

# THE POLITICS UNDERPINNING THE NON-REALISATION OF THE RIGHT TO DEVELOPMENT

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## Abstract

The right to development stands out as one of the controversial rights ever since its articulation in the 1970s. The adoption of the 1986 United Nations Declaration on the Right to Development underlines the importance of international cooperation for it to be realised. I argue that the emphasis on ‘development aid’ rather than the broader ‘development cooperation’ has contributed a great deal to the politicisation of the right and consequently undermined its materialisation. Indeed, there is the need for semantic and conceptual clarity in the use of the term ‘international assistance and cooperation’ that has deceptively supplanted ‘international cooperation.’ While the former is a term used under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights with a view to laying down the broader States Parties’ obligations, the latter is what the Declaration on the Right to Development exclusively employs. I argue that even if development assistance is indispensable, taking it as the sole approach to the realisation of the right to development is both wrong and unhelpful.

## Key words:

Right to development; international assistance and cooperation; the New International Economic Order; the Declaration on the Right to Development

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## Introduction

The right to development has been on the agenda during the last decades; but we are still far behind *any meaningful move* and we are rather engaged in counting votes\*<sup>1</sup> as to who are in favour, against, or indifferent to the various global initiatives concerning this right. As gross an assertion as the phrase ‘*any meaningful move*’ might appear, there is sufficient evidence that one can put forward to prove even bigger generalisations.

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<sup>1</sup> To borrow Laure-Helene’s words in her report to the DFID, voting is a ‘public acknowledgment of the lack of consensus’. See *The Right to Development: A Review of the Current State of the Debate for the Department of International Development*, April 2002, p 16.

Differences exist among world states concerning this right that range from challenging its very existence to the peripheral issues of identifying who may be regarded as the right and/or duty holders. Beginning from its early periods of recognition, the right to development has been thought as the resurrection of the ‘New International Economic Order,’<sup>2</sup> in which the developing countries insisted on improved terms of trade, heightened development assistance and tariff reductions by the developed world. These demands necessitated the ‘reordering’ of the dominant international economic arrangements that were characterised by:

[t]he division of the world into exporters of primary products and exporters of manufactures; the adverse factorial terms of trade for the products of the developing countries; the dependence of the developing countries on the developed for finance; the dependence of the developing countries on the developed for their engine of growth.

There was thus skepticism on the part of various countries in the Global North that the Right to Development was meant to bring back the notion of the New International Economic Order through the back-door. The ‘north’ block had thus to be given assurances through the delegates in the drafting Committee of the Declaration on the Right to Development that this would not be so.<sup>4</sup> Stephen Marks had explained this fact as follows:

Key Western delegations made it clear to the other members of the drafting group that they would ensure that the declaration on the right to development was not used as a means of resuscitating New International Economic Order. Nor would they allow the declaration to create any entitlement to a transfer of resources; aid was a matter of sovereign decision of donor countries and could not be subject to binding rules under guise of advancing every human being’s right to development.<sup>5 2 3 4 5</sup>

<sup>2</sup> There have always been strong opponents to the so called New International Economic Order who even argued that ‘it is not New; it is not International; it is not Economic; and it is not Order’ thereby challenging its basic content and relevance. See, for example, the lecture by J G., Harry, ‘The New International Economic Order,’ 5, Oct. 1976, the *Woodward Court Lecture at the University of Chicago, Selected Papers No. 49* page 3; see also generally Grunel, Herbert G., ‘The case against the New International Economic Order,’ *Review of World Economics*, Vol. 113, No. 2, pp 284-307.

<sup>3</sup> See, W. Arthur Lewis (1977), ‘The evolution of the International Economic Order,’ *Discussion Paper 74*, (Woodrow Wilson School, Princeton University: New Jersey), p 1.

<sup>4</sup> See, Stephen Marks (2003), ‘Obstacles to the Right to Development,’ *Working Paper*, Harvard University.

<sup>5</sup> *Ibid*, p 2.

At least two messages can be discerned from the perceived concerns on resource transfer and the caveats against the reincarnation of the New International Economic Order through the right to development. One of these messages is a fact and the other is a misconception. To begin with the latter, there always persisted a daunting misconception on the meaning of the right to development, even more daunting than the challenge regarding its very existence. For instance, a quick look at Dr. Michael Novak's statement, the then US Representative to the UN Human Rights Commission, tells us that development may easily be equated with pure profit-loss analysis. I quote:

.. .Development.. .is a form of profit - a reasonable return on investments made, a reasonable growth, and a reasonable surge forward. We recognize that both profits and losses can be judged by a rule of reason.. .On the whole, an economy without profit is an economy without development.<sup>6</sup>

Apart from this misconception, there is a second important fact that one may discern. This pertains to international assistance and cooperation which had been the underlying element of the New International Economic Order, and concerning which the vote counting has shown the most consistent trend, so much so that one can easily tell the outcomes even before the votes were cast.<sup>7</sup> This same fact, I would argue, has politicized the right to development and thereby hampered its realization.

