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RIGHT TO DEVELOPMENT

**Report of the Open-ended working group on the right to development
on its fourth session
(Geneva, 3 February-14 February 2003)**

Chairperson-Rapporteur: Mr. Bonaventure M. BOWA (Zambia)

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Introduction

1. In 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; (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." The mechanism would also include the appointment by the Chairman of the Commission of an independent expert with high competence in the field of the right to development, with a mandate to present to the working group at each of its sessions a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion, taking into account, inter alia, the deliberations and suggestions of the working group. In its resolution 2002/69, the Commission decided to extend the mandate of the working group for one year.

2. Accordingly, the Open-ended working group on the right to development convened its fourth session in Geneva from 3 to 14 February 2003. H.E. Mr. Bonaventure M. Bowa (Zambia) was unanimously elected to the Chair of the working group after his nomination by the outgoing chair, H.E. Mr. Mohamed-Salah Dembri (Algeria).

I. ORGANIZATION OF THE SESSION

A. Opening of the session and election of officers

3. Following his election to the Chair, the fourth session was opened by Ambassador Bowa, who thanked the outgoing Chairperson-Rapporteur for his contribution to the working group. He pointed out that the working group had achieved consensus on important work, while much remained to be agreed on the implementation of the right to development. A key challenge was to create a fair enabling environment in which developing and developed countries alike would work in a cooperative spirit to allow all their peoples to have equitable economic sustenance and an economic environment in which they could choose their own destinies.

B. Attendance

4. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group: Algeria, Argentina, Armenia, Australia, Austria,

Bahrain, Belgium, Brazil, Cameroon, Canada, Chile, China, Costa Rica, Cuba, France, Gabon, Germany, Guatemala, India, Ireland, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Paraguay, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sweden, Syrian Arab Republic, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Viet Nam.

5. Representatives of the following States also attended: Albania, Andorra, Angola, Azerbaijan, Bangladesh, Barbados, Belarus, Benin, Botswana, Bulgaria, Burundi, Colombia, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, Georgia, Ghana, Greece, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Latvia, Lebanon, Lesotho, Lithuania, Madagascar, Malta, Mauritania, Mongolia, Morocco, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Oman, Panama, Philippines, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, Spain, Switzerland, Tunisia, Turkey and Zambia. The Holy See was also represented.

6. The following United Nations bodies were represented: Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Children's Fund (UNICEF), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP) and United Nations Population Fund (UNFPA).

7. The following specialized agencies were represented: Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), International Monetary Fund (IMF), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), World Bank, World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Trade Organization (WTO).

8. The following intergovernmental organizations were represented: European Commission and International Organization for Migration (IOM).

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

General status

Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO), Europe-Third World Centre, Franciscans International and Zonta International.

Special status

Baha'i International Community, Fundación Intervida, François-Xavier Bagnoud Centre for Health and Human Rights, Group for International Solidarity, Indian Movement "Tupaj Amaru", Interfaith International, International Association against Torture, International Council of

Jewish Women, International Federation of University Women, International Organization for the Development of Freedom of Education, International Service for Human Rights, International Young Catholic Students and World Union of Catholic Women's Organizations.

Roster

Association of World Citizens, Minority Rights Group International.

C. Documentation

10. The working group had before it a number of pre-session and background documents to inform its deliberations, a complete list of which is attached at annex II. Among these were: the report of the High Commissioner for Human Rights (E/CN.4/2003/7), the fifth report of the independent expert (E/CN.4/2002/WG.18/6), the preliminary study of the independent expert on the impact of international economic and financial issues on the enjoyment of human rights (E/CN.4/2003/WG.18/2), the report of the third session of the working group on the right to development, containing the agreed conclusions of the third session (E/CN.4/2002/28/Rev.1), and text of the Declaration on the Right to Development.

D. Organization of work

11. A detailed agenda and the programme of work, as amended, were adopted by consensus at the session's first meeting, on 3 February 2003.

II. SUMMARY OF THE PROCEEDINGS

12. The secretariat presented the annual report of the High Commissioner for Human Rights, summarizing over 30 specific activities undertaken by the Office in support of the realization of the right to development since the last session. In the past year, OHCHR continued to extend administrative, technical and substantive support to the working group and its independent expert, and had strengthened its research and analytical capacity to those ends. At the same time, OHCHR was engaged in system-wide training for United Nations development agencies, and was training its own staff in development issues as well. The report recapitulates a number of relevant seminars, workshops and training programmes that the Office had organized. Some delegations welcomed the attention given by the report to cooperation with Member States and United Nations agencies, others the integration of results from United Nations global conferences, and still others the report's treatment of various aspects of the right to development, as well as a perceived balance of attention between national and international aspects. A number of delegations suggested that consideration might be given to adding more analytical content to future reports, in addition to the description of relevant activities. Others recommended the inclusion of more information on concrete steps taken to follow up on the recommendations of international conferences and summits.

