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**IMPLEMENTING THE RIGHT TO DEVELOPMENT-
A REVIEW OF THE TASK FORCE CRITERIA AND SOME OPTIONS**

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Introduction

1. The basic objective of the paper is to critically examine the criteria developed by the High Level Task Force (Task Force) for facilitating and undertaking a periodic assessment of the progress in the implementation of the right to development. More specifically, the paper seeks to outline the desirable conceptual and methodological elements of an approach that could potentially support a comprehensive framework for the operationalisation of the right to development.
2. The criteria suggested by the Task Force were developed in the context of an analysis of the Millennium Development Goal (MDG) 8 on global partnership for development from a right to development perspective. While agreeing on the criteria, the Human Rights Council's Working Group on the Right to Development was of the view that a pilot assessment of some selected global partnerships for development, for their relevance to promote the implementation of the right to development, would help in the review and progressive refinement of the suggested criteria. The implicit assumption being that such an exercise would contribute to clarifying the content and the focus of the right to development and help in developing a set of operational tools, guidelines, or potentially even elements of an international legal instrument for furthering the implementation of the right.
3. The notion of the right to development, as it has evolved in the international human rights discourse and in the work of the UN human rights bodies, seeks to bring a new approach to development thinking, policy making and, in particular, to development cooperation. The underlying feature of a right to development approach, or more generally a human rights approach, is that it identifies right holders who, by virtue of being human, have a claim over certain entitlements, and there are duty bearers, who are legally bound to *respect, protect* and *fulfill*¹ the entitlements associated with those claims. Thus, there are rights of individuals and there are correlate obligations, primarily for the State- individually and collectively- and its institutions.² The human rights approach also identifies certain cross-cutting norms or principles such as participation, empowerment, non-discrimination and equality, transparency and accountability including, the rule of law and good governance, at the national and international levels, which are expected to guide the duty bearers in the conduct of the process to secure

¹ In the human rights literature, these are referred to as the 'Maastricht principles' that define the scope of State obligations, generally in the national context, but could well be applied to describe the nature of State obligations at the international level.

² Further, these obligations could be 'perfect obligations' or 'imperfect obligations'. The former refers to immediate obligations (relate principally to civil and political rights) such as the obligation to respect (State must not deny enjoyment of a right) or the obligation to protect (State must prevent private actors/third party from violating a right), where the method for meeting the obligation by the duty bearer is known and well defined and can be enforced through a judicial process. In the latter case, it may be difficult to accurately identify the action required by the duty bearer to meet its obligations. It typically includes obligation to promote (creating the policy framework to support the enjoyment of rights) and to provide (allocation of public resources to ensure that people realise and enjoy their rights). The claims in this case relate to implementation of duty bearer's commitments to pursue certain policies for achieving a set of desired results. Often, the imperfect obligations are not justiciable (as they relate principally to economic and social rights) and due to resource constraints, the duty bearer may have a progressive approach in fulfilling them.

human rights.³ In the event of violation or denial of rights, the approach emphasizes availability of appropriate means to seek and support redress.

4. There is a universal acceptance that these entitlements encompass the complete scope of human engagement from its economic, social and cultural aspects to the civil and political dimensions of an individual's life. Standards have been established and their normative basis elaborated in various instruments including the Universal Declaration of Human Rights and the core international human rights treaties.⁴ However, there is not as much of a clarity and agreement on what the responsibilities and obligations of the duty bearer are and how they have to be met and assessed. Indeed, in real life it is difficult to identify the policies and the measures that could define these obligations as it is almost impossible to establish a direct causal link between a policy instrument and the extent of its impact on human well-being. It is likely that a desired social outcome is influenced by more than one policy measure and at the same time a policy measure may have an impact on multiple outcomes. Most often, one has to be satisfied with the identification of a set of policies and the corresponding instruments that correlate with a set of desired social outcomes. In case of the right to development, the problem is further compounded by the fact that unlike other human rights it derives its legitimacy from the Declaration on the Right to Development (DRtD) - an all encompassing 'political document' - and not a legally binding instrument. For any legally binding instrument, even when the link between measures expected of State parties in fulfilling their obligations and the corresponding desired social outcomes is not all that obvious, such measures are likely to enjoy a better acceptance and commitment of the duty bearers as they are seen as an elaboration/extension of an international treaty. Moreover, from the perspective of a development practitioner, the elaborated normative standards on rights, as well as the narrative on correlate duties suffer from a certain lack of concreteness that makes it difficult to identify tools and methodology that establish the added value of human rights concepts in development policy.

5. In the exercise to review and refine the criteria suggested by the Task Force the larger objective is to arrive at a set of qualitative and quantitative tools that facilitate the implementation of the right to development and support a periodic assessment of its progress. Given the current articulation of the criteria, it has to be borne in mind that some of these criteria could be more relevant at the international level, such as for assessing global partnerships for development from a right to development perspective, and that others could better reflect the progress in country strategies for the implementation of the right. A disproportionate focus on one or the other set of criteria could end up compromising the intrinsic value and the scope of the right for informing the development process, in its implementation phase. Having said that and as argued in the latter part of this paper, unlike other human rights, the right to development by its very definition may have a more significant contribution to make in the conduct of international cooperation for the universal realisation of human rights.

³ These cross-cutting norms or principles have also been reiterated by the Working Group on the Right to Development as being relevant for the implementation of the right, at its various sessions.

