

Submission in follow-up to HRC resolution 19/34 “The right to development”

Guyana

The Government of Guyana submits its views in regards to the proposed attributes, criteria, sub-criteria and indicators that the Open-ended Intergovernmental Working Group on the Right to Development has developed to assess the extent to which States, individually and collectively, establish, promote and sustain national and international arrangements in order to create an enabling environment for the realization of the right to development.

The Government of Guyana is of the view that the current structure of the proposed criteria, sub-criteria, and indicators should be reviewed and re-designed first of all in regards to its compliance with philosophy, objectives and intent of the UN Declaration of the Right to Development (A RES/41/128 December 1986).

Firstly, the thrust of the Declaration is on states, individually and collectively, to assume the “primary responsibility for the creation of national and international conditions favourable to the realization of the right to development” (Article 3) and “to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all states, as well as to encourage the observance of human rights” (Article 3 (2)), and that the “right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and individuals who make up nations.” (Preamble)

In this regard, it appears that the indicators represent an instrument to assess the performance of governments at national levels in the realization of political, economic, social and cultural rights, while overlooking the responsibility of states at the international levels and the international community. Therefore it should be noted that the use of the proposed indicators can result in the marginalization of developing countries by focusing on national duties while not having the guaranteed fulfillment of international obligations and a facilitating environment. (Articles 3, 4, 5, and 6)

Recognition regarding mutual and reciprocal responsibilities among the partners/states should be highlighted, taking into account their respective capacities and resources and the special vulnerability of developing countries and more particularly the Least Developed Countries. It is important to ensure that developing countries, through ownership and through international assistance and cooperation, have the human, financial and technical resources and capacity to implement successful development strategies relevant to the implementation of the right to development.

Since, the right to development should be viewed as an overarching right without which the full realization and enjoyment of all other rights cannot be guaranteed. Then the global or international environment which permits countries or hinders countries development, such as inequitable trade relations, inequities in decision-making forum at international and regional bodies and dependence on aid assistance must also be measured and taken into account. The issue of international cooperation and collective responsibility appears to have shifted to national responsibilities thereby ignoring the global challenges faced by developing countries to influence issues on their own.

A second issue that must be addressed, and, which the Intergovernmental Working Group appears to have not addressed is how will the State Parties reports to international treaties bodies in regards to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women, the Declaration on the Rights of Indigenous peoples, and Convention on the Rights of Persons with Disabilities, be treated. The proposals of the Working Group appear to create new and additional reporting mechanisms, thereby duplicating what states will be reporting on periodically in accordance with their treaty obligations, thus placing greater reporting burdens on developing countries and small states.

Guyana is of the view that a more user friendly, manageable and less burdensome approach maybe for the relevant information submitted by State Parties in their reports to selected and identified conventions be extracted by the UNHRC, and with the individual State's approval, form the basis for assessment of progress in the implementation of the Declaration and obstacles and challenges faced. The OAS model on how its addresses reporting and reviews of State parties on the Inter-American Convention against Corruption is a case that should be examined.

Alternatively, questions pertinent to national strategies to address development, social justice and inclusion and sustainable development, and challenges faced and or implementation of commitments made in regards to international cooperation may be included in State Parties reports to the above-mentioned conventions.

Thirdly, Guyana does not support the view that the right to development should be made into a legally binding instrument.

Fourthly, Guyana also has difficulties with the structure and the proposed indicators, criteria and sub-criteria.

There appears to be no indicators to measure compliance and implementation of commitments made by developed countries and their developmental agencies, multilateral bodies and international financial institutions, in regards to the developing and most poor countries. A case in point is the poor implementation of commitments made to developing countries in regards to the Millennium Development Goals 2015.

Therefore, intergovernmental agreement must be reached on the indicators, criteria and sub-criteria that will be used to measure implementation of the Declaration. Furthermore, there appears to be no recognition that there is no standardized data collection criteria and systems between countries. In regards to this issue, recognition must also be given to the capacity (human, physical, financial and technological) of developing countries to gather data and analyze it in a timely manner for submission to the UN.

