

# Understanding the Human Right to Development

## **Dr. Mallika Ramachandran & Dr. Deepa Kansra**

Dr. Ramachandran is a Freelance Editor and Researcher. She is Guest Faculty at the Centre for Post Graduate Legal Studies, Teri School of Advanced Studies, Delhi.

Dr. Kansra is Assistant Professor at the Human Rights Studies Programme, School of International Studies, Jawaharlal Nehru University, Delhi.

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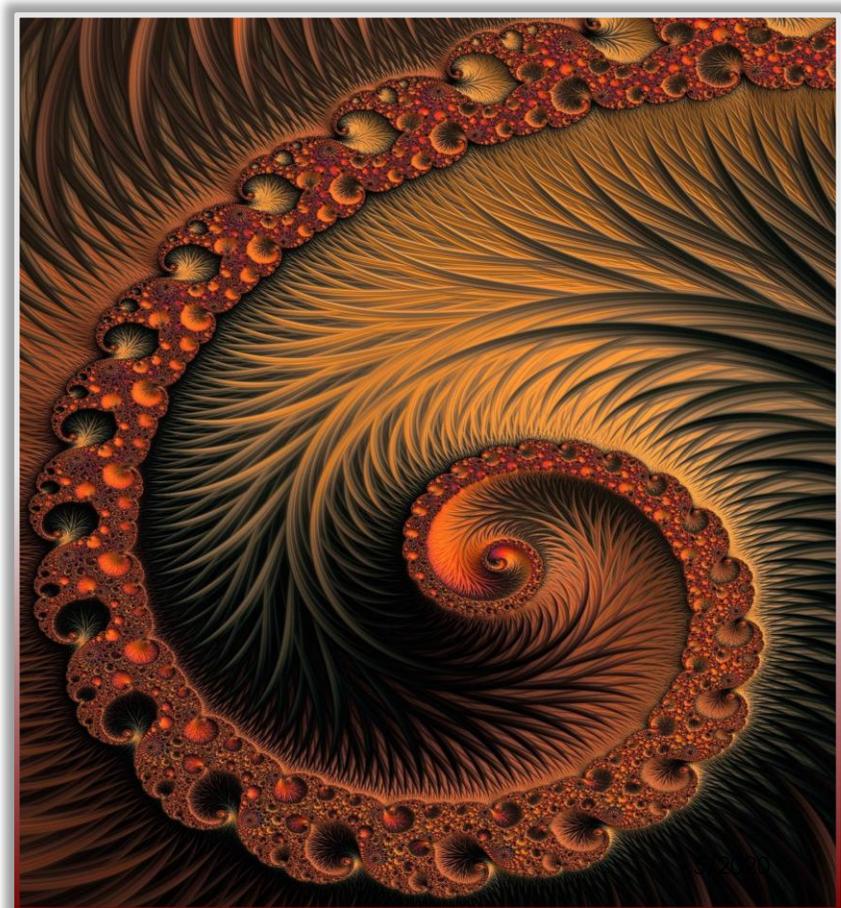
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# The topic

The topic covers;

- Chronology of important developments
- The need and significance of the Right to Development
- The Declaration on the Right to Development
- The features of the right, and responsibilities of states
- Internal–External & Process–Result Dimensions
- Role of Special Rapporteur on Right to Development

[Photo: Pinterest]



## Points for Discussion

1. Timeline [1972–2016]
2. Why Human Rights & Development
3. Declaration on Development, 1986: Key Provisions
4. Features of Right to Development
5. Right Holders & Duty Bearers
6. Responsibility of States
7. External & Internal Dimensions
8. Process & Result Dimensions
9. Right to Development & Related Rights/Principles
10. Special Rapporteur on Right to Development
11. The African Charter on Human & Peoples' Rights, Article 22
12. Final Points

