

# RIGHT TO DEVELOPMENT

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The genesis of the right to development is most certainly found in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations (UN) General Assembly in 1948. The preamble to the declaration announces the UN's determination to "promote social progress and better standards of life in larger freedom" (Henkin et al., p. 41). Article 28 of the UDHR states, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (p. 46). To many in the poorer countries of the Southern Hemisphere, a successful articulation of a state's duties and obligations arising from this commitment to create a just economic and social international order would represent breakthrough progress in the human rights arena. Through various organs of the UN, the international community has addressed these concerns in the ongoing debate on the utility of a collective right to development.

The right to development, as a specific human right, first came to light in the 1960s and 1970s as the newly emergent independent states sought to articulate a new normative framework to correct years of colonial domination. Many of these developing states argued that hundreds of years of exploitation by the colonial powers had depleted their natural wealth and created conditions of extreme poverty among their citizens. The former colonial powers of course were hesitant to recognize any legal obligation for reparations or accept responsibility for the negative economic results of the colonial period. The new group of developing countries, however, now had a numerical majority within the UN system and used this voting power to push economic development goals to the top of the international agenda. The former president of the UN Commission on Human Rights, the Senegalese jurist Kéba Mbaye, was one of the first expert scholars to refer to a right to development, which he defined as "the recognized prerogative of every individual and every people to enjoy in just measure the goods and services

produced thanks to the effort of solidarity of the members of the community" (p. 7).

During this initial period of postcolonial independence, many of the new developing states joined the Bretton Woods institutions, the International Monetary Fund and the World Bank, and the General Agreement on Tariffs and Trade. However, some of these states quickly became disillusioned with the liberal trading order set up by the developed world after World War II, sentiments subsequently expressed by the UN General Assembly in both the 1974 Declaration on the Establishment of a New International Economic Order (NIEO) and the 1975 Charter of Rights and Duties of States. The developed states were able to block the implementation of the NIEO since they controlled the resources necessary to make it effective. The UN Conference on Trade and Development was established as an organ of the General Assembly to address development issues and the specific concerns of the less developed countries. The organization became a key forum for discussion and action on the NIEO and pushed for new rules regarding commodity agreements, trade, and debt.

The international system thus went through a period of enormous change and upheaval in the 1970s. The newly independent, developing states stood up and demanded that colonialism and neocolonialism be seen as violations of human rights law, with former colonial powers thus having legal obligations to cooperate and assist with development. Development aid and assistance then would not be seen as merely charity but as a legal duty to correct for this history of exploitation. The less developed states also demanded that economic, social, and cultural rights be put on an equal footing with the civil and political rights promoted by the developed world. It is within this contentious political context that the right to development emerged.

The right to development was first recognized as a human right by the UN Commission on Human Rights in a resolution approved in February 1977. This resolution

called on the UN Economic and Social Council to invite the secretary-general to undertake a study on "the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs" (Ouguergouz, p. 300). The commission highlighted the obstacles hindering developing countries from securing the enjoyment of economic, social, and cultural rights.

In 1981 the UN established the Working Group of Government Experts on the Right to Development. Among its recommendations, this expert body invited the secretary-general to initiate a global consultation on the realization of the right to development as a human right, which was later convened in Geneva in 1990. The concept was further elaborated by the Organization of African Unity and codified in the African Charter on Human and Peoples' Rights. The African Charter, opened for signature in 1981 and ratified in 1986, declares in Article 22: "(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. (2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development" (Henkin et al., p. 341).

The most important document in international law affirming and elaborating the right to development is the UN Declaration on the Right to Development (DRD), adopted by the General Assembly in 1986. The DRD defines development as 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" (Henkin et al., p. 297). In Article 1(1), the DRD states, "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" (pp. 298-299). In Article 2(1), the DRD makes it clear that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development" (p. 299). The declaration charges states with the legal duty and obligation to create "national and international conditions favorable to the realization of the right to

development" (Article 3[1]), to "co-operate with each other in ensuring development and eliminating obstacles to development" (Article 3[3]), and to "take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development" (Article 4[1]) (p. 299).

The key element of the DRD, the glue holding the declaration together, is the assertion of the need for international cooperation to overcome the legacy of colonialism. For example, Article 4(2) states: "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" (Henkin et al., pp. 299-300). The document calls on states to "promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States" (Article 3[3]) (p. 299).

