

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific countries or regions.

The Politics of the Possible

The Way Ahead for the Right to Development

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- There is general agreement on the added value of the right to development as it places human well-being, rather than growth, at the center of the development process; supports greater democracy in international financial decision-making; and seeks social justice and respect for all human rights as part of the processes and outcomes of national and international development policies. Yet, up to now this right has been essentially a political claim that has had little impact on the development practice.
- International debate on the future of the right to development reveals political concerns regarding the priority of human rights vs. development; collective responsibility; the enabling environment; the structure of the global economy; access to resources and technology; and gender issues.
- Governments are divided on whether there should be an international treaty and on the use of indicators – the former strongly opposed by OECD countries and the latter equally strongly opposed by the Non-Aligned Movement. These are false problems: legal obligations can just as well be established by numerous other applications of binding international law and, meaningful monitoring of any human right always requires reliable tools of measurement, by whatever appellation.
- The current political concerns need not prevent pilot-testing of context-specific reporting templates or studying experience with guidelines, framework agreements, multistakeholder agreements, and regional treaty regimes. The same holds true for mainstreaming the right to development in the work of Treaty Bodies, Special Procedures, the Universal Periodic Review, and for increased and meaningful engagement of civil society.



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Preface on the 25th Anniversary of the UN Declaration on the Right to Development

»The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be realized« proclaims the United Nations Declaration on the Right to Development, which was adopted by the General Assembly on December 4, 1986.

The Declaration takes a holistic, human-centered approach to development. It sees development as a comprehensive process aiming to improve the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation and in the fair distribution of the resulting benefits. In other words, recognizing development as a human right empowers all people to claim their active participation in decisions that affect them – rather than merely being beneficiaries of charity – and to claim an equitable share of the benefits resulting from development gains.

The normative content of the Declaration remains highly relevant today. States have the primary responsibility for human rights fulfillment and for the creation of a national and international enabling environment for development, hinging critically on the individual and collective application of the principles of equality, non-discrimination, participation, transparency, accountability, and international cooperation. Human aspirations for development and well-being can be realized only when there is a solid national and international accountability framework for development that respects equity, social justice, and all human rights.

At the UN Millennium Summit in 2000, the heads of state and government committed themselves »to making the right to development a reality for everyone and to freeing the entire human race from want.« Ten years later, at the 2010 Millennium Development Goals Review Summit, they reaffirmed the importance of freedom, peace, and security; respect for all human rights, including the right to development; the rule of law; gender equality; and an overall commitment to just and democratic societies for development.

Yet, for more than a billion people living in extreme poverty and hunger, the right to development remains a

distant reality. Hard-won development gains have been reversed as a result of the multiple crises of the past few years, including the global financial crisis and the ensuing recession, climate change, and environmental disasters. These upheavals have made it more difficult for many countries to achieve the Millennium Development Goals and to fulfill their human rights obligations, in particular with respect to the right to development.

Obstacles to realizing the right to development are not static, but evolve constantly. New insights into the most formidable challenges are key in seeking to address them. The right to development guides us to identify the structural and systemic root causes of inequality and underdevelopment as well as in efforts to find equitable and sustainable solutions.

This publication gives a short overview of the history, concept, and recent debate on the right to development. It draws on the discussions of a conference »25 Years of the Right to Development: Achievements and Challenges« that took place February 24-25, 2011, in Berlin, and was organized by the Friedrich-Ebert-Stiftung (FES) and the United Nations Office of the High Commissioner for Human Rights. The conference – the first of a series of events that the United Nations Office of the High Commissioner for Human Rights (OHCHR) supported in commemoration of the 25th anniversary of the Declaration on the Right to Development – brought together governmental and nongovernmental experts, members of academia and civil society, United Nations system organizations and agencies, and other actors active in the right to development. The conference provided an opportunity to exchange expert views on practical proposals and suggestions for the way forward in the effective realization of the right to development. It also raised public awareness and advocated the importance of this right for the many challenges that the international community is facing in today's world.

It is our sincere hope that this publication and the ideas it contains will contribute to constructive and inspiring approaches in making the right to development a reality for everyone, as foreseen in the Millennium Declaration.

Navanethem Pillay
United Nations High Commissioner for Human Rights

Peter Struck
President of the Friedrich-Ebert-Stiftung

1. Introduction

The Declaration on the Right to Development was adopted by the UN General Assembly 25 years ago. It is uncertain whether this is an occasion to celebrate this achievement or bemoan the lack of genuine change based on this normative instrument. On February 24-25, 2011, the Friedrich-Ebert-Stiftung (FES) and the UN Office of the High Commissioner for Human Rights (OHCHR) held a conference in Berlin on »25 Years of the Right to Development: Achievements and Challenges«, which was attended by a distinguished group of diplomats, government officials, UN staff, academics, and representatives of civil society under Chatham House Rules.

This international policy analysis is based on a paper the author presented to the Berlin Conference and the deliberations of recommendations of the conference.¹

2. Brief History of the Right to Development

The idea of the right to development builds on key ideas that have emerged since the 1940s, including those of greater democracy in international relations; the complementarity of economic independence and political independence of states; the rethinking of development strategies in the wake of the widespread perception of failure of traditional development policies; the concepts of human beings as subjects rather than objects of development; the respect for human rights and the inter-relationship between human rights and development; and the re-orientation of the UN development strategy to one that is human-centered.²

The formulation of the right in the Declaration of 1986 was more directly inspired by a lecture and an article by Judge Kéba M'Baye for the International Institute of Human Rights³ and an extensive study by Philip Alston for

the UN Secretary-General in 1978.⁴ That 161-page paper anticipated by 32 years the current debate on most issues. For example, he foresaw that the translation of the concept of the right to development »into a notion capable of providing practical guidance and inspiration, based on international human rights standards, in the context of development activities will depend significantly on the future course of action adopted by the Commission on Human Rights.«⁵ Indeed that translation has been the essential quest of the international community to this day. On balancing »national« and »international« dimensions of right to development, he wrote: »In view of the growing inter-relationship between »national« and »international« aspects of development it may not always be possible to draw a workable distinction between what constitutes the »international« as opposed to the »national« dimensions of particular issues.«⁶ He emphasized »the central importance of participation at all levels in order to promote realization of the right to development«⁷ and numerous other issues that continue to be debated today.

