

## **Submission in follow-up to HRC resolution 24/4 “The Right to Development”**

### China NGO Network for International Exchanges (CNIE)

The 15th session of the intergovernmental working group on the right to development hold from 12th to 16th in May, 2014 will continuously discuss the issue of revising attribute 2 and attribute 3 of the Right to Development Criteria and Operational Sub-criteria (A/HRC15/WG.2/TF/2Add.2). CNIE believes that the current standards in attribute 2 and attribute 3 have basically reflected the requirements clarified in The Declaration on the Right to Development (DRTD), but those standards still need to be improved to some extent in certain aspects. Specifically, those standards have not clearly clarified the core elements and principles of the right to development, and the responsibilities which the international community, especially the developed countries, should take to implement the right to development. Therefore, it is necessary to insist on three principles, in order to fulfill the standards in attribute 2 and attribute 3. Firstly, it is necessary to make a balance between “the right based development” and “the right to development.” Secondly, it is necessary to make a balance between “development as right” and “right as development.” Thirdly, it is also necessary to make a balance between international responsibility and domestic responsibility for implementing the right to development. Based on the three principles, the suggestions on improving and revising attribute 2 and attribute 3 of the Right to Development Criteria and Operational Sub-criteria are as following:

#### **Attribute 2: Participatory human rights processes**

##### **2(a) To establish a legal framework supportive of sustainable human-centered development**

##### **2(a) (i) Ratification of relevant international conventions**

###### **Suggestions:**

1. Change 2(a) (i) “sub-criteria” from “ratification of relevant international conventions” into “ratification of international legal documents on the right to development and relevant international conventions”
2. Change 2(a) (i) “indicators” into “certifying the promises to the right to development documented in Declaration on the Right to Development, Vienna Declaration and Programme of Action, the Resolution Concerning the Right to Development in 1979, Doha Round Negotiations, Monterrey Consensus, and other relevant international documents; evaluating the situations of different countries on ratifying and implementing A Guide to Implement the Right to Development, after such a guide has been made; ratifying the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and conventions relating to environment,

disadvantaged and marginalized populations and labour standards”

For the above mentioned changes, it is necessary to sort out the existing international legal documents relevant to development, include what can contribute to development, bring in “core elements of the right to development—equality in the opportunity of development and criteria of fair sharing of fruits of the development”, and reinforce the obligation of international community to developing countries for the following reasons:

(a). 2(a)(i) “the ratification of international conventions” and 2 (a) “2 (a) to establish a legal framework supportive of sustainable human-centred development” do not correspond or match completely. 2 (a) (i) “indicators”, in order to emphasize the observability, lists only six categories of existing international human rights instruments, most of which touch upon the right to development without covering the entire contents of the right to development, and most of which seem not to have any direct or practical relevance to the right to development, or more precisely, to its core elements - the development of equal opportunity, equal participation, and promoting the share of the achievements of development ( Declaration on the Right to Development section 1 ) - but only to drift away from them. (b) As for the scope, these six categories of instruments are basically limited within the range of State responsibility to their own people, leaving out the State responsibility to the international community and the responsibility of international community on the right to development. (c) If the above mentioned indicators (including the International Covenant on Civil and Political Rights, International Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights) in 2(a) are considered capable of covering the right to development, then the right to development and its framework can be replaced content wise by civil and political rights, economic, social and cultural rights; subject wise by special subjects such as children, the disabled and disadvantaged population, labour, etc.; norm wise, by the two conventions and conventions relating to environment and labour standards--which could easily lead to the denial of necessity of existence of the right to development and its independent status as a third-generation human right. (d) Since the goal of 2(a) is to “establish a legal framework” rather than repeating existing international conventions on human rights which failed and will not be able to solve the long existing problem of protecting and reinforcing the right to development, sticking to the existing international human rights conventions and trying to build a indicator system based on them makes not much sense. Instead, on this basis, further studies and new international legal instruments are needed. Before the Convention on the Right to Development is actually made, approved and ratified, I suggest making an Action Guideline for the Implementation of Declaration on the Right to Development, through which we detail and materialize the right to development into operable and measurable right, and include this guideline in the indicators.