The UN continued throughout the 1990s to affirm and validate the human right to development. The Global Consultation on the Right to Development as a Human Right was convened in Geneva in January 1990. Participants included representatives from more than fifty governments, forty nongovernmental organizations, twenty experts, and a dozen UN programs and agencies. The Global Consultation focused on the ways both the structure of international economic relations and the distribution of internal economic power worked as impediments to the achievement of human rights.

The report from the Global Consultation is noteworthy in that it links development to democracy and participation, reinforcing the mutually dependent nature of political and economic rights. The report further notes that "no one model of development is universally applicable to all cultures and peoples." What constitutes "development is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs." It follows that participation must be "the primary mechanism for identifying appropriate goals and criteria" for the development process (Barsh, p. 328).

The conditions for democratic participation include "a fair distribution of economic and political power among all sectors of national society" and "genuine ownership or control of productive resources such as land, financial capital, and technology" (Barsh, p. 329). Participation is "effective in mobilizing human and natural resources and combating inequalities, discrimination, poverty and

exclusion. . . . States must not only take concrete steps to improve economic, social and cultural conditions and to facilitate the efforts of individuals and groups for that objective, but must do so in a manner that is democratic in its formulation and its results" (pp. 329–330). In 1993 the UN World Conference on Human Rights held in Vienna adopted the Vienna Declaration and Programme of Action, which reaffirms in Article 10 "the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights" (Henkin et al., p. 116). Significantly, the United States dropped its objections and accepted the validity of the right to development and voted in favor of the Vienna Declaration.

Also in 1993 the UN Commission on Human Rights established the second working group on the right to development. This body of fifteen experts was mandated to identify the obstacles to the realization of the DRD and recommend means toward the realization of the right to development by all states. Five sessions of the working group were conducted between 1993 and 1995.

In 1996 the UN Commission on Human Rights reaffirmed the right to development and established yet another expert committee to explore strategies for the implementation and promotion of the right to development. The intergovernmental working group of ten experts on the right to development was given a two-year mandate by the UN Economic and Social Council.

In 1998 the UN General Assembly approved a resolution affirming the right to development and calling for the inclusion of the DRD in the International Bill of Rights. (The International Bill of Rights encompasses the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.) For many less developed countries, such an action would have been an appropriate way to celebrate the fiftieth anniversary of the UDHR. The majority of the less developed countries continued to view the right to development as the most important human right. The more developed countries, in particular the United States, remained skeptical. The United States seemed to back away from its 1993 endorsement and now claimed that this "right" was merely rhetoric, impossible to implement, and pushed by the less developed countries to pressure the developed countries into increasing aid levels.

A compromise between the less developed and more developed countries occurred at the 1998 meeting of the UN Commission on Human Rights. The less developed countries withdrew the proposal to include the DRD in

the International Bill of Rights. In its place a resolution was adopted by consensus that recognized that the fiftieth anniversary of the UDHR gave the international community the opportunity to put human rights, and in particular the right to development, at the top of the global agenda. The resolution urged the Office of the High Commissioner for Human Rights to continue to accord priority to the right to development. Follow-up mechanisms, including the establishment of an open-ended working group on the right to development and the appointment of an independent expert, were approved. While not as theatrical as the inclusion of the DRD in the International Bill of Rights, Anne Orford notes that these actions meant that the rich and poor countries of the international community could continue to move forward together on the implementation of the right to development.

In 2005 the Office of the High Commissioner for Human Rights organized both the sixth session of the Working Group on the Right to Development and the second meeting of the high-level task force on the implementation of the right to development. These meetings focused on the challenges to implementing the Millennium Development Goals in relation to the right to development, the improvement of global partnerships to the realization of the right to development, and national strategies for implementation of the right to development. The goals, adopted by all the member states of the UN and by the world's leading development organizations, can be read as representing a human rights-based approach to development. The strategic vision articulated in the eight goals calls for all states by 2015 to (1) cut extreme poverty in half; (2) provide universal primary education; (3) promote gender equality; (4) reduce child mortality; (5) improve maternal health; (6) combat malaria, HIV/AIDS, and other diseases; (7) ensure environmental sustainability; and (8) establish a global partnership for development.

