneva and reviewed the progress made in the implementation of the right to development by considering the report of the task force mentioned above. In its recommendations submitted for endorsement by the Human Rights Council at its meeting in September 2010, the Working Group invited Member States as well as other stakeholders to share their views on the work of the task force (A/HRC/15/WG.2/TF/2, Add.1 and Add.2) and on the way forward. It also

requested the Chairperson-Rapporteur of the Working Group to prepare, with assistance from OHCHR, two compilations: of the submissions received from Governments, and of inputs from other stakeholders, respectively. The report of the Working Group on its eleventh session is contained in document A/HRC/15/23.

11. OHCHR supports the work of other subsidiary mechanisms of the Council in addressing, within their mandate, issues pertinent to the right to development. These include the Social Forum, the Advisory Committee, the Forum on Minority Issues, and the Expert Mechanism on the Rights of Indigenous Peoples, as well as special procedures. The Special Rapporteur on the right to food in his annual report (A/HRC/13/33/Add.2) drew on the principles underlying the right to development in stressing the need for transparency and accountability in the use of revenues. Further, the independent expert on human rights and international solidarity stated in his annual report (A/HRC/12/27) that “both the attainment of the Millennium Development Goals and the realization of the right to development, essential to the eradication of poverty, require international solidarity and cooperation, especially as envisaged in Millennium Development Goal 8 on the global partnership for development” (para. 32). Detailed information on the activities of these mechanisms is available in their annual reports to the Human Rights Council.

2. Millennium Development Goals and poverty reduction

12. OHCHR continued to promote the integration of all human rights, including the right to development, in national and international efforts towards the achievement of the Millennium Development Goals and poverty reduction. The Declaration on the Right to Development (1986) underscores the duty to cooperate with a view to promoting, encouraging and strengthening universal respect and observance of all human rights without discrimination, as well as to ensuring development and eliminating obstacles to development. In emphasizing both the national and international dimensions of development, the Declaration is eminently relevant to the achievement of the Millennium Development Goals.

13. In preparation for the High-level Plenary Meeting of the General Assembly in September 2010 to review the progress of the Millennium Development Goals achievements, OHCHR has been engaged in international advocacy and awareness-raising to highlight the centrality of human rights principles and standards in achieving the Goals. As part of this effort, OHCHR, jointly with the United Nations Children’s Fund (UNICEF), the Norwegian Centre for Human Rights, Harvard University and the Institute for Development Studies of the University of Sussex, convened an international symposium on the Millennium Development Goals and human rights in March 2010 in Cambridge, United States of America. The symposium highlighted several key tenets of the right to development, in particular the need to strengthen accountability at both the national and international levels.

3. Support to regional initiatives and activities on the right to development

14. The OHCHR Regional Office for East Africa, jointly with the African Union Commission and the United Nations Economic Commission for Africa (UNECA), held a meeting on “Improved interaction between the universal periodic review, the African Peer Review Mechanism and the right to development” in November 2009, in Arusha, Tanzania. The meeting involved representatives from Member States, United Nations agencies, the International Criminal Tribunal for Rwanda, the African Committee of Experts on the Rights and Welfare of the Child, the African Court on Human and Peoples’ Rights, national human rights institutions, the Economic and Social Council, regional economic commissions, African civil society and the human rights community, as well as experts. Participants stressed the need to ensure the realization of the right to development in the

African Peer Review Mechanism and universal periodic review processes. Further, participants highlighted the need to further explore the complementarity between the two mechanisms with regard to the right to development, including through joint follow-up activities involving civil society. Inclusion of the right to development criteria in the reporting under the universal periodic review was also recommended by the high-level task force on the implementation of the right to development (A/HRC/15/WG.2/TF/2, para. 85).

15. In April 2010, the African Union held a seminar on the “Operationalization of the right to development” in Geneva. The meeting focused on, inter alia, the establishment of a framework for cooperation, sharing and interaction with regional organizations and/or institutions, as well as on examining and further elaborating areas of international cooperation toward the operationalization of the right to development. The seminar invited OHCHR to present an overview of its programme on the operationalization of the right to development, and to deliver a statement. When doing so, OHCHR stressed the vital importance of coherence of policy and action on the part of Member States in integrating the right to development into the work of the entire United Nations system, in particular to those entities with a mandate relevant to the right to development.

16. OHCHR organized the 15th Workshop of the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region, which was held in April 2010 in Bangkok, hosted by the Government of Thailand. The workshop was attended by representatives from national human rights institutions and civil society organizations, and delegates from more than 30 States. The regional framework is based on four pillars, namely, national human rights action plans, human rights education, national human rights institutions, and the right to development and economic, social and cultural rights. In its opening statement, OHCHR highlighted several aspects of the right to development, including international cooperation to support development efforts.

