

PART FOUR

Implementing the right to development

monitoring, action and the way forward

Introduction

The final part of this book builds on the assumptions of the previous parts, namely, that the initial conceptualization reviewed in Part One can guide global development partnerships and national development policies; that these partnerships and policies can be pursued in accordance with the principles at the heart of the right to development examined in Part Two and that they can benefit from experience with the development goals considered in Part Three and further, on strengthened international cooperation and global partnership for development as a whole. Thus far, the chapters have focused on the progression from policy to principles. In Part Four the focus is on outcomes, both in the form of strategies to achieve social justice as envisaged by the right to development and in the form of refining tools that allow progress to be monitored and evaluated.

If and when genuine right to development policies and principles become reality, the real promise lies in the measurable social justice outcomes of the process, through the realization of the right to development. The 10 chapters in this part examine two approaches to achieving measurable progress in realizing the right to development. Some discuss tools for measuring outcomes relating both to goal 8 and to a broader range of norms contained in the Declaration on the Right to Development. Others explore the potential for further development of international law, politics and practice of the right to development in the hope that its next quarter century will see concrete achievements based on the high aspirations of the Declaration.

Nicolas Fasel discusses in chapter 24 the experience of OHCHR in adapting indicators used in the social sciences to the needs of human rights monitoring. Building on the conceptual and methodological framework of indicators for human rights as endorsed by the United Nations human rights treaty bodies in 2008, Fasel explains the process which proceeds from distilling core attributes of a particular human right and identifying structural, process and outcome indicators (see HR/PUB/12/5). He explains how attributes “anchor” indicators in the normative framework of human rights and how indicators “capture a linkage between commitments, efforts and results”. Data-generating mechanisms, such as statistics, events-based data, surveys and expert judgements, have proved useful as human rights indicators; however, the right to development poses particular challenges in assessing features such as the realization of active, free and meaningful participation or States’ obligations to create international conditions favourable to the right to development.

In chapter 25, Fateh Azzam examines how the right to development contributes to international cooperation in the context of goal 8. In order to give practical significance to this relationship, he proposes eight elements for inclusion in State reports on the Millennium Development Goals and related poverty-reduction programmes, such as the poverty reduction strategy papers and the United Nations Development Assistance Framework, in order to make them more conducive to the realization of human rights and the right to development in particular. He concludes by highlighting the significance of the approach

proposed for the transformations occurring in the Middle East and North Africa, which resulted from “frustration against unaccountable Government, ineffectual economic policies, rampant corruption and the exclusion of the intended beneficiaries of development from any participation in the debates on public policy”.

A.K. Shiva Kumar identifies in chapter 26 several critical issues pertaining to right to development policy formulation, using examples from India of policy shifts that have been strongly influenced by human rights-based arguments. After examining six challenges to the realization of the Millennium Development Goals (resources, leadership, data collection, accountability, participation and a legal framework), he identifies ways of strengthening public action for promoting the right to development approach.

Moving to the regional level of implementation of the right to development, Obiora Chinedu Okafor provides a sociolegal analysis of article 22 of the African Charter of Human and Peoples’ Rights in chapter 27. One of the most salient features of the history of the right to development is the adoption in 1981 of that treaty norm within the framework of the Organization of African Unity. The African Charter entered into force the same year that the Declaration on the Right to Development was adopted. Article 22 is, according to Okafor, “proof positive that this right transcends the realm of soft international human rights law”. He outlines the normative properties, strengths and weaknesses of article 22, as well as what lessons the experience with this regional norm might have for a possible global treaty on the right to development. He concludes by proposing ways that the right to development might contribute to improving the lives of poor people through better development praxis.

The high-level task force and the Working Group on the Right to Development benefited from additional insights on criteria and indicators, principally by the authors of chapters 28 and 29. In chapter 28, Rajeev Malhotra provides a critical analysis of the criteria and monitoring framework developed by the task force and the Working Group. Focusing on the product of the task force’s third session in 2007 (see A/HRC/4/WG.2/TF/2), Malhotra explains the value of identifying a limited number of attributes, and then specifying criteria and sub-criteria, which should be measured by structural, process and outcome indicators. Indeed, he makes a number of suggestions to “rationalize the criteria for overlapping content and redundancy”. The attributes should be non-overlap-

ping and exhaustive as far as possible, although some overlap is inevitable. The qualitative and quantitative indicators “could enable and support a periodic assessment of the progress being made in the implementation of the right”.

