Human rights-based approaches to development assistance and policies

Lilian Chenwi

Introduction

Development assistance (also referred to as foreign aid or international cooperation for development) is a global or extraterritorial activity that is crucial in promoting human rights and development. It is of particular importance to poor or low-income countries in stimulating social and economic development (Kieh 2014, p. 261; Sengupta 2002, p. 1424). It is also ‘a crucial countercyclical flow in times of crisis’ with ‘the potential to be a transformative force to support and guide a sustainable recovery in developing countries’ (Organisation for Economic Cooperation and Development (OECD) 2020, p. 8; see also United Nations (UN) 2020, p. 58). The international community continues to experience global crises that not only threaten human rights and development but also necessitate transnational and collaborative action in addressing them. The COVID-19 crisis, for example, has negatively impacted the global economy, human rights and development, and has brought to the fore the need to intensify and rethink approaches to international cooperation and assistance and to adopt responses that are human rights-based (Guterres 2020a; Guterres 2020b). Development assistance has been useful in funding/building health and social protection systems and funding medical research, which are crucial to national responses to the COVID-19 crisis (OECD 2020, p. 8; UN 2020, p. 31). Hence, development assistance ‘could play a crucial role in tackling the immediate impacts of the coronavirus crisis and supporting a recovery centred on human rights, gender equality and a just transition’ (Van de Poel 2020).

There is a common understanding that development cooperation and assistance should further the realisation of human rights and that the international human rights (IHRs) framework is necessary for realising development (OHCHR 2006, pp. 7–14 and 35). Though many core UN human rights treaties contain references to international cooperation and assistance, which is code for development assistance/foreign aid, in realising human rights, development assistance activities exist that are contrary to human rights standards, resulting in hindrances to the realisation of rights and promotion of well-being of individuals in the receiving state (see Chenwi 2018, pp. 99 and 112–130, highlighting examples where rights violations have been linked to projects for which development assistance has been provided to African states; Sengupta 2002, pp. 1432–1433 on failures of development assistance/aid; Committee on Economic, Social and Cultural Rights (CESCR) 2014a, para. 12 raising concerns over China’s economic and technical assistance

projects that ‘have reportedly resulted in rights violations in the receiving countries; and Herre and Backes’ chapter in this book explaining how financialisation in the context of development cooperation impacts the enjoyment of human rights). It should be noted that there have also been critical voices on development aid undermining sovereignty of recipient states (see Brown 2013 for detailed discussion of sovereignty questions in the context of aid) or it being neo-colonial, facilitating foreign/external influence/control and perpetuating forms of economic exploitation (see for example Langan 2018, pp. 61–88). In addition to sovereignty being ‘the very basis upon which aid relations are conducted’, recognition of sovereign rights of recipient states forms ‘the base from which recipients are able to contest the terms of aid relationships’ (Brown 2013, pp. 263 and 274). Hence, while internationally recognised human rights impose limits on state sovereignty, donor states have a duty to respect the sovereignty of territorial/recipient states (De Schutter et al. 2012, pp. 1142 and 1146). Also, IHRL, as seen from the discussion on human rights-based approach (HRBA) in this chapter, provides guiding principles that are useful, if applied effectively, in addressing unequal power relations and risks of conditionalities/neo-colonialism in the context of development assistance while furthering rights realisation and development.

Over the past decade, the need to apply a HRBA in the context of development assistance has surfaced constantly, as the approach ‘entails the promotion of legal rights and legal capacity building within the context of (international) development activities’ (Broberg and Sano 2018, p. 664). The COVID-19 crisis, as stated above, has reinforced this need. A HRBA has its basis in the recognition of the interdependence and mutually reinforcing dynamic between human rights and development. There is no one HRBA, as approaches to integrating human rights in development assistance vary; but at the core of a HRBA is the need to ensure compliance with IHRL standards and principles when engaging in development assistance. Consequently, the IHRs framework (which extraterritorial obligations (ETOs) are part of) should be applied in developing, implementing, assessing and evaluating development assistance policies and practices. Hence, donor and recipient states’ obligations to respect, protect and fulfil human rights in their activities implies that they have a duty to adopt a HRBA, as it not only facilitates mainstreaming of human rights principles but also compliance with their human rights obligations when engaging in development assistance activities. A HRBA is thus relevant to operationalising ETOs in practice. The duty to adopt a HRBA is reinforced through the increasing emphasis by treaty bodies, among others, in the context of implementation of states’ obligations. A HRBA has also received support from international development cooperation actors (including UN agencies) and domestic actors such as non-governmental organisations (NGOs) active in developing countries (*ibid*, pp. 664 and 665).

