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**FIFTH REPORT OF THE INDEPENDENT EXPERT ON THE RIGHT  
TO DEVELOPMENT, MR. ARJUN SENGUPTA, SUBMITTED IN  
ACCORDANCE WITH COMMISSION RESOLUTION 2002/69**

**Addendum**

**Mission to Sweden**

### **Executive summary**

This mission report is prepared in response to the request made by the Commission on Human Rights in its resolution 2002/69 asking the independent expert “to conduct an appraisal of country-specific studies relevant to the proposed operational model of his development compact, taking into account different national, regional and international frameworks including the New Partnership for Africa’s Development” (NEPAD).

It gives a summary of the main issues discussed during the meetings held in Sweden highlighting and clarifying at the same time some of the topics dealt with in the independent expert’s fifth report. It also compares, inter alia, the democracy- and human-rights based approach to development of the Swedish International Development Cooperation Agency (SIDA) with the independent expert’s development compact. Finally, it discusses NEPAD and its relationship to the development compact.

## **Introduction**

1. The Commission on Human Rights, in its resolution 2002/69, requested the independent expert “to conduct an appraisal of country-specific studies relevant to the proposed operational model of his development compact, taking into account different national, regional and international frameworks including the New Partnership for Africa’s Development”.

2. The mission to Sweden, undertaken during 2002, served the objective of elaborating upon the independent expert’s notion of a development compact and discussing country-specific development cooperation models within bilateral, national and multinational frameworks, such as the one adopted by the Swedish International Development Cooperation Agency, to assess their relevance to his proposed development compact and to compare the objectives and strategies for sustainable development contained in these frameworks with the principles and goals of the right to development and his proposed operational model.

3. The fifth report of the independent expert (E/CN.4/2002/WG.18/6) was also prepared in response to that request. It elaborates on the discussions of development cooperation policies and the details of his proposed operational model of a development compact contained in his fourth report. The fifth report refers in particular to international frameworks of development cooperation, such as the Poverty Reduction Strategy Paper (PRSP), the Comprehensive Development Framework (CDF), the Common Country Assessment (CCA) and the United Nations Development Assistance Framework (UNDAF). In addition, it focuses on the New Partnership for Africa’s Development (NEPAD). The independent expert compares those frameworks with the right to development framework, in particular in terms of its principles, notably participation, accountability, transparency, equity and respect for the principle of non-discrimination. He concludes that the right to development/development compact model can accommodate all the existing mechanisms and frameworks and shows that some of them can be extended and modified so as to incorporate the basic principles of his approach. He also stressed that the realization of all human rights must be central to development efforts. In addition, there must be an independent monitoring mechanism to monitor the performances of all the countries, the obligations of the developing countries and those of the international community. He finally discusses the possibilities for financing rights-based development.

### **The meetings held during the mission to Sweden**

4. During the mission to Sweden, the independent expert on the right to development met with representatives of the Ministry for Foreign Affairs, the Department for Global Development, the Department for Africa, the Director-General for Development Cooperation, SIDA, which organized a round-table meeting, and the Swedish NGO Foundation for Human Rights.

5. The discussions focused mainly on the legal status of the right to development and its value added, the beneficiaries and duty bearers as identified by the right to development, the development compact as a means to operationalize the right to development and its basic operational elements (which are: a rights-based development programme focusing on specific rights and poverty eradication; appropriate indicators and benchmarks for monitoring the status

of realization; and an appropriate monitoring mechanism), a fund for financing development compacts, NEPAD, and the appropriate forum for discussing rights-based development cooperation.

6. The mission was characterized by a frank, in-depth discussion about the proposals made by the independent expert to implement the right to development in practical terms. The discussions were not limited to the development compact, but addressed issues such as the legal status of the right to development, the lack of implementation so far, concern about international cooperation as a legal obligation, and the doubt about the Commission on Human Rights being the right forum for advocating a rights-based approach to development. A question was asked concerning the manner of funding the proposed model, in view of political constraints and reservations on the part from certain States.