**2(a) (iii) National legal protection of human rights**

Suggestions:

1. To change 2(a) (iii) “sub-criteria” into “National legal protection of the right to development” from “National legal protection of human rights”. While the right to development is a kind of fundamental human rights, but human rights, as a general expression of all kinds of human rights, is different from the right to development. Therefore, the sub-criteria should emphasize clearly the significance of the right to development rather than the generally-defined human rights in national development strategies, given the sub-criteria is highly relevant to the right to development.

2. To change 2(a) (iii) “indicators” from “Constitutional and legislative guarantees” into “Constitutional and legislative guarantees of the right to development”, the latter requires reviewing constitutional law to see if they contain provisions on equal development. Comparative study of constitutions or constitutional documents among 100 countries shows that there are some countries that affirmed the right to development or a strategy of equal development by means of constitutional principles or constitutional rules. Also, as an overall tendency in constitutional amendment, normative affirmation and protection of the right to development is expanding. (See Wang Xigen, *On the Legal Protection of the Right to Development*, China Renming Gonggan University Press 2002).

3. To change 2(a) (iii) “indicators” from “national human rights institutions protecting human rights” into “national human rights institutions evaluating and monitoring the implementation of the right to development”, so as to evaluate whether these institutions have the function of protecting the right to development and the actual performance. The establishment of a national human rights institution does not necessarily mean including responsibility on the right to development in their statutory duty, since it is possible that some countries hold indifferent attitude towards the right to development. We shall prevent an over-abstract human right approach because it dilutes and weakens the right to development.

4. To add one new indicator: “legal review and implementation mechanism of the right to development”. To construct a legal review system of the right to development, enable legal institutes to launch legal review on national development policies, action plans and projects to decide if they are beneficial or detrimental to the right to development, modify or abolish if latter.

**2(b) To draw on relevant international human rights instruments in elaborating development strategies**

Suggestions:

1. Change 2(b) “criteria” from “to draw on relevant international human rights instruments in elaborating development strategies” into “to draw on relevant

international devices about the right to development in elaborating development strategies”

### **2(b) (i) Human rights-based approach in national development strategies**

Suggestions:

1. Change 2(b) (i) “sub-criteria” from “human rights-based approach in national development strategies” into “human rights-based approach in national development strategies, which should especially emphasize the significance of equal development in national laws and policies about human rights”

2. Change 2(b) (i) “indicators” from “human rights in national development plans and PRSPs” into “the right to equal development in national development plans and PRSPs”

3. To delete “responsibility for extraterritorial infringement of human rights including by business enterprises” from 2(b) (i) “indicators”

Firstly, there are fundamental differences between the right to development and right-based development. One cannot measure the right to development simply by general civil and political rights as the former has its own emphasis on elimination of the developmental gap and unfairness. Secondly, the criteria system is for the right to development rather than human rights in general, so it should keep its focus on the elements of the right to equal development in development strategy documents instead of involving all human rights. Thirdly, the “responsibility for extraterritorial infringement of human rights including by business enterprises” and “Human rights-based approach in national development strategies” do not correspond, in the sense that to extraterritorial infringement of human rights including the ones by business enterprises is simply not a part of national development strategies. National development strategies are macro level protections of the right to development, while corporate responsibility matters on a micro level. They are mutually exclusive.

### **2(b) (ii) Human rights-based approach in policy of bilateral and multilateral institutions/agencies**

Suggestions:

1. Change 2(b) (ii) “sub-criteria” from “human rights-based approach in policy of bilateral and multilateral institutions/agencies” into “the right to development-based approach in policies of bilateral and multilateral institutions/agencies”

2. Change 2(b) (ii) “indicators” from “institutional policy on human rights; human rights impact assessments of WTO agreements and IMF and World Bank

programmes” into “institutional policy on the right to development; equal right to development impact assessments of WTO agreements and IMF and World Bank programs”

As mentioned above, the right to development cannot be replaced by human rights because they are not the same. Replacing the right to development with human rights in the indicators may dilute or weaken the special protection of the right to development. The right to development emphasizes fair and equal opportunities for development among subjects (nations, ethnics and individuals) in different stages or at different levels of development with the aim to eliminate the development gap between developed and developing countries, especially the least developed countries.

