

The Right to Development as a Human Right

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1. Introduction

The Declaration on the Right to Development,¹ which stated unequivocally that the right to development is a human right, was adopted by the United Nations in 1986 by an overwhelming majority, with the United States casting the single dissenting vote. This Declaration came almost thirty-eight years after the adoption of the Universal Declaration of Human Rights, according to which human rights constituted both civil and political rights (Articles 1 to 21) and economic, social, and cultural rights (Articles 22 to 28). In fact, the Universal Declaration reflected the immediate post-war consensus about human rights based on what President Roosevelt described as four freedoms—including the freedom from want—which he wanted to be incorporated in an International Bill of Rights. There was no ambiguity at that time about political and economic rights being interrelated and interdependent components of human rights, and no disagreement that “true individual freedom cannot exist without economic security and independence.”² And the credit should rightfully go to Mrs. Eleanor Roosevelt, who was the head of the U.S. delegation during the drafting of the Universal Declaration, for having first identified and advocated for the right to development when she stated, “[W]e are writing a bill of rights for the world, and . . . one of the most important rights is the opportunity for development.”³

The consensus over the unity of civil and political rights and economic, social, and cultural rights was broken in the Fifties, with the spread of the Cold War. Two separate covenants, one covering civil and political rights and another covering economic, social, and cultural rights, were promulgated to give them the status of international treaties in the late Sixties, and both came into force in the late Seventies. It took many years of international deliberations and negotiation for the world community to get back to the original conception of integrated and indivisible human rights. The Declaration on the Right to Development was the result. However, the single dissenting vote by the United States set back the process by several years, during which the international community could have tried to translate such a right to development into a reality. Issues were raised about the foundational basis of this right, its legitimacy, justiciability, and coherence. The world was still divided between those who denied that economic, social, and cultural rights could be regarded as human rights, and those who considered that economic, social, and cultural rights as not only fully justifiable human rights but as essential human rights. Claims and counterclaims continued to be made by both the groups in different forums.

Finally, a new consensus emerged in Vienna at the Second UN World Conference on Human Rights in 1993. The Declaration adopted there reaffirmed “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

¹ The Declaration on the Right to Development was adopted by the United Nations General Assembly, resolution 4/128 on December 4, 1986 (<http://www.unhcr.ch/html/menu3/b/74.htm>). The Universal Declaration of Human Rights was adopted by UN General Assembly Resolution 217 (A) II on December 10, 1948.

² State of the Union Message to Congress by President Roosevelt, January 11, 1944.

³ M. Glen Johnson, “The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights,” *Human Rights Quarterly* 9.1 (1987): 19–48.

fundamental human rights.” This Declaration, which was supported by the United States, went on to say, “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of government.” It also committed the international community to the obligation of cooperation in order to realize these rights.⁴ In effect the right to development emerged as a human right which integrated economic, social, and cultural rights with civil and political rights in the manner that was envisaged at the beginning of the post–World War II human rights movement. The world got back, so to speak, to the mainstream of the human rights movement, from which it was deflected for several years by Cold War international politics.

In this paper, I would like to examine some of the questions relating to the right to development as a human right. The first question is about the nature of the right to development itself. Although the right to development is described in detail in the 1986 Declaration, like all constitutional documents it is open to interpretations which may sometimes be conflicting. However, if this Declaration is read together with other instruments that are now regarded as the International Bill of Rights, viz., the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social, and Cultural Rights, and if it is seen as a document on human rights evolving from the process of the human rights movement, it can be given an interpretation that can be most helpful for its realization.

The second question, related to the first, is: how does it help the process of development if it is identified as a human right? In other words, is there a value addition in looking at programs for development as a process of realization of human rights, as spelled out in the Declaration on the Right to Development? The third question that naturally comes up would be: why, then, has it been so hard to secure a consensus on this subject so far? Are the differences due to some misunderstandings in interpretations of these texts, or are they due to some deeper conflict between the political and economic groups affected by the process? I would like to show that both the cold war issues and the call for the New International Economic Order by the developing countries raised questions which were not very pertinent to the process of realization of the right to development. Instead, the right to development as a human right raises issues about which the world has been fundamentally divided—such as issues related to the ideas of justice, equity, and priorities of international policy. Finally, I shall try to point out that because of its association with these issues related to justice and equity, realizing the right to development is fundamentally different from conventional policies and programs for development, whether seen as increasing the growth of gross national product (GNP), supplying basic needs, or improving the index of human development.

2. The Nature of the Right to Development

A Textual Analysis

I have discussed this issue at great length in my first report as the Independent Expert on the Right to Development, submitted to the Commission on Human Rights, Geneva, pursuant to Commission resolution 1998/72, and General Assembly resolution 53/155.⁵ It has been further elaborated in my article in the journal *Development and Change*⁶

The first article of the text of the Declaration on the Right to Development succinctly puts forward the concept of the right to development. It 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 and contribute to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized.

