



# The Taming of the ShriII: From Indicators to Indicatorization

## *The Norm-Generation and Political Effects of Indicators on Human Rights*

*Siobhán Airey*

PhD Candidate, Faculty of Law, University of Ottawa, 57 Louis Pasteur,  
Ottawa, Ontario, Canada K1N 6N5

*sairey@uottawa.ca*

### Abstract

This article addresses the specific norm-generation function of indicators in a human rights context, focusing on ways that indicators foreground and legitimize as ‘truth’ particular worldviews or values. It describes the stakes of this process through elaborating on the concept of ‘indicatorization’, focusing on one moment in which the relationship between human rights and development was defined through indicators: the indicatorization of the Right to Development by a UN High Level Task Force in 2010. In this initiative, different perspectives on human rights, equality, participation and development from within the UN and the World Bank were brought together. This resulted in a subtle but significant re-articulation of ideas contained in the 1986 UN Declaration on the Right to Development. The article argues that how indicatorization happens, matters, and has important implications for the potential role of human rights discourse within international economic relations.

---

\* Ideas for this paper were presented at the Harvard Institute of Global Law and Policy’s June 2014 Collaborative Research Workshop, and at a meeting of a collaborative research group on ‘Indicators as Political Spaces’ in Bogota in September 2014. I would like to thank the participants from both events for their helpful reflections and feedback, and to Rene *Urueña* for his supportive leadership of this initiative. All responsibility for the ideas in this paper rest with the author.

## Keywords

indicators – human rights – indicatorization – right to development – World Bank

### 1 Introduction

This article explores an overlooked role of indicators in defining and elaborating the contents of international human rights norms. While the role of indicators in assessing and monitoring human rights has received much attention in scholarly and practitioner literature, their role in defining the content of a human right, though recognized, remains under-theorized. To this end, this article aims to contribute to that part of the literature on indicators and human rights, and indicators more generally, which analyses and problematizes the framing effect; and in the context of human rights, the norm-generation and norm-elaboration functions that human rights indicators can play. In this respect, it addresses the role of indicators as an instrument of global governance. Through articulating and using the concept of ‘indicatorization’, I draw attention to the steps and stakes of this process in order to reveal the political significance of indicators for the continual re-articulation of the content of human rights. Indicatorization subtly but powerfully affects not only the content of a human right — what the human right *is* — but also shapes the role of human rights within wider initiatives and discourses, such as that of development. Thus, the role of indicators in a human rights context has clear implications for the wider role of the international human rights project in international politics.

This article proceeds in two halves. It begins with an examination of the distinct features of both human rights and indicators that underpin the close relationship between both, and the role of indicators in overcoming some key difficulties faced by the international human rights project. It highlights conceptual norm-generation challenges posed by the use of indicators in a human rights context. Although this issue is flagged in some of the literature, it remains largely overlooked because of the predominant focus on human rights indicators as instruments to assess and measure human rights, at the cost of attention being paid to their norm-generation role and the political effects of this function. In order to capture this norm generation role and analyze it in such a way that reveals the political stakes at play in this process, I introduce the concept of ‘indicatorization’ and explain how it might be used in service of this end.

This examination is followed by the second part of this article, which takes a more in-depth look at one example of this norm-generation aspect of indicators by focusing on a human right — the right to development (‘RTD’) — in respect of which criteria and indicators were the main mechanism through which its contents were elaborated. This section begins with an overview of the clearest articulation of the content of the RTD found within the international human rights arena, the 1986 *Declaration on the Right to Development*.<sup>1</sup> Three features of the RTD are highlighted: its articulation of the concept of development, its articulation of the concept of participation and its approach to the external or international dimension to that right. This is followed by a summary of the context in which the relationship between human rights and development has evolved in recent years, highlighting evidence of a wider movement within the international human rights and international development arenas to articulate an ever-closer relationship between both. Two significant examples of this movement are identified and further analyzed. Within the international development arena, the World Bank sought to articulate the relationship between rights and development through the issuance of its World Development Report (‘WDR’) in 2006, entitled ‘Equity and Development’.<sup>2</sup> The contents of this report offer a distinct and different approach to the three features of the Declaration: an approach to the outcomes of development captured in its concept of ‘equity’; the concept of participation explored through the WDR’s concept of ‘agency’; and its perspective on the international dimension of the RTD through its concept of ‘global equity’. At the time the World Bank released this report, a UN Task Force was also working to elaborate the content of the Declaration on the Right to Development through attributes and indicators, the efforts of which were captured in a report released in 2010.<sup>3</sup> By analyzing the contents of the Task Force report in relation to the three selected features of the Declaration (the concept of development, of participation and the external or international dimension to the RTD), I argue that one can see the ways in which the choice

---

1 UN General Assembly, *Declaration on the Right to Development* (4 December 1986), UN Doc. A/RES/41/128.

2 World Bank, *World Development Report 2006: Equity and Development* (World Bank, Washington, 2006).

3 Human Rights Council, *Right to Development: Report of the High-Level Task Force on the Implementation of the Right to Development on its Sixth Session — Addendum: Right to Development Criteria and Operational Sub-Criteria* (8 March 2010), UN Doc. A/HRC/15/WG.2/TF/2/Add.2.

of indicators selected to elaborate the RTD by the Task Force reflects a particular view of human rights and of development, and the relationship between both. Far from these initiatives happening in separate institutions and epistemic communities, I argue that an analysis of the indicators selected by the Task Force, in light of the approach to ‘equity and development’ in the earlier WDR report, reveals that this event constitutes a significant moment of convergence in the World Bank’s and the UN Task Force’s perceptions of rights, development and the relationship between both. I speculate that this moment has wider consequences for the contestative, emancipatory or transformative potential of human rights discourse within the development project, and suggest that the concept of ‘indicatorization’ may be helpful to further research in this area.

## 2 ‘An Ideal Husband’: Matchmaking Human Rights and Indicators

### A *The Basis of the Relationship*

Elaborating the content of international human rights standards and norms — especially those related to economic, social and cultural rights and those related to ‘third generation rights’ such as the right to development — has long been perceived to be challenging. The strong values-based nature of those rights, and their more generalist elaboration in treaties and declarations, has not always translated smoothly into legal and policy instruments whose impacts and outcomes are directly measurable in terms of the progressive realization of human rights. Human rights norms can thus be perceived to offer little guidance to policy-makers who need to make policy choices, often in a context of economic scarcity. This is where data and indicators helpfully step in, both to enumerate the content of a right in more detail and to assist in monitoring its implementation. In both roles, indicators play an important role in moving human rights — and international human rights in particular — from standard setting to implementation.

However, the use of data and indicators for human rights purposes can also be problematic, facing both pragmatic<sup>4</sup> and conceptual challenges. On

4 On the pragmatic side, Waldmüller’s research on the elaboration of human rights indicators in Ecuador identifies and echoes a number of challenges identified in the literature. These include conceptual and ‘translation-related’ (adapting human rights indicators to particular contexts); methodological; institutional (the particular institutional contexts in which human rights indicator initiatives are undertaken); human-capacity and expertise, and reporting, use and dissemination. Johannes Waldmüller, ‘Human Rights Indicators as “Development 2.0”’,

the latter, while some human rights principles and values such as non-discrimination and equality may be more easily captured by numerical data,<sup>5</sup> the open-ended nature of other principles such as participation and accountability make them (currently) less amenable to monitoring and measurement through numbers and data. Nor can the infringement-violation continuum be adequately captured by mere numbers or composites of these through indexes. Data and indicators can also struggle to capture the well-recognized inter-relatedness of human rights; and indeed, sufficient data on rights may not be available at all, given the resource constraints faced by some States.

Such challenges can lead to a number of unintended effects with particular relevance for the continuing elaboration of human rights norms. First, the uneven availability of relevant data can have path-dependent consequences. The lack of data on more complex human rights can make these harder to identify and track, leading to an overall unevenness in monitoring their implementation and, over time, potentially contributing to their receding visibility within the human rights canon. Secondly, though much data of a socio-economic nature is now available through international datasets, not all data is suitable for human rights norm elaboration or monitoring purposes. For example, a key feature of human rights norms is the central (though often very varied) role(s) of the State, and other actors, in the respect for and fulfillment of human rights. Generic indicators on socio-economic areas may not lend themselves to an analysis of the contribution of various actors towards the status of a human right, though other forms of data gathering (such as qualitative data) may be helpful in this regard.<sup>6</sup>

---

(13 October 2014), *Alternatus*, available at: <<http://www.alternatus.net/>>. See also Sally Engle Merry, 'Human Rights Monitoring and the Question of Indicators', in Mark Goodale (ed.), *Human Rights at the Crossroads* (Oxford University Press, Oxford, 2013) pp. 140–150.

5 This is where disaggregated data is available, broken down by sex, race, age, location etc.

6 A human rights indicator is defined by the UNHCHR as 'specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms or standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights': OHCHR, *Human Rights Indicators A Guide to Measurement* (OHCHR, Geneva, 2012) p. 16. This implies a number of distinct features, including the following:

- (1) Identification of the purpose of holding duty-bearers to account: OHCHR, *Principles and Guidelines on a Human Rights Approach to Poverty Reduction* (OHCHR, Geneva, 2003) p. 3, para 13.
- (2) Attention to the approach and processes through which initiatives to realize human rights are undertaken, as well as a focus on the outcome or result. Much socioeconomic data focuses on the latter and does not give information on the former. Human rights principles include such concepts as 'maximum available resources', the 'progressive realization of rights', 'non-retrogression' along with those of participation and accountability.