This chapter explains development assistance and its legal basis, the nature and scope of states’ ETOs in the context of development assistance, highlighting donor states’ ETOs to respect, protect and fulfil rights when engaging in development assistance, including their obligation to offer assistance. As ETOs of donor states do not leave recipient/territorial states off the hook (that is, they too have IHRs obligations to comply with), the chapter also briefly highlights recipient states’ obligations, specifically their obligation to seek assistance. The chapter then considers the relationship between human rights and development assistance, with specific focus on what a HRBA to development assistance entails.

Development assistance

There is no single internationally agreed definition of what development assistance constitutes (UN Economic and Social Council (ECOSOC) 2008, p. 4). Various bodies and writers have defined the term, with promotion of social and economic development and human rights among its constituent elements. Minoiu and Reddy (2009, p. 7) define development assistance as ‘aid expended in a

manner that is anticipated to promote development, whether achieved through economic growth or other means', which is distinguishable from non-development aid (the latter defined as 'aid of all other kinds'). Skogly (2006, p. 192) defines it in simple terms as 'a direct transfer of public funds from one state to another state'. OECD Development Assistance Committee (DAC), using the terminology official development assistance (ODA), defines it as 'government aid that promotes and specifically targets the economic development and welfare of developing countries' (OECD 2019).

Development assistance could be bilateral ('from official (government) sources directly to official sources in the recipient country') or multilateral ('core contributions from official (government) sources to multilateral agencies where it is then used to fund the multilateral agencies' own programmes') and is bi/multi where a government contracts a multilateral agency to provide a project on its behalf in a recipient country (OECD, cited in Chenwi 2018, p. 89). The main objective of development assistance is the promotion of development and welfare of the recipient country. Development assistance flows comprise, *inter alia*, 'programme and project assistance, humanitarian assistance, debt relief, costs of education provided to developing country nationals in the donor country, administrative costs of ODA programmes, subsidies to NGOs, and programmes to raise development awareness in donor countries' (ECOSOC 2008, p. 5). Loans 'must be deemed concessional' to qualify as development assistance (*ibid*). Hence, development assistance measures are not limited to economic or technical assistance.

Development assistance model has largely been North-South cooperation. However, with the ever-increasing global crises, it is more and more becoming universal and multidirectional. The COVID-19 crisis, for instance, has seen the North-South cooperation model, though still important, 'continuously losing significance as the predominant cooperation model in developing regions', with South-South cooperation receiving a visible push and stimulating creative solutions (Izmestiev and Klingebiel 2020). Also, other forms of cooperation such as "South-North cooperation" (for example, China's support to Italy) and "East-North cooperation" (for example, Russia sending medical material to the United States) have become increasingly prominent (*ibid*).

The Sustainable Development Goals 2015 (SDGs) – the Declaration and Goal 17 – confirm the international target for ODA by developed states to developing countries as a minimum of 0.7 per cent, and to least developed countries as 0.15 to 0.20 per cent, of the developed state's gross national income (UN 2015). Though the SDGs are not per se legally binding, they reflect state commitments. The mutually reinforcing dynamic between human rights and development (explained below) implies that IHRL ensures the monitoring and accountability mechanisms for their enforcement.

The legal basis of development assistance is the reference in various international human rights and development documents/frameworks to a duty of international cooperation and assistance or the need to increase development assistance to poorer countries, especially as a tool to promote development and facilitate enhanced human rights implementation (see Skogly's chapter in this book elaborating on this duty). While it remains contentious whether the obligation to cooperate is an enforceable binding legal obligation, the obligation is increasingly widely accepted and has been consistently reaffirmed by UN bodies and experts. The acceptance of the existence of a binding legal obligation in relation to development assistance is necessary in order to ensure that such assistance does not 'rests upon charity' (De Mesquita et al. 2010, p. 112) and is in line with relevant state obligations such as ETOs.

