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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Concept document on the right to development

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Summary

This paper discusses some concepts which in the author's view are essential to the improvement and advancement of ongoing work on the right to development: first, the importance of many of the pending and recently completed projects of the Sub-Commission itself to this field in laying the foundation for the importance of a human rights approach to the right to development; second, the importance of creating human rights indicators which will ensure the centrality of human rights principles; third, principles for development partnerships. Conclusions and recommendations are offered at the end of this paper.

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Introduction

1. In its resolution 2003/83 the Commission on Human Rights requested the Sub-Commission on the Promotion and Protection of Human Rights to prepare a concept document establishing options for the implementation of the right to development and their feasibility, inter alia, an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, including issues which any such instrument might address, for submission to the Commission at its sixty-first session for consideration and determination of the feasibility of those options.
2. In its decision 2003/116 the Sub-Commission requested me to prepare a working paper identifying and analysing possible alternatives that would enable the Sub-Commission to respond fully and as effectively as possible to the request of the Commission on Human Rights in resolution 2003/83.
3. Last year, in its decision 2004/104, the Sub-Commission, having been advised that for unexpected technical reasons it was not possible for me to submit my paper, recommended to the Commission that I be requested to submit, without further delay, to the Sub-Commission at its fifty-seventh session the requested working paper so as to allow the Commission to consider and take decisions on the matter at the Commission's sixty-second session.
4. The Commission, in its resolution 2005/4, took note of Sub-Commission decision 2004/104, noted with concern that the concept document had not yet been submitted, and requested the Office of the High Commissioner to continue to provide all necessary administrative support and financial and human resources to the Sub-Commission in its work on the concept document.
5. The present document is submitted in accordance with these requests.
6. The author would like to thank the Office of the High Commissioner for its support of the work on this paper and for arranging the expert studies and high-level seminar in 2004, and to the authors of the five research papers of 2004 for providing information useful to the author and to others on this topic. Comments received from the European Union and the Governments of Mexico, Switzerland and Chile are also very much appreciated.
7. I wish also to place on record my deep appreciation to the representative of the non-governmental organization Minnesota Advocates for their cooperation and research support.

I. OVERVIEW

8. I have prepared a concept paper based on the research papers prepared at the request of the Office of the High Commissioner, other background materials, including papers presented to, and discussed by, the Sub-Commission, and information gained from personal testimonies at national and international conferences attended during my almost 30 years of work on the ground as a human rights advocate and practitioner in a developing country. The language is plain. For, in a survival context such as life is for the majority of us in developing countries,

time is critical. One therefore tends to be direct. It is hoped, despite the lack of linguistic artistry, that these thoughts and suggestions will be useful to the Commission and Sub-Commission.

9. I have decided to focus this paper on concepts I believe should be addressed as work on the right to development evolves in the next several years. I will discuss the concepts and then present some conclusions and recommendations. I have also included a very limited bibliography at the end of this paper, indicating key background materials.

10. “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (Declaration on the Right to Development, art. 1). It has now been over 30 years since a right to development was first proposed and nearly 20 years since the Declaration was adopted by the General Assembly by its resolution 41/128 of 4 December 1986. The right to development also received prominent attention in the Vienna Declaration and Programme of Action (1993) and the United Nations Millennium Declaration (2000), and in the activities of the Commission on Human Rights for at least the last 10 years. Development will also be one of the core topics addressed in the draft outcome document to be considered by Heads of State at the High-level Plenary Meeting of the General Assembly to review progress in the fulfilment of the commitments contained in the Millennium Declaration scheduled to take place in New York from 14 to 16 September 2005.

11. I also note the important work of the new high-level task force on the implementation of the right to development, which provided advisory input this year to the Working Group on the Right to Development, and the discussions at the sixth session of the Working Group in February 2005.

II. CONCEPTS

12. Since the Commission has asked the Sub-Commission for a concept paper touching upon development programme options and their feasibility, including the possibility of binding legal standards, guidelines for implementation of development programmes and principles for development partnerships, I felt it would be most practical in this paper to identify some concepts which affect each of these topic areas. More specific recommendations relating to these topic areas are also included in the conclusions and recommendations at the end of this paper.