On the one hand, for those influential world states<sup>8</sup> their being impervious to the idea of international duty to assist has made them unable to have a positive conception for this right, the primary holders of which are individual human persons. This same misconception also stems from certain advocates of the Global South who consider international assistance and cooperation as a panacea to all their development-related problems. On the other hand, and as a continuum to this tangled conception, the right to development seems to have remained more of a dream as most of the southern states have persistently and exclusively chosen to rely on and/or use international assistance and cooperation as an escape-hatch for their failure to even try.

<sup>6</sup> See Michael Novak, quoted in M., Stephen, (2004) 'The Human Right to Development: Between Rhetoric and Reality,' *Harvard Human Rights Journal*, Vol. 17, pp 137-145, at p 144.

<sup>7</sup> At least the 'South's' stance in favour of most of the RTD-related UN initiatives, the US' 'persistent objection' and the UK's abstinence can easily be foretold if one knows what is on the table for votes' cast.

<sup>8</sup> By 'influential' it is meant the all-round influence that countries of the North have on most decision making processes, be it at international, regional or at times domestic issues.

This article thus interrogates these two misconceptions and briefly forwards some critical insights to the present development aid agenda from the perspectives of the recipient and the provider. This can give some light regarding the roots of the politicization of the right to development which has indeed undermined its realization. In its first section, the article presents the various characterizations of the right to development and examines them with a view to suggest the appropriate way of looking at the concept. International development aid as an element of the right to development will be briefly addressed in the second section by highlighting on the challenges that this duty has posed and is posing to the development agenda. In the third section, a critical overview on alternative approaches to development aid is forwarded which shall then be followed by concluding remarks.

## 1. The meaning of the right to development

Sengupta describes the right to development as the right to a particular process of development in which "all human rights and fundamental freedoms can be fully realized".<sup>9</sup> This understanding of the concept goes beyond the 'profit-loss' analysis which has been used to describe the right.<sup>10</sup> However, it is not possible to attain the acceleration of this process in isolation from the material conditions of the particular society.<sup>11</sup> As development takes place in this 'material world' of ours by transforming our immaterial needs and desires, 'individual human progress and changes in the material conditions and the other natural forces of immaterial nature' are inseparably intertwined.<sup>12</sup>

Therefore, the process of realizing all the rights and freedoms recognized as human rights (i.e., civil and political rights, and economic, social and cultural rights) must be coupled with the material capabilities of the subjects of the right to development. Amartya Sen puts these two aspects of the right to development into two categories of '*the process aspect*' and "*the opportunity aspect* of freedom".<sup>13</sup> For him, development must combine these two and thus where there are 'inadequate processes such as the violation of voting privileges or other rights' it signifies absence of freedom and in effect development.<sup>14</sup> The same

<sup>9</sup> See 4<sup>th</sup> Report of the Independent Expert, Arjun Sengupta, the UN Economic and Social Council, E/CN.4/2002/WG.18/2, 20 Dec. 2001, Para 2.

<sup>10</sup> Michael Novak, *supra* note 6.

<sup>11</sup> See 'The legal nature of the right to Development,' UN Economic and Social Council, UN doc. E/CN.4/Sub. 2/2004/16, 1 June 2004, Para 3.

<sup>12</sup> *Ibid.*

<sup>13</sup> Amartya Sen (1999), *Development as Freedom*, (Oxford: Oxford University Press), at p 17.

<sup>14</sup> *Ibid.*

holds true for lack of opportunities such as ‘absence of elementary opportunities such as the capability to escape premature mortality or preventable morbidity or involuntary starvation.’<sup>15</sup>

Two semantically identical and thematically asymmetrical discourses abound our contemporary development literature. what makes the problem seemingly intractable is that both approaches are championed by different syndicates of the same global inter-governmental organization -the UN. The United Nations Development Programme (UNDP) as the UN’s principal custodian of development-related engagements advocates an approach that measures development through the lens of the Human Development Index (HDI) and the Millennium Development Goals. On the other hand, the human rights departments within the same organization pursue their discursive human rights agenda relating to development.

The HDI that the UNDP introduced to replace the pre-1990s’ GDP/GNP<sup>16</sup> as a tool of measuring development essentially embodies the *opportunity aspect* of this process through its tripartite tools. These are long and healthy life captured by the results of *life expectancy*; education as measured by *adult literacy and enrolment* at the three levels of education-primary, secondary and tertiary; and having a decent *standard of living* that the Purchasing Power Parity is expected to reveal. However, these indices do not provide a space for measuring human rights, freedoms and democratic values, which are described by Sen as the ‘*process aspects*’ of development.