#### JUSTIFICATION FOR A RIGHTS APPROACH

To have a "right" is to make a claim on others to a certain type of treatment. The international community, through the actions described above, has adopted the "right to development" as a human rights claim in international law. The primary justification of a rights approach is to move the idea of development assistance and cooperation out of the realm of charity and into one of legal obligation. Mohammed Bedjaoui eloquently explains that the human right to development claim "goes something like this:

'Before giving me charity or offering me your aid, give me my due. Perhaps I shall then have no need of your aid. Perhaps charity is no more than the screen behind which you expropriate what is due to me. Such charity does not deserve to be so called; it is my own property you are handing back to me in this way and, what is more, not all of it' (pp. 1191-1192).

However, many scholars argue that before a claim can be recognized as a "right," a mechanism for the realization of that right must be found. In other words, to become a "valid" and "concrete" right, as opposed to a "manifesto" or "abstract" right, the feasibility of the right must be established. This involves establishing how the "duty holders" could realize the right through either existing or new institutions or mechanisms.

Arjun Sengupta, the UN independent expert on the right to development for the Human Rights Commission, contends that such mechanisms for the realization of this right have been articulated. He notes that the recognition of the right to development as a human right raises the status of that right to one with universal applicability and inviolability. It also specifies a norm of action for the people, the institution, or the state and international community on which the claim for that right is made. It confers on the implementation of that right a first-priority claim to national and international resources and capacities and, furthermore, obliges that state and the international community, as well as other agencies of society, including individuals, to implement the right. (Sengupta, pp. 845-846)

There are a number of key elements to this legal justification for a human "right to development." First, the key to understanding the right to development is to take seriously the importance of equal opportunity. With increasing economic globalization, a challenge of human rights is to carve out an area of protection that is exempt from the often inequitable and harsh effects of global capitalism. The DRD highlights the right to equal access to the benefits of development. Article 8(1) calls on states to ensure "*equality of opportunity* for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income" (Henkin et al., p. 300; emphasis added). And Article 2(3) proclaims, "States have the right and 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 . . . and in the fair distribution of the benefits resulting therefrom" (p. 299). This can be read as a call to give everyone an equal chance to participate fully in an economic system that can be

unjust if protective measures are not taken. The right to development requires that those state and nonstate actors with power over others strive to prevent the human suffering caused from this vigorous economic system and hundreds of years of colonialism. This right declares that these commanding actors have a duty to strive to uphold a minimal economic floor, which is to meet certain basic subsistence requirements, so that every person is given an equal chance to participate freely and fully in the global economy system.

Second, it is clear that although the right to development is a collective right, its targeted beneficiary is not only the community or the state but also the individual. As noted above, Articles 2(1) and 2(3) of the DRD clarify that it is the individual human being who is the beneficiary of the right to development. Philip Alston asserts that this formulation makes it clear that the state is "the medium through which the rights of individuals are able to be effectively asserted vis-à-vis the international community" (p. 512). The state exercises this right against those who hinder the ability of the state to implement development policies that benefit all individuals in their societies. Thus the right to development does not grant states rights over the individual rights of its citizens. On the contrary, the right to development proclaims the primacy of a human rights-based development model in the interest of all of the individuals of the society. This right can be claimed by individuals and by states, as agents of these individuals, when these human rights claims are threatened.

Third, the DRD recognizes that actors other than states are responsible for respecting, protecting, and fulfilling economic and social human rights. The declaration does explicitly establish that states have an obligation to respect and promote the right to development (see Article 2[3] quoted above). However, these obligations, according to Anne Orford, are expressed both as a duty of states toward their own peoples and as a right of states toward outside actors. For example, Article 6(3) proclaims that states must "take steps to eliminate obstacles to development resulting from the failure to observe civil and political rights, as well as economic, social and cultural rights" (Henkin et al., p. 300). And Article 3(3) provides that states have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest, and co-operation among all states,

as well as to encourage the observance and realization of human rights (p. 299).

Articles 4(1) and 4(2) also call for international cooperation to facilitate the realization of the right to development. These articles can be read to imply that, under the right to development, states have a legal obligation to demand that powerful outside economic actors respect human rights-based development policies in their countries. The "duty holders" thus move beyond the state and include international financial institutions, multinational corporations, trade organizations, and others. All of these powerful economic actors have a legal duty to uphold the right to development, and states can assert this right against these actors.

