Benefit Sharing and Human Rights

Right to development

Working Group on the Right to Development

UN Declaration on the Right to Development (1986)

Article 2.3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

1996 – Report of the Working Group on the Right to Development – E/CN.4/1998/24

Participation also implies fair distribution of the results of development among all those who have participated in it. Thus participation both precedes and follows development maximum as development should benefit from the participation of one and all and they, in return, should enjoy its benefits.

As pointed out in the report on the Global Consultation, the position may be summed up by stating that the right to development includes: the right to effective participation in all aspects of development and at all stages of the decision-making process; the right to equal opportunity (in) access to resources; and the right to fair distribution of the benefits of development.

2006 – Report of the Working Group on the Right to Development – E/CN.4/2006/26

The Working Group recommends that the following criteria be applied to the periodic evaluation of global partnerships as identified in Goal 8 from the perspective of the right to development: (d) The extent to which policies supported by a partnership ensure the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom, as required by article 2, paragraph 3, of the Declaration on the Right to Development.

2007 – Report of the Working Group on the Right to Development – A/HRC/4/47

Outcome (m) The extent to which policies supported by a partnership ensure the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free, and meaningful participation in development and in the fair distribution of the benefits resulting therefrom, as required by article 2, paragraph 3, of the Declaration on the Right to Development.

2012 – Report of the Working Group on the Right to Development – A/HRC/21/19

[the criteria] decision-making; promote good governance and respect for rule of law at the national level; provide for fair access to and sharing of the benefits of development; provide fair sharing of the burdens of development; and eradicate social injustices through economic and social reforms. Comments and drafting suggestions would be included in a conference room

Intergovernmental Group of Experts

1997 – Progress report of the Intergovernmental Group of Experts – E/CN.4/1997/22

Measures should be instituted to ensure the trading system does not lead to inequitable or more inequitable distribution among countries of benefits from development. In particular, measures should be instituted to ensure that less economically developed countries do not suffer losses from trade rules. The effects of trade rules on equity and on development prospects and options (especially of developing and the least developed countries) should be studied and, if necessary, the rules should be adapted to enable realization of the right to development. Concerns relating to social development, equity and the realization of the right to development should be major aspects in the design of present and future international trade rules.

Secretary General

1999 – The Right to Development Report of the Secretary-General – E/CN.4/1999/20

The international trading system should be reformed in a way not to lead to inequitable distribution of development benefits among countries. In particular, measures should be taken to ensure that the less economically developed countries do not suffer losses from the rules and regulations governing international trade. These rules should be adapted as necessary to enable the realization of the right to development.

2000 – Fifty-fifth session. Item 116 (b) of the provisional agenda. Note by the Secretary General – A/55/306

In the 1999 report, a programme for realizing the right to development was suggested (E/CN.4/1999/WG.18/2, paras. 57–80), and the working group may wish to consider it in detail. There may be other programmes that the working group may wish to examine. But in all these exercises, it is necessary to appreciate the basic characteristics of any programme for realizing the right to development as a right and to ensure that the principles of human rights (equality, non-discrimination, participation, etc.) in implementing the overall plan and realizing individual rights must be carried out according to the human rights approach to development, that is, with transparency, accountability and in a non-discriminatory and participatory manner and with equity and justice. In practice, this means with schemes formulated and implemented at the grass-roots level with the beneficiaries participating in the decision-making and implementation, as well as sharing equitably in the benefits.

The formulation and implementation of all the policies in the programme must be based on a human rights approach maintaining transparency, accountability, participation and non-discrimination with equity in decision-making and in sharing the benefits or, in short, through the empowerment of the poor beneficiaries.

The human rights approach, where the beneficiaries are empowered to participate in the decision-making and in executing the different schemes, transparently and accountably, and sharing the benefits equitably, is not just an end in itself, helping to realize the human right to development.

2001 – Report of the Secretary-General – A/56/256

Obstacles at the international level include: (c) Unequal distribution of the benefits resulting from globalization and economic interdependence, which have not reached all countries, communities and individuals. These benefits are increasingly beyond the reach of some countries, the least developed and African countries in particular.