⁴ Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights, June 25, 1993.

⁵ Economic and Social Council, United Nations E/CN.4/1999/WG.18/2, 27 July 1999.

⁶ Arjun Sengupta, “Towards Realizing the Right to Development,” *Development and Change*, June 2000.

First, there is a human right that is called the right to development, and this right is “inalienable,” meaning it cannot be bargained away. Then, there is a process of “economic, social, cultural, and political development,” which is recognized as a process in which “all human rights and fundamental freedoms can be fully realized.” The right to development is a human right, by virtue of which “every human person and all peoples are entitled to participate in, contribute to and enjoy” that processes of development.

Subsequent articles in the Declaration clarify the nature of this process of development further and elaborate on the principles of exercising the right to development. For example, Article 1 recognizes that not only “every human person” but “all peoples” are entitled to the right to development. Article 1, Clause 2 even explicitly refers to the right of peoples to self-determination. But that does not mean that “peoples’ rights” can be seen as countering to or in contradistinction from an individual’s or “every human person’s” right. Article 2, Clause 1 categorically states that it is “the human person” who is the central subject of development, in the sense of the “active participant and beneficiary of the right to development.” Even if “peoples” or collectives of “human persons” are entitled to some rights, such as full sovereignty over the natural wealth and resources in terms of territory, it is the individual human person who must be the active participant in and beneficiary of this right.

The process of development, “in which all human rights and fundamental freedoms can be fully realized,” would lead to, according to Article 2, Clause 3, “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 [emphasis added].” Article 8 elaborates this point further by stating that the measures for realizing the right to development shall ensure “equality of opportunity for all” in their access to basic resources, education, health services, food, housing, employment and in the *fair distribution of income*. The realization of the right would also require that *women have an active role* in the development process, and that “appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.”

To realize this process of development to which every human person is entitled by virtue of his right to development, there are responsibilities to be borne by all the concerned parties: “the human persons,” “the states operating nationally,” and “the states operating internationally.” According to Article 2, Clause 2, “all human beings (persons) have a responsibility for development individually and collectively,” and they must take appropriate actions, maintaining “full respect for the human rights and fundamental freedoms as well as their duties to the community.” Human persons thus are recognized to function both individually and as members of collectives or communities and to have duties to communities that are necessary to be carried out in promoting the process of development.

But “the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development” is of the states, as Article 3 categorically suggests. This responsibility is complementary to the individual’s responsibility as mentioned above, and is only for the creation of conditions for realizing the right and not for actually realizing the right itself. Only the individuals themselves can realize the right. The actions of the states needed for creating such conditions are to be undertaken at both the national and the international levels. At the national level, Article 2, Clause 3 points out that “states have the right and the duty to formulate appropriate national development policies,” and Article 8 says that states should undertake “all necessary measures for the realization of the right to development,” and again, “should encourage popular participation in all spheres.” In addition, the states are required by Article 6, Clause 3 to take steps “to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social, and cultural rights, “because the implementation, promotion and protection of these rights would be essential for realizing the right to development as “all human rights and fundamental freedoms are indivisible and interdependent” (Article 6, Clause 2.) The states are also expected to take resolute steps to “eliminate the massive and flagrant violation of human rights” resulting from apartheid, racial discrimination, colonialism, foreign domination and occupation, etc. (Article 5).

In regards to the obligation of the states operating at the international level, the Declaration emphasizes the crucial importance of international cooperation. First, the states have a duty “to cooperate with each other in ensuring development and diminishing obstacles to development . . . and

fulfill these duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, [and] mutual interest . . ." (Article 3, Clause 3). This has been further reiterated in Article 6, which states that "all states should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms." Indeed Clauses 2 and 3 clarify conditions required to fulfill the realization of fundamental freedoms and human rights as mentioned in Article 1. "All human rights and fundamental freedoms are indivisible and interdependent" and the "implementation, promotion, and protection of civil, political, economic, social, and cultural rights" deserve equal attention (Article 6, Clause 2). And failure to observe civil and political rights as well as economic, social, and cultural rights may result in "obstacles to development" that the states are responsible to eliminate (Article 6, Clause 3).

Finally, according to Article 4, the states have the duty, individually and collectively, to formulate international development policies to facilitate the realization of the right to development. It recognizes that sustained action is required to promote rapid development of developing countries and then declares: "As a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development."