Extraterritorial obligations in development assistance

Consideration of ETOs in the context of development assistance is crucial because development agencies have traditionally viewed recipient states as the 'sole duty-bearers of human rights obligations in their countries', with donor agencies having the discretion to require

compliance with human rights by the recipient countries (Khalfan 2012, p. 397). However, IHRs standards have given rise to extraterritorial human rights obligations of donor states in the context of development assistance. Furthermore, as seen below, states' ETOs have implications for the way development assistance is undertaken, including priority setting in development policy.

It is important to note at the outset that ETOs of donor states does not leave recipient/territorial states off the hook, as they too have IHRs obligations to comply with, which are of a territorial nature. Recipient states have territorial obligations to respect, protect and fulfil rights, including an *obligation to seek appropriate international assistance* in situations where they have inadequate national resources to ensure realisation of human rights, *to receive appropriate assistance* and *to make effective use of such assistance when provided* (*Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights 2011 (Maastricht Principles)*, Principle 34; CRC Committee, General Comment no. 4, para. 43 and General Comment no. 5, paras. 60–61; CESCR 2015c, para. 40 and 2015a, para. 28; CESCR 2007, para. 5). In relation to the duty to make effective use of assistance when received, the recipient state is obliged to put in place a sustainable institutional framework on its use; failing which, the state would be in breach of its obligation to take steps to use the maximum amount of its resources towards the progressive realisation of rights. The state must also ensure compliance with human rights principles and priorities in the use of development assistance. For example, development assistance must be allocated to priority sectors and be used for the progressive realisation of rights (CESCR 2009b, paras. 16 and 29). States are also required to 'enhance the transparency of the receipt, management and spending of official development funds' that they receive (CESCR 2015b, para. 11).

Regarding ETOs, donor states are required, in their development assistance activities, to comply with their obligations to respect, protect and fulfil rights under applicable human rights treaties. Though the extent of the latter obligation remains contentious, treaty bodies such as the CESCR have elaborated on the extraterritorial dimensions of these obligations (see, for example: CESCR, General Comment no. 24, paras 29–37). The *Maastricht Principles* also elaborate on these obligations. It should be noted that the extraterritorial application of these obligations does not imply that 'each state is responsible for ensuring the human rights of every person in the world' (De Schutter et al. 2012, p. 1090).

Extraterritorial obligation to respect requires that states refrain from conduct, including in the context of international cooperation, which directly or indirectly interferes with enjoyment of rights by persons outside their territories, and 'not obstruct another state from complying with its [human rights] obligations' (*Maastricht Principles*, Principles 19–21; CESCR, General Comment no. 24, para. 29; CESCR, General Comment no. 19, para. 53; CESCR, General Comment no. 15, para. 31). Therefore, in the context of development assistance, the extraterritorial obligation to respect requires that a state's action should respect, and not impair, rights enjoyment in other states (Skogly 2006, p. 68). A state should also ensure that any change in its funding policies in the course of development assistance provision does not result in retrogression in rights enjoyment in the receiving state and that it has taken all necessary efforts to prevent or limit the extent of any retrogression (De Mesquita et al. 2010, p. 116). Failing which, it would amount to a breach of the state's obligation to respect access to rights in other states.

Extraterritorial obligation to protect requires that states take necessary measures, including through international cooperation, to prevent and redress rights infringements that occur outside their territories as a result of the activities of entities that they are in a position to regulate or influence, and to ensure effective remedy for those affected, 'especially in cases where the remedies available to victims before the domestic courts of the state where the harm occurs

are unavailable or ineffective' (*Maastricht Principles*, Principles 23–27; CESCR, General Comment no. 24, para. 30; CESCR 2013a, para. 6). In the context of development assistance, the extraterritorial obligation to protect requires the donor state to, as far as possible, protect against the implementers of a project funded through its development assistance violating rights in the recipient state. The donor state should therefore exercise oversight over the implementation of the project as part of fulfilling its extraterritorial obligation to protect. Oversight does not however imply implementation of a solely donor-driven approach to development assistance or detrimental tied aid practices, as recipient countries should not be prevented from taking responsibility for their own development in utilising the aid.

The *extraterritorial obligation to fulfil* requires that states contribute to creating an international enabling environment for rights fulfilment, including in matters relating to development cooperation (*Maastricht Principles*, Principles 28–29; CESCR, General Comment no. 24, para. 37). Further, if in a position to assist, states have an obligation to *provide (offer) appropriate international assistance*, 'consider [a request to assist or cooperate] in good faith, and respond in a manner consistent with their obligations to fulfil ... rights extraterritorially' (*Maastricht Principles*, Principles 33 and 35; also see De Mesquita et al. 2010, p. 113).

