NGO Mining Working Group
Response to Zero Draft of the Outcome Document for the United Nations Summit to Adopt the Post-2015 Development Agenda

Transforming our World by 2030: A New Agenda for Global Action

The Post-2015 Development Agenda aims to be transformative and groundbreaking. However it is impossible for the Agenda to "take the bold and transformative steps needed to shift the world on to a sustainable path" (Zero Draft preamble), if the narrative and design fail to acknowledge and address the root causes of systemic problems.

The Zero Draft makes an important stocktaking assessment of our world today: rising inequalities within and among nations; enormous disparities, of opportunity, wealth and power; growing unemployment; spiraling conflict and violence; growing migration challenges; natural resource depletion, environmental degradation, and climate change (para. 12). Yet the narrative and orientation willfully ignore the role that neoliberal development policies - and especially the extractive development model - have played in creating and exacerbating these problems.

As a global community we must acknowledge that much of the violence, inequality, and poverty that we aim to eradicate with this Agenda has actually been inflicted in the name of development. The past two years of post-2015 civil society consultations have entered into evidence this development-based violence and marginalization and especially its devastating and disproportionate impact on women, indigenous peoples, and peasant communities.

To be coherent with the objectives of sustainable development, we must guarantee that the Agenda first, does no harm; that the root causes of poverty are eradicated; that people are at the center as rights-holders, and that its proposed solutions are sustainable.[1]

The text accompanying the Sustainable Development Goals (SDGs) will be a reference point for the interpretation. For many it will serve as a first point of contact with the Agenda, giving a sense of its orientation and objectives. The NGO Mining Working Group presents these proposed amendments and critical rationale in order to improve the Agenda in five main ways:

1. Anchor the Post-2015 Development Agenda in human rights
2. Make poverty eradication the objective over economic growth and prosperity
3. Explicitly name and include the human right to water and sanitation in priority themes
4. Safeguard essential public services from public private partnerships (PPPs)
5. Ensure effective participation of affected communities and civil society

1 Mining Working Group, Advocacy Brief, "A Rights-Based Approach to Resource Extraction in the Pursuit of Sustainable Development" (May 2015), available at http://miningwg.com/resources-2/mwg-advocacy-brief/.

1 Anchor the Post-2015 Development Agenda in Human Rights

Civil society and UN Special Procedures have been unequivocal in calling on States to anchor the Post-2015 Development Agenda in human rights principles and the existing human rights framework. Yet far from being rooted in a robust human rights framework, the Zero Draft represents a notable regression in terms of recognizing human rights compared to the Rio+20 outcome document and the Millennium Declaration.

The marginalization of human rights in the Zero Draft reflects the same misconception and limited understanding of human rights that has dominated much of the Intergovernmental Negotiations to date. As civil society has repeatedly argued and shown, not only is a rights-based agenda ethically and legally mandated, a rights-based approach is also pragmatic in terms of, inter alia: reaching the objectives of promoting equality and non-discrimination; ensuring participation by all rights-holders; taking advantage of existing resources, knowledge, and platforms; evaluating policy results; and increasing accountability.

It is worth clarifying that rights-based accountability serves both a corrective function of addressing wrongdoing and also a pragmatic and preventative function: "helping to determine which aspects of policy or service delivery are working, so they can be built on, and which aspects need to be adjusted. Accountability principles and mechanisms can improve policymaking by identifying systemic failures that need to be overcome in order to make service delivery systems more effective and responsive."[1]

A further limitation evident in the conception of human rights in the Zero Draft is a focus only on States' negative obligations to respect human rights, to refrain from interfering with or curtailing human rights. Unlike previous UN development documents[2] , there is no acknowledgment in the text of the State obligations to protect the human rights of individuals and groups from abuses by third parties including transnational corporations under their jurisdiction, and the obligation to fulfill human rights or take positive action to guarantee the enjoyment of basic human rights.