The three sub-levels of the criteria and the monitoring instances of the implementation of the right to development are rather vague and lack clarity, thus making it difficult for many states to

report. Several criteria, sub-criteria and indicators should be more precisely re-formulated and re-structured, as there are several areas where there is duplication, for instance:-

- Criteria 1(c), 1(j) and sub-criteria 2(b)(i) should be merged since they focus on national development strategies within the context of the right to development.
- The structure of Attribute 3 sub-criteria is repetitive: sub-criteria 3(a) (i) Equality of opportunity in education, health, housing, employment and incomes should have been structured under criteria and sub-criteria 1(a) since it relates to socio-economic welfare of persons. In addition to that sub-criteria 3(c) (iv) and its indicator is similar to Sub-criteria 1(a) (iii) and its indicator in that they both are specific to slum populations. These should be reviewed and restructured since it is repetitive and will further result in duplication in several areas and will make it extremely difficult for reporting member states.
- Sub-criteria 2(b) (ii), 3(a) (iii) and 3(a)(iv) along with their indicators should all be placed under Criteria 1(e) “To promote an equitable, rule-based, predictable and non-discriminatory international trading system because all of these are relevant to international trade, and therefore if reconfigured will avoid repetition. For example 2(b) (ii) Indicator focuses on “Institutional policy on human rights; human rights impact assessment of WTO agreements” while 1(e) Indicator is the exact variable “Human rights impact assessment of trade agreements, aid for trade”. In addition to that it is evident that sub-criteria 3(a) (iii) “Reducing marginalization of least developed and vulnerable countries and its indicators “mitigating differential bargaining power and adjustment costs of trade liberalization is relevant to international trade and therefore should be restructured under the criteria relevant to the international trading system.
- Also sub-criteria, Movement of persons 1(e) (iii) and the Sub-criteria 3(a) (iv) Ease of immigration for education, work, and its indicator “Flow of skilled and unskilled migrants from rich to poor countries” should be grouped under the same criteria to avoid repetition when countries are reporting since they both deal with immigration issues.
- Also Criteria 1(h) and (3)(b) should have been grouped together because they are both specifically relevant to climate change and environmental sustainability and all the sub-criteria dealt with prevention of environmental degradation and resource depletion and environmental burdens of development, while the indicators makes specific reference to the “availability of climate change funds for developing countries; multilateral agreements to reduce negative environmental impacts; distribution of contributions to climate change, and the ratification of environmental conventions etc.

Attribute 1: Comprehensive and human-centred development policy

Whilst Guyana is prepared to illustrate its concerns in regards to the specific indicators under this attribute, it is of the strong view that in regards to the right to development, indicators which focus on ascertaining State Parties' investment in the social sector is the best indicator with further prioritization of specific areas as a requirement at the national level. Therefore some of the proposed indicators etc do not solicit this information from states.

The indicators relevant to Health 1(a) (i) are rather vague and too narrow: HIV prevalence as an indicator is inadequate. The focus should be on access to affordable health services, especially for poor and vulnerable groups – women, children, elderly, indigenous peoples and differently-abled persons. Other areas such as the fight against HIV/AIDS, malaria and tuberculosis prevention, treatment, care and support, maternal health and protection of sexual and reproductive health and children's health should be included as indicators under Health and extracted from State Party reports to the CEDAW, CROC and UNGASS.

The expenditure on education as percentage of GDP should be an indicator within 1(a) (ii) Education. The focus should be on access to education for all children. International scores for student achievement should not be an indicator since they are not necessarily a better indicator of the achievement of quality results than properly developed national tests.

In addition, the indicators for measuring the sub-criteria equality of opportunity in education are mainly economic indicators and would be difficult for countries such as Guyana to calculate given the resource capacity constraints.

With regards to sub-criteria 1(a) (iii) Housing and Water the indicators should include access to and non-discrimination in housing on the basis of race, gender, and persons with disabilities. The indicators should not only measure the homeless rate and slum populations but include government expenditure to tackle homeless and slum populations since the objective of these criteria are to assess the extent to which states are creating an enabling environment for the realization of the individual's right to development.

Access to water seems to be given little attention in the indicator and this is a critical issue for people's survival and growth.

