

DECLARATION ON THE RIGHT TO DEVELOPMENT

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Introduction

The Declaration on the Right to Development of 1986 (hereinafter “DRTD”) is an ambitious document of programmatic character containing a blend of principles informed by international human rights instruments, and an aspirational political statement. It introduced into the United Nations human rights agenda the right of every human being to participate in, contribute to, and benefit from economic, social, cultural and political development. The significance of the right to development lies in the fact that it embodies a comprehensive approach to the realisation of human rights by according attention to structures, processes and outcomes of development both at the national and international levels.

The DRTD establishes equity, equality and justice as primary determinants of development, thereby heralding a new rights-based approach to development. It laid the foundation to advance the United Nations agenda designed to integrate development into human rights. It has been a catalyst for the recognition of the right to development in a number of subsequent regional and international instruments dealing with human rights and sustainable development. However, the content, nature and the status of the DRTD and the right to development itself are contested by scholars and States, and the intergovernmental process aiming to reach a political consensus on its meaning and practical interpretation is highly politicised. Divisions about the legal status and implications of the right to development prevail between—and within—the North and the South. It is in this context that this Introductory Note seeks to analyse the origins, content and the status of the DRTD and its impact on the evolution of the right to development.

The Genesis of the DRTD

The DRTD was adopted by the United Nations General Assembly by its resolution 41/128 of 4 December 1986. The gestation period of the DRTD was a long one. It has its origins in the Charter of the United Nations, the human rights agenda of the United Nations, the right to self-determination, the principle of non-interference, permanent sovereignty of States over their natural resources and wealth, and the campaign for a New International Economic Order of the 1970s and early 1980s.

Although the concept of development is largely a product of economic and political events of the post-World War II period, the aim of the international community to reduce poverty and promote welfare has its roots in the League of Nations. The Covenant of the League of Nations addressed development within its mandate system in Article 22. This concept of development found its expression in Article 55 of the Charter of the United Nations in a wider context of international economic and social cooperation among States. Article 55 recognizes the importance of promoting “conditions of economic progress and development” and “solutions of international economic, social, health, and related problems” and all Members of the United Nations pledged themselves through Article 56 “to take joint and separate action” in cooperation with the United Nations “for the achievement of the purposes set forth in Article 55”. Thus, the embryonic foundations for the DRTD were laid in the Charter of the United Nations itself in 1945.

The momentum to articulate and promote the right to development of States gathered pace within the United Nations in the 1950s and 1960s in the context of both the right of self-determination and the developmental needs of States without outside interference. Resolutions 1710 and 1715 (XVI), adopted by the General Assembly in the early 1960s, proclaimed the first United Nations Development Decade. The 1962 United Nations General Assembly resolution 1803

(XVII) on Permanent Sovereignty over Natural Resources required sovereignty to be exercised in the interest of a State's "national development and of the well-being of the people of the State". The human rights dimension of development was included in the 1966 report of the Secretary-General on the progress of the first Development Decade, 1960s.

The link between development and human rights was officially recognised by the Tehran Conference on Human Rights in 1968. In its resolution 2027(XX), the General Assembly strengthened that link when it recognized the need for the framework of the Development Decade to "devote special attention on both the national and international levels to progress in the field of human rights, and to encourage the adoption of measures designed to accelerate the promotion of respect for and observance of human rights and fundamental freedoms". The resolution invited governments to include in their plans for economic and social development measures directed towards the achievement of further progress in the implementation of the human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights and subsequent international human rights instruments.

Another major prelude to the DRTD was article 2(1) of the International Covenant on Economic, Social and Cultural Rights. Along the lines envisaged in Articles 55 and 56 of the Charter of the United Nations, the Covenant absorbed "development", qualifying it as an important means for the achievement of human rights. It was a recognition of the idea that development measures can serve as a framework within which economic and social rights can be defined and realized.

Building on the provisions of the Charter of the United Nations and the 1966 Covenant, and inspired by the regional and international initiatives, the General Assembly recognized the right to development in its resolution 34/46 of 23 November 1979 under the title "Alternative approaches and ways and means within the United Nations system for improvising the effective enjoyment of human rights and fundamental freedoms". A concerted momentum towards the adoption of the DRTD commenced in 1975 when the United Nations Commission on Human Rights, the predecessor of the current Human Rights Council, decided to place on its agenda the "Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries" (E/CN.4/1179). While the matter concerning different dimensions of development were being debated within the United Nations, a Senegalese jurist, Keba M'baye, first proposed the idea of a right to development ("Le droit au développement comme un droit de l'homme" in *Revue des droits de l'homme*, vol. 5, 1972, p. 505), and it was first given legal recognition in the 1981 African Charter on Human and Peoples' Rights ("Banjul Charter").

