**Note**

**The Right to Development beyond Rhetorical Debates**

**Background**

A reflection on the operationalisation of the right to development requires to move away from political debates and controversies surrounding the 1986 Declaration on the Right to Development (hereafter the Declaration).

Following the achievement of the consensus on the Vienna Declaration and Program of Action in 1993, the right to development, as established in the Declaration was reaffirmed to be a universal and inalienable right and an integral part of fundamental human rights.

Since the adoption of the Declaration on the right to development in 1986, although progress was achieved with the partial implementation of the Millenium Development Goals, the right to development remains aspirational for a large part of the world’s population. Until very recently, one could reasonably argue that the Declaration was solely the subject of difficult diplomatic and political debates. Although it has been supported in international forums and foreign policy positions, its transposition or impact on national, regional and international development policies and practices remains limited.

While the discussions on the right to development have long been framed within the paradigm of the North-South divide, globalisation and global economic crisis have highlighted that the right to development is relevant to all countries regardless of levels of development. Today, even in countries where the enjoyment of rights have been generally positive, mounting inequalities and social precariousness have jeopardised the realisation of the right to development for many. In fact, globalization has been identified as the paradox of growing wealth accompanied by growing inequality, both a force of inclusion and exclusion.[[1]](#footnote-1)

In 2015, the right to development was again reasserted in a series of consensual international commitments including the 2030 Agenda for sustainable development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction 2015-2030 and the Paris Agreement on climate change. These new commitments have provided a new momentum for the protection, promotion and fulfilment of the right to development at national and international levels.

The Special Rapporteur believes that in this context, it is part of his mandate to advocate practical means of implementing the right to development. This includes identifying and promoting good practices in implementing the right to development at local, regional and international levels. Collecting empirical evidence of promising practices will contribute to moving away from the theoretical deadlock of defining criteria and sub criteria to assess the progressive realisation of the right to development.

This background paper explores the existing literature on operationalising the right to development with a view to initiating a reflection on documenting good practices. Exchanges of various experiences and challenges could help define a set of concrete elements to be taken into consideration while designing, monitoring and assessing policies and programs aiming at advancing development grounded in human rights at national, regional and international levels.

In view of the comprehensive nature of the right to development, it is essential that all the dimensions of this right be correctly taken into consideration.[[2]](#footnote-2)

**The added-value of the Right to Development?**

*A Comprehensive approach to the realisation of human rights*

The right to development provides a comprehensive approach to the realisation of human rights by according attention to processes and outcomes; recognising the entitlements of individuals as well as collectives including future generations. It puts **equity, equality and justice as primary determinants of development**, andpromotes the full realisation of all human rights and fundamental freedoms.

The right to development was described as the right to human development, a development process that expands freedoms leading to the realisation of all human rights.[[3]](#footnote-3) The right to development has been defined as the right to a particular process of development that allows the realisation of economic, social, and cultural rights as well as civil and political rights and all fundamental freedoms by expanding the capabilities (freedom to achieve) and choices of individuals. The process of development in which all human rights are realised is contingent to the freedom to participate in both the decision-making processes and the equal enjoyment of the fruits of development in all spheres.

The right to development encompasses **the right** **to benefit from the outcomes of development processes**, i.e. improved realisation of different human rights, **as well as the right to access the process** **itself**. Duty-bearers must provide access to processes by adopting a human rights based approach to designing and implementing policies and interventions. In this respect, **both the ends and the means of such a process of development are to be treated as rights**.

Furthermore, the right to development has to be understood as a composite right wherein all the rights, i.e. economic, social and cultural, as well as civil and political rights are **realised together**. The right to development is embedded **in the principles of indivisibility and inter-dependence of all human rights.** In other words, **the level of realisation of the right to development** **is contingent on the level of realisation of other rights**, such as the right to health, food or housing, or to liberty, security of person or freedom of expression etc. This means that the interdependence of rights has to be central in programing, monitoring and assessing development.

It is worth noting that economic variables are crucial because they determine the extent of the provision of resources for realising the different rights but also because they affect the manner, the phasing and the timing of their realisation. This is central to the right to development that requires that all rights are realised simultaneously.