Though the legally binding nature of the *obligation to provide assistance* in the context of development assistance has been questioned (Vandenhoele 2007, p. 97), the obligation is recognised and confirmed in international instruments and by various bodies. International standards on international cooperation and assistance explicitly refer to an obligation on states to 'take' steps/actions 'individually and through international assistance and co-operation' towards rights realisation (see Skogly's chapter in this book). The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict 2000 (OPAC) (art. 7), for instance, explicitly recognises the obligation of states that are 'in a position to do so', to 'provide' assistance – 'including ... technical cooperation and financial assistance'. The Committee on the Rights of the Child (CRC Committee) (General Comment no. 5, para. 7) has also recognised that the obligations on states parties include an obligation 'to contribute, through international cooperation, to global implementation' of children's rights. Similarly, the CESCR (General Comment no. 3, para. 14) has recognised states' duty to offer assistance, stating that it will not be possible to realise economic, social and cultural rights to the fullest extent in many countries if states that are capable of taking part in an active programme of international assistance and cooperation do not do so. The UN requires rich countries to ensure that a large part of the financial resources they provide to developing countries be in the form of ODA, which should be progressively increased (UN General Assembly, Resolution 262 (XXV), para. 43). As stated above, developed states have an obligation to allocate a minimum of 0.7 per cent (to developing states), and 0.15 to 0.20 per cent (to least developed states), of their gross national income for development assistance. Accordingly, various UN bodies have raised concerns over states' non-compliance with the minimum target and urged states to comply (see for example: CRC Committee, General Comment no. 5, para. 61; CESCR 2014b, para. 18, 2015d, para. 36 and 2013b, para. 9). In line with principles and priorities in cooperation, states that offer assistance have an obligation to, *inter alia*: prioritise realisation of the rights of vulnerable, disadvantaged and marginalised groups, prioritise core obligations for the realisation of minimum essential levels of rights, move expeditiously and effectively towards full realisation of rights, observe IHRs standards and avoid retrogressive steps unless they can be reasonably justified (*Maastricht Principles*, Principle 32; also see De Schutter et al. 2012, pp. 1154–1157 for examples of general comments by the CESCR accentuating these obligations).

The extraterritorial obligation to fulfil thus requires that 'states' extraterritorial activities ... positively improve human rights situations of individuals in third states' (Skogly 2006, p. 71).

In the context of development assistance, therefore, states should ensure that their activities contribute to rights fulfilment and the principles and priorities in cooperation stated above should be taken into consideration in the development and implementation of their development assistance policies and programmes.

Using the right to health as an example to illustrate the extraterritorial obligations to respect, protect and fulfil in the context of international assistance, a state must ensure that its actions ‘*respect* the right to health in other countries’, ‘*protect* against third parties undermining the right to health in other countries’ and, subject to available resources, ‘*fulfil* the right to health through, for instance, facilitating ‘access to essential health facilities and services in other countries’ (De Mesquita et al. 2010, p. 116). Also, in the course of development assistance provision, a state should not ‘withdraw critical right-to-health aid without first giving the recipient reasonable notice and opportunity to make alternative arrangements’; otherwise, this would amount to procedural unfairness, in breach of its extraterritorial obligation to *respect* access to health (ibid).

The ETOs to respect, protect and fulfil rights thus provide a framework for development of policymaking and implementation. They also provide a means to monitor the performance of donor states regarding the integration of human rights with development, including in the context of development assistance, required under a HRBA. One of the key components of a HRBA to development assistance is ‘actual status of human rights in the setting where development assistance is to be provided’ in relation to, *inter alia*, ‘duty-bearers’ commitment to respect, protect and fulfil human rights’ (Broberg and Sano 2018, p. 669). Hence, integration of human rights into analysis of development policies and their implementation can be facilitated through a matrix of donor policies and programmes vis-à-vis state obligations to respect, protect and fulfil rights (see UNDP 2015, p. 12 where this is further illustrated). ETOs can thus be operationalised in practice through a HRBA.