Furthermore, it is not sufficient or credible that the Agenda is "guided" by human rights principles while the document fails to explicitly name the international human rights framework and outline strategies to realize human rights commitments. The general reference to "international law" (paras. 11 & 16) instead of human rights law in the Zero Draft concerns us, given the current context in which trade and investment protection laws are promoted at the expense of human rights and national sovereignty.[3] Human rights should be seen as serving an obligatory and functional role in the achievement of the SDGs rather than as one of many examples of outcomes of the SDG goals and targets alongside fuzzy concepts like "justice and equality" and "shared prosperity" (para. 15).

Grounding the SDGs in a human rights framework would ensure stronger accountability by enabling monitoring and review through existing mechanisms. The human rights mechanisms, including the Human Rights Council, the Special Procedures, the Treaty Bodies, and the Universal Periodic Review, have proven to be important spaces for evaluating human rights compliance of states and monitoring human rights abuses by third parties.

Finally, a rights-based approach is the only way to operationalize the commitment to "leave no one behind." Anchoring the Post-2015 framework in human rights would move the development agenda from a charity-based approach to a justice approach that clearly delineates the responsibilities and entitlements of each actor: people as rights-holders, national governments as primary duty-bearers sharing common but differentiated responsibilities.[4]

Though far from perfect, the Chapeau of the Open Working Group text reflected civil society demands to explicitly name and recognize human rights, and it was negotiated in a highly inclusive and transparent manner. We therefore regret to see this important piece of the Post-2015 package relegated to Annex 3, as an afterthought rather than an overarching frame for the Post 2015 Development Agenda. In addition to the proposed textual amendments below, we recommend that the Chapeau text be brought into the introduction of the Agenda.

1 OHCHR, Who will be accountable, p. ix

2 Millennium Declaration, Rio+20 outcome document

3 See statement by 10 UN experts: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E

4 Joint Statement, Human Rights for All Post-2015 (Dec. 10, 2013), available at http://sustainabledevelopment.un.org/content/documents/5123joint.statement.dec10.pdf.

11. The new Agenda is guided by the purposes and principles of the Charter of the United Nations, ~~[including full respect for international law. It is grounded also in the Universal Declaration of Human Rights and other international instruments such as the Declaration on the Right to Development.]~~ [and we reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights, including the Declaration on the Right to Development. We emphasize that this Agenda will be implemented consistent with the obligations of all States to respect, protect, and promote human rights and fundamental freedoms for all.] We reaffirm all the principles of the Rio Declaration on Environment and Development, including, inter alia, the principle of common but differentiated responsibilities.

16. We are announcing today 17 Goals with 169 associated targets. Never before have world leaders pledged common action and endeavour across such a broad policy agenda. We are setting out together on the path towards sustainable development, devoting ourselves collectively to the pursuit of global development and of "win-win" cooperation which can bring huge gains [to all people,] to all countries and all parts of the world. We will implement the Agenda [guaranteeing and promoting the effective participation by rights-holders at all levels to ensure that it is] for the full benefit of all, for today's generation and for future generations. In doing so, we reaffirm our commitment to international [human rights] law and emphasize that the Agenda will be implemented in a manner that is consistent with [internationally recognized human rights and] the rights and obligations of states under international law.

III. Follow-up and Review

Global Level

8. The HLPF will be the apex of a global network of review processes, working coherently with the General Assembly, ECOSOC, [the UN human rights system] and other relevant actors, in accordance with existing mandates. It will facilitate sharing of experiences, including successes, challenges and lessons learned, and promote system-wide coherence and coordination of sustainable development policies. Adequate linkages will be made with the follow-up and review of UN Conferences on LDCs, SIDS, LLDCs and countries in special situations.

2 Make Poverty Eradication the Objective over Economic Growth and Prosperity

The Zero Draft conflates economic growth and prosperity with poverty eradication and does not address the evidence that the growing concentration of wealth associated with growth-based development policies has in fact contributed to the proliferation and deepening of poverty. The text fails to acknowledge the many examples where policies aimed at economic growth and prosperity for some few have undermined development goals for many others, generating insecurity and aggravating marginalization. The Agenda must not perpetuate the faulty premise that economic prosperity will automatically generate positive human and ecological development where it is most needed.