*Clear identification of the roles of various stakeholders*

The Declaration on the Right to Development clearly identifies the roles and duties of various stakeholders. While the Declaration unequivocally affirms that the human person is the central subject of development and should be the active participant and beneficiary of the right to development (Article 1) it adds in Article 2 (para 2) that “**all human beings** [persons] **have a responsibility for development**, **individually and collectively**.”

The Declaration recognises both individual and collective rights. States are recognised a right and duty to eliminate colonialism, apartheid, racial and other forms of discrimination, neo-colonialism and all forms of foreign oppression and domination. State also have the sovereign and inalienable right to choose their own economic, political, social and cultural system **in accordance with the will of their people**. This includes sovereign and permanent control over natural resources, wealth and economic activities. The enjoyment of the right to development necessarily involves a careful balancing between the interests of the collective on one hand, and those of the individual on the other.

While the Declaration recognises States as right holders, the primary emphasis is on their role as duty bearers. Articles 2 and 4 affirm that “States have the right and the duty to formulate appropriate national and international policies to facilitate the realisation of the righto development and Article 8 adds that **“States should encourage popular participation in all spheres”.** In addition, States are required, by Article 6 (para.3) to **take steps to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights**. States are clearly identified as bearing “the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development” (Article 3).

The Declaration also mentions that “**as a complement to the efforts of developing countries**, effective **international cooperation is essential** in providing countries with appropriate means and facilities to foster their comprehensive development.

The obligation to realise the right to development requires the realisation of all, or most, rights in a planned manner in tandem with an appropriately high and sustainable economic growth and necessary changes to its structure.

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| As summarised by Sengupta,[[4]](#footnote-4) the right to development is the right to a process of development in which all human rights and fundamental freedoms can be fully realized (art. 1), and which has to be exercised in a manner that ensures that:(a) The individuals concerned would effectively participate, fully and meaningfully, at all stages of decision-making (arts. 1, 2 (3) and 8);(b) Individuals would have equal opportunity of access to resources(art. 8);(c) They would be entitled to a fair distribution of the benefits ofdevelopment and of income (arts. 2 and 8);(d) States would carry out their responsibilities to enable that process of development to materialize through appropriate national and international development policy (arts. 3 and 4);(e) There would be international cooperation among States (and international agencies) to facilitate the realization of the right to development; and finally and most importantly,(f) All such activities will be carried out while maintaining full respect for civil and political as well as economic, social and cultural rights (preamble, arts. 6 and 9). |

**The Human rights based approach: component of the right to development**

A human rights approach to development is human development carried out in a manner fulfilling human rights. It is further defined 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 protection human rights.”[[5]](#footnote-5) The human development approach and the rights based approach are complementary. A right based approach is specified in the Declaration on the Right to Development as a **participatory, accountable and transparent process with equity in decision making and sharing of the fruits or outcomes of the process**. It is an approach that promotes and protects all the civil and political rights

This approach also calls for a focused attention on those who lag behind in enjoying these rights and it requires that positive actions be taken on their behalf,[[6]](#footnote-6) hence fostering equity in development processes.

*According to Sengupta, any increase of human development, carried out in accordance with a participatory, accountable, transparent, and non-discriminatory manner that improves equity and justice by reducing poverty will be consistent with the rights approach to development.*

However, implementing the human rights based -approach to development is not the same thing as realising the right to development. The realisation of the different rights, i.e. civil and political rights as well as the economic, social, and cultural rights, may be the specific outcomes of several policy programs but in order to qualify as the realisation of the right to development, individuals should have access to processes and outcomes in conformity with the human rights based approach.

**Implementing the right to development**

*National Level*

Realising the right to development relies on national action and international cooperation. Development plans need to be designed and implemented following the human rights standards, based on empowerment and participation in the decision-making and execution, with transparency and accountability, and equity and non-discrimination in the enjoyment of the benefits. This means that planning should be based on decentralised decision-making. Policies and programs have to be designed through a process of consultation with the direct beneficiaries, including groups and communities, in a non-discriminatory and transparent manner.