⁴ Alternately, the International Bill of Rights, which mainly comprises the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The other more recent instruments designed to address situation of special groups and regions in the promotion and protection of human rights are the Convention on Elimination of Racial Discrimination (CERD), Convention on Elimination of Discrimination Against Women (CEDAW), Convention on the Right of the Child (CRC) and Convention Against Torture (CAT)

6. It may be instructive to revisit and sharpen our understanding of the notion of the right to development before we assess the Task Force criteria and make them more operational and reflective of the established practice and methodology for evaluation. Section II of this paper revisits the DRtD and some other relevant literature, in order to pin down the essential elements or the content of the right. The respect for analytical rigor requires that the suggested criteria should be explicitly anchored in the normative foundations of the right to development. Section III reviews the Task Force criteria, maps them to the content of the right and presents the framework for identifying the requisite tools-quantitative as well as qualitative - that could help in refining the criteria and making them more operational. The concluding section outlines a few suggestions for the consideration of the Task Force for taking forward the work currently underway in making progress on the implementation of the right to development.

I. THE NOTION OF RIGHT TO DEVELOPMENT

7. The Declaration on the Right to Development⁵ (DRtD) adopted by the United Nations General Assembly in 1986, in its Article 1 defines ... *“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”*. Such a broad based notion of development in terms of economic, social, cultural and political advancement directed at the full realisation of all human rights and fundamental freedoms, transformed the right to development from a mere claim for a supportive international economic order, rooted in the period of decolonisation, to a multifaceted and a cross- cutting human right⁶.

8. Before identifying the main elements or the attributes of the right to development based on a reading of the DRtD and its elaboration, it is important to highlight a salient feature of the right, which makes it somewhat distinct from other substantive and procedural human rights,⁷ as well as from the more commonly used concept and terminology of rights-based approaches (to development).⁸ It relates to the intrinsic complementarity between the national and the

⁵ Declaration on the Right to Development (41/128) and the resolution on the Right to Development (41/133) of 4 December 1986.

⁶ In its early conception in the 70s and early 80s, within the confines of the international arena, the right to development was seen as a right of communities, states and peoples subjugated to colonial domination and exploitation. It was a collective right whose claim holders were the juridical persons at various levels of groupings such as the states, regions, provinces, municipalities or towns and the duty holders were the state, the developed countries and the international community⁶. It was not until later that the right was also conceptualized in the municipal law in addition to the international law.

⁷ It is sometime useful to make a distinction between a substantive human right such as the right to education (UDHR Art. 26) or the right to life (UDHR Art. 3) and a procedural right such as the right to a fair trial (UDHR Art.10-11).

⁸ These concepts have come into vogue with the UN system-wide objective of mainstreaming human rights in the work of all agencies and programmes and are often defined in a broad or even loose manner. It is useful to remember that unlike the rights-based approaches which essentially apply the human rights standards and the cross-cutting norms to address issues of development and social change, the right to development is a fundamental human right, backed by customary international law and has all the features of a right, including the right holders and the duty bearers. It does not enjoy an international legal status, in the sense that there is no international treaty explicitly recognizing the right, even though its constitutive elements viz. the economic, social and cultural rights, as well as the civil and political rights represent internationally recognised human rights law. While the right continues to be sustained by the DRtD, for legal support at the international level, it also draws on references in a number of

international dimension of the right with a relative emphasis on the latter. This can be explained partly by the historical moorings of the right to development in the decolonization era, and partly by the very nature of the right- as an integrated framework of rights. The international human rights standards recognize the universality of State obligations - individually and collectively - and the importance of international cooperation in the realisation of rights. However, when we consider a human right in isolation from other rights it is easy to downplay the importance of international cooperation and the obligations of the international community in realizing that right. In such a case it can always be argued that if a particular right has to be realized all that the State has to do is to realign its allocations in favour of that right. But this argument fails when we consider the right to development, where the co-realisation of the constituent rights may require international support and cooperation, hence the importance of international cooperation in the implementation of the right to development.

Identifying Right to Development Attributes

9. Foremost, the Declaration paved the way to bridge the separation of the civil and political rights from the economic, social and cultural rights that had been effected due to the adoption of two separate Covenants in 1966. The right to development, thus, formalised the notion of 'indivisibility of human rights'. The implication of this aspect of the right requires that the policy approach and the focus of the implementation strategy, has to be necessarily on holistic development, where the relevant standards on the civil and political rights and the economic social and cultural rights have to be seen as an integrated whole and recognized in the criteria developed for furthering the implementation of the right to development. The first attribute of the right to development could, therefore, be the emphasis on *holistic development*.

Holistic Development

10. Based on the DRtD, it could be argued that the operationalisation of the notion of holistic development requires a focus on: (i) an integrated strategy for the implementation of all human rights (Article 1(1), 6(2) and Article 9(1) refer to this aspect); (ii) not only the outcomes of the development process, which can be identified with the realisation of all human rights, but also on the *process* of their realisation (Article 1(1), 2(1 to 3) and Article 8 (2)); and (iii) growth with equity (Article 2(3)).