2012 – Consolidated report of the Secretary-General and the UN High Commissioner for Human Rights on the right to development – A/HRC/21/28

Realizing the right to development of persons with disabilities requires the adoption of a human rights–based approach to disability that respects their active, free and meaningful participation in development, the fair distribution of resulting benefits, and their inclusion in society on an equal basis with others.

Independent Expert Reports

1999 – Second Report of the independent expert on the right to development – E/CN.4/1999/WG.18/2

There has to be equal opportunity of access to resources and a fair distribution of the benefits and full respect for human rights.

Regarding these three basic rights, it may be necessary to spell out the elements of the rights approach in greater detail, especially regarding the participation and the equitable distribution of benefits.

2001 – Third report of the independent expert on the right to development – E/CN.4/2001/WG.18/2

In the independent expert's approach to the realization of the right to development the obligation to facilitate the rights-holders' realizing of their claims falls not only on States nationally and internationally, but on international institutions, on the civil society, and on any body in the civil society in a position to help. NGOs are one constituent of civil society that can and has often played a very effective role in the implementation of human rights. Indeed, when the rights are to be realized through participation in development and through fair and equitable sharing in the decision-making and benefits-sharing with accountability and transparency and in a widely decentralized manner, NGOs may have to play an even more crucial role in monitoring the programmes and delivering the services and may often replace the existing bureaucratic channels of administration.

In a human rights framework such international cooperation should not only be transparent and non-discriminatory but also equitable and participatory, both in the decision-making and in the benefits-sharing.

2002 – Fourth report of the independent expert on the right to development – E/CN.4/2002/WG.18/2

The right to development essentially integrates the human development approach into the human rights–based approach to development. It goes beyond accepting the goals of development in terms of human development and assessing the different forms of social arrangement conducive to those outcomes in terms of these goals of development. It converts those goals into rights of individuals and, in the process, identifies duty bearers (rights-holders) in connection with those rights. It also sets as the core components of all the well-being and freedom with equity in the basis of their active, free and meaningful participation and the fair distribution of benefits resulting therefrom.

When questions of sharing those benefits were discussed, the human rights concern was expressed in terms of "fairness" and of being "equitable and just", but not of absolute equality.

Commission on Human Rights

2001 – Commission On Human Rights Fifty-Seventh Session – E/CN.4/2001/SR.17

It was proving very difficult to harness such powerful forces as the technological revolution, liberalization and globalization and use them to achieve peace and development for all. Economic inequalities had grown in recent years and everything seemed to indicate that the poor would continue to be poor and the principles of the right to development would be largely forgotten. Such inequalities were perhaps the clearest sign that market growth alone could not ensure the fair distribution of economic benefits, which could be achieved only by taking joint action specifically for that purpose.

2002 – Commission on Human Rights resolution – E/CN.4/RES/2002/24

The inextricable link between full respect for the rights contained in the International Covenant on Economic, Social and Cultural Rights and the process of development, the central purpose of which is the realization of the potentialities of the human person with the effective participation of all members of society in relevant decision-making processes as agents and beneficiaries of development, as well as with a fair distribution of its benefits.

High Commissioner for Human Rights

2002 – Report submitted by the High Commissioner for Human Rights – E/CN.4/2003/25

The General Assembly underlines that social development requires not only economic activity, but also reduction in the inequality in the distribution of wealth and more equitable distribution of the benefits of economic growth within and among nations, including the realization of an open, equitable, secure, non-discriminatory, predictable, transparent and multilateral rule-based international trading system, maximizing opportunities and guaranteeing social justice, and recognizing the interrelationship between social development and economic growth.

They further recognize that while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed.

Effective poverty reduction and equitable access for everybody to the benefits of economic growth are not just a moral imperative, but also a precondition for sustainable growth.

2008 – Note by High Commissioner for Human Rights: Implementation Of General Assembly Resolution 60/251 – A/HRC/4/8

The world has become more globalized and the interaction between international actors is more rapid, so there are new challenges to be faced. The benefits and burdens of this global world are not evenly distributed and, without wishing to say that globalization has a detrimental impact on the world, it does produce some negative effects. The world needs a fairer distribution of the benefits of globalization. Furthermore, globalization has also rendered the interaction between international actors more and more interdependent.