A human rights-based approach to development assistance

The link and importantly the interdependence between human rights and development, plus state commitments to comply with human rights and correlating obligations in the context of development (including development assistance), have been recognised in various international documents including the DRD and SDGs, and by various UN agencies/bodies (OHCHR 2008; UNDP 2007; UN 2015, paras. 3, 8, 10 and 19). About 90 per cent of the SDG targets are linked to IHRs (Smith 2020, pp. 405 and 417–419). Treaty bodies have urged states to mainstream human rights into implementation and monitoring of the 2030 Agenda and SDGs (see for example: Committee on the Rights of Persons with Disabilities (CRPD Committee), 2019c, para. 67, and 2019a, para. 60). This is crucial considering that donor states are focused on the SDGs (Smith 2020, p. 414). The relationship is also evident in the discussion on ETOs in the preceding section.

Despite the relationship between development and human rights, earlier approaches to development did not place human rights at the centre of development. The approaches either reinforced inequality, existing power structures and failed to achieve sustainable outcomes, as beneficiaries were viewed as objects/passive recipients and not partners in development (the charity approach), or donors determined the needs of the beneficiaries which ended up being supply-based, with the donor ‘dumping whatever surplus it had on developing countries’ (needs-based approach) (Bokulić and Taneja 2009, pp. 10–11). Hence, ‘traditional approaches to development assistance ... focused largely on needs of the poor and the provision of specific commodities and services to meet those needs’ (Ussar 2011, p. 7). The non-placement of human rights at the centre of development, it can be argued, implied that (sufficient) attention was not

given to ETOs of donor states with human rights conditionalities often placed on recipient states and not donor states. The challenges with these earlier approaches and the increasing recognition of the congruence between human rights and development has given rise to the need for both donor and recipient countries to pursue development policies and their implementation within a human rights framework. Hence, human rights conditionality in aid, for instance, should not be placed only on recipients but also on donor countries themselves.

A HRBA to development seeks to place human rights principles at the core of development policies and practices ‘in order to support a conceptual shift from development based on externally devised, charity-focused aid provided to passive recipients to looking at development as a process that empowers people through an inclusive and participatory approach’ (Ussar 2011, p. 4). ‘Human rights provide a means of empowering all people to make decisions about their own lives rather than being the passive objects of choices made on their behalf’ (UNDP 2015, p. 1). An inclusive and participatory approach to development assistance is crucial considering concerns over lack of, or insufficient, participation of vulnerable groups in the planning, design, implementation, monitoring and evaluation of international cooperation projects, including efforts aimed at achieving the 2030 Agenda for sustainable development (see for example: CRPD Committee 2019b, paras. 57–58 and 2019e, paras. 61–62).

Previous understandings of what the HRBA to development entailed differed among UN agencies, resulting in the need to adopt a common understanding of the concept and its implication for development cooperation and assistance policies and programmes (OHCHR 2006, p. 35). In 2003, a Statement of Common Understanding on a HRBA to development cooperation and development programming by UN agencies was adopted (ibid, pp. 35–37). As recognised in the Statement, the main objective of development policies and programmes should be fulfilment of human rights guaranteed in IHRs instruments; and IHRs standards and principles ‘should guide all development cooperation and programming in all sectors in all phases of the programming process’ (ibid, pp. 15–16 and 35–36; see also OECD 2007, p. 11). This implies that ETOs of donor states cannot be ignored in the development and implementation of development assistance policies, as they have been recognised under, *inter alia*, IHRL. Considering their relevance in development assistance, there is therefore the need to clarify ETOs in the context of development aid and strengthen their legal base.

Approaches to integrating human rights into development activities and definitions of HRBA to development vary. The OHCHR (2006, p. 15) defines HRBA to development as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’. In simple terms, a HRBA ‘is a way (or a “method”) of implementing human rights in a development context’ (Broberg and Sano 2018, p. 665) or ‘a commitment to systematically integrate human rights norms, standards or principles in all aspects and areas of development cooperation’ (D’Hollander et al. 2014, p. 238). A narrow definition, focussing on poverty (excluding the rights of the relatively well-off) and emphasising resources and regulation is provided by Gauri and Gloppen (2012, p. 486), defining ‘HRBAs as principles that justify demands against privileged actors made by the poor or those speaking on their behalf, for using national and international resources and rules to protect the crucial human interests of the globally or locally disadvantaged’ (see also pp. 488–502 where they distinguish and elaborate on types of HRBAs, which includes, *inter alia*, “Global compliance approaches” rooted in and pressuring for compliance with international and regional treaties’ and “Programming approaches” focusing on policies and principles of donors and executive agencies’; the approaches have implications for ETOs, as they imply pressuring for compliance with ETOs recognised under applicable treaties and evaluating donors’ development assistance policies’ compliance with ETOs).