13. In his statement to the working group, the High Commissioner for Human Rights pointed out that the working group was the only annual global forum on human rights and development. He indicated that the progress on the realization of this right was important not only because it had been accepted as a universal and inalienable right but because its realization mattered to the

hungry, the destitute and the voiceless who had been denied the right to participate in, contribute to and enjoy economic, social, cultural and political development. He pointed out that, like any other right, the right to development imposed obligations on particular people and institutions. It imposed obligations, first, on individual States, but also on the international community, which could not shirk its collective responsibility for effective international cooperation in promoting and protecting the right to development. The High Commissioner reiterated his commitment to providing the highest level of secretariat support to the working group and its independent expert.

14. The statement was followed by remarks from delegates welcoming his commitment and his approach to the mandate on the right to development. Some emphasized the importance of the Office's practical, operational activities, while others saw, in the report of the High Commissioner and his statement, a useful structure for an operational framework for the realization of the right to development. In relation to the activities summarized in the report of the High Commissioner, some delegations suggested that consideration be given to the organization by the Office of a seminar on the right to development, inviting States, agencies and experts to contribute on key themes, while others thought that the working group itself could better serve that purpose. OHCHR was also encouraged to participate substantively in the working group's deliberations, in addition to serving as its secretariat.

15. OHCHR also presented the work it had done to support the New Partnership for Africa's Development (NEPAD) and the African Union, through contacts with African States, organizations and civil society. This translated into assistance to adopting rights-based approaches to programming, ensuring that human rights are central in NEPAD documents, and organizing a series of meetings in Africa to link developmental efforts of NEPAD with the promotion and protection of human rights. Special attention was devoted to raising awareness to the importance of human rights in conflict prevention mechanisms and to paying due attention to humanitarian and refugee law.

16. In presenting the fifth report to the working group, the independent expert described the right to development as a right to a particular process of development that was based on certain human rights principles, and in which all other fundamental rights and freedoms had to be fulfilled. Economic growth, with equity, participation and other human rights norms was a critical element of this process, as it was necessary to relax resource constraints to progressively realize human rights. When a right was recognized as a valid claim, States and the international community had to fulfil corresponding obligations. A remedial mechanism was important for the realization of this right, as were suitable monitoring systems with indicators to guide the process of realizing the right. The obligation of States was to design and implement rights-based development policies to realize individual rights and to achieve economic growth. The international community had the obligation to cooperate with States through appropriate trade, debt and financial policies as well as resource transfers to enable them to realize rights and achieve sustainable growth with equity and justice. He pointed out that his fifth report provided a brief overview of the principles of development cooperation, compared them to the proposed right to development framework, and indicated how some of these processes could be modified to incorporate the principles of his proposed approach and its operationalization through the development compact.

17. The independent expert found the existing instruments of NEPAD, the poverty reduction strategy paper (PRSP) and the common country assessment of the United Nations Development Assistance Framework (CCA-UNDAF) very close to the compact model. In particular, the five core principles of the PRSP, namely country driven, result oriented, comprehensive, partnership oriented and with a long-term perspective for poverty eradication, brought it closer to his proposal for a development compact. However, there were issues of resources and aspects of development that were not fully addressed in these instruments. The independent expert saw an important distinction between the notion of a right to international assistance for developing countries, on the one hand, and the obligation of the international community to assist in the development of these countries, on the other. While developing countries do not have a right, as such, to 0.7 per cent of gross national product (GNP) of developed countries in official development assistance (ODA), there was nevertheless an obligation for the donor countries to provide that. The expert believed that the development compact proposal would ensure that countries that respect human rights and meet their own obligations at the national level could then claim assistance from donor countries. The proposed special window of “callable funds” in the development compact would ensure the availability of the requisite funding. The funds would only be released once the country had followed the agreed human rights agenda and the necessary policies were in place. A support group, consisting of the key donors and multilateral institutions, would then requisition the money from the pledged resources of the “callable funds”. The independent expert considered NEPAD to be the closest existing mechanism to a development compact, though its matching obligations for the international community remain to be clarified.

18. Delegations responded to the independent expert’s presentation with a series of questions on the proposed development compact. Some understood the proposal as a voluntary mechanism, and an optional alternative that would exist alongside other development mechanisms. Others asked about the feasibility of the proposal. Still others asked whether any examples were already in place and if the donor community was ready to sign on to these. Some sought further clarification on the details of how the compact proposal would depart from or add to existing mechanisms such as CCA and UNDAF, the Comprehensive Development Framework (CDF) and PRSP, and structural adjustment policies. Others enquired about the likelihood of success in raising the additional resources necessary for implementing the proposal. A delegation drew attention to the negative impact of measures that violated other human rights on the right to development. Mention was specifically made of unilateral extraterritorial embargoes and obstacles created to access technology with politically motivated incentives. Attention was also drawn to the World Solidarity Fund that had already been approved by the General Assembly and which closely resembled the development compact proposal.