The developments that ensued these initiatives on this matter both at the regional and international levels led ultimately to the adoption of the DRTD. The thirty-seventh session of the Commission held in 1981 established a Working Group (resolution 36 (XXXVII)) to study the scope and contents of the right to development. Upon receiving the report of the Working Group (E/CN.4/1985/66), the Commission transmitted it together with other relevant documents to the General Assembly in 1985, through the Economic and Social Council (resolution 1985/43), paving the way for the adoption of the DRTD on the right to development. When the report was received, the Third Committee of the General Assembly considered several proposed amendments to the text in 1986 and completed its consideration of the draft declaration, which was then submitted to the General Assembly for adoption and was adopted with the support of an overwhelming majority of States. A total of 146 States voted for the resolution with only one State against and 8 abstentions (against: the United States of America; abstaining: Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom of Great Britain and Northern Ireland).

The Content of the DRTD

As stated in the Preamble to the DRTD, it draws on the provisions of the Charter of the United Nations and the 1996 International Covenant on Economic, Social and Cultural Rights and on the 1966 International Covenant on Civil and Political Rights. The DRTD provides that there should be full respect for the principles of international law concerning friendly relations and cooperation in accordance with the Charter of the United Nations, and there is a duty on the part of all Members of the United Nations to create international conditions favourable to the realisation of the right to development, to co-operate to eliminate “obstacles” to development and to take steps to formulate international development policies with a view to facilitating the right to development.

The DRTD provides a comprehensive framework and approach to the policies and programmes of all relevant actors at the global, regional, sub-regional and national levels to realise the right to development. It integrates aspects of both human rights and development theory and practice and requires active, free and meaningful participation of the people in the process of development. It embodies the human rights principles of equality, non-discrimination, participation, transparency, accountability as well as international cooperation in an integrated manner. It reaffirms the principles of self-determination and full sovereignty over natural wealth and resources and involves both national and international dimensions of State responsibilities including responsibilities in the creation of an enabling environment for development and favourable conditions for all human rights. The idea behind the right to development is the adoption of a comprehensive and human-centred development policy, participatory development processes, social justice and equity.

The content of the DRTD is framed along the following main themes: (1) comprehensive approach to development whereby development is not defined solely in terms of economic growth, but as a “comprehensive” and multi-faceted “process” with social, cultural, political as well as economic elements; (2) respect for all human rights and affirmation that human rights are indivisible and interdependent, and equal attention should be given to economic, social and cultural rights along with civil and political rights; (3) participation in the formulation of development policies as the human person is at the centre of development; (4) social justice for all, since the development process should be about promoting social justice, including the “fair distribution of the benefits” of development for individuals and “equality of opportunity for all” for access to basic resources and services, as well as the eradication of all social injustices; (5) international co-operation, since the realisation of the right to development requires not only appropriate national policies, but also suitable international conditions for development with appropriate international policies and co-operation; (6) respect for the right to self-determination, as the DRTD establishes that development “implies the full realisation of the right of peoples to self-determination”. The notion of self-determination in this context means that, as a minimum, minorities must enjoy the right to participate in the design and implementation of a sustainable development policies.

Since the subjects and beneficiaries of the right to development are individuals under the DRTD, they are the bearers of rights, who can make claims against the State for the promotion, protection, and fulfilment of the obligations or duties contained in the right and owed by the duty-holder. As the DRTD promotes “people-centered development”, it makes individuals holders of the right to development. Although the State is not explicitly mentioned as the subject of the right to development, the DRTD can be interpreted as introducing the notion that States are also right-holders, for example, that they have the right to formulate appropriate national development policies, since the DRTD also refers to “peoples” as right-bearers. Human rights law claims are generally held against States under international human rights law. Under the DRTD, however, States can impose human rights claims against other States and also possibly against the international community. Nonetheless, read in totality, the DRTD establishes the State as the primary duty-holder, while the individual does have duties, too, in the realisation of the right to development. States have a duty of co-operation, both individually and as members of the international community, to formulate international development policies.