1 (a) (v) Food security and nutrition, indicator should not only focus on Child stunting rates but should also include food security in terms of the general population since the right to be free from hunger and malnutrition is a fundamental human right of every woman, man, youth and child. Universal and sustainable food security is an imperative part of achieving the social, economic and human development objectives of societies and is an important element in promoting the socio-economic well being of any state.

In addition there should have been a nexus between Criteria 1(b) "To maintain stable national and global economic and financial systems" and sub-criteria 1(a) "Food Security" since the indicators 1(b)(ii) dealt with "National food price volatility; mechanisms for mediating price swings for food staples; food volatility", and 1(b) (v) indicator focuses on "International commodity prices for food staples; international price stabilization mechanisms".

The World Trade Organization (WTO) should have been specifically mentioned under 1(e) since this Criteria focus on the creation of an equitable, rule-based, predictable and non-discriminatory international trading system of which the WTO is the determining factor regarding the rule based multi-lateral international trading system.

While the Working Group included Criteria 1(e) and Sub-criteria 1(e) (i), the indicator calls for human rights assessment impact which is not as relevant as measuring the progress in regards to these criteria globally, regionally and nationally. Criteria 1 (e) should be the subject of a high level study to measure progress made in regards to international trading systems and their present day impact on developing countries. This study should also take into account the challenges of inclusiveness for developing countries, Least Developed Countries (LDCs) and Small Vulnerable Economies in trade policy making and implementation and the structural imbalances and constraints that impede equitable development within the multilateral trading system.

The process of rule-making in the WTO has been dominated by a handful of industrialized nations that set the agenda of multilateral trade negotiations in a manner that not only disregards developing countries' genuine concerns, but also actively impairs their ability to implement development policy. In addition this criteria does include the impact of these decisions on developing countries.

Sub-criteria 1(e) (ii) Market Access indicators, while relevant should also identify what measures should be taken by developed countries to cut Agricultural export subsidies that negatively impact developing countries' markets thus hindering the process of the right to development within the context of international trade. The indicators should also include "implementation of development Cooperation dimension within trade agreements between developing countries and developed countries to facilitate the right to development within vulnerable economies."

Sub-criteria Movement of persons 1(e) (iii) does not address issues such as restrictions on labour flows from developing to developed countries or even among developing countries. In addition to that 1(e) (iii) and 3(a) (iv) should be re-examined within the context of the 4 Modes of Supply of the 1994 General Agreement of Trade and Services (GATS), which aims at progressive liberalization of trade in services through these four modes of supply namely, cross-border supply (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3) and movement of natural persons (Mode 4).

With regards to 1(f) "To promote and ensure access to adequate financial resources", Emphasis should be placed on including the impediments relating to donor community unfulfilled commitments towards aid, and what can be done to ensure that these commitments are effectively fulfilled in a timely manner to facilitate the development process within developing countries, while more attention should be placed on unsustainable debt burdens.

Fair trade that seeks greater equity in international trade should have been included as an indicator under 1(e) since this mechanism contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers, especially in developing countries. This is an essential variable in the right to development since it also promotes fairer trading conditions and empowers producers to combat poverty and

strengthen their position in world markets. Promoting Fair trade within the international trading system would facilitate the right to development since its purpose is to alleviate poverty and empower producers in developing countries and the most marginalized within the global trade system.

With regards to Criteria 1(g) (iv) Indicators, while intellectual property rights and technology transfer provisions in trade agreements are important, at the country level, there appears to be little economic research on developing countries that directly links the IPR regime to domestic innovation and development, and the determinants of effective technology transfer are dependent on several variables.

The ability of countries to absorb knowledge from elsewhere and then make use and adapt it for their own purposes is of crucial importance. In this context, certain issues are critical for development purposes, first, it is clear that the ability to adapt new technologies to local uses is improved by strong levels of educational attainment coupled with and not in the absence of sizeable endowments of financial and human capital and the development of appropriate institutions. Secondly, productivity in absorbing foreign technologies depends critically on the R&D capabilities of local enterprises. Therefore the importance of technical and financial assistance with regards to technology transfer is imperative for some developing countries.

Attribute 2: Participatory human rights processes

Sub-criteria 2(b)(ii) indicators should be reformulated to include mechanisms in development projects and arrangements with international aid, trade, and lending institutions, for fair institutionalized mechanisms of mutual accountability and review, including effective remedies where parties have not complied with agreed commitments as this can hinder the development process of developing countries.

