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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING;
THE RIGHT TO DEVELOPMENT

Report of the open-ended Working Group of Governmental Experts
on the Right to Development

Vice-Chairman Rapporteur: Mr. Kantilal Lallubhai Dalal (India)

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I. INTRODUCTION

1. By its resolution 36 (XXXVII) of 11 March 1981, the Commission on Human Rights decided to establish a Working Group composed of 15 governmental experts appointed by the Chairman of the Commission, taking into account the need for equitable geographical distribution. The Economic and Social Council, in its decision 1981/149, approved the Commission's decision to establish such a Working Group.
2. The Working Group was instructed to study the scope and content of the right to development and the most effective means to ensure the realization, in all countries of the economic, social and cultural rights enshrined in various international instruments, paying particular attention to the obstacles encountered by developing countries in their efforts to secure the enjoyment of human rights.
3. In 1984, the Group adopted a report contained in document E/CN.4/1985/11 which was submitted to the Commission on Human Rights at its forty-first session. The Commission, after taking note of the report, decided, by its resolution 1985/43, to transmit that report to the General Assembly through the Economic and Social Council, so as to enable the Assembly to adopt a declaration on the Right to Development.
4. In 1986, the General Assembly, by its resolution 41/128, proclaimed and adopted the Declaration on the Right to Development. The General Assembly also adopted resolution 41/131 entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms", in which it welcomed the decision of the Commission, in its resolution 1986/16 on the future work of the Working Group, and requested the Secretary-General to transmit to the General Assembly at its forty-second session a report containing information on the progress made by the Working Group in the accomplishment of its tasks. In addition, the Assembly adopted resolution 41/133 entitled "Right to development". At its tenth session held from 5 to 20 January 1987 at Geneva, the Group adopted its report (E/CN.4/1987/10) which was submitted to the Commission on Human Rights at its forty-third session.
5. At its forty-third session, the Commission on Human Rights, after taking note of the report, by its resolution 1987/23, requested the Secretary-General to circulate the Declaration on the Right to Development to all Governments, United Nations organs and specialized agencies and other governmental and non-governmental organizations, and to invite them to offer their comments and views on the subject of the implementation of the Declaration. By the same resolution, the Secretary-General was also requested to take the necessary steps to ensure that an analytical compilation of all replies received was circulated to Governments and other interested parties well in advance of the next meeting of the Working Group.
6. In 1988, the Commission, by resolution 1988/26, took note of the report of the Working Group and requested the Secretary-General to circulate it to all Governments, United Nations organs and specialized agencies and other governmental and non-governmental organizations, in all the official languages

of the United Nations, drawing their attention to the compilation of replies (E/CN.4/AC.39/1988/L.2) and inviting them once more as a matter of urgency and high priority to offer their comments and views on the subject of the implementation and further enhancement of the Declaration on the Right to Development. In addition, the Commission decided to convene the Working Group on an open-ended basis during the last week of January 1989. It also directed the Working Group to study, at its twelfth session, the analytical compilation, if necessary together with the individual replies themselves, and to submit to the Commission, at its forty-fifth session, its final recommendations as to which proposals would best contribute to the further enhancement and implementation of the Declaration on the Right to Development, at the individual, national and international level, and especially as to the views of the Secretary-General and Governments on how an evaluation system on the implementation and further enhancement of the Declaration on the Right to Development could be set up. It also decided that, at its forty-fifth session, on the basis of the consideration of the report of the Working Group and the views expressed by the members of the Commission at the session, a decision would be taken on the further course of action in the matter, in particular on practical measures for the implementation and enhancement of the Declaration.

Composition of the Working Group and its Bureau

7. At its twelfth session, the composition of the Bureau of the open-ended Working Group of Governmental Experts was composed as follows:

Chairman: Mr. Alioune Sene (Senegal)

Vice-Chairmen: Mr. Kantilal Lallubhai Dalal (India)
Mr. Julio Heredia Pérez (Cuba)
Mr. Danilo Türk (Yugoslavia)

Rapporteur: Mr. Kantilal Lallubhai Dalal (India)

Dates of sessions

8. The Working Group held its twelfth session from 23 to 27 January 1989 at Geneva, and adopted its report on 10 February 1988.