The first official mention of »the right to development as a human right« was in the resolution calling for that study,⁸ which led to the creation of the first Working Group on the right to development, established by Commission resolution 36 (XXXVII) of March 11, 1981, and consisted of 15 governmental experts, who were tasked with presenting a draft international instrument on this subject. By then, however, the political climate had evolved in two significant ways. First, the Commission on Human Rights had become highly charged with ideological positioning on practically every issue. Second, the momentum for the Establishment of a New International Economic Order as well as the Charter of Economic Rights and Duties of States had not been lost yet. Countries identifying themselves with the Non-Aligned Movement (NAM) continued

1. The conference program and contributions are available at http://www.fes.de/GPol/en/RTD_conference.htm.

2. For a systematic analysis of some 36 UN documents since 1944 reflecting the principles eventually articulated in the Declaration on the Right to Development, see Taznara Kunanayakam, Annotations to the Declaration on the Right to Development and Related United Nations System Instruments, Resolutions and Reports, prepared for the Centre for Human Rights and issued as HR/RD/1990/CONF.I for the 1990 Global Consultation on the Right to Development. See also ACC Task Force on Long-Term Development Objectives, E/1989/80 (»Development for People, by People«).

3. Kéba M'Baye, Le Droit au Développement Comme un Droit de L'Homme [The Right to Development as a Human Right], Leçon inaugurale de la Troisième Session d'enseignement de l'Institut International des

droits de l'Homme [Inaugural Address of the Third Teaching Session of the International Institute of Human Rights] (July 3, 1972), in 5 *Revue des droits de l'homme* (1972): p. 503. It should be noted that Senegal chaired the 33rd session of the Commission when the Senegalese delegation proposed what became resolution 4 (XXXIII).

4. The International Dimensions of the Right to Development As a Human Right in Relation with Other Human Rights Based on International Co-Operation, Including the Right to Peace, Taking into Account the Requirements of the New International Economic Order and the Fundamental Human Needs, Report of the Secretary-General, UN doc. E/CN.4/1334, January 2, 1979.

5. *Ibid.*, para. 316.

6. *Ibid.*, paras. 34 and 37.

7. *Ibid.*, para. 252.

8. Commission on Human Rights resolution 4 (XXXIII), adopted on February 21, 1977 without a vote.

to have faith in the UN system through majority decisions of the General Assembly to establish the normative basis and the blueprint for the creation of a more just international economic order. The hope was that the Declaration on the Right to Development would use the categorical imperatives of human rights to oblige those countries that dominate the international economy to accept greater responsibility for eliminating the causes of poverty and mal-development as well as pay more for raw materials extracted from developing countries, provide more aid, and improve the terms of trade in favor of developing countries.

However, by the time the drafting got started, the more conservative North American and European members of the drafting committee agreed that, while a general moral (not legal) commitment to human development was acceptable, under no circumstances would they allow a text that would either affirm any legal obligation to transfer resources from North to South or codify specifics regarding any of the issues contained in the Declaration. The human right to development was finally proclaimed by the UN General Assembly on December 4, 1986, in the Declaration on the Right to Development,⁹ which defined it as »an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.«¹⁰ Being a resolution of the General Assembly, the Declaration does not create any legal obligations, although it has the potential for carrying the weight of moral and political obligations.¹¹ A considerable body of commentary has appeared in support of the Declaration, mainly in human rights publications, but critical and skeptical views have also emerged in legal and political writings.¹²

Several working groups on the implementation of the right to development were set up in the 1980s and 1990s without accomplishing much change in develop-

ment practice. One of the bright spots in this disappointing record was the Global Consultation on the Realization of the Right to Development, organized at the UN office in Geneva from January 8-12, 1990, pursuant to resolutions of the Commission,¹³ ECOSOC,¹⁴ and the General Assembly.¹⁵ Development and human rights NGOs, representative of specialized agencies and programs, international financial institutions, and leading scholars participated. Among its conclusions was that »the formulation of criteria for measuring progress in the realization of the right to development will be essential for the success of future efforts to implement that right. Such criteria must address the process of development as well as its results; quality as well as quantity; the individual as well as social dimension of human needs; and material as well as intellectual and cultural needs.«¹⁶

The recommendations for action echo many of the concerns now before the Working Group, including action by states to make explicit provision for the right to development in national policy and development plans; to provide greater access to justice by the poor and other vulnerable and disadvantaged groups; to ensure that corporations do not violate the right to development; to »cooperate in creating an international economic and political environment conducive to the realization of the right to development, in particular through the democratization of decision-making in intergovernmental bodies and institutions that deal with trade, monetary policy, and development assistance ...«; and to ensure greater transparency in negotiations and agreements.¹⁷

It called on the Secretary-General to appoint »a high-level committee of independent experts«, the description of which follows very closely what became the High-Level Task Force, including: giving »priority to the formulation of criteria for the assessment of progress in the realization of the right to development« and implementing a program of development education reaching grassroots organizations; the »design of appropriate indicators of progress« by regional economic commissions; all UN system assistance and cooperation to facilitate the mo-

9. UN General Assembly Res. 41/128 of December 4, 1986. The United States cast the only negative vote; eight other countries abstained.

10. *Ibid.*, Article 1.

11. On the nature of the obligations contained in the Declaration, see Stephen P. Marks, Obligations to Implement the Right to Development: Political, Legal, and Philosophical Rationales, in Bård Anders Andreassen and Stephen P. Marks (eds.), *Development As a Human Right: Legal, Political and Economic Dimensions*, revised and updated in second edition, Brussels: Intersentia, 2010, pp. 73-100.

12. See A/HRC/12/WG.2/task force/CRP.7/Add.1 (selected bibliography).

13. Commission resolution 1989/45 of March 6, 1989.

14. Economic and Social Council Resolution 1989/141 of May 24, 1989.

15. General Assembly Resolution 44/62 of December 8, 1989.

16. The Realization of the Right to Development: Global Consultation on the Right to Development as a Human Rights, HR/PUB/91/2, para. 171.