However, another feature of indicators — and of statistical data in general — that is of particular significance to their role in human rights monitoring and norm elaboration relates to qualities of objectivity and truth that lend them added authority and credibility.<sup>7</sup> When selected and utilized for human rights norm elaboration and monitoring purposes, indicators — now human rights indicators — bring this ‘aura’ with them, potentially insulating a data-heavy human right from further scrutiny or contestation, while simultaneously fixing its articulation in a particular way.

## B *Elaborating the Relationship between Indicators and Human Rights in Practice*

The UN’s Office of the High Commissioner for Human Rights has taken the lead on developing a methodology through which indicators are used to monitor international human rights. The most recent and significant articulation of this approach is in its 2012 publication, which defines human rights indicators and outlines their role as predominantly that of measuring and assessing human rights.<sup>8</sup> The conceptual framework presented by the OHCHR to identify and develop human rights indicators consists of a two-step process. The first step involves the identification of a limited number of ‘attributes’ of the human right, based on ‘an exhaustive reading of the standard’ that captures the ‘essence’ of the human right. The second step is the selection of structural, process and outcome indicators, followed by indicators that capture such cross-cutting human rights principles as non-discrimination and equality.<sup>9</sup>

---

See Margot E. Salomon & Colin Arnott, ‘Better Development Decision-Making: Applying International Human Rights Law to Neoclassical Economics’ (2014) 32 *Nordic Journal of Human Rights* pp. 44–74.

- (3) A further consideration with using available socioeconomic data for human rights monitoring is the significant resources required to develop new datasets. Existing socioeconomic data has a number of benefits in that it is readily available, may have existed for some time, and may already enable comparisons with related areas.
- 7 ‘Reliance on numbers and quantitative manipulation minimizes the need for intimate knowledge and personal trust. Quantification is well suited for communication that goes beyond the boundaries of locality and community’: T. M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton University Press, Princeton NJ, 1995) p. ix.
- 8 OHCHR (2012), *supra* note 6, at p. 16 for a definition of indicators.
- 9 Structural indicators largely refer to the legal and regulatory framework that relate to the human right: the ‘hard’ law framework, so to speak; process indicators refers more to policy frameworks and decisions, and outcome indicators relate to the enjoyment of the right e.g. the percentage of girl children that fully complete primary school. *Ibid.*, pp. 30–41.

In both of these steps, the input of experts, along with recognized human rights institutions, is explicitly recognized.

Although the report recognizes a number of challenges in capturing compliance through the use of quantitative data, these challenges are presented as problems that can be overcome through a pragmatic approach to the selection and use of appropriate indicators informed by expert knowledge.<sup>10</sup> Although recognition of the role of indicators in human rights norm-elaboration is implicit, the instrumental role of indicators in helping to assess, monitor, communicate and enforce human rights remains predominant throughout the document.<sup>11</sup> This report presents a view of human rights as being whole and uncontested, but which need to be ‘transformed into a message that is more tangible and operational’,<sup>12</sup> in which the role of indicators is key.

### C *Indicatorization: Capturing the Stakes of the Role of Indicators in Human Rights Norm Generation*

As highlighted in the above section, the use of data and indicators in human rights discourse has a strong if under-explored norm-generation role with significant path-dependent and political effects. To identify and foreground for analysis the features of this norm-generation role, and its political effects, I utilize the concept of ‘indicatorization’. At a very simple level, by adding the suffix ‘ization’ to the term ‘indicators’, the new combined term draws explicit attention to the deliberate and contingent nature underpinning the process by which a human right is ‘broken down’ (through, for example, the ‘attributes’, as advised by the OHCHR report, or other means) and re-articulated and re-conceptualized through the selection and use of data and indicators. This process contains implicit norm-generating qualities in the following five ways.

First, the human rights indicators selected to elaborate the attributes of a right represent a constructed idea or ideal of what that human right *should* be. It creates a vision of what the human right *is*, and carries within it a sense of what the right *order* of matters related to that human right should be. For example, the actors who are most relevant to the realization of the right, their relationships, their duties and obligations towards each other and so forth are all encapsulated in the choice of indicators selected as being relevant to that

<sup>10</sup> *Ibid.*, p. 24.

<sup>11</sup> Five uses of human rights indicators are identified: (1) compliance monitoring; (2) performance monitoring; (3) human rights advocacy and people empowerment; (4) national human rights action plans and development plans; and (5) human rights budgeting: *ibid.*, pp. 104–126.

<sup>12</sup> *Ibid.*, p. 2.

particular human right. Secondly, through the use of technical abstractions, the choice of indicators creates the appearance of coherence amongst what might well be deeply contested or diverging concerns. It lends to the perception that a kind of consensus or settlement that has been reached, the political nature of which can be masked by the overtly technocratic nature of the decision made.

Related to this 'coherence' element of indicatorization is the ability of indicators to enable different epistemic communities and different organizations from different fields to communicate and engage with each other in ways that smooth over differences and divergences. Indicators thus become a kind of *Esperanto*, facilitating engagement and consensus between diverse and perhaps divergent interests, through assemblages of information that connect previously distant spheres of meaning and values. Experts and expertise can play a key role in this process, dealing with and trading in the 'right' types and forms of information through which shared approaches and understandings can be generated.

Thirdly, indicators have particular consequences for considerations of time and space. Depending on the nature and type of data and indicators available, perspectives on what happened in the past (or indeed what the past *was*), as well as shared hopes for the future, can become encapsulated through choice of indicators. Similarly, indicators can also capture or leave out connections and relationships with entities and phenomenon in places both local and distant. This is particularly important for how human rights indicators capture the global dimension of the status of human rights.

Fourthly, the concept of indicatorization draws attention to the deliberately constructed nature of human rights indicators and their role in the performative functions of human rights monitoring and assessment, where notions of a 'good' state or 'failed' State are constructed. These rituals are part of an important identity formation and augmentation exercise for States and other institutions (such as human rights monitoring bodies) that have clear consequences for relationships between States; for their status, access to opportunities and exposure to sanctions within the wider global and regional order; and for the relationships between States and other entities such as international organizations. Within States, these identities can also have significant implications for groups, communities, regions and institutions.

Finally, by focusing on the *choice* and *use* of indicators in human rights through the lens of indicatorization, one can more clearly identify and analyze the stakes and the political effects of a process that has, to date, largely been characterized as an instrumental, technocratic and politically neutral exercise. The choice of indicators is now revealed as an exercise in



determining the nature of a human right itself, implicit in which is a whole worldview about rights and their role in the wider scheme of local and global affairs, along with the 'right' role of various actors, what constitutes a rights-compatible social and economic order and so forth. In this respect, indicators are a particular kind of knowledge with strong governance effects.

It is important to highlight that though indicatorization draws attention to the determinative role and effect of indicators on human rights, this is not to say that this has an automatically positive- progressive, nor negative-constraining effect, on the concept of human rights, the wider discourse of human rights and its role within international political relations. The choice of indicators can have effects anywhere on that continuum; and indeed, it is helpful to see that, depending on the range and number of indicators selected to capture and monitor a human right, different indicators may have different effects on how 'progressive' they enable the right to be. Thus if, for example, four attributes and twenty indicators may have been selected to monitor a particular human right, it may well be the case that some of those indicators may reflect an understanding about part of the right that might well be contested by human rights scholars and activists. Where multiple indicators are used, some of these may well be in relative tension with others. One example that illustrates this phenomenon is 'rule of law' indicators. The concept of 'rule of law' is a malleable one, closely associated with human rights and good governance.<sup>13</sup> The 'Rule of Law' dimension of the World Bank's Worldwide Governance Indicators Project Index ('WGI') claims to "capture ... perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence".<sup>14</sup> However, an analysis of the sources used to generate this dimension show that the predominant focus of concern is how the law affects private property and private business activity,<sup>15</sup> displaying a strong bias in favour of

13 The malleability of the concept of 'rule of law' is highlighted by Christopher May who approaches its resonance in contemporary debates on governance and law, and its content as a 'social imaginary': Christopher May, *The Rule of Law: The Common Sense of Global Politics* (Edward Elgar, 2014) p. 1.

14 Daniel Kauffman, Aart Kraay, Massimo Mastruzzi, 'The Worldwide Governance Indicators, Methodology and Analytical Issues', *Policy Research Working Paper 5430* (The World Bank Development Research Group, September 2010) p. 4, available at: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1682130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130)>.

15 Issues surveyed include whether patent and copyright protection is not adequately enforced; intellectual property rights protection; private property protection; business cost of crime and violence; efficiency of legal framework for challenging regulations;

business-oriented interests in the rule of law.<sup>16</sup> Thus this Rule of Law Index, in the context of a partial proxy measurement for 'good' governance, skews the notion of governance it purports to measure when set against human rights conceptions of democratic governance which would focus on how representative and accountable governance mechanisms are,<sup>17</sup> and their inclusion of marginalized groups such as women and minorities.

Having outlined an analytical framework through which these aspects to rights and indicators can be revealed through the concept of indicatorization, let us now turn to exploring one example of how a human right was elaborated through indicators.

### 3 Exploring the Indicatorization of the Right to Development

#### A *The UN Declaration on the Right to Development and Its Post-Declaration Evolution*

Coined by the Senegalese jurist Keba M'baye in 1972, the human right to development has been amongst the most controversial rights in contemporary international human rights discourse. Though it has an fascinating genealogy, building on key ideas that had been emerging from the 1940s onwards,<sup>18</sup>

---

generally speaking, does the State exercise arbitrary pressure on private property (e.g. 'red tape')?; and the degree of observance of contractual terms between national and foreign private stakeholders: see 'Rule of Law' list of individual variables used to construct the index, available at: <<http://info.worldbank.org/governance/wgi/index.aspx#doc-sources>>.