High Level Task Force on Implementation of the Right to Development

2009 – Report of the high-level task force on the implementation of the right to development – A/HRC/12/WG.2/TF/2

Right to development criteria: Sustainable Development: ... provide for a fair distribution of development benefits as well as sustainable use and access to natural capital and resources, both for current and future generations. Preventing environmental degradation, resource depletion and enabling mitigation of and adaptation to negative impacts of climate change are essential. (Article 2(3), Criteria (a), (g)), (p.31).

2010 – Report of the high-level task force on the implementation of the right to development – A/HRC/15/WG.2/TF/2/Add.2

Finally, article 2 of the Declaration makes it clear that "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom." Thus the process of right to development relates to policies and programmes at the national level affecting persons within a State's jurisdiction.

The standards presented in the table could be structured according to the responsibilities of States acting internally, externally and collectively, or indicate for each sub-criterion the appropriate level of State responsibility. ...While structure, process and outcome indicators are relevant to all three, the principal distinguishing feature is that the first relates to commitment (to a particular concept of development), the second to rules and principles (human rights, participation, accountability and transparency) and the third to distributional outcomes (fair distribution of the benefits and burdens of development).

Social justice in development: 3(a) To provide for fair access to and sharing of the benefits of development;

Criteria to promote and ensure access to the benefits of science and technology: 1(g)(i) Pro-poor technology development strategy; 1(g)(ii) Agricultural technology; 1(g)(iv) Green energy technology

To provide for fair access to and sharing of the benefits of development: 3 (a) (iii) Reducing marginalization of least developed and vulnerable countries;

To provide for fair sharing of the burdens of development: 3(b)(i) Equitably sharing environmental burdens of development (Availability of climate change funds for developing countries; multilateral agreements to reduce negative environmental impacts; distribution of contributions to climate change); 3(b)(ii) Just compensation for negative impacts of development investments and policies (Hazardous industries, dams, natural resource concessions); 3(b)(iii) Establishing safety nets to provide for the needs of vulnerable populations in times of natural, financial or other crisis

To eradicate social injustices through economic and social reforms (General Assembly resolution 41/128, art. 8, and the Monterrey Consensus (A/CONF.198/11), para. 16), including 3(c) iv) Land reform Access to land; secure land rights;148 and remedies against land grabs.

2010 – Consolidation of findings of the high-level task force on the implementation of the right to development – A/HRC/15/WG.2/TF/2/Add.1

Heavy debt burdens pose major obstacles for a few low-income developing countries in achieving the Goals and meeting obligations on economic, social and cultural rights. While debt-relief initiatives contribute to the right to development, debt cancellation alone is insufficient, and must be accompanied by enhanced State capacity, governance, respect for human rights, promotion of equitable growth and sharing the benefits thereof (A/HRC/12/WG.2/TF/2, para. 68).

... Intellectual property is a policy tool serving the important public and developmental purpose of encouraging beneficial investing in new technology. But it can also have a negative consequence on the diffusion of technology, since the temporary monopoly it creates can restrict the sharing of the benefits of technology.

Benefits of Extractive Activities

2012 – Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes – A/HRC/21/48

Ensure that the benefits of extractive activities are equitably distributed among affected communities. Greater awareness regarding the potential inadequacy of financial payments is needed, as it can create undue influences and enable adverse impacts. To this end, mechanisms that strengthen the capacity of indigenous and tribal peoples and further their own development priorities should be favoured;

Indigenous Peoples

1989 – ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries

Article 15. 1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 15.2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Committee on the Elimination of Racial Discrimination

1998 – Report of the Committee on the Elimination of Racial Discrimination (Nicaragua) – A/50/18 – CERD/C/277/Add.1

Concern is expressed at the ratio of communal land to private land in the autonomous regions, with particular regard to the mining rights and at inequalities in the sharing of the benefits of the exploitation of natural resources in the autonomous territories between the regional and the central authorities.