Case for an international legal standard of a binding nature on the right to development

13. It can be argued that the right to development is inextricably linked to both civil and political rights and economic, social and cultural rights and requires national implementation of those legally binding obligations that are already set out in the two International Covenants on Human Rights. This begs the following questions: Why then do we need a right to development if these rights are already set out in legally binding Covenants? If the legally binding component has failed to ensure the enforcement of these rights in these Covenants, what is the point of having another “legally binding right”? Has an assessment been done of the existing legally binding rights to establish reasons for failure or success?

14. It has already been amply demonstrated that there are strong differences of opinion among legal luminaries as to whether the right to development can be placed within a legally binding framework. The view that human rights instruments address the obligations of a State to its citizens and not obligations between States seems to be in ascendancy.

15. The ongoing legal discussion on the need to clarify issues related to the process, including identification of the nature and extent of obligations stemming from the right, at both the national and international level, for the relevant duty bearers should proceed, and may well be informed by the outcomes of practical steps being taken for the realization of the right.

16. It is accepted that international assistance is required for Governments to realize some human rights goals. The fact is that the manner in which this assistance has been forthcoming in too many cases resulted in Governments violating the basic rights of their citizens.

17. The recognition of the need for change is being addressed through dialogue among the major international financial institutions, development practitioners, a number of donor and recipient States, the International Labour Organization and the World Health Organization, as well as work spearheaded by the Office of the High Commissioner for Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights.

18. In view of the ongoing discussions among duty bearers, partners and stakeholders, I am of the view that the successful identification of ways to infuse human rights values and principles into the development process would better serve the realization of the right.

19. Recognition must be given here to the work of the Sub-Commission. The ongoing relevance of the Sub-Commission's work is clear in this field. There does not appear to have been any consistent effort to gather this work and analyse it as a body of work affecting the right to development. Much of this work nevertheless is highly relevant to this field. As a consequence, there would appear to be a need to find effective ways to integrate our work with the work of the other development-mandated activities in the United Nations and elsewhere.

20. To simply stop and review the present agenda and scope of work of the Sub-Commission is to realize the many studies and programme initiatives bearing upon the right to development. This work is important. We need to be more effective in disseminating the results of our work to others and in building better bridges to the other programmes within our mandate.

21. For example, recent work of the Sub-Commission in this field includes:

- (a) Work on slavery and slavery-like practices by Ms. Warzazi;
- (b) The completed study on globalization by Mr. Oloko-Onyango and Mrs. Udagama;
- (c) The completed study on the right to drinking water by Mr. Guissé, and his working paper this year on draft guidelines;
- (d) The ongoing expanded working paper on extreme poverty by the ad hoc working group chaired by Mr. Bengoa;

- (e) Mr. Bengoa's working paper on poverty as a violation of human rights;
- (f) The ongoing study on corruption by Ms. Mbonu;
- (g) Mr. Decaux's working paper and Mr. Bossuyt's new study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights;
- (h) Mr. Guissé's working paper on the effects of debt on human rights;
- (i) The work of the Social Forum;
- (j) The work of the working group on transnational corporations;
- (k) The work related to the right to development ongoing in the Working Group on Minorities;
- (l) The work related to the right to development ongoing in the Working Group on Indigenous Populations;
- (m) The ongoing study of Mr. Pinheiro on restitution of refugees' homes and property.

22. The analysis of this work in the context of the right to development would add to the discussions on determining guidelines on the implementation of the right to development as well as ensuring that emphasis is placed on the human rights approach in the right to development.

23. Such analysis should be part of a wider collation and analysis of work done by the development agencies with a view to developing guidelines based on the views and experiences of donors, duty bearers and stakeholders. The Social Forum, I think, could play a critical role in reflecting the views of stakeholders.

Guidelines on implementation

24. From the ongoing discussions, there seems to be consensus on the view that it is not possible to implement and realize the right to development without the cooperation and collaboration of all stakeholders and partners. There are some major challenges: the first, to rethink methods of cooperation on the basis of respect for sovereignty and the rights of citizens; another, the creation of human rights indicators; another, the change in method of assessing the success of a project/policy, i.e. to replace a dollar-sign measure with the measure of improved human capital.