A fourth and final element to the UN's legal justification and interpretation of the right to development concerns the issue of participation. The DRD emphasizes democratic participation as the basis of the right. State action becomes decisive. The state has a duty to open up the space for democratic participation. The DRD thus draws a direct link between civil and political rights and economic, social, and cultural rights. A legal positivist human rights approach is thus combined with a strategy of democratic participation. In essence, the argument is that international economic and social human rights depend on their adaptation and acceptance by local communities. And it is the state that can create the proper environment for the fulfillment of the right to development by opening up the political space so that democratic participation can become a reality. The state can regulate the activities of other transnational economic actors whose practices violate basic human rights provisions. The right to development, and all economic and social human rights, cannot be imposed by the UN or countries in the Northern Hemisphere. The protection and fulfillment of the right to development are dependent upon the active democratic participation of the citizens of the less developed countries.

The DRD thus stresses that the enjoyment of the right to development by individuals is based on a free, active, and meaningful participation in and enjoyment of the benefits of development. The right has been characterized as a participatory right in the sense that people have the right to determine their model of development.

## RESULTS

The UN continues the process of exploration of ways to implement the right to development. An open-ended

working group on the right to development meets annually, and an independent expert conducts research and makes further recommendations for action.

However, the most significant impact of this UN approach has been to move the right to development out of the realm of charity and into the realm of entitlement under international law. A state is bound by international law not only through positivist treaty or custom but also through general principles of law. To most legal scholars, the "sources of international law" are found in Article 38 of the Statute of the International Court of Justice, which includes a directive to the court to apply "general principles of law" in its deliberations (Henkin et al., p. 35). International legal scholars note that the phrase "general principles" allows a court to go outside generally accepted rules of international law. Looking to general principles of international law implies therefore a break with the view that only rules created by a formal treaty process or a reliance on general custom are valid.

At this stage in its evolution, the right to development does not clearly demarcate concrete rights and obligations of specified subjects. Treaty obligations and customary practice are missing. However, this does not mean that the right to development is not emerging as a principle of international law with commensurate legal duties and obligations. The secretary-general of the UN has concluded that there are a large number of principles of law based on the UN Charter and the international texts of human rights laid down in covenants, declarations, and recommendations that demonstrate the existence of the right to development in international law. In addition, other legal scholars argue that, over the last three decades, nation-state practice has affirmed the right to development as a general principle of international law.

There is thus a strong "soft law" case for the right to development as an emerging principle of international law. The term "soft law" is paradoxical because many of the instruments referred to are not, strictly speaking, law. Many argue, for example, that the wide variety of international instruments pertaining to development—resolutions, declarations, charters of rights and duties, and final acts from international organizations and conferences—present a substantial soft law case for this emerging right. These instruments are not "hard law," that is, treaties or customary law, yet their impact on state behavior can be significant. These instruments do create an environment of strong expectation that states will gradually conform their conduct to meet the requirements of the adopted resolution or declaration.

Framing these development issues within a perspective of human rights takes them out of the domain of voluntary, benevolent "alms for the poor" and into the arena of legitimate legal claims. Just as individuals have a right not to be tortured, they also have a right not to be denied equal opportunity and basic subsistence as a consequence of either the history of colonialism or current trade and finance policies that promote economic globalization. The right to development entitles individuals and groups to make specific assistance and participatory claims. As Sengupta writes: "The 'have-nots' of the international economy would have a right to share equally in the decision making privileges as well as in the distribution of the benefits, just as the rich developed countries" (p. 850). Advocates of the right to development argue that the developmental needs of the bottom half of the world's population provide a compelling moral framework to locate rights. From these needs it is possible to determine the rights and duties for all powerful economic actors to meet the right to development. It is hard to imagine a more pressing and urgent priority.

To many observers, the strength of this right to development approach is that it has the potential to create a degree of legal accountability in economic planning. The integration of development issues into the human rights framework of clear entitlements and duty holders creates a more answerable and responsible development process. The international human rights structure within the Office of the High Commissioner for Human Rights, for example, provides a degree of transparency that is often missing in the decision making of states, multinational corporations, and international financial institutions. Through the human rights architecture at the UN, policy decisions on development planning could be subject to more analysis and input from local and global nongovernmental organizations dedicated to human development issues. The DRD's focus on participation is designed to integrate local input into development programs in a meaningful way. This human rights approach thus helps establish accountability by instituting the obligations of these different actors to enact policies, promote legislation, and impose monitoring mechanisms to fulfill these legal responsibilities. In these ways the human rights approach to the fulfillment of human development attempts to develop the critical dimension of legal accountability.