11. Human rights are indivisible, interdependent and complementary. Any two rights are interdependent if the level of enjoyment of one is dependent on the level of realisation on the other. The principle of indivisibility requires that improvement in realisation of any human right can not be at the expense of violation or deterioration in the outcomes associated with any other right. Complementarity of rights implies interdependence or mutual reinforcement and a sense of completeness, which is attained when parts come together to form a whole. For instance, attainments on the right to education cannot be deemed as socially valuable or even acceptable if they are at the expense of improvement in realisation of the right to health. At a more general level, improvement in realisation of economic and social rights cannot be at the expense of deterioration in realisation of the civil and political rights. Indeed the two sets of rights complement each other. Similarly, the principle of inter-dependence among the human rights

international instruments, including declarations and conventions. Among these an important one is the United Nations Millennium Declaration.

makes it necessary that improvement in realisation of any one human right is a function of realisation in all or at least some of the other human rights, in any context. Thus, for instance, it is futile to talk of the right to information in the absence of a certain minimal realisation on the right to education or it is meaningless to talk of the right to work in the presence of violation of rights to participate and have equal access to public service and be considered as an equal on grounds of race, color, sex, language, or religion. These principles together make it necessary to see the realisation of human rights as a process of co-realisation of all human rights. Indeed, the right to development is seen as a composite right wherein all economic, social and cultural rights, as well as the civil and political rights because of their interdependence, indivisibility and complementarity are realized together. The integrity of the right implies that if any one of constituent rights is violated the composite right to development is also violated.⁹

12. The DRtD highlights the importance of the process, as well as the desired outcomes in the realisation of the right to development. It defines the right to development as a right to participate in, contribute to and to enjoy the fruits of multifaceted development. The process is important instrumentally, as well as intrinsically. Thus, in case of the right to education, to be able to have a legal claim on education as a public good is as important as being able to access it in a non-discriminatory manner. The focus on the conduct of the process in a particular manner with an effective participation of all stakeholders necessitates the reflection of the cross-cutting norms or principles, as referred earlier, along with the human rights standards in the choice of criteria for the implementation of the right to development.

13. The first Independent Expert on the right to development, Arjun Sengupta reiterates this when he defined the right to development as a right to a particular process of development in which all human rights and fundamental freedoms can be fully realised in their totality as an integrated whole.¹⁰ The right to development is a right of the people to outcomes, which are improved realization of different human rights. It is also a right to the process of realizing these outcomes facilitated by the concerned duty holders through policies and interventions that conform to the human right standards and the cross cutting norms. Similarly, Osmani¹¹ suggests that .. ‘ the right to development is the right of everyone to enjoy the full array of socio-economic-cultural rights as well as civil-political rights equitably and sustainably and through a process that satisfies the principles of participation, non-discrimination, transparency, and accountability.

⁹Sengupta (see the next footnote for reference) has described this in terms of an improvement of a “vector” of human rights, which is composed of different rights that constitute the right to development. The realization of the right to development implies an improvement of this vector, such that there is improvement of some or at least one of these rights without any other right being violated. It relates directly to the principle of non-retrogression, which put simply implies that nobody should suffer an absolute decline in the enjoyment of any rights at any point of time. S.R. Osmani (See UN document E/CN.4/Sub.2/2004/18 and in (ed.) Sengupta and Marks) argues that human rights approach (could also be read as right to development) necessarily requires sectoral integration at the level of policy-making because of interdependence and complementarities among rights. Indeed, interdependence and complementarities exist between rights within the category of economic, social and cultural rights and among the economic social and cultural rights and the civil and political rights.

¹⁰ First report: E/CN.4/1999/WG.18/2; second report: A/55/306; third report: E/ CN.4/2001/WG.18/2; fourth report: E/CN.4/2002/WG.18/2 ; fifth E/CN.4202 /WG.18/6; sixth E/CN.4/2004/WG.18/2; country study E/CN.4/2004/WG.18/3 and the preliminary study E/CN.4/2003/WG.18/2 at www.unhchr.org

¹¹ See *Some thoughts on the Right to Development*, in (Ed.) The Right to Development, Franciscans International, Geneva, page 34-45.

14. In his interpretation, Sengupta attaches significant importance to economic growth in defining the content of the right to development. He sees a role for a particular kind of economic growth in relaxing the resource constraints on the implementation of the right.¹² The importance of economic growth is particularly critical when the consideration is to co-realise all human rights, without retrogression in the enjoyment of any right, and when the pace of securing the rights is also an issue. Some rights namely the economic, social and cultural rights can be realised only progressively due to resource constraints, especially when there are large gaps (particularly in developing countries) in the current attainment levels and the desired development outcomes that correspond to the full realisation of those human rights. There are other human rights, mainly the civil and political rights, which may be realised more directly and immediately, as they do not require significant levels of resources for their fulfilment.¹³ In his formulation, economic growth is not only instrumentally relevant, but it is sufficiently critical for the realisation of the right to development to be an end in itself.¹⁴

Enabling Environment

15. The second attribute of the right to development follows from the importance being placed in the DRtD on the *enabling environment* in the implementation of the right (Article 3(1 to 3)). The Declaration points out that the States have duty to take steps - individually and collectively – to create the enabling environment, internationally and nationally, for the full realisation of the right. In doing so it suggests that States have to take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights (Article 6(3)). A related aspect of this feature is that while acknowledging the State as the primary duty bearer of the right, the Declaration emphasizes the importance of international cooperation in the realisation of the right to development (Article 4(2)). In terms of reflecting this aspect of the right to development in the criteria for its implementation, it would be necessary to identify a few vital elements of an enabling environment and the critical obstacles to development at the international and national levels.

16. The development literature identifies at least four categories of obstacles, or alternately the enabling factors, that could potentially be beyond the reach of national action for developing countries and, therefore require international cooperation.¹⁵ These include (i) the issue of inadequate resources, including aid, debt and technology flows and labour mobility; (ii) international policy regime (the trade regime) that may not be entirely supportive of the development process in the developing countries such as by denying the developing countries adequate access to the developed country markets; (iii) asymmetries in global governance or

¹² See the fifth report E/CN.4/2002/WG.18/6, para 11 and also 9.