**2(c) To ensure non-discrimination, access to information, participation and effective remedies**

**2(c) (iii) Procedures facilitating participation in social and economic decision-making**

Suggestions:

1. Add another “sub-criterion” in 2(c) (iii), that is “the level and the quality of participation.” This “sub-criterion” should include the following two “indicators”:

One is “the quantitative analysis of participation”. The scope of this analysis includes economic, political, social, cultural, and ecological aspects of development process

Another is “the qualitative analysis of participation”, which includes the level and the quality of participation (i.e., the stability of participation mechanism, the representation of participants, and the effectiveness of participation consequences)

**2(c) (iv) Establishment of a legal framework supportive of non-discrimination**

Suggestions:

1. Add “old people, children, disabled people, unemployed people, people living in undeveloped areas, and people living below the line of poverty” after “women” in 2(c) (iv) “indicators”

2. Add “or religious belief, educational level, economic situation, social identity” after “regardless of race or ethnicity” in 2(c) (iv) “indicators”

3. Change “core human rights” into “the rights to equal participation, to promote development, and to share the achievements of development” in 2(c) (iv) “indicators”

These are criteria on the issue of equal participation. They should provide indiscriminate protection for all people in the world and not only for women in accordance with the equal protection clauses in the UN Charter and the Universal Declaration of Human Rights. Moreover, since it remains a problem for us to achieve agreement in the meaning and understanding of “core human rights”(while the Declaration on the Right to Development expressively provided the definition of the right to development), the criteria should be in accordance with what was provided by the declaration and emphasize that all subjects are indiscriminately entitled to the right to development rather than only to the so-called core human rights. Compared with the so-called core human rights, the right to development is unique. It can be defined in three aspects on the basis of which criteria can be determined: First, on the subject of right, not only all individuals but also all specific groups such as ethnic and racial groups enjoy the right to development. That is, in addition to the individual dimension, it has a collective dimension, which invests three kind of collective subjects including people living in specific areas especially the underdeveloped area, ethnic groups and racial groups. Second, on the object of right, the right to development can be embodied in five forms, including the right to political development, the right to economic development, the right to social development, the right to cultural development, and the right to sustainable development. The fact that it contains elements of civil and political rights does not mean that it equals or can be replaced by the latter. One of the greatest features of the right to development is that through a macro-comparison among subjects at different development levels, it enables the protection of undeveloped or developing subjects, with a core value of the equal opportunity of development. Third, on practical level, the right to development consists of three forms of practice—participation in development, promotion of development and sharing the outcome of development. This means that the evaluation of development should be comprehensive: not only evaluate if there is participation in the development process, but also the degree, consistency and sustainability of the participation, as well as the result or effect, i.e., if there is fair sharing of the fruits of development. In order to evaluate the extent of fairness and the its scope of the sharing of fruits of development among all mankind, reform of global distribution system and the evaluation of its actual effect should be included in the indicators.

#### **2(c) (vi) Indicators reflecting likelihood of differential treatment of marginalized groups**

Suggestions:

1. Add “including all citizens in marginalized areas, absolutely poverty-stricken population, and the vulnerable groups, such as migrant workers, urban poor, and unemployed people, who appear in the process of economic restructuring ”after “marginalized groups” in 2(c) (vi) “indicators”

2 (c) (vi) “Indicators reflecting likelihood of differential treatment of marginalized