# Timeline

- The idea of the Right to Development was first proposed by a Senegalese jurist, Keba M'baye in **1972**.
- Commission of Human Rights Resolution in March **1979**, expressly recognized development as a human right.
- In **1981**, the right to development was recognized in the African Charter on Human and Peoples' Rights.
- In December **1986**, the Declaration on the Right to Development was adopted by a General Assembly resolution.
- Right to development is referred to as a third generation human right. A group right.
- In **1993**, the Right to Development was reaffirmed as part of the Vienna Declaration and Programme of Action [para 10].
- In **1998**, an Open-ended Working Group on the right to Development was established, and an Independent Expert appointed.
- The Millennium Declaration (**2000**) affirmed the commitment to 'making the right to development a reality' [para 11].
- In **2000**, the Human Development Report dealt with human rights and human development.
- The position of Special Rapporteur on the Right to Development was established in **2016** [Human Rights Council resolution 33/14].
- A number of UN agencies, intergovernmental organizations also work extensively on development issues, including UNDP, UNCTAD, UNFCCC, ECA, the World Bank, IMF, WTO, UNESCO, WIPO, and WHO. [Special Rapporteur Report 2017]

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# Why Human Rights & Development

Initially development was isolated from human rights or any discussion of rights; this changed due to the end of the Cold War, failure of structural adjustment programs, and redefining of the notion of 'development' by thinkers as being more than simply economic growth (Peter Uvin 2010). It is seen that:

Human rights and human development both seek to secure freedom, well-being, and dignity for all human beings.

Development without consideration of human rights is problematic.

Purpose & direction of development should be fulfillment of rights of the people.

Limitations on economic decision-making and related processes.

While the two concepts (human rights and development) share common objectives, it is insufficient to say that development programmes would automatically further human rights; considering development as a human right implies adopting a rights-based rather than services-based approach (Peter Uvin 2010).

'When development is seen as a human right, it obligates the authorities, both nationally and internationally to fulfil their duties in delivering ... that right in a country'; it becomes a primary claim on the resources (in a broad sense) of a country; and entails the right of reprimanding those that have the obligation to deliver' [Arjun Sengupta 2000].

# Declaration on Development, 1986

Key provisions:

- Article 1(1): definition
  - Article 8-states to take all necessary measures for the realization of the right to development.
  - Article 5: steps towards elimination of flagrant violations of human rights of peoples and human being in situations such as apartheid, racism, colonialism, foreign domination, foreign intervention, etc.
- Article 3: primary responsibility of states
  - Article 6 (1): non-discrimination
  - Article 6(2) and 9(1): interdependence and indivisibility of all human rights; and interdependence and indivisibility of all aspects of the right to development.

# Features of Right to Development

## Definitions:

1. Right to development is a **universal** right that covers civil, political, social, economic, cultural rights.
2. The 1986 Declaration is soft law, persuasively pushing for a re-look at the processes of economic, social and political development.
3. The right to development is an **inalienable right** by virtue of which every human person is entitled to participate in, contribute to, and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. [Supreme Court of India 1995].
4. The Declaration is not binding but its core principles—such as **self-determination, economic and social progress, higher standards of living, participation, inclusiveness, equality and non-discrimination**—are anchored in legally-binding international law such as the Charter of the United Nations, International Covenants, and Conventions on Human Rights. [Special Rapporteur Report 2017.]

## Features:

- **Human persons & peoples** are central to the right, and are active participants.
- **Responsibility of all persons** in the process of development including state, individual, and community.
- The process of development must be linked to **principles of justice, equity & non-discrimination**.
- All players involved in the process of development are **key stakeholders**.
- **Inalienable right**
- Incorporates the **right to participation**.
- A **composite human right** inclusive of all human rights & fundamental freedoms.
- It reaffirms the original conception of all human rights as **interrelated and indivisible**.
- It is an **empowering right** through which all other rights can be exercised and realized.