¹³ There is one school of thought that argues that for securing the civil and political rights as well, the resource requirements in developing countries may be considerable, both in absolute and relative terms, when it comes to establishing an adequate human rights protection system in the country.

¹⁴ Sengupta, therefore, suggests that it has to be an element of the vector that defines the composite right to development in any context. The issue whether economic growth has an instrumental importance or that it also has a constitutive relevance in the notion of right to development could be debated. It could well be argued that a certain kind of economic growth, when seen in terms of the opportunities that it generates for the people to be productively employed and have a life of dignity and self esteem, may also have a subsequently constitutive role in the notion of the right to development. However, to the extent that these desired aspects of growth can be reflected in the process and the other outcomes comprising the right to development, it may not be tenable to argue for a 'right to economic growth' and reflect it accordingly in the notion of the right to development.

¹⁵ See, for instance, Sakiko Fukuda-Parr in UN document E/CN.4/2005/WG.18/TF/CRP.2.

what has also been described as ‘democratic deficit’ in multilateral organizations: and (iv) the issue of peace and security (conflict management) and disarmament (Article 7 DRtD). Indeed, it could be argued, as Sakiko Fakuda-Parr does in her paper,¹⁶ that international responsibilities relate to addressing obstacles that are beyond the ability of a State to tackle on its own. On the national level, the three major concerns in terms of an enabling environment for the implementation of the right to development relate to the issue of (v) country ownership of the development plans, strategies and programmes; (vi) the issue of policy space; and (vii) the issue of good governance, rule of law and democracy. Thus, in operationalising the second attribute of the right to development, one has to have criteria that reflect each of these seven elements that have been suggested here as constituting the essence of the notion of an enabling environment or inversely the identified obstacles to development.

17. In the discussion on the role of enabling environment in the implementation of the right to development, the issue of loss of ‘policy space’ or ‘policy autonomy’ in the developing countries and how it could potentially affect the capacity of these countries in meeting their human rights obligations, particularly in times of global crisis and economic stress is a relevant one. In the present phase of globalization with its attendant requirement for building global policy regimes, to ensure policy coherence across countries (such as the WTO or general caps on fiscal deficits), may in fact end up restricting the flexibility for the developing countries in the use of certain policy instruments (raising resources for say social security programmes through indirect taxes in countries where the direct tax base is narrow) that the currently developed countries may have enjoyed at an earlier comparable stage of development. This may necessitate the use of special temporary measures (such as in the WTO) until such time that development gap is sufficiently bridged and the special measures are not required anymore.¹⁷

Eradication of social injustice

18. Finally the third attribute of the right to development follows from the emphasis laid on *eradication of all social injustices* in the DRtD (Article 5 and Article 6(1)). The social justice is a vital aspect of the right to development framework. It emphasises the moral imperatives of eliminating inequalities among people and dismantling the institutional structures, primarily related to the acts of omission as well as commission of the principal duty bearers, that help in perpetuating those inequalities, both at the national and international level. Ultimately, the realisation of the right to development (Article 8(1) DRtD)... ‘shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.’

19. There are at least three elements that may have to be captured in criteria on this attribute of the right to development. These include (i) focus on (following Article 5), inter alia, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, unity and territorial integrity; (ii) gender equality and rights of

¹⁶ Ibid.

¹⁷ In his study on globalisation (E/CN.4/2004/WG.18/2), Sengupta has identified the issue of loss of policy autonomy, constraints on institutional capacity, the speed of adjustments and required policy responses, as well as the need for coordination of policies as factors influenced by the on-going process of globalisation that have a bearing on implementation of the right to development in the developing countries. He also analyses the issue of technology transfer between the technology producers and the technology recipients and the implications that this has for the implementation of the right to development. The criteria to assist in the implementation and assessment of the right to development may have to reflect these concerns.

women in development (Article 8(1)); and (iii) importance of social safety nets in mitigating hardships and dislocative effects during times of economic crisis, stress or natural disasters.

20. Let us now consider briefly what some other literature on the right to development has to offer by way of an elaboration on some of the elements listed under the three identified attributes of the right to development. After the DRtD in 1986, significant clarification on the content and the implementation of the right to development was provided by the 'Global Consultation'¹⁸ on the realisation of the right to development as a human right, held in 1990. On the content of the right it was observed that the right to development included the right to effective participation in all aspects of development and at all stages of decision making process; the right to equal opportunity and access to resources; the right to fair distribution of the benefits of development; the right to respect for civil, political, economic, social and cultural rights, and the right to an international environment in which all these rights could be fully realised. The human person was seen as the central subject, rather than a mere object of the right to development and the concept of participation was central to the realisation of the right. Participation was to be viewed as a means to an end and as an end in itself. While participation was the principal means by which individuals and peoples collectively determined their needs and priorities to ensure protection and advancement of their rights and interests, for it to be effective in mobilising human and natural resources and in combating inequalities, discrimination, poverty and exclusion a genuine ownership or control of productive resources including land, financial capital and technology were seen as necessary for furthering the implementation of the right to development.

21. The Consultations favoured a development strategy that addressed the issue of not only economic growth compliant with the cross-cutting human rights norms but of achieving social justice and realisation of all human rights. A role was foreseen for affirmative action or temporary special measures, in the development strategy, both at national level- in favour of disadvantaged groups- and at the international level in terms of development assistance to countries constrained by limited availability of resources and technical capacities. The removal of barriers to economic activity, such as trade liberalisation, was not seen as sufficient in itself. There was recognition of the interdependence between peace, development and human rights as the framework for supporting an enabling environment for realising the right.

