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Item 4 of the Provisional Agenda - Implementation of the mandate and programme of work
Consideration of proposed thematic studies
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Mainstreaming the Right to Development in
International Development Cooperation
Wednesday 1 May 2024, 12:00 PM to 1:00 PM

Concept Note

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Introduction

This thematic study seeks to focus on mainstreaming the right to development in international development cooperation. International development cooperation has emerged as one of the most important means for promoting human rights and sustainable development. As noted in the first thematic study of the Expert Mechanism, international cooperation is a duty of States and is firmly anchored in the Charter of the United Nations, the core human rights legal instruments, the 1986 Declaration on the Right to Development, and other important resolutions of the General Assembly and the Human Rights Council.

The Declaration on the Right to Development stresses the importance of development cooperation. It stipulates that “the realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations”, and that “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development”. It further recognizes that “States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development”. In the context of developing countries, it also stipulates that “Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.

Similarly, the 2030 Agenda for Sustainable Development identifies a variety of mechanisms through which development cooperation between States can help realize the Sustainable Development Goals everywhere. In fact, development cooperation is at the heart of the 62 means of implementation targets that are key to realizing all the SDGs.

Development cooperation takes various forms. While a significant corpus of it is associated with financial assistance and aid, other forms of cooperation such as technology-sharing, capacity-building, infrastructure assistance, trade cooperation, investment facilitation, among others, are also very prevalent. While traditional development cooperation focused on North-South

cooperation, South-South and triangular cooperation, and possibly sui generis forms of development cooperation, have also emerged as potent supplements to the former.

These multidimensional practices have generated significant knowledge and experiences among partner countries on what works and what does not in terms of realizing the overall objectives of promoting sustainable development and human rights. There is no doubt that development cooperation in all forms, if done effectively, can and does contribute to the realization of the right to development. Indeed, effectiveness principles for cooperation, especially North-South cooperation, have been agreed upon under various frameworks, including the Paris Declaration on Aid Effectiveness, 2005; the International Health Partnership Plus, 2007; the Accra Agenda for Action, 2008; the Busan Partnership for Effective Cooperation, 2011; and the Global Partnership for Effective Development Cooperation, 2011. The latter document crystalizes the agreement among countries on the four key effectiveness principles as country ownership, focus on results, inclusive partnerships, and transparency and mutual accountability.¹ The Addis Ababa Action Agenda “welcomes continued efforts to improve the quality, impact and effectiveness of development cooperation and other international efforts in public finance, including adherence to agreed development cooperation effectiveness principles”.

In the context of South-South cooperation, the operational principles have been incorporated in the Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation of 2009 and the Buenos Aires outcome document of the second High-level United Nations Conference on South-South Cooperation (BAPA+40), adopted in 2019. These are respect for national sovereignty, national ownership and independence; partnership among equals; non-conditionality; non-interference in domestic affairs; and mutual benefit.²

Triangular cooperation involves Southern-driven partnerships between two or more developing countries supported by a developed country(ies)/or multilateral organization(s) to implement development cooperation programmes and projects. The outcome document of the Third South Summit held in Kampala from 21 to 22 January 2024 reaffirms “the importance of triangular cooperation, and acknowledge that triangular cooperation is aimed at facilitating, supporting and enhancing South-South initiatives, through the provision of, inter-alia, funding, capacity-building, technology transfer, resource mobilization, policy dialogue and exchange of best practices as well as other forms of support, at the request of developing countries, *in line with the principles of South-South cooperation*, and must be led by the countries of the South” [emphasis added].

There are clear differences between the effectiveness/operational principles of North-South Cooperation on the one hand, and South-South and Triangular Cooperation on the other (for instance, conditionality). Broadly speaking, however, these operational principles for effectiveness have substantive complementarities with the normative principles of the RTD. However, the normative framework of the RTD adds significant value since it recognizes that development is itself a human right and that realizing it, including through international cooperation, is an obligation of States. Operationalizing the RTD at all stages of development cooperation practices

¹ <https://www.effectivecooperation.org/landing-page/effectiveness-principles>

² *Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation*, A/RES/64/222, 15 December 2009, para 11; *Buenos Aires outcome document of the second High-level United Nations Conference on South-South Cooperation*, A/RES/73/291, 30 April 2019, para 8.

can help guarantee successful results by consciously providing them with a human person and people-centred approach to development.