This faulty orientation disregards the repeated calls for a rights-based approach and the redistribution of wealth as central strategies for the eradication of poverty. Setting out a shared understanding of poverty will help contribute toward ensuring coherency in this agenda with its stated objective of poverty eradication.

For the UN, poverty is the "human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political, and social rights."[1] Poverty then is not only characterized by lack of income, but is multidimensional.

Therefore, poverty eradication involves targeting the root causes of injustice and ensuring greater access to power and resources for marginalized groups.

The Zero Draft's reference to the "tyranny of poverty" is appropriate in its recognition of the power relations implicit in inequality and poverty: it is this concentration of power and resources at the expense of others' agency and rights that must be transformed. This ought to be the driving orientation of the agenda.

Instead, we see a global push for economic growth at all costs. The Post-2015 Development Agenda features economic growth as a key and independent objective (preamble) and offers no parameters for what constitutes "sustainable and inclusive" economic growth. Growth is referenced as a means to achieve the SDGs (para 24) and as an independent priority of Member States that must be safeguarded from potentially conflicting elements within the agenda (para 19).

To free the world from the tyranny of poverty, we must recognize the structures and systems that uphold this tyranny over people and include in the Zero Draft effective checks on the power imbalance and structures that perpetuate the cyclical injustice of poverty. The Post-2015 package must prioritize eradicating poverty over economic growth and prosperity, enabling and creating space for local and alternative models of development that are grounded in human rights and community participation.

1 Cite CESC, 2001; GP on Extreme Poverty.

MWG Proposed Changes to Text

3. We recognize that poverty eradication is the greatest global challenge and an indispensable requirement for sustainable development. [We recognize poverty as the human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of human rights.] We intend, between now and 2030, to end poverty and hunger once and for all; to combat inequalities; to ensure the lasting protection of the planet and its resources; and to ~~create conditions for sustainable, inclusive and sustained economic growth and shared prosperity.~~ [redistribute wealth.]

24. We will seek to build strong economic foundations for all our countries. ~~Sustained and inclusive economic growth is essential for prosperity~~. [Distributive justice is essential for the eradication of poverty.] We will work to build dynamic, sustainable and people-centred economies, promoting youth employment in particular and decent work for all. All countries stand to benefit from having a healthy and well-educated workforce with the knowledge and skills needed for productive and fulfilling work and full participation in society. We will therefore adopt policies ~~which increase productivity and productive employment, financial inclusion,~~ [which increase employment, sustainable] agricultural and industrial development, sustainable [public] transport systems, [public funding for public services and] ~~modern~~ [sustainable] energy provision.

3 Explicitly Name and Include the Human Right to Water and Sanitation in Priority Themes

Although environmentalists, decision-makers and the business sector agree that the deepening global water crisis is the single largest challenge plaguing the planet in the 21st century,[1] the Zero Draft does not adequately reflect the widespread nature of this concern, nor its urgency. Goal 6,[2] which combines freshwater management targets and universal access to water and sanitation services, is a fairly complex and far-reaching goal dealing with a range of urgent social and environmental issues. In addition, water is a crosscutting theme that is a pre-condition for the fulfillment of other SDGs. For example, water shortages and contamination affect gender equality, the fight against poverty, environmental health, and the production of food and energy.

Despite this, water is not included in Zero Draft paragraphs 20-28 that cover the major thematic issues of the 17 SDGs. Brief mentions of water within the document overlook the importance of the human right to water and sanitation and fail to cover the range and complexity of freshwater challenges faced by communities that are meant to benefit from this development agenda. To this end, moving the Chapeau, which explicitly names the human right to water to the third annex of the Zero Draft relegates water from a top priority and shifts focus away from viewing water as a matter of human rights.

