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RIGHT TO DEVELOPMENT

**Report of the Working Group on the Right to Development
on its seventh session (Geneva, 9-13 January 2006)**

Chairperson-Rapporteur: Mr. Ibrahim Salama (Egypt)

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Introduction

1. In its decision 1998/269, the Economic and Social Council, taking note of Commission on Human Rights resolution 1998/72, endorsed the Commission's recommendation to establish a follow-up mechanism to make further progress towards the realization of the right to development as elaborated in the Declaration on the Right to Development, initially for a period of three years. The mechanism included the establishment of an open-ended Working Group with a mandate: (a) to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; (b) to review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and (c) to present for the consideration of the Commission on Human Rights a sessional report on its deliberations, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.

2. In its decision 2005/256, the Economic and Social Council, taking note of Commission resolution 2005/4, approved the decision of the Commission to renew for one year the mandate of the Working Group and to convene its seventh session before the sixty-second session of the Commission for a period of 10 working days; of those 10 working days, 5 were to be allocated to the second meeting of the high-level task force established within the framework of the Working Group, and the Working Group in turn was to meet for a period of 5 working days to consider the findings and recommendations of the task force and further initiatives in accordance with its mandate.

3. The second meeting of the high-level task force on the implementation of the right to development took place in Geneva from 14 to 18 November 2005 and submitted its conclusions and recommendations contained in its report (E/CN.4/2005/WG.18/TF/3) for the consideration of the Working Group.

4. Accordingly, the Working Group on the Right to Development convened its seventh session in Geneva from 9 to 13 January 2006 to consider the report of the task force and further initiatives in accordance with its mandate.

I. ORGANIZATION OF THE SESSION

A. Opening of the session

5. The seventh session of the Working Group was opened by Ms. Mona Rishmawi, Officer-in-Charge of the Development and Right to Development Branch, OHCHR. In her opening address, she welcomed the continuing progress made in the debate on the right to development, noting with interest the preparatory work of the high-level task force. In particular, she welcomed the task force's elaboration of criteria for periodic evaluation of

development partnerships as a concrete step towards clarifying the operational dimensions of the right to development. These criteria would provide development practitioners with a tool that could have a real impact at the national level. She informed the Working Group about the establishment of a new OHCHR Unit dedicated to working on the Millennium Development Goals (MDGs) and noted that MDGs offered possibilities for a practical and concrete approach to the right to development. Strengthening development partnerships through the implementation of MDG 8 would provide the Working Group with the opportunity to constructively contribute to the work of relevant international and regional organizations.

B. Election of the Chairperson-Rapporteur

6. At its first meeting, on 9 January 2006, the Working Group re-elected by acclamation Mr. Ibrahim Salama (Egypt) as Chairperson-Rapporteur. In his statement following the election, the Chairperson-Rapporteur highlighted the achievement of conceptual clarity as the main progress made at the last session of the Working Group. The next step should be to make the concept more operational and to move towards its implementation. He underlined the complexity of the task and that the transformation of the Commission on Human Rights into a Human Rights Council made it even more important for the Working Group to be very clear about where it wanted to go. One important way in which the right to development could be made operational was as a policy coherence regulator. It was a complex topic and further research was needed to develop a clear and coherent methodology. The implementation of the right required genuine partnerships between the human rights, development and trade communities. The Working Group could play an important role in assisting practitioners with the tools and ideas and in supervising the implementation of the right to development. He highlighted the positive contribution of the high-level task force in moving the Working Group into an implementation mode and enhancing partnerships with United Nations agencies and the international financial institutions. He also welcomed the establishment of an OHCHR Unit focusing on the human rights aspects of MDGs.

C. Organization of work and adoption of the agenda

7. At the same meeting, the agenda of the seventh session of the Working Group, as amended, was adopted on the basis of the provisional agenda (E/CN.4/2006/WG.18/1/Rev.1). The agenda as adopted is contained in annex I below.

D. Attendance

8. Representatives of the following States members of the Commission on Human Rights attended the meetings of the Working Group: Argentina, Bhutan, Brazil, Burkina Faso, Canada, Congo, Costa Rica, Cuba, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Guatemala, Honduras, India, Indonesia, Ireland, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, Nigeria, Qatar, Republic of Korea, Romania, the Russian Federation, South Africa, Sri Lanka, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe.