25. Against this background, it is of the utmost importance to recognize and actualize the empowerment of the people and their local communities in implementing any development programme and in ensuring the full respect for the cultural, social and economic diversities of the people in the implementation, monitoring and evaluation of these programmes, including special needs of vulnerable groups.

26. I fully recognize that this will entail changes in attitude and approach on the part of donors and recipients. For donors and Governments there will have to be a willingness to listen to recipients, especially those in areas where proposed projects are to be implemented. There is going to be a need to recognize that the people do have their own collective development goals.

27. Many before me have emphasized the need to ensure that a human rights approach is made both part of the means and of the end-objectives of any development activity. Each of the expert studies commissioned by the Office of the High Commissioner touches on this topic in different ways. But this emphasis needs to continue to be an overarching focus in all development activities. The Sub-Commission should continue to seek ways of mainstreaming human rights into development.

28. We also need to continue to focus on ways to make a human rights approach to development more real, more practical, and more enduring. It needs to be the first thing that is addressed, and the last thing that is evaluated. We need to build a culture of expectation in the development field - development which occurs without a human rights focus is not true development.

29. The importance of empowering the people and their local communities in the implementation of any development programme must be a centrepiece of these activities.

30. Each community is unique. Development programmes that work in one community may not necessarily work in another community. We need to ensure the full respect for the cultural, social and economic diversities of the people in the implementation, monitoring and evaluation of these programmes. This requires the continuation of the reform process that is finally under way based on the recognition that one size does not fit all.

31. Some communities rely more than others on the oral or storytelling tradition. Standard written United Nations documents and programmes do not fit these communities' needs. We need to be more sensitive to these differences and more responsive in the way that development programmes are designed for these communities.

32. When we look at the different communities we should be serving in this human rights approach, we should also remember to focus too on the special needs of vulnerable groups, such as women, children, indigenous peoples, migrant workers, persons with HIV/AIDS and so on.

33. Human rights indicators are important, but they need to be developed with an eye on measuring what is truly important from a human rights perspective. There is a tendency to focus on things that are easier to measure, like economic growth statistics. This type of measurement can be very misleading from a human rights perspective. There is a need to find genuine, effective indicators of true development progress from a human rights perspective. I believe this has to start with assessing the impact on the people whom the project is supposed to serve.

34. I'm always sceptical when someone presents a development programme to me as being successful because it achieved "a 10% increase in economic growth". Growth statistics hide underlying inequities. A human rights assessment should indicate whether the quality of life of the people at whom the project was directed has improved: Are more children being sent to school? Are more mothers able to give their children two instead of one meal daily? Are more

fathers employed? ... Identification of the indicators would of course vary from community to community, country to country. The consistent important factor would be focus on whether or not people have achieved any measure of development as a consequence of the project.

35. I certainly want to acknowledge that there is much good work going on in the area of developing good human rights-based indicators. But it needs to continue to be a focus of our efforts in the future. The expertise of the Sub-Commission should remain involved in this debate. Human rights organizations have much to contribute to this area. To my mind, the Sub-Commission should seek to develop working links with organizations such as the International Labour Organization, the World Health Organization and development agencies. Such ongoing collaboration would enhance the initiatives already undertaken, provide current experiences for analysis and lay the foundation for identifiable indicators.

36. The extremely harmful effect that poor governance and corruption have on development programmes can also not be overstated. This point was emphasized in particular by the European Union and the Government of Mexico in their written submissions, and has been emphasized by many speakers and Governments across the spectrum in prior meetings and contributions. There is a need to find concrete, effective methods of preventing, detecting, and removing these obstacles from development initiatives.

37. The work in our Sub-Commission by Ms. Mbonu on corruption should be integrated with our analysis of the right to development, in particular with the good governance component of the right to development. The recent seminar on good governance practices for the promotion of human rights held in Seoul on 15 and 16 September 2004, organized jointly by the High Commissioner's Office and the United Nations Development Programme, at the request of the Commission on Human Rights, was also an important contribution to this topic.

38. In my view, many of the ongoing development projects pay lip service to good governance, but we aren't doing enough at a practical level to make sure it is achieved.

39. We must emphasize the need to find concrete, effective methods of preventing, detecting and removing these corruption and bad governance obstacles from development initiatives.