Furthermore, the debate on a right to development has contributed to the effort at the UN to articulate the concept of "human development." Such an approach looks beyond standard economic growth models and instead

focuses on equity and distributive justice. Human development is based on a fair distribution of benefits and meaningful participation based on true equality of opportunity. The DRD departs from the narrow economic conceptions of development and instead emphasizes the human person as the active participant and beneficiary of development.

The United Nations Development Programme (UNDP) has played a leadership role in the development of indexes and measurements of basic economic and social human rights. The human development approach draws on three perspectives of poverty: income, basic needs, and capabilities. The income perspective asserts that a person is poor if his or her income level is below a defined poverty line, often determined by the income necessary for a specified amount of food. The basic needs perspective argues that poverty is the result of the lack of the resources for the fulfillment of basic human needs including food. This approach goes beyond the lack of private income and includes the need for basic health education, and essential services to be provided by the community to prevent individuals from falling into poverty. In the capabilities perspective, poverty is the absence of the opportunity to achieve some basic capabilities to function. According to Amartya Sen, capability functions include being well nourished, adequately clothed and sheltered, able to avoid preventable morbidity, and able to partake in the life of the community. Poverty clearly cannot be reduced to a single dimension. The capabilities approach most fully captures this total picture.

The assertion of a right to development has encouraged an increasing number of individuals and groups to embark on a rights-based methodology to development based on the capabilities approach. The realization of the right to development involves the improvement of the process and the outcome of human development. As noted above, the right to development approach attempts to establish the entitlements of rights holders that the duty bearers (individuals, states, international financial institutions, multinational corporations, and so on) are expected to fulfill, respect, protect, and promote.

A commitment to the right to development implies the recognition that development is a process toward a comprehensive development program that takes into account the realization of all human rights—economic, social, cultural, civil, and political. In this sense, according to Sengupta, it is possible to see the right to development as a process of development, that is, "a metaright" the set of recognized human rights and fundament

freedoms. . . . The right to that process is different from the right to the outcomes of that process. But it is expected that the process would lead with a high probability to the realization of all these outcome rights. The right to that process of development is thus a metaright to all these human rights" (p. 875). This process of development is to be executed over time with consistency and sustainability.

Moreover, the right to development has played a central role in the reforms in the development agencies at the UN and accompanied former Secretary-General Kofi Annan's decision to mainstream human rights within all UN activities. The integration of human rights into the UN's development programs can be seen in the work of the UN Development Assistance Framework (UNDAF), Common Country Assessments (CCA), and the Human Rights Strengthening (HURIST) project. These programs are part of the secretary-general's efforts to enhance the UN's capacity to implement a rights-based development mandate. This comprehensive approach toward integrating all human rights into development planning is the actualization of the "metaright" framework of the right to development.

The operation of the UNDAF, CCA, and HURIST demonstrates how it is possible to integrate human rights into development planning and create the process of development envisioned in the right to development. The UNDAF is designed to bring greater coherence to the UN's assistance programs at the country level by establishing a planning framework for the development operations of the UN system. The country assessments are viewed as the first step in the preparation of the assistance framework. It articulates a common understanding of the causes of the development problems, needs, and priorities of a country. The "partners" in the development of the assessments include the national government, UN agencies (UNDP, the Office of the High Commissioner for Human Rights, and so on), civil society (nongovernmental organizations, research institutes, and so on), the donor community, and Bretton Woods institutions (the World Bank and the International Monetary Fund). These partners work together to develop a consensus on the development problems, priorities, and needs of the country requesting assistance. The common understanding, agreed to by these development partners, becomes the key document used to define the overall purpose and strategy of UN system support to the country. And most significantly, human rights criteria form the base of its indicators for development.

The UNDAF-CCA process thus provides an entry point for a human rights-based approach to development.