17. Further, at the request of UNECA, OHCHR contributed to the revision of the African Peer Review Mechanism questionnaire by proposing the inclusion of constituent principles of the right to development - non-discrimination, participation, transparency and accountability - and the need to pay due attention to the rights of women, indigenous peoples, minority groups and other marginalized and vulnerable groups.

18. In this regard, it should be noted that the task force recommended that the Working Group encourage regional initiatives and senior-level consultations involving regional institutions to integrate the right to development concerns and criteria into their policies and activities. Such regional consultations might also include the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights and European human rights institutions as well as the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights and the Arab Human Rights Committee (A/HRC/15/WG.2/TF/2, paras. 74 and 75).

4. Trade and human rights

19. At the World Trade Organization (WTO) Public Forum in September 2009, OHCHR co-sponsored and contributed to a panel discussion on “Human rights impact assessments: a pertinent tool for informing and improving trade governance?”. The panel discussion examined the conceptualization and implementation of human rights impact assessments compared to other types of assessments. Participants assessed the potential of human rights impact assessments to govern and shape trade policy and agreements in a manner beneficial to the realization of human rights and the right to development. The panel concluded that all WTO Member States are also signatories of various human rights treaties which require them to respect human rights while fulfilling their commitments under international trade law.

20. In March 2010, OHCHR participated in a workshop organized by the Department of Ethics, Equity, Trade and Human Rights of the World Health Organization (WHO) in Geneva, providing contributions from a right to development perspective, particularly in the context of access to medicines. The workshop discussed concrete activities as a follow-up to World Health Assembly resolution 59.26 on international trade and health, which called upon WHO to provide support for Member States to understand the implications of international trade and trade agreements for health, and to address relevant issues through policies and legislation.

5. Financing for development

21. In October 2009, OHCHR, in cooperation with the Centre of Concern, held a side event on “Human rights and financing for development: towards realizing the right to development” at the sixty-fourth session of the General Assembly in New York. The event brought together human rights and development experts, as well as civil society representatives. The aim was to raise awareness of the potential role of the right to development in overcoming the development challenges faced today, and to bring more fairness to global economic governance. The deliberations highlighted the importance of creating an enabling global environment for development, including through the financing for development process. Participants noted that this could be achieved by integrating the right to development approach into both national and global policymaking. The discussions stressed the added value of human rights principles, including the right to development for the financing for development process, the need for good governance at both the national and international levels, and the importance of closer cooperation between agencies in the areas of human rights, development and financing for development.

B. Strengthening global partnership for development

1. The right to development criteria

22. In 2005, the Working Group requested the high-level task force on the implementation of the right to development to examine Millennium Development Goal 8 on a global partnership for development, and to suggest criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development (E/CN.4/2005/25, para. 54 (i)). In 2006, the Working Group adopted the right to development criteria and requested the task force to apply them, on a pilot basis, to selected partnerships, with a view to their operationalization and progressive development, and thus contributing to mainstreaming the right to development in the policies and operational activities of relevant actors at the national, regional and international levels, including multilateral financial, trade and development institutions (E/CN.4/2006/26, para. 77). In 2009, the Working Group decided that the revised criteria and sub-criteria should address the essential features of the right to development, as defined in the Declaration on the Right to Development, in a comprehensive and coherent way, including priority concerns of the international community beyond those enumerated in Millennium Development Goal 8, and that they should serve the purposes set out in all relevant provisions of Human Rights Council resolution 9/3 (A/HRC/12/28, para. 45).

23. As requested by the Working Group, OHCHR provided all necessary support to the task force in the implementation of the recommendations of the Working Group, including the development of the right to development criteria and sub-criteria. In December 2009, OHCHR, jointly with the Program on Human Rights in Development at the Harvard School of Public Health and the Measurement and Human Rights Program at the Harvard Kennedy School of Government, held an expert consultation on “Elaboration of criteria and

operational sub-criteria for the implementation of the right to development” (the report of the meeting is contained in document A/HRC/15/WG.2/TF/CRP.4). The expert consultation reviewed a consultancy paper commissioned by OHCHR on the right to development criteria and corresponding operational sub-criteria (A/HRC/15/WG.2/TF/CRP.5). The consultation provided an opportunity for academics, international experts and development practitioners to further elaborate on the methodology to measure compliance with the right to development. It facilitated expert assessments of the right to development criteria, with a view to making them operational and reflective of standards of qualitative and quantitative evaluation used in international institutions and recognized by social scientists.