International Cooperation

To appreciate fully the emphasis that the Declaration puts on international cooperation, Article 4 should be read in conjunction with the opening sentences of the preamble of the Declaration itself that refers to "the purposes and principles of the charter of the United Nations to the achievement of international cooperation in solving international problems of an economic, social, cultural and humanitarian nature and in promoting and encouraging respect for human rights and fundamental freedoms." That reference was to Article 1 of the Charter, and the case of international cooperation could be further strengthened by referring also to Article 55 and 56 of the Charter. According to those articles, member states pledge themselves to take joint and separate actions to promote (a) high standards of living, full employment and conditions of economic and social progress and development, (b) solutions of international economic, social, health and related problems and international cultural and education cooperation, and (c) universal respect for and observance of human rights and fundamental freedoms without distinction as to race, sex, language, or religion. Then the Charter declares that all members of the United Nations Organizations "pledge themselves to take joint and separate actions in cooperation with the organization for the achievement of these purposes." Because the Charter has a special status as the foundation of the present international system, this pledge is a commitment to international cooperation by all states within the United Nations.

The Vienna Declaration of 1993, to which we have referred to above and which established the consensus about the right to development as a human right, reaffirms the solemn commitment of all states to fulfill these obligations in accordance with the Charter of the United Nations (para. 1); that states should cooperate with each other in ensuring development and eliminating obstacles to development, and that the international community should promote effective international cooperation for the realization of the right to development (para. 10); that progress towards the implementation of the right to development requires effective development policies at the national level, and a favorable as well as equitable economic environment at the international level (para. 10), and that the international community should make all efforts to alleviate specific problems such as the external debt burden of developing countries to supplement the efforts of the governments of these countries.

The Main Propositions

The Declaration on the Right to Development is a consensus document. It is the result of a paragraph-by-paragraph negotiation to settle on an agreed text which is not always very neat, focused, or non-ambivalent. But a textual analysis of the document as we have done above supplemented by the discussions held at the different fora at that time would clearly suggest the following four main

propositions of the Declaration: (A) The right to development is a human right. (B) The human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be fully realized—which means that it combines all the rights enshrined in both the covenants and each of the rights has to be exercised with freedom. (C) The meaning of exercising these rights consistently with freedom implies *free, effective, and full participation* of all the individuals concerned in the decision making and the implementation of the process. Therefore, the process must be transparent and accountable, individuals must have *equal opportunity* of access to the resources for development and receive *fair distribution* of the benefits of development (and income). (D) Finally, the right confers unequivocal obligation on duty-holders: individuals in the community, states at the national level, and states at the international level. National states have the responsibility to help realize the process of development through appropriate development policies. Other states and international agencies have the obligation to cooperate with the national states to facilitate the realization of the process of development.

The covenants on civil and politics rights and on economic, social, and cultural rights both call for international cooperation. But the Declaration on the Right to Development talks about that cooperation in the most concrete terms and places squarely on the international community the obligation to cooperate to make a success of the process of development together with appropriate policies and measures adopted by the national players. Furthermore, combining the implementation of the right to development with the other rights and a manner of exercising it which is consistent with fundamental freedoms envisions an approach to development which elevates the process of its realization to the exercise of a human right.

The last point can be illustrated by referring to a specific right and the progress in its treatment in any program for the realization of the different rights. For example, the right to housing was recognized as an element in the right to an adequate standard of living in Article 25 of the Universal Declaration of 1948. It was incorporated in almost the same form as Article 11 of the International Covenant on Economic, Social and Cultural Rights of 1966. Since a covenant has the status of an international treaty, this was a clear step forward from the Universal Declaration. The Article 11 in the covenant states: “The States Parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”⁷

The Committee on Economic, Social and Cultural Rights, the Treaty Body established by the ECOSOC to monitor and interpret the implications of the different components of the covenant, has examined the right to (adequate) housing in its General Comments. It stated that the right “should be seen as a right to live somewhere in security, peace and dignity . . . which should be ensured to all persons irrespective of income or access to economic resources. . . . [Article 11.1] must be read as referring not just to housing but to adequate housing, [which means] adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost.”⁸

This interpretation is no doubt a further advance from the formulation in the covenant about what is meant by adequate housing. But it falls short of the standard of the right to development. The second part of the General Comment lays down the characteristics of adequate housing, but even if the supply of such housing expanded substantially, it will not be fulfilling the right to development unless the individual persons have the freedom to choose what they want from among them. The first part of the comment sets forth that this right should be seen as a right to live somewhere in security, peace and dignity (even if it is granted that it could be practically ensured to all irrespective of income or access to economic resources). But who decides what that “somewhere” is where an individual can live in security, peace and

⁷ International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly Resolution 2200 A (XXI) on 16 December 1966. (Entered into force on 3 January 1976.)

⁸ Committee on Economic and Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (at. 11.1). On the completion of general comments and general recommendations adopted by the Human Rights Treaty Bodies. UN Doc. HRT/Gen/1/Rec 12, 1994.

dignity? For realizing the right to development, that freedom to choose, through participation in decision making, transparently and with accountability, with equality of access, and with a fair share in the benefits, would be just as important as the supply of the housing at reasonable cost through an appropriate policy of development. In a real world situation, that freedom to choose may have to be exercised carefully, within the overall constraints of resources and appropriate, democratically arrived at procedures of maximizing the choice in the presence of the possibility of disagreement among the different potential claimants. But that freedom must be there in exercising the right to housing as a part of the right to development. The state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available.