- 16 Tor Krever, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense' (2013) 34 *Third World Quarterly* p. 140.
- 17 This idea of governance actually reflects the concept of governance used by the authors of the Worldwide Governance Indicators. They define governance as '...consist(ing) of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.' See 'Introduction', available at: <<http://info.worldbank.org/governance/wgi/index.aspx#doc>>.
- 18 Marks summarizes these as including '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 the 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's development

contemporaneous accounts of debates on the right prior and subsequent to its elaboration in the Declaration on the Right to Development highlighted often highly divergent views on the meaning of the right,<sup>19</sup> with some expressing skepticism regarding its value to the human rights canon.<sup>20</sup> If we take the 1986 Declaration as representing a moment of consensus on the content of the right, three features of the right stand out.

First, it contains a strong focus on the egalitarian and inclusive outcomes of development, expanding jurisprudence on the progressive realization of economic and social rights beyond their historic recognition of minimum standards and explicitly dealing with the need for distributional measures to address inequalities between groups.<sup>21</sup> Of further note is the Declaration's explicit recognition of the full gamut of equality rights in its approach to development: not just of equality of access, opportunity<sup>22</sup> and participation<sup>23</sup> but also equality of outcome.<sup>24</sup> This approach to substantive equality, as opposed

---

strategy to one that is more human-centred'. See Stephen P. Marks, 'The Politics of the Possible. The Way Ahead for the Right to Development', (June 2011) available via the website of the Friedrich Ebert Stiftung at: <<http://library.fes.de/pdf-files/iez/08156.pdf>>. The content of the Declaration echoes sentiments expressed in earlier Declarations promoted by the Non-Aligned Movement during the era of the 'New International Economic Order'. See UN General Assembly, 'Resolution on Permanent Sovereignty Over Natural Resources', (14 December 1962), GA Resolution 1803 (XVII), UN Doc. A/5217. See also the UN General Assembly, 'Declaration on the Establishment of the New International Economic Order', (1 May 1974), UN Doc. A/RES/S-6/3201.

19 Philip Alston, 'Making Space for New Human Rights: The Case of the Right to Development', (1988) 1 *Harvard Human Rights Yearbook* pp. 20–21.

20 See e.g. Jack Donnelly, 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development' (1985) 15 *California Western International Law Review* p. 473. This has continued up to the present day: see Arne Vandenberghe, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31 *Netherlands Quarterly of Human Rights* p. 187.

21 The Declaration defines development as 'a comprehensive economic, social, cultural and political *process*' aimed at 'the constant improvement of the wellbeing of the *entire* population and *all* individuals' This is repeated in the Declaration's inclusion of the 'fair distribution' of the benefits of development as a key element of the right: Preambular para. 2 (own emphasis). Art. 8.1 also states that the 'fair distribution of income' is a duty of states.

22 Art. 8.1.

23 Preambular paras. 2 and 13, and Art. 2.3.

24 Preambular para. 2 and Art. 2.3: 'States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the wellbeing of the entire population and of all individuals, on the basis of ... the fair distribution of the benefits resulting therefrom.'

to formal equality, is particularly noteworthy for its implications for the nature of States' domestic and international policies on development.

Secondly, participation is a key element of the RTD. It declares the right of every human person and peoples to participate in development,<sup>25</sup> and specifically recognizes women's role in the development process.<sup>26</sup> This idea of participation extends to include States' participation in the wider international order, and particularly in the international economic order.

Thirdly, and relatedly, States' obligations in the RTD have both an internal or domestic,<sup>27</sup> and an external or international, dimension.<sup>28</sup> The objective of States' duties in the latter is the deliberate creation of an international environment conducive to the realization of both the right to development, and peoples' human rights, and improvement in the development status of developing countries is identified as a key objective of international co-operation.<sup>29</sup> Significantly, several references are made to the establishment of a New International Economic Order, and to the elimination of human rights violations resulting from colonialism and neo-colonialism.<sup>30</sup> As others have noted,

25 Preambular para. 13. This is repeated in Art. 1.1 and Art. 2: 'The human person is the central subject of development and should be the active participant and beneficiary of the right to development'; and also in Art. 8.2: 'States should encourage popular participation in all spheres as an important factor in development.' The Declaration also explicitly states that 'All human beings have a responsibility for development, individually and collectively ... and they should therefore promote and protect an appropriate political, social and economic order for development.' Interestingly, the Declaration arguably places a duty on the human person also, when it states in Art. 2.1 that '[a]ll human beings have a responsibility for development, individually and collectively ... and they should promote and protect an appropriate political, social and economic order for development.'

26 Art. 8.1.

27 Art. 3.3. This includes duties on states to 'formulate national development policies that aim at the constant improvement of the well-being of the entire population.' Salomon proposes that this implies that a state can assert the right of its people to development against other states and actors. Margot E. Salomon, 'From NIEO to Now and the Unfinishable Story of Economic Justice' (2013) 62 *International and Comparative Law* p. 51.

28 UNGA *supra* note 3. The latter is the focus of much of states' duties elaborated in the Declaration, including 'to cooperate ... in ensuring development and eliminating obstacles to development'; 'to formulate international development policies' that facilitates the full realisation of the right to development, asserting that 'effective international co-operation is essential' to providing developing countries with the 'means and facilities' to foster their development.

29 Art. 4.2 states that '[s]ustained action is required to promote more rapid development of developing countries'.

30 Preambular paras. 10 and 16, as well as Arts. 3 and 5.

the Declaration at the time represented the latest in a series of (ultimately unsuccessful) efforts by the Non-Aligned Movement to use international law to achieve reform of the international economy.<sup>31</sup>

Thus, the RTD, as enunciated in this Declaration, includes and expands on many of the recognized key human rights norms contained in other international human rights covenants, such as the progressive realization of rights;<sup>32</sup> the ‘minimum essential levels’ or ‘core obligations’ of rights;<sup>33</sup> the indivisibility and interdependence of human rights; non-discrimination and equality;<sup>34</sup> participation;<sup>35</sup>

31 Salomon, *supra* note 27, pp. 31–54. See also Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, Cambridge, 2011).

32 Art. 2 (1) of the 1966 *International Covenant on Economic, Social and Cultural Rights* (‘ICESCR’) reads as follows: ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’: ICESCR, 993 UNTS p. 3 opened for signature 16 December 1966, (entered into force 3 January 1976). This is echoed in the 1989 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS p. 3 (entered into force 2 September 1990) (‘CRC’), which states in Art. 4: ‘States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.’

33 UN Committee on Economic, Social and Cultural Rights (‘CESCR’), *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, (14 December 1990), UN Doc. E/1991/23, para. 10, p. 86.

34 See ICESCR Art. 2 (2).

35 This includes the right to take part in the conduct of public affairs and aspects of this right are addressed by rights in the 1966 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 99 UNTS p. 171 (entered into force 23 March 1976) (‘ICCPR’), including the freedom to seek and receive information, freedom of association and are prominent in the human rights of Indigenous Peoples’ and minorities, through the concept of free, prior and informed consent (which is contained in the Declaration on the Rights of Indigenous People and in ILO Convention 169). In addition the CESCR ‘places great importance on transparent and participative decision-making processes at the national level’: CESCR, ‘Statement on an Evaluation of the Obligation to Take Steps to “the Maximum Available Resources” Under an Optional Protocol to the Covenant’, (21 September 2007), UN Doc E/C.12/2007/1, para. 11; and at the international level: CESCR, ‘Statement on the Importance and Relevance of the Right to Development, Adopted on the Occasion of the Twenty-Fifth Anniversary of the Declaration on the Right to Development’, (20 May 2011), UN Doc E/C.12/2011/2, para. 6.

and transparency and accountability.<sup>36</sup> In addition, the centrality of international assistance and co-operation<sup>37</sup> to the right to development constitutes a distinct normative contribution, recognizing as it does the international dimension to States' abilities to fulfil their human rights obligations and the impact of the international environment on States' abilities therein.<sup>38</sup> Furthermore, its repeated references to national sovereignty, sovereign equality, sovereignty over natural resources and a New International Economic Order capture a very distinct vision of an international order in which States, especially developing States, can participate as politically sovereign equals, and in which constraints and constrictions over their economic sovereignty are eliminated.

Subsequent to the Declaration, the 1980s and 1990s saw some activity within the UN in relation to clarifying the content of the right and making it capable of implementation.<sup>39</sup> The Commission's decision to adopt a resolution recommending the establishment of an open-ended working group ('OEWG') and an Independent Expert,<sup>40</sup> and later on (in 2004) a High-Level Task Force ('Task Force') ensured that work continued on the Declaration.<sup>41</sup>

36 *Ibid.* CESCR (2011). This not only relates to the obligation to provide a prompt, accessible and effective remedy before an independent authority when human rights are infringed or violated, but includes the right to seek, receive and impart information (ICCPR Art. 19.2).

37 CESCR, *supra* note 33, at para. 13, which states 'the essential role of such co-operation in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23'; and at para. 14, which states 'international co-operation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.'

38 Salomon, *supra* note 27, p. 52.

39 A variety of human rights mechanisms were involved in developing the right to development before and after the Declaration including the UN High Commissioner for Human Rights, various Working Groups on the Right to Development, a Global Consultation on the Right to Development, World Conferences, an Intergovernmental Group of Experts, an Independent Expert (who was succeeded by the High Level Task Force on the implementation of the right to development) and various elements of the human rights treaty regime, including the Commission on Human Rights.

