# **Mandate of the Special Rapporteur on the right to development**

# Third regional consultation on the practical implementation of the right to development: Identifying and promoting good practices

# Convened for the Latin American and Caribbean Group, 11-12 October 2018, Panama City

**Outcome document**

In September 2017, the United Nations Human Rights Council adopted Resolution 36/9, which mandated the Special Rapporteur to conduct a series of regional consultations on the practical implementation of the right to development.

The following consultations have taken place/are scheduled to take place in 2018:

* regional consultation for the African Group (Addis Ababa, March 2018)
* regional consultation for the Western European and Others Group and the Eastern European Group (Geneva, June 2018)
* regional consultation for the Group of Latin American and Caribbean (Panama City, October 2018)
* forthcoming regional consultation for the Asia-Pacific Group (Bangkok, December 2018)

Documentation relating to the various regional consultations is available on the website of the mandate at https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/RegionalConsultation.aspx

The discussions held during the two/ day meeting in Panama City were very fruitful and a large number of recommendations and promising practices were formulated by participants as listed below. The Special Rapporteur hopes to receive further suggestions on implementing these recommendations and he welcomes additional written submissions from all stakeholders. He will conduct a global assessment of all the recommendations once he concludes the consultation process in 2019. The expected outcome of the consultation process is the development of a set of practical guidelines and recommendations drawn from empirical evidence. The guidelines will serve as a tool in designing, monitoring, and assessing the structures, processes and outcomes of human rights motivated development policies. They will also promote indicators and measurements that have proven successful in specific contexts.

**(1) Promoting active, meaningful and informed participation**

* Participation should be understood as continuum: consultation, participations and access to justice. These three elements should be the components of any integral participation scheme. Access to justice in this regard is essential. It should not be purely procedural but rather embedded in national policies and laws.
* A key element of accountability is access to information to allow meaningful and effective participation in decision-making processes. In this regard, information on development policies, including international development policies such as the SDGs should be made available to the general public in an accessible format.
* Channels of participation should be promoted on a continuous basis. There should be opportunities for the equal participation for those who are further behind, including people with disabilities, women, youth,minorities, indigenous peoples, Afro-descendants and other disempowered categories and marginalized groups.
* The principle of prior consultation, particularly of indigenous communities, needs to be enforced. This includes adherence to ILO Convention 169.
* Public planning processes should be participatory and entail monitoring mechanisms. Participatory planning processes should also be decentralised. This will also facilitate the leveraging of domestic resources. It requires providing space to the pursuit of local development initiatives, which can better reflect the interest of the community through genuine participation. This is closely linked to democratic and fiscal decentralisation processes.
* Indicators to measure development, including within the framework of the implementation of the SDGs, should be developed in a participatory manner with the involvement of civil society organisations-including academia, development practitioners, social workers and community leaders. Traditional and indigenous knowledge should also duly be taken into consideration.
* The promotion of the right to development requires training in academia but also capacity building of the civil society. Empowering groups and collectives to defend their right to development is essential. Regional civil society network should integrate the right to development in their human rights advocacy and seek to mainstream it at local levels.
* National councils for social and economic development (or equivalent institutions) could be appropriate institutional setting to develop multi-stakeholders fora to draw together a national agenda for development that is fair and equitable (ex of Brazil). National Observatory of equality can be attached to these institutions to monitor. Provincial councils can be established to carry out similar missions at the local level.