9. The following States were also represented at the Working Group: Albania, Algeria, Angola, Austria, Bangladesh, Barbados, Belgium, Benin, Bosnia and Herzegovina, Brunei Darussalam, Bulgaria, Cambodia, Chile, Croatia, Cyprus, Czech Republic, Denmark,

Estonia, Ghana, Greece, Iran (Islamic Republic of), Iraq, Kuwait, Libyan Arab Jamahiriya, Madagascar, Mali, Malta, Morocco, Myanmar, New Zealand, Philippines, Portugal, Senegal, Serbia and Montenegro, Singapore, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Venezuela and Yemen.

10. The following non-member States were represented as observers: the Holy See, Palestine.

11. The following United Nations body was represented: United Nations Development Programme.

12. The following specialized agencies were represented: Food and Agriculture Organization of the United Nations, the International Monetary Fund, World Bank and the World Trade Organization.

13. The following intergovernmental organization was represented: African Union.

14. The following non-governmental organizations in consultative status with the Economic and Social Council were represented:

General consultative status

Europe Third World (CETIM), Franciscans International.

Roster

International Federation of Rural Adult Catholic Movement.

15. The following academic institution was represented: Tilburg University.

E. Documentation

16. The Working Group had before it a number of pre-session and background documents to inform its deliberations. A complete list of documents is contained in annex II below.

II. SUMMARY OF THE PROCEEDINGS

A. Consideration of the report of the high-level task force on the implementation of the right to development

17. Malaysia made a general statement on behalf of the member States of the Non-Aligned Movement (NAM) and China. NAM noted with concern the absence of tangible progress in the operationalization of the right to development, in the two decades that had passed since the adoption of the Declaration of the Right to Development in 1986. NAM had supported the establishment of a high-level task force as a way to bypass lengthy and repetitive conceptual discussions and as a direct route to the implementation of the right to development. In this

context, NAM expressed concern that the report of the second meeting of the task force was seen to focus excessively on the national level in the discussion on criteria for the evaluation of global partnerships, and seemed to confuse the mainstreaming of human rights into development with the right to development. NAM further provided the following comments: highlighted their understanding of the right to development as a bridge between economic, social and cultural rights on the one hand, and civil and political rights on the other, which had to be mainstreamed into international development activities; encouraged OHCHR to forge cooperation with UNCTAD; mentioned that the debt relief granted to some African countries last year could contribute towards an international environment conducive to development; and suggested that the Working Group focus its deliberations on developing a legally binding instrument on the right to development.

18. Austria, on behalf of the European Union (EU), acceding and candidate countries, Norway, the Republic of Moldova and Ukraine, welcomed the constructive dialogue over the past two years which had shifted the debates on the Working Group from the general to the specific and from the conceptual to the operational. EU highlighted that, in their view, the main priority in the work of the Working Group should be to find ways to improve the practical implementation of the right to development. EU underlined that States have the primary responsibility for the respect for all human rights, including the right to development. This could best be achieved by applying a human rights perspective to national development plans and global partnerships. In this context, EU welcomed the recognition in the World Summit Outcome Document that development, security and human rights are mutually reinforcing. EU also welcomed the work of the high-level task force on Millennium Development Goal 8 and on ways to improve the effectiveness of global partnerships for development. In particular, EU welcomed the criteria identified by the task force to assess global partnerships. The work of the task force was seen to move beyond the dichotomy of action at either the national level or the international level, recognizing that sustainable development requires action at both levels, in a spirit of mutual commitment and accountability. The task force also proved its value as a forum for dialogue between different stakeholders.

19. Morocco, on behalf of the Group of African States, associated itself with the statement made on behalf of NAM and China. The Group welcomed the examination by the high-level task force of Goal 8. However, it considered that the task force in its report focused on the national dimension, rather than on the responsibility of all partners at the international level. The Group pointed out that the criteria for assessing global partnerships should include criteria for whether the real needs of developing countries are being met and whether commitments made by international partners had been implemented. It was stressed that the right to development should be mainstreamed in policies and operational activities at the global level. The Group also underlined the importance of increasing financial assistance to developing countries; the need to mobilize resources to combat pandemics such as HIV/AIDS, malaria and tuberculosis; the central role of foreign direct investment in improving the effectiveness of global partnerships; the impediment of the debt burden to achieving the right to development; the need for additional resources to finance efforts towards the achievement of MDGs and the need for States to honour their commitment to dedicate 0.7 per cent of their gross national product (GNP) to official development assistance (ODA).

20. Following the general statements, the Working Group had a paragraph-by-paragraph consideration of the conclusions and recommendations contained in the report of the high-level task force (E/CN.4/2005/WG.18/TF/3, paras. 47-92). Compared to previous sessions, the seventh session of the Working Group focused from the very beginning on the report and findings of the task force, as they were considered a good basis for discussion, and deliberations were centred upon the draft conclusions and recommendations of the Working Group.