40. A human rights approach can play a major positive role here if allowed to be engaged. Good governance will come through development that involves the people, i.e. the people through local community meetings should decide what they desire as development for their area or village. Decisions could be implemented either through local government bodies, where these exist, or through community representatives chosen by the people to act as overseers or supervisors along with donor representatives. By this route important aspects of self-determination, the right to life (in other words, the quality of life), respect for the views and dignity of the poor, accountability and transparency could all be realized.

41. For example, I would suggest that there always be an independent advocate or ombudsperson appointed with any development programme. This person could assist and advise the local people and local community. This person would be completely separate from the national Government, the local government, and the development donor organization.

This independent advocate could act as a facilitator when necessary, teach the local people what their rights are, explain the transparency and good governance they are entitled to, help to be their coach, and help empower them to ask the right questions and implement their rights and benefits more effectively.

Principles for development partnership

42. The principles of mutual respect, participation and accountability that are implicit in the ideas already put forward in this paper are equally relevant to the development of principles for development partnership. The challenge to change is even more daunting in a situation where the power of capital has dominated unchallenged and has impacted, too often negatively, on the daily lives of millions of people in the developing world for far too long.

43. It has already been established that partnerships are essential for the poorer countries to meet the human rights obligations owed to their citizens. For meaningful participation to occur changes in the way international affairs are conducted must be made.

44. The concerns of the poor must be voiced by States' representatives in global financial forums. One way of doing this is for the human rights impact assessments of development programmes and policies to be reported on and discussed at the relevant meetings. Where possible, the question of remedial action should be thoroughly discussed.

45. If the concept of partnership is to become meaningful, certain practices that now obtain in the conduct of meetings and the decision-making process will have to be eliminated.

46. There is undoubtedly a growing role for development assistance in the current world context. This assistance should, however, be determined on the basis of a commitment to a common set of objectives, projects and policies determined by consensual, participatory discussions guided by the views of the recipients.

47. The notion of ownership will have to be broadened to include the people. It must be recognized that the concept of ownership by the people will have value-added benefits both in terms of economic and of human capital.

48. In determining the content of programmes it is critical to ensure that all the various levels of stakeholders are involved in the discussions. Care must be taken to ensure that the composition of the discussants does not favour one group over another.

49. Concrete funding commitments from rich donor countries and international organizations are absolutely essential for meaningful progress to be achieved in the right to development. Admittedly, this is a controversial topic and one that will undoubtedly be addressed in the High-level Plenary Meeting of the General Assembly in September. We must avoid duplication of work, but constructive ways must be explored of bringing the entire international family of Governments and organizations together to promote the right to development for all peoples. This is not somebody else's problem - this is everyone's problem - more so in the context of a globalized world.

50. Development is not only an obligation of poor countries. Rich countries and international and multilateral agencies must have a moral obligation to assist. Fortunately, the realization is now growing that assistance must always be based on the views and needs identified by the people.

51. I recognize that the topic of donor obligations is controversial and not one that has any easy answers. It is always going to be easier for the have-nots to ask for more than for the haves to give it. But we must not lose track of this issue as we explore new standards, new guidelines and new modalities for development programmes in the future. As a priority, the cause and effects of recent reforms should be collated and analysed. Preliminary guidelines should be developed from the exercise. The discussions at the upcoming High-level Plenary Meeting of the General Assembly will no doubt contribute significantly to the building process.

III. CONCLUSIONS AND RECOMMENDATIONS

52. This section contains conclusions and recommendations for the Sub-Commission's and the Commission's future work on the right to development.

A. Conclusions

53. **The ongoing work of the Sub-Commission is relevant and important to the work on the right to development and should be integrated into the ongoing activities relating to development and the right to development.**

54. **There is a need to continue to emphasize the importance of focusing on a human rights approach to the right to development.**

55. **In developing human rights indicators to measure progress in development, it is important that we continuously question the validity and relevance of the indicators that emerge. We must ask ourselves, Are these right indicators? Are they measuring the right things? There should be an ongoing process to evaluate the appropriateness of the indicators themselves and whether they are adequately measuring the true human rights impacts of the programmes concerned.**

56. **The importance of good governance to the successful implementation of development programmes and effective realization of the right to develop cannot be overemphasized.**

57. **The importance of concrete funding commitments to support the right to development is also essential to success. This is a controversial topic and one which requires sensitivity and openness on the part of all interested stakeholders. We should continue to acknowledge the sensitive nature of this topic and the need to proceed cautiously, with all stakeholders' views being carefully considered.**

B. Recommendations

58. The Sub-Commission should adopt a thematic resolution this year on the right to development, summarizing the Sub-Commission's work in this field and encouraging dialogue with other United Nations bodies that have development-based mandates, and with the reform work being done by donor and multilateral agencies.