22. Among the possible criteria to measure progress towards the realisation of the right to development, the Consultation identified a number of categories including: conditions of life (basic material needs such as food, health, shelter, education, leisure and a safe and a healthy environment, as well as personal freedom and security); conditions of work (employment, extent of sharing in the benefits of work, income and its equitable distribution and degree of participation in management); equality of access to resources (access to resources needed for basic needs and equality of opportunity); and participation. Since participation was the right through which all other rights in the Declaration were to be exercised and protected, indicators on participation were critical in measuring the progress in the realisation of the right to development. It included indicators to capture the form, quality, democratic nature, and

¹⁸ The Realisation of the Right to Development- Global Consultation on the right to Development as a Human Right-Report Prepared by the Secretary-General pursuant to the CHR resolution 1989/45; HR/PUB/91/2, page 44, paragraph 143.

effectiveness of participatory processes, mechanisms and institutions. At the international level it included the 'democratic deficit' in inter-governmental bodies. Moreover, it was concluded that in assessing participation there was a need to include public access to information and responsiveness of decision-makers to public opinion.

23. In his reports Sengupta also presented the concept of a 'Development Compact',¹⁹ with a view to outline a programme of specific policies of national action and international cooperation for implementing the right to development. He views the Compact as a mechanism to bring together the various stakeholders in an operational framework based on the notion of the 'mutuality of obligations' or 'shared responsibilities'. The logic of the proposal rests on the acceptance and a legal commitment of the countries to pursue, individually and collectively, the universal realisation of all human rights. He argues that if the developing countries are committed to the realisation of human rights and undertake steps to implement a rights-based development process, then their efforts should be matched by implementation of the reciprocal obligations by the international community. This could be in the form of support and cooperation in the implementation of the agreed programmes through direct assistance and such other measures that improve the prospects of the developing countries to mobilise the required resources to fund their efforts. The concept of the compact, particularly the idea of mutuality of obligations, though not explicit in the DRtD, helps in capturing the essence of the right for its operationalisation and implementation. Indeed, as international cooperation policies have not been anchored in this concept of mutuality of obligations, the concept becomes a natural candidate for inclusion in the set of criterion for assessing development partnerships for compliance with the right to development.

24. The distinction between the national and the international dimension of the right to development, often favoured in the human rights discourse, has somehow reinforced an impression that the two could, perhaps, be studied and analyzed separately in evolving strategies for furthering the implementation of the right to development. However, the recent phase of globalisation, because of its pace, spread and the depth of integration across countries, has exposed the limitation of making this differentiation between the two dimensions of the right to development. This aspect is particularly highlighted by the still unfolding impact of the global financial sector meltdown that has affected almost all countries, directly or indirectly, irrespective of their involvement in the global financial markets where the crisis erupted in mid-September 2008. In reality, the national and the international dimension of the right to development are closely entwined. Impediments to national development, commonly identified at the international level, necessarily have corresponding commitments at the national level. Similarly, the issue of governance is cross cutting and relates equally to effective and efficient functioning of the national institutions, as to the role and operations of the international organizations/institutions. It is also true that in many developing countries if the gap between the attainment and realisation of human rights has to be visibly bridged in a reasonable period of time there has to be a renewed effort at identifying effective national policies and backing them up with suitable international development cooperation and assistance. It is, therefore desirable that in identifying the policies and strategies for realisation of the right to development the national and the international dimensions are viewed in an integrated manner.

¹⁹ The idea of a 'compact' was first proposed by T. Stoltenberg, in the late eighties and was elaborated in the UNDP's Human Development Report 2003(?). S.R. Osmani (see footnote 5) has also suggested that the concept of a development compact may be useful for implementing the right to development.

25. Having identified certain attributes of the right to development and their respective operational elements, the challenge now is to reflect them into concrete criteria and corresponding qualitative and quantitative measures that will facilitate the operationalisation of the right to development framework and help in the implementation the right. In identifying the three attributes of a right to development one has already taken a significant step in concretising the content of the right. Often one finds, and this is true of most human rights, that the enumeration of the standards on a right in the articles (treaty provisions) and its elaboration in the relevant instruments (including general comments by the concerned treaty bodies in case of a legal instruments) are quite general and even overlapping, not quite amenable to the process of identifying operational criteria or sub-criteria. By selecting the attributes of a right, the process of identifying suitable criteria or appropriate quantitative measures is facilitated as one arrives at a categorisation that is clear, concrete and, perhaps, more 'tangible' in facilitating such a selection.²⁰ It may be noted that the acceptability of the approach rests critically on being able to identify attributes that are mutually exclusive (i.e. to the extent feasible the attributes do not overlap in their scope) and are based on an exhaustive reading of the standard so that, to the extent feasible, the complete standard is reflected in the selection of the attributes and the corresponding criteria, sub-criteria or the quantitative /qualitative measures. A simple test for the appropriateness of the selected attributes of a right involves an independent reading of the attributes and their operational elements, when considered together, it should present a reasonably exhaustive understanding of the normative content of that right.