However, the operational principles for effectiveness can be either seen as an option or as essential component of the duty to cooperate inherent in the normative principles of the right to development. In this context, development cooperation practices have not necessarily mainstreamed the normative principles of the right to development in a systematic or conscious manner across all their processes, especially that development itself is a human right of all individuals and peoples, and that this entails a duty on States to cooperate. This can lead to effectiveness principles themselves not being mainstreamed and, thus, effectiveness being compromised. There is also a lack of clarity on what exactly such mainstreaming means for the obligations of States engaged in development cooperation leading to lack of progress in its operationalization.

The following normative features of the RTD are of particular relevance:

1. **Development as a human right:** Development is understood as an inalienable human right of all individuals and peoples and not just as a privilege enjoyed by them. Right-holders are guaranteed three entitlements – to participate in, contribute to, and enjoy – economic, social, cultural and political development. As such, operationalizing the RTD guarantees that the human being and all peoples are central to the developmental objectives of development cooperation.
2. **Right-holders determine the development priorities:** Since human beings and peoples are the right-holders, it is they who self-determine their development priorities. The role of the recipient States in development cooperation is to guarantee that their requests for cooperation are based on the development priorities of the right-holders. Recipient States do have the right to formulate appropriate national development policies,³ however, this right is to be exercised by the State vis-à-vis other States and the international community on behalf of or as agents of its peoples and persons, who are the principal rights holders. States are never entitled to exercise this right against the interests of, or to the exclusion of, their own population and individuals, since such formulation is to be done “on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.⁴
3. **Attention to both the processes and outcomes of development:** The RTD requires focusing not only on the outcomes which are sought to be realized from a development plan or agenda (the “what” question), but also on the processes by which those outcomes are achieved (the “how” question). Both the processes and outcomes of development must be consistent with and based on all other human rights.⁵ This is a valuable framework for development cooperation practices since it helps ensure compliance with all human rights at all stages from

³ A/RES/41/28, article 2.3.

⁴ United Nations General Assembly, *Operationalizing the right to development in achieving the Sustainable Development Goals*, A/HRC/48/63, 6 July 2021, para 28.

⁵ *Ibid.* para 12.

planning to monitoring and evaluation.⁶ It helps guarantee that there is no trade-off between human rights while implementing development cooperation projects.

4. **The Duty of Cooperation Receiving States:** Receiving States have a duty to respect, protect and fulfil the RTD of right-holders within their jurisdictions. This requires formulating national development policies and programmes that promote the RTD, eliminate existing obstacles to development, and ensure that no new obstacles are created.⁷ This normative framework is especially important for development cooperation. The following practical steps may be identified for receiving States:⁸
 - a. Receiving States must identify development priorities and set national targets for realizing sustainable development based on participation and contribution of right-holders. Development cooperation must be in sync with such development priorities and a means for realizing national targets.
 - b. Receiving States must identify obstacles they face in meeting the identified development priorities and national targets for realizing sustainable development. Development cooperation practices must be informed by the need to eliminate such obstacles to development.
 - c. When receiving States find themselves unable to realize their targets on their own due to technological, financial, or capacity deficits, or where obstacles emanate from international levels, they must discharge their duty to seek international cooperation, including for development cooperation where appropriate. This duty to seek international cooperation is not affected by the right of the receiving State to reject any cooperation that undermines the RTD. However, the burden to justify such a rejection lies on the receiving State.⁹
5. **The Duty of Cooperation Providing States:** The obligation to respect the RTD applies to States not only internally but also extraterritorially.¹⁰ RTD requires that cooperation providing States do not adopt and implement policies that undermine the RTD of persons outside their jurisdictions, including in the receiving States. It also requires that international cooperation is viewed from the normative lens of the duty of States to cooperate and not from the traditional lens of donor-recipient charity. This entails the following:
 - a. Cooperation providing States must not impose their own development priorities on receiving States or determine the sectors for aid allocation. These practices inevitably misalign funding with recipient country priorities or undermine recipient country ownership over development programmes. As noted above, it is the right of receiving States to determine their priorities and international cooperation practices must be compliant with this principle.