1. **Financing Development**

* Development banks play a fundamental role with regards to the right to development. Existing accountability and monitoring mechanisms of development banks - such as the Compliance Advisor Ombudsperson of the World Bank and the MICI (independent consultation and investigation mechanism) of the Inter-American Development Bank- should be used more effectively or be reformed when they are ineffective. The monitoring mechanisms of development banks should generally be strengthened to be more participatory and to ensure direct contact with affected communities and impacted areas.
* Development banks should adopt an explicit human rights policy. Banks should carry out human rights impact assessments, including assessments that measure the impact of securities.
* Development banks must respect environmental and social safeguards. They should not attempt to avoid them by financing projects through third entities.
* Development banks should disseminate more information on the long-term impact of their projects, including the impact in other countries where they operate.
* Civil society has an active role to play in promoting transparency and accountability of development banks, especially at the regional level. Communities and stakeholders should be empowered to engage with those who finance development projects to promote a culture of impact assessment prior to the adoption of projects, during their implementation and after their completion. Civil society should participate in parliamentary oversight assessment of the work of those banks to make sure that rights are respected.
* Communities need access to information about projects financed by development banks *before* the projects are authorized. Projects should be monitored to ensure that no human rights violations occur while the projects are being carried out.
* The establishment of a BRICS Bank regional office in Brazil could be an opportunity for regional civil society networks to weigh in the development of policies for the region.
* The Special Rapporteur should engage with regional development banks in order to provide guidance and advice on how they can promote a rights- based approach to their activities. He should capitalise on the fact that regional banks are growing in size and ambition, looking to re-invent development financing and to overcome the Bretton Woods model.
* Development financing should not be seen as purely in terms of economic opportunities. The debate on funding development should be re-centred around the obligations of States to promote development using the maximum resources available and seeking or providing international cooperation in that regard. The private sector has an important role to play as well, namely through redirecting capital towards redistribution schemes.
* There is a need to transform tax policies in the region so that they are more progressive and fair e.g. by addressing the privileges that the corporate sectors enjoy. This would allow generating domestic resources to strengthen social investment aimed at eradicating poverty and inequality. Governments should have a more positive approach to tax justice.
* While corporate social responsibility is important, it is clearly insufficient as the contribution of the private sector to development. Any true contribution of the private sector to funding development should be embedded into taxation policies that ensure equitable redistribution of economic growth. States should measure the benefits they receive when granting tax breaks to corporations in order to evaluate to what extend citizens actually benefit.
* Public-Private Partnerships (PPPs) should not be seen as a panacea. Often they are turned to as ‘solutions’ when States lack resources for development projects. However, past experience has shown the private partner may promote private interests rather than the interests of the people. It is important that civil society participates in the elaboration of indicators and conditions to measure the success of PPPs in terms of public service delivery to ensure that it is not the economic interest that prevails and ensure conformity with existing norms and obligations
* The Special Rapporteur should address structural issues that lead to inequality within and between countries. For example, tax havens and illicit financial flows divert financial resources that could otherwise be available for development. 80 percent of illicit financial flows come from legal monetary policies, so such laws should be changed. Many bilateral investment treaties do not actually attract investment. ECLAC should measure the productivity of assets in order to advise States accordingly. Addressing the issue of corruption also goes hand in hand with promoting the right to development.
* States should move away from the financialization of social policies, i.e. turning social services into economic opportunities to generate profits. There is a need to reverse the trend of privatisation of social services such as healthcare, education etc., which remain the primary responsibility of States in accordance with their obligations under international human rights law.
* A rights-based approach to managing public debt should be articulated. Austerity policies, i.e. the reduction in public spending, runs contrary to the right to development as they increase inequalities, undermine social protection etc. Social protection floors and welfare need to be guaranteed by States, even in times of economic and financial crisis. When austerity measures are necessary to service national debt, they should continue to respect the right to development i.e. these policies should not aim to raise financial resources through reducing funding to the public sector. Instead, they should seek to raise funding in different ways e.g. by asking the private sector to pay its fair share, through stopping illicit financial flows that direct financial resources outside of the country and by reform of tax policies which lead to the wealthiest paying the least.
* There is a need to rethink the dichotomy between fiscal policies and social budgeting. It is possible to combine fiscal responsibility and investment in social welfare. Budgeting should be participatory and people centred rather than a purely economic exercise. In this regard, States should share promising practices in implementing participatory budgeting and its positive impacts on growth and development.
* The financing of social welfare and protection should be guaranteed and embedded in law so as to ensure continuity regardless of the ideological orientation of successive governments. In Uruguay, for example, the right to care was enshrined in domestic law.
* States have to be co-responsible for the provision of home care, remunerate those who take on the caring function and provide proper training in this regard. This will allow the recognition and formalisation of care work.