19. In light of existing mechanisms like PRSP, UNDAF and NEPAD, questions were raised about the usefulness of an additional mechanism. Some suggested that it would be preferable to address the human rights weaknesses of these mechanisms, rather than creating new initiatives. Delegations pointed to NEPAD’s triple layers: at the national level a contractual obligation of Governments to deliver growth to civil society and addressing expectations of business and labour; at the regional level, countries support and monitor each other to adopt good governance and sound management principles; at the international level, support for NEPAD was repeatedly expressed, including by the General Assembly. Several delegations saw PRSP as a useful instrument that worked well to focus efforts on alleviating poverty. There were, however, some

reservations as it was thought that any donor conditionalities countered the principle of national ownership. Some believed that the strong influence of the IMF and World Bank left little room for autonomy in development decision-making. The emphasis on participation in the PRSP process was positive, but, some thought, too resource intensive. Others sought clarification on the independent expert's concept of "mutuality of obligations", and what this would imply for State responsibility in meeting human rights obligations, including those associated with the right to development. Others wondered whether the idea of mutual obligations undercut the broadly accepted notions of domestic ownership and development partnerships. The creation of a fund with callable contributions was also questioned. It was felt by some that the need for domestic resource mobilization was also overlooked. Still other delegations found an inadequate focus on international obligations, including issues of debt, intellectual property, access to technology, the digital divide, investment flows and commodity prices. Others called for a more balanced approach to framing the membership of the independent expert's proposed support group for the compact, including active civil society participation. The fact that there was no redress mechanism to ensure that the international obligations were met was also raised as a shortcoming. Finally, delegates pointed out the need for appropriate indicators to be designed to monitor the respective obligations in the model.

20. Continuing the debate on the development compact, one delegation believed that the right to development was more than the sum of other rights, and that it implied as well a specific right to assistance, with corresponding obligations, based upon the 1986 Declaration. It was suggested that it was time to start work on an international declaration on rights and responsibilities drawing on the already existing international instruments and that the Committee on Economic, Social and Cultural Rights could consider requesting one of its members to conduct a study on criteria and benchmarks concerning State performance in the field of international cooperation. It was also suggested that benchmarks for right to development impact assessments along the lines of environmental impact assessments could be considered when concluding trade and environmental agreements. Another delegation stressed that there was no universally valid link between progress on human rights and growth and called for States to adopt the right policies while the international community should help accommodate external shocks and fight corruption in order to fulfil its obligations related to the right to development.

21. Some delegates warned that the working group should take care not to downgrade the right to development vis-à-vis other rights. The World Conference on Human Rights had placed it on equal footing with other human rights, noting the indivisibility and interdependence of all rights. Nor could one isolate respect for human rights from ensuring sustainable economic growth. The notion of international obligations must be recognized and individual States, it was thought, could not be seen as the sole duty-holders for respecting human rights. Finally, the right to development must be pursued at the national, regional and international levels.

22. The World Bank drew attention to the need to focus the debate, to expand on the relationship between the right to development and the process of wealth creation and to draw the boundaries of the political economy of human rights, both internationally and domestically. The Bank suggested that the working group consider deliberating on how to link existing human development strategies with the right to development, identifying institutional development constraints and the policy mix best suitable for implementing the right, designing a matrix of agency-specific concerns which the group could address and better integrating the parallel

substantive work of OHCHR and of the special procedures with that of the working group. The Bank noted that criticism on the paucity of explicit human rights concerns in NEPAD could equally be addressed to the PRSP framework. It sought clarification and justification for the additional resources implied by the development compact model. UNDP commented on the mainstreaming of human rights in their work, and drew attention to the Secretary-General's initiative to strengthen inter-agency support to the country teams in undertaking the CCA-UNDAF process in a rights-sensitive manner. It was indicated that UNDP, OHCHR and other agencies were in the process of developing instruments that would address the specific needs for training, dissemination of best practices and review and monitoring mechanisms appropriate for this process. UNFPA and ILO made statements on their activities and their relevance to the goal of implementing the right to development. Both were engaged in support to Member States, but also broader initiatives to share knowledge and promote a rights-based international agenda on labour, population and gender issues, conducive to improving international cooperation in favour of human rights in general, and women's and workers' rights in particular.

23. Minority Rights Group International (MRGI) and the Indian Movement "Tupaj Amaru" regretted that the reports of the independent expert had never addressed the issue of minority and indigenous peoples' rights and their role in development processes, which sometimes further excluded and marginalized such groups. From a conflict-prevention perspective, such attention was crucial and the independent expert was invited to pay more attention to this issue and to encourage the use of disaggregated indicators in order to facilitate this. On the concept of development, the MRGI representative expressed deep disappointment with the outcome of and lack of NGO participation in the Johannesburg World Summit on Sustainable Development. He believed that sustainable development implied a radical change in the production and consumption of the highly developed countries and the need to substitute neo-liberal and anarchical development with a rational and planned development, aiming at changing the profoundly unjust international economic order. MRGI requested that the working group ask the independent expert to prepare a report on the link between the right to development and the rights of minorities and indigenous peoples. MRGI appealed to the working group not to shy away from the term "obligations" with regard to States acting at the international level as duty-bearers for the right to development. It believed that international cooperation should not be narrowly interpreted in order to seek to exonerate the international community of States from meeting its obligations. At the international level, obligations of conduct in relation to this right would translate into international cooperation to build fair trading arrangements and financial systems that respected minority rights, sustainable environmental standards, and regulation of the activities of multinational corporations.