The DRTD contains 10 articles. Article 1 (1) proclaims that the right to development is an inalienable human right in the following words: “1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” This definition encompasses within it the right to development as both an individual and collective right of peoples. Article 1 (2) establishes the nexus between the right to development and the principle of self-determination as well as the sovereignty of States over all their natural wealth and resources.

The DRTD identifies in article 2 the human being as the central subject of development and attributes States the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals. The remaining provisions of the DRTD identify the responsibilities and duties of States with regard to the realisation of the right to development.

Article 3 declares that, “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.” According to a high-level United Nations task force on the implementation of the right to development, “the responsibility for the creation of this enabling environment encompasses three main levels: (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and (c) States acting individually as they formulate national development policies and programmes. (A/HRC/15/WG.2/TF/2/Add.2). Echoing the provisions in Article 56 of the Charter of the United Nations, article 4 of the DRTD provides that “1. 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.”

While article 5 outlines the historical background to the violations of human rights resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination, article 6 reaffirms the need to promote, encourage and strengthen universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion, emphasises the indivisible and interdependent character of all fundamental freedoms and calls for equal attention to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

Article 7 speaks of the need to promote the establishment, maintenance and strengthening of international peace and security and general and complete disarmament under effective international control to ensure the enjoyment of human rights in general and the right to development in particular. Article 8 calls upon States to undertake, at the national level, all necessary measures for the realization of the right to development and to ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Similar to the manner in which article 6 places emphasis on treating all fundamental freedoms as indivisible and interdependent, article 9 provides that all the aspects of the right to development set forth in the DRTD are indivisible and interdependent and each of them should be considered in the context of the whole.

Article 10 calls for “steps to ensure the full exercise and progressive enhancement of the right through the formulation, adoption and implementation of policy, legislative and other measures”. However, the DRTD does not prescribe any specific course of action by which “conditions conducive to the fulfilment of human person” are created and leaves it to the United Nations and its Member States to work out the processes and modalities required to create “conditions conducive to the fulfilment of human person”.

Impact of the DRTD

The DRTD has had an impact on the subsequent international development agenda. The Rio Declaration on Environment and Development reiterated and elevated the status of the right to development by including it in its article 3: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. Unlike the DRTD, the Rio Declaration was adopted with the support of an overwhelming majority of States. Although the United States expressed, in a separate statement, its opposition to development as a right, the normative character of the provisions in article 3 of the Rio Declaration and the support it received has strengthened the status of the right to development.

The right to development was recognized by the 1993 World Conference on Human Rights (A/CONF.157/23). Many provisions of the Millennium Declaration (General Assembly resolution 55/2 of 8 September 2000) were inspired by the DRTD. It can be argued that the agenda of the multilateral cooperation set by the Millennium Declaration by uniting the key themes and challenges of the new millennium, such as development, poverty eradication, and human rights, democracy, and good governance was a continuum of the agenda set by the DRTD. The Millennium Declaration states that “we are committed to making the right to development a reality for everyone and to freeing the entire human race from want”.

Another instrument that carries the spirit of the DRTD is the Sustainable Development Goals (General Assembly resolution 70/1 of 25 September 2015). A series of other international commitments have reasserted the right to development including the Addis Ababa Action Agenda (General Assembly resolution 69/313 of 27 July 2015), the Sendai Framework for Disaster Risk Reduction 2015-2030 and the Paris Agreement on Climate Change. Through these instruments, States have given a new momentum for the protection, promotion and fulfilment of the right to development at national and international levels. The significance of the DRTD lies partly on the fact that many national and international agencies and especially the United Nations agencies have relied upon the right to development as a legal framework for integrating human rights in the development process.

Although the right to development has met the procedural requirements to become a new internationally recognised human right, the DRTD itself does not represent a legally binding instrument. However, thanks to the impact of the efforts leading up to the adoption of the DRTD and of its subsequent developments, the right to development has found its expression in a number of regional and international instruments, including article 23 of the Declaration on the Rights of Indigenous Peoples, articles 1 and 2 of the Vienna Declaration and Programme of Action, Principle 3 of the Rio Declaration on Environment and Development, section III (article 11) of the United Nations Millennium Declaration, Sustainable Development Goals, Monterrey Consensus (Report of the Secretary-General, “Outcome of the International Conference on Financing for Development” (A/57/344, 23 August 2002)), article 22 of the African Charter on Human and Peoples’ Rights, and article 37 of the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations of 2012, and the Abu Dhabi Declaration of the Organization of Islamic Cooperation of 2016. The right to development has also found its recognition in jurisprudence and examples are: *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples’ Rights, 2010, and *Bakweri Land Claims Committee v. Cameroon*, African Commission on Human and Peoples’ Rights, 2002.