40 The open-ended working group held its first session in 2000. Dr Arjun K. Sengupta, an Indian economist, was appointed to the Independent Expert position and by 2004 had produced eight reports: Marks, *supra* note 18 p. 5.

41 The Task Force's membership consisted of five nominated experts and representatives of identified international trade, finance and development institutions: see the website of the Office of the United Nations High Commissioner for Human Rights, available at: <<http://www2.ohchr.org/english/issues/development/taskforce.htm>>. The individual experts were from the USA, Ghana, Japan, Brazil and the Netherlands, and the institutional

From 2004–2010, the Task Force worked through the tasks of its mandate;<sup>42</sup> in the latter years, at the request of the Working Group, it focused its attention on defining criteria to evaluate the RTD and a methodology to effectively track its implementation.<sup>43</sup>

However, the UN was not the only international institution focusing on enunciating the relationship between rights, equality and development at that time. At the same time, the World Bank was also defining its own approach.

### B *The World Bank's Approach to Development, Equality and Human Rights*

In 2006, the World Bank issued a World Development Report titled 'Equity and Development'. This WDR marked an important moment in the World Bank's discourse on development policy, signalling a shift that involved the broadening of its focus on poverty reduction to a concern for inequity more generally. The report defined equity as an expectation "[that] individuals should have equal opportunities to pursue a life of their choosing and be spared from extreme deprivation in outcomes", highlighting that equity is complementary to "long-term prosperity".<sup>44</sup> Two principles underpinned this approach. The first was equality of opportunity, whereby a person's life achievements would be determined by their efforts and talent more than predetermined circumstances such

---

members were from the International Monetary Fund, the United Nations Conference on Trade and Development, the United Nations Development Programme, UNESCO, the World Bank and the WTO: Marks, *supra* note 18, p. 6.

42 Initially, the Task Force was to consider obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development; social impact assessments in the areas of trade and development and best practices in the implementation of the right to development. Commission on Human Rights, Review of Progress in the Promotion and Implementation of the Right to Development: Consideration of the Report of the High-Level Task Force on the Implementation of the Right to Development. Report of the high-level task force on the implementation of the right to development: see UN Doc. E/CN.4/2005/WG.18.2 (24 January 2005), para 3.

43 In 2004, the Working Group initially requested the Task Force to examine the obstacles and challenges to the implementation of the Millennium Development Goals, modified 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: Marks, *supra* note 18, p. 6.

44 World Bank, *supra* note 2, p. 2. Elsewhere, in several sections, it asserts that 'greater equity can, over the long term, underpin faster growth': *ibid.*, pp. 17, 70.

as race or gender, family or social background.<sup>45</sup> The second equity principle chosen by the WDR was the avoidance of absolute deprivation.<sup>46</sup> The WDR's approach to equity merits further attention. The first principle reflects a liberal view of equality that supports the promotion of policy responses such as equality before the law, equal enforcement of personal and property rights, non-discriminatory institutions and equal access to public services and infrastructure. The second principle would support policies that seek to ensure that members of society do not fall below an absolute threshold of need. This approach reflects a minimal approach to equality, linking 'equity' to formal equality of opportunity, but not necessarily equality of participation or equality of outcome.

For the WDR (and unlike the approach to equality in the Declaration), equity is not a value or a goal with intrinsic value. Instead, the WDR's core proposal is that equity is instrumental in the growth and development process: "greater equity can in the longer term underpin faster growth".<sup>47</sup> Markets are given a central role in achieving greater equity within and between States.<sup>48</sup> However, in taking this approach to equity as being premised largely on equality of opportunity, the WDR's shift in emphasis from poverty reduction to equity risks becoming limited to poverty reduction 'plus' attention to social policies that focus only on those who are 'the poorest of the poor'. This view eliminates considerations of the need to reduce inequality. The limits of this approach are evident in that, from this perspective, it is not illogical to argue that inequality can actually provide an incentive for its reduction.<sup>49</sup> The instrumental role

45 The report notes that '[p]redetermined circumstances — gender, race, place of birth, family origins — and the social groups a person is born into should not help determine whether people succeed economically, socially, and politically': *ibid.*, p. 19.

46 'Societies may decide, for insurance or for compassion, that its (sic) members will not be allowed to starve, even if they enjoyed their fair share of the opportunity pie, but things somehow turned out badly for them': *ibid.*, p. 19.

47 *Ibid.*, p. 70.

48 'Achieving more equal access to markets is fundamental to greater equity within societies as well as to moving countries onto dynamic growth paths, thus enhancing global equity ... [t]he main issue is access. The playing field is typically far from level in the workings of markets. Barriers are intrinsically inequitable when they privilege insiders' access to capital, good jobs, and favoured product markets. But they are also bad for the innovation and investment that lie at the heart of modern economic growth. That is why leveling the playing field has the potential to be both more equitable and more efficient. It is also why broadening access typically requires more economic competition and more political accountability': *ibid.*, 178.

49 *Ibid.*, 3. Indeed, the 'Overview' in the report notes, 'even with genuine equality of opportunities, one would always expect to observe some differences in outcomes owing to differences in preferences, talents, effort, and luck. This is consistent with the important role



that equity plays in relation to economic growth means that any policy proposal that seeks to address inequity will always be qualified by the consideration of how it will affect the operation of the 'markets'.

From a human rights perspective, this market-focused approach to equity poses a number of risks and circumscriptions. First, it is not clear whether a focus on the avoidance of absolute deprivation (however defined) may adequately meet the 'minimum essential level' or 'core obligation' norms of international human rights law. Secondly, making the promotion of economic growth and market efficiency the prime focus of the development policy of States may not, in all cases, be compatible with the human rights norm that obliges States' parties to take steps 'to the maximum of their available resources' to realize economic, social and cultural rights under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), or the norm of 'non-retrogression'. Similarly, this focus on economic growth and market efficiency may lead to a selective approach to the realization of human rights, where those rights that are deemed to be compatible with economic growth and the efficient operation of the markets are prioritized and others are left unattended to or, given the inter-relatedness of human rights, become severely diluted.<sup>50</sup> For example, initiatives to promote 'participation rights' can become focused on access to information for consumers and freedom of movement for traders, with rights to participation in broader decision-making processes, to trade union membership and freedom of association being overlooked or circumscribed. Thirdly, this minimalist approach to equity prevents recognition of how inequalities between groups, within and between states influence and reproduce the development processes that perpetuate unjust and unequal development outcomes.<sup>51</sup> In taking this approach, the links between equity and human rights can remain underdeveloped, whether at the national, regional or international level, militating against the identification of longer-term comprehensive solutions to eliminate structural causes.<sup>52</sup> Thus, the

---

of income differences in providing incentives to invest in education and physical capital, to work, and to take risks.'

50 Salomon & Arnott, *supra* note 6.

51 E. Anderson and T. O'Neill, *A New Equity Agenda? Reflections on the 2006 WDR, the 2005 HDR, and the 2005 RWSS*, Overseas Development Institute ('ODI') Working Paper, London, UK (2006). See also Richard G Wilkinson & Kate Pickett, *The Spirit Level: Why More Equal Societies Almost Always Do Better* (Allen Lane, London, 2009).

52 For example, research undertaken by the International Labour Office (ILO) on the costs of eliminating child labour has found that the benefits of eliminating child labour and replacing it with universal education exceed projected costs by a ratio of 6.7 to 1, giving (over time), an internal rate of return of 43.8%. However the report highlights that one

WDR's approach to equity differs markedly to the approach to equality as an outcome of development contained in the *Declaration on the Right to Development*.

However, the divergences in their respective approaches to human rights and development do not end there. Recall that the Declaration's definition of development viewed it as a process, in which the participation of the human person, peoples and women was viewed as vital. Helpfully, the WDR links inequality of opportunity to "the freedom and capacity of people to participate in and shape society",<sup>53</sup> as well as recognizing the "inequality trap for women".<sup>54</sup> To address the "unequal capacity of people to influence the form taken by institutions, and the consequences of unequal institutions for continuing inequality", the WDR draws on a concept of 'agency' defined as "people's capacity to transform or reproduce societal institutions".<sup>55</sup> Curiously, the WDR asserts that people in poverty internalize disadvantage, an "adaptive preference" that is expressed in "[preference] for menial occupations and ascription to norms and subservient behaviour that only legitimize and perpetuate their powerlessness".<sup>56</sup> However, this situation can be changed by unspecified "interventions" that give "more self-confidence and assertiveness to disadvantaged groups, work[ing] against the internalization of disadvantage, and creat[ing] new channels for excluded groups to exercise voice with greater effect".<sup>57</sup>

This approach locates both the cause of lack of 'agency' and the locus and the arenas for change in this dearth of agency mainly within the disenfranchised themselves. While elsewhere in the report there is a vague mention of

---

and a half decades during which the programme is first implemented, its economic burden will exceed its returns. After this period, the net flows turn positive, since past this point there are no further costs, only the benefits derived from improved education and health. See ILO, *Investing in Every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour* (ILO, Geneva, 2003) pp. 4–6. This is an example of where a short-term and merely market-focused cost-benefit analysis on child labour could fail to consider the costs to the dignity and inter-generational life opportunities of affected children, families and communities, and could limit approaches to addressing child labour to considerations of national responses only.

53 World Bank, *supra* note 2, p. 28.

54 *Ibid.*, p. 51.

55 It continues with 'Dire material circumstances, rational expectations about their limited prospects for upward mobility, and strong beliefs about the legitimacy and immutability of their situation conspire to create a vicious circle from which it may be very difficult for the poor to escape': *ibid.*, p. 48.