17. *Ibid.*, paras. 181-188.

monitoring, coordination, and implementation of the right to development; to provide for direct and indirect participation of representatives of people and groups at all levels of decision-making in UN assistance programs; to hold regional consultations; to disseminate the Declaration on the Right to Development in local languages; and to place the implementation of the right to development as a human right on the agenda of the relevant ECOSOC and General Assembly committees on an annual basis, and periodically at the plenary of the General Assembly.¹⁸

Other noteworthy developments in the 1990s include the reference in the 1993 Vienna Declaration and Programme of Action to the right to development as »a universal and inalienable right and an integral part of fundamental human rights«¹⁹, the prominence given to the right to development in the mandate of the High Commissioner for Human Rights,²⁰ and the General Assembly calling on the High Commissioner to establish »a new branch whose primary responsibilities would include the promotion and protection of the right to development.«²¹ The right was regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

A second Working Group of 15 experts nominated by governments met between 1993 and 1995 to look at obstacles to implementation. In 1994 they submitted preliminary guidelines and a checklist.²² Further attempts were made between 1996 and 1998 with the Intergovernmental Working Group of Experts charged with elaborating an implementation strategy for the right to development.²³ At the 1996 Commission, the resolution on the right to development was passed by consensus for the first time.²⁴ Finally, in 1998 a breakthrough occurred when the Commission on Human Rights adopted by

consensus a resolution recommending the establishment of a follow-up mechanism consisting of an open-ended working group (OEWG) and an Independent Expert (IE). The OEWG was mandated »to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration ...« The IE was mandated »to present to the working group at each of its sessions a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion, taking into account, *inter alia*, the deliberations and suggestions of the working group.«²⁵ The OEWG held its first session in 2000²⁶ and will hold its 11th session in November 2011.

Dr. Arjun K. Sengupta, a prominent Indian economist, was appointed Independent Expert and by 2004 had produced eight reports.²⁷ He went on to be the Independent Expert on Human Rights and Extreme Poverty and then was elected to chair the OEWG until his demise in 2010 – a great loss to the international community, to his country, and to his friends across the world. He brought a fresh approach to understanding the right to development, which he defined as »the right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value.«²⁸ On completion of Dr. Sengupta's mandate, the OEWG decided to recommend (and the Commission and ECOSOC accepted) a new mechanism in the form of the High-Level Task Force, which began functioning in 2004.²⁹

18. *Ibid.*, paras. 189-205.

19. Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (1993), para. 10. [hereinafter Vienna Declaration].

20. G. A. Res. 48/141 (1993).

21. G. A. Res. 50/214 (1995).

22. The group was created by Commission on Human Rights Resolution 1993/22, adopted on March 4, 1993, by a roll-call vote of 36 to 1, with 13 abstentions. The guidelines are contained in Annex 1 to the report of the Working Group on the Right to Development on its first session, UN doc. E/CN.4/1994/21 and Corr.1.

23. Report of the Intergovernmental Group of Experts on the Right to Development on its second session, Geneva, 1997, UN doc. E/CN.4/1998/29.

24. Commission on Human Rights Resolution 1996/15.

25. Commission on Human Rights Resolution 1998/72 of April 22, 1998, adopted without a vote, para. 10. The Economic and Social Council endorsed this resolution in its decision 1998/269.

26. Report of the Open-Ended Working Group on the Right to Development E/CN.4/2001/26, March 20, 2001.

27. First Report: E/CN.4/1999/WG.18/2, July 27, 1999; Second Report: A/55/306, August 17, 2000; Third Report: E/CN.4/2001/WG.18/2, January 2, 2001; Fourth Report: E/CN.4/2002/WG.18/2, December 20, 2001; Fourth Report of the Independent Expert on the Right to Development-Mission, E/CN.4/2002/WG.18/2/Add.1, March 5, 2002; Fifth Report: E/CN.4/2002/WG.18/6, September 16, 2002 and E/CN.4/2002/WG.18/6/Add.1, December 30, 2002; Preliminary Study of the Independent Expert on the Right to Development on the Impact of International Economic and Financial Issues on the Enjoyment of Human Rights, E/CN.4/2003/WG.18/2, January 27, 2003; Review of Progress and Obstacles in the Promotion, Implementation, Operationalization and Enjoyment of the Right to Development, E/CN.4/2004/WG.18/2, February 17, 2004.

28. Report of the Independent Expert on the Right to Development, Arjun Sengupta, A/55/306, August 17, 2000, para. 22.

29. Commission on Human Rights in its resolution 2004/7 as endorsed by the Economic and Social Council in its decision 2004/249.

3. UN Process Since the Creation of the High-Level Task Force

The Working Group requested in 2004 that the task force examine (a) the obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development; (b) social impact assessments in the areas of trade and development at the national and international levels; and (c) best practices in the implementation of the right to development.³⁰ The task force folded the issue of best practices into the scope of the other two mandated themes. The OEWG modified this mandate in 2005 to focus on Millennium Development Goal 8 – on a global partnership for development – and to suggest criteria for its periodic evaluation, with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development.³¹ The next step was in 2006, when the OEWG adopted right to development criteria and requested that the task force apply them, on a pilot basis, to selected partnerships, with a view to their operationalization and progressive development, and thus contributing to mainstreaming the right to development in policies and operational activities of relevant actors at the national, regional, and international levels, including multilateral financial, trade, and development institutions.³² Application and refinement of the criteria continued for the period from 2007 to 2009,³³ as requested by the OEWG. In 2009, the task force embarked upon a more systematic process of structuring criteria around attributes and attaching illustrative indicators. The first step was to commission a substantive paper³⁴ and other background materials,³⁵ and to convene an international meeting of experts.³⁶ Based on this work, the task force developed preliminary attributes and criteria. A progress report was shared with the Working Group at

its 10th session, in 2009, drawing attention to the imperative of placing the identified criteria on a rigorous analytical foundation, both conceptually and methodologically.³⁷

In the final phase of its work, the task force refined the methodology and structure of the criteria further on the basis of three attributes, or components, of the right to development (comprehensive human-centered development, enabling environment, social justice and equity). These had the support of the OEWG and were reflected in the criteria, although the task force took into account the numerous suggestions made regarding specific criteria, as it continued in 2009 and 2010 to develop a full set of attributes, criteria, sub-criteria and indicators. To draw on specialized expertise further, the OHCHR convened an expert consultation in December 2009, and, at its sixth session, in January 2010, the task force considered the consultants' study and the report of the expert consultation,³⁸ together with preliminary observations made by Member States and observers from concerned institutions and nongovernmental organizations.³⁹

On April 26, 2010, the chair presented the outcome of the task force's efforts to the OEWG on behalf of the members of the task force, namely, Stephen Marks (USA), Raymond Atuguba (Ghana), Sakiko Fukuda-Parr (Japan), Flavia Piovesan (Brazil), and Nico Schrijver (Netherlands), as well as the institutional members from the International Monetary Fund; the United Nations Conference on Trade and Development; the United Nations Development Programme; the United Nations Educational, Scientific and Cultural Organization; the World Bank; and the WTO.