The problem of realizing the right to development, viewed from this perspective, would not appear to be only in designing a set of national and international policies to implement the elements of economic, social and cultural rights, as enunciated in the covenants together with civil and political rights, but also in exercising the human rights approach of respecting the fundamental freedom of individuals to choose the lives they want to live, and exercising the rights they want to claim, transparently and accountably, through participation, with equal access, and with a fair share of the benefits. The process of free exercise of the right to development is as important as the increase in the supply of means or resources that facilitate the enjoyment of those rights.

3. The Value Addition in the Human Rights Approach to Development

If development depends upon policy and not just in the spontaneous play of market forces, then any approach that facilitates, if not ensures, more than another the formulation, adoption, and implementation of appropriate policies to realize the objectives of development would be regarded as superior. When development is seen as a human right, it obligates the authorities, both nationally and internationally, to fulfill their duties in delivering (or, in human rights language, promoting, securing, and protecting) that right in a country. The adoption of appropriate policies follows from that obligation. Nationally, the government must do everything, or must be seen as doing everything to fulfill the claims of a human right. If the rights to food, education, and health are regarded as components of a human right to development, the state has to accept the primary responsibility of delivering the right either on its own or in collaboration with others. It has to adopt the appropriate policies and provide for the required resources to facilitate such delivery because meeting the obligation of human rights would have a primary claim on all the resources—physical, financial, or institutional—that it can command.

Internationally, states other than where the rights-claimants reside, if they are party to the international agreement recognizing those rights, would also have the obligation to do everything possible to help in delivering those rights. The Declaration on the Right to Development and the Vienna Declaration have spelled out the international obligations to cooperate for realizing these human rights which belong to individuals as human beings irrespective of their residence, citizenship, nationality, or religion. But even without these relatively recent Declarations, the Charter of the United Nations enjoins upon them the duty to cooperate in fulfilling human rights. They are supposed to adopt international policies and set aside resources for the purpose of realizing these rights.

There is a long history behind the rise of human rights to such a predominant position of influence over government actions. The notion that every human being is entitled to some basic rights was the inspiration behind most of the revolutions in history, including the English, American, French, Mexican, Russian, and Chinese. The last half of the 20th century, as noted in the *Encyclopedia Britannica*, may be fairly said to mark the birth of the international as well as universal recognition of human rights. In the treaty establishing the United Nations, all members obliged themselves to take joint and separate actions for the achievement of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” In the Universal Declaration of Human Rights (1948), representatives from many diverse cultures endorsed the rights therein set forth “as a common standard of achievement for all peoples and all nations.” And in 1976, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, each previously approved by the UN General Assembly in 1966, entered into force and effect. Indeed, the last

half of the 20th century has seen, in the words of human rights scholar Louis Henkin, “essentially universal acceptance of human rights in principle,” such that “no government dares to dissent from the ideology of human rights today”.⁹

Indeed, it is this point that no government now dares to ignore human rights that gives the claims based on human rights such pre-eminence. There is still of course a lot of disagreement about the nature of these human rights, which rights or claims are to be regarded as human rights and which are not, and how such rights are to be realized or implemented.

But once there is a consensus, established through a due process about the nature and identity of the human rights, the governments are obliged to try to deliver them. Whether they succeed or not would depend upon the design of the programs of implementation, whether the governments command adequate physical, financial, and institutional resources required for this implementation, and whether the governments are able to reconcile or overcome the conflicts between different groups that may arise in the process of implementation. But the obligation to deliver this right becomes a major constraint, if not *the* binding constraint, on the behavior of the government.

This particular force in the notion of human rights, I submit, is derived from the origins of the human rights movement associated with the principles of social contract theory. This secular theory of social contract reversed the biblical concept of contract, such as the one between God and Abraham. Instead of God choosing his people and their governors, people chose their governors who acted according to promises. The natural rights theorists, Hobbes (1588-1679), Locke (1632-1704) and Rousseau (1712-1778), were the principle proponents of this secular theory, which was best exemplified by Locke’s claim during the English Revolution of 1688 that certain rights like the right to life, liberty, and property belonged to individuals as human beings because they existed in the state of nature before human beings entered civil society. Upon entering a civil society, those human beings surrendered through a social contract to the state only the right to enforce the natural rights, not the rights themselves. If the state failed to secure these rights, it violated the terms of the social contract and would be liable to be overthrown by a social revolution. A century after the English Revolution, the French Revolution of 1789 was supported by the natural rights theorists again in terms of action against the sovereign breaking the terms of the social contract, and the French Declaration of the Rights of Man and Citizen asserted that the rights of liberty, property, security, and resistance to oppression are “natural, inalienable, and sacred.” Among other revolutionaries of the Eighteenth Century, Thomas Jefferson claimed that it was not only permissible but morally required to overthrow tyrannies that violate these principles of “natural equity and justice” that formed the basis of the legitimacy of the governments. The American Declaration of Independence openly proclaimed:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it.¹⁰