Apart from this weak link that characterizes the tools, the fundamental flaw of most statistical analyses relates to their focus on the ‘averages.’ Where figures are established showing a numerical rise, a report could well be used to gauge a nation as being in perfectly ‘healthy’ condition. As has already been criticized, the HDI averaging approach overlooks, among others, ‘the degree of

<sup>15</sup> *Ibid.*

<sup>16</sup> When the 1990 Human Development Report made that shift, the previous tool of measuring mere GDP trends was criticised as ‘supplanting a focus on ends by an obsession with merely the means.’ See the 1990 Human Development Report, UNDP, 1990, Chapter I, p 9. This was again modified by the 1997 report that employed Human Poverty Index. While again describing the rationale for the adoption of the new indices the report said that this new approach, rather than measuring poverty by income, the use of indicators that capture the most basic dimensions of deprivation are needed such as; a short life, lack of basic education and lack of access to public and private resources. See Human Development Report, UNDP, 1997, p 5.

economic and social cohesion.<sup>17</sup> According to Javier Bilbao-Ubillos, the absence or presence of economic and social cohesion is noticeable based on such indices as income gap, the ease or difficulty of access to education and health services, and the level of popular participation in politics, the economy and social initiatives.<sup>18</sup> The 2010 Development Report also admits this glitch stating that 'countries may have a high HDI and be undemocratic, unequitable and unsustainable -just as they may have a low HDI and be relatively democratic, equitable and sustainable'<sup>19</sup> and then concludes on the impossibility of getting it all right at once.

The quest for the objective measurability of development has steadily continued with its ever unrelenting innovative approaches to measure poverty, and has now culminated in the adoption of the Multidimensional Poverty Index (MPI). The previous tools have now been considered as unfulfilling in answering the question 'who is poor'? The MPI thus begins with the usual narrative that poverty is multidimensional which cannot be captured just by the reductionist one dollar per-day calculation of the World Bank. By the latter's standard, for instance, 39% of the Ethiopian population would be considered poor while based on the MPI, this figure rises to 90%.<sup>20</sup> In contrast, '46% of Uzbekistan's population would be classified as poor using the \$1.25-a-day measure, but only 2% meet the criteria under the MPI.'<sup>21</sup><sup>22</sup> The recent report that introduced these indices to assess 104 countries of the world has stated the following by way of describing what it means and its novelties compared to the previous measurement tools:

This new measure replaces the Human Poverty Index (HPI), published since 1997. Pioneering in its day, the HPI used country averages to reflect aggregate deprivations in health, education and standard of living. It could not identify specific individuals, households or larger groups of people as jointly deprived. The MPI addresses this shortcoming by capturing how many people experience overlapping deprivations and how many deprivations they face on average.. The MPI is the product of multidimensional poverty headcount (the share of people who are multidimensionally poor) and the average number of deprivations each multidimensionally poor household experiences (the intensity of their poverty).<sup>22</sup>

<sup>17</sup> See Javier Bilbao-Ubillos (2011), 'The limits of the Human Development Index: The complementary role of economic and social cohesion, development strategies and sustainability,' *Sustainable Development*, DOI:10.1002/SD, at p 5.

<sup>18</sup> *Ibid.*, p 6.

<sup>19</sup> See Human Development Report 2010, UNDP, p 65.

<sup>20</sup> See Dan Morrell 'Who is Poor,' *Harvard Magazine* 9, (Jan-Feb 2011).

<sup>21</sup> *Ibid.*

<sup>22</sup> See Human development Report, 2010, *supra* note19, p 95.

By focusing on those three aspects of human needs-health, education and standard of living-and using 10 different indicators<sup>23</sup> that further detail these three cross-cutting themes, the MPI still fails short of providing the clear notion of development. The multidimensionality of poverty notwithstanding, measuring it only by those symptoms leaves no room for depicting the processes, and underlying structures of vulnerability that led to those symptoms. The MPI may reveal, for instance, high child mortality which could eventually trigger aid money to flow to reduce those numbers. In other words, the MPI runs the risk of merely ‘describing’ poverty thereby ‘obscuring the dynamics and the processes involved.’<sup>24</sup> This consistent pattern in failure to get it right evinces at the minimum that development as a fact of billions of lives is misunderstood, and those tools and figures are merely self-serving to the producers’ institutional politics.

This is partly explainable by the shortcomings associated with the dominant narrative on the meaning and conceptual foundations of development. The primary and most pressing reason for this is the world community’s desistance in acknowledging development as one fundamental right with its associated right-holders and duty-bearers. The decoupling of the human rights and development actors for so many decades is as regrettably fresh today as it was back in the 1970s and 1980s when movements for the recognition of the human right to development had got their highest tempo resulting, however, in a mere UN Declaration. Alston observed this dissociation as *‘ships passing in the night’* and he vividly portrayed how the human rights agenda distanced itself from developmental goals, and *vice versa*<sup>25</sup>

Four decades back, the Senegalese jurist, M’Baye had imbued the meaning of development with a wider perspective:

To comprehend true development, the idea of ‘a real improvement in living standards’ must be taken into account; it is not a longer life for every person that matters but a better life. The civilization that is based on ever greater production and ever increasing consumption is, without a shadow of a doubt, as we are

<sup>23</sup> Health being measured by child mortality and nutrition; education measured by the number of children enrolled and years of schooling; and living standards by assets, floor, electricity, water, toilet and cooking fuel.

<sup>24</sup> See, Brendan J. Whelan & Christopher T Whelan, ‘In what sense is poverty multidimensional?’, in Room, Traham, (1995), *Beyond the threshold: the measurement and analysis of social exclusion*, (Bristol: The Policy Press).