The OEWG had instructed the task force to:

Consolidate its findings and present a revised list of right to development criteria along with corresponding operational sub-criteria and outline suggestions for further work, including aspects of international cooperation not covered until then, for the consideration of the Working Group.⁴⁰

The terms of reference for the task force were set out in Report of the Working Group on the Right to Development on its fifth session (Geneva, February 11-20, 2004), E/CN.4/2004/23, March 18, 2004, paras. 44-51.

30. E/CN.4/2004/23, para. 49.

31. E/CN.4/2005/25, para. 54 (i).

32. E/CN.4/2006/26, para. 77.

33. A/HRC/4/47, para. 53; A/HRC/9/17, para. 41; and A/HRC/12/28, para. 46.

34. Implementing the Right to Development: A Review of the Task Force Criteria and Some Options, by Rajeev Malhotra (A/HRC/12/WG.2/task force/CRP.6).

35. Methodological Issues of Qualitative and Quantitative Tools for Measuring Compliance with the Right to Development, selected bibliography (A/HRC/12/WG.2/task force/CRP.7/Add.1).

36. See A/HRC/12/WG.2/task force/CRP.7.

37. A/HRC/12/WG.2/task force/2, annex IV.

38. A/HRC/15/WG.2/task force/CRP.4.

39. A/HRC/15/WG.2/task force/2, paras. 67-69.

40. A/HRC/9/17 of 10 September 2008, para. 43 (e).

The task force took this quite literally and prepared its report for the April 2010 session of the OEWG in three parts:

1. Main report (A/HRC/15/WG.2/task force/2), containing, in the recommendations, the task force's suggestions for further work.
2. The consolidation of findings (A/HRC/15/WG.2/task force/2, Add. 1), including conclusions that were expressed as honestly as possible as regards the obstacles to realizing this right.
3. Right to development criteria and operational sub-criteria (A/HRC/15/WG.2/task force/2, Add. 2), containing not only criteria and sub-criteria but also a core norm, three attributes, and illustrative indicators.

4. Real and Perceived Political Differences Regarding the Right to Development

The politics of the right to development are often depicted as sustained support from developing countries and reluctant acquiescence or opposition from OECD countries. The political landscape is much more complicated, with economic power shifting toward certain emerging markets and countries that used to be active in promoting the right to development becoming silent as they grow at a rapid pace. The dividing line is only superficially between the EU (with other OECD countries) and NAM (with the Organization of the Islamic Conference members and the Africa Group), although voting tends to divide along these lines. When it comes to the right to development, it is not accurate to see the interests as following a dichotomy between rich and poor, North and South, developed and developing countries. Poverty is a reality in so-called developed countries and the pace of growth and development in several so-called developing countries far exceeds that of Europe and North America. In sum, the political assessment of the right to development in the UN cannot be reduced to old North/South or developed/developing divisions. The discussion in 2010 and the written responses give the impression that the EU and OECD are more favorable to the proposals of the task force than NAM, which seems an odd reversal of roles in light of the pro-development preferences of the task force and the specific content of the documents submitted by the task force to the OEWG.

The task force was composed of independent experts acting in their personal capacity and sharing experience in international development and human rights. Its members shared a deep commitment to advancing international human rights in ways that benefit the people in developing countries and in redressing the causes of social injustice. They made an effort to broaden support for the right to development and believed that support for the right to development from some geopolitical groups should not result in hostility from others. The task force acted on the assumption that the right to development – if promoted in the balanced way it had proposed – would be seen as beneficial to all groups of states. The task force did not take sides in the politics of Member States, but the political reactions seem to be demonstrating that this was not perceived to be the case. Perceived and real differences are reflected in government responses and fall roughly into six areas: priority of human rights vs. development; collective responsibility; enabling environment; structure of the global economy; access to resources and technology; and gender issues.

4.1 Priority of Human Rights vs. Development

One of the perceived problems with the right to development as formulated by the task force is that the criteria present a »human rights-based approach to development,« whereas they should reflect a »development approach to human rights.« This is further explained by saying that the right to development is not »about mainstreaming all human rights into the development process. Instead, it is about mainstreaming and implementing development-oriented policies at all levels, in order to further improve the capacity of States to ensure the full enjoyment of all human rights.« The perception is that the realization of the right to development means that improved conditions of development for low-income states places them in a position to ensure the respect of all the human rights of their citizens. This view that development leads to human rights must be advanced with care, lest it give the impression that problems of development constitute a pretext for failing to fulfill human rights obligations. Such an approach would contradict the right to development since – in the words of the Vienna Declaration and Programme of Action, reflecting the proper interpretation of Article 6 of the Declaration on the Right to Development – »the lack of

development may not be invoked to justify the abridgement of internationally recognized human rights.«⁴¹ Therefore, a »development approach to human rights« must mean something else.

A development approach to human rights is reflected in the progressive realization of human rights in accordance with available resources, including international cooperation and assistance. It also means giving special attention to the most vulnerable and disadvantaged members of society. It means working hard to eliminate the obstacles to development that hold so many countries back, including corruption, social and economic inequality, as well as poor terms of trade, debt burden, and inadequate levels of aid and investment. These are in fact the issues the task force sought to address in proposing the criteria.

Furthermore, every one of the 18 criteria proposed by the task force is based on specific provisions of the Declaration on the Right to Development or on major resolutions of the General Assembly or Summit declarations of major international conferences, and they are cited in notes to each criterion. Due attention is given to each element of the Declaration, with none having been neglected, except perhaps gender issues, which should be given more explicit attention. For these reasons, the criteria reflect both a »human rights-based approach to development«, and a »development approach to human rights«.