First and foremost, the human right to water and sanitation must frame all goals, targets and indicators dealing with water resource management and universal access to water and sanitation services. As noted in a call by 621 organizations from the global water justice movement,[3] explicit recognition of the human right to water and sanitation is the only way to safeguard scarce water supplies for the basic needs of people and the planet against other competing interests.

Paragraph 15 of the Zero Draft calls for affordable drinking water rather than the enjoyment of the human right to water and sanitation that encompasses other important principles (including availability, accessibility, acceptability, safety, and sufficiency). As seen with the MDGs, emphasis on one aspect of the normative content of this right leads to inappropriate solutions that neglect the needs of the most vulnerable segments of the population.

In addition, the solutions to freshwater scarcity in the Zero Draft are limited to a call for "more efficient use" and waste management (para 26). Because of this shortcoming, the document fails to appreciate the full extent of the current water crisis, its humanitarian implications, and the obstacles it will pose to the development agenda. An emphasis on efficiency fails to acknowledge the urgent need to examine how water resources are distributed and how water pollution is regulated. An emphasis on efficiency and waste management alone signals an approach that favors the status quo rather than a willingness to challenge the unsustainable and unjust manners in which watersheds are being depleted and destroyed by a powerful few while resources are denied to marginalized and vulnerable segments of the population.

As the world water crisis deepens and proliferates, a hierarchy of water use that prioritizes human rights is essential to ensuring equitable and environmentally sustainable use of limited supplies. If the Post-2015 Development Agenda is to succeed, the text must reflect these essential concerns.

In addition to amendments to existing paragraphs, we call for an independent paragraph highlighting the importance of the freshwater crisis and calling for all SDG activities pertaining to freshwater use and distribution to be framed within a human rights-based approach. We propose the language be drawn from UNGA Resolution 66/288 The Future we Want.[4]

1 http://www.weforum.org/news/climate-change-and-water-shortage-main-concerns-world-economic-forum-east-asia

2 6:Ensure availability and sustainable management of water and sanitation for all, Zero Draft,p.13

3 https://drive.google.com/open?id=0B_ogobv2USnNajhoVTFnRnlwam-FVc3dvNE1BcjY3RlprMU53&authuser=1

4 UNGA Resolution 66/280 para 121

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15. In the goals and targets which we have agreed, we are setting out a supremely ambitious vision. We envisage a world free of poverty, hunger, disease and want. A world, for example, of safe and nutritious food; ~~of affordable drinking water~~ [universal enjoyment of the human right to water and sanitation]; of universal access to basic education; of physical, mental and social well-being. A world of universal respect for human rights and human dignity; of justice and equality; of respect for race and ethnicity; and of equal opportunity permitting the full realization of human potential while promoting shared prosperity. A world in which every woman and girl enjoys full gender equality and all barriers to their empowerment in our societies have been removed. A just, equitable, tolerant and inclusive world. And one in which humanity lives in complete harmony with nature.

26. We recognize that sustainable urban development and management are crucial to the quality of life of our people. We will work with local authorities and communities to renew and plan our cities so as to foster community cohesion and personal security and to stimulate innovation and employment. We will reduce the negative impacts of urban activities, including through the safe management and use of chemicals, the reduction and recycling of waste and more ~~efficient~~ [equitable and sustainable] use of water and energy. And we will work to minimize the impact of cities on the global climate system.

[add: 23*bis*. Given the urgent nature of the freshwater crisis facing the world today, we reaffirm our commitments regarding the human right to safe drinking water and sanitation, to be respected, protected, and progressively realized for all, for today's generations and future generations. The human right to water and sanitation is of cross-cutting importance and frames all relevant goals, targets, and indicators dealing with water resource management and universal access to water and sanitation services.]

