

The Right to Development: Promoting and Protecting a Human Right in the Contemporary Context

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1. Introduction

Thirty years ago, the United Nations General Assembly adopted the Declaration on the Right to Development, establishing the framework that provides individuals and peoples, both domestically and globally, with the right to an equitable, sustainable and participatory development, in accordance with the full range of human rights and fundamental freedoms².

The advancement of a human rights-based approach to development is among the greatest achievements of the 1986 UN Declaration on the Right to Development. Since then, this approach has guided the integration of norms, standards and principles of the international human rights system into the plans, policies and processes of development, including the 2030 Agenda and the Sustainable Development Goals.

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² See the report by the UN High Level Task Force on the implementation of the right to development - A/HRC/15/WG.2/TF/2. Add 2.

At the 30th Anniversary of the Declaration on the Right to Development, it is essential to review its contributions and to explore perspectives of the full and effective realization of the right to development, inspired by the human rights-based approach to development and by a development approach to human rights.

Firstly, it is necessary to consider the conceptual and legal basis regarding the right to development.

2. Conceptual bases and legal framework of the right to development

By recognising, at its Article 2, that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development”, the Declaration played a crucial role to the revision of the meaning of development, shifting from what it had been traditionally interpreted by economists into a conception that has been guided by the human dimension.

Recalling Amartya Sen’s conception, development has to be conceived of as a process of expansion of the true freedoms that people can benefit from.³ Similarly, Arjun K. Sengupta, states that the right to development is the “right to a process that expands the capabilities or freedom of individuals to improve their

³In conceiving of development as freedom, Amartya Sen states that “In this sense, the expansion of liberties is seen both as 1) an end in itself and 2) the main meaning of development. Such ends may be respectively termed the constitutive and the instrumental function of liberty with regard to development. The constitutive function of liberty is related to the importance of substantive liberty for the elevation of human life. Substantive liberties include elementary capacities such as avoiding privation due to hunger, malnutrition, avoidable mortality, premature death and liberties associated with education, political participation, prohibition of censorship, etc. From this constitutive perspective, development involves the expansion of human liberties”. (Amartya Sen, *Development as Freedom*, New York:Alfred A. Knopf, 1999, pp.35-36, p.297). On the right to development, see also Karel Vasak, *For Third Generation of Human Rights: The Rights of Solidarity*, International Institute of Human Rights, 1979.

well-being and to realize what they value”.⁴

In such way, three key attributes emerges when applying a human rights perspective to the right of development: (i) social justice; (ii) participation, accountability and transparency; and (iii) international cooperation.

2.1. Social justice

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”, as enshrined in Article 28 of the Universal Declaration of Human Rights.

The Declaration on the Right to Development, in the same way, recognises development as an economic, social, cultural and political process, aimed at guaranteeing the constant improvement of the well-being of the population and of individuals, based on their active, free and significant participation in this process, guided by the fair distribution of the benefits resulting from it.

Indeed, in the contemporary world order poverty is "feminised", as the majority of the 1.5 billion people living on 1 dollar a day or less are women. About 80% of the world's population lives in developing countries, marked by low incomes and educational levels, and high rates of poverty and unemployment.⁵ Roughly 85% of the world's income goes to the richest 20% of the world's population, whilst 6%

⁴Report by the Independent Expert on the Right to Development, Arjun Sengupta, A/55/306, August 17, 2000, para.22.

⁵ Jeffrey Sachs states that: “eight million people around the world die each year because they are too poor to stay alive” (Jeffrey Sachs, *The End of Poverty: Economic possibilities for our time*, New York: The Penguin Press, 2005, p.1). He adds that: “One sixth of the world remains trapped in extreme poverty unrelieved by global economic growth and the poverty trap poses tragic hardships for the poor themselves and great risks for the rest of the world (Jeffrey Sachs, *Common Wealth: Economics for a crowded planet*, London, Penguin Books, 2008, p.6).

goes to the poorest 60%.⁶

Therefore, in promoting development, equal consideration must be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights, tackling gaps so no one is left behind, as incorporated by the 2030 Agenda, especially regarding Goals 1 (No Poverty), 5 (Gender Equality) and 10 (Reduced Inequalities). Addressing the right to development, Mary Robinson states that “The great merit of the human rights approach is that it draws attention to discrimination and exclusion. It permits policy makers and observers to identify those who do not benefit from development.”⁷

2.2. Participation, accountability and transparency

According to the 1986 Declaration: “The human person is the central subject of development and should be the active participant and beneficiary of the right to development (...).” The Declaration also obliges States to formulate development policies based on the entire population and of all individuals’ “active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.