II. REVIEW OF THE TASK FORCE CRITERIA - SOME ISSUES AND OPTIONS

26. A critical examination of the right to development criteria suggested by the Task Force for assessing global partnerships for development from a right to development perspective raises several issues at both conceptual, as well as methodological levels. The issues become somewhat more complex, as one goes beyond the objective for which the suggested criteria are presently being used. Foremost, we could either be looking at criteria that merely assist in the identification of aspects of global partnerships for development that conform with the right to development framework; or we could be looking at developing a set of validated criteria as a means to clarify the content of the right to development and strengthen its operationalisation with the help of clear measurable tools (qualitative as well as quantitative), which, in turn, support a periodic assessment of the progress being made in the implementation of the right. The issue is essentially one of scope and the range of themes on development cooperation under the criteria that have been already articulated or may have to be developed. Clearly, the right to development framework is much more than a well conceived partnership for development or the MDG 8.

27. Depending on what the objective for identifying the right to development criteria are, the content and the focus of the criteria will differ. In the first instance, the criteria will have to reflect and emphasize the instrumental aspect of the right, focusing primarily on the cross-cutting norms, the process and the procedural elements that the right to development framework can

²⁰ This has been the approach of the Office of the High Commissioner for Human Rights (OHCHR) in the work undertaken by it for the international human rights treaty bodies on the identification of indicators for promoting and monitoring the implementation of human rights. See, for instance, UN document HRI/MC/2008/3 dated 6 June 2008.

potentially bring into making the development partnerships more effective. In this case, the formulation of criteria could be more generic, since reference to the human rights standards related to the substantive rights will be minimal and the acceptance of the suggested criteria would depend largely on the perceived appeal of the criteria to the stakeholders of the development partnership. This appeal, in turn, will be based on the assessment of the relevant stakeholders on the potential contribution of the criteria to the intended results of their partnership. In the second instance, a starting point is to review the suggested criteria for comprehensiveness in reflecting the normative framework on the right to development. The criteria, in this case will have to exhaustively cover the human rights standards as applicable to the right to development, as well as the human rights cross-cutting norms.

28. Secondly, at a purely functional level, in the real life context there isn't just as yet a partnership for development at the global, regional or at the bilateral level that could be described as being uniquely designed for implementing the right to development. This makes the task of assessing the development partnerships from a right to development perspective truly challenging. Thirdly, continuing the argument further, if all we need is generic criteria that allow us to assess the extent of congruence between the existing/on-going development partnership and the right to development, there may not be any need for having an exhaustive approach to reflect the normative framework on the right to development or in developing sub-criteria or additional criteria that are particularly useful for analyzing thematically focused development partnerships, such as those on trade, or technology transfers or simply aid, debt and concessional flows. For in that case, as argued earlier, the specific objectives of the existing/ongoing partnerships is not as important as the manner in which the partnerships are being conducted. In such a case the partnership may as well be following a rights-based framework as against a right to development normative framework.

29. Fourthly, the ex-post categorization of criteria into structural / institutional, process and outcome, after the criteria had already been articulated, may not be appropriate. It seems an afterthought which does not add any real value to the suggested criteria.²¹ Indeed, such a categorization has been used by the Office of the High Commissioner for Human Rights (OHCHR) in the context of the work on the identification of indicators to promote and monitor the implementation of human rights, undertaken for the international human rights treaty bodies.²² In the said work, an ex-ante use of this categorization helped in transcribing the narrative on the normative content of different human rights into a consistent and comprehensive set of quantitative indicators. Moreover, the configuration of structural-process-outcome indicators helped in identifying indicators that could reflect the commitment-effort-results aspect of the realization of human rights, primarily through use of available administrative (official statistics) information. It has been suggested that an objective assessment of this relationship forms the bedrock of human rights assessment. The primary concern in assessing the implementation of the human rights is in measuring the effort that the duty-bearer make in meeting their obligations, irrespective of whether it is directed at promoting a right or protecting it. While it is this facet of the measurement that helps in bringing out the added value of a human rights approach to development and social change, it is equally important to get a measure of the 'intent/commitment' of the State party, as well as the consolidation of its efforts, as reflected in appropriate 'result' indicators. The use of the structural-process and-outcome categorization may

²¹ The identification of a criteria in one of the three categories is not consistent and is open to question

²² See footnote 20.

therefore be more useful in the process of identifying the quantitative and qualitative measures or indicators corresponding to various right to development criteria, rather than in categorizing the criteria.

30. The fifth concern relates to the overlapping scope of many of the existing criteria. For operational ease and effective application of the criteria (or potential sub-criteria) it may be necessary to review the existing criteria to make them, as far as possible, mutually exclusive in their content. This is an issue that has been highlighted in the papers commissioned by OHCHR on the analysis of different global partnerships for development.²³ There is also the related concern of restricting the overall number of criteria and /or sub-criteria for practical reasons. At the same time, it is desirable that the identified attributes of the right and the corresponding criterion, when considered together, present, as far as feasible, an exhaustive understanding of the normative content of the right to development.

31. On balance, and as argued in the introductory section of the paper, it may be desirable to work towards a comprehensive set of criteria that help in concretizing the normative framework on the right to development and thereby support the progress in its implementation. Thus, beginning with the identification of the attributes of the right to development, the corresponding operational elements of the attributes, followed by the criteria and then sub-criteria or quantitative and qualitative measures will be required as outlined in the earlier section. Such an approach is consistent with the work undertaken by the author (see for reference footnote 20) in identifying indicators, primarily based on available administrative data, for a selection of substantive and procedural UDHR human rights, covering both civil and political rights, as well as economic social and cultural rights for the UN human rights treaty bodies.