56 *Ibid.*, p. 49.

57 *Ibid.*, p. 50.

the need for greater participation of ‘the poor’ in a number of areas,<sup>58</sup> the links between agency and mechanisms that ensure greater participation of people in poverty in decision-making mechanisms remain undeveloped.<sup>59</sup> Furthermore, there is little articulation of an approach to address women’s participation in the development process in the WDR.<sup>60</sup> Both of these matters are surprising given, the volume of literature now available on participatory democracy, and women in development.<sup>61</sup>

The third feature of the RTD highlighted in this article relates to the external or international dimension to development, in particular in relation to the nature of States’ duties and obligations. Recall that the Declaration strongly affirmed States’ obligations to deliberately create an international order conducive to the realization of the RTD and human rights, one that respects States’ political and economic sovereignty and that addresses international constraints on developing States’ development. The WDR devotes its final chapter to ‘Achieving Greater Global Equity’. It locates of the causes of global inequalities in the different endowments of different countries (ascribed to patterns of history and geography), along with the rules that affect options for deploying these endowments on domestic and global markets.<sup>62</sup> On the former, it asserts

58 *Ibid.* For example, women’s participation is identified as contributing to an ‘inequality trap’ (p. 21); participation in education (p. 137); and land (p. 162) are also identified.

59 Curiously though, enhancement in agency is linked with mechanisms to address regional disparities through ‘meaningful’ political participation: *ibid.*, p. 205.

60 Though an ill-defined notion of ‘state intervention’ along with changes in the labour market are identified as factors that contribute to change: *ibid.*, p. 54.

61 On participatory democracy, there are now many examples of initiatives where public participation in policy processes formerly limited to elected leaders, bureaucrats and experts have been implemented. One such policy arena with significant implications for the realization of human rights is that of municipal and national budgets. For examples of different approaches, see Esther Hernández-Medina, ‘Social Inclusion through Participation: The Case of the Participatory Budget in São Paulo’ (2010) 34 *International Journal of Urban and Regional Research* pp. 512–532; Chris Holler and Geneva Faulkner, ‘Participatory Budgeting in Denver, Colorado’ (2012) 101 *National Civic Review* pp. 23–25; and Janette Hartz-Karp, ‘Laying the Groundwork for Participatory Budgeting: Developing a Deliberative Community and Collaborative Governance — Greater Geraldton, Western Australia’, (2012) 8 *Journal of Public Deliberation*, Article 6 pp. 1–18. For women and development, there is an extensive body of literature on issues, geographic areas, institutions and approaches: see e.g. Nalini Visanathan, Lynn Duggan, Nan Wieggersma, Laurie Nisonoff (eds), *The Women, Gender and Development Reader* (Zed Books, 2011); Ann M. Oberhauser and Ibipo Johnston-Anumonwo, *Global Perspectives on Gender and Space: Engaging Feminism and Development* (Routledge, New York, 2014).

62 World Bank, *supra* note 2, pp. 206–207.

that action to build endowments is primarily of a domestic nature (though aid is acknowledged to play a role). On the latter, while the agenda setting, negotiations and enforcement roles of international financial institutions is recognized as being key to global action on inequity, the lack of progress to “enhance voice” within the World Bank and IMF is merely lamented. Though the exclusive and non-representative membership structure of institutions such as the Financial Stability Forum and the Basel Committee on Banking Supervision is recognized, along with the role of private international standard-setting agencies, no calls for a change in their modes of decision-making or representation are made.

Thus, the WDR’s approach to addressing States’ roles and duties in creating a more equitable international order remains a mere re-iteration of some of the well-recognized flaws in the international order, without further analysis of why these have continued to persist or introducing new proposals that may help to address them. In short, the WDR’s approach to “achieving greater global equality” is acceptance of the continued existence of the status quo.<sup>63</sup>

### C *The Relationship between Human Rights and Development: Reeling or Relaying from Tension to Coherence?*

The relationship between human rights and development continues to be described by practitioners and scholars alike as one of ‘convergence’,<sup>64</sup> while at the same time there are continued calls for their ‘mutual reinforcement’.<sup>65</sup> This situation is augmented by a considerable body of literature on instruments through which this objective may be achieved, for example through the use of indicators and tools such as Human Rights Impacts Assessments.<sup>66</sup> In this

63 *Ibid.*, pp. 206–223.

64 Siobhán McInerney-Lankford & Hans-Otto Sano, *Human Rights Indicators in Development: An Introduction* (World Bank, Washington, 2010) p. 4.

65 Philip Alston & Mary Robinson, ‘The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours’, in Philip Alston & Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, Oxford, 2005) p. 4. Also, Philip Alston, ‘Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals’ (2005) 27 *Human Rights Quarterly* p. 755.

66 Human Rights Council, *Report of the Special Rapporteur on the Right to Food, Olivier DeSchutter, Addendum Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, (19 December 2011), UN Doc. A/HRC/19/59/Add.5; James Harrison & Alessa Goller ‘Trade and Human Rights: What Does ‘Impact Assessment’ Have to Offer?’ (2008) 8 *Human Rights Law Review* pp. 587–615; Gauthier De Beco, ‘Human Rights Impact Assessments’ (2009) 27 *Netherlands Quarterly of Human Rights* pp. 139–166.

view, while recognizing some differences and divergences in the approach of both human rights and development, their respective goals are perceived to be compatible overall.

Another view recognizes ongoing if not irreconcilable tensions between both. This perspective views with suspicion the development project and its rhetoric, cognizant of its continued failure to halt and eliminate the gross inequalities that now characterize relations between the richest and poorest people and communities within and between countries. From this standpoint, there exists a profound risk of co-option and conversion of human rights “into a paradigm of *trade-related, market-friendly human rights*”<sup>67</sup> via their incorporation into development initiatives delivered by States and development agencies such as the international financial institutions (‘IFIs’). In this view, human rights risks becoming yet another means through which society is subsumed into the wider project of economic growth through the expansion of markets, and where any potential offered by human rights for political contestation of the development project is reined in.<sup>68</sup>

These debates are taking place at a time when several initiatives at the international level, in the international institutions on development<sup>69</sup> and of human rights,<sup>70</sup> are being undertaken to make the relationship between

67 Upendra Baxi, *The Future of Human Rights*, (Oxford University Press, Delhi, 2001) p. 157 (emphasis in the original). Baxi notes ‘Article 17 protects individual as well as associational rights to property, a provision that for all practical purpose negates the radical looking assurances in Articles 23–6. Not surprisingly, intellectual property rights stands fully recognized in Article 27(2)’: *ibid.*, note 136.

68 Robin Perry, ‘Preserving Discursive Spaces to Promote Human Rights: Poverty Reduction Strategy, Human Rights and Development Discourse,’ (2011–2012) 7 *McGill International Journal of Sustainable Development Law and Policy* p. 61, at p. 85.

69 Examples from the former include the WDR in 2006, titled *Equity and Development* that is the focus of part of the analysis of this article. Later WDRs such as WDR 2012 on gender, and WDR 2013 on jobs, also address the relevance of human rights to these themes. Another example is the issuance by the Development Assistance Committee of the Organisation for Economic Co-operation and Development of the *DAC Action-Oriented Policy Paper on Human Rights and Development* (OECD, Paris, 2007) and the *Integrating Human Rights into Development, Donor Approaches, Experiences and Challenges* (OECD, Paris, 2006). Lending institutions such as the International Finance Corporation and regional development banks have also produced policies and instruments that are meant to address, in part, the human rights impacts of development projects that they lend to.

70 Examples here include the outcome document of the UN Conference on Sustainable Development (Rio + 20), *The Future We Want*. (11 September 2012), UN Doc. A/RES/66/288; and the Joint Statement of Chairpersons of the UN Treaty Bodies on the 25th Anniversary of the Declaration on the Right to Development, (1 July 2011), available via the OHCHR

development and the realization of human rights more real and more visible. Where these initiatives lie on the continuum between tension and coherence in the relationship between human rights and development depends very much on an analysis of the content of the instruments through which this relationship is articulated.

The elaboration of the content of the RTD through criteria and indicators by the Task Force on the Right to Development constitutes a significant moment in this evolving relationship. First, it represents, from within the international human rights arena, a distinct conceptualization of this relationship. It thus captures an approach to human rights, as well as to development, and how each relates to the other. It represents a moment of positioning which affects conceptions of both arenas, and the evolution of their relationship until then, capturing developments from other moments that have occurred in the past.<sup>71</sup> Secondly, from a human rights perspective, it represents an important step within a context of progress towards a legal standard on the right to development.<sup>72</sup> Thirdly, the resort to and use of technical abstractions such as criteria and indicators to elaborate the content of this contentious right signals a deliberate turn to the technical to address the normative and political. Previous work undertaken on elaborating the RTD within the UN had taken different approaches.<sup>73</sup>

#### D *Indicator-izing the Declaration on the Right to Development: From Tension to Coherence in the Relationship between Human Rights and Development*

The Task Force on the implementation of the right to development began its work in 2004. In December 2004, the Task Force met to consider a number of areas for analysis and recommendation, including best practices in the

---

website at: <<http://www.ohchr.org>>. Indeed, the OHCHR's report on human rights indicators specifically recognizes the potential of indicators to 'contribute to bridging the human rights discourse and the development policy discourse': *supra* note 6, at p. 26.

71 An example of this is the articulation of the Millennium Development Goals.

72 The role of this framework in contributing to this end is repeated in several of the Task Force and Working Group documents and specifically in the criteria and indicators report. 'The criteria and sub-criteria should be relatively long-lasting 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': Human Rights Council, *supra* note 3, p. 5, para. 13.