The 1986 Declaration is the only international instrument that makes the nature of participation in development so explicit. The 2030 Agenda revigorated the

⁶Andrew Hurrell, *On Global Order: power, values and the Constitution of International Society*, Oxford: Oxford University Press, 2009, p.11.

⁷ Mary Robinson, What rights can add to good development practice, In: Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards mutual reinforcement*, Oxford: Oxford University Press, 2005, p.36. To Mary Robinson, “Lawyers should not be the only voice in human rights and, equally, economists should not be the only voice in development” (op. cit).

principle of participation by adopting a goal that pursues the promotion of peaceful and inclusive societies, the provision of justice for all and the building of effective, accountable and inclusive institutions at all levels (Goal #16).

At a national level, the right to free, active and meaningful participation demands, on the one hand, the expansion of the universe of those entitled to participate in the democratic game, inspired by the clause of equality and non-discrimination. Indeed, statistics show that the countries with the highest Human Development Index are precisely those with the smallest "gender gap".

On the other hand, this right demands the expansion of participatory arenas, strengthening democratic density – which can no longer be limited to *who* participates in the democratic game, but must also include *how* to participate⁸. People should be active participants in development rather than passive beneficiaries.

Participation should also be meaningful as an effective expression of popular sovereignty in the adoption of development programmes and policies. Meaningful participation and empowerment are reflected by the people's ability to voice their opinions in institutions that enable the exercise of power, recognizing the citizenry as the origin and the justification of public authority.

According to Freedom House, nearly 40 years ago more than half of the world was ruled by one form of autocracy or another, and many millions lived under

⁸ See Norberto Bobbio, *Democracy and Dictatorship: The nature and limits of state power*. Translated by Peter Kennealy, Minneapolis: University of Minnesota Press, 1989. Formal processes of democracy have proliferated at a national level, as illustrated by pioneering initiatives in Brazil, such as the participatory budget formulation process.

outright totalitarianism.⁹The majority now lives in democratic states. However, a total of 47 countries are deemed not free, representing 24% of the world's polities and 35% of the global population.

At a global level, the principle of participation demands an increase in the role of civil society organisations in policy discussion and decision-making processes. In addition, there is a pressing need to strengthen the participation of developing countries in international economic decision-making and norm-setting.¹⁰

Due to the lack of democracy in global governance, it is essential to promote good governance at an international level and effective participation of all countries in international decision-making processes.¹¹

In this context, the struggle for a new multilateralism is urgent. This would involve reforms in the global financial architecture in order to achieve a new political balance of power, democratising financial institutions and enhancing their transparency and accountability.¹² The establishment of the G20, demands for reform of the voting structures of Bretton Woods institutions, as well as other

⁹ The share of countries designated as free increased from 31% in 1980 to 45% in 2000, and the proportion of countries designated as not free declined from 37% in 1980 to 25% in 2000. A free country demands free institutions, free minds, civil liberties and law-based societies. (Freedom House, *Freedom in the World 2011 – Annual survey of political rights and civic liberties – The authoritarian challenge to democracy*).

¹⁰ See *Analytical study of the High Commissioner for Human Rights on the fundamental principle of participation and its application in the context of globalization*, E/CN.4/2005/41, 23 December, 2004.

¹¹ See Right to Development Criteria and Operational Sub-Criteria, A/HRC/15/WG.2/task force/2.Add.2, February 2, 2010, Annex I.