24. The International Federation of University Women thought that the working group and the independent expert tended to ignore gender issues, as was the case with most development initiatives, including PRSP and UNDAF, which operated within the "traditional male paradigm". The representative of the François-Xavier Bagnoud Centre for Health and Human Rights believed that the development compact model suggested by the independent expert could be well suited to integrate human rights concerns into development. The development compact should not be seen as a separate instrument, and practices and principles that worked in existing mechanisms and instruments should be reflected in the operationalization of the compact proposal.

25. Responding to questions raised, the independent expert clarified that the approach to policy could be common, but its elements (e.g. taxation, trade and investment policies) had to be uniquely formulated for each country. He suggested that the compact could be implemented in a bilateral or multilateral framework, but that in either case, it must be followed as a matter of international obligation. The independent expert reiterated that States were the primary duty-bearers and that the human rights and growth linkage was central to the right to development. He proposed to rephrase “mutual obligations” as “mutual responsibilities”, whereby country commitments are matched by those of the international community. He clarified that in his view, the international obligations existed only when the State had recognized and implemented its national obligations. The compact could indeed be fitted within existing mechanisms as long as it was possible to maintain in those mechanisms the centrality of human rights, bring in the responsibilities of the international community and actions that they needed to take in that context, have suitable monitoring mechanisms and recourse to remedial action, and fill funding gaps at the national level. He added that, in the current context of globalization, no country had complete autonomy in its policy-making. This made it necessary to recognize the interface between the national and international dimensions in the implementation of the right to development.

26. The independent expert welcomed the idea of case studies but indicated that he believed that there were no countries currently implementing the right to development. Such studies could explore how rights-based approaches to development had been implemented. The independent expert then proposed the convening of a meeting of donors to further discuss the development compact idea. He suggested as well the convening of a working group of experts from bilateral donor and multilateral financing agencies and from human rights institutions to concretize the development compact proposal, as well as the principle of burden-sharing and methods of evaluating whether human rights obligations had been fulfilled. Finally, he pointed to the need for one or more donor countries to take the lead in adopting the development compact model and urging others to follow.

27. As an addendum to his fifth report the independent expert then made a statement on his mission to Egypt. The discussion on NEPAD, of which Egypt was one of the main initiators, gave the independent expert insight into the background of the initiative and its political and economic thrust, and informed him about discussions under way between NEPAD and the Group of Eight (G-8). The representative of Egypt welcomed the report of the independent expert and highlighted that the invitation addressed to the independent expert was part of Egypt’s policy to promote human rights, including the right to development. The role of Egypt in the NEPAD process was underlined, and it was pointed out that the country had progressed in addressing the issues of poverty, women’s empowerment and child labour.

28. The independent expert’s visit to Sweden gave him a good opportunity to discuss both the development compact and the NEPAD model. He noted that the Government of Sweden did not question the duty to cooperate at the international level. Yet, the precise nature of this duty was a matter of discussion. The independent expert pointed out in that context that although the Declaration on the Right to Development was not a legally binding instrument, he believed that the right to development was based on the rights contained in the International Covenants on Human Rights, and it was therefore not necessary to have a separate legally binding instrument. The independent expert read out the conclusions as contained in his report, where reference was

made to the similarity between the approach of the Swedish International Development Agency and the proposed development compact model. The Swedish delegation found the visit of the independent expert timely, since it was in the process of a major review of its development policy, the main thrust of which was to mainstream human rights into all partnership agreements.

29. In exploring additional components of the realization of the right to development, delegations stressed the importance of good governance at the national and international levels. At the international level, it would help make the development cooperation system more efficient, coherent and transparent. It was noted by some that the current architecture of global economic governance was not conducive to realizing the right to development. The Monterey Consensus, the Third United Nations Conference on the Least Developed Countries and the heavily indebted poor countries (HIPC) initiative were supported as positive initiatives for dealing with debt, although more resources were needed to reward eligible countries that adopted good governance and sound management principles. UNDP gave a description of its activities in 135 countries with a new major emphasis on good governance as a means of allowing participation of the poor in decision-making and accountability monitoring.

30. Delegates pointed out that relevant forms of international cooperation took a variety of forms which also included sharing of technology and related financial and economic modalities, and several interventions pointed to the need for the international community to cooperate in creating an environment that facilitated the realization of the right to development. Several delegations reviewed efforts of developing countries to support each other through South-South cooperation, while it was noted that lack of resources weighed heavily on the advancement of that form of cooperation. The Tokyo International Conference on African Development and its follow-up process was viewed by one delegation as an important component of South-South cooperation, addressing region-specific problems while addressing common interests and constraints.

31. Delegations noted that the Millennium Development Goals (MDGs) brought poverty back to the centre of the development debate as a primary objective and could be progressively realized while maintaining macroeconomic stability. Reference was made to the current United Nations effort to operationalize the MDGs, including the Millennium Campaign and Millennium Project.