73 See previous work of the Independent Expert of the Commission on Human Rights on the Right to Development, available via the OHCHR website at: <<http://www.ohchr.org>>.

implementation of the right to development.<sup>74</sup> In the report of this meeting, the Task Force specified that development

had to be grounded in sound economic policies that fostered *growth with equity* ... [and that] recognition of the need to *build complementarity into growth-oriented strategies and human rights* was a response to the growing call by people for *more empowerment, more ownership and more sustainability* in development efforts.<sup>75</sup>

A footnote in this report records that the Task Force recognized and welcomed the World Bank's World Development Report 2006 — Equity and Development as encapsulating this theme.<sup>76</sup> Although it was only acknowledged in brief by the Task Force at this meeting, their recognition of the WDR's approach to equity and development is perhaps key to understanding the subsequent approach to the right to development taken by the Task Force through the development of its criteria and indicators framework on the right to development.

In 2005, the Task Force adopted a preliminary set of 13 criteria on global partnerships which formed the basis of its further work on elaborating the contents of the right to development.<sup>77</sup> An analysis of the 13 criteria shows that the three features of the RTD identified above were variously reflected in its contents. In relation to a definition and purpose of development, the contents of Article 2(3) of the Declaration were reiterated.<sup>78</sup> In relation to participation

74 The other two areas were: (i) obstacles and challenges to the implementation of the Millennium Development Goals in relation to the Right to Development; and (ii) social impact assessments in the areas of trade and development at the national and international level. See Commission on Human Rights, 'Review of progress in the Promotion and Implementation of the Right to Development: Consideration of the Report of the High-Level Task Force on the Implementation of the Right to Development' (13–17 December 2004), UN Doc. E/CN.4/2005/WG.18/2.

75 Commission on Human Rights, 'Review of Progress in the Promotion and Implementation of the Right to Development: Consideration of the Report of the High-Level Task Force on the Implementation of the Right to Development'. *Report of the High-Level Task Force on the Implementation of the Right to Development*, (24 January 2005), UN Doc. E/CN.4/2005/WG.18/2, para. 31 (emphasis added).

76 *Ibid.*, p. 13, note 2.

77 Commission on Human Rights, *Report of the High-Level Task Force on the Implementation of the Right to Development on its Second Meeting*, (8th December 2005), UN Doc. E/CN.4/2005/WG.18/TF/3.

78 *Ibid.*, para 82 (b): 'The extent to which the partnership respects the right of each State to determine its own development policies, in accordance with its obligation to ensure that

in development, the right of “all” individuals to participate in development, along with the participation of “affected populations” in “processes of elaborating, implementing and evaluating related policies, programmes and projects”, along with gender equality and “the rights of women”, were also recognized.<sup>79</sup> In relation to the international dimension to the RTD, the criteria on global partnerships referred to “support from international donors and other development actors for these efforts to attain positive development outcomes”, along with the recognition of “mutual and reciprocal responsibilities between the partners, based on realistic assessment of their respective capacities”, as well as the existence of “institutionalised mechanisms of mutual accountability and review”.<sup>80</sup> Thus, this preliminary list of 13 criteria upon which the Task Force later undertook its work on RTD indicators does address the three features of the RTD, though it can be said that the international dimension as articulated is less robust than that elaborated in the Declaration.

The Task Force continued its work over several years, and from 2009, dedicated its attention on producing right to development criteria. At this stage, it had already identified three components of the right:<sup>81</sup>

- (a) comprehensive human-centred development, defined as the “indivisibility and interdependence of human rights in development, the outcomes of development and the process of their realization, as well as a sustainable development process that promotes growth with equity and aims at a constant improvement of well-being”;
- (b) an enabling environment, described as States’ duties to create this, nationally and internationally, and the importance of international cooperation therein; and
- (c) a social justice and equity aspect, described as equality of opportunity for all in “their access to basic resources, education, health services, food, housing, employment and the fair distribution of income”, with a focus on non-discrimination and inclusion, gender equality and the rights of

---

the policies are aimed 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’. See also Human Rights Council, *Report of the Working Group on the Right to Development on its Eighth Session*, Fourth Session (14 March 2007), UN Doc. A/HRC/4/47, paras. 51, 52 and 55.

79 *Ibid.*, para. 82(e) & (k).

80 *Ibid.*, para. 82m (c) & (h).

81 Human Rights Council, *Report of the High-Level Task Force on the Implementation of the Right to Development on its Fifth Session, Twelfth Session* (17 June 2009), UN Doc. A/HRC/12/WG.2/TF/2, para 102.



women, the equitable sharing of benefits from development, with the existence of social safety nets to mitigate hardships during times of economic crisis, stress or natural disasters.

What is interesting about this stage in the Task Force's work is the approach taken to identifying and elaborating criteria on the RTD. First, the range of sources now identified as authoritative on the content of the RTD is expanded beyond just the contents of the Declaration to also include "prevailing development theories".<sup>82</sup> Given the Task Force's earlier endorsement of the WDR, it is reasonable to speculate that the WDR may well have been considered as one of those prevailing development theories. Secondly, the RTD is now broken down into three components, whose contents are further articulated in more detail. The components and contents signal subtle but significant changes to the content of the right from that which is articulated in the Declaration. Of particular note is the 'translation' of the Declaration's articulation of development that includes the fair distribution of the benefits of development, to one that focuses on an "equitable sharing" of the benefits of development. The term 'equity' (which is not in the Declaration, and which is not defined by the Task Force) makes further appearance in this component of the RTD in relation to "sustainable" development, defined as one that "promotes growth with equity". It emerges again in the third selected component of the RTD on "social justice and equity" which includes reference to "fair distribution of income", an "equitable sharing of benefits from development" and non-discrimination and inclusion. Another shift in the content of the RTD that emerges from the Task Force's work is the notion of States' duties at the international level and the purpose of international efforts therein. Recall that the Declaration makes multiple references both to an "international order" and "international economic order" in which the rights in the Declaration can be realized.<sup>83</sup> This has

---

82 The Task Force's report on the Right to development criteria states that 'care was taken to ensure that all standards (attributes, criteria and sub-criteria) were firmly anchored in: (a) the Declaration on the Right to Development; (b) criteria already examined and found useful by the Working Group; (c) an analysis of United Nations bodies or agencies, leading scholars and practitioners; (d) other international human rights laws, standards, theories and practices; and (e) prevailing international development standards, theories and practices': Human Rights Council, *supra* note 3, at p. 5, para. 13. Significantly, (e) opens the opportunity to consider theories and ideas on development from international development organizations and other sources.

83 This includes references to a "new international economic order"; "international conditions favourable" to the realization of the RTD; States' duties to co-operate to ensure development and eliminate obstacles to development; duties to formulate international

now become translated into the creation of “an enabling environment”, in which the Declaration’s multiple references to States’ international duties under the RTD become its “[emphasis on] the importance of international cooperation in the realization of the right to development”.<sup>84</sup>

The Task Force summarized the Right to Development in what it called a “core norm” as follows:<sup>85</sup>

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.

This core norm was further expanded through three ‘attributes’, eighteen ‘criteria’ and sixty-eight ‘sub-criteria’.<sup>86</sup> Each of the sub-criteria is linked to varying quantities of ‘indicators’.<sup>87</sup> The Task Force asserted that the criteria and sub-criteria captured the “essential features” of the right to development as defined in the Declaration in a “comprehensive and coherent way”.<sup>88</sup>

#### (a) Defining Development

One of the more controversial and innovative features of the definition of development in the Declaration was its commitment to substantive equality

---

development policies along with a broader need for international co-operation to assist developing countries to develop.

84 *Supra* note 66 at para. 104.

85 *Supra* note 3, at Annex p.8.

86 The criteria framework presents the following three attributes to the right to development. Attribute 1 is titled ‘Comprehensive and human-centred development policy’. It includes ten criteria such as the promotion of ‘constant improvement’ in socio-economic well-being in which health, education, housing and water, work and social security, and food security and nutrition are identified as sub-criteria, and the creation of an equitable, rule-based, predictable and non-discriminatory international trading system in which trade rules, market access and movement of persons are identified as sub-criteria. Attribute 2 is identified as ‘Participatory human rights processes’ and it has five criteria including one focusing on ensuring non-discrimination, access to information, participation and effective remedies, and the promotion of good governance at the international level and national levels. Attribute 3 — Social Justice in Development — has three criteria: including the provision for ‘fair access to and sharing of the benefits of development’, and the provision for ‘fair sharing’ of the burdens of development: *supra* note 3, pp. 8–15.

87 There are one hundred and forty nine ‘indicators’ in total, with each of these having its own ‘note’. Each note indicates the source of data for that indicator.

88 *Supra* note 3, p. 1, para. 1.

through its assertion of the fair distribution of the benefits of development as a key part of the RTD. This aspect of the Declaration is addressed in the HLTf criteria framework mainly through Attribute 3: Social Justice in Development. Criteria identified include “[t]o provide for *fair access to and sharing of the benefits of development*”, for which one of the sub-criteria is “*equality of opportunity in education, health, housing, employment and incomes*”.<sup>89</sup> What is striking here is how the enunciation of States’ duties to formulate policies aimed at the improvement of the entire population and individuals on the basis of the “fair distribution of the benefits” of development enunciated in the Declaration, has become translated into the less weighty “fair access to” and “sharing” of the benefits and burdens of development in the criteria framework, with equality of opportunity, rather than equality of outcome selected in relation to areas such as health, housing and education.