<sup>25</sup> See Philip Alston (2005), ‘Ships passing in the night: The current state of the human rights and development debate seen through the lens of the millennium development goals,’ *Human Rights Quarterly*, Vol. 27, No 3, pp 755-829.

beginning to acknowledge it today, a civilization condemned to fatal contradictions and chaos.<sup>26</sup>

M'Baye then went on listing what he called factors that help assess improvements in living standards. The nine factors he identified were more or less summaries of the rights enshrined under the International Covenant on Economic, Social and Cultural Rights except one-individual human freedom.<sup>27</sup> And until as recently as the 1990s, we have not been able to unpack what M'Baye had meant by 'a better life', and 'individual human freedom', which has been explained by the works of Amartya Sen particularly in his work 'Development as Freedom.'

Turning now to the human rights to development discourse, as noted above, the insistence to regard the right to development as a human right to a process of realizing all fundamental rights has not been taken that seriously. The Declaration on the Right to Development is proof that the world countries, particularly the affluent ones, remain less enthused in setting a binding norm relating to individual and peoples' right to development.<sup>28</sup> During its adoption as a mere Declaration, the United States did not hesitate to cast the single dissenting vote followed by several abstentions.<sup>29</sup> The Declaration has five core

<sup>26</sup> See Keba M'Baye (1978), 'Emergence of the 'Right to Development' as a human rights in the context of a New International Economic Order,' Paper presented at *a Meeting of experts on human rights, human needs and the establishment of a New International Economic Order*, Paris, UNESCO, 19-23 June 1978, at p 3.

<sup>27</sup> His complete lists were health, food consumption and nutrition, education, employment and working conditions, housing, social security, clothing, leisure activities and individual human freedom. M'Baye, *Ibid.*

<sup>28</sup> The Open Ended Working Group on the right to development was established with a view to take appropriate steps so as to make the declaration evolve into 'an international legal standard of a binding nature.' That in effect meant to have it as a binding convention and little has been achieved in meeting this mandate over the last one decade. See the Resolution that extended the Working Group's mandate which was originally established in 1998; Human Rights Council, Res 4/4, adopted without a vote, during its 31<sup>st</sup> meeting, 30 March 2007, para 2(d).

<sup>29</sup> Germany, Iceland, Israel, Japan, Norway, Sweden and the United Kingdom were the countries that abstained. One of the differences that existed related to who the subjects of the rights-holders could be and this created three clear categories: i) Those supporting the notion of making individuals, peoples and states as the ones entitled to the right to development; ii) those that strictly singled out individuals to be the rights-holders thereby restricting the duty-bearers to domestic level; and iii) the ones that assumed a middle-ground. For further elaboration see generally Kiwanuka, R.N., (1988), 'Developing rights: The UN Declaration on the Right to Development,' *Netherlands International Law Review*, Vol. 35, pp 257-272.

components that underline the duty of States (both at national and international level)<sup>30</sup>, the centrality of the human person as the subject and beneficiary of the right to development<sup>31</sup>, the essentiality of all human rights as ends and means of development<sup>32</sup>, the vitality of participation<sup>33</sup> and the part that emphasizes the obligation of governmental, inter-governmental and non-governmental development organizations.<sup>34</sup>

Professor Arjun Sengupta has amply elaborated on these points in his reports as an independent Expert on the right to development. He defined the right to development as a right to a process:

The right to development refers to a process of development which leads to the realization of each human right and of all of them together and which has to be carried out in a manner known as rights-based, in accordance with the international human rights standards, as a participatory, non-discriminatory, accountable and transparent process with equity decision-making and sharing of the fruits of the process.<sup>35</sup>

This understanding of development as an entitlement to ‘a process’, as much as an abstract conception as it might seem, is vital in many ways. Primarily, it reminds both the duty-bearers and right-holders alike about the complex task involved in the full realization of the right which requires a duration that is relatively longer. It involves, as spelt out under the Declaration, ‘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.’<sup>36</sup> Accordingly, understanding the development agenda as a process is vital and that would serve as a constant reminder to the actors involved to remain relentless and resilient. Secondly, and most importantly, the emphasis to an all-round process of realizing human rights dispels the age-old narrative of portraying civil and

<sup>30</sup> See United Nations General Assembly, *Declaration on the Right to development*, U.N. GAOR., 41<sup>st</sup> Sess. 4 Dec. 1986, U.N. Doc. A/Res/41/28, Article 2(3) (cited as DRTD hereinafter).

<sup>31</sup> DRTD, Article 3.

<sup>32</sup> DRTD, Article 2(1).

<sup>33</sup> DRTD, Article 1(1).

<sup>34</sup> See Article 10 of the Declaration and generally Paul, James C.N., (1992), ‘The human right to development: Its meaning and importance,’ *John Marshall Law Review*, Vol. 25, pp 235-265.

<sup>35</sup> Arjun Sengupta (2002), ‘On the theory and practice of the right to development,’ *Human Rights Quarterly*, Vol. 24, No 4, pp 837-889, at p 846.