Attendance

9. Representatives of the following States and non-governmental organizations attended the session:

(a) States: Algeria, Austria, Benin, Brazil, Bulgaria, Cameroon, China, Cuba, Egypt, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, Ghana, India, Iraq, Ireland, Italy, Libyan Arab Jamahiriya, Morocco, Netherlands, Nigeria, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Senegal, Syrian Arab Republic, Union of Soviet Socialist Republics, Venezuela;

(b) Non-Governmental Organizations: Baha'i International Community, Friends World Committee for Consultation, Indigenous World Association, International Commission of Jurists, International Council of Jewish Women, International Council on Social Welfare, World Federation of Methodist Women.

Organization of work

10. At its twelfth session, the Working Group held five plenary meetings as well as a number of informal meetings.

11. The Working Group had before it the following documents: the provisional agenda (E/CN.4/AC.39/1989/L.1) and the analytical compilation of comments and views on the implementation of the Declaration on the Right to Development prepared by the Secretary-General (E/CN.4/AC.39/1989/1). The additional replies received from Governments, United Nations organs and specialized agencies, governmental and non-governmental organizations were made available to the Working Group.

II. WORK OF THE GROUP AT ITS TWELFTH SESSION

12. Pursuant to the directives contained in General Assembly resolution 43/127 and in Commission on Human Rights resolution 1988/26, the Working Group, at its twelfth session, was entrusted with studying the analytical compilation, if necessary together with the individual replies themselves, of comments and views offered by Governments, United Nations organs and specialized agencies and other governmental and non-governmental organizations on the subject of the implementation of the Declaration on the Right to Development. On the basis of the study of the analytical compilation prepared by the Secretary-General of all replies received, and the individual replies themselves, the Working Group was asked to work out and submit to the Commission, at its forty-fifth session, its recommendations as to which proposals would best contribute to the further enhancement and implementation of the Declaration, at the individual, national and international levels. The Working Group was also requested to submit its further recommendations to the Commission on practical measures to implement the Declaration, including specific proposals concerning future work.

13. The twelfth session of the open-ended Working Group on the Right to Development was opened by its Chairman, Mr. Alioune Sene (Senegal). The Under-Secretary-General for Human Rights and Director-General of the United Nations Office at Geneva, Mr. Jan Martenson, made an introductory statement. The Working Group also heard statements by its Vice-Chairman/Rapporteur, Mr. Kantilal Lallubhai Dalal (India), and its Vice-Chairmen, Mr. Julio Heredia Pérez (Cuba) and Mr. Danilo Türk (Yugoslavia).

III. COMMENTS AND VIEWS ON THE ANALYTICAL COMPILATION

14. A number of experts considered the analytical compilation a good basis for its work. It reflected that, although the Declaration on the Right to Development was not adopted by consensus, there was a growing trend towards a convergence of views on the implementation of the Declaration. The experts welcomed the work done and the efforts made by the Secretariat. A number of experts also noted that the analytical compilation also reflected the improved international political climate of the past year.

15. During consideration of the analytical compilation prepared by the Secretary-General under Commission on Human Rights resolution 1988/26 and General Assembly resolution 43/127, a few experts noted that a significant number of Governments, United Nations organs and specialized agencies and other governmental and non-governmental organizations had still not heeded the renewed request by the Secretary-General to offer their comments and views on the implementation of the Declaration. The Secretary-General was therefore requested to continue his efforts in that regard.

16. Members of the Working Group welcomed the views of the Chairman of the Working Group (see annex II).

IV. SUMMARY OF VIEWS EXPRESSED REGARDING THE RECOMMENDATIONS OF THE WORKING GROUP

17. A number of experts stressed that the mandate of the Working Group was to study the analytical compilation and formulate final recommendations relating to the further enhancement and implementation of the Declaration on the Right to Development and an evaluation system on the implementation and enhancement of that Declaration.

18. It was suggested that greater publicity should be given to the Declaration, so that its concept and definition could receive wider recognition at national and international levels.

19. It was stressed that increased efforts should be made for a more effective co-ordination of United Nations activities in development and human rights.

20. Various delegations proposed that seminars or training courses, including issues related to the right to development, should be organized under the United Nations advisory services programme. In this respect, the suggestion was made that consideration be given to organizing a seminar on women and development in rural areas in 1990 or 1991.

21. A number of experts suggested that global consultations should be initiated involving an exchange of views to enhance awareness of the Declaration.