21. The Working Group welcomed the efforts made by the high-level task force to identify criteria for assessing global partnerships for the realization of the right to development and the steps to be taken by development practitioners. Delegations raised questions regarding the definition and operationalization of the criteria identified by the task force, and regarding who should apply these criteria. Delegations pointed out the need to establish the relevance and make the necessary links to the underlying principles of the right to development, as enumerated in paragraph 40 below, as well as gender, good governance and democracy, the needs of the most vulnerable and marginalized groups and mutual and reciprocal responsibilities.

22. Several delegations underlined that the right to development was a stand-alone right, and that it was this right, rather than merely a human rights-based approach to development, that the Working Group should seek to mainstream and make operational. The report of the high-level task force was seen to focus excessively on national rather than international responsibilities of States. Other delegations pointed out that, as all human rights were interdependent, the right to development was about a process of development, in which all human rights were realized, and therefore, inter-State partnerships placed responsibilities on all parties involved. Furthermore, a constant concern in the debates, which has been reflected in the agreed conclusions, was to ensure effective use of existing human rights monitoring mechanisms and to avoid duplication.

23. Delegations also underlined the importance of referring to articles 3 and 4 (1), of the Declaration on the Right to Development on the duty of States to cooperate, forging linkages between MDGs and human rights and reading MDGs in the light of the Millennium Declaration. A number of delegations and the representative of one non-governmental organization underlined the importance of increased financial contributions towards meeting MDGs by 2015. In particular, wealthy countries should dedicate 0.7 per cent of GNP to ODA. A number of delegations also expressed concern that parts of the text seemed to introduce new conditionalities for developing countries, and it was suggested that the sensitive term “conditionality” be avoided. Several delegations noted progress realized in the context of debt relief.

24. Other issues that were not touched or elaborated upon in the task force report, and that were briefly mentioned in the Working Group, were: the issue of “national policy space”, the role of transnational corporations in relation to human rights, the impact of migration on the realization of the right to development, and a legally binding instrument on the right to development.

B. Consideration of the way forward

25. The Working Group considered four options for its future work: (a) to maintain the focus on Millennium Development Goal 8 and criteria for its periodic evaluation with a view to having the task force apply the criteria identified to a number of partnerships, and report back to the Working Group; (b) to consider the broader topic of Goal 8, focusing on other issues covered by

Goal 8, as identified but not elaborated on by the task force (e.g. youth employment, landlocked and small island developing States); (c) to focus on the topics identified by the task force as pertinent to Goal 8, but not covered by the targets enumerated therein (e.g. migration, role of the private sector, global governance and regional initiatives); and (d) to decide to select a new topic, not related to Goal 8.

26. The consensus of the Working Group was to focus on the first option above and continue work on Millennium Development Goal 8. Some delegations favoured the fourth option. Several delegations were of the view that the further exploration of Goal 8 would be useful, and that the application of the identified criteria for global partnerships to specific partnerships should contribute to their progressive development. Several delegations considered that some options could be combined, for example, options one and two, i.e. applying the criteria to particular partnerships, while at the same time doing research on other Goal 8-related issues. It was pointed out that the different options did not exclude each other, and the Chairperson said that it would be a question of “when”, and not “if”.

C. Address by the United Nations Deputy High Commissioner for Human Rights

27. In her closing statement to the Working Group, the Deputy High Commissioner congratulated the Working Group and its Chairman on the progress made at the present session. She noted the very positive atmosphere of the session with the constructive participation by a large number of States and institutions. In particular, she welcomed the agreement the Working Group had reached on the criteria for evaluating Goal 8 from the perspective of the right to development. This was a very concrete result, which could contribute to the implementation of the right to development. She underlined that OHCHR would support the Working Group in its work on the practical application of these criteria and in all its other efforts to advance the right to development.

III. CONCLUSIONS AND RECOMMENDATIONS

28. Based on the discussions in the Working Group, the Chairperson prepared and circulated his draft text for the conclusions and recommendations of the seventh session of the Working Group. The draft text was subsequently discussed, negotiated and amended by delegations. At its final meeting, on 13 January 2006, the Working Group adopted, by consensus, its conclusions and recommendations. With regard to the WTO Ministerial Conference Declaration adopted in Hong Kong in December 2005, the delegation of Venezuela stated that it had been approved with reservations from their Government. Several States expressed their appreciation for the able and wise guidance by the Chairperson, for the spirit of cooperation that had characterized the session, and for the high quality of support provided by the secretariat.