The ‘multifaceted and intersectoral nature’ of the HRBA to development implies ‘that human rights values, standards and principles come to bear at different times (together or independently) during the programming exercise’ and there is ‘subsequent need for alignment of development assistance’ (UNDP 2015, p. 9). The 2003 Statement of Common Understanding identifies and elaborates on the following principles that should guide development policies: ‘universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law’ (OHCHR 2006, p. 36). The HRBA therefore ‘has significant implications for the manner in which development priorities and objectives are identified and country programme outcomes formulated’ (ibid, p. 28; see also UNDP 2015, p. 1). Treaty bodies have thus urged states to adopt development policies that are in line with human rights treaties, with measurable and tangible targets and indicators (see for example, CRPD Committee 2019a, para. 60).

Operationalisation of the HRBA involves various modalities and institutional mechanisms. An ‘intersectoral perspective’ is needed, with the approach being applied in all phases of development, including during planning, implementation and evaluation of results (UNDP 2015, p. 9; World Bank and OECD 2016, p. 54). ‘Contextual analysis, insights about institutional constraints and sensitivities are all important dimensions that must also be taken into account’ (Broberg and Sano 2018, p. 676). Approaches to its application might thus vary depending on the context. In addition to context, a ‘donor’s human rights policies’ and the parameters of its ‘mandates, capacity, or comparative advantage in the field’ influences its approach to integrating human rights into development activities (World Bank and OECD 2016, p. 52).

Despite the varied approaches to integrating human rights in development assistance, there are common characteristics for operationalising a HRBA to development assistance. These common characteristics include, among others: ‘employment of the concept of human rights’ (that is, not viewing development assistance as charity ‘but as part of efforts to fulfil rights’); linking rights to corresponding obligations; focussing on capacity building, enabling duty bearers to respond to claims from recipients, ensuring minimum core rights are fulfilled, facilitating access to services for rights-holders and ensuring their free participation in decisions that affect their livelihood; and addressing marginalisation and vulnerability to discrimination (Broberg and Sano 2018, pp. 667–669). Corresponding IHRs obligations include ETOs, as explained above. In short, rights-holders and corresponding duty-bearers have to be identified in specific development assistance contexts, and their capacities to claim their rights and fulfil their duties, respectively, has to be promoted (Ussar 2011, pp. 4 and 8; World Bank and OECD 2016, p. 53). In addition to taking remedial measures and ensuring accessible mechanisms for violation of rights in the recipient state, a HRBA requires that a donor state undertakes ‘systematic and independent human rights impact assessment prior to making funding decisions’ and establish ‘an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries’ (CESCR 2014a, para. 12). However, mainstreaming human rights in all development aid or all areas of development work might be challenging in some communities or contexts (for example, in rural communities’ context where, as argued by some scholars, a HRBA is ‘less effective because literacy is lower than average, and the state is less present’), necessitating strategic and ‘targeted interventions on the part of governments, donors, and civil society actors’ that are adapted according to the sector, the rights-holders and the duty-bearers (Gauri and Gloppen 2012, p. 487; Broberg and Sano 2018, pp. 673 and 676).

There is emerging state practice on integration of a HRBA into development assistance, as various states and other development actors have integrated human rights in their mandates through adoption of a HRBA to development assistance, particularly at the level of policy commitments. World Bank and OECD (2016) highlight some examples of successfully integrating

human rights in development assistance. They include the Swedish International Development Cooperation Agency (SIDA)'s mainstreaming of 'child rights in all aid interventions as part of a long-term, sustainable development cooperation strategy, while also engaging in targeted interventions with a more immediate impact' (ibid, p. 67). SIDA 'uses the acronym P.L.A.N.E.T. as a way of organizing and remembering what to consider when applying a HRBA to development cooperation', in terms of which it considers, *inter alia*: 'participation; links to human rights in legal instruments at the national, regional, and international levels, such as the CRC and the African Charter on the rights and welfare of the child; accountability; non-discrimination; empowerment; and transparency' (ibid). Sweden's Kenya programme is also seen as a 'longstanding example of mainstreaming human rights in a bilateral country program' with success (see ibid, pp. 64–66, explaining the programme). Norway has also 'introduced human rights as a crosscutting issue to be mainstreamed across all parts of Norway's Development Cooperation' (ibid, p. 63). In operationalising its HRBA, Norway has given special attention to 'participation, accountability, and non-discrimination' (ibid). Following 'reported difficulties' in implementation of crosscutting issues of 'gender, anticorruption, and climate/the environment', Norway formulated a new standard, requiring 'that all grants be assessed from the "do no harm" principle and that risk factors that might have a negative impact on human rights be mitigated' (ibid, pp. 63–64). This approach accords with ETOs, which includes a duty on states to prevent, or avoid causing, harm (*Maastricht Principles*, Principles 13 and 14).