A further criterion selected for this attribute of the RTD is identified as “[t]o provide for *fair sharing of the burdens of development*”, for which sub-criteria include the “*provision of just compensation for negative impacts of development investments and policies*” and “*establishing safety nets to provide for the needs of vulnerable populations in times of natural, financial or other crisis.*” The sub-criterion of the provision of just compensation, which at first glance is welcome, can in fact be keenly at odds with a human rights approach to development. This stems from the different values base of an economic-oriented approach to development which, as Salomon and Arnott point out, accepts a theory of compensation that anticipates wrongs and views them as acceptable on the basis that the aggregate benefits to those who gain are more than aggregate costs to those who lose, and that compensation will be forthcoming and right the wrong. They point out a number of flaws in this approach from a human rights perspective, including that policy decisions which anticipate undermining the socio-economic or cultural rights of some people constitute a *prima facie* violation and can only be introduced if the State has undertaken a number of steps.<sup>90</sup> Furthermore, the ‘first instance’ recourse to compensation rather than rectification or restitution for a violation accepts in principle the economic approach that commodifies harms and ignores the fact

89 *Ibid.*, Criteria 3(a) and sub-criteria 3(a)(i), p. 14 (own emphasis).

90 These include including demonstrating careful consideration of all alternatives; participation of affected groups in examining the proposed measures; a determination on whether the measures were directly or indirectly discriminatory; the effect of the measure on the enjoyment of the right affected, in addition to whether the measure is justified in the context of the full use of the state’s maximum available resources: Salomon & Arnott, *supra* note 6, at p. 66.

that some violations are often incommensurable and can have lasting effects on individuals and communities that cannot be financially calculated.<sup>91</sup>

In addition, the industries identified in the HLTF criteria framework in relation to just compensation include “hazardous industries, dams, natural resource concessions”.<sup>92</sup> These are industries frequently associated with egregious and large-scale human rights violations such as large-scale displacement, civil unrest, labour rights violations, environmental and livelihood destruction causing widespread disruption of community life, health and well-being. However, a focus on these industries alone hides from view other development practices with human rights costs, particularly those whose effects are less immediately visible,<sup>93</sup> and which may emerge only after a time period has elapsed. It also lends to the notion of development as primarily a physical project, or singular initiative, and not a process that — cumulatively, over time, and as a result of a myriad of complex policy decisions by States and international organizations — may lead to the gradual deterioration of people’s circumstances, resulting in an erosion and eventual violation of their socio-economic rights.<sup>94</sup>

91 *Ibid.*

92 *Supra* note 3, at Annex p. 15.

93 An example here are the potential violations of the right to food prompted by speculation on the commodity derivatives market which has led to financial speculation on food, driven up the price of many basic foodstuffs causing widespread hunger. See Miriam Ross, ‘Goldman Sachs made up to £250 million betting on food prices in 2012’ (21 January 2013), World Development Movement, available at <<http://www.wdm.org.uk/food-and-hunger/goldman-sachs-made-%C2%A3251-million-betting-food-prices-2012>>. See also the work of the former UN Special Rapporteur on the Right to Food, Olivier de Schutter, e.g. Olivier De Schutter, *Food Commodities Speculation and Food Price Crisis – Regulation to Reduce the Risks of Price Volatility*, Briefing Note 2 (September 2010), available at: <<http://www.srfood.org/en/speculation>>.

94 A clear example of this type of ‘development’ lies in the austerity measures imposed by the Troika on peripheral EU countries as a necessary cost rationalized as necessary to maintaining the integrity of the wider financial system and ensuring a swift return to economic growth. Evidence is now emerging that the burden of these measures has largely fallen on those with least resources to withstand it, across those countries. See e.g. Caritas Europe, ‘The European Crisis and Its Human Cost – A Call for Fair Alternatives and Solutions’, Social Justice Ireland (2014), available at: <[www.caritas.eu](http://www.caritas.eu)>. In a recent Working Paper, the IMF itself has queried the efficacy and social cost of austerity policies finding that fiscal consolidation episodes are typically associated with a significant and persistent increase in inequality, declines in wage income and in the wage share of income, and with increases in unemployment. See L. Ball, D. Furceri, D. Leigh, and L. Prakash, ‘The Distributional Effects of Fiscal Consolidation’. IMF Working Paper (2013)

## (b) How the Task Force Criteria and Indicators Framework Address Participation

The concept of participation in the Declaration on the RTD has three features:

- (a) the active, free and meaningful participation of individuals in development, including the right to self-determination;
- (b) States' right and duty to formulate national development policies that support the participation of people(s) in development; and
- (c) States' rights and duties to co-operate with each other at the international level to create an international order supportive of the RTD.

Participation is largely dealt with under attribute 2 of the Task Force's criteria and indicators framework entitled "Participatory human rights processes", which contains a sub-criteria 2(c) ("[t]o ensure non-discrimination, access to information, participation and effective remedies"). The latter is the focus of the analysis this article on participation.

In debates on participation in decisions on development, the issue of free, prior and informed consent ('FPIC') of Indigenous Peoples on decisions that affect them remains pertinent,<sup>95</sup> and is one that has received much attention from within the international human rights and international development communities. Here, the Task Force addresses these rights of Indigenous Peoples through an indicator on the "existence of a legal or administrative standard requiring free, informed prior consent by indigenous communities to the exploitation of natural resources on their traditional lands".<sup>96</sup> Including this as an indicator is a very welcome move and recognizes and builds on other

---

WP/13/151. It is worth noting the austerity measures implemented by the Troika constituted a comprehensive package of legal, regulatory and policy changes across a diverse range of areas, whose effects become visible over time. Such an approach resonates deeply with the inter-connected approach to development captured in the Declaration's notion of development as a 'process'. For an excellent analysis of the gaps in legal accountability between States and international institutions for the violation of socio-economic rights, see Margot E. Salomon, 'Of Austerity, Human Rights and International Institutions', (2015) 4 *European Law Journal* p. 521.

95 The UN Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of Indigenous Peoples be obtained in matters of fundamental importance for their rights, survival, dignity, and well-being: see UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, (2 October 2007), UN Doc. A/RES/61/295, Art. 10.

96 *Supra* note 3, at Annex p.13.

work within the UN undertaken in this area.<sup>97</sup> For non-Indigenous peoples, (and, presumably, Indigenous People also), the Task Force includes as another indicator the “provision of sufficient political and financial support to ensure effective participation of the population in all phases of the development policy and programme design, implementation, monitoring and evaluation”.<sup>98</sup>

However, notes on both of these elements of this indicator reveal that no datasets on these indicators are currently available.<sup>99</sup> The lack of available international datasets is telling, and points to a key dimension already highlighted of the indicatorization of the RTD: the determinative power of indicators to capture a particular worldview deriving from their reliance on existing data and pre-existing epistemic frameworks that reflect the state of the world in particular ways. The acknowledged lack of datasets throws up interesting questions: how will States themselves report on this indicator? Will the absence of an agreed dataset give recalcitrant States more leeway in their reports? How will a monitoring mechanism ascertain compliance with this part of the RTD in the absence of this data, and thus evaluate the State’s approach to this part of the right? How will the lack of datasets affect the monitoring of FPIC, and how participatory development processes are? Of course, the lack of datasets may well be the prompt to address the challenge of monitoring this aspect of the RTD in greater depth, potentially leading to a further re-articulation of this aspect of the right.

(c) Capturing the External and International Dimension of the RTD through Indicators

The Declaration on the RTD included several references to States’ duties to cooperate at the international level to create international conditions that are conducive to the realization of the RTD, and the Task Force’s indicators and criteria framework includes several sub-criteria and indicators that relate to

97 This includes the work of the UN Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

98 This is supplemented with an additional indicator: ‘percentage of national and sub-national ministries and other public service providers with published procedures to support public participation in the different stages of assessment, planning, implementation and evaluation of programmes and policies.’ *Supra* note 3, at p.13.

99 For both rights respectively, country-specific budgets at ministerial level and country-specific administrative information, followed by ‘(no data sets available)’ are identified: *supra* note 3, p. 20, at note 108. This is a telling insight into the type of datasets that are currently available vis-à-vis the rights of Indigenous Peoples.

the international dimension of development.<sup>100</sup> Of the many elements of the Task Force's criteria and indicators framework that address this aspect of the RTD, I have selected two for further scrutiny as both of these illustrate features of indicatorization that relate to the norm-generation and *Esperanto* abilities of human rights indicators.

The first relates to the reference to "equity, non-discrimination and right to development objectives in IMF, World Bank and WTO programmes and policies", for which the indicator specified is as follows:<sup>101</sup>

For IMF, World Bank and WTO – does the institution explicitly take a rights-based approach to its work, with particular attention to equality and non-discrimination, transparency, participation and accountability?  
Source: IMF, World Bank, WTO policy statements (no international data sets available).

These international institutions, of which States are members, play important roles in policy areas that are key to States' development and the economic relations between States. By including these within the remit of the monitoring framework of the RTD, the Task Force has taken an important step in further solidifying the relationship between international human rights law and the roles and practices of the international institutions such as the WTO, the World Bank and the IMF. This is a subject that has attracted a range of perspectives and approaches in the past.<sup>102</sup>

Such a move certainly seems warranted. The World Bank Group's Office of the Compliance Advisor/Ombudsman for the International Finance Corporation ('IFC') and Multilateral Investment Guarantee Agency ('MIGA') members of the World Bank Group (the private sector wings of the World Bank), is an independent post that reports directly to the President of the World Bank Group. It has a crucial role in reviewing complaints from communities affected by development projects undertaken by the IFC and MIGA. In its most recent Annual Report, the Office indicated that, institutionally in their

100 These include references to reducing risks of external macro-imbalances, reducing and mitigating impacts of international financial and economic crises, protecting against the volatility of international commodity prices, international trade rules, migration, international capital flows etc: *supra* note 3, at pp. 9–10.