A second major source of ideas for the task force’s proposed criteria was the study entitled “Bringing theory into practice: framework and assessment criteria” (A/HRC/15/WG.2/TF/CRP.5), which was commissioned by OHCHR in 2009. The authors of that study, Maria Green and Susan Randolph, have prepared an abridged version of their report, which appears in chapter 29. The chapter takes a position on several key issues concerning duties and modes of implementation before proposing a formal definition of the right “in the form of a set of time-invariant core criteria for assessing implementation of the right”. They also discuss “methodological issues involved in determining time-specific sub-criteria and indicators ... suitable for monitoring implementation of the right to development”. They proposed a comprehensive set of indicators in their full report, stressing that “the process of deciding on actual indicators would necessarily entail a broad-based consultative process involving both stakeholder participation and sectoral expertise in the various substantive development areas”. Their approach is based on three types of obligations (collective action obligations, individual (or unilateral action) obligations with regard to those under a State’s jurisdiction, and individual obligations with regard to those outside the State’s jurisdiction) and specifies core criteria and sub-criteria for each type. The extensive work of Randolph and Green in arranging criteria by level of obligation reflected in this chapter is a rich source of ideas for specifying State obligations. Their suggested indicators—summarized as “exemplars” in this chapter—also provide an extensive basis for further development of measurement tools, supporting their conclusion that “the right to development is very much a workable tool and more than amenable to playing a tangible role in the complex sphere of human rights and development practice”.

These contributions to the work of the task force from OHCHR, Malhotra, and Randolph and Green are essential background to understanding the final product, covered in chapter 30, in which Stephen Marks, the former Chair of the task force, presents the criteria that emerged from the sixth session. Recalling the early expression of need for such criteria and indicators (going back to 1979), this chapter summarizes the approach taken by the task force at its vari-

ous sessions, before explaining the rationale for and content of the core norm, and the attributes, criteria, sub-criteria and indicators proposed in 2010, which are listed at the end of the chapter. The chapter concludes by recalling the task force's "firm conviction that the right to development can be made concrete and applicable to development practice if and when there is the political will to do so".

Chapter 31 builds on the Expert Meeting organized by the Friedrich-Ebert Stiftung in Geneva from 4 to 6 January 2008. Chapters based on the proceedings of that meeting by Stephen Marks, Koen De Feyter, Beate Rudolf and Nicolaas Schrijver are summarized in order to present the various options for utilizing international law to advance the right to development. These contributions relate to the prospects for transforming the right to development criteria into "an international legal standard of a binding nature", the relationship of the right to development with existing treaty regimes, the potential value of a multi-stakeholder agreement, alternative pathways to a binding legal instrument and the conclusions of the authors.

Chapter 32 contains the consolidation of findings of the high-level task force, based on its final report to the Working Group on the Right to Development in 2010. It summarizes the main findings regarding the Millennium Development Goals, social impact assessments, and five areas of global partnership as defined in goal 8 (development aid, trade, access to

essential medicines, debt sustainability, and transfer of technology), and then provides seven additional general conclusions and recommendations, including an appeal to States to balance the national and international dimensions of this right so that they complement rather than conflict.

Finally, in chapter 33 entitled "The right to development at 25: renewal and achievement of its potential", Ibrahim Salama looks back over what has been accomplished and what remains to be done. Looking at the past 25 years, Salama recalls that "the right to development seems to remain conceptually hostage to the cold war-influenced motivations for the 'two-track' approach to elaborating on the Universal Declaration of Human Rights" but now "has renewed relevance" to an integrated approach. He surveys the accomplishments of the right to development by considering its current value added, its symbiosis with existing human rights treaties and the special procedures of the Human Rights Council, and developments on the right in case law. In conclusion, he suggests possible ways forward. Among the latter, he proposes three options, namely, reconstitute the high-level task force to study all the Millennium Development Goals and develop guidelines based on the Declaration on the Right to Development; establish an ad hoc expert body made up of relevant intergovernmental organizations, mandate holders and treaty bodies to review the concerns of all stakeholders; and elaborate a framework convention, to be supplemented later with specific protocols.