32. The independent expert, in introducing his preliminary study on the impact of international economic and financial issues on the enjoyment of human rights, pointed out that he had focused on the nature of policy action required to address these issues. It was not easy to establish a general cause and effect relationship between the developments in this area and the right to development, its effects depending largely on a country-specific context. Although he had not addressed the impact on civil and political rights in his report, he mentioned that expanding global access to information had strengthened processes of democratization and awareness of rights. The impact of globalization on the realization of the right to development was not clear, although increase in disparities and inequalities was a common feature of globalization in many countries. There was no clear statistical relationship between indicators on globalization and human development indices or indicators reflecting specific human rights. Nor was there any evident impact on economic growth, and often policies of opening up markets had been accompanied by other fiscal and industrial measures contributing to improved growth

rate. As concerned income distribution, the available evidence indicated deterioration. The impact on poverty eradication was also mixed. Another important implication was the loss of autonomy on policy instruments. In most cases globalization meant loss of State revenues due to lowering tariffs and taxes and consequently led to a reduction of public spending, especially in the social sector. It was in that context that international cooperation became especially important, since domestic resources alone were not adequate.

33. In most countries expectations of rising exports and foreign inflow of capital with greater integration with the global economy had not materialized. Protection in the developed countries on manufactured as well as agricultural goods had remained high and capital flows had been confined largely to a handful of developed countries. Additional resources alone were not sufficient; international cooperation had to be multidimensional to succeed and the development compact offered a model. The independent expert suggested three alternatives for the consideration of the working group: first, an international strategy to realize the right to development formulated with the involvement of the human rights bodies, financial institutions and development agencies; second, an issue could be identified, such as trade and human rights, on which a group of experts could present recommendations to the working group; third, a few countries could be selected for undertaking case studies to document how they might have implemented the process of realizing human rights in a globalized context. The independent expert also stated that he would welcome being mandated to work on human rights in the WTO and implications on the right to development.

34. In their reactions, participants thanked the independent expert for his effort and raised a number of comments, questions and reservations. Most agreed that globalization was an inescapable reality, with some underscoring the necessity of both mainstreaming all human rights in the development process and promoting the right to development as a particular right. The study, one delegation regretted, was devoid of a historical perspective that could have shown that development of the industrial world had taken place without external constraints or conditionalities. In developing countries, the legacy of colonialism and insufficient resources prevented mass education and other prerequisites of development. Another contribution focused on international obstacles to the implementation of the right to development. A notion of globalization that was reduced to free-market principles aggravated the lives of the poor and threatened peace and security while only a minority benefited. It was recommended that international cooperation should be made more effective. One delegation warned against the current focus on poverty reduction which could distract from broader development issues and the right to development.

35. The preliminary study was described in one intervention as a step towards expressing the human rights community's concerns on the way the world economy was being oriented. The current architecture of global economic governance was not conducive to realizing the right to development. As long as poverty remained so widespread, human rights forums had a role in discussions on international economic affairs such as trade. Other delegations stressed the importance of good governance at the national and international levels for the realization of the right to development; at the international level, it would help make the international development cooperation system more efficient, coherent and transparent. International financial institutions

should increase the integration of social and environmental parameters into their operational procedures and allow adequate participation of developing countries in formulating standards and codes.

36. Some non-governmental organizations, such as the Indian Movement “Tupaj Amaru” made reference to the impact of globalization on indigenous peoples’ rights. International financial institutions and multinationals were promoting a globalization that aggravated poverty, indebtedness and the environmental exploitation affecting indigenous populations; the representative called for new economic relations. The independent expert was requested to better identify the linkage between growth, free trade and globalization and their impact on poverty and the denial of the right to development and how to better protect human rights in development.

37. UNDP gave a description of its activities with a major emphasis on good governance as a means of allowing participation of the poor in decision-making and accountability monitoring. That was also true at the international level where poor countries must benefit from similar rights within a democratic international order. UNDP was actively engaged in helping countries to reach the MDGs together with its United Nations system partners and international financial institutions, and participating in advocacy to mobilize resources. UNDP requested specific indications from the working group on how it could best contribute to its work.

38. Delegates pointed out that there was no consensus on the independent expert’s development compact proposal. Some thought that studying other development instruments, both bilateral and multilateral, to identify the positive as well as negative concerns could help understand how the proposed development compact might work. Others suggested that adopting the idea of shared responsibilities instead of obligations might also help to narrow the differences in the working group. Underlining the international dimension of the right to development, some emphasized that the individual State was not the only stakeholder. One delegation underlined the importance of making development assistance more predictable and less subject to fluctuations and interruptions. The fear was expressed by one delegate of double standards being applied by donors in evaluating the fulfilment of national obligations before international obligations under the development compact model. Others rejected the independent expert’s notion of “mutual obligations” altogether. Finally, one suggested that meaningful international cooperation was already evident in the functioning of international organizations and bilateral development arrangements.

39. Some delegations invited the independent expert to examine the impact on the right to development of the non-fulfilment of commitments made at United Nations conferences and at the WTO Ministerial Conference in Doha. Others proposed that the working group should monitor the implementation of the conclusions and action plans of United Nations conferences. Further clarification with regard to the independent expert’s proposed joint Commission on Human Rights and WTO group was requested, with some delegations stating that they were not in favour of the proposal, stressing the need to raise human rights issues, including the right to development, in existing forums, such as UNCTAD and WTO. Opposition was also raised to the idea of the working group directly addressing issues of trade and other technical matters which, it was suggested, were beyond its competence.