29. The Chairperson concluded the session by underlining that the conclusions and recommendations adopted by the Working Group represented a historical turning point. The Working Group had translated the norms and principles stated in the Declaration on the Right to Development into concrete results-oriented criteria which gave guidance as to the practical implementation of the right to development. He thanked all actors who contributed to this achievement.

Introduction

30. The Working Group on the Right to Development emphasizes that the right to development, as defined in article 1, paragraph 1, of the Declaration on 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”.
31. The Working Group reiterates that the implementation of the right to development requires growth with equity, with the human person as the central subject of development, and that a rights-based approach to economic growth and development contributes to the realization of the right to development.
32. The Working Group reiterates its view that there is growing acceptance of the simultaneous levels of action required at the national, regional and international levels in the implementation of the right to development. While the importance of the implementation of the right to development by States cannot be overemphasized, this does not in any way reduce the importance of international cooperation in providing an enabling environment at the international level.
33. The Working Group recognizes the importance of a future collaboration, within the framework of the Working Group, between the future Human Rights Council and United Nations bodies, agencies, funds and programmes, multilateral financial and development institutions, and the World Trade Organization, with a view to benefiting from their experience and expertise in identifying concrete measures to implement the right to development and to mainstream it into their spheres of action, in order to progressively achieve a fuller realization of the right.
34. The Working Group welcomes the fact that the second meeting of the high-level task force further highlighted the importance of the partnership between the human rights community and international financial institutions and other participating actors, and contributed to a further enhanced understanding of the substantive components of the right to development.
35. The Working Group considered the report of the high-level task force on the implementation of the right to development, which constituted a good basis for its deliberations and agreed conclusions and recommendations on Goal 8, on a global partnership for development, and on criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development.

B. Conclusions

36. The Working Group recognizes the importance of genuine partnerships in realizing the right to development as part of the implementation of article 4, paragraph 1, of the Declaration, which states that “States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to

development". The Millennium Development Goal 8, with its focus on international cooperation, is a framework compatible with international responsibilities contained in the Declaration.

37. This duty of international cooperation is further entrenched in the Charter of the United Nations. It is manifested in mutual commitments, which translate the general duty of international cooperation into specific binding arrangements between cooperating partners. Such arrangements are defined and agreed upon through genuine negotiations, which ensure national ownership of the development process.

38. The Working Group is aware that the commitments made with respect to the right to development at the highest State level, including the commitment in the Millennium Declaration "to making the right to development a reality for all", are not always referred to and acted upon at the level of daily responsibility for policymaking action in relation to development partnerships. Under these circumstances, it is not surprising that the formulation of the Goals and the process of monitoring progress in realizing them have been silent - or not sufficiently explicit - on human rights and the right to development.

39. The Working Group also recognizes occurrences of gaps and incoherencies between the implementation of the right to development, on the one hand, and the practices of development partnerships on the other. The Working Group therefore agrees that in enhancing the effectiveness of global partnerships with regard to the realization of the right to development, it is necessary to identify all its dimensions that should guide and complement such partnerships.

40. The Working Group recalls the principles that underlie the right to development, namely, equality, non-discrimination, participation, transparency and accountability, as well as international cooperation. It also attaches particular importance to the principle of equity, as stressed by the independent expert on the right to development in his fifth report (E/CN.4/2002/WG.18/6), and the rule of law and good governance, at all levels, as being central to the realization of the right to development.

41. The Working Group agrees that States, while adopting agreements and making commitments at international forums, such as in the context of WTO, as well as in the implementation of Goal 8, remain accountable for their human rights obligations. Ensuring policy coherence between a State's international human rights obligations and all its multilateral and bilateral trade and development engagements is, therefore, a central prerequisite of the right to development. In negotiating such engagements, Governments should comply with and ensure respect for their human rights obligations, by applying a coherent and coordinated approach. The Working Group also recognizes that States should implement the resolve to integrate the right to development into national policies,¹ including development strategies, at the national and international levels.

42. The Working Group again notes the discussions in UNCTAD on the concept of space for national economic policy and urges States, in pursuing that discussion, to bear in mind its relevance to the realization of the right to development.

43. The Working Group further recognizes that Goal 8 implies significant international roles not only for developed and developing States, but also for other relevant global entities, notably international financial institutions, business corporations, the media and NGO networks. Similarly, relevant international human rights institutions, such as human rights treaty bodies, the special procedures of the Commission on Human Rights and the High Commissioner for Human Rights, have a responsibility, within their respective mandates, to work with Governments and their international trade, finance and development partners in order to ensure coherence between their undertakings in these areas and States' human rights obligations in general, particularly with regard to the right to development.