<sup>36</sup> DRTD, Preamble para 2.

political rights as luxury goods that only the affluent few may afford and/or enjoy.<sup>37</sup>

Conceptually, therefore, approaching development as mainstream human right is the key to bring the misconceived agenda of the poor back into the forefront. With this significant shift in understanding, one may consider the essential tools as reflected in the MDGs that have handy-to-measure and monitor goals, targets and indicators. Such detailed articulation would have a sound legal basis only if development is properly placed as a human rights agenda. While the MDGs are merely consensus-based goals<sup>38</sup>, the human rights norms are binding international obligations in spite of weak monitoring mechanisms.

The idea enunciated by Sengupta that the bits and pieces of all human rights must, as of necessity, be made to move forward forming ‘a vector of human right’<sup>39</sup> is ingenious. However, even the best of circumstances would require some form of priority setting that necessarily affects the vector. In the course of handling these conditions, what has been suggested is to remain vigilant in at least not regressing in any one of the rights while prioritizing:

When the right to development is taken as a process where all the rights are progressively realized, such prioritization would mean that some rights could be

<sup>37</sup> It had for long been suggested countries need to make tradeoffs temporarily, which Jack Donnelly summarises them under the headings of *needs trade-off*, *equality trade-off* and *liberty trade-off*. Particularly the latter is suggestive of the temporary suspension on ‘the exercise of civil and political rights’ because they ‘may disrupt or threaten to destroy even the best-laid development plan’ which according to Donnelly is a ‘tragically misguided conception.’ See Donnelly, Jack, (1984), ‘Human rights and development: Complementary or competing concerns?’ *World Politics*, Vol. 36, No 2, pp 255-283, at pp255-258.

<sup>38</sup> However it is to be noted that because of their consensus-based adoption process, some attribute the character of customary international obligations to the MDGs’ first seven Goals. Philip Alston, then goes on to state ‘it would follow in many respects that the eighth Goal is also a strong candidate, especially in light of the existence of an international duty to cooperate as enshrined in the UN Charter and elsewhere.’ See Alston, Philip, (2004), ‘A human rights perspective on the Millennium Development Goals,’ paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development.

<sup>39</sup> The Independent Expert has articulated the concept of ‘vector’ right employing his expertise on econometrics to explain what it means by a process of realizing all human rights. He had stated that ‘the concept of development as freedom is [...] a vector consisting of a large number of elements such as income, employment, health, education or opportunities in general which includes all forms of freedoms.’ See Arjun Sengupta, Study on the current state of progress in the implementation of the right to development, E/N.4/1999/WG.18/2, 27 July 1999, para 67.

realized earlier than the others, without violating or retrogressing on the fulfillment of any right. The comparison could be then between the incremental changes in the realization of the right rather than between giving up some in exchange of a gain in others.<sup>40</sup>

This is meant to confirm to the Maastricht Guidelines that stipulate the indivisibility, interdependence, interrelatedness and of equal importance for human dignity of all human rights.<sup>41</sup> Unfortunately, setting and meeting priorities under the circumstances where millions of children are left to the plight of hunger is barely carried out by stringent considerations of such abstract concepts. Usually, expenditures speed up at an accelerated pace even before they are mobilized, and many developing countries rely on an anticipated foreign aid for their annual budget. Moreover, the complex analyses and design of all those tools of implementation are real luxuries that the 'Bottom Billion'<sup>42</sup> ill-affords. While we recognize the right to development as a process, identifying the exact place of international cooperation within this process is relevant if that process is to be carried out to its logical and proper destination. The following section examines the place of this duty within the international human rights frame.

## **2. Normative bases for international cooperation**

To begin with, the Declaration explicitly places the duty for the realization of the right to development on all human beings, individually and collectively.<sup>43</sup> However, as it is the case for all human rights, the primary responsibility lies on states which, according to Article 3 of the Declaration, are responsible 'for the creation of national and international conditions favorable to the realization of the right to development.' in so doing, the Declaration establishes two-tiered structures whereby at national and international level, states are enjoined to

<sup>40</sup> Sengupta (2002), *supra* note 35, p 867.

<sup>41</sup> See Maastricht Guidelines on violations of economic, social and cultural rights, Maastricht, Jan 22-26, 1997, para 4.

<sup>42</sup> The 'Bottom Billion' is used to describe by the Oxford Professor Paul Collier the currently impoverished countries of the South. With the significant turn of events in Brazil, China and India, the formerly five billion estimates of the poor are shifting according to him, leaving only 'an impoverished ghetto of one billion people' who are 'not just falling behind [but] are falling apart.' See Collier, Paul (2008), *The bottom billion: Why the poorest countries are failing and what can be done about it*, (Oxford: Oxford University Press), p xi.