groups” does not exhaust “marginalized groups”(see English version, endnote117). According to endnote 117, marginalized groups include ethnic group, racial group, women, disabled, aged, other identified groups), leaving out poor people who live in developed areas, people who live in marginalized areas such as desert and arid areas, people who live in ecologically or environmentally fragile areas (though they do not belong to ethnic minorities, women, the elderly or the disabled); it also leaves out the vulnerable populations due to social and economic restructuring such as rural migrant workers, urban poor and the unemployed. They are vulnerable groups and should become part of the focus of the protection of the right to development and to be included in assessment indicators. In addition to the macro dimension (international) and micro level (individual), the middle level (international region and national region) should also be taken into account when we consider the right to development of individuals. Moreover, the statistical methods and calculation standard of vulnerable populations should be improved. After calculating the whole sum of disadvantaged population, including ethnic minorities, indigenous people, women, the disabled, the elderly, the unemployed or laid-off workers, rural migrant workers, the poor, vulnerable groups in underdeveloped areas, etc., we have to deduct the overlap sections (such as poverty population among the unemployed, the disabled among women) and non-vulnerable populations in these group (such as self-made unemployed, migrant workers, ethnic minorities groups, women).

#### **2(c) (vii) Mechanisms for transparency and accountability**

Suggestions:

1. Add an “indicator” relevant to the “sub-criteria” of transparency, that is “the transparency of legislation and policy-making procedures of development, the transparency of administrative procedure, the transparency of judicial procedures and judgment”

The indicators in 2 (c) (g) “Mechanisms for transparency and accountability “are “Percentage of providers of core public services, whether public or private, for which there exist functional administrative or judicial means of complaint and remedy if standards are violated”, while there is no indicator that corresponds to “transparent” but only to “accountability”.

#### **2(d)To promote good governance at the international level and effective participation of all countries in international decision-making**

Suggestions:

Add 8 “sub-criterion” and corresponding “indicators” in 2(d), which include:

1. Add a "sub-criterion" of "consensus oriented,". It's corresponding "indicator" is "the democracy of international policy-making and action"
2. Add a "sub-criterion" of "participatory". It's corresponding "indicator" is "the level and the scope of the least developed countries and developing countries in participating international economic and social organizations"
3. Add a "sub-criterion" of "rule of law". It's corresponding "indicator" is "the regulation system and regulation implementation of international rule of law on the right to development"
4. Add a "sub-criterion" of "effectiveness and efficiency". It's corresponding "indicator" is "the comparison between the governance cost and the governance output of international economics and politics"
5. Add a "sub-criterion" of "accountability," It's corresponding "indicator" is "how to develop the responsibility mechanism of international development according to the current Convention mechanism, and how to perform policy accountability and moral accountability of the responsibility mechanism of international development"
6. Add a "sub-criterion" of "transparency". It's corresponding "indicator" is "the transparency of international policy-making, the transparency of development governance program, the transparency of development consequences"
7. Add a "sub-criterion" of "responsiveness". It's corresponding "indicator" is "the responsiveness and adjustment to the deterioration of development situation, the increase of development gap, and social and economic crisis"
8. Add a "sub-criterion" of "equitability and inclusiveness". It's corresponding "indicator" is "to improve international institutions, such as IMF, WTO, World Bank, WIPO, WHO, and to optimize the structure of international relations"

Compared with domestic governance, international governance standards are significantly weak. We shall establish international governance evaluation criteria according to the eight elements of good governance provided by United Nations. According to the UN, good governance has eight characteristics. Good governance is; Consensus Oriented; Participatory; following the Rule of Law; Effective and Efficient; Accountable; Transparent; Responsive; Equitable and Inclusive.  
(See <http://www.unescap.org/resources/what-good-governance>)

In short, quantity wise, the amount of criteria, sub-criteria and indicators should be increased. Statistics shows that: in attribute 2, only 1 out of 5 listed indicators involves international participation (2 (d)), while the other four are only about domestic participation; Among the total 17 sub-criteria, there are a total of 15



domestic sub-criteria, accounting for 88.2%, and only 2 international sub-criteria, accounting for only 11.7%; among the 33 indicators, 30 are domestic indicators (90.9%) and domestic indicators have only 3(9.1%). Quality wise, attention shall be paid to the quality and level of participation in international development process. I here suggest changing 2 (d) “to promote good governance at the international level and effective participation of all countries in international decision-making” into “to promote good governance at the international level and effective participation of all countries in the optimization and improvement of international relations”.