44. In approaching the criteria relevant to assessing the effectiveness of global partnerships for development with regard to the realization of the right to development, the Working Group recognized that other aspects not mentioned in Goal 8 (such as private sector and global governance) were also relevant to the realization of Goal 8.

Aid

45. The Working Group is aware that aid is not an end in itself and that it is a necessary instrument for reaching the Millennium Development Goals where they cannot be met by national means alone. While recognizing the vital importance of substantially raising the volume of ODA, the Working Group highlights the following issues as relevant to the periodic evaluation of aid, from the perspective of the right to development:

(a) Ensuring that ODA policies are guided by human rights in general, and the right to development in particular, and poverty reduction objectives;

(b) ODA following guidelines for aid effectiveness applicable to both donor and partner countries, such as the Paris Declaration on Aid Effectiveness, and particularly of ODA being more predictable and harmonized;

(c) Identifying, formulating, establishing accountability for and ownership by each party of their respective commitments within the framework of a partnership, and in the context of good governance and respect for human rights;

(d) National ownership of State commitments in partnerships for development, requiring the implementation of effective anti-corruption programmes at all levels that eliminate misuse of aid and meet human development objectives;

(e) Achieving positive net levels of ODA, irrespective of requirements of emergency aid and aid for purposes of national security;

(f) Effective progress by many developed countries in their commitments to achieve the target of 0.7 per cent of their GNP to ODA by 2015, and the need to explore other sources of financing as recommended in the Monterrey Consensus.

Trade

46. The Working Group welcomes the commitment in the 2005 World Summit Outcome "to governance, equity and transparency in the financial, monetary and trading systems" and

“to open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial systems”.² This commitment is consistent with Goal 8, which added “a commitment to good governance, development and poverty reduction - nationally and internationally”. The Working Group recognizes the importance of fair trade. In this respect, the Working Group further recognizes the need to enlarge the opportunities for developing countries in the global economy. The necessity to further develop a rule-based, open and non-discriminatory trading system is a vital step for the implementation of the right to development.

47. The Working Group agrees that incorporating the underlying principles of the right to development, mentioned in paragraph 45 above, into trade relations contributes to fulfilling the commitments of the 2005 World Summit. In this context, the Working Group reaffirms the central importance of the development dimension in every aspect of the Doha Work Programme within the WTO negotiations and welcomes the commitment of all States to making it a meaningful reality, in terms both of the results of the negotiations on market access and rule-making, and of the specific development-related issues set out in the Ministerial Declaration adopted in Hong Kong on 18 December 2005.

48. The Working Group recognizes the importance of successful completion of the Doha round of trade negotiations, for building an environment conducive to the realization of the right to development. In this regard, substantial progress in the Doha round with respect to agriculture, intellectual property and public health, liberalizing trade in services, special and differential treatment, and trade-related capacity-building would be positive steps towards making the global trade regime more compatible with the right to development. Overcoming supply-side constraints on capacity to trade, such as those relating to physical infrastructure, education and skills training, is a major challenge facing developing countries, especially the least developed, which requires support targeted on aid for trade reform.

Debt

49. As recognized in the report of the Working Group on its sixth session (see E/CN.4/2005/25, para. 54 (a)), an unsustainable debt burden is a major obstacle for developing countries in achieving the Millennium Development Goals and in meeting their obligations under the International Covenant on Economic, Social and Cultural Rights. In this regard, the Working Group is of the view that debt servicing should not negatively impact on a State's capacity to achieve those Goals.

50. The Working Group agreed that poverty reduction and promotion and protection of human rights should be taken into consideration in finding solutions for debt sustainability. Moreover, arrangements to service national debt should take into account national priorities of human development and poverty reduction, consistent with its human rights obligations.

Technology transfer

51. The Working Group considers that knowledge is a global public good and a key instrument for development and that transfer of technology in development partnerships should respect the right of everyone to benefit from scientific progress and its applications.

52. It also recognizes that protection of intellectual property should serve the valuable purpose of stimulating innovation through research and development, while minimizing its negative impact on individual or national access to such research and development. With respect to essential medicines in particular, the Working Group considers that intellectual property protections should not result in the weakening of the enjoyment of the human right to the highest attainable standard of health, or in limiting access to essential medicines, as stated in general comment No. 14 of the Committee on Economic, Social and Cultural Rights.

53. In the light of target 17 of Goal 8 on providing, in cooperation with pharmaceutical companies, access to affordable essential drugs in developing countries, the Working Group highlights the importance of the Doha Ministerial Declaration on TRIPS Agreement and Public Health. It further welcomes the decision in December 2005 to make permanent the WTO decision of 2003, which allows for the exportation of pharmaceutical products under compulsory licence to address the public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis and other epidemics. The Working Group supports other WTO decisions to extend the transition period for least developed countries to provide protection for trademarks, copyright, patents and other intellectual property under TRIPS.