101 *Supra* note 3, at p. 9 and p. 17, note 39.

102 See for example Margot E. Salomon, 'International Economic Governance and Human Rights Accountability', in Margot E. Salomon, Arne Tostensen & Wouter Vandenhoe (eds.), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Intersentia, Oxford-Antwerp, 2007) pp. 153–183.

policies and practices, the IFC and MIGA could make significant changes to improve development outcomes.<sup>103</sup>

Another international institution of significance to the international dimension of the RTD, the WTO, currently does not formally include consideration of either the human rights impacts, or the development impacts, of trade policies and agreements in its comprehensive surveillance mechanism on States' trade policies — its Trade Policy Reporting Mechanism ('TPRM') — though it would appear to have the legal mandate to do so.<sup>104</sup> The WTO's discomfort with their inclusion within the criteria framework is evident from the contents of a submission it made following the HRC resolution 15/25.<sup>105</sup> While acknowledging the "strong link" that exists between the right to development and the WTO, it concluded its submission by asserting that "it is hard to justify limiting examination of the 'environment' to the work of organizations in isolation, or to isolated aspects of their structure", advising instead that a concentration on the

103 'We believe that better project preparation, better project consultation, diligent supervision of investments, and the right to redress are important ingredients for better development outcomes.' The Report also notes that 'Compliance work has a natural tension with the institution we are tasked to investigate. Over the past year, IFC's responses to our audits (now called investigations) have often been dismissive. One of the major challenges we have observed involves how IFC converts CAO findings into tangible improvements in its environmental and social procedures and practices.' See Compliance Advisor Ombudsman, *2013 Annual Report* (CAO, Washington, 2013) pp. 4–5.

104 The WTO's TPRM would appear to be a particularly appropriate institutional mechanism to pursue this kind of analysis and role within the WTO. Grounded in the WTO's legal framework, the purpose of the TPRM is 'to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements, and where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system', through a review and assessment of individual Members' trade policies and practices, 'against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment.' See WTO, *Annex 3 Trade Policy Review Mechanism*, available at: <[http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm#annex3](http://www.wto.org/english/docs_e/legal_e/legal_e.htm#annex3)>. This potential of the TPRM has already been recognized by the International Trade Union Confederation ('ITUC') who has requested that a section on the implications of trade on core labour standards and decent work be included in reviews. Though this is not as yet been taken up by the WTO, the ITUC produces its own reports on the status of the internationally-recognized core labour standards for each Member. See ITUC, 'WTO Reviews', available at: <<http://www.ituc-csi.org/wto-reports>>.

105 In which the HRC endorsed the recommendations of the Working Group to seek further feedback from Member States on the criteria: Human Rights Council, *Report of the Working Group on the Right to Development on its Eleventh Session*, (10 June 2010), UN Doc. A/HRC/15/23.



“position and interaction of different intergovernmental organisations, including the WTO, within that system” be made.<sup>106</sup>

Thus, depending on the approach taken by the relevant international organizations to this indicator, and how it is eventually monitored, the inclusion of this criterion and indicator as a measure of how supportive the policy strategies of the major international development organizations are of the RTD has the potential to be quite path-finding and progressive.

Another criterion included by the Task Force that addresses the international dimension of the RTD is “[t]o create an equitable, rule-based, predictable and non-discriminatory international trading system” which includes “Aid for Trade” as an indicator of trade rules “conducive to the right to development”.<sup>107</sup> Aid for Trade — broadly defined as financing to enable countries (especially poorer countries) to enhance their trading capacities, including linking them to global value chains — has emerged strongly as a key element of many international donors’ and institutions’ trade and development policies, including those of the WTO, the OECD and the European Union. The discourse of Aid for Trade is heavily dominated by poverty reduction statements.<sup>108</sup> Funding for Aid for Trade initiatives is now a significant part of international development funding, with more than US \$170 billion allocated from donors to developing countries since 2005.<sup>109</sup>

However, there is concern about the actual impact — positive and negative — of Aid for Trade on people in poverty. A recent study undertaken by NGOs Traidcraft and Cafod, focusing on the UK’s and EU’s approaches to Aid for Trade, suggests that the impact of Aid for Trade on poverty reduction is currently only measured at the macro-level and over a longer-term, and that the impact of concrete projects on poor and excluded groups is typically not

106 WTO, ‘Submission in follow-up to HRC resolution 15/25 “The Right to Development”’, (undated) at p. 8, available at: <[www.ohchr.org/Documents/Issues/Development/Session12/WTO.pdf](http://www.ohchr.org/Documents/Issues/Development/Session12/WTO.pdf)>.

107 *Supra* note 3, criteria 1(e), sub-criteria 1(e)(i) at p. 10.

108 See e.g. the statement “[a]id for trade has been designed as a tool to interlock aid and trade policies in pursuit of raised living standards and reduced poverty”: OECD, ‘Trading out of Poverty: How Aid for Trade Can Help’ (2009) *OECD Journal on Development* p. 9. The WTO-OECD initiative on ‘Aid for Trade’ asserts in a recent report that ‘[o]ne dollar invested in aid for trade is on average associated with an increase of nearly USD 8 in exports from all developing countries — and with an increase of USD 20 in exports for the poorest countries.’ See OECD-WTO, ‘Aid for Trade at a Glance 2013’, p. 16, available at: <[https://www.wto.org/english/res\\_e/booksp\\_e/aid4trade13\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/aid4trade13_e.pdf)>.

109 *Ibid.*, p. 12.

assessed.<sup>110</sup> The UK's Independent Commission for Aid Impact recently published a highly critical report on the UK DFID's Trade Development Work programme in South Africa.<sup>111</sup> It found that the programme assumed that it would benefit people in poverty, but had not linked programme activities to people in poverty, nor mitigated negative impacts on people in poverty such as increased food price volatility and unemployment in certain sectors.<sup>112</sup> DFID subsequently cancelled that programme. The impact of Aid for Trade initiatives on the reduction of poverty in developing and least-developed country Members of the WTO remains largely undocumented,<sup>113</sup> although it is linked to enhanced economic growth. While this example may not be representative of what is a complex and broadly constructed initiative, it does highlight that the unqualified inclusion of Aid for Trade as an indicator on the right to development on the basis of its alleged effects on poverty reduction may be misplaced. As currently constructed, Aid for Trade initiatives focus on enhancing the movement of goods from developing countries across borders, and does not include an explicit focus on the reduction of poverty.

#### 4 Conclusion

This article draws attention to the specific norm-generation function of indicators in a human rights context. It illustrates the ways that the use of indicators can foreground and legitimise as 'truth' particular worldviews or values. It elaborates on the concept of 'indicatorization' to draw attention to the steps and the stakes of this process and focuses on one moment in which the relationship between human rights and development was defined through indicators, the indicatorization of the Right to Development by a UN High Level Task

110 Liz Turner & Laura Rovamaa, 'Aid for Trade: Reviewing EC and DFID Monitoring and Evaluation Practices' (Traidcraft & CAFOD, 2013), available at <[http://www.traidcraft.co.uk/international\\_development/policy\\_work/policy\\_resources/policy\\_reports](http://www.traidcraft.co.uk/international_development/policy_work/policy_resources/policy_reports)>.

111 ICAI, *DFID's Trade Development Work in Southern Africa* Report No. 30 (December 2013), available at: <<http://icai.independent.gov.uk/reports/dfids-trade-development-work-southern-africa/>>.

112 *Ibid.*, p.2.

113 A review of the OECD's 'Aid for Trade' website, one section of which is devoted to the gathering of data and reporting on 'Aid for Trade' flows, donors and recipients, does not include dedicated data on the poverty reduction impacts of Aid for Trade initiatives. This is surprising, as the Logical Framework to assess Aid for Trade performance includes 'improved trade performance and poverty reduction' as one of its four elements: see <<http://www.oecd.org/dac/aft/logical-framework.htm>>.

Force in 2010. An analysis of this initiative reveals how, through this process, ideas on development, participation and the international dimension of the right to development were re-articulated in subtle but significant ways that both diverge from and progress ideas contained in the UN's 1986 *Declaration on the Right to Development*. Through the indicatorization of the RTD at that time, different perspectives on human rights, equality and development from within the UN and the World Bank were brought together, building on initiatives that had taken place earlier within both institutions.

How indicatorization happens, matters. As a process, indicatorization does not have inherent progressive or regressive effects on the conceptualization of human rights. However, its reliance on available data sets (whose own orientation reflects particular world views), and the contingent nature of the selection and choice of data used (though these decisions can be made by 'experts' and appear to be mainly technocratic, they are, in fact, political in nature), impacts on the contestative and emancipatory role of human rights within wider international relations. Indicatorization shapes not only our conception of the human rights norm, but also affects how it engages with other aspects of social life. This article highlights that indicatorization has implications for the role of human rights discourse within international relations, and in a development context, for international economic relations in particular.

The concept of indicatorization may be of help to further research on the role of indicators as an instrument of global governance, moving beyond debates about indicators on whether they adequately capture what is 'right' and 'real' about a human right. Instead, it may help focus more on the peculiar form of knowledge that they create, and how, as a particular form of technology, they wield, shape and transmit power in very distinct ways.<sup>114</sup>

---

114 See e.g. the contributions of the other authors to this special forum.