2003 – Concluding Observations on Ecuador of the Committee on the Elimination of Racial Discrimination – CERD/C/62/CO/2

As to the exploitation of the subsoil resources of the traditional lands of indigenous communities, the Committee observes that merely consulting these communities prior to exploiting the resources falls short of the requirements enshrined in article 5 (d) (v) of the Convention, which guarantees the right of indigenous peoples. The Committee therefore recommends that the prior informed consent of these communities be sought, and that the equitable sharing of benefits to be derived from such exploitation be ensured. Detailed information on land titles of indigenous communities, as well as on remedies available to indigenous people claiming compensation for the environmental depletion of their traditional lands, should be included in the State party's next periodic report.

Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People

2001 – Review Of Developments Pertaining to the Promotion and Protection of Human Rights and Fundamental Freedoms of Indigenous Peoples, Working Group on Indigenous Populations, Note by the Secretariat – E/CN.4/Sub.2/AC.4/2001/2

In cases where indigenous peoples' lands or natural resources are being used, benefit-sharing can take the form of joint ventures or share-holding of the project in question. It is important to move away from the view that indigenous peoples are merely vulnerable groups, to one that considers them as equal partners and whose rights over their lands and natural resources must be respected.

One main strategy for the realization of the right to development of indigenous peoples is their full and equitable participation in development and in benefit-sharing. On the political level, this requires participation of indigenous peoples in all domestic institutions, including government, parliament and the judiciary, as well as the military and police forces.

2003 – Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples – E/CN.4/2003/90

... Free, prior, informed consent is essential for the human rights of indigenous peoples in relation to major development projects, and this should involve ensuring mutually acceptable benefit sharing, and mutually acceptable independent mechanisms for resolving disputes between the parties involved, including the private sector.

2006 – Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – E/CN.4/2006/78/Add.5

The social and economic situation of indigenous peoples remains a fundamental issue, as is their access to the resources needed to improve their situation. In countries where indigenous peoples live in areas endowed with rich natural resources, part of the funds generated by those resources should be shared.

2007 – Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – A/HRC/6/15

According to the Permanent Forum on Indigenous Issues, the principle of free, prior and informed consent comprises the following elements: (c) Information should be provided that covers (at least) the following aspects: the nature, size, pace, reversibility and scope of any proposed project or activity; the reason(s) for or purpose(s) of the project and/or activity; its duration and the locality of areas that will be affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;

...It should be noted that the principle of participation extends beyond the planning, implementation and evaluation of projects, also enabling indigenous peoples to share in the benefits derived from development.

Special Rapporteur on the Rights of Indigenous Peoples

2007 – Inter-American Court of Human Rights, Saramaka Case

The State must guarantee that the Saramakas will receive a reasonable benefit from any development, investment, exploration or extraction plan within their territory

...In the present context, the right to obtain "just compensation" translates into a right of the members of the Saramaka people to reasonably share in the benefits made as a result of a restriction on their right to the use and enjoyment of their traditional lands and of those natural resources necessary for their survival.

Benefit sharing may be understood as a form of reasonable equitable compensation resulting from the exploitation of traditionally owned lands and of those natural resources necessary for the survival of the Saramaka people

2009 – Special Rapporteur on the Rights of Indigenous Peoples Report to the Human Rights Council – A/HRC/12/34

In relation to States' duty to consult: "elements of confidence-building conducive to consensus" a consensus-driven consultation process in such contexts should not only address measures to mitigate or compensate for adverse impacts of the project, but also explore and arrive at means of equitable benefit-sharing in a spirit of true partnership

2010 – Special Rapporteur on the Rights of Indigenous Peoples Report to the Human Rights Council – A/HRC/15/37

In the context of indigenous peoples, the corporate responsibility to respect human rights means that companies must exercise due diligence by identifying, prior to commencing their activities, various matters relating to the basic rights of indigenous peoples, and by paying adequate attention to those matters as the activities are being carried out. Such matters include ... benefit sharing with indigenous peoples.

Indigenous peoples' right to share in the benefits arising from activities affecting their traditional territories reflects the broad international recognition of the right to indigenous communal ownership, which includes recognition of rights relating to the use, administration and conservation of the natural resources existing in indigenous territories, independent of private or State ownership of these resources.

There is no specific international rule that guarantees benefit sharing for indigenous peoples, aside from the consideration that such sharing must be "fair and equitable".