54. The Working Group emphasizes that bilateral or regional trade agreements should be consistent with TRIPS and other WTO agreements, and that they should not impede the ability of States to make use of flexibilities and safeguards provided in TRIPS and other WTO agreements. In this regard, the Working Group takes note of general comment No. 17 (2005) of the Committee on Economic, Social and Cultural Rights, on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15, para. 1 (c), International Covenant on Economic, Social and Cultural Rights), and recognizes that further reflection is needed on the complex relationship between intellectual property and human rights, with a view to identifying criteria for the periodic evaluation of this aspect of Goal 8.

55. In addition to the areas mentioned explicitly in Goal 8, the Working Group considers that the following other areas of development partnerships are relevant to the effective implementation of the right to development, and which should be covered by criteria for periodic evaluation of Goal 8.

Role of the private sector

Transnational corporations and corporate responsibility

56. The Working Group is aware that the activities of transnational corporations (TNCs) and other business enterprises can have positive effects on the development efforts of host countries. They can contribute to the enjoyment of human rights, inter alia, through investment, employment creation, transfer of technology, just and equitable working conditions and stimulation of economic growth and community development. However, the practices of TNCs may negatively impact on the enjoyment of human rights and degrade basic social, economic

and environmental standards. TNCs should operate in a manner consistent with the domestic and international human rights obligations of the host countries and the countries of origin. The Working Group, therefore, considers that the elaboration of criteria should be considered for periodic evaluation of the effects of TNC activities. Such criteria may contribute to ensure their compliance with human rights laws and regulations, and the effectiveness of the enforcement of these laws and regulations, taking into account the degree of influence exercised by many TNCs.

57. The Working Group recognizes the merit of recent efforts to introduce human rights standards into the conduct of local and foreign enterprises, such as the voluntary codes of conduct, the Global Compact and the “Draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” (E/CN.4/Sub.2/2003/12/Rev.1).³ The Working Group particularly notes a sharpening focus by the International Finance Corporation (IFC) on ensuring that its own policies and guidance to its private sector clients are supportive of and respect all human rights, as well as on assisting them in the development of tools and practical guidance on how to assess human rights risks.

58. Monitoring of progress at all levels of action will be needed on the basis of criteria of corporate responsibility and accountability to be developed from a human rights perspective. The Working Group is of the view that such criteria could be developed by United Nations procedures that incorporate human rights standards, especially the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, taking into account the positions of all stakeholders.

Foreign direct investment

59. The right to development implies that foreign direct investment (FDI) should contribute to local and national development in a responsible manner, that is, in ways that are conducive to social development, protect the environment, and respect the rule of law and fiscal obligations in the host countries. The principles underlying the right to development, as mentioned above, further imply that all parties involved, i.e. investors and recipient countries, have responsibilities to ensure that profit considerations do not result in crowding out human rights protection. The impact of FDI should, therefore, be taken into account when evaluating progress in Goal 8 in the context of the right to development.

Global governance

60. With regard to institutional asymmetries in global governance, the Working Group identifies at least two widely acknowledged types of problems which should be addressed in the context of periodic evaluation of Goal 8. The first concerns the growing imbalances in the monetary and financial systems that expose the global economy to shocks that are beyond any national capacity to control. The second is asymmetry in decision-making and norm-setting in international trade and finance. The voting structures of the World Bank and the International Monetary Fund are heavily weighted towards developed countries, based on their relative economic strength.

Migration

61. The Working Group acknowledges the important nexus between international migration and development, as well as its relevance to Goal 8, and the need to deal with the challenges and opportunities that migration presents to countries of origin, destination and transit. The Working Group recognizes that international migration requires a holistic and coherent approach based on shared responsibility, which also and concurrently addresses the root causes and consequences of migration. The Working Group also recognizes that international migration presents benefits, as well as challenges, to the global community. The Working Group looks forward to the high-level dialogue of the General Assembly on international migration and development to be held in 2006, which will offer, as well, an opportunity to discuss the multidimensional aspects of international migration and development. In order to identify appropriate ways and means to maximize their development benefits and minimize their negative impacts, the Working Group reaffirms the importance of ensuring respect for and protection of the human rights of migrants, migrant workers and members of their families.

Regional initiatives

62. The Working Group attaches particular importance to regional initiatives for monitoring the realization of human rights, including the right to development. The Working Group stresses the potential value of such partnerships as a development compact, which provides for the institutionalization of an inclusive participatory process and transparent public scrutiny, which are conducive to the right to development.