1. **Promoting Accountability and Access to remedy**

* Economic obstacles to accessing justice should be removed especially as they relate to economic, social and cultural rights.
* Many communities have difficulties in accessing to court systems, inter alia, because the judiciary has protected corporations. In the absence of formal mechanisms to express dissent with prevailing development policies and projects, community discontent frequently led to protests, unrest and even the ‘criminalization’ of communities. In this context, communities should be empowered to enable their effective access to justice. To this end, countries should establish and strengthen institutional mechanisms through which communities and individuals can express their concerns about development processes, including those involving the private sector.
* There is an urgent need to promote accountability concerning human rights violations resulting from natural resource extraction. States should guarantee access to information and meaningful participation of all relevant stakeholders in the decision-making around these activities. They must ensure access to justice and effective remedies and reparation for everyone whose rights have been violated as a result of these activities.
* Environmental and social safeguards should be enforceable and private enterprises and investment banks should not be left to make their own standards and to monitor their own compliance. The State should have a role in setting these safeguards, gathering the necessary information, and determining whether they are complied with. It is important for civil society to have access to information for its own purposes, but the State should play a role in monitoring.
* In order to enhance accountability in the private sector, tax authorities should publish the taxation rates and revenues generated by major economic actors. Fiscal authorities should have a legal obligation to monitor the taxation of major economic operators and publish accessible information in this regard.
* NHRIs across the region could play a more active role in protecting and promoting the right to development. NHRIs should be empowered to conduct investigations and put forward recommendations to governments- not only in cases of human rights violations but also with the view of informing development policies and their compliance with human rights principles.
* NHRIs should make reference to specific SDGs when analysing cases in order to illustrate how these cases relate to development outcomes. This is particularly relevant in case where NHRIs have signed a declaration whereby they agreed to monitor SDG implementation in their own countries.
* NHRIs can engage in public education to empower communities to claim their rights. An example of one NHRI was given, which hosts workshops and meetings on right to development-related topics with various stakeholders. The NHRI also partnered with academic and civil society organisations to carry out studies on particular subjects, including impact of minimum wage policies, public budgeting and corruption on human rights. This has helped to sensitize policymakers on the potential impact of these policies before they are put in place.
* Civil society and communities should be empowered to submit more cases relating to economic, social and cultural rights to the Inter-American human rights system. There is a need to apply article 26 of the American Convention on Human Rights more consistently as it was only in 2017 when a violation of article 26 was found for the first time.
* There may be a need for a dedicated international body to address rights issues related to the environment.
* The submission of shadow reports on economic, social, cultural and environmental rights should be promoted in the framework of State reviews by international human rights mechanisms. The observations and recommendations of various human rights mechanisms should be used to enhance the protection of the right to development, and of economic, social and cultural rights through case law at the local and national levels.

1. **Promoting the right to development at the regional level**

* In order to promote the understanding of development as a holistic process, the discourse around development should not be solely focused on economic considerations. Economic growth should be seen as one aspect of development and the approach to development should not be conceived as a sequential one whereby economic growth is sought to finance social policies. Instead, social policies should be firmly grounded in commitments for a fairer redistribution of existing wealth. Overall, there is a need to change predominant economic/ development paradigm in the region as it gives a central role to natural resources extraction as the engine of development. The absence of a holistic vision of development is closely related to the failure to fully take into consideration the realities of communities and to seek their active and meaningful contributions to development policies and programming. The paradigm of sustainable and inclusive development should be central to political debate. To this end, the political dimension of sustainable development needs to be better articulated and explained.
* We shoulddevelop new ways of measuring development beyond GDP/capita, taking into account the costs of well-being and the environment. While some countries may be doing well in terms of the conventional indicators, they may be more vulnerable to other development issues e.g. in relation to risks associated with climate change and natural hazards. We also need diverse and more precise measurements of inequality that goes beyond the indicator of income inequality.
* Many countries in the region demonstrate a strong recognition of the benefits of ensuring active and meaningful participation in development in their domestic legal and policy frameworks. However, implementation often remains problematic. Mechanisms for claims and dispute resolution are insufficient or inefficient. NHRIs should take on a stronger role in promoting and protecting ESCRs as well as environmental rights and promote the justiciability of such rights.
* In order to guarantee inclusive development in the region and uphold the key principle of non-discrimination there is a need to give due attention to the structural obstacles faced by persons of African Descent in the region.
* The contribution of GRULAC to the promotion of the right to development can be seen inter-alia by the adoption of the Ecaszu ‘Regional Agreement on access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean’. This agreement enshrines commitments made in the Rio Declaration more than 25 years ago and should be considered as a good practice that other regions should consider adapting in their local settings.
* Building stronger networks of civil society organisations as well as NHRIs would enable stakeholders to push forward common agendas at the regional and international levels.