Indicators relating to sub criteria 2 (c) (ii) should include not only the “existence of a legal or administrative standards requiring free, informed prior consent” but a consultative process to facilitate the participation of poor, vulnerable and indigenous communities in relation to issues of interest to them (such as land and access to services) as well as those of national importance. Free prior and informed consent may not be the most effective way to guarantee that indigenous people are made aware of issues of relevance that may have an impact on them. The Government of Guyana is a strong advocate of establishing a consultative process with indigenous peoples and the participation of indigenous peoples in relevant decision making process in development strategies and programmes to ensure a just and equitable balancing of interests between other stakeholder and indigenous peoples.

Under the establishment of a legal framework supportive of sustainable human-centred development (Attribute 2 – “Participatory human rights processes”) Criteria 2(a), all of the United Nations core human rights treaties should be considered as an indicator regarding the “Ratification of relevant international conventions”. In addition, since sub-criteria 2(c) (iv) Indicators notes the “constitutional or legal protections ensuring equal right for citizens regardless of race or ethnicity”, and also identifies the constitutional or legal protections

specifically for women, therefore the ratification of Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) should be included.

Attribute 3: Social Justice in Development.

The criteria and sub-criteria, indicators under social justice excluded the elderly as well as persons with disabilities. These variables are important and would be covered under other treaty obligations.

The inclusion of and accessibility for persons with disabilities should thus be recognized in the criteria, sub-criteria, indicators within the context of “Work and Social Security” and “equality of access to resources and public goods.” To further provide for fair access to sharing of the benefits of development and to promote constant improvement in socio-economic well-being. This would be measured under the countries that have acceded to the Convention on Rights of Persons with Disabilities.

Ratification of the protocol to prevent, suppress and punish trafficking in persons is rather insufficient and should not be the only indicator relevant to sub-criteria 3(c) (ii). There are other relevant indicators that could be included to measure the elimination of sexual exploitation and human trafficking such as countries that work along with UNIFEM, UNFPA, IOM, ILO and UNICEF and other organizations that promote women and children’s rights.

Under criteria 3(c)(v) Land reform, indicators failed to specifically include access to land; secure land rights for the indigenous and or poor and vulnerable populations. It should be noted that land issues, particularly the dispossession of Indigenous peoples from their territories, is one of the most urgent concerns for Indigenous peoples worldwide. Land and resource issues are also essential to the physical and cultural survival of Indigenous peoples and to the right to development within the context of eradicating social injustices through economic and social reforms.

C) Conclusions and recommendations of the task force, particularly regarding the suggestions related to further action on the criteria; thematic areas of international cooperation for consideration; and mainstreaming the right to development.

The circulation of the criteria to States and other relevant stakeholders is a useful way to garner the views of States in regards to the methodology and modalities for assessing the implementation of the Declaration on the Rights to Development.

With regards to the preparation of a reporting template, Guyana is of the view that until states have reached agreement on which criteria and the methodology and mechanisms on reporting, a reporting template is premature.

The Government of Guyana supports the recommendation to organize initiatives and senior level consultations involving regional institutions on the integration of the right to development into their policies and activities in accordance with the Declaration on the Right to Development, and relevant UNGA resolutions.

With regards to the Thematic areas of international cooperation for consideration, the majority of the areas suggested by Working Group for future priority consideration have not identified international cooperation. Therefore, the Working Group should focus on the thematic area on international cooperation as an essential element that will promote the right to development.

On mainstreaming of the right to development, Guyana supports the recommendation by the Working Group to integrate and mainstream the right to development into all aspects of the work of OHCHR and the United Nations bodies, developmental agencies and international financial institutions. With regard to the mainstreaming of the right to development in the work of the treaty bodies and other relevant human rights bodies, this should be carried out in accordance with the mandates of these respective bodies to create a level of harmonization.

The Government of Guyana is of the view that the right to development should be excluded from the UPR process, since it not only entails the responsibilities of the individual state but states acting collectively in global and regional partnerships to promote the right to development. This would complicate reporting for individual states through the UPR process.