63. The Working Group emphasizes the importance of meeting the international community's commitment to address the special needs of Africa, as recognized, *inter alia*, in the 2005 World Summit Outcome Document (para. 65). The Working Group concludes that the NEPAD African Peer Review Mechanism (APRM) could be an appropriate reporting mechanism for measuring progress towards Goal 8, with a view to implementing the right to development. Nevertheless, to reach its right to development potential, States would need to incorporate in the National Programmes of Action that emerge from APRM explicit criteria for capacity-building, resource allocation, monitoring and evaluation that are more directly aligned with the principles of the right to development. The Working Group also recognizes the significance of the OECD/ECA Mutual Accountability Review in this context.

64. The Working Group further acknowledges the work of the African Partnership Forum and notes the importance of linking benchmarks for progress and performance against the commitments contained in the G-8 Africa Action Plan adopted at the 2002 Kananaskis, Canada, Summit, and supported by the African Charter on Human and Peoples' Rights and other regional instruments. The Working Group also considers that article 22 of the African Charter, the only legally binding provision on the right to development, could provide a basis for African countries to assess periodically the realization of the right to development in the African context. In other regions, a genuine peer review process, assessing the extent to which human rights have been part of the development process, would contribute significantly to the periodic evaluation of the right to development.

65. The Working Group also welcomes the recent adoption, within the framework of the Iberoamerican Summit process, of the Salamanca Declaration and its Additional Statement on the achievement of the Millennium Development Goals, as a contribution to a strategic partnership for poverty reduction and the implementation of the right to development.

C. Recommendations

66. **In formulating its recommendations, the Working Group wishes to stress that they are based on its previous numerous recommendations regarding measures supporting the right to development, particularly during its fifth and sixth sessions. The following recommendations aim to identify specific actions to be taken by development practitioners and other relevant entities already engaged in periodic monitoring of progress on the Goals. In proposing these steps, the Working Group wishes to avoid creating new monitoring and reporting entities.**

Criteria for assessing global partnership from the perspective of the right to development

67. **The Working Group recommends that the following criteria be applied to the periodic evaluation of global partnerships as identified in Goal 8 from the perspective of the right to development:**

(a) The extent to which a partnership contributes to creating an environment and supports a process in which all human rights are realized;

(b) The extent to which a partnership respects the right of each State to determine its own development policies, in accordance with its international obligations;

(c) The extent to which partnerships for development promote the incorporation by all parties concerned of all human rights, and particularly the right to development, into their national and international development strategies, and the extent to which partner countries receive support from international donors and other development actors for these efforts;

(d) The extent to which policies supported by a partnership ensure the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom, as required by article 2, paragraph 3, of the Declaration on the Right to Development;

(e) The extent to which a partnership values and promotes good governance, democracy and the rule of law at the national and international levels;

(f) The extent to which a partnership values and promotes gender equality and the rights of women;

(g) The extent to which a partnership reflects a rights-based approach to development, and promotes the principles of equality, non-discrimination, participation, transparency and accountability;

- (h) The extent to which the priorities set by a partnership are sensitive to the concerns and needs of the most vulnerable and marginalized segments of the population, and include positive measures in their favour;**
- (i) The extent to which a partnership applies human rights impact assessments and provides, as needed, for social safety nets;**
- (j) The extent to which a partnership recognizes mutual and reciprocal responsibilities between the partners, based on an assessment of their respective capacities and limitations;**
- (k) The extent to which a partnership includes fair institutionalized mechanisms of mutual accountability and review;**
- (l) The extent to which a partnership ensures that adequate information is available to the general public for the purpose of public scrutiny of its working methods and outcomes;**
- (m) The extent to which a partnership provides for the meaningful participation of the concerned populations in processes of elaborating, implementing and evaluating related policies, programmes and projects;**
- (n) The extent to which, in applying the preceding criteria, statistical and empirically developed data are used, and, in particular, whether the data are disaggregated as appropriate, updated periodically, and presented impartially and in a timely fashion;**
- (o) The extent to which a partnership contributes to a development process that is sustainable and equitable, with a view to ensuring continually increasing opportunities for all.**

68. **The preceding criteria are primarily to be applied by the parties to a partnership. These criteria would have to be applied on a continuing basis in order to achieve coherence and accountability. The Working Group further recognizes that additional criteria could be developed for specific issues on which partnerships exist and operate.**

69. **Additional recommendations are addressed to the following actors having responsibility for monitoring certain aspects of global partnerships of particular relevance for advancing the right to development.**

Parliaments, national institutions and civil society

70. **The Working Group encourages States to strengthen national parliamentary mechanisms and legislative bodies, as well as civil society organizations and national human rights institutions, in order to play a more prominent role in the evaluation of Goal 8 from the perspective of the right to development, drawing, as appropriate, on the criteria listed above.**

States

71. In order to build the capacity within each developing country to collect, analyse and interpret relevant statistical information, and to utilize the results for policy improvements, the Working Group endorses its conclusion at its sixth session (see E/CN.4/2005/25, paras. 53 and 54 (e)) and strongly encourages development partners to provide the necessary training and other facilities for such capacity-building.