¹² According to Joseph Stiglitz, "We have a chaotic, uncoordinated system of global governance without global government". The author defends a "reform package", including, among other measures: 1) changes in voting structure at the IMF and World Bank, giving more weight to developing countries; 2) changes in representations (who represents each country); 3) adopting principles of representation; 4) increasing transparency (since there is no direct democratic accountability for these institutions); 5) improving accountability; and 6) ensuring better enforcement of the international rule of law. (Joseph Stiglitz, *Making Globalization Work*, London: Penguin Books, 2007, p.21).

initiatives aimed at broadening global governance, democratising international decision-making arenas and strengthening the voice of the South are worthy of mention.

2.3. International cooperation

According to the 1986 Declaration, States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development. They are also bound to cooperate in ensuring development and eliminating obstacles to development. The States have as well the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the right to development. The same idea of partnership can be found at Goal #17 of the 2030 Agenda, proving this is an ongoing challenge.

The High Level Task Force on the Implementation of the Right to Development has identified some criteria regarding the responsibilities of States acting collectively at the global and regional levels for that goal¹³. In a nutshell, these criteria calls for stability, rule of law, predictability, non-discrimination, peace, security, sustainability, democracy, transparency, accountability, human rights and a fair and equitable distribution of the benefits and burdens of development.

Besides the traditional obligations to respect, protect and implement the

¹³ See the report of the High Level Task Force on the implementation of the right to development for the April 2010 session of the Working Group, including the list of criteria, sub-criteria and indicators - A/HRC/15/WG.2/TF/2. Add 2.

human rights, the obligation to cooperate also stands out with reference to the right to development. This is because the right to development has solidarity as a founding value, which, in an increasingly global order, invokes the duty of international cooperation.

In article 22, the 1948 Universal Declaration itself enshrines “the right to social security through national effort and international co-operation (...)”. The principle of international cooperation is also enshrined in article 2 of the International Covenant on Economic, Social and Cultural Rights: “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 realization of the rights recognized in the present Covenant (...)”.

Deriving from the greater principle of human dignity, the international jurisprudence promoted by the Committee on Economic, Social and Cultural Rights has also endorsed the duty of the States to observe a minimum core obligation as far as social rights are concerned. In this way, General Comment n° 3 by the Committee on Economic, Social and Cultural Rights refers to the obligation of States to adopt measures for the implementation of social rights by means of concrete, deliberate and focused actions in the most effective way possible, both by immediate or by progressive application, as highlighted by the Limburg principles.¹⁴ Therefore, States have the duty to avoid measures of social

¹⁴ The Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, paragraph 22 (UN doc.E/CN.4/1987/17). As AsbornEide observes, “State obligations for economic and social rights were elaborated by a group of experts, convened by the

regression.

3. Contemporary challenges of the right to development

3.1. Development of indicators to measure the implementation of the right to development

Adopting indicators means that it is possible to identify advances, steps backward and inaction by public powers in terms of the right to development. The creation of indicators to measure the implementation of the right to development will allow the strengthening of the States' responsibility to respect, protect and implement the right to development. It will contribute to stimulate information by the State, which will allow more precise formulation and evaluation of public policies, thus favouring the incorporation of the human rights perspective into the formulation of such policies.

The UN High Level Task Force on the implementation of the right to development has made significant efforts to produce indicators and criteria for evaluating and measuring the implementation of the right to development.¹⁵

International Commission of Jurists, in Limburg (the Netherlands) in June 1986. The outcome of the meeting is the so-called Limburg Principles, which is the best guide available to state obligations under de CESCR. (...) A decade later, experts on economic, social and cultural rights met in Maastricht to adopt a set of guidelines on violations of human rights (The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights)" (AsbornEide, Economic, Social and Cultural Rights as Human Rights, In: Eide, A, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights: a textbook. 2nd revised edition, Dordrecht: MartinusNijhoff Publishers, 2001, p.25).

¹⁵See report by the UN High Level Task Force on the implementation of the right to development for the April 2010 session of the Working Group, including the attributes of the right to development and the list of criteria, sub-criteria and indicators - A/HRC/15/WG.2/TF/2. Add 2.

Likewise, the 2030 Agenda highlights, in its paragraph 48, the importance that indicators have for decision-making in the process of implementing sustainable development.

3.2. Adoption of an international treaty for the protection of the right to development

This proposal has caused politico-ideological polarity and tension among States that favour only the Declaration on the Right to Development and States that desire the strengthening of legal protection of the right to development through the adoption of a legally binding instrument (in the form of an international treaty). This debate involves the controversy between the national and international dimension of the right to development.