The eighteenth-century human rights movements thus established that there existed a set of human rights, which were derived from natural laws or any other generally accepted source of agreement, and that the government was the product of a social contract between the people, and the states were instituted to carry out the tasks of governance to fulfil these rights, in accordance with the social contract. There have been serious disagreements about the basis and the nature of human rights and there are very few proponents of the theory of natural rights now. But the basic principles of the notion of social contract are still widely accepted and almost universally accommodated within national constitutions,

⁹ Cited in Burns H. Weston, “Human Rights,” *Encyclopedia Britannica*, online version, updated 1998.

¹⁰ For a discussion on the development of the doctrines of natural law and natural rights as well as constitutions and social contracts, besides the articles in the *Encyclopedia Britannica*, see Richard Tuck, *Natural Rights Theories Origins and Development* (Cambridge, 1979) and Richard McKeon, “Philosophy and History in the Development of Human Rights,” in *Ethics and Social Justice*, ed. H. E. Kiefer and M. Munitz (State University of New York Press, 1968).

lending legitimacy to governments. The national constitutions codify the rules and procedures to protect, promote, and secure the rights of the individuals either separately or as members of groups or collectives; and national governments are expected to protect and uphold those constitutions. They are liable to be corrected by the rule of law and when necessary overthrown or changed. Internationally, the governments accept contracts with other governments determining their mutual behavior or interactions through treaties, covenants, and declarations. In other words, the notion of social contracts has now become a universal principle, governing the behavior of states operating both at the national and at the international levels.

For such social contracts, what is important is the acceptance by all parties of a set of “human rights” which the state parties are obliged to fulfill. In the ultimate analysis, human rights are those rights which are given by people to themselves. They are not granted by any authority, nor are they derived from some overriding natural or divine principles. They are human rights because they are recognized as such by a community of peoples, flowing from their own conception of human dignity, in which these rights are supposed to be inherent. Once they are accepted through a process of consensus building, they become binding at least on those who are party to that process of acceptance.

The right to development when it is accepted as a human right through a legitimate process of consensus building, therefore, becomes a primary claim on resources of a country—when resources are taken in the broadest sense as being whatever instrument that is necessary to realize certain objectives—physical, financial, or institutional. It also entails a legitimate right of reprimanding the parties which have the obligation to deliver as the counterpart to the holders of rights. The exact process of reprimanding may vary according to circumstances. For a national government, this can be executed through a judicial process of compensation or reparation if these rights which are violated are justiciable. Otherwise, it may follow the route of legislative changes and parliamentary sanctions. It can even take the form of changing or overthrowing the government.

Internationally such reprimand has taken the form of sanctions or international pressures. But more often than not, it has to be executed through public opinion or through the process of international law, compacts, or mutual agreements, especially when the obligation-holders are not just the national governments where the right-holders reside but all other governments who are party to the covenants establishing that right.

The importance of having a social contract around a set of human rights almost in the same form and spirit as in the eighteenth century was well recognized at the time of the formulation of the Universal Declaration of Human Rights. In the third preamble of the Declaration, it was stated, “it is essential if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”¹¹ That is the signal to approaching the problem of realization of human rights through a legal process or a mutually enforced framework of positive action both at the national and at the international level. The right to development, once it is established as a human right, would be entitled to treatment similar to that meted out to any other universally accepted human right.

4. Controversies Regarding the Right to Development

Once the right to development is viewed in this manner—as a human right derived from an implicit social contract binding civil society that identifies duty-holders both nationally and internationally, (primarily the nation-states and the international community, individuals, and groups operating in civil society) with the obligation to deliver this right—it should be easy to appreciate the controversies surrounding this right. First, for many years and especially during the Cold War period, the Western democracies and the Second World socialist countries were not willing to treat civil and political rights and economic, social, and cultural rights at par, or on equal terms, not to speak of regarding them as components of an integrated whole of an international bill of rights. That is why we not only had two separate covenants on these two sets of rights, but also the Western block was upholding the civil and

¹¹ Universal Declaration of Human Rights, 1948, Preamble.

political rights and the Socialist countries pressured for the economic and social rights. On a formal plane the controversy was to have been resolved with the adoption of the right to development. But the reasons for taking these contrary positions kept lingering and was further complicated by the Third World countries putting forward the case of the right to development in the name of the collective rights of a group of countries to bring about a New International Economic Order. If some of the Industrialized countries would not support the economic and social rights, they would find it even more difficult to support the right to development.