72. The Working Group proposes that all Millennium Development Goals country reports include information on Goal 8 from the perspective of the right to development, drawing on the criteria suggested above.

Entities monitoring TNC activities

73. Host States, States of origin, NGOs, IFC, the Special Representative of the Secretary-General and others that monitor the effects of TNC activities on global partnerships for development should be attentive to the need for policy coherence, as mentioned above. The Working Group recommends that periodic evaluation of TNC activities by those already engaged in monitoring such activities should include a human rights perspective and that the criteria above be applied, as appropriate.

United Nations agencies, funds and programmes

74. The Working Group recommends that the support by United Nations development-related agencies, funds and programmes to national development strategies to achieve MDGs, within their respective mandates and in the context of the United Nations Development Assistance Framework, give equal attention to Goal 8 from a right to development perspective, particularly in the preparation of MDG country reports, with due regard to the criteria enumerated above.

International financial institutions

75. The Working Group encourages the international financial institutions to apply the above-mentioned criteria to their partnerships. The Working Group reaffirms the commitment to broaden and strengthen the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting and to that end stresses the importance of the continuing efforts to reform the international financial architecture. In this context, the Working Group notes that these efforts could also contribute to the realization of Goal 8, from the perspective of the right to development.

The way forward for the Working Group

76. The Working Group recommends that the Commission on Human Rights consider renewing the mandate of the Working Group for a further year.

77. The Working Group recommends that the mandate of the high-level task force be renewed for a further period of one year to enable it to apply the criteria enumerated in

paragraph 38 above, on a pilot basis, to selected partnerships, with a view to operationalizing and progressively developing these criteria, and thus contributing to mainstreaming the right to development in the policies and operational activities of relevant actors at the national, regional and international levels, including multilateral financial, trade and development institutions.

78. The Working Group also discussed additional options for the future, namely:

(a) Continuing to consider the broader topic of Goal 8, which has not been exhausted, thereby focusing on other issues covered by this Goal, as identified but not elaborated upon by the task force (e.g. youth employment, landlocked and small island developing States);

(b) Focusing on topics identified by the task force as pertinent to Goal 8, but not covered by the targets enumerated therein (e.g. migration, role of private sector, global governance and regional initiatives);

(c) Selecting a new topic, which is not related to Goal 8.

79. In conformity with paragraph 55 of its agreed conclusions at its sixth session on issues for the future, and with the need to retain focus without losing comprehensiveness of the Working Group's approach, it decides to revisit these options after its consideration of the next report of the task force. In the same spirit of focus and comprehensiveness, the Working Group recalls the issues listed in that paragraph. The request is reiterated to interested States to provide, in due course, relevant information establishing the value-added and right-to-development perspective of these issues.

80. The Working Group decides to consider the draft outline for a compendium on partnerships for development cooperation and other multilateral and bilateral arrangements that contribute to the implementation of the right to development, and identify common elements and best practices emerging therefrom at its next session, in the light of the next report of the high-level task force, as it did not have the time to do so at the current session.

Notes

¹ General Assembly resolution 60/1, 2005 World Summit Outcome, para. 126.

² Ibid., para. 36.

³ IFC is a member of the World Bank Group. It finances and provides advice for ventures and projects undertaken by the private sector in partnership with developing countries.

Annex I

AGENDA

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda, timetable and programme of work.
4. Review of progress in the promotion and implementation of the right to development:
 - (a) Consideration of the report of the high-level task force on the implementation of the right to development;
 - (b) Consideration of the report of the United Nations High Commissioner for Human Rights;
 - (c) Consideration of the way forward.
5. Adoption of conclusions and recommendations.
6. Adoption of the report.

Annex II

LIST OF DOCUMENTS

Symbol

Title

E/CN.4/2006/WG.18/1

Provisional agenda

E/CN.4/2005/WG.18/TF/3

Report of the high-level task force on the implementation of the right to development (Geneva, 14-18 November 2005)

E/CN.4/2006/24

Report of the United Nations High Commissioner for Human Rights