When domestic law offers limited responses to this question, or no responses at all, due diligence with respect to indigenous rights may require companies to set up specific benefit-sharing mechanisms, based on international standards. It should be kept in mind that under a corporate approach based on respect for indigenous rights, benefit sharing must be regarded as a means of complying with a right, and not as a charitable award or favour granted by the company in order to secure social support for the project or minimize potential conflicts.

Companies must ensure that benefit-sharing mechanisms ... are appropriate to the specific context of indigenous peoples.

2010 – Special Rapporteur on the Rights of Indigenous Peoples Report to the General Assembly – A/65/264

The problems arising from such development projects affecting indigenous peoples are present in a wide range of situations that the Special Rapporteur regularly encounters in connection with his activities of monitoring and responding to situations of concern to indigenous peoples around the world. These problems are often related to the absence of any adequate mechanisms of participation of indigenous peoples in the design and implementation of the development initiatives, the absence of adequate mitigation measures that take into account indigenous environmental and cultural concerns, the failure to recognize indigenous property rights in lands and resources and the absence of equitable sharing in the benefits of the development projects.

2011 – Special Rapporteur on the Rights of Indigenous Peoples Report to the General Assembly – A/66/288

Furthermore, a consensus-driven consultation process in such contexts should not only address measures to mitigate or compensate for adverse impacts of the project, but also explore and arrive at means of equitable benefit-sharing in a spirit of true partnership.

2012 – The Special Rapporteur on the Rights of Indigenous Peoples Report to the Human Rights Council – A/HRC/21/47

... consultation and free, prior and informed consent are best conceptualized as safeguards against measures that may affect indigenous peoples' rights. Other such safeguards include but are not limited to carrying out prior impact assessments, the establishment of mitigation measures, benefit-sharing and compensation for any impacts, in accordance with international standards.

2013 – The Special Rapporteur on the Rights of Indigenous Peoples Report to the Human Rights Council – A/HRC/24/41

Whether or not indigenous consent is a strict requirement in particular cases, States should ensure good faith consultations with indigenous peoples on extractive activities that would affect them and engage in efforts to reach agreement or consent. In any event, the State remains bound to respect and protect the rights of indigenous peoples and must ensure that other applicable safeguards are implemented as well, in particular steps to minimize or offset any limitation on the rights through impact assessments, measures of mitigation, compensation and benefit sharing.

Agreements with indigenous peoples allowing for extractive projects within their territories must be crafted on the basis of full respect for their rights in relation to the affected lands and resources and, in particular, should include provisions providing for impact mitigation, for equitable distribution of the benefits of the projects within a framework of genuine partnership, and grievance mechanisms.

2009 – Observation (CEACR), published 99th ILC session (2010) Indigenous and Tribal Peoples Convention, 1989 (No. 169) – Norway (Ratification: 1990)

The Committee confirms that the Convention does not limit the participation in benefits and the receipt of compensation under Article 15(2) to indigenous peoples who are landowners under the national legislation. The Committee, however, considers that there is no single model for benefit sharing as envisaged under Article 15(2) and that appropriate systems have to be established on a case by case basis, taking into account the circumstance of the particular situation of the indigenous peoples concerned.

Expert Mechanism on the Rights of Indigenous Peoples

2010 – Review by the Expert Mechanism on the Rights of Indigenous Peoples – A/HRC/15/35; A/HRC/15/36

Indigenous peoples identify the right of free, prior and informed consent as a requirement, prerequisite and manifestation of the exercise of their right to selfdetermination, as defined in international human rights law. Moreover, the principle is of fundamental importance for their participation in decision-making. This is because free, prior and informed consent establishes the framework for all consultations relating to the acceptance of projects that affect them, and any related negotiations pertaining to benefitsharing and mitigation measures. Particular emphasis is placed on free, prior and informed consent for projects or measures that have a substantial impact on indigenous communities, such as those resulting from large-scale natural resource extraction on their territories22 or the creation of natural parks, or forest and game reserves on their lands and territories.

2012 – Follow-up report by the Expert Mechanism on the rights of indigenous peoples and the right to participate in decision-making with a focus on extractive industries – A/HRC/21/55

Consultations and free prior informed consent are necessary in relation to benefit-sharing arrangements and must accord with indigenous peoples' own understanding of benefits, making reference to the IFC Performance Standard 7 (see also A/67/301 para 78).