The DRTD provides a framework for the adoption of measures to ensure that the development process is respectful of human rights and of the process in which all human rights and fundamental freedoms can be realized. Read together, the provisions in articles 1 and 6 of the DRTD can be regarded as stipulating a legal requirement according to which the development process would be regulated by human rights norms. Accordingly, development interventions by national and international agencies would have to follow the priorities set by human rights. The right to development has had some degree of legal and practical implications to the issue of human rights

and development. The DRTD has been instrumental in integrating economic, social and cultural rights into the workings of international agencies and specially the United Nations agencies.

The DRTD provides additional normative support for integrating the human development approach into mainstream development initiatives. It also has had a measure of influence on the negotiations for the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which have integrated provisions on international assistance and cooperation with a focus on the needs of developing countries. The right to development is an aspirational and enabling right. It is a right to means of achieving other human rights.

The DRTD firmly places the right to development within the legal framework of international human rights and links the realization of this right to international cooperation in the realms of economic development and social justice. The concept of the right to development carries with it a moral and political force in the deliberations on economic development of developing countries and delivery of promises made through various international initiatives, ranging from financing for development and poverty reduction to projects of social engineering envisaged in the Charter of the United Nations.

The challenge ahead is to translate the provisions of the DRTD into concrete obligations. Another challenge is to conceptualise the right to development legally, since the DRTD does not unequivocally specify obligations flowing from the right to development. Since the term “development” is a multidimensional and shifting concept sensitive to time and place, it is an unsettled, or a relative idea, depending on the context to which it applies. In a wider sense of the term, every country is developing in different ways and in different areas of human activity. As stated in preambular paragraph 2 of the DRTD, development is a continual process anywhere and everywhere: “development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”.

Overall, the term “development” in the context of the DRTD has largely been understood to mean “social and economic development” of developing countries in general and of the least-developed countries in particular. Therefore, the right to development is mainly about the economic and social development of developing countries, as stated in article 4 (2) of the DRTD.

Conclusion

The aim of the DRTD is to integrate the right to development into human rights. It provides a set of normative prescriptions to be reflected in development policies and practices as it seeks to ensure that development policies and practices do not interfere with the enjoyment of human rights. The aim is to revisit certain fundamental questions in light of new directions developed in legal thinking to better understand the relationship between development and human rights. Since the DRTD itself does not prescribe any specific course of action by which the right to development has to be realised, leaving it to the United Nations and its Member States to work out the processes and modalities required for it, the Human Rights Council, in its resolution 33/14 of 29 September 2016, established the mandate of the Special Rapporteur on the right to development, who is expected to contribute practical guidance for the effective realisation of the right to development at local, national, regional and international levels.

The mandate of the Special Rapporteur is to explore ways and means of implementing the commitments of States under article 8 of the DRTD to “undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices” and to

“encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.” Accordingly, the Special Rapporteur proposed a set of guidelines and recommendations on the practical implementation of the right to development in a report submitted to the Human Rights Council, which places particular attention on meaningful participation in setting development priorities and enjoying development benefits, methods of mobilizing resources for development that are inclusive and sustainable, monitoring and evaluation of development policies, and measures for accountability when rights are infringed (A/HRC/42/38).

Going forward, there have been several proposals made to negotiate and conclude a framework convention on the right to development, to concretise the provisions of the DRTD which accommodates the various interests of both the developed and developing countries. The United Nations Working Group on the Right to Development was tasked to assist Member States in drafting a new treaty declaring development as a human right. In January 2020, the Human Rights Council published a draft Convention on the Right to Development (A/HRC/WG.2/21/2/Add.1). This draft Convention is based on existing international legal instruments as much as possible and builds upon the Universal Declaration of Human Rights, the nine core United Nations human rights treaty, and of course on the DRTD. If this draft Convention receives the support required within the Council, and subsequently within the United Nations General Assembly, a treaty on the right to development stands to join the group of United Nations human rights treaties. Thus, there is a prospect of the DRTD becoming a catalyst that transforms the right to development from a soft-law principle into a hard-law principle, thereby becoming a historical declaration.

This Introductory Note was written in January 2021.

Related Materials

A. Legal Instruments

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B. Documents

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