Rationalization of the Task Force Criteria

32. As a first step in the review of the Task Force criteria one could begin by rationalizing the suggested criteria for overlapping content and redundancy. Of the 17 criteria suggested by the Task Force, it was found that 7 could be dropped altogether or by modifying the existing criteria without compromising on any significant content. Also with a view to ensure that the criteria reflect the normative framework of the right comprehensively, they need to be framed more broadly to cover the national and the international dimensions of the right. However, for reasons suggested earlier the relative emphasis continues to be on the importance of international cooperation in the implementation of the right. Further, following the analysis in the preceding section on the limited relevance and value added of introducing the categorization of structural/institutional- process- outcome for the suggested criteria, the proposed revised criteria devoid of such a categorization are as follows:

The extent to which a development strategy/ partnership:

- (a) Contributes to creating an enabling environment for sustainable, *equitable* development *that enables* the realization of all human rights;

²³ See, for instance, the Un document A/HRC/8/WG.2/TF/CRP.5 by Ms Bronwen Manby where she highlights the need to revise the criteria with a view to make them more focused or the mission reports of the High Level Task Force.

- (b) Draws on all relevant international human rights *standards*, including those relating to the right to development, in elaborating the content of development strategies /*partnerships* and tools for monitoring and evaluating their implementation;
- (c) Promotes good governance, democracy and the rule of law and effective anti corruption measures at the national and international levels;
- (d) Follows a human rights-based approach to development, and integrates the principles of equality, non-discrimination, participation, transparency, and accountability in its development strategies;
- (e) Establishes *policy* priorities that are responsive to the needs of the most vulnerable and marginalized segments of the population, with positive measures to realize their human rights;
- (f) Recognizes mutual and reciprocal responsibilities among the *development stakeholders/ partners, supported by institutionalized accountability mechanisms*, taking into account their respective capacities and resources;
- (g) Promotes gender equality and the rights of women;
- (h) Provides for the meaningful consultation and partnership of all stakeholders, including *by ensuring free flow relevant information* in elaborating, implementing and evaluating development policies, programmes and projects;
- (i) Respects the right of each State to determine its own development policies in accordance with international law, and the role of national parliaments to review and approve such policies; and
- (j) Establishes, as needed, safety nets, to provide for the needs of vulnerable population in time of natural, financial or other crisis.

33. It may be noted that this list of proposed revised criteria does not include criteria (g), (l), (n), (p) and (q) from the list of criteria as revised by the Task Force at its fourth session (see Annex to this paper). The relevant elements from the criteria that were dropped have been introduced in italics in the proposed revised list.

Mapping Proposed Revised Criteria to Right to Development Attributes

34. As a second step a possible mapping of the proposed revised criteria with the identified attributes of the right to development and their operational elements, followed by an illustrative list of quantitative and qualitative indicators, has been attempted and presented in the enclosed table. It makes the link between a criterion or a potential criterion and the normative content of the right explicit. It can be seen that there are several gaps in the table, for instance no criterion has been identified for certain operational elements of an attribute, and occasionally no quantitative/qualitative measure has been identified for an existing criterion. The intention has been to merely illustrate the concept and methodology for developing an operational framework for implementing the right to development without seeking to be exhaustive or even reflecting an adequate picture of different kinds of quantitative/qualitative measures that can be used for undertaking assessments in this exercise. If the suggested approach is seen as being useful by the Task Force, the gaps can be filled-in based on discussions and an adequate consensus.²⁴

²⁴ The illustrative tables of indicators in the UN document HRI/MC/2008/3 dated 6 June 2008 referred earlier, provides a number of human rights quantitative and qualitative measures covering both civil and political rights as

35. Secondly, it can be seen from the table that some of the criteria such as criterion (a) from the revised list may have to be specifically broken-down to reflect the various operational elements under the attribute 'enabling environment', including aid, debt, or technology flows that reflect the resources need to augment the domestic efforts for implementing the right. Alternately, one could argue that instead of one overarching criterion, such as the proposed criterion (a), we need four additional criteria to reflect the four aspects of the operational element of adequate resources followed by the relevant quantitative/qualitative measures. The format, therefore, facilitates a consist approach to develop criteria that, for instance, relate to specific thematic partnerships for development under the MDG 8, without creating a conflict with the criteria already articulated.

36. Thirdly, following the earlier analysis, the table shows that it may be possible, or even desirable, to use the categorization of structure-process-outcome indicators in selecting the quantitative and qualitative measures for tracking the implementation of the criteria. The advantage in doing so would be to ensure a comprehensive reflection of the relationship between commitment-effort-results on part of the duty bearer for each criterion and by definition each identified attribute of the right, which will bring out the added value of the right to development to the development process. Finally, though the national and the international dimensions have not been emphasized in the articulation of the criteria as indicated in the approach and as reflected in the table, there may be a case for keeping the two dimensions of the right to development in view while selecting the quantitative and qualitative measures (i.e. the relevant indicators) for operationalising and tracking the right to development criteria.

III. CONCLUSIONS AND THE WAY FORWARD

37. In order to make progress in the implementation of the right to development, it is essential that while the conceptual basis of the selection of criteria is strengthened, the identified criteria and their qualitative and quantitative measures are also empirically validated. The attempt should be to remove any sense of arbitrariness in the selection of the criteria. This may require the Task Force to study additional partnerships at the international /regional/bilateral level, but also analyze and document some national level development experiences with a view to present tools for implementation of the right to development and not merely sensitizing the global development partnerships to the right to development perspective. The implementation of the right to development requires bridging of the human rights and development discourses, which can be aided by an approach such as the one presented in this paper. One of the tasks then would be look more closely at suitable quantitative and qualitative measures from available relevant international databases and lists of indicators, and build a broad based consensus around them, including through piloting of some of the identified indicators while studying the different partnerships for development. The exercise for validation of the criteria and the operational tools would require a structured engagement of the various stakeholders, at the national and international levels.

well as economic social and cultural rights that can be introduced in the right to development table, depending on the context - be it at the national level or of the global/regional development partnerships, at the international level.