4.2 Collective Responsibility

Flavia Piovesan presented a paper to the Berlin Conference on »What are the collective responsibilities of states, acting in global and regional partnerships, for the creation of an enabling environment?«⁴² She stressed the need to »focus on the joint and external responsibilities of states in the realization of the right to development as a solidarity-based right.« The discussion brought out that a duty to act collectively still required assigning responsibility to individual States in order to ensure accountability, which could be accomplished through such instruments as a framework convention on the right to development.

41. Vienna Declaration, para. 10.

42. See http://www.fes.de/GPol/pdf/Piovesan_RtD_final.pdf.

The task force relied on the Declaration on this issue, specifically Article 3 (»States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development«) and Article 4 (»States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.«) However, it also set out state obligations at three levels: those that are exercised internally, externally, and collectively.⁴³

There is a genuine political difference between those governments that attach importance to the »collective« dimension in order to hold institutions like the WTO and the World Bank legally responsible for implementing the right to development and those that reject such responsibility. The task force certainly welcomed the level of responsibility such institutions have acknowledged but relied on the wording of Article 3 to ground its position, namely that the obligations fall on states to ensure that they promote the right to development when they act collectively. What matters is the affirmation in Article 4 of the Declaration that »effective international cooperation is essential« and that such cooperation is »a complement to the efforts of developing countries.« That is why, again echoing the 1978 study, the task force called for balancing national and international responsibilities, and thus called on developed nations to do more through international cooperation for those countries that take seriously their Article 2 responsibilities.⁴⁴

The importance of the »collective responsibility« is reflected in the task force listing »States acting collectively in global and regional partnerships« first in the enumeration of types of obligations.⁴⁵ Some developing countries insist on collective responsibility because they want to hold international institutions legally accountable to fulfill right to development obligations. The difficulty with this position is that the multilateral institutions are composed of many of the same states that stress international responsibility in the OEWSG. The political reality is that their own Ministers of Finance and Governors of Central

43. Right to Development Criteria and Operational Sub-Criteria, A/HRC/15/WG.2/task force/2/Add.2, Annex I.

44. Consolidation of Findings of the High-Level Task Force on the Implementation of the Right to Development, A/HRC/15/WG.2/task force/2/Add.1, March 25, 2010, paras. 81-82.

45. Right to Development Criteria and Operational Sub-Criteria, A/HRC/15/WG.2/task force/2/Add.2, paras. 16 and 17.

Banks meeting in the G20, their Governors in the Board of Governors of the World Bank and the IMF, their delegates to the WTO, OAS, AU, League of Arab States, ASEAN, and the various agencies and programs of the UN have not seen fit to propose – within the legal procedures of those institutions – to hold them legally accountable for fulfilling right to development obligations. The legal authority to do so rests with the governments that create the rules governing international entities. Until they do so, collective responsibility remains that of states acting by their voice and vote in global and regional institutions.

4.3 Enabling Environment

The Berlin Conference discussed the topic »What international enabling environment is needed for the realization of the right to development?« on the basis of a paper by Aldo Caliari.⁴⁶ Because of the importance of balancing both national and international dimensions of the enabling environment, it also discussed »What national enabling environment is needed for the realization of the right to development?« on the basis of a paper by Rajeev Malhotra.⁴⁷ The task force had, in an earlier formulation of the criteria, proposed »enabling environment« as one of the three components (along with comprehensive human-centered development, and social justice and equity) of the right. On refining the criteria, the term »attributes« was preferred to »components« and »enabling environment« was upgraded to the core norm, making it definitional of the right:

The right to development is the right of peoples and individuals to the constant improvement of their well-being and to a national and *global enabling environment* conducive to just, equitable, participatory and human-centred development respectful of all human rights.⁴⁸

The core norm is then clarified through these three attributes: 1. comprehensive and human-centered development policy; 2. participatory human rights processes; and 3. social justice in development.⁴⁹ The enabling en-

46. http://www.fes.de/GPol/pdf/Caliari_Int_enabling_environment.pdf.

47. http://www.fes.de/GPol/pdf/Malhotra_National_Dimension.pdf.

48. Right to Development Criteria and Operational Sub-Criteria, A/HRC/15/WG.2/task force/2.Add.2, February 2, 2010, Annex I. (emphasis added).

49. See section 5.B (Preparation for a Reporting Template) for more on the three attributes.

vironment is reflected in numerous criteria under each of these attributes, such as conditions that sustain peace and security in a criterion »To contribute to an environment of peace and security«, which contains five sub-criteria. However, the criticism some countries level at the task force for neglecting the enabling environment is belied by its inclusion in the core norm.

4.4 Structure of the Global Economy

Perhaps the most intractable real political difference is the question of whether and how the human rights organs of the United Nations – including those that deal with the right to development – should address the structural imbalances, and hence impediments to equitable development on a global scale, including the international economic, financial, and political systems, and the need for democratic decision-making in global institutions governing trade, foreign direct investment, migration, intellectual property, and the flow of capital and labor. Furthermore, it should, from their perspective, address the lack of democracy in global governance, the imbalances in global trade regimes, and ensure country ownership of development policies through what delegates often call »policy space«.

On that score, the position of developing countries was reflected, *inter alia*, in Criteria 1 and 2 and their sub-criteria: »Create an equitable, rule-based, predictable and non-discriminatory international trading system« with sub-criteria on »Bilateral, regional and multilateral trade rules conducive to the Right to development«, and reference to »Market access [share of global trade], and »Movement of persons«. Regarding democracy in global governance, consider Criterion »Promote good governance at the international level and effective participation of all countries in international decision-making«, with sub-criteria on »Mechanisms for incorporating Aid recipients' voice in Aid programming and evaluation« and »Genuine participation of all concerned in international consultation and decision-making«. Additionally, one of the indicators for that purpose is »IMF voting shares compared to share in global trade«⁵⁰; »representatives per country participating in negotiations.« The IMF is also requested »To adopt national and interna-

50. Ratio of percentage IMF quotas to share in global trade. Sources: World Bank's World Development Indicators Online, and IMF, <http://www.imf.org/external/np/sec/memdir/members.htm>.

tional policy strategies supportive of the right to development», while a specific sub-criterion asks for »Right to development priorities reflected in policies and programs of IMF, World Bank, WTO and other international institutions«.