59. The Commission may wish to consider inviting the Sub-Commission's chairperson to attend future sessions of the Working Group on the Right to Development in order to present a summary of the most recent work of the Sub-Commission on the right to development.

60. The Sub-Commission should request each author of a study or working paper under item 4 next year, and in subsequent years, to make some observations and recommendations in their reports pertaining to the right to development. These observations and recommendations could then be collected into a single document and shared with organizations in this field.

61. The Sub-Commission should continue to seek to identify new, under-researched areas of study in the field of the right to development and to ask its expert members to prepare working papers on these topics. The Sub-Commission should also seek input from other United Nations development-based bodies on topics where the Sub-Commission's expertise and modalities might be usefully applied. This input could guide the Sub-Commission in its future work, and could further the research on the right to development and effective implementation strategies.

62. The standards, guidelines and other normative work done so far in this field should be collected into a reference work, including the Sub-Commission's own work.

63. The Sub-Commission should determine whether any comprehensive collection of the ongoing work on indicators, especially human rights indicators, is being made. If so, the Sub-Commission should follow these activities closely. If not, the Sub-Commission should recommend that such work be done, perhaps by the Sub-Commission itself if no other logical body is apparent.

64. All persons active in this field should evaluate ways and means of enhancing good governance and eliminating corruption from development programmes. The Sub-Commission's own study on corruption (by Ms. Mbonu) should be noted in this regard.

65. The Sub-Commission should consider developing draft standards or guidelines to facilitate transparency and informed participation by local communities and local people in their own development programmes, taking into account any other drafting work being done in this field.

66. The Sub-Commission should consider working towards a model or template for local communities to use in seeking funding commitments. I am of the view that this type of model should address general human rights-based principles which may be of interest to the local community. But the details of programmes at all times should be determined by the people.

67. The Sub-Commission should consider whether the three concepts identified in this paper are the appropriate key concepts on which to focus, whether any of these concepts should be reformulated, and whether there are other such concepts which should be added as a core list.

68. The Sub-Commission should call on all interested persons to apply the concepts identified in this paper to development options in their work. Information on outcomes should be requested for inclusion in the ongoing analysis.

69. It would seem that the development of binding legal standards is premature at this time. However, preparatory work could be started identifying the components and stages that a possible standard-setting activity in this field could involve.

70. Much good work is ongoing in defining the concept of partnership as it relates to development programmes. However, partnership should not merely be viewed as a relationship between a national Government and an international funding source. Local communities should also be part of the partnership concept, because local communities should have a voice in how development programmes are structured, implemented and managed. In my view, this is the most fundamental point. In fact, development programmes should emerge from the people and not be imposed on them from the outside.

71. The Sub-Commission should continue this work at its next session, including considering the possibility of financial and staff support to carry out meetings with people in selected geographic areas (perhaps three to five such areas) to have discussions, get local peoples' views on development and see what picture emerges. What is important here is that some of these meetings should be held in areas where there have been formal development programmes identified through reports. Both successful and failed programme areas should be visited.

72. In order to facilitate the broadest discussion on the right to development, the Sub-Commission should recommend that the World Programme for Human Rights Education be used to focus on education on the right to development.

73. Pursuant to the request of the Commission on Human Rights, the Sub-Commission should submit this working paper, together with a summary of the other views and ideas discussed at this year's session, to the Commission at its sixty-second session in 2006.

Annex

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(b) "The legal nature of the right to development and enhancement and its binding nature" (E/CN.4/Sub.2/2004/16), prepared by Professor Shadrack Gutto, Director, Centre for African Renaissance Studies, University of South Africa, Pretoria;

(c) "Mainstreaming the right to development into international trade law and policy at the World Trade Organization" (E/CN.4/Sub.2/2004/17), prepared by Professor Robert Howse, University of Michigan, United States;

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