7. The atmosphere was generally very receptive and participants were open to the ideas and proposals made by the independent expert. While not committing themselves to any of these, they were nevertheless prepared to further discuss and consider the proposals made.

8. The independent expert remarked that during earlier missions, there had been a clear difference between officials concerned with finance and development and those concerned with human rights, whereas during the present mission no such visible differences could be seen.

9. Attention was also drawn to a certain ambivalence between SIDA and the Ministry for Foreign Affairs: whereas the former was committed to a rights-based approach to development, the latter often did not fully take into account economic, social and cultural rights in their development activities.

10. Another issue raised concerned the relationship between existing development approaches and the development compact model. The independent expert noted that there was scope to adjust these approaches to make them compatible with the development compact model. In particular, the problem of limited civil society participation in current processes, for example in setting up PRSPs, could be solved within that model, since partnership, transparency and accountability were basic elements thereof.

11. The importance of economic growth for sustainable human development was also underlined. In that connection, it was pointed out that no proper development policy could be made without sound macroeconomic policies and a strategy for resource mobilization. The independent expert recalled that economic growth was necessary for relaxing resource constraints.

12. Since political constraints often circumscribed the discussions for many Governments in the working group, the independent expert also emphasized the role and importance of the NGO community and civil society in furthering the discussion on the right to development.

### **The legal status of the right to development and its value added**

13. The discussion on the question of the legal status of the right to development focused on the fact that the Declaration on the Right to Development was not a legally binding instrument and that international cooperation was only a political but not a legal commitment. In addition,

the question of jurisdiction concerning both State-State and State-individual relationships arose; a State cannot be accused of having violated human rights in a country where it was not present. On the contrary, many human rights violations occurred owing to the lack of political will by national Governments and it was doubtful whether a commitment such as the one proposed in development compacts would have the desired impact.

14. The independent expert underlined that the Declaration on the Right to Development, although not a legally binding treaty, could become customary law. In addition, it dealt with rights recognized in international conventions, which were therefore legally binding. It only dealt with all the rights together. That was also the reason why it might not be necessary to have a new convention. International cooperation was also included in other legally binding texts, like Articles 55 and 56 of the Charter of the United Nations. From a practical point of view, the independent expert argued that in a globalized world cooperation became more than a moral obligation.

15. The value added in the right to development approach, namely the integration of all rights into a composite right, a totality, qualitatively different from the individual constituent rights, was that it implied a specific process, programme or plan for its realization over a certain period of time. It also allowed for each person, or each member of a group, to claim this totality as a right.

#### **The beneficiaries and duty bearers of the right to development**

16. Concerning the right to development and its collective-right dimension, the independent expert distinguished between exercising and enjoying a right. A right could be exercised by groups and by individuals, but could be enjoyed only by individuals. This was due to the fact that only individuals, but not groups, could experience an increase in their welfare or well-being, since individual preferences could not be aggregated.

17. The independent expert noted that there were a multitude of duty bearers. The primary duty bearer for development, however, is the nation-State, which also had the duty to make sure that other duty bearers acted in compliance with those duties. Other duty bearers included multinationals, multilateral agencies and the international community. Although there was no right to development cooperation as such, there was nevertheless an obligation of the international community to assist in the realization of the right to development, if a State took the required steps and discharged its own responsibilities. In that context, it was mentioned that development cooperation consisted not only of development assistance but also included trade, market access, the debt problem, the technical divide and other forms of international exchange, depending on the situation of each individual country. Since development compacts were country specific, their constituent elements had to be made in accordance with the local demands and contexts.