The advantage of this rights-based approach is that it equips the UN with a whole range of legal instruments to utilize in negotiations and discussions with state and nonstate actors. The normative framework of international law that impacts on the development area includes rules covering nondiscrimination, education, social security, health, participation, and an adequate standard of living, which minimally entails access to food, water, and housing. Many of the human rights agreements are binding on states and thus require compliance. Through this linkage of international law to development planning, the UN is trying to move beyond human rights standards setting and into human rights enforcement and monitoring.

The UNDAF-CCA guidelines reference human rights and guide country teams on where to find general information on human rights and specific information on human rights in their country. Development is assessed through the CCA Indicator Framework, which embraces a human rights core. Framework indicators for economic and social human rights include income poverty, food security and nutrition, health and mortality, reproductive health, child health and welfare, education, gender equality and women's empowerment, employment and sustainable livelihood, housing and basic household amenities and facilities, the environment, and drug control and crime prevention. Framework indicators for civil and political human rights include ratification of international human rights instruments, democracy and participation, administration of justice, and liberty and security of persons.

Through the CCA Indicator Framework, states are able to establish specific benchmarks to measure their own performance in the realization of economic, social, cultural, civil, and political rights. In other words, this framework provides a way to measure the right to development as a process of development that respects all human rights. The UN system can respond with technical assistance and aid in an integrated and holistic manner.

HURIST is a joint program of the UNDP and the Office of the High Commissioner for Human Rights designed to help in the development of national capacities for the promotion and protection of human rights and the application of a human rights approach to development programming. It supports government requests for assistance in the field of human rights by helping to develop action plans at a country level. The goal is to link development and human rights in practice through the integration of human rights into the work of the UNDP.



The UNDAF, CCA, and HURIST represent the right to development in practice. These programs, based on a holistic understanding of the interdependent nature of human rights, are designing national programs that clearly define the responsibilities of all duty holders (governments, international financial institutions, and so on) to meet their obligations under international human rights law.

The Office of the High Commissioner for Human Rights has also worked to link the realization of human rights with the UN effort to achieve the Millennium Development Goals. In 2005 the commissioner's office announced the establishment of a unit dedicated to working on the goals, in particular the poverty reduction strategies and a rights-based approach to poverty. The commissioner's office will assist member states by providing human rights advice on strategies for achieving the goals, including the right to development. In the context of implementing this plan of action, the commissioner's office will support UN country teams and pilot initiatives to apply a rights-based approach to poverty reduction strategies at the national level. The report of the high commissioner for human rights to the 2005 substantive session of the Economic and Social Council addressed the human rights dimensions of the goals. The high commissioner drew particular attention to the close relationship between goal eight, on a global partnership for development, and the right to development, as both highlight the importance of a cooperative international environment for human development.

#### REMAINING PROBLEMS

Tensions that first emerged during the Cold War over the prioritization of human rights continue to plague international politics. During the Cold War, for example, economic and social rights were often associated with the values of communism, while civil and political rights were linked to liberal capitalism. Despite the end of the Cold War, many nations of the developed world persist in prioritizing civil and political rights, often referred to as "first generation" rights, over other claims. And on the other hand, many of the governments in the less developed world maintain a focus on economic, social, and cultural rights, known as "second generation" rights. Although the right to development has been labeled a new collective "third generation" right of solidarity and fraternity, similar divisions between the rich and poor states remain over the importance of this novel approach. These significant divergences on the interpretation and importance of the right to development have appreciably hindered progress on the

fulfillment of this right, with the developed and underdeveloped nations often talking right past each other.

On one side, the nations of the Southern Hemisphere have overwhelmingly embraced the right to development. As previously noted, many less developed countries view the right to development as an innovative, distinct legal right with states as the primary rights holders and the international community as the primary duty bearers. These less developed countries charge that the developed states are not living up to either their moral obligations or their legal duties to help the former colonies remove the primary obstacles to development that exist in the international arena.

On the other side, many nations in the developed world reject this interpretation of the right to development precisely because of the implied legal obligations of the rich countries to assist the poor. These developed countries resist acknowledging this right to avoid any legal obligations or constraints to the free flow of trade and investment across borders. These nations are also fearful of losing control over development assistance through the establishment of a legal regime dictating duties and responsibilities to certain poor states over long-standing client states. The United States in particular, with its stress on free markets and individual responsibility, is not receptive to either reparations arguments or international "welfare state" policies. And some ask, why should the United States have to pay for British, Dutch, French, and Portuguese colonialism?