### **2(d) (i) Mechanisms for incorporating aid recipients’ voice in aid programming and evaluation**

Suggestions:

1. To add “the reasonability of assistance conditions, the voluntariness of accepting assistance, whether or not there exist assistance terms with unequal and harsh terms”

2 (d) (i) “Mechanisms for incorporating aid recipients’ voice in aid programming and evaluation” only provides “aid” and “participation” two sub-indicators. While in the right to development , the aid is only one of the elements of the realization among a series of content like trade, debt relief , poverty reduction. Moreover, the design of the indicator on aid is very limited as it only involves the percentage of aid provided by Paris Declaration indicator 4”, which is an indicator only on quantity, while the quality of the aid is not a less important issue. In order to ensure the fairness and equality of the aid and the people-centered sustainable development that is truly helpful for the aid recipients, it is necessary to increase the reciprocity in the conditions, fairness in sharing of the aid and to make sure that in the agreement there is no term that includes harsh conditions for the aid recipient.

### **Attribute 3: Social justice in development**

#### **3(a) To provide for fair access to and sharing of the benefits of development**

Suggestions:

1. Add “education, health care, housing, employment” before “income equality,” and add “developed areas-developing areas” after “social-economic status” in 3(a) (i) “indicators”

2. Add “public necessities equally benefiting disadvantaged social groups” after “public expenditures benefiting poor households” in 3(a) (ii) “indicators”

3. Add four “sub-criteria” and corresponding “indicators” after 3(a) (iv), which are:

3(a) (v) assistance, which includes following “indicators”: technology assistance, finance assistance, debt relief, percentage of official development assistance in the GDP of aid-giving nation and ratio of increasing or decreasing such assistance annually

3(a) (vi) sharing the achievements of cultural development, which includes following “indicators”: protection of cultural and national heritage (approving Concerning the Protection of the World Cultural and Natural Heritage), protection of intangible cultural heritage (approving Convention for the Safeguarding of Intangible Cultural Heritage), protection of life style and spiritual production, such as national language, press and publication, and so on

3(a) (vii) sharing the achievements of political development, which includes following “indicators”: the ratio of reaping benefits from internationally political new order, the percentage of reaping the least, the medium, and the most benefits from improved international political system, the percentage of the average index number in global governance

3(a) (viii) global distributive justice, which includes following “indicators”: the comparison between global income increase and national income increase, the development gap between the global average development level and the medium-developed country’s development level, the percentage of a nation’s poverty population in global poverty population, the increase or decrease range of marginalized population

### **3(b) To provide for fair sharing of the burdens of development**

Suggestions:

1. Add three “indicators” in 3(b) (i) “equitable sharing environment burdens of development.”

The first indicator is the ratio of natural resources consumption of domestic investment and overseas investment in that of overall national investment

The second indicator is the fair share of carbon emission between overseas-invested enterprise and domestic-invested enterprise (i.e., to share carbon emission according to the proportion of investment or profits of overseas-invested enterprise and domestic-invested enterprise)

The third indicator is the compensation for ecological protection

2. To add a “sub-criterion” and its corresponding “indicators” in 3(b) (ii) “just compensation for negative impacts of development investments and policies”

Specifically, the “sub-criterion” added here is the evaluation of the resource

distribution of economic development, which includes three “indicators”:

The first indicator is the wage gap between the cheap labor in developing countries and international labor standards

The second indicator is the price margin between the cheap natural resources in developing countries and international average price of such resources

The third indicator is the ratio of the market shares of developing countries and developed countries in a state or an area

3. To add a series of “indicators” of emergency management after “establishing safety nets to provide for the needs of vulnerable populations in times of natural, financial or other crisis,” which include a series of crisis warning and emergency management mechanisms on the issues of food, public health, drinking water, and debt crisis.

### **3(c) To eradicate social injustice through economic and social reforms**

Suggestions:

1. To move 3(c) (ii) and 3(c) (iii) to 2(a) (1)

These are not issues of social justice in the sharing of the fruits of development, but international legal instruments protecting human rights of special subjects, so they should be incorporated into 2 (a) (a).

Also, I suggest removing “sexual exploitation” from 2 (c) (ii) for it has no direct relationship with the right to development.