Generally, the HRBA has been adopted, to varying degrees, by, for example, UN bodies and specialised agencies, European Union (EU), OECD/DAC, bilateral agencies (with policies and programmes that apply a HRBA to development found in, for example, Australia, Austria, Canada, Germany, Netherlands, New Zealand, Norway, Ireland, Sweden, Switzerland, UK and USA), international financial institutions (IFIs) and NGOs that are engaged in development assistance activities (Broberg and Sano 2018, p. 667; Gauri and Gloppen 2012, p. 492; Ussar 2011, p. 4; World Bank and OECD 2016, pp. 92–120; see also D'Hollander et al. 2014, pp. 86–234 and 237 for case studies of applying a HRBA). However, some IFIs' ability to address human rights considerations in their environmental and social policies is constrained by provisions in their constitutive legal instruments (see World Bank and OECD 2016, pp. 113–118 elaborating on this). Nonetheless, the support for SDGs by donors and banks implies a recognition that development policy priorities be set on human rights grounds.

A HRBA to development has thus gained general acceptance, with UN treaty bodies calling on states to adopt a HRBA to their development cooperation and assistance policies and programmes (see for example: CRC Committee, General Comment no. 5, paras. 61 and 64 and General Comment no. 3, para. 41; CESCR 2015d, para. 36 and 2014a, para. 12; CRPD Committee 2017, paras. 66–67 and 2019d, para. 63). They have also called on organisations or institutions like the World Bank Group, the International Monetary Fund and World Trade Organization to ensure that their activities related to international cooperation and economic development are in accordance with IHRL (see for example: CRC Committee, General Comment no. 5, para. 64).

It is evident from various writings that have considered how the HRBA works in practice that it has value, for example, its usefulness in improving aid effectiveness and facilitating operationalisation of IHRs obligations, including ETOs (for a discussion of its values, see for example: OHCHR 2006, p. 16; Gauri and Gloppen 2012, p. 486; World Bank and OECD 2016, pp. 26–50; Sengupta 2002, p. 1434; Broberg and Sano 2018, pp. 672–674 and 677). However, it also has challenges such as its unsuitability for all development aid interventions, but which can be mitigated if a strategic approach to its implementation is adopted, taking context into consideration and without ruling out the possibility of using other suitable methods to

complement the approach (for a discussion of its challenges and how they can be mitigated, see for example: Broberg and Sano 2018, pp. 673–674; World Bank and OECD 2016, pp. 54 and 121–137).

Conclusion

Development assistance is a global or extraterritorial activity that several development agencies or states are involved in. This chapter has established that states (particularly developing or poorer states) have an obligation to seek development assistance should they lack the ability to realise rights, and states that are able to do so (particularly developed or richer states) have a duty to offer such assistance. There are, however, debates as to whether the latter is of an enforceable binding nature. Notwithstanding, IHRL standards establish ETOs to respect, protect and fulfil rights in the provision of development assistance. Furthermore, the adoption of a HRBA in development assistance has been emphasised, which requires, *inter alia*, compliance with IHRL obligations, including ETOs. A HRBA requires that states and development agencies that are engaged in development assistance, as well as civil society actors involved in the process, ensure a process of development where human rights are realised and in a way that not only establishes the specific entitlements in a non-discriminatory manner but also ensures accountability, including extraterritorial responsibility, for the non-achievement or violation of the entitlements. The HRBA has the potential to enrich development assistance policies and their implementation and is important in addressing challenges with previous approaches to development and ensuring that development assistance activities promote human rights and sustainable development. The approach also provides a framework for consideration of ETOs in the context of development assistance and directs states on how to abide more operationally with their ETOs in the context of development aid.

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