40. Some delegations saw a need for more facilitation of fair participation by developing countries and for the lifting of protectionist barriers and subsidies. The optimistic view expressed by some with respect to the Doha agenda was questioned as neither the Trade-Related Aspects of Intellectual Property Rights (TRIPS) nor the agricultural negotiations had succeeded so far. The attention of the working group was drawn to a statement made before the Sub-Commission on the Promotion and Protection of Human Rights in 2002, in which Sub-Commission expert David Weissbrodt had described the challenges posed by international trade law and trade arbitration mechanisms to human rights law and principles. FAO stressed that within WTO negotiations, the interests of large producers were in contrast to those of small producers concentrating on food security. Some countries wanted to hear how exactly poor countries could adopt free trade policies given the associated costs and implications for domestic poverty. WTO had to take better account of human rights principles as expressed in the Vienna Declaration and Programme of Action. One delegation indicated that while growth might provide the resources for implementing human rights, including the right to development, distortions in trade liberalization could have the opposite effect. High protection levels in the developed world acted as a barrier to fair agricultural trade. It was important to address these issues as only very few rich countries could afford to subsidize their exports.

41. According to one delegation, for developing countries, growth in agricultural trade offered opportunities to realize a host of human rights including rights to food, health, work and the rights of indigenous people, migrants and children. A group of delegations stressed that free trade was a necessary but not sufficient tool that could help to combat poverty and advance development. Reference was made to the "Everything but Arms" initiative sponsored by the European Union in support of 49 LDCs, and the new trade agreement between the African, Caribbean and Pacific group of States (ACP) and the EU. At the same time, these delegations called for more South-South cooperation, trade and regional integration. They were committed to the Doha agenda. The Monterrey Consensus, the Third LDC Conference and the HIPC initiative were also supported as positive initiatives for dealing with debt, although more resources were needed to reward eligible countries that adopted good governance and sound management principles.

42. One delegation regretted that the studies and reports of the independent expert were still not addressing the combined effects of the state of trade, debt and ODA governance on the right to development. Identifying these effects would help in a dialogue that could take place with the WTO on trade dispute-settlement mechanisms and how they affected human rights. One delegation expressed concern that specialized discussions had to be undertaken in the appropriate forum. It sought to join with partners in a determined effort to eradicate poverty, achieve sustained economic growth and promote sustainable development while advancing to a fully inclusive and equitable global economic system. Commitment to promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion were seen as being critical to sustainable development. The delegation did not dispute the international dimension of development; however, in its estimation the right to development was not a fundamental, basic or essential human right and the realization of economic, social and cultural rights was progressive and aspirational.

43. A number of actions were suggested for the independent expert. He was encouraged to interact with international organizations, including the European Commission in Brussels, and to measure the value added in regional initiatives. Another delegation underlined the importance of developing interim human rights initiatives that could make development realizable and soften market-oriented policies in the immediate term, since the operationalization of the development compact proposal would take a long time. Additional data on negative micro-economic effects of globalization and proposals to mitigate or reverse them could also be added in the study, according to one delegation. It was also suggested that the independent expert and a group of experts might be mandated to develop guidelines to assist countries in implementing the principles of the Declaration on the Right to Development. Attention was also drawn to the request to the Secretary-General for an analysis of the proposal to use special drawing rights allocations for development purposes.

44. In discussing proposals for a permanent follow-up mechanism, delegates raised questions on whether the creation of the development compact, as a new mechanism that could take a bilateral or multilateral form, was desirable to help implement the right to development, and whether existing mechanisms (UNDAF, PRSP, NEPAD), with appropriate adjustments to integrate the right to development, could be considered follow-up mechanisms and made to fit the model envisaged by the independent expert. Another contribution considered that the working group itself already constituted a follow-up mechanism and that it should remain in place to examine studies and country experiences and monitor the implementation of the conclusions of United Nations conferences.

45. From a conceptual perspective, one delegation said there that was a twin necessity of both mainstreaming all human rights in the development process and promoting the right to development as a particular human right. A suggestion was made to introduce principles of democracy and good governance at the international level. Concern was expressed by some delegations that if international obligations only followed fulfilment of national obligations in the development compact proposal, then someone would have to make a judgement on this, raising the possibility of double standards on human rights being applied by donors. A need was felt for considering South-South cooperation as an element leading towards the implementation of right to development, as exemplified by the Tokyo International Conference on African Development and its follow-up process. That was one way to address region-specific problems while building on commonalities of interests and constraints.

46. One delegation stressed the fact that it viewed the implementation of the right to development as important in making development assistance more predictable and less subject to fluctuations and interruptions. For that reason, there was a need to seriously consider an international legal instrument on the right to development.