⁶ Operationalization of the M&E framework of the UN-wide SSTC strategy and action plan. Review of existing UN reporting mechanisms and recommendations, June 2021, page 11.

⁷ A/HRC/48/63, 6 July 2021, para 12.

⁸ In this context, see *Ibid.*, elaborating on how the RTD can be operationalized in realizing the SDGs.

⁹ *Ibid.* para 34.

¹⁰ United Nations General Assembly, *Right to Development*, A/HRC/15/WG.2/TF/2/Add.2, 8 March 2010, annex, para 1.

- b. Cooperation providers are under an obligation to refrain from conduct that impairs the ability of the receiving State to comply with that State's obligations with regard to the RTD. As such, cooperation providing States must not impose conditionalities while supporting development projects that undermine the RTD of recipients. For instance, aid or assistance as loans designed to increase debt, with predatory conditionalities attached, or requiring contracts for companies only from the providing State as a condition of cooperation, can violate the RTD of recipients.¹¹
 - c. Cooperation providers are under an obligation to refrain from conduct that aids, assists, directs, controls or coerces the receiving State, with knowledge of the circumstances of the act, to breach that State's obligations with regard to the RTD.
6. **The Duty to Conduct Human Rights Impact Assessments:** The RTD entails the right of persons and peoples to actively, freely and meaningfully participate in and contribute to development, and also their right to enjoy such development on the basis of non-discrimination. The only way to ensure that these rights are not denied through development cooperation activities is through impact assessments. Additionally, since development as a right must be consistent with all other human rights, assessment of the actual and potential impacts on all human rights is indispensable.¹² As such, operationalizing the RTD requires that partner States, individually and jointly, conduct prior and ongoing assessments of the actual and potential risks and impacts of their cooperation activities on the RTD and other human rights. This includes impact assessment of the conditionalities attached to development cooperation, especially to prevent and mitigate adverse impacts through them on the right of individuals and peoples in cooperation receiving countries to determine their own development priorities, to participate and contribute to their own development, and to enjoy it without discrimination. Where relevant, this includes requiring contractors to conduct human rights impact assessments and due diligence. This will not only assist partner States in realizing a better and more sustainable project delivery but will also help them in course correction, if necessary.
7. **Data Gathering, Monitoring and Evaluation:** The RTD requires that data gathering, monitoring and evaluation of development cooperation is conducted as part of the discharge by States of their corresponding obligations, including the duty to cooperate. This framework helps channel and focus the objectives of such exercises towards an analysis of compliance with national development objectives and targets, and elimination of obstacles to development for the right-holders, as well as to verify a "fair distribution of benefits" of development through cooperation.

There is no doubt that there are successful illustrations of all forms of development cooperation. But there are also critiques of some of the development cooperation practices. It is plausible that the extent of success of these practices is directly related to whether or not they mainstreamed the operational principles on effectiveness of development cooperation, and whether they did so based on the normative framework of the right to development which recognizes that development

¹¹ A/HRC/48/63, para.41.

¹² Ibid. paras 43-46.

cooperation is not to be seen through the lens of charity or generosity, and that the development priorities of individuals and peoples in the cooperation receiving countries and their national ownership is fundamental.

Purpose:

This study seeks to explore how the normative framework of the right to development can be mainstreamed and operationalized in the different forms of development cooperation practices to ensure their effectiveness. It will identify best practices across North-South, South-South and Triangular cooperation, and recommend measures to further enhance them by mainstreaming the right to development.

Guiding questions:

1. What systems can be instituted in practice to align development cooperation with the self-determined development priorities of individuals and peoples in cooperation receiving countries?
2. Where cooperation is tied with conditionalities, how can it be ensured that the impacts of such conditionalities do not undermine receiving country's ownership over programmes and the right of individuals and peoples in the receiving country to participate in, contribute to, and enjoy development?
3. What are the main obstacles that countries seeking development cooperation and those willing to provide it face, and how can they be overcome?
4. What practical illustrations in North-South, South-South and Triangular cooperation projects can be identified and shared that demonstrate full operationalization of effectiveness principles?

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