4.5 Access to Resources and Technology

Another issue over which there are real political differences is concern over inadequate resources and unfulfilled commitments toward aid, as well as unsustainable debt burdens, and restrictions on labor flows from developing to developed countries. Both developed and developing countries are committed to financing development and that is why a criterion refers to »Promot[ing] and ensur[ing] access to adequate financial resources«. In order to deal in greater depth with the problem, there is a sub-criterion on the »Magnitude and terms of bilateral official capital flows« with an indicator on »Net ODA flows relative to donor national incomes with 0.7 % MDG benchmark and recipient national incomes«⁵¹; program-based aid⁵²; quality of aid⁵³; as well as a sub-criterion on »Magnitude and terms of multilateral official capital flows« with as indicators »Proposals for innovative sources of financing for international development«⁵⁴; and a sub-criterion on »Debt sustainability« with an indicator of external debt relative to exports.⁵⁵ In this regard, »the task force stresses the importance of donor States keeping their commitments in the Doha Round, Monterrey Consensus, Gleneagles G-8 summit and London G-20 summit to increase assistance.«⁵⁶

51. Net ODA as percentage of GNI (MDG indicator 8.1). Source: OECD, <http://www.oecd.org/dac/stats/data>.

52. Percentage of aid provided through program-based approaches (Paris Declaration Indicator 9). Source: OECD, 2008 Survey on Monitoring the Paris Declaration: Effective Aid by 2010? What Will It Take, vol. 1. Overview available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/Full-2008-Survey-EN.pdf>.

53. Quality of aid indicator of Commitment to Development Index. Source: Center for Global Development, http://www.cgdev.org/section/topics/aid_effectiveness.

54. Number of times that innovative proposals for financing (e.g., Tobin tax, airline tax) feature on the agenda of G-8 and G-20 meetings, and of intergovernmental meetings on financing for development. Source: records of G-8 and G-20 meetings, and of UN FFD.

55. Ratio of debt to exports. Source: World Bank, Global Development Finance.

56. Consolidation of Findings of the High-Level Task Force on the Implementation of the Right to Development, A/HRC/15/WG.2/task force/2/Add.1, March 25, 2010, para. 69.

A major concern of developing countries, reflected in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, is with »country ownership of development policies« and »policy space«, which must be seen in relation to the rather demanding requirement of Article 2(3) of the Declaration that such ownership applies, from the right to development perspective, only to 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«.⁵⁷ The right to development does not justify increased resources in whatever form (aid, loans, debt forgiveness, investment, etc.) for policies that fail to meet that standard.⁵⁸

Another concern of the task force was lack of technology transfer, thus motivating a criterion on »Promot[ing] and ensur[ing] access to benefits of science and technology« with five sub-criteria on »Pro-poor technology development strategy«; »Agricultural technology«; »Manufacturing«; »Technology transfer, access, and national capacity technology«; and »Green energy technology«, each with associated indicators.

There is a real political difference with regard to green technology, sometimes perceived by developing countries as a barrier to their development. This issue was addressed in relation to the Clean Development Mechanism,⁵⁹ which the task force felt »should be reinforced by enhancing its effectiveness, ensuring its social and environmental integrity, and incorporating a right to development perspective.«⁶⁰

4.6 Gender Issues

The indicator under the sub-criterion on »constitutional or legal protections specifically for women« is woefully inadequate and subsequent elaboration of criteria and indicators can give more attention to gender. In this regard, the Convention on the Elimination of all Forms

57. See the views of the task force on country ownership under the Accra Agenda for Action in Consolidation of Findings of the High-Level Task Force on the Implementation of the Right to Development, A/HRC/15/WG.2/task force/2/Add.1, March 25, 2010, para. 69.

58. *Ibid.*, para. 74.

59. *Ibid.*, paras. 59-62.

60. A/HRC/15/WG.2/task force/2/Add.1, para. 62.

of Discrimination against Women (CEDAW) should be added to the list of core human rights conventions listed in the indicator set for this sub-criteria. After all, Article 8 of the Declaration calls for »effective measures ... to ensure that women have an active role in the development process« and the task force fully endorses this priority and the greater attention to gender.

5. Recommendations for the Way Ahead

Governments in the OEWG will be presented with a compilation of views from governments and other stakeholders⁶¹ and a summary of the panel discussions during the 18th session of the Human Rights Council on the theme »The Way Forward in the Realization of the Right to Development: Between Policy and Practice«, pursuant to Council decision A/HRC/DEC/16/117 of March 25, 2011 (adopted with the US abstaining). The recommendations below reflect the proposals submitted by the task force in its final report and the views expressed during the Berlin Conference, covering five areas, which government and civil society delegations may find useful in charting a path forward.

5.1 Further Action on the Criteria

At the Berlin Conference, Margot Salomon presented a paper on the topic »Do the right to development core norm, attributes, criteria, sub-criteria and indicators proposed by the HLTF respond to the criticism that the right to development is too vague? How can they be further clarified or improved?«⁶² On the adequacy of the core norm and criteria, she concluded »the fact that neither the core norm nor the recent case law comprehensively responds to all our preoccupations when it comes to giving effect to the right to development is not an indication that the right remains too vague, but rather of just how much it has yet to do«. The task force proposed – consistent with standard practice – circulating the criteria for comments by governments, relevant international and national agencies responsible for trade and development, academic centers, and civil society organizations. In fact, the Council decided, fol-

lowing the recommendation of the OEWG, to ask the OHCHR »to seek the views of States Members of the United Nations and relevant stakeholders on the work of the high-level task force and the way forward«. ⁶³ Dr. Sengupta had undertaken to present options to the OEWG but his untimely death leaves that task to his successor in accordance with the wishes of the Council that the Chairperson/Rapporteur »prepare two compilations of the submissions received from Governments, groups of Governments and regional groups, as well as the inputs received from other stakeholders, and to present both compilations to the Working Group at its twelfth session«, which is now scheduled for November 14-18, 2011, at which time the OEWG Chairperson/Rapporteur should present a compilation rather than options, which is a step backwards if it is amere reproducing of replies from governments as received.