47. A large number of delegations spoke in favour of country studies showing how countries were striving to implement the right to development in their national planning and policy-making. Studies of regional groupings and regional cooperation arrangements were also called for by some as well as a dialogue with international financial institutions and the WTO, while some suggested actual studies on how and to what degree those institutions integrated human rights in their work. It would be useful to study other development instruments, both bilateral and multilateral, to identify the possible positive as well as negative concerns that could

help understand how the proposed development compact might work. Attention was drawn to the strategies and results of certain particular countries in realizing economic, social and cultural rights as potentially useful models for advancing the right to development. The independent expert was invited to pay more attention to the issue of minority and indigenous peoples, on the one hand, and to gender issues, on the other hand, and to encourage the use of disaggregated indicators in order to facilitate this.

48. The working group adopted the summary of the proceedings as reflected in paragraphs 12 to 47 above in its meeting on 24 March 2003 and it took note of the views and observation of the Chairperson-Rapporteur as reproduced in the annex I.

Annex I

VIEWS AND OBSERVATIONS OF THE CHAIRPERSON-RAPPORTEUR

1. Having concluded its general debate, the working group began to consult on conclusions and recommendations, on the basis of a list of proposals made by delegations. The working group was, however, not in the position to conclude this task within the time allotted to the formal session of the working group. Some delegations called for the continuation of negotiations so as to arrive at conclusions and recommendations by consensus. Other delegations however proposed that the working group should ask the Chairperson-Rapporteur to draw his own conclusions and recommendations and give delegations an opportunity to comment thereon. In an attempt to reconcile these two positions the Chairperson-Rapporteur held a number of informal consultations, including on a bilateral basis with delegations. As these consultations did not achieve any positive results, and to underscore the important contribution made by the debate in the working group, the Chairperson-Rapporteur presents in the following paragraphs his views and observations on the progress made. These were taken note of by the working group in its session on 24 March 2003.

Principles and norms

2. The working group recalled the consensus achieved at the World Conference on Human Rights in 1993, reaffirming that “the right to development, as established in the Declaration on the Right to Development, is a universal and inalienable right and an integral part of fundamental human rights”. It records the Millennium Declaration pledge to “make the right to development a reality for everyone” and reaffirmed the agreed conclusions of the third session of the Open-ended working group on the right to development, as contained in paragraphs 95 through 120 of document E/CN.4/2002/28/Rev.1. The working group agreed to take its work forward on the basis of consensus, conceptual clarity, concrete action, and a commitment to balance in addressing the national and international aspects of the right to development. It recognized the essential importance to the realization of the right to development of good national governance and effective international cooperation.

The High Commissioner and his Office

3. The working group welcomed the statement of the High Commissioner for Human Rights recognizing the working group as the only official global forum on human rights and development in which States, international agencies, financial institutions and NGOs participated annually. The working group reviewed the High Commissioner’s report and appreciated its strengthened content and approach, including the information on the work of the OHCHR field offices in implementing the right to development. The working group expressed gratitude to the High Commissioner for his efforts in having secured a significant increase in the participation of international agencies and institutions. It also acknowledged the high level of secretariat support provided to the fourth session.

4. The High Commissioner was invited to consider supplementing future reports with additional analyses of the issues covered, including evaluation of follow-up activities of recent summits and conferences; and to ensure the availability of OHCHR representatives for

substantive participation in the future deliberations of the working group, in particular, for reporting on the relevant initiatives in OHCHR field offices and its technical assistance projects. The working group requested the High Commissioner to strengthen the technical assistance programme, including capacity-building, offered to countries at their request, and to prioritize the right to development in the OHCHR programme.

5. The Chairperson-Rapporteur recommends that OHCHR consider collecting good practices related to the implementation of the right to development in development programmes and policies, including specific initiatives like those aimed at combating HIV/AIDS. He proposes that the Office undertake analytical studies of the role that could be played by national human rights institutions in the creation and implementation of development partnerships.

6. The working group recognized that while it had over the past four years covered extensive ground in identifying obstacles existing at the national and international levels impeding progress towards the realization of the right to development, its findings and conclusions had not been adequately followed. Therefore, the working group requested the High Commissioner to bring its conclusions to the attention of the major international institutions including WTO, the World Intellectual Property Organization (WIPO), IMF, the World Bank, UNCTAD and other United Nations agencies as well as other relevant regional organizations and actors, at the highest policy-making level.

Participation of international agencies and financial institutions

7. The working group noted that the fourth session had seen the participation of the largest number of international agencies and financial institutions of all sessions to date, with a significant increase over previous years, and hoped that this trend would continue in subsequent sessions. The working group encouraged all international agencies and financial institutions to participate actively in future sessions, to take due account of the reports and conclusions of the working group in their work, and to share their relevant experiences and expertise during the deliberations of the working group.

Fifth report of the independent expert

8. Having reviewed the fifth report of the independent expert containing a further elaboration of his development compact proposal, the working group expressed gratitude for his work. The group took note of the comments, questions and reservations of various delegations regarding the compact proposal, indicating the need for further clarification on a number of aspects of that proposal, including with regard to: the independent expert's conceptual approach to the right to development; the nature of obligations and responsibilities at the national and international levels; the notion of "mutuality of obligations" and its implications for the legal accountability of States and for domestic ownership of development; the question of the fulfilment by States of their human rights obligations and its relationship to conditionality; the operational feasibility of the compact model; the risk of duplication and the relative advantage of the compact over integration of the right to development into existing mechanisms and instruments; the need to pay explicit attention to women, indigenous populations and minorities; the proposal's resource implications; the role of domestic resource mobilization in the compact model; the composition of the proposed compact support group and the role of civil society in

that body and in the compact in general; corresponding redress mechanisms; the need for appropriate indicators to accompany the model; and the ways to advance the right to development while the compact model is being further clarified.