# Right-Holders and Duty Bearers

- **HUMAN PERSON**—Human person is the '**central subject**' of the development process [preamble, article 2]. Development is an **inalienable right** of 'every human person and all peoples' [article 1(1)]
- **NATIONS–GROUPS**—The right to development is both an individual and a collective right. This means that **collectivities (e.g. countries, peoples, nations, and groups) are also beneficiaries of the right to development.** [Special Rapporteur Report 2017]
- **RIGHTS**—Right to development encompasses rights provided in binding international human rights instruments including **right to self determination, right to participate, right to freely dispose of natural wealth & resources.**

- **STATES**—The **primary responsibility** for implementing the right to development belongs to states [article 3]
- The states have a duty **individually and collectively** as members of the international community.
- **INDIVIDUALS**—All **individuals have a responsibility** for development, individually and collectively [article 2]
- **INTERNATIONAL COMMUNITY**—The RTD is often interpreted as including a **duty to provide international assistance**, which would possibly be legally binding.
- **NON-STATE**—The Declaration on Development identifies obstacles to development, empowers individuals and peoples, calls for an enabling environment and good governance at both national and international levels, and enhances accountability of duty bearers—**governments, donors and recipients, international organizations, transnational corporations, and civil society.** [UN Office of the High Commissioner]

# Responsibility of States [Key provisions]

States have:

- 'the **primary responsibility** for the **creation of national and international conditions** favourable to the **realization of the right to development**' [article 3(1)]
- 'the right and the duty **to formulate appropriate national development policies** that aim at the constant improvement of the well-being of the entire population and of all individuals...' [article 2(3)]
- To take steps individually and collectively **to formulate international development policies** to facilitate the full realization of the right [article 4(1)]
- 'the duty **to cooperate with each other** in ensuring development and eliminating obstacles to development' [article 3(3)]
- To take steps to **eliminate 'massive and flagrant violations' of the human rights** of peoples and human beings affected by situations such as apartheid, racial discrimination, colonialism, foreign domination and occupation, aggression, colonialism, threats of war, etc. [article 5]

# Responsibility of states (cont.)

- To cooperate with each other **to promote, encourage and strengthen universal respect for and observance of all human rights** and fundamental freedoms [article 6 (1)].
- Take steps **to eliminate obstacles to the right to development** arising from the failure to observe civil, political, economic, social, and cultural rights [article 6 (3)].
- Promote the establishment, maintenance, and strengthening of **international peace and security** [article 7].
- To take **all essential measures at national level** for the realisation of the right to development; ensure equality in access to basic resources, food, health services, housing, etc. [article 8 (1)].
- Encourage **popular participation** in all spheres [article 8(2)].

The right to development has both external and internal dimensions. The two dimensions are to a great degree interrelated.

**THE EXTERNAL DIMENSION**—addresses *disparities of the international political economy which evidence massive global inequities...* This aspect of the right engages the responsibilities of states internationally when acting individually or collectively.

**THE INTERNAL DIMENSION**—focuses on the duties of each state to ensure domestic policies that seek to contribute to the realization of the fundamental human rights of all its subjects.

The external dimension seen in light of;

- 1) the impact on human rights derived of **powerful actors external to the developing state** advancing rules governing world markets that are widely criticized for being inequitable;
- 2) the pervasive influence of **international economic organizations** that continue to espouse neoliberalism (or its more recent variant); and
- 3) the corresponding **reduction in domestic autonomy** that limits the ability of states—particularly poor and less influential states—to decide independently their own economic and social policies.

[Margot Salomon, *Legal Cosmopolitanism and the Normative Contribution of the Right to Development*, 2008]

The right to development has two dimensions: process & result.

**PROCESS:** The right to participate in, and contribute to, development, relates to the process aspect;

- The process dimension of the RTD emphasizes two features:
- Its gradual realization; and
- its participatory nature.

**RESULT:** The right to enjoy development is linked with the understanding of it as a result. The understanding of development as a result... has two consequences:

First, states are obliged to build and maintain institutions that ensure both the participatory decision-making process and the full realization of all human rights.