<sup>43</sup> DRTD Article 2(2).

discharge their responsibility as they relate to this right.<sup>44</sup> The international dimension of the duty emerging from the right to development emphasizes the indispensability of international cooperation. In this context, it constitutes a duty ‘to cooperate with each other in ensuring development and eliminating obstacles to development.’<sup>45</sup>

The provision further explains what is meant by the duty of international cooperation as a duty ‘to promote a new international economic order based on sovereign equality, interdependence [and] mutual interest.’ A more emphatic statement is contained under Article 4 of the Declaration in that it explicates the duty vis-a-vis the developing and developed world states. The duty of international cooperation for development must thus serve as a complement to the efforts of developing countries [by] providing these countries with the means and facilities to foster their comprehensive development.<sup>46</sup>

The terminologies enshrined in the Declaration reiterate the importance of measures that do not merely aim at handing out development aid, but rather envisage the need for a more radical approach in addressing the social evil of underdevelopment. The terms such as ‘*promotes new international economic order*’, ‘*eliminating obstacles to development*’, ‘*based on interdependence and mutual interest*’, ‘*effective cooperation*’, and ‘*appropriate means and facilities to foster their comprehensive development*’ clearly transcend the conventional approach in development aid. The Vienna Declaration has also reaffirmed the necessity of creating a favorable as well as equitable economic environment at the international level for the realization of the right to development.<sup>47</sup> Unfortunately, however, the stark difference in what has been achieved in mobilizing funds by way of development assistance and emergency food aid on the one hand and what has been carried out with regard to the comprehensive approach in development cooperation reveals the resistance involved in taking matters of development seriously.

<sup>44</sup> DRTD Articles 2(3), 6 and 8 further elaborate the nature of this duty owed by national governments. These basically relate to formulating appropriate national development policies through the process of active, free and meaningful participation and that further ensures fair distribution of benefits. The Declaration also imposes on national governments the duty to take appropriate steps to eliminate obstacles to development by observing all the human rights and encourage popular participation in all spheres.

<sup>45</sup> DRTD Article 3(3).

<sup>46</sup> DRTD Article 4(2).

<sup>47</sup> See Vienna Declaration and Programme of Action, U.N. GAOR, World Conference on Human Rights, 48<sup>th</sup> Session 22<sup>nd</sup> Plenary Meeting, U.N. Doc. A/CONF.157/23, 1993, para 10.

### **3. The duty to international ‘cooperation’: Commitment beyond assistance out of ‘charity’**

One key element of the human right to development is the duty to international cooperation. The terminologies ‘assistance’ and ‘cooperation’ are regrettably used without caution, at times as mere synonyms. Nonetheless, while cooperation signifies a mutual give-and-take type of relationship, assistance completely shifts the concept to some form of dependency, with a pure receiver at one end while the other party stands as a sole provider. It is interesting to observe that the Declaration on the Right to Development never uses the term ‘assistance’ and rather alludes thrice to the duty of ‘cooperation.’<sup>48</sup>

In the course of explaining the contents of the Declaration on the Right to Development as well as the Covenant on Economic, Social and Cultural Rights, there is a widespread tendency to use the words ‘international assistance’ and ‘cooperation’ in a manner that amply explains the politicization of the right to development.<sup>49</sup> This is so because the moment ‘assistance’ is linked to the development agenda, it is conceived by various wealthy states as being obliged to provide for the wellbeing of the Global South in return for nothing. The negotiations are also handled at the political level under a setting in which the subjects of the right are barely taken into account. There is thus the need to deal with the correct meaning and content of the duty for international cooperation as an indispensable element of the right to development.

One may trace the roots of this duty to Article 1(3) of the UN Charter that articulates one of the purposes of the organization to be the achievement of ‘international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all.’<sup>50</sup> The Universal

<sup>48</sup> See DRTD 3(2); 3(3); and 6(2).

<sup>49</sup> For instance, in their extended discussion of the nature and scope of states’ parties obligations under the covenant on economic, social and cultural rights, Alston and Quinn use a number of expressions rendering the whole meaning of international cooperation more dubious than it already is. They use the following terms as if they are inter-changeable: Economic and technical assistance; international assistance and technical cooperation; international cooperation; international assistance and cooperation; international development assistance; international assistance; economic and technical assistance; and international development cooperation. See generally Philip Alston & Gerard Quinn (1987), ‘The nature and scope of states’ parties obligations under the International Covenant on Economic, Social and Cultural Rights,’ *Human Rights Quarterly*, Vol. 9, No 2, pp 156-229

<sup>50</sup> See the UN Charter Article 1(3). The DRTD duplicates this as an opening statement in its preamble paragraph 1.

Declaration of Human Rights also adopts that caution and refers to the duty of international cooperation under Article 22.<sup>51</sup>

Only the International Covenant on Economic, Social and Cultural Rights employs the term ‘international assistance and cooperation’ albeit only once while laying down the nature of the duties of States Parties.<sup>52</sup> Even if references are made in subsequent provisions, it is either just international cooperation that is used or ‘technical assistance.’ The latter is a term used to refer to assistances needed on non-substantive matters under Articles 22 and 23 which Craven calls ‘primarily procedural provisions.’<sup>53</sup> This choice of wordings is relevant, as mentioned above, to exactly capture the meaning and breadth of the duty of international cooperation as it specifically relates to the human right to development.