Annex I. Mapping Proposed Revised Criteria to Right to Development Attributes

Attributes & corresponding operational elements	Proposed Revised Criteria	Illustrative Quantitative & Qualitative Measures
<p>I. Holistic Development</p> <p>1. Integrated Strategy</p> <p>2. Complementarity of Process and Outcomes</p> <p>3. Growth with Equity</p>	<ul style="list-style-type: none"> ➤ Draws on all relevant international human rights <i>standards</i>, including those relating to the right to development, in elaborating the content of development strategies <i>/partnerships</i> and tools for monitoring and evaluating their implementation; ➤ Follows a human rights-based approach to development, and integrates the principles of equality, non-discrimination, participation, transparency, and accountability in its development strategies; ➤ Provides for the meaningful consultation and partnership of all stakeholders, including <i>by ensuring free flow relevant information</i> in elaborating, implementing and evaluating development policies, programmes and projects; 	<ul style="list-style-type: none"> ➤ International human rights treaties, relevant to the right to participate in public affairs, ratified by the State ➤ Number of CCA and UNDAF prepared internationally and for specific countries ➤ Existence of institutionalized consultation process for policy planning ➤ Date of entry into force and coverage of legislation on access to information ➤ Gini Coefficient of income /consumption or by quintiles ➤ Unemployment rates, by sex, target groups and level of education
<p>II. Enabling Environment</p> <p>1. Adequate Resources</p> <ul style="list-style-type: none"> ➤ Aid ➤ Debt ➤ Technology flows ➤ Labour mobility <p>2. Supportive trade regime</p> <p>3. Asymmetries in global governance</p> <p>4. Peace, security & disarmament</p> <p>5. Country ownership of dev plans</p> <p>6. Policy space and autonomy</p>	<ul style="list-style-type: none"> ➤ Contributes to creating an enabling environment for sustainable, <i>equitable</i> development <i>that enables</i> the realization of all human rights; ➤ Recognizes mutual and reciprocal responsibilities among the <i>development stakeholders/ partners, supported by institutionalized accountability mechanisms</i>, taking into account their respective capacities and resources ➤ Respects the right of each State to determine its own development policies in accordance with international law, and the role of national parliaments to review and approve such policies; 	<ul style="list-style-type: none"> ➤ Official development assistance (ODA) as percentage of GDP/ Share of net ODA in National development expenditure ➤ Debt service ratio of the country ➤ External and within country repatriation of money by workers ➤ Foreign trade as a proportion of GDP ➤ International organizations that follow a representative/equitable system of decision making

Annex II

Criteria for Periodic Evaluation of Global Development Partnerships from a Right to Development Perspective (as revised by the task force at its fourth session, January 2008)

To facilitate their application, the criteria remain organized in three groups related to development partnerships: structure and institutional framework, process and outcome.

Structure/institutional framework

The extent to which a partnership:

- (a) Contributes to creating an enabling environment for sustainable development and the realization of all human rights;
- (b) Draws on all relevant international human rights instruments, including those relating to the right to development, in elaborating the content of development strategies and tools for monitoring and evaluating their implementation;
- (c) Promotes good governance, democracy and the rule of law and effective anti corruption measures at the national and international levels;
- (d) Follows a human rights-based approach to development, and integrates the principles of equality, non-discrimination, participation, transparency, and accountability in its development strategies;
- (e) Establishes priorities that are responsive to the needs of the most vulnerable and marginalized segments of the population, with positive measures to realize their human rights;
- (f) Recognises mutual and reciprocal responsibilities among the partners, taking into account their respective capacities and resources and the special vulnerability of Least Developed Countries;
- (g) Ensures that human rights obligations are respected in all aspects of the relationship between the partners, through harmonization of policies;

Process

The extent to which a partnership:

- (h) Ensures that adequate information is freely available to enable effective public scrutiny of its policies, working methods and outcomes;
- (i) Promotes gender equality and the rights of women;
- (j) Provides for the meaningful consultation and partnership of all stakeholders, including affected populations and their representatives, as well as relevant civil society groups and

experts, in processes of elaborating, implementing and evaluating development policies, programmes and projects;

- (k) Respects the right of each State to determine its own development policies in accordance with international law, and the role of national parliaments to review and approve such policies;
- (l) Includes fair institutionalized mechanisms of mutual accountability and review, through which the fulfillment by all partners of their agreed commitments is monitored and publicly reported, responsibility for action is indicated, and effective remedies are provided;
- (m) Monitors and evaluates progress in achieving development strategies by carrying out systematic assessments of the human rights impact of its policies and projects based on appropriate indicators and contributes to strengthening the capacity to collect and disseminate timely data, which should be disaggregated sufficiently to monitor the impacts on vulnerable population groups and the poor;

Outcome

The extent to which a partnership:

- (n) Ensures that developing countries, through their own efforts and through international assistance and cooperation, have the human and financial resources to implement successfully development strategies based on these criteria;
- (o) Establishes, as needed, safety nets, to provide for the needs of vulnerable population in time of natural, financial or other crisis;
- (p) Achieves the constant improvement of the wellbeing of population and all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits, in accordance with article 2, paragraph 3, of the Declaration on the Right to Development;
- (q) Contributes to development that is sustainable and equitable, with a view to ensuring continually increasing opportunities for all and a fair distribution of resources.