22. Several delegations endorsed the suggestion concerning the preparation of a bibliography dealing with the right to development and topics relating thereto.

23. The opinion was advanced that there was a need for elaboration of a compendium on the Declaration on the Right to Development which would draw upon provisions of other international instruments and national measures already in force and giving effect to the provisions of the Declaration. In that connection, it was suggested that the compendium should also include court decisions invoking the provisions of the Declaration. Some members referred to cases in which actions at the individual, group, national and international level had drawn support from the provisions of the Declaration.

24. On the implementation of the Declaration and the evaluation system, it was suggested that an appropriate questionnaire should be prepared and addressed to Governments.

25. In the view of some experts, in formulating recommendations, account should be taken of the obstacles affecting the realization of the right to development, such as impediments to the right to self-determination, gross violations of human rights, the external debt problem and the related issues of the establishment of a new international economic and humanitarian order. In that connection, it was pointed out that international co-operation, international peace, security and disarmament would greatly contribute to the realization of the right to development. It was also pointed out that the right to development involved the participation of all of the partners concerned.

26. Some members of the Working Group made a number of proposals on the evaluation system for the enhancement and implementation of the right to development. These proposals included continuance of the open-ended Working Group meeting during or prior to the session of the Commission on Human Rights and/or allocation of a specific number of days during the session of the Commission exclusively to the evaluation of measures for enhancement and implementation of the right to development.

27. Some members advocated that the recommendations of the Working Group should include a programme of activities within a time frame.

V. RECOMMENDATIONS

28. The Working Group recommends that it is now opportune and desirable to elicit from Governments, United Nations organs and other bodies more specific views on the concrete ways and means to implement the Declaration through a questionnaire. An illustrative list of points which can be included in the questionnaire is contained in annex I to the present report. The Secretary-General should transmit this questionnaire to Governments and organizations concerned as soon as possible.

29. The Working Group recommends that the right to development be fully integrated with other human rights in the World Public Information Campaign for Human Rights to be launched in 1989.

30. The Working Group further recommends that the Advisory Services Section of the Centre for Human Rights also include the right to development in its programme of activities.

31. In implementing the right to development, special attention should be given to the situation of vulnerable groups. In view of the fact that women continue to suffer innumerable obstacles and discrimination in the full exercise of their human rights, including the right to development, the Working Group recommends that urgent and energetic efforts should be made in order to enhance the content of the right to development, especially regarding the participation of women at local, regional and national levels.

32. The examination of replies received from an increasing number of Governments indicates that some of the constitutional and legislative provisions, judgments and different judicial organs and various executive measures anticipate provisions of the Declaration on the Right to Development. Furthermore, a few cases have emerged in which actions at individual, group and national levels have resulted in ensuring that the development process protects and safeguards human rights and vice versa. Information relating to these areas needs to be collected by the Secretary-General and disseminated to the Commission on Human Rights on a continuing basis. The Working Group recommends that the Secretary-General be invited to prepare, on a continuing basis, an analytical compendium containing provisions of national laws and administrative and judicial measures which implement the provisions of the Declaration.

33. The Working Group recommends that, in order to strengthen the implementation of the Declaration, the Secretary-General should be urged to increase contacts, collaboration and co-ordination with all interested non-governmental organizations, and particularly those active in the field of human rights and in the field of development. Those non-governmental organizations should be encouraged to play a greater role in generating active participation and involvement of individuals and groups, especially youth, women and labour, in the process of implementation of the Declaration.

34. The Working Group reiterates the step-by-step approach and implementation of the provisions of the Declaration in stages already recommended in its last two reports (E/CN.4/1987/10 and E/CN.4/1988/10). These reports also list several specific recommendations, both short-term and long-term. The Working Group especially reiterates its recommendations relating to the dissemination of general information on the nature and content of the right to development and the organization of educational and research activities to familiarize all countries with the provisions of the Declaration. It also reiterates that special publications could be prepared such as a glossary of published research works on the right to development.