In general, developed countries emphasise the national dimension of this right, defending that the tutelage of the right to development should be maintained by means of soft law (in this case, with the 1986 Declaration only), without the need to adopt a treaty to this end; whilst developing countries emphasise the international dimension of the right to development, and defend the adoption of a legally binding Convention for the Protection of the Right to Development. They argue that the existence of an international treaty can even have a high impact in the domestic sphere, providing a special opportunity for setting parameters for the implementation of the right.¹⁶

See also the document "Indicadores de progreso para medición de derechos contemplados en el Protocolo de San Salvador", OEA/Ser.L/XXV.2.1, GT/PSSI/doc.2/11, March 11, 2011.

¹⁶Note that in article 22, the African Charter on Human and Peoples' Rights establishes that "All peoples shall have the right to their economic, social and cultural development with due regard to

3.3. Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Since 1966, civil and political rights have counted on the mechanism of individual petitions, which has strengthened the justiciability of these rights in the global, regional and local spheres. As for social rights, only in 2008, with the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights¹⁷ were they able to count on this system, which will positively impact the degree of justiciability of these rights.

The same ambivalence can be observed in regional systems of human rights protection regarding the diverse manner of treating civil and political rights, and economic, social and cultural rights. Both in the inter-American and in the European systems, economic, social and cultural rights only came to be enshrined either more recently or by fewer member-States than civil and political rights have been.

The Optional Protocol is an important initiative to break with the unequal

their freedom and identity and in the equal enjoyment of the common heritage of mankind.” In 2010, the African Commission on Human and Peoples' Rights condemned the State of Kenya for the violation of the right to development of the Endorois community, composed of around 60,000 individuals, who had lived for centuries in the region of Lake Bogoria, where they were removed from without any previous consultation or later compensation. For the Commission, “arguments recognizing the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development. (...) The result of development should be the empowerment of the Endorois community. It is not sufficient for the Kenyan Authorities to merely give food aid to the Endorois. The capabilities and choices of the Endorois must improve in order for the right to development be realized” (case n. 276/2003, Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois community versus Kenya).

¹⁷The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was approved by General Assembly Resolution A/RES/63/117 on 10 December, 2008.

protection assigned to civil and political rights, and economic, social and cultural rights in the international sphere. For the implementation of the right to development, it is vital to encourage States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which can contribute immensely to the protection, actionability and justiciability of these rights in the international, regional and local spheres.

3.4. International Financial Institutions Reform

The action by international financial institutions – especially with regard to trade, debt and technology transfer – is crucial to the realisation of the right to development. The 2030 Agenda tackles this challenge at its Goal #17, by targeting financial means of implementation, such as the mobilization of additional financial resources and assistance for developing countries in attaining long-term debt sustainability.

The UN High Level Task Force has considered a heavy debt burden as a major obstacle for poor developing countries in meeting their obligations under the International Covenant on Economic, Social and Cultural Rights¹⁸, jeopardising the right to development by diverting a large part of the scarce resources from crucial programmes of education, health care and infrastructure. A human rights approach would imply that, under any circumstance, expenditure should not be restricted to

¹⁸In its General Comment n° 2, in article 22 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights has indicated that “international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives”.

the extent that it amounts to violations of the rights to food, health, education, an adequate standard of living and social security. .

The World Bank and the International Monetary Fund's innovative programmes¹⁹ on debt-relief are contributing to the right to development, but they must be accompanied by enhanced State capacity, improved governance and respect for human rights, and promotion of equitable growth and the sharing of benefits thereof. The strengthening of global financial institutions, giving developing countries greater voice and representation, improving democratisation, transparency and accountability of international financial institutions would also be essential for the realisation of the right to development.

3.5. Promoting international cooperation

It is essential that international cooperation be conceived of not as mere charity or generosity, but as solidarity, in the sphere of the principle of shared responsibilities in the global order. Goal #17 of the 2030 Agenda embraces this idea by aiming to revitalize the global partnership for sustainable development.