24. The outcome of the above expert consultation informed the work of the task force on the right to development criteria and sub-criteria, which was presented to the eleventh session of the Working Group in April 2010 (see para. 9). In the view of the task force, the right to development criteria and sub-criteria provide a methodological framework and structure, designed to serve as an operational tool for assessing the extent to which States are individually and collectively taking steps to establish, promote and sustain national and international arrangements that create an enabling environment for the realization of the right to development. The criteria and sub-criteria are also aimed at contributing to mainstreaming the right to development into the policies and operational activities of relevant actors, and at evaluating the human rights implications of their policies and programmes. Finally, in the view of the task force, the criteria and sub-criteria are aimed at serving as a tool for stakeholders to assess the state of implementation of the right to development, thereby facilitating its further realization at the international and national levels.

25. The development and application of the right to development criteria constituted important steps in strengthening the global partnership for development and supporting the mainstreaming of human rights, in particular the right to development, in policies and operational activities of actors, including multilateral financial, trade and development institutions.

2. Access to essential medicines

26. At its tenth session, and with regard to Millennium Development Goal target 8.E on access to essential medicines, the Working Group recommended that the task force, in further refining the list of criteria and preparing the corresponding operational sub-criteria, “...draw on its dialogue with the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, The Global Fund to Fight AIDS, Tuberculosis and Malaria and the Special Programme for Research and Training in Tropical Diseases” (A/HRC/12/28, para. 46 (b)).

27. Consequently, in June and July 2009 OHCHR supported a follow-up mission of the task force to WHO, the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, the Special Programme for Research and Training in Tropical Diseases and The Global Fund to Fight AIDS, Tuberculosis and Malaria (the report is contained in document A/HRC/15/WG.2/TF/CRP.2). The meetings addressed the follow-up to recommendations contained in the study commissioned by OHCHR concerning access to essential medicines (A/HRC/12/WG.2/TF/CRP.5/Rev.1).

28. The task force and WHO agreed that the implementation of a WHO global strategy and plan of action on public health, innovation and intellectual property seemed to provide a good opportunity for linking human rights to those areas. Considering the significance of public health, the task force encouraged WHO to take the lead in coordination with respect to cross-cutting issues. The human rights content of the global strategy and plan of action could be examined in the light of the Human Rights Guidelines for Pharmaceutical

Companies in relation to Access to Medicines (A/63/263, annex), and more generally the right to health. The task force considered that principles underlying the right to development could be introduced into the operation of the global strategy and plan of action at the implementation stage.

29. With regard to mainstreaming the right to development principles in the work of the Special Programme and The Global Fund, the meetings emphasized that, despite the absence of explicit reference to the right to development, both institutions were applying some of those principles in their activities. The Special Programme adopted participatory and empowering procedures towards expanding access to health and furthering equitable development. The task force also welcomed the support provided by Global Fund programmes for strengthening health systems in developing countries.

30. Lastly, OHCHR will hold a workshop on access to medicines in the second half of 2010 as mandated by the Human Right Council which, in its resolution 12/24, “invites the Office of the United Nations High Commissioner for Human Rights to convene an expert consultation, within existing resources, open to the participation of Governments, regional and international organizations, relevant United Nations bodies and civil society organizations, for an exchange of views on human rights considerations relating to the realization of access to medicines as one of the fundamental elements in achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and invites the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to present a summary of the discussions held during the expert consultation to the Council” (para. 7).

3. Transfer of technology

31. In relation to Millennium Development Goal target 8.F on technology transfer, the Working Group recommended that the task force “...hold consultations to gather information on the Development Agenda of WIPO [World Intellectual Property Organization] in relation to the realization of the right to development” and “...continue to draw on the necessary expertise from examining the Clean Development Mechanism, including in connection with mitigation of and adaptation to climate change, from the perspective of the right to development” (A/HRC/12/28, para. 46 (e) (i) and (ii), respectively).

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

32. As requested, OHCHR provided support to the task force by organizing a technical mission to WIPO in July 2009, during which the task force also discussed the contribution of the WIPO Development Agenda to the realization of the right to development (the report on the mission is contained in document A/HRC/15/WG.2/TF/CRP.1). The task force concluded that, although the Development Agenda does not directly refer to the right to development, its basic motivations and objectives are aimed at establishing an enabling environment at the national and global levels that facilitates an equitable, sustainable and participative process of development (A/HRC/15/WG.2/TF/CRP.1, para. 12). The task force considered that the global enabling environment component of the right to development criteria should make an explicit mention of technology, as it is a crucial element that can help developing States to achieve their development goals (para. 21). The task force recommended that WIPO continue the quest for new analytical approaches to the complex relationship between development and intellectual property policy that are fully informed by the right to development criteria (para. 22).