#### **The development compact and a fund for financing for development**

18. In discussing the operational model of a development compact, the complementarity of the approach of SIDA and the right to development approach was highlighted. The independent expert noted that his proposal was not meant to replace existing initiatives and that it was possible to retain individual donorship. His proposal rather strove to complement existing initiatives in a constructive way. Significantly, SIDA is applying a democracy- and

human-rights based approach to development. Democracy and human rights are seen as two interdependent concepts. The models are developed by SIDA and the Ministry for Foreign Affairs together and are based on the principles of integrating a human-rights based approach into development, with the individual person as the centre of the development process and the nation-State as the main responsible entity. The added value of such an approach is seen in achieving a shared pool of values, a clear division of responsibility, a participatory process, a holistic view of the individual person's problems and potential as well as of the power relationships and structures in society, an analytical tool, and a measuring instrument and indicator. Its aim as well as its effect is democratization. It reveals power structures affecting the poor, and it provides standards and uncovers discrimination.

19. However, the development compact model would require institutionalized international donor cooperation to channel aid in an integrated effort. SIDA noted that it used "silent partnerships" for some projects, acting together with other donors, and also participated in the "fast track initiative", led by the World Bank, to accelerate implementation, in cooperation with a number of donors.

20. Further discussion concerned the funding model for development compacts. The independent expert, introducing the notion of a fund for financing development compacts, highlighted that this fund would consist of callable contributions of up to 0.7 per cent of gross national product. Funds would be made available only if a candidate country had fulfilled all the self-imposed conditionalities under the development compact model. When a country succeeded in fulfilling these conditionalities, they could request to a pro rata distribution of funds. The rights and related obligations would already have been accepted by the countries concerned, which had adhered to one or several international human rights instruments. The independent expert also pointed to the enormous impact on developing countries which such a commitment would have and that what was required was a clear commitment by the international community. Such a commitment would also imply a guarantee that the process would be kept on track.

21. Scepticism and fears concerning the misuse of funds could be countered by a strong monitoring mechanism, which should be an independent national adjudicating (quasi-judicial) body, established in accordance with the Paris Principles. All stakeholders, the international community, individuals and the civil society should have the possibility of making complaints, but the mechanism should decide whether the commitments undertaken by both the donor and developing countries had been complied with.

### **New Partnership for Africa's Development (NEPAD)**

22. During the mission the independent expert discussed the NEPAD initiative with the representatives from the Department for Africa. While generally welcomed as a good initiative, it was also pointed out that so far it was only an outline. Though the first steps had been taken, like the establishment of a Peace and Security Council and the African Peer Review Mechanism (APRM), a detailed plan for implementation was required and the APRM had to be strengthened. The need for an independent secretariat and for indicators to measure the compliance with and impact of certain measures was also pointed out. Other critical issues mentioned were prioritization and the increase in membership of the implementation committee to 20 members. The Department indicated its readiness to support regional cooperation in Africa. Another focus of its activities was at the national level and PRSPs were vital in that context.

23. The independent expert characterized NEPAD as a perfect test case, an initiative containing all the elements for a development compact, and the international community should be ready to assist. He agreed that the APRM needed to be strengthened; any monitoring mechanism had to comply with the principles mentioned above.

### **The appropriate forum for discussion**

24. It was important that the forum in which the discussion was taking place be the appropriate one. Significantly, the Commission on Human Rights was not considered the best forum for promoting the contents of what could be included in a development compact. In particular, it was considered less constructive than other forums for the purpose of advocating a rights-based approach to development, which was better promoted in development forums.

25. The independent expert suggested that willingness to talk about and support the rights-based approach to development in other forums should also imply support for it in a human rights forum.

### **Conclusions**

26. The similarities of and complementarity between the democracy and human rights approach advocated by SIDA and the right to development/development compact approach were highlighted; nevertheless, some differences remained, such as the need for coordinated action by all donor countries. The need for one or several countries to take the lead in that respect was emphasized and a donor meeting to further discuss the development compact idea was suggested.

27. In the view of the independent expert, the following proposals merit further consideration:

(a) A meeting of donors should be organized to further discuss the development compact idea;

(b) Prior to that meeting, a working group of experts from bilateral donor and multilateral financing agencies and from the human rights institutions should be convened to concretize the proposal for development compacts, the principles of burden-sharing and the methods of evaluating whether the human rights obligations had been fulfilled;

(c) One or several donor countries needed to take the lead in adopting the development compact model and urging others to follow.

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