Discounting the purely political and Cold War reasons for the countries taking their respective positions, the reasons for Western countries supporting civil and political rights but opposing economic and social rights as human rights can be summed up as follows: (a) human rights are individual rights, (b) they have to be coherent, in the sense that each right holder must have some corresponding duty-holder whose obligation would be to deliver the right, and (c) human rights must be justiciable. All these criticisms, if they are valid, would hold against the right to development.

The identification of human rights completely in terms of individual rights would imply total acceptance of the theory of natural rights. As Donnelly puts it, in the Universal Declaration of Human Rights, "human rights are clearly and unambiguously conceptualized as being inherent to humans and not as the product of social cooperation. These rights are conceptualized as being universal and hold equally by all, that is as natural rights."¹² In that paradigm, human rights are only personal rights, based on negative freedom, such as the rights to life, liberty, and free speech, whereby the law prohibits others from killing, imprisoning, or silencing an individual who has a claim to such freedoms that the state is expected to protect. Economic and social rights are associated with positive freedoms which the state has to secure and protect through positive action. They are not natural rights, therefore, according to this view, not human rights. Collective rights are more than individual rights and to the extent the right to development is essentially linked to collective rights as well as positive economic rights, it would be disqualified from being regarded as a human right.

All these arguments have been substantially repudiated in the literature. The Universal Declaration has many elements going beyond the principles of natural rights. In fact, it is firmly based on a pluralistic foundation of international law with many elements of economic and social rights, considering an individual's personality as essentially molded by the community.¹³ Indeed, logically, there is no reason to take the rights of a group or a collective (people or nation, ethnic or linguistic groups) to be fundamentally different in nature from an individual's human rights so long as it is possible to define the obligation to fulfill them and duty-holders to secure them. Even personal rights can be taken as rights to be protected by individuals and groups.¹⁴ Furthermore, it is well established that the identification of civil and political rights with negative rights and economic, social, and cultural rights with positive rights is too superficial because both would require negative (prevention) as well as positive (promotion or protective) actions. So logically, it is hard to regard only civil and political right as human rights and economic and social and collective rights as not human rights. As we have noted above, it is ultimately for the concerned people to decide what they would regard as human rights and which the states would have the obligation to deliver.¹⁵

¹² See Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Policies of the Right to Development*. These issues have been debated extensively in the human rights literature. Most of the arguments are well summarized in two articles by Philip Alston: "The Right to Development at the International Level," in *Workshop of the Hague Academy of International Law*, October 1979, and "Making Space for New Human Rights: The Case of the Right to Development," in *Human Rights Yearbook* Vol. 1, 1988. Also see Amartya Sen's latest book *Development as Freedom*, Chapter 12 (Alfred A. Knopf, 1999).

¹³ According to Philip Alston, "The Reagan Administration's outright refusal to accept the validity of the idea of collective human rights flows quite logically from its conception of human rights which is based not on the Universal Declaration of Human Rights but on the American Declaration of Independence" (*ibid. Human Rights Yearbook* Vol 1, 1988). Stephen Marks, in a well-reasoned paper, "From the 'Single Confused Page' to the Decalogue of Six Billion Persons: The Roots of the Universal Declaration of Human Rights in the French Revolution," shows that the form and the content of the Universal Declaration of Human Rights were very much influenced by the French Revolution.

¹⁴ See Charles Taylor, "Human Rights: The Legal Culture," in *Philosophical Foundation of Human Rights* (Paris: UNESCO, 1986), and Vienna Van Dyke, "Human Rights, Ethnicity and Discrimination," in *Contribution in Ethnic Studies*, 1985.

¹⁵ Philip Alston put it categorically: "It is a matter of human decision what kinds of units are accepted as right-and-duty bearing units and what kinds of rights they shall have." Alston, *op. cit.* footnote 10.

The second criticism, which Sen has described as “the coherence critique” is spelled out as, “Rights are entitlements that require correlative duties. If person A has a right to some X, then there has to be some agency, say B, that has a duty to provide A with X. If no such duty is recognized, then the alleged right, in this view, cannot but be hollow.” This would seem to make it very difficult for many of the positive rights to be treated as rights proper, without identifying “agency-specific duties,” such as in the case of “every individual having a right to food, to medicine or to education.”

Sen believes that it is possible to resist the claim that any use of rights except with co-linked perfect obligation lacks cogency. In many legal contexts the claim may indeed have some merit, but in normative discussions rights are often championed as entitlements or powers of immunities that would be good for people to have. Human rights are seen as rights shared by all—irrespective of citizenship—the benefits of which every person should have. While it is not the specific duty of any given individual to make sure that the person has his right fulfilled, the claim can be generally addressed to all those who are in a position to help.”¹⁶ Sen defines perfect obligation following Immanuel Kant as a specific duty of a particular agent for the realization of a right, and then describes what Kant himself had characterized as “imperfect obligation”: “when the claims are addressed generally to anyone who can help, even though no particular person or agency maybe be charged to bring about the fulfillment of the rights involved.”¹⁷

In terms of this approach, the assertion of a human right would require the identification of a set of duty-holders who are in a position to help to deliver the rights and that demands are placed on them that they should try to help. If these claims can be made legal, with appropriate legislation, covenant, or treaty, then such obligation may become binding. Otherwise, they remain a moral standard which may not have a legal sanction, but which in many situations may be as forceful in persuading all the duty holders to deliver those rights.