The role that international cooperation could play in development endeavors had been observed in the aftermath of World War II. The period was not only marred by the destructive effects of war, but also by the Great Depression of the 1930s that led to the Bretton Woods Conference. The impetus that brought together the Conference participants was ‘to restructure international finance, establish a multilateral trading system and construct a framework for economic cooperation that would avoid a repeat of the Great Depression.’<sup>54</sup> By then, the realization of these structural goals was considered possible only if Europe was pulled out of its damaged socio-economic conditions by injecting large amount of aid into its economy.<sup>55</sup> That was exactly what was done and in consequence

<sup>51</sup> ‘Everyone, as a member of society... is entitled to the realisation, through national and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights.’ See Universal Declaration of Human Rights, adopted 10<sup>th</sup> Dec 1948, G.A.Res 217A(III), U.N. GAOR. 3<sup>rd</sup> Sess. U.N. Doc. A/810 (1948), Article 22

<sup>52</sup> The International Covenant on Economic, Social and Cultural Rights, adopted 16<sup>th</sup> Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. A/6316 (1966); see Article 2(1); Article 11(1) and (2) cautiously refer only to ‘international cooperation’ and not ‘assistance.’

<sup>53</sup> Mathew Craven (1995), *The international covenant on economic, social and cultural rights: A perspective on its development*, (Oxford: Clarendon Press), p 108

<sup>54</sup> See Dambisa Moyo (2009), *Dead aid: Why aid is not working and how there is another way for Africa*, (London: Penguin Books Ltd.), p 10

<sup>55</sup> That was how the Marshall Plan was conceived and implemented rendering today’s developed countries beneficiaries of a substantial amount of aid money throughout the five-year timeline of the Plan. Accordingly, the top recipients of the aid were Great Britain (24%); France (20%); Italy (11%) and Germany (10%). Moyo, *Ibid.*

what was achieved.<sup>56</sup> As Kunz wrote, ‘by providing the seed money for the recovery of Western Europe, the Marshall Plan transformed its beneficiaries from poverty cases into partners.’<sup>57</sup> That ‘economic miracle’<sup>58</sup> happened because of the swift, sharp and effective cooperation for development the world has ever experienced in the long history of the aid industry.<sup>59</sup>

Even if international cooperation has its normative basis both within the UN Charter and later on within the binding human rights Covenants, its essence and application has been frequently politicized. While at some level it is considered as a global gesture of generosity that puts the two sides in a relationship of donor and recipient, it has never grown to its height of maturity by which there are only relations of development partnerships based on genuine mutual interests and the recognition of the principle of sovereign equality of nations.

As alluded to above, the UN Charter stands out as the primary global instrument that normativises international cooperation as one of the rationales for the existence of the organization. The principle was further embodied in the Universal Declaration of Human Rights and it ultimately gained a binding normative basis under the Covenant on Economic, Social and Cultural Rights. Providing a normative meaning to the idea of international cooperation aims at transforming it from being a mere moral commitment to legally claimable right by the rights holders from the duty bearers. There is, however, no doubt that it remains entangled with the ineffective enforcement and monitoring mechanisms of the international human rights law regime.

As observed by Sakiko Fukuda-Parr, ‘conceptually, development cooperation is still rooted in the logic of charity rather than the logic of shared responsibilities in a global economy.’<sup>60</sup> Her analysis on the principal factors impending on international cooperation explains why this duty is far greater than and different from mere ‘claim to a hand out.’ One of the factors particularly relate to the obstacles emanating from the international economic environment triggered by the dependence of developing countries on primary

<sup>56</sup> There is no doubt that there were and still are critics that view the US action as self-serving, See generally, Diane B. Kunz (1997), ‘The Marshall Plan reconsidered: A complex of motives,’ *Foreign Affairs*, Vol. 76, pp 162-170.

<sup>57</sup> Kunz, *Ibid*, p 162.

<sup>58</sup> As the German’s recorded economic growth as a result of the Plan was came to be known. Kunz, *Ibid*.

<sup>59</sup> It is traced as far back as the 1896 US overseas assistance carried out in the form of food aid. Moyo, *supra* note 54.

<sup>60</sup> See Sakiko Fukuda-Parr (2006), Millennium Development Goal 8: Indicators for human rights obligations? *Human Rights Quarterly*, Vol. 28, No. 4, pp. 966-997, at p 968.

commodities for their exchange earnings and the unpredictable fluctuation in prices, ‘tariff escalation, or development tax, where developed countries impose higher tariffs on processed goods than on unprocessed goods.’<sup>61</sup><sup>62</sup>

The second and most significant obstacle is what she calls ‘systemic asymmetry in global governance.’ When it comes to global economic agendas and development policies, the significance of the roles played by the International Financial Institutions is less contested. However, the persistence in excluding the developing countries from decision-making processes at the level of these institutions and the importance that international cooperation has for the realization of development cooperation are not taken seriously.