The Mechanism recommended ensuring independent assessment of consultation practices, providing translation and interpretation services to indigenous peoples, enabling indigenous peoples to obtain expert, independent and technical assessments of the potential impacts of extractive activities on them, including on their own lives, lands and territories, and ensuring that indigenous peoples perspectives on the extractive activity are taken into account, including in their ideal benefit-sharing arrangements if they so choose

Independent Expert on human rights obligations relating to the enjoyment of a safe healthy and sustainable environment

2012 – Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment – A/HRC/22/43

In construing indigenous and tribal property rights, the Inter-American Court of Human Rights has stated that the State must consult with the community regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is used without a prior assessment of its environmental and social impacts and guarantee that the community receives a reasonable benefit from any such plan if approved.

2013 – Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment – A/HRC/25/53

Firstly, States have a duty to recognize the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely. Secondly, States are obliged to facilitate the participation of indigenous peoples in decisions that concern them. The Special Rapporteur has stated that the general rule is that "extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent," subject only to narrowly defined exceptions (A/HRC/24/41, para. 27). Thirdly, before development activities on indigenous lands are allowed to proceed, States must provide for an assessment of the activities' environmental impacts. Fourthly, States must guarantee that the indigenous community affected receives a reasonable benefit from any such development. Finally, States must provide access to remedies, including compensation, for harm caused by the activities.

2013 – Review of World Bank operational policies, Permanent Forum on Indigenous Issues, Note by the Secretariat – E/C.19/2013/15

the concept that indigenous peoples should share in the benefits of any development that involves their lands, territories and resources is represented in the UNDRIP recognition of indigenous peoples' ownership over their lands, territories, and resources as well a right to traditional knowledge (art. 31) ... benefit-sharing is not a stand-alone right, but is the result of indigenous peoples' property rights and the required free PIC of indigenous communities if their lands and resources are impacted by a proposed activity. When development projects are located or commercially developed on indigenous' lands and resources, the agent proposing the project should engage in consent processes with the effected community to reach an agreement that ensures that the community benefits from a project that is carried out on or affects lands, territories and resources.

Right to science

1946 – Universal Declaration of Human Rights

Article 27.1: Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2012 – Report of the Special Rapporteur in the field of cultural rights – A/HRC/20/26

The need to promote everyone's access to science and its applications raises the issue of the sharing of benefits and the transfer of scientific knowledge and technologies.

Two declarations made by UNESCO that address the issue in the field of biomedical research, its conduct, outcomes and applications are a useful starting point. The Universal Declaration on Bioethics and Human Rights states that "benefits resulting from any scientific research and its applications should be shared with society as a whole and within the international community, in particular with developing countries". In article 15, it recognizes multiple forms of benefit-sharing, including "special and sustainable assistance to, and acknowledgement of, the persons and groups that have taken part in the research; access to quality health care; provision of new diagnostic and therapeutic modalities or products stemming from research; support for health services; access to scientific and technological knowledge; and capacity-building facilities for research purposes."

66. The need to promote everyone's access to science and its applications raises the issue of the sharing of benefits and the transfer of scientific knowledge and technologies.

2013 – Report of the Independent Expert on human rights and international solidarity – A/68/176

The preliminary considerations of the current Independent Expert about the draft declaration were drawn from various sources, notably from the activities described in her first report to the Council and its addendum containing the summary of discussions during the expert workshop on human rights and international solidarity held in June 2012 in Geneva (A/HRC/21/44 and Add.1); from the country study mission to Brazil, and from her informal consultations with various actors, personal research and engagements with civil society in various countries: (f) A right to international solidarity will establish and strengthen space for participation and, at the same time, increase the accountability of national and international stakeholders by creating duties and obligations, including respect for cultural diversity and the right to peace. This should not be interpreted as replacing the obligations of national Governments to respect, protect and fulfil human rights within their territories. Rather, this would support national policy choices and, at the international level, could take the form of supporting participation, for example by making data available to all, including through transfer of technology, capacity-building and the sharing of the benefits of research and scientific progress.

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