4 Safeguard Essential Public Services from Public Private Partnerships (PPPs)

We emphasize the importance of an agenda that is first and foremost for the people, upholding the concern that, "In principle, States have a legitimate interest in pursuing channels that open up business interests for their citizens. But undue deference to business interests at the expense of other legitimate interests such as human rights, is a source of acute concern."[1]

In failing to distinguish between stakeholders and rights-holders, the agenda remains ambiguous about whose interests it serves. The framing of multi-stakeholder processes as an attempt to create "win-win cooperation"[2] is a failure to recognize the duty of the State to safeguard the interests of rights-holders against conflicting interests of third parties. The Post-2015 Development Agenda must show a greater commitment to protecting the interests of rights-holders rather than attempting to facilitate compromises between rights-holders and third parties.

In addition, the Zero Draft unequivocally promotes business and private sector participation-- including through the Global Partnerships framework (para 36)- without acknowledging any of the risks associated with this strategy. The call to "scale up substantially public-private cooperation" (para 39) is alarming in light of the disastrous experiences with privatization, notably in the areas of water and sanitation, health care, and education. For this reason, the Post-2015 Development Agenda should exclude essential public services that implicate States' obligations to guarantee the human rights to water and sanitation, education, and health from private sector partnerships and from private financing. It is essential that language in the Post-2015 package reflect this.

We are also concerned with the Zero Draft's linkage of the SDGs to the trade agenda (34) despite repeated concerns by civil society organizations, and recently by 10 UN experts about the adverse impacts of the trade agenda and investment protection mechanisms on human rights.[3] Furthermore, development aid or loans aimed at implementing the Post-2015 Development Agenda must not be tied to conditionalities forcing privatization or trade liberalization.

Finally, the Global Partnership for development within the agenda must be understood as a partnership between State actors, as States are accountable for their human rights obligations (including extra-territorial) and are accountable to their citizens.

1 United Nations Special Rapporteur Maina Kiai, A/HRC/29/25

2 Para 16, Zero Draft

3 UN experts voice concern over adverse impact of free trade and investment agreements on human rights at http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E#sthash.rXZJLoCy.dpuf

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30. The new Agenda deals also with the means required for implementation of the goals and targets. We recognize that these will require the mobilization of financial resources (~~both public and private~~, domestic and international) as well as capacity-building, the transfer of environmentally sound technologies and a wide range of other supportive policies and measures. ~~Business, the private sector and philanthropic organizations will feature prominently in relation to resource mobilization and implementation of the Agenda~~. [Greater public resources will be mobilized for essential public services including water and sanitation, healthcare and education, where private financing and private sector participation have proven to be detrimental.]

5 Ensure Effective Participation of Affected Communities and Civil Society

The experience of poverty is characterized by lack of capabilities, opportunities, choices, security, and social power. Lack of power is a universal characteristic of poverty that manifests itself in many ways; at its core is the inability to participate in or influence decisions that profoundly affect one's life.[1] Therefore, empowerment and agency are not just tangential or procedural objectives for the Agenda but rather required elements of poverty eradication.

To be coherent with the stated commitment to eradicate and transform the tyranny of poverty, there must be a manifest commitment to empowering those that have systematically been marginalized from the decision-making spaces that dramatically affect their development.

If the Post-2015 Development Agenda is to deliver on people-centered sustainable development, it must prioritize rights-holders over stakeholders and correct ambiguous language in this regard (paras 36, 37 and III 3, 9, 14). In addition to being legally mandated, effective participation by rights-holders is essential for achieving democratic, inclusive, and effective development. Thus, the Post-2015 narrative must challenge existing power relations that restrict people's agency and enable free, informed and meaningful input to final decisions and outcomes.[2] One integral part of this is promoting and monitoring related rights such as access to information, freedom of expression and assembly, self-determination, and effective remedy for harms committed. However, these rights are not meaningfully elevated in the Zero Draft (paras 17, 21, 28). Furthermore, despite adamant calls by civil society throughout the Post-2015 processes, the Zero Draft fails to recognize and respond to the demands of those who have suffered the perverse effects of the dominant development model (paras II 7, III 3).