Furthermore, some leaders in rich states also point to the unfortunate reality of high levels of corruption that exist in many less developed countries. If the right to development means that richer states should redistribute wealth to poorer states, why should the former do this when in many poor countries the government is often a kleptocracy that steals from the public treasury to line the pockets of the ruling group? In fact, some of the more unsavory governments in the less developed countries have used the right to development to justify repressive policies. Civil and political rights are put on hold, while the state is given the right to pursue a particular economic model of development. These states from the developed world thus assert that corrupt regimes in the Southern Hemisphere use the right to development as a cover to hide inefficiency and corruption and blame their economic woes on the lack of international assistance. Through this lens, a redistribution of wealth from the North to the South makes no sense.

As a consequence of all of these problems, many in the developed world do not see the right to development as an



emerging principle of international law with corresponding legal duties. Instead, these rich states view this right as merely a "synthesis" of previously documented rights. Through this lens, the right to development is seen as a statement of morality and not a declaration of law. From this view, there are therefore no legal obligations that flow from this confusing, amalgamation declaration on development.

Additionally, some human rights scholars remain skeptical of the utility of the right to development. Jack Donnelly, for example, argues against the very idea of a human right to development. Conceptually, he sees human rights as resting on the view of the "individual person as separate from, and endowed with inalienable rights held primarily in relation to, society, and especially the state. Furthermore, within the area defined by these rights, the individual is superior to society in the sense that ordinarily, in cases of conflict between individual human rights and social goals or interests, individual rights must prevail" (p. 497). A collective right to development is thus a potentially confusing, conceptual digression.

Critics further note that the implicit source of a right to development, Article 28 of the UDHR (quoted above), was never confirmed in a parallel provision in the human rights treaties drafted to give the force of treaty law to this resolution. This lack of articulation of the right to development could be viewed as a "tacit renunciation" of the right. Furthermore, critics assert that it remains unclear what this right would look like. Is this an individual right or a right of peoples or a right of states? If the right is merely a statement calling for the enjoyment of all existing human rights, it does not help advance the struggle for human dignity.

The DRD does not help resolve many of these problems that remain in the definition of "rights holders" and "duty bearers." The DRD can be interpreted in a variety of ways. For example, Article 2(2) seems to describe the individual as the ultimate duty bearer with its declaration that "all human beings have a responsibility for development" (Henkin et al., p. 299). Article 3(1), on the other hand, clearly gives this responsibility to the state: "States have the primary responsibility . . . for the realization of the right to development" (p. 299). Article 4(2) points in a different direction by calling attention to the critical duties of the rich, developed states to provide the less developed nations "with appropriate means and facilities to foster their comprehensive development" (p. 300). Ultimate responsibility for ensuring this right is thus highly contested, with proponents of opposing positions highlighting different articles of the DRD. Thus the DRD,

on the one hand, has been read to support international accountability and absolve national governments from final responsibility. Yet on the other hand, it has been read to support national accountability, absolving responsibility from the international community or other governments. This ambiguity in both "rights holders" and "duty bearers" continues to hinder the actualization of this right.

Critics also argue that this ambiguity creates a political danger. Corrupt elites in the less developed countries can use the right to development to promote economic growth as a precondition to the realization of human rights. As noted, these elites contend that the protection and promotion of civil and political rights must wait until after these issues of economic equity are addressed. The responsibility for development thus shifts away from the less developed country and onto the international system. This implies that development is prevented solely by the actions from the outside, the decisions made by the wealthier countries. Corrupt elites are able to remove their responsibility to promote, protect, and provide economic and social human rights.

Furthermore, there is a continued lack of clarity on the content of the legal duties and obligations that flow from the right to development. Some argue that the DRD does not clarify these duties. For example, what are the exact policies that states and international financial institutions should enact to uphold their responsibilities under the right to development? Without clarity on these issues, some argue that the right to development could actually hinder human rights progress. A focus on an amorphous right to development could potentially overshadow the basic human rights protections already established in international law. That is to say that the poor are better served with specific rights to food, education, health care, and so on than a vague "right to development."

And, although there are accountability procedures within the Office of the High Commissioner for Human Rights, in fact there are few mechanisms to hold powerful economic actors accountable to the legal obligations codified through the right to development. For example, there are no effective mechanisms to hold the powerful Bretton Woods institutions (the International Monetary Fund, the World Bank, and the World Trade Organization) accountable to human rights norms. Some argue that without clear enforcement mechanisms the right to development adds little if anything to existing economic and social human rights instruments.