Core Norm and Attributes

The core norm was provided in an effort to respond to the complaint from certain delegations that the concept is vague and has never been defined in a way that is coherent or has gained consensus. By proposing the core norm quoted above, the task force sought to condense into 40 words the essential concepts, not as a justiciable right, but rather as a standard of achievement, reflecting what has been agreed as the essence of the right in the Declaration and balancing the main concerns of various geopolitical groups, which are further specified by attributes and criteria. The Berlin Conference noted that the core norm does not cover all 10 articles of the Declaration, lacking in particular reference to the obligations to protect and fulfill, or to »sustainable« (which was not in the Declaration).⁶⁴ Indeed, the task force had been careful to include in the core norm only concepts contained in the Declaration (thus »sustainable« was not included) but did include in the attributes and criteria all 10 articles and developments since 1986, such as sustainable development and climate change, based on summit and other international conferences.

The three attributes correspond to the concepts of policy, process, and outcome. What *policy* must be advanced to realize the right to development? The answer in Attri-

61. See <http://www.ohchr.org/EN/Issues/Development/Pages/12thSession.aspx>.

62. See http://www.fes.de/GPol/pdf/Salomon_Core_Norm.pdf.

63. A/HRC/RES/15/25, para. 3(d).

64. See http://www.fes.de/GPol/pdf/rtd_Bras-Gomes_summary.pdf.

bute 1 is »comprehensive and human-centred development policy«. *How* should this right be advanced? The answer, given in Attribute 2, is through »participatory human rights processes«. What should be the *outcome* of action to realize this right? The answer, in Attribute 3, is »social justice in development«. It should be recalled that »an enabling international environment«, has been raised to the level of the core norm and applies to all three attributes.

Criteria, Sub-criteria and Indicators

The criteria and sub-criteria were written to be relatively long-lasting (between attributes and indicators as regards their lasting value) and suitable for inclusion in a set of guidelines or a legally binding instrument that development actors may use over the long term when assessing whether their own responsibilities or those of others are being met. The task force understood the term »operational sub-criteria« as used by the OEWG to refer to measurable sub-elements of broader criteria, that is, indicators. The importance of indicators was noted, *inter alia*, in the Secretariat report of 1978 and in the Global Consultation of 1990, mentioned above, as basic tools of accountability. The task force mentioned them at its first session in 2004 and tried to reassure governments on the matter in its report on the criteria.⁶⁵ Explaining that the indicators did not aim at »ranking or even judging countries but rather in providing to the Working Group »operational sub-criteria« apparently did not allay misgivings of some states, in particular NAM, which considered that the task force had exceeded its mandate by including them, although others offered constructive suggestions for improving the indicators. Under the circumstances, the OEWG does not appear ready to find consensus on this matter and governments might wish to avoid forcing this issue through the explicit mention of indicators, although there is no doubt that any meaningful monitoring of the implementation of the right to development will use them.

65. »Some governments are apprehensive about »indicators«, presumably concerned that domestic actions, which are sovereign prerogatives of the State, will be judged by others. As explained, the development of indicators was not an exercise in ranking or even judging countries but rather in providing to the Working Group »operational sub-criteria« in the form of a set of methodologically rigorous tools that can be used in determining where progress is occurring or stalling and the next steps for promoting implementation of the right to development.« Right to Development Criteria and Operational Sub-Criteria A/HRC/15/WG.2/task force/2/Add.2, para. 78.

5.2 Preparation of a Reporting Template

Among the issues discussed at the Berlin Conference under next steps required to advance the right to development agenda were field-testing and evaluation of progress. The 1990 Consultation recommended »publication of the criteria for measuring progress in implementing the right to development and the results of the evaluation of their usefulness«. ⁶⁶ The task force considered that the application of criteria could be made manageable through templates that are more context-specific and could be pilot-tested. A trade agreement, or mechanism for transfer of technology, or a development strategy can be improved by applying the tools developed but they would have to be adapted to each context. The discussion group at the Berlin Conference dealing with international enabling environment proposed transforming the OEWG into a kind of monitoring body or upgrading the task force and extending its responsibility to provide remedies. The reporting templates might be a more realistic beginning but, in any case, the OEWG will need to put a mechanism in place to test it. Alternatively, this might be done through a research institute enjoying respect in the development community, which would draft and apply the templates without a mandate from the OEWG.

5.3 Further Development of a Comprehensive and Coherent Set of Standards

This issue was examined at the Berlin Conference under the theme »What next steps are required to advance the right to development agenda? What are the prospects for the political acceptability of different options?« on the basis of a paper for discussion by Nico Schrijver,⁶⁷ who laid out various options for a comprehensive and coherent set of standards, including a legally binding standard: adopting a new Declaration, drafting Implementation Guidelines, concluding multistakeholder agreements on the various elements of the right to development between states and non-state actors, and drafting a new convention. Neither the task force nor the Berlin Conference had definitive views on the matter. The best course seems to be for the OEWG to gather information on guidelines, codes of conduct or practice notes, framework convention, multi-stakeholder agreements and the like and examine propo-

66. Global Consultation, para. 180.

67. See http://www.fes.de/GPol/pdf/Schrijver_R2D25years2011.pdf.

sals for the structure and methods for drafting a set of standards most suited to the right to development so that the OEWG can consider all options, including legally binding instruments, on the basis of evidence. This proposal is consistent with the task force's view that »further work on a set of standards and regional consultations could be an opportunity to explore whether and to what extent existing treaty regimes could accommodate right to development issues within their legal and institutional settings, and thereby assist the Working Group in achieving consensus on whether, when and with what scope to proceed further in this matter«. ⁶⁸ In the same vein, it thought it would be useful for the Working Group »to seek information, properly analysed on existing examples used in the United Nations system, such as guidelines, codes of conduct or practice notes, and examine proposals for the structure and methods for drafting of a set of standards most suited to the right to development. A mechanism could then be put in place to formulate such a set of standards based on the criteria prepared by the task force«. ⁶⁹

The Berlin Conference also saw an advantage in cross-regional initiatives and dialogue, which is similar to the task force's proposal to engage regional human rights bodies, both well-established ones in African, Europe, and the Americas, and new ones, such as the ASEAN Intergovernmental Commission on Human Rights and the Arab Human Rights Committee. At the Berlin Conference it was suggested to have a mechanism to assist regional bodies that actually work on the right to development in order to learn from the experience from the Inter-American and the African systems.

The Berlin Conference was aware of the strong opposition from the EU, the United States, Canada, Japan, and others to the NAM position, based on its 2009 Summit, to »...urge the UN human rights machinery to ensure the operationalisation of the right to development as a priority, including through the elaboration of a Convention on the Right to development by the relevant machinery...⁷⁰ [and to] Propose and work towards the convening of a United Nations-sponsored High-Level International Conference on the Right to development«. ⁷¹

68. A/HRC/15/WG.2/task force/2, para. 77.

69. *Ibid.*, para. 76.