9. The Chairperson-Rapporteur suggests that the independent expert might like to pursue further the feasibility of implementing the proposed development compact in consultation with bilateral donors, multilateral agencies and other stakeholders.

Preliminary study on the impact of international economic and financial issues

10. The working group reviewed the preliminary study of the independent expert on the impact of international economic and financial issues on the enjoyment of human rights. It noted that a variety of views existed among delegations on those issues. The working group requested that the independent expert provide further analysis to the next session of the working group on the impact of issues such as international trade, access to technology, good governance and equity at the international level, and the debt burden on the right to development.

11. The working group agreed that while the globalization process and the corresponding liberalization of market forces, trade and investment flows offered new opportunities, they would not by themselves lead to the realization of the right to development or a reduction of poverty. Since globalization was not benefiting all States, there was an urgent need for measures to promote, both at the national and international levels, good governance which was essential for the realization of the right to development. The working group agreed that good governance at both the national and international levels implied equality, equity, non-discrimination, accountability, transparency and participation, as well as international cooperation and solidarity. The working group noted that negotiations were taking place in relevant forums addressing several of those issues. The working group urged participants to consider measures that would facilitate the realization of the right to development. In this context, the Chairperson-Rapporteur was of the view that States should, among other measures, endeavour to eliminate protectionist barriers against the exports from developing countries and to suppress subsidies in economic sectors that negatively affected exports from developing countries.

Existing development instruments and mechanisms

12. The working group discussed PRSP, CCA/UNDAF, NEPAD and South-South cooperation as potential mechanisms for the advancement of the right to development. It encouraged OHCHR, international agencies and financial institutions, and all relevant actors to enhance efforts to integrate all human rights in these and other existing development instruments and mechanisms and to use them to promote the right to development and to report on those efforts to the working group at its next session.

Practical activities

13. The working group, having considered the mission reports of the independent expert, identified the need for the collection and analysis of concrete examples and good practices in implementing the right to development, and encouraged the independent expert and OHCHR, in consultation and cooperation with international agencies and financial institutions, to develop

country specific studies in the developed as well as the developing countries. Such studies were to be at the invitation and initiative of interested countries, examining in an integrated manner both national and international aspects and the role of all stakeholders in the right to development in those countries. In that context, it was also stressed that NEPAD could provide a suitable framework for the implementation of the right to development. The working group expected that the independent expert and OHCHR would present information in that regard at the next session of the working group and hoped that the NEPAD secretariat would be able to participate in the discussions.

14. The working group discussed the question of holding an expert seminar on crucial aspects of the right to development. Some participants expressed the view that such a discussion could take place in the framework of an OHCHR convened expert seminar before the next session of the working group, while others considered the possibility of holding an expert discussion during the session of the working group. Still some other delegations made reservations as to the purpose of this proposal. It is the Chairperson-Rapporteur's view that the Commission on Human Rights should facilitate such a seminar, details of which can be worked out, in view of the importance that many delegations said they attached to the right to development.

A suitable permanent follow-up mechanism

15. The working group discussed the question of a suitable permanent follow-up mechanism and noted that the matter would be reconsidered by the working group in more depth at its next session, with a view to clarifying the range of options for such a mechanism.

Next session of the working group

16. The working group recommended that the mandate of the working group be extended for an additional year, and that an agenda and programme of work for the fifth session be agreed and distributed well in advance of that session.

Annex II

LIST OF DOCUMENTS

Symbol	Remarks
E/CN.4/2002/WG.18/6	Independent expert's fifth report
E/CN.4/2002/WG.18/6/Add.1	Mission to Sweden
E/CN.4/2003/7	Report of the High Commissioner for Human Rights on the right to development
E/CN.4/2002/WG.18/CRP.6	NEPAD document
E/CN.4/2002/WG.18/CRP.7	Information supplied by UNFPA
E/CN.4/2002/WG.18/CRP.8	Information supplied by the Government of Iraq
E/CN.4/2003/WG.18/1	Provisional agenda
E/CN.4/2003/WG.18/2	Preliminary study of the independent expert, Mr. Arjun Sengupta, on the impact of international economic and financial issues on the enjoyment of human rights, submitted in accordance with Commission resolutions 2001/9 and 2002/69
E/CN.4/2003/WG.18/3	Note by the secretariat
E/CN.4/2002/28/Rev.1*	Report of the working group on the right to development on its third session
<u>Resolutions of the Commission on Human Rights</u>	
2002/69*	The right to development
1998/72*	The right to development
2002/28*	Globalization and its impact on the full enjoyment of human rights
2002/22*	Human rights and unilateral coercive measures
<u>Resolutions of the General Assembly</u>	
56/150*	The right to development
41/128*	Declaration on the Right to Development

* Background documents