In this perspective, any economic or social right for an individual or a collective can qualify as a human right, provided the moral standard or the ethical assertion of the right is accepted by all people in a particular civil society, and provided it is possible to identify at least a group of possible duty holders, if not one specific duty holder, who are in a position to deliver that right and who are willing to accept their obligations to help. From that point of view, the economic, social, and cultural rights according to the international covenant, and the right to development according to the Declaration of 1986 are all human rights. They have been adopted by the international community of states through a legitimate process of consensus building at the United Nations, and they have enumerated the rights and all the duty holders, primary among them being nation-states complemented by the international community of other states and multi-lateral agencies. What would be needed is an agreement about the procedures to be followed and the programs to be implemented by all the duty holders. In addition, what may be needed is to formulate a legislative basis for the obligations morally accepted to become legally obligatory.

It will be seen from these discussions that the third criticism that the human rights must be justiciable does not have a decisive force. The skeptics who doubt the appeal and effectiveness of ethical standards of rights-based arguments would not consider a right to be taken seriously unless the entitlements of those rights are sanctioned by a legal authority, such as the state, based on appropriate legislation. As Sen puts it, these skeptics would say, “Human beings in nature no more are born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring.”¹⁸

This criticism confuses human rights with legal rights. Human rights are based on moral standards on a view of human dignity, and which have many different ways of fulfillment depending on the acceptability of the ethical base of the claims. This does not, of course, obfuscate the importance or usefulness of such human rights translated into legislated legal rights. In fact, every attempt should be made to formulate and adopt appropriate legislative instruments to ensure the realization of the claims of a human right once it is accepted through consensus. These rights would then be backed by justiciable claims in courts and by authorities of enforcement. But to say that human rights cannot be invoked if

¹⁶ Amartya Sen, *Development as Freedom*, p. 230.

¹⁷ Amartya Sen, *ibid.*

¹⁸ Amartya Sen, *ibid.*, p. 228.

they cannot be legally enforced would be most inappropriate. For many of the economic and social rights and the right to development, and even for some elements of civil and political rights, the positive actions that are necessary may often make it very difficult to identify precisely the obligations of particular duty-holders to make them legally liable to be prosecuted. Enacting appropriate legislative instruments for any of these rights would often be a stupendous task, and it would be often useful and necessary to find alternative methods of enforcement of the obligations rather than through the courts of law.

Monitoring of Implementation

In fact, for many of the positive rights, implementability is often more important than enforcement. Designing a program of action that would facilitate the realization of the right might be a better way of going about it than trying to legislate on those rights. In that case, what may be required is some monitoring authority or some dispute settlement agencies, than a court of law settling claims. Democratic institutions of local bodies, or non-governmental organizations, or public litigation agencies, may prove to be quite effective in dealing with the rights-based issues which are not amenable to exactly-formulated legislative principles.

Finding such monitoring agencies or consultative forums may often be the only way to enforce obligations of the international community, their agencies and governments, to cooperate in fulfilling the rights as envisaged in the right to development. Indeed, justiciability of international commitments must be dealt with differently from the enforcement of national obligations. The world has of course many different agencies of international arbitration of which the international court is only one. These are established institutions and procedures for settling trade and financial disputes. For human rights, however, such agencies may not be useful unless the failure of the obligation can be put in a relevant form admissible to these institutions. The human rights treaty bodies, operating mostly on reporting methods, may be often quite inadequate, even when direct complaint procedures are available. What would be needed in most cases is a forum where international agencies and concerned governments could get together and talk to each other. A transparent consultation mechanism, subject to the democratic pressure of public opinion, may often play a much more significant role in enforcing institutional agreements, especially on human rights, than any outside judicial authority.

Collective Rights vs. Individual Rights

There is a different type of criticism which has been most persistently leveled against the right to development, in particular, in addition to the criticisms mentioned above that are application to all rights other than the civil and political rights. The right to development was promoted both by the Third World protagonists and First World critics as a collective right of states and of peoples for development. We have already dealt with the problem of the admissibility of collective rights as human rights, as against individual rights, and have argued that it is perfectly logical to press for collective rights to be recognized as human rights. But then care must be taken to define the collective rights properly and not in opposition to individual rights per se. Indeed there are legal institutional agreements and covenants that have recognized and built upon collective rights, and the Declaration on the Right to Development itself has recognized the collective right of peoples in its Article 1 when it states that every human person and all peoples are entitled to the human right to development and also the right to self-determination, exercising "their inalienable right to full sovereignty over all their natural wealth and resources." But now these collective rights are seen as opposed to, or even superior to, the right of the individual. The Declaration on the Right to Development states categorically (Article 2) that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development."