We welcome the Zero Draft's suggestion that the follow-up and review processes will, inter alia, be open and inclusive, supported by an enabling environment for the participation of all people and stakeholders and that they will build on existing platforms and processes and aim to minimize the reporting burden on national administrations.[3] However, it is essential that the follow-up and review principles and mechanisms set out in this narrative be explicitly tied to human rights norms and frameworks. This is a pragmatic solution in terms of efficiency, avoiding excessive reporting burdens, and taking advantage of existing mechanisms and platforms.

As we have noted in this critique of the Zero Draft, an agenda rooted in human rights would not only measure the short- and long-term impacts of policy efforts on peoples' rights, but it also would ensure that the processes of designing, implementing, and monitoring policies guarantees peoples' rights to effective participation. A Zero Draft text reflective of a rights-based framework would increase the likelihood that people have a voice within policy and decision-making spaces at the national, regional, and global levels. This is especially important for groups that tend to be marginalized from the spaces where policy determinations are made.

1 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13407&LangID=E. See also Franciscans International, Development: Sustainable for whom?, http://franciscansinternational.org/fileadmin/docs/Environment/FI_20booklet_Development-Sustainable_20for_20whom_Nov_202013_final-EN.pdf.

2 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13407&LangID=E. See also Franciscans International, Development: Sustainable for whom?,

3 Follow-up and Review, paragraphs 1-3, Zero Draft

21. Vulnerable sections of the population whose needs are reflected in the goals and targets include children, youth, people living with disability and older people; the needs of others who are vulnerable, such as migrants and indigenous peoples, are also reflected. People living in areas affected by conflict, terrorism and complex humanitarian emergencies are also experiencing severe challenges. [Meaningful consultation and effective participation for these diverse, marginalized sectors of the population will be ensured in accordance with international human rights standards in order to design, implement, and monitor policies that are effectively tailored to reach the objectives of transformation, poverty eradication, justice, and equality.]

28. Sustainable development cannot be realized without peace. The new Agenda recognizes the need to build peaceful, just and inclusive societies, based on respect for human rights (including the right to development) [the rights to freedom of expression and freedom of peaceful assembly and association,] the rule of law and effective and accountable institutions. These are fundamental requirements for the achievement of sustainable development [and for the effective participation of all rights-holders in the process.] Factors which give rise to violence, insecurity and injustice, such as corruption and poor governance, are addressed in the Agenda. We must redouble our efforts to resolve or prevent conflict and to support countries emerging from conflict situations so as to lay the foundations for sustainable development. We commit to remove the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment.

III. Follow-up and Review

Global Level

14. In line with Resolution 67/290, the HLPF will ~~support meaningful~~ [ensure effective, broad, and balanced] participation in follow up and review processes ~~by civil society, the major groups, the UN System, relevant multi-stakeholder partnerships, the private sector and other stakeholders.~~ [In recognition of the power imbalances inherent in the tyranny of poverty, the HLPF will support the participation of rights-holder that traditionally have been marginalized from decision making spaces affecting their lives.]

NGO MINING WORKING GROUP

The NGO Mining Working Group (MWG) is a coalition of non-governmental organizations (NGOs) that, in partnership with our members and affected local communities throughout the world, advocates at and through the United Nations for human and environmental rights as related to extractive industries.

Member Organizations of the Mining Working Group

Blue Planet Project
Council of Canadians
Congregation of the Mission
Dominican Leadership Conference
Edmund Rice International
Feminist Task Force
Franciscans International
Greek Orthodox Archdiocesan Council (GOAC)
International Presentation Association
Loretto Community
Marianists International
Mennonite Central Office
Medical Mission Sisters
Missionary Oblates of Mary Immaculate (OMI)
Passionists International
Religious of the Sacred Heart of Mary
Salesian Missions
Sisters of Charity Federation
Sisters of Mercy, Mercy International Association: Global Action
Sisters of Notre Dame de Namur
Sisters of St. Joseph of Peace
Society of the Sacred Heart
Temple of Understanding
UNANIMA International
United Methodist Women, the United Methodist Church
VIVAT International
Yamasi People, Southeast Indigenous Peoples Center

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