33. In November 2009, OHCHR collaborated with the United Nations Conference on Trade and Development and the International Centre for Trade and Sustainable

Development to organize a panel discussion entitled “The WIPO Development Agenda and the right to development: towards bridging the gap?”. The participants exchanged views on the synergies between the Development Agenda implementation process and the right to development in the context of the wider nexus between intellectual property and human rights. It was stressed that technological innovation was one of the tools for realizing the right to development. In this context, the Development Agenda was identified as one of the most important global initiatives, with significant potential for the realization of the right to development.

(b) *Clean development mechanism*

34. OHCHR commissioned an independent study to explore the interface between the right to development and climate change, with a focus on international cooperation, financial arrangements and, in particular, the clean development mechanism (A/HRC/15/WG.2/TF/CRP.3/Rev.1). The author of the study emphasized that the mechanism provided a clear example of an international partnership between developing and developed countries to achieve the objectives of promoting sustainable development and mitigating climate change. He also raised issues, with regard to the mechanism, of technology transfer, environmental integrity, and the adoption of a rights-based approach to development, all of which are crucial for effective and equitable climate change mitigation and the implementation of the right to development (para. 3).

35. The author of the study concluded that the mechanism needs to ensure that the host State follows an inclusive and participatory process, based on clear sustainability criteria, when determining whether a proposed project contributes to sustainable development. The study included a recommendation that the mechanism adopt a rights-based approach in order to avoid adverse impacts of its projects on peoples’ rights and to ensure environmental and procedural integrity. The author also stressed the need to ensure the equitable participation of developing countries in the mechanism with a view to achieving a fair distribution of development benefits, both within and across countries. With respect to the rule of law and governance, the author of the study noted with regret that the clean development mechanism does not include any tools or measures to provide affected stakeholders with recourse where required procedures have not been properly followed.

4. Debt relief

36. With regard to Millennium Development Goal targets 8.B and 8.D on debt relief, the Working Group recommended that “the task force should devote time during its next [January 2010] session to an examination, from the perspective of the right to development, of the experience of the institutions responsible for the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative, and other institutions and procedures that address the issue of debt relief” (A/HRC/12/28, para. 46 (c)).

37. Consequently, OHCHR facilitated the organization of the task force session devoted to discussing debt relief issues. Speakers included representatives of the World Bank and the International Monetary Fund (IMF), as well as the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. The World Bank and IMF presented the debt relief issue in the context of their respective programmes, including the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative, the Debt Reduction Facility for IDA-only Countries, the Debt Sustainability Framework in Low-Income Countries, the Debt Management Facility for Low-Income Countries and the International Development Association. The independent expert presented several ideas to enhance the effectiveness of debt relief initiatives with regard to

their contribution to poverty reduction and the fulfilment of human rights. The summary of the discussion is contained in document A/HRC/15/WG.2/TF/2.

5. Challenges and lessons learned

38. In the consolidation of its findings, the task force concluded that:

none of these [global partnerships] was established as a direct consequence of commitment to [Millennium Development] Goal 8, but 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. (A/HRC/15/WG.2/TF/2/Add.1, para. 76)

39. The task force further noted that “in all 12 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” (A/HRC/15/WG.2/TF/2/Add.1, para. 78).

40. The need and importance for policy coherence across institutions, including the United Nations system, was often underscored in the dialogue with institutions responsible for global partnerships. Support for the mandate of the High Commissioner for Human Rights to promote, protect and mainstream the right to development, including through a strengthened global partnership, would be enhanced if the mandates of those institutions integrated or were interpreted to include dimensions of human rights and the right to development. This could be seen as a matter of coherence of policy and action on the part of Member States, in bringing the right to development to all relevant parts of the United Nations system. In this regard, the WIPO Development Agenda represents a key contemporary global initiative undertaken by Member States towards realizing the right to development.

41. The global partnership for development, in the context of a unified global economy, should recognize the interdependence of States and all other stakeholders, including the private sector and civil society; the interrelation of rights and responsibilities; the interrelationship between the national and international levels of governance and development; the indivisibility of all human rights; and, above all, the primacy of human dignity.

42. The year 2011 will mark the twenty-fifth anniversary of the United Nations Declaration on the Right to Development; this presents an opportunity to focus on realizing the vision of the Declaration for the improvement in human well-being. Past achievements and the present momentum provide us with a basis for reflection on the way forward in making the right to development a reality for everyone as envisaged in the Millennium Declaration. The realization of the right to development requires the integration of its constitutive principles in development and governance at all levels, thus creating an enabling environment for the achievement of internationally agreed development goals, including the Millennium Development Goals.