Currently, around 80% of the world's population lives in developing countries. It is estimated that more than 1.7 billion people live in poverty.²⁰ A vicious cycle is set in place, in which economic inequality feeds political inequality in the exercise of power at an international level and vice-versa.

¹⁹See the Heavily Indebted Poor Countries Initiative (HIPC), launched in 1996 by the World Bank and the IMF, and the Multilateral Debt Relief Initiative (MDRI), launched in 2005, to assist Heavily Indebted Poor Countries to reach the MDG (Millennium Development Goals).

²⁰Jean-Paul Fitoussi, Amartya Sen and Joseph Stiglitz, *Mismeasuring our Lives*. New York : Perseo Books, 2011.

Thomas Pogge observes that "In 2000, the rich countries spent about US\$4.650 million on development assistance for meeting basic needs abroad while also selling the developing countries an estimated US\$25.438 million in conventional weapons"²¹. In this context, it is vital that developed countries invest 0.7% of their GDP in a "Vulnerability Fund" to aid developing countries, thus meeting the commitments made in the Monterrey Conference on Financing for Development - "Monterrey Consensus", 2002.

3.6. Stimulating action by private actors in the promotion of human rights

Regarding the private sector, there is also a need to accentuate its social responsibility, especially that of multinational companies, inasmuch as they constitute the great beneficiaries of the globalisation process. It is important to encourage companies to adopt human rights codes relative to commercial activities; to demand commercial sanctions on companies that violate social rights; and to adopt the "Tobin tax" on international financial investments, among other measures.

In a context of re-invention of the role of the State, it is crucial that the private sector, especially transnational corporations, widen its responsibility in the promotion of human rights, strengthening social, environmental and ethical responsibility. Some measures were considered at the 2030 Agenda, under its Goal#17, such as the encouragement and promotion of effective public, public-

²¹ Thomas Pogge, *World Poverty and Human Rights*, Cambridge, Polity Press, 2002. See also Amartya Sen, *Identity and Violence: The illusion of destiny*, New York/London: W.W.Norton& Company, 2006, p.97.

private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

3.7. Best practice consolidation

For the implementation of the right to development, it is also crucial to identify, exchange and promote best practices, so as to give them a catalysing effect.

4. Conclusion

Lastly, we can conclude that the implementation of the right to development involves challenges of a legal, cultural, political and economic nature.

In the legal and cultural sphere, we can envisage that the right to development encompasses a multiplicity of actors that transcends the actors involved in the realisation of other human rights.

The right to development requires a rupture with the traditional view inspiring the protective international architecture, in which human rights violations point, on one hand, to the State (as the violator) and, on the other, to the singularly considered individual (as the victim). In its complexity, the right to development, in both its national and international dimension, does not only consider the State as violator (but also international institutions and non-State actors) and the individual as victim (but also communities and groups). It is worth saying that the right to development invokes a pattern of conflict different from the classical and traditional pattern that inspires the system of international human rights protection.

In its essence, the right to development translates the right to a national and international environment that ensures the exercise and expansion of individuals' and peoples' human rights, as well as their basic freedoms.

As if such a legal and cultural challenge were not sufficient, there is still a challenge of a more political nature. The process of implementation of the right to development has been characterised by ideological tensions and political ambivalence. The refusal by States to assign the same treatment to economic, social and cultural rights as to civil and economic rights stands out. In this sense, the resistance by States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and to adopt a Convention on the Right to Development must be mentioned.

A challenge of an economic nature adds to these challenges. Thus, States face the challenge of adopting individual and collective measures and actions for implementing the right to development in the national and international spheres.

In an increasingly complex arena, it is crucial to advance in the affirmation of the right to development and global justice in the social, economic and political fields; to compose a new architecture able to respond to the challenges of the current agenda, of the new power dynamics in the international sphere and in a growing landscape of shared responsibilities

In this context, new initiatives, as the 2030 Agenda for Sustainable Development, reaffirm the importance of the human rights-based approach to development, 30 years later its seminal contribution. Indeed, the 1986 Declaration on the Right to Development remains as a dynamic and living instrument capable of addressing the contemporary challenge of advancing global democracy and

global justice based on international cooperation and the creativity of civil society, considering development as an empowering process.