While describing the corrective measures needed for these shortcomings in the international economic system, Arjun Sengupta underlines:

International cooperation will have to take many different forms as to tackle the problems, such as solving the debt problem, decreasing the instability of commodity prices and export earnings, reducing the protectionism in developed countries and dealing with the inadequacies of the international financial system.<sup>62</sup>

Alston and Quinn also note the ‘notoriously imprecise’ nature of the obligation of international cooperation and suggest the reinterpretation of the meaning to be attributed today to this duty. By quoting the Draft Declaration on the progressive development of principles of international law relating to a new international economic order, they pointed out that all states, and particularly those:

whose economic, monetary and financial policies have a substantial impact on other States, should conduct their economic policies in a manner which takes into account the interests of other countries by appropriate procedures of consultation; in the legitimate exercise of their economic sovereignty, they should seek to avoid any measure which causes substantial injury to other States, in particular to those interests of developing States and their peoples.<sup>63</sup>

Therefore, the duty for international cooperation deserves serious attention commensurate with the transformative impact it can have towards the realization of the right to development. Unfortunately, however, more emphasis is given to the aid agenda, both in the form of ‘band aid’ and ‘Official Development Assistance.’ Countries crave for and report their achievement in reaching the 0.7% of GDP that they are required to hand out to the least developed, the unfortunate, the Highly Indebted Poor Countries, and to the countries entitled to the Multilateral Debt Relief Initiative. The best the Official Development

<sup>61</sup> Sakiko Fukuda-Parr, *Ibid*, p 977

<sup>62</sup> Sengupta, *supra*, at note 35, p 877

<sup>63</sup> See Alston and Quinn, *supra* note 49, p. 191.

Assistance could do seems to be parenting those states at the receiving end and creating a ‘vicious cycle’, which as Moyo would prefer to call it, is a ‘cycle that chokes off desperately needed investment [and] instills a culture of dependency.’<sup>64</sup>

Good-intentioned measures based the donor’s discretion that aim at assisting countries in need have the effect of aggravating their conditions in the poverty trap unless we turn the wheel and enable it to roll towards cooperation in bilateral and multilateral trade, reforming the International Financial institutions, guaranteeing market access, lifting agricultural subsidies, and putting in place other equitable schemes. Such measures would indeed transform the relations between the North and the South from the bond of parenting to that of partnering.

### **Concluding remarks**

Since its emergence as an agenda that seized the international community’s attention, the right to development has remained in a constant state of controversy, marred by pretense as well as rejection. It is highly politicized both at the local and global levels. While various national governments dump the reasons for their failure to the inability of the international community to ‘assist’, the latter on its part has distanced itself from embracing the much needed aspects of the duty to international cooperation. Reporting on progresses of the MDGs, for instance, the Ethiopian government has categorically stated all the Goals as achievable but one, which is Goal 8. That in a way is shifting the responsibility back to the international assistance paradigm that would eventually be used to justify failure to attain an MDG goal by 2015. This also reveals the politics involved on the part of the primarily responsible national states for the realization of the right to development.

The international community, specifically the ones that are ‘donor countries’ would not also escape from this verdict as they have chosen to pursue the sub-optimal and reductionist approach with regard to their duty of international cooperation. As long as the duty is taken as an act of charity and as mere supply of financial aid, a wide range of politicization becomes inevitable with regard to the serious choices of whom to “assist” and whom not to.

The geopolitics of most aid policies are grounded on the so called ‘strategic interests.’ Censoring ‘assistance’ through this lens would naturally lead to the position that ‘Sub-Saharan Africa is too far away and too negligible a market to

<sup>64</sup> Moyo, *supra* note 54, p. 49.

elicit a priority concern.<sup>65</sup> At the same time, this sub-region is home to more than 70% of the world's poor.

Based on their strategic interest or the lack of it in Africa, the leading world powers have their hold in the continent where the realization of the right to development is a dream far away from reality. Richard Dowden rightfully observes, '[a]s British aid agencies scurry around Africa trying to save it from poverty, and the Chinese businessmen and workers seek their fortunes there, the Americans are sending in the army.'<sup>66</sup> The establishment of AFRICOM is but one symbolic expression of how the US looks at Africa (whose subjects are deprived of their capabilities) as more of a security threat than a development partner. The preoccupation of the UK and many other European countries on aid as their primary approach to tackle those incapacities also offers minimal optimism for success. Aid fundamentally cripples agency of those at the receiving end, breeds dependency and accountability deficits.

To use Dowden's remarks, 'aid agencies, western celebrities, rock stars and politicians cannot save Africa. Only Africans can develop Africa.'<sup>67</sup> In other words, the attainment of the right to development is an *endogenous* pursuit, while at the same time it requires the conducive exogenous (i.e. regional and global) setting anchored on cooperation and partnership rather than the cyclic addiction to charitable 'aid' and 'assistance.' In the absence of the capability to strike the appropriate balance between endogenous pursuits and exogenous cooperation, the politicization of the right to development is bound to continue both at the 'receiving' and 'providing' ends of the political game. \_\_\_\_\_ ■

<sup>65</sup> See Jeffrey Sachs *et al* (2004), 'Ending Africa's poverty trap,' *Brookings Papers on Economic Activity*, Vol. 1, pp. 117-240, (see p. 137).

<sup>66</sup> Richard Dowden (2009), *Africa: Altered states, ordinary miracles*, (London: Portobello Books Ltd.), p. 508.

<sup>67</sup> Dowden, *Ibid*, pp. 6-7.



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