35. The Working Group recommends to the Commission on Human Rights that it request the Secretary-General to explore possibilities of initiating consultation and an exchange of views with experts eminent in development and human rights areas, including experts from the United Nations and non-governmental organizations to enhance awareness and implementation at individual, national and international levels of the provisions of the Declaration. The Working Group recommends that the Commission invite the Secretary-General to organize, if possible in 1989, a global consultation on the realization of the right to development involving representatives of the United Nations system and its specialized agencies, regional intergovernmental organizations and interested non-governmental organizations, including those active in development and human rights, to focus on the fundamental problems posed by the implementation of the Declaration, the criteria which might be used to identify progress and possible mechanisms for evaluating such progress. The Commission could request the Secretary-General to prepare suitable background documents to assist the global consultation in its deliberations. The organizations of the United Nations system, regional intergovernmental and the non-governmental organizations concerned could be

invited to give high priority to their preparation for and participation in the global consultation. The Secretary-General could be requested to present the report on the global consultation, if possible to the Commission on Human Rights at its forty-sixth session. In the view of the Working Group this recommendation will contribute to the evolving of an evaluation system for enhancement and implementation of the right to development.

36. The Working Group reiterates its previous recommendation that there is a need for continuing evaluation mechanisms; as the Declaration on the Right to Development is of very recent origin, its place in the family of human rights and development processes needs to be promoted, encouraged and strengthened.

37. The Working Group recommends that the Commission on Human Rights should continue to consider the question of the right to development as a matter of high priority, under a separate item on its agenda as of its forty-sixth session.

VI. ADOPTION OF THE REPORT

38. At its 5th meeting on 10 February 1989, the open-ended Working Group of Governmental Experts on the Right to Development adopted the present report.

Annex I

ILLUSTRATIVE LIST OF POINTS TO BE INCLUDED IN A QUESTIONNAIRE ON THE
REALIZATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Should the Commission on Human Rights decide to propose to the Economic and Social Council that States should periodically (triennially or quinquennially) report on the implementation of the Declaration on the Right to Development it might take into account the following types of questions:

1. Which are the essential elements of the content of the right to development in the context of the domestic socio-political and legal system (art. 1).
2. Which are the essential features and objectives of the domestic development model and which are the main difficulties (domestic and international) encountered in the process of its realization (arts. 1 and 2).
3. How is the duty of States to formulate appropriate development policies (art. 2, para. 3) being carried out and which are the main difficulties (domestic and international) in this process.
4. What are the main instruments guaranteeing equality of opportunity for all individuals in their access to basic resources and services (art. 8) and to the benefits resulting from development.
5. What steps are being taken to eliminate obstacles to the realization of the right to development, resulting from failure to observe civil and political rights as well as economic, social and cultural rights (art. 6, para. 3, as well as arts. 2, 3 and 5).
6. What steps are being taken to encourage popular participation in all spheres (art. 8, para. 2).
7. What steps should be taken to give effect to the provisions of article 4 of the Declaration relating to the duty of States to formulate international development policies with a view to facilitating the full realization of the right to development.
8. What steps are being taken to contribute to the strengthening of international peace and security and particularly to the reduction of military spending (art. 7).
9. What steps are being taken domestically to secure the full exercise and progressive enhancement of the right to development (art. 10).
10. What steps should be taken at the international level to ensure the full exercise and progressive enhancement of the right to development (art. 10).
11. What steps have been taken or are proposed in respect of recommendations made in the reports of the Working Group of Experts on the Right to Development.

Annex II

A. VIEWS SUBMITTED BY MR. ALIOUNE SENE, CHAIRMAN OF THE
OPEN-ENDED WORKING GROUP OF GOVERNMENTAL EXPERTS ON
THE RIGHT TO DEVELOPMENT, CONCERNING THE IMPLEMENTATION
OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Document E/CN.4/AC.39/1989/1 is an analytical compilation of the comments furnished by States, international organizations and non-governmental organizations on the implementation of the Declaration on the Right to Development. The text prepared by the Secretariat thus underscores the contribution made by the Declaration to the international instruments relating to human rights and fundamental freedoms. It might be well to recall that the right to development is the capacity recognized to each individual, to each people and to each group of being able to accede to greater well-being and dignity in respect for freedom and for justice. The right to development has therefore an individual and collective dimension and it originates in the principles of the Charter of the United Nations and other relevant international instruments relating to human rights, namely, the covenants and agreements on civil and political rights and on economic, social and cultural rights.