Effective economic policies are required to generate adequate growth, accompanied by effective employment policies as well as tax policies to mobilise domestic resources indispensable for the implementation of programs. The importance of economic growth is critical when the concern is to co-realize all human rights, without retrogression in the enjoyment of any right, and when the pace of securing the rights is also of importance.

The basic characteristics of any programme for realizing the right to development have been delineated by Sengupta[[7]](#footnote-7) as follows:

*(a) The implementation of the right to development should be seen as an overall plan or programme of development where some or most human rights are realized while no other rights are violated. In addition, there should be sustained overall growth of the economy, with increased provision of resources for the realization of those rights;*

*(b) Implementation of any of the rights cannot be an isolated exercise, and plans or projects for the implementation of the other rights should be designed taking into account considerations of time and cross-sectoral consistency;*

*(c) The exercise of implementing the overall plan and realising individual rights must be carried out according to the human rights standards, that is, with transparency, accountability and in a non-discriminatory and participatory manner and with equity and justice. In practice, this means that the plans should be formulated and implemented at the grass-roots level with the effective participation of beneficiaries in decision-making processes, implementation, as well as the equitable sharing of the benefits. In short, this implies planning that empowers the beneficiaries;*

*(d) The rules and procedures of economic, political, social and legal institutions must integrate the interdependence of all human rights by associating a process of development that combines expanding opportunities with equity and justice. The realization of the right to development would in some cases imply a change in the institutional framework, which should also spill over from national to international institutions;*

Obstacles to implementing policies that are in conformity with the above recommendations include resource constraints, lack of effective leadership and genuine political commitment, **absence of accountability and learning**, **weak partnership and participation, as well as deficiencies in assessment and evaluation**.[[8]](#footnote-8)

Moreover, the right to development cannot be realised without effective international cooperation to remove existing international obstacles impeding national economies to strive and to mobilise the required resources to implement human development programs. These includes inter-alia the structures of the international trading and financial regimes, the absence of a global taxation regulation and the asymmetries in global governance in general as well as increasing threats to peace and security.

*International level*

While the right to development clearly reasserts that developing states hold the primary responsibility in implementing the right to development even in the absence of adequate international cooperation; it also reasserts the **complementarity between the national and the international dimension of the right**. At the international level, States have a duty to cooperate in accordance with Articles 55 and 56 of the United Nations Charter. Article 2 (1) of the International Covenant on Economic Social and Cultural Rights, recognises that the realisation of rights greatly depends on international cooperation,

The Millennium Development Goals (MDGs) were successful in raising the profile of poverty as an issue of international concern, fostering international cooperation to tackle it. However, a number of human rights gaps were identified in both the design and implementation of the MDGs. These gaps included the inappropriate adaptation of global goals to national contexts, the failure to address discrimination and increasing inequalities; a disregard for civil and political rights in areas such as personal security, administration of justice and political participation and the non-alignment of global goals, targets and indicators with human rights treaty standards. The MDGs framework suffered from **weak accountability for both process and outcomes**; **and non-participatory processes and disregard for process aspects in general**.[[9]](#footnote-9)

The Recent commitment to ground the 2030 Agenda for sustainable development in human rights is in line with the content of the right to development and represents a real shift from the approach adopted with the Millennium Development Goals (MDGs). The post-2015 development agenda offers a key opportunity to advocate for the broad-based inclusion of human rights principles of transparency, accountability, participation, non-discrimination, equality within the development, trade, investment, economic and regulatory spheres. The right to development requires that international cooperation is improved to facilitate compliance with human rights obligations and responsibilities.

Several major developments have taken place in mainstreaming human rights in the work of the United Nations in recent years. Human rights standards have progressively been integrated into global policy documents and international development planning, as well as national development policies, UN Development Assistance Frameworks (UNDAFs) and Common Country Analysis. Growing recognition of the connections between human rights, economic growth, equality and development has opened the door for the participation of the Office of the High Commissioner for Human Rights (OHCHR) in policy discussions. There are increasing demands from Member States and the wider UN system for technical assistance with the integration of human rights in development, poverty reduction and economic strategies.