For all of these reasons, the United States has consistently objected to the claim of a human right to

development. American approval of the Vienna human rights declaration in 1993, which endorsed the right to development, did not alter U.S. policy. The United States continues to call attention to the conceptual confusion surrounding the right and the failure of the right to development to give adequate attention to economic liberties and free enterprise. The United States and other developed states have also seen this right as potentially in conflict with trade law and other international economic instruments. The United States has resisted movements to establish any international regulations that might hinder the free flow of capital and investments across borders. The right to development is seen as contributing to such a regulatory atmosphere.

#### SUMMARY

Although not enough progress has been made to address these types of concerns, it is important to emphasize that the DRD purposely takes a multidimensional view of development and accountability rests with the individual, the nation, and the international community. These responsibilities include both positive duties to act and negative duties to refrain from impeding the development of others. Furthermore, part of the response to these unresolved problems lies in the analysis provided by the UN's independent expert in his view (described above) that the right to development is in essence a right to a particular process of development, which includes human rights as both the means and the outcome of development. Through this vision, while some rights improve dramatically, no human right deteriorates during the process of economic development. A great strength of this approach is that it does not permit any human right to be denied in the realization of the right to development. And through the UNDAF, CCA, and HURIST, the UN system seems to be implementing this vision of the process of development. However, the world community is not united behind this interpretation. The fundamental resistance in the rich countries to accepting the legal obligations inherent to the right to development hinders further progress.

Richard Jolly and other UN experts also point to four other dynamics working to hinder progress on the right to development and separate human rights values from economic development theories and policies. First, the "development" field is filled with economists who have focused narrowly on "economic development" rather than the broader conception of "development as a process" incorporating economic, social, cultural, and

political factors. Thus the ways the right to development has been articulated and defended are foreign to traditional economic methods. Second, the focus on economic development has skewed the attention of economists and practitioners to a focus on gross domestic product growth indicators as evidence of improvement in a society. This has unfortunately meant that not enough attention has been then paid to the negative externalities, such as environmental harm, or problematic distributional outcomes accompanying economic growth. Third, some doctrinaire orthodox liberal economists simply assumed that human rights and democracy would go hand in hand with the emergence of the free market. State interventions to promote, protect, and fulfill economic and social human rights are therefore seen as unnecessary and counterproductive. As previously discussed, the Cold War politicized this discussion and further crippled this debate. Fourth, the discipline of economics sought to separate itself from normative issues and create a value-free science (on a par with the hard sciences). Development economics, when it emerged in the early 1950s, continued to promote the idea that objectivity was possible through value-free positive economic analysis. The human rights paradigm of course begins in the exact opposite position with values at the center of its framework for development. Many neoclassical economists, on the other hand, will only concede that the increasing of living standards by increasing economic growth in the less developed countries is a desirable goal.

At the Copenhagen World Summit for Social Development, the UNDP presented a "World Social Charter" that included the following: "We propose to build a society where the right to food is as sacrosanct as the right to vote, where the right to a basic education is as deeply enshrined as the right to a free press and where the right to development is considered one of the fundamental human rights" (p. 6). The notion of the right to development challenges all of us to side with the poor. It fundamentally moves the discussion of development cooperation and assistance out of the realm of charity and into the realm of entitlement under international law. It is based on the development needs of those who suffer as a result of hundreds of years of colonialism and the structural forces of economic globalization. The duties and obligations of individuals, states, and international actors to meet the right to development are envisioned through a comprehensive process of development that is attentive to the entire corpus of the internationally affirmed human rights. In a world filled with preventable suffering, it is

hard to imagine a more pressing and urgent legal and moral priority.

[See also African Union: Banjul Charter; Collective/Group Rights; Economic, Social, and Cultural Rights: International Covenant on Economic, Social, and Cultural Rights; Right to Food and Adequate Standard of Living; Globalization; Right to Health and Health Care; Human Security; United Nations Development Programme; United Nations High Commissioner for Human Rights; and Right to Work.]

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VOLUME 2  
Democracy Promotion—John Humphrey

OXFORD  
UNIVERSITY PRESS

2009