Consequently, the implementation of the Declaration on the Right to Development implies the realization and enjoyment of those individual or collective rights which are interdependent and indivisible since the human person is their central subject, active participant and authentic beneficiary, in other words, the absolute finality. Moreover, the right to development is geared to a political demand for international co-operation and universal solidarity whose purpose is the common good, or, the material prosperity of individual freedom and social and cultural progress. In other words, the real basis of the right to development finds its justification in the obligation to demonstrate solidarity, the lack of which might be fatal to the survival of mankind.

It is appropriate to recall that Article 1 of the Charter makes it a priority of the United Nations "to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character". Similarly, in Article 55 of the Charter the basis of peace is "higher standards of living, full employment and conditions of economic and social progress and development".

In 1919, the Constitution of the International Labour Organisation affirmed that universal and lasting peace can be established only if it is based on social justice. This is the reason why the seventy-fifth session of the International Labour Conference took as its theme "Human Rights. A common responsibility" since everyone is aware that destitution and poverty breed political disorder and unrest. Indeed, the implementation of the Declaration on the Right to Development means a better life, collective security, the end and means of a peaceful international society.

In addition to its role of safeguarding peace and security, the United Nations also has an obligation to establish a new international order that is consonant with justice and to promote in the regions of the world respect for the rights of people and human rights, as prerequisites for development.

Today, these problems occur in the institutional context at the level of the rationalization and co-ordination of the decision-taking machinery and the organs responsible for monitoring the implementation of international commitments undertaken in matters of development co-operation. This is because the world in which we live is changing radically and economic difficulties are calling into question the survival of mankind in the face of the major global challenges of our time.

The Declaration on the Right to Development teaches us the need for a shared responsibility, a system of partnership, a moral contract for deploying concerted efforts to combat poverty and destitution, illiteracy and disease thanks to the phenomenal discoveries in science and technology amassed by human knowledge.

The negotiations on which the fate of the developing countries today depends should be seen in this perspective, regardless of whether they related to financing, currency or development aid, access to sources of capital, transfers of technology, commodity prices, trade, the debt crisis, structural adjustment and so on, all based on sovereign equality and independence, mutual interest and reciprocal advantage, respect for human rights and for the cultural identity of the nations involved.

We must also be attentive to the main ideas that guide or influence the history and moral code of the contemporary era in order to take part in the wide-ranging deliberations on questions of food, non-renewable natural resources, health, education, culture, employment, telecommunications, technology, environment, the seabed, space, disarmament, genetic manipulation, drugs, as well as the problems of organizing State institutions, the management of the economy of public and private enterprises, participation in democratic life, the fulfilment of human rights and, in particular, the role of women in development. These are all issues which impinge on the right to development and on which the specialized agencies of the United Nations, intergovernmental institutions, non-governmental organizations, the United Nations university and the international scientific community are able to make a continuing and unique contribution as in the case of the working paper before us.

This consolidated document undoubtedly makes it possible to give further consideration to and identify the components that are able to determine the rules of the right to development, its scope and its content, its purpose and its basis, its legal nature and its finalities. The object of this exercise is to publicize the Declaration on the Right to Development so as to make it more credible, better understood and more universal by seeking the accession of all on a basis of consensus.

In this connection, attention should be drawn to the distinguished contribution made by the Nobel Peace Prize winners who, meeting in Paris, January 1988, exchanged views on the anguish and uncertainties overshadowing civilization and development on the eve of the third millenium. The obstacles to the harmonious development of mankind include the upsurge in racism, apartheid, poverty and destitution, illiteracy, economic imbalances in international relations, ideological and religious intolerance. Other threats that hang over the contemporary world are the arms race, wars and violence, a nuclear holocaust, the deterioration of the environment and the ecological balance, natural disasters and larger-scale violations of human rights.

However, the promises of tomorrow's civilization, namely, of development, are progress in science and technology, the dissemination of knowledge and cultural values thanks to the powerful information and communications media which make for exchanges among men, cultures and economic products.

In conclusion, I recommend that you should read the book entitled Promesses et menaces à l'aube du XXIème siècle, published by Editions Odile Jacob in association with the Edition Le Seuil, which summarizes an informative and concise debate that transcends differences of nationality, ideology and belief but which is thought-provoking at the global level on major issues relating to our destiny.

This ideal of humanism, progress and tolerances characterizes the discussions of men and women, scholars, writers and humanitarian activists who express with passion and lucidity their concern about the future of the planet and their wish to build a more just, more fraternal and more prosperous world that measures up to the meaning we give to the right to development.