Since the adoption of the Monterrey Consensus progress has been made in mobilizing financial and technical resources for development from an increased number of actors. Globally, economic activity and financing flows have increased substantially. Advances in science, technology and innovation have enhanced the potential to achieve development goals. Many countries, including developing countries, have implemented policy frameworks that have contributed to increased mobilization of domestic resources and higher levels of economic growth and social progress. Developing countries’ share in world trade has increased and, while debt burdens remain, they have been reduced in many poor countries. These advances have contributed to a substantial reduction in the number of people living in extreme poverty.[[10]](#footnote-10) **However, genuine and effective international cooperation** ... “[a]s a complement to the efforts of developing countries, in providing these countries with appropriate means to foster their comprehensive development” **has been slow to materialise**. International cooperation remains a crucial precondition to operationalising the right to development.

 The Least Developed Countries, Land Locked Developing Countries and Small Island Developing States have been identified as the most in need of international cooperation in order to implement programs and measures towards achieving the right to development. International cooperation goes well beyond development aid, it includes addressing unfair trade practices, the inadequacies of the international financial system, immense gaps in technology transfers, illicit financial flows including tax evasion, and also common but differentiated responsibility with regards to environmental sustainability. Improvements in international cooperation are needed in quantity but also quality. **For example, the right to development can add value to aid effectiveness by focusing on ownership through effective participation, genuine political commitment, ensuring the removal of resource constraints and aid conditionality and providing an enabling environment while promoting accountability**. A human rights approach to development cooperation would foster country ownership and mutual accountability at the international level. A right to development approach is needed to advance the goals expressed in the Paris Declaration on Aid Effectiveness and the Accra Action Agenda.[[11]](#footnote-11)

In an effort to move forward, it seems crucial to document what and how initiatives are being undertaken in various parts of the world.

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| *Good Practices in advancing the realisation of the right to development:**Taking all the above into consideration it could be said that good practices in implementing the right to development would include* ***comprehensive, holistic*** *policies and programs that are aiming at advancing the* ***realisation of*** *all or several human* ***rights simultaneously****. Designed, implemented, monitored and assessed* ***through a human rights based approach*** *that is participatory, accountable, transparent, and non-discriminatory. These policies and programs have to be* ***grounded on the principle of non-discrimination and equality*** *and ensure that those who are lagging behind are given special attention to effectively participate in and benefit from said policies and programs. It would also require* ***the allocation of appropriate*** *financial and economic* ***resources*** *from both domestic and international sources ( if needed) so as to reflect genuine* ***political commitment and accountability****. Furthermore, individuals should also be effective actors in the* ***equal sharing of the benefits*** *of said policies and programs on an equal footing. Any such policies and programs should include* ***mechanisms of accountability*** *including judicial or quasi- judicial mechanism for conflict resolutions or as recourse in case of violation. Finally good practices have to* ***deliver outcomes****, achieve the primary aim of improving equity, justice and well-being for all through the realisation of all or several human rights without any being violated or neglected.*  |

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1. E/CN.4/Sub.2/2003/14, para 5 [↑](#footnote-ref-1)
2. Realising the right to development, chap2 [↑](#footnote-ref-2)
3. Realising the right to development, Chap4, p-71 [↑](#footnote-ref-3)
4. E/CN.4/1999/WG.18/2 [↑](#footnote-ref-4)
5. see Bard A. Andreassen and Stephen P. Marks (eds.), Development as a Human Right- Legal, Political and Economic Dimensions, 2nd edition, Intersentia, (2010), p. 50. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. Realising the right to development, Chapter 4, p.85.86 [↑](#footnote-ref-7)
8. Realizing the Right to Development, chapt. 26 [↑](#footnote-ref-8)
9. See OHCHR, http://www.ohchr.org/EN/AboutUs/Pages/developmentintheeconomicsphere.aspx [↑](#footnote-ref-9)
10. Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para 5 [↑](#footnote-ref-10)
11. See http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm [↑](#footnote-ref-11)