70. XVth Summit of Heads of State and Government of the Non-Aligned Movement, Sharm el Sheikh, Egypt, July 11-16, 2009, NAM2009/FD/Doc.1, para. 421.13.

71. *Ibid.*, para. 421.14.

The Berlin Conference acknowledged that a convention, in terms of recognition, would elevate the right to development to the same level as other human rights, but noted the difficulties regarding the added value to the existing human rights treaties, the definition of the right, the identity of the rights holders and the duty bearers, and the scope of application. Furthermore, a new human rights treaty that does not receive widespread ratification may run the risk of doing more harm than good for the cause of the right to development. ⁷² There was more support for working toward the formulation of guidelines for the implementation on the right to development, based on the Declaration, the existing human rights treaties, and the criteria of the task force. The examples mentioned were the Draft Guidelines on Poverty Reduction, the OECD Guidelines on Multinational Enterprises, and the ILO Declaration on Fundamental Labour Norms. In the discussion group on collective responsibility, the idea of a Framework Agreement on the Right to Development (taking the Framework Convention on Climate Change as a model) was mentioned as a way of translating key principles derived from the work of the task force (such as the core norm and attributes) into binding international law by creating a forum for further political discussion among the contracting parties, which could result in protocols on specific issues – such as access to essential medicines – once political agreement is reached. It was also suggested at the Berlin Conference to establish a database of different types of agreements (regional, bilateral, multistakeholder) that satisfy right to development criteria, and could thus be labeled as right to development agreements.

In any case the OEWG has been able to achieve consensus by keeping a legally binding instrument among the possible outcomes of the process without establishing

72. It can be recalled that the Sub-Commission on the Promotion and Protection of Human Rights did not receive a feasibility study on an »international legal standard of a binding nature« as requested in 2003 (Commission on Human Rights Res. 2003/83 adopted by 47 to 3 – United States, Australia, and Japan – and 3 abstentions); the expert entrusted with the task having noted »strong differences of opinion among legal luminaries as to whether the right to development can be placed within a legally binding framework«, and concluded that »the development of binding legal standards is premature at this time«. Concept Document on the Right to Development. Working paper submitted by Florizelle O'Connor, UN Doc. E/CN.4/Sub.2/2005/23, June 24, 2005, paras. 14 and 69. What the sub-commission did not produce was eventually produced to a large extent by the Friedrich-Ebert-Stiftung in the publication of the proceedings of the Expert Meeting on Legal Perspectives Involved in Implementing the Right to Development, held at the Château de Bossey, Geneva, Switzerland, from January 4-6, 2008. See *Implementing the Right to Development: The Role of International Law*, Geneva, Switzerland: Friedrich-Ebert-Stiftung and Program on Human Rights in Development of the Harvard School of Public Health, 2008.

any automaticity that the process must lead there. The key language in this regard is that the process »could evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement«.⁷³ Since the gap between government positions on a legally binding instrument is too wide, governments may wish to maintain a similar formula as they explore the options mentioned above.

5.4 Mainstreaming the Right to Development

In the 1978 study alluded to earlier, the UN proposed that the Commission consider »ways and means by which the promotion of ... the right to development, might be more fully integrated into the entire range of United Nations development activities«.⁷⁴ This idea is further reflected in the General Assembly's request that the High Commissioner mainstream the right to development.⁷⁵ The task force recommended such mainstreaming and believes this should not present serious political obstacles. Although the fact that so little has been done in this regard in the 32 years since it was recommended might indicate that there are obstacles that cannot be overcome by repeating the request for action in a resolution. It may be that a concerted effort is required to demonstrate the advantages to be derived from taking up the right to development explicitly beyond the unit of the Secretariat in charge.

A main concern expressed in the group on next steps at the Berlin Conference was the issue of mainstreaming, particularly in the UN system. In the concluding session, it was recommended to integrate the right to development into human rights treaties and other processes of human rights monitoring, such as the UN's Universal Periodic Review and Special Procedures, echoing in this regard a recommendation of the task force. Governments should support such mainstreaming.

73. A/RES/64/172, para. 8. Note that the latest Council resolution fails to repeat the second »could«, which creates an unnecessary ambiguity. »3. Decides: ... (h) That the Working Group shall take appropriate steps to ensure respect for and practical application of the above-mentioned standards, which could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature through a collaborative process of engagement.« A/HRC/RES/15/25, para. 3(h).

74. E/CN.4/1334, para. 314.

75. GA resolution 64/172, paras. 36-38.

5.5 Outreach and Dissemination of Right to Development Information

Among the many recommendations made in the Secretariat report 32 years ago and by the Global Consultation 21 years ago was the wider dissemination of the Declaration and other information on the right to development and on participation of the presumed beneficiaries of development, of indigenous peoples, of vulnerable sectors of society, and of civil society organizations. The Berlin Conference also stressed the importance of public awareness and participation of civil society with a view to stimulating political interest. It is true that the value of the right to development for social mobilization has not been evident. A plan of action to engage the NGO sector in promoting the right will only succeed if the involvement of NGOs will help them reach their goals in tangible ways.

The reality is that there is a lack of incentives to implement the right to development by decision-makers whose actions are rarely determined by the compelling value of an idea alone. The task force was of the view that this right will be taken seriously only if there is evidence of the advantage to be gained by making explicit reference to it in specific development actions. This need to prove the value of applying the right to development in practice supports the suggestion reiterated at the Berlin Conference to generate more evidence through context-specific reporting templates to be assessed so as to determine the difference, if any, of pro-right to development actions.

In conclusion, the task force's final report, the consolidation of findings, and the proposed criteria contain elements that offer the international community the opportunity to move the right to development agenda forward if two conditions are met. First, that the tools the task force proposed – or others to be developed by the Working Group – maintain a balance that gives equal attention to the imperative of greater economic justice among and within Member States, and the human rights dimension of development, which is of both instrumental and intrinsic value. Second, that incentives be found to redirect development policies and programs in the ways indicated, not only by very broad and vague right to development principles but also by more precise criteria and operational sub-criteria that get at the processes that determine the winners and losers of global development.



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