Second, ...the right to enjoy development encompasses a right to receive a share of the benefits from it.

# Right to Development & Related Rights/Principles

Right to Development can be understood as having the following content:

- (1) **HUMAN RIGHTS:** The process of development must follow *the priorities set by human rights*.
- (2) **PARTICIPATORY:** The process of development *must be participatory*; this cannot be achieved without transparency, both in the agenda-setting of development and the elaboration of rules concerning the distribution of the benefits.
- (3) **STRUCTURAL CONDITIONS:** The process of development presupposes *structural conditions on the national level ensuring the rule of law*. In particular, this means the *proper administration of justice, notably an independent judiciary*.

4. **SUBSTANTIVE & PROCEDURAL DUTY:** all human rights, civil and political as well as economic, social and cultural, must be realized. This imposes on states the obligation *to respect, to protect, and to fulfil these rights* according to the applicable international treaties and customary international law. A corollary of this obligation is the *procedural duty* to create appropriate mechanisms of implementation and supervision.

5. **COOPERATION & FUTURE GENERATIONS:** At the international level, the procedural dimensions of the RTD are complemented by recommendations—to *cooperate in ensuring development*, and to meet equitably the *needs of present and future generations*.

[See Beate Rudolf, 2008]

# Special Rapporteur on Right to Development

1. The Special Rapporteur on the right to development monitors and reports on issues affecting the right to development, and advocates for its promotion worldwide.
2. The works include;
  - Public Thematic Reports
  - Country Visits
  - Receiving & investigating complaints
  - Contributing to the work of other bodies
  - Evaluating programmes and policies and providing practical recommendations on how to make these more inclusive, just and equitable, participatory and sustainable.
  - The Special Rapporteur's work complements the mandate of the Working Group on the right to development.

In its 2017 report, the Special Rapporteur identified the following three as challenges;

1. **Politicization**—including differences on the indicators or nature of obligations pertaining to the right.

*Quoting, these conceptual differences have resulted in a lack of sufficient momentum—and common ground—for the full realization of the right to development.*

1. **Lack of engagement**— *“The political divide has resulted in a low level of engagement by United Nations agencies and civil society in promoting, protecting and fulfilling the right to development”.*
2. **Adverse global trends**— *“The implementation of the right to development faces numerous other challenges related to the state of our world today: the global financial and economic crisis, the energy and climate crisis, the increasing number of natural disasters, the new global pandemics...”*

## The African Charter on Human & People's Rights, Article 22

- o The African Charter on Human and People's Rights is **one of the only human rights treaties** containing a legally binding human right to development (the other is the Arab Charter of 2004), and was the first instrument to recognize the right.
- o Article 22 of the African Charter recognizes both the right of 'all peoples' to economic, social and cultural development as well as the responsibility of states (individually and collectively) to ensure the exercise of the right to development.
- o In **Centre for Minority Rights Development (on behalf of the Endorois) v. Kenya (2003)**, which was concerned with the eviction of the Endorois (a pastoralist people) from their ancestral lands, the African Commission found a **violation of the right due to a lack of meaningful participation** by the community, as well as due to encroachment on their rights and capabilities. The Endorois people were seen as **beneficiaries and states as primary duty bearers**. [See discussion in Serges Allain Djoyou Kamga, 'The Right to Development in the African Human Rights System: The Endorois Case', 2011 (*De Jure*)]
- o *Article 22 explicitly disaggregates its concept of development into economic, social and cultural components...*[Obiora Chinedu Okafor 2008]

# Final Points

1. Identification of indicators to assess the implementation of the right can be challenging.
2. The Declaration on Development is a key instrument for the realization of the right to development.
3. The Special Rapporteur on Right to Development is key to coordinating the works of different agencies.
4. The Declaration is binding in terms of its principles & obligations overlapping with other international human rights instruments.
5. The right to Development is core to the MDGs and the SDGs .
6. The Declaration on Development reinforces the right to international assistance and global cooperation on human rights matters.