One of the most articulate defenders of the Third World position regarding collective rights, Georges Abi-Saab, a Professor at the Graduate Institute of International Studies in Geneva, suggests two possible definitions of collective rights, first as a sum-total of double aggregation of the rights and of the individuals. (If there are n different rights, r_i , $i= 1, \dots, n$, and if there are m different individuals $j =$

1,.....m, having these rights, the collective rights will be $R = \sum_i \sum_j r_{ij}$). This, as Abi-Saab says, has the intent of highlighting the link between the rights of an individual and the right of the collectivity. The second definition of collective rights is seen as a right from the collective perspective, “without going through the process of aggregating individual human rights by considering it either in the economic dimensions of the right of self-determination, or alternatively as a parallel right to self-determination.”¹⁹

Both these definitions build up on the rights of individuals. Indeed, the right to self-determination gives nations “the full sovereignty over all their natural wealth and resources,” but that has to be exercised for the benefit of all individuals. In the case of an individual, the rights-holder is also the beneficiary of the exercise of the right. In the case of collective right, such as that to self-determination, the right-holder may be a collective such as a nation, but the beneficiary of the exercise of the right has to be the individual. There may of course be some occasion when the right of a particular individual may come into conflict with the right of a collective. An obvious example would be the closed-shop practices of a trade union conflicting with the right to work of a particular unemployed person. But the beneficiaries of a trade union practice must be all individual workers, and not just the trade union, as an organization, its management and its treasury. It is also quite possible that different rights or different individuals enjoying a right may come into conflict in some specific situations. It would be necessary to institute some transparent procedures to resolve these conflicts. But such procedural restrictions in dealing with the exercise of a rights does not detract from the nature and importance of the collective right seen as built on individual rights.

It is important to note this point on the integral relationship between the collective and the individual in understanding the human rights approach to development. The Commission on Human Rights, in a resolution (No. 5 XXXV) as early as in 1975—well before the Declaration on the Right to Development was adopted—stated that “development is as much a prerogative of nations as of individuals within nations.” Indeed, in many cases individual rights can be satisfied only in a collective context, and the right of a state or a nation to develop is a necessary condition for the fulfillment of the rights and the realization of the development of individuals.

Indeed, most of the demands of the developing countries during the 1970s, when the content of the right to development was negotiated, can be put forward in these terms. The integrated program of commodities, the generalized preference scheme, industrialization, and technology transfers and all the essential components of the New International Economic Orders were the claims made on behalf of the developing countries which were all meant to be preconditions for development of all peoples in those countries. Many of these proposals may not be relevant any more in the changed conditions of the world economy, and the developing countries themselves may not put them forward as parts of their development agenda. But during the Seventies and Eighties they were regarded as highly relevant, and this is reflected in the wording of the preamble of the Declaration of the Right to Development. However, they were never meant to disregard the primacy of individual rights which used the foundations of human rights theory and which developed over time with collective rights complementing the individual rights. Those who detract from the significance of the right to development by arguing that it is a protection of a collective right of the state or the nation, in conflict with the individual rights foundations of the human rights tradition are more often than not politically motivated.

The Third World proponents of the right to development also must take a serious note of the implication of the human rights approach to development as collective rights of a nation or a state. The exercise of those rights must lead to the realization of the right of all individuals to development, which means a particular process of development where all human rights and fundamental freedoms can be fully realized. We have analyzed the text of the Declaration to establish that this would imply (a) effective participation of all individuals in the decision-making and the execution of the process of development, which would necessarily require transparency and accountability of all activities, (b) equality of access to resources, and (c) equity in the sharing of benefits. These are essential elements of the process of development which make the right to that process a human right and which are the foundation of a right

¹⁹ Georges Ali-Saab (The Hague Academy of International Law), *The Right to Development at the International Level* (The Hague, 1975).

to development—development with equity and justice. Now it must be clear that economic growth and development of a state or a nation does not automatically lead to this process of development. In fact, if very specific policies are not taken to realize such development, the economic growth of a state increases often tends to the concentration of income and wealth, making the rich richer, even if not always the poor poorer.

The main motivation behind the developing countries' clamoring for the New International Economic Order was the demand for equity in dealing with the running of the international economic system, in all its trade, financial, and technological relationships. The specific methods of such running of the world economy may have changed over time, and the international economic order of today, defining the relationship between the different economies and the rules and procedures of their interactions, is quite different from the international economic order of the Sixties and Seventies. But the basic requirements for equity and justice in the process of development fulfilling the human right to development have not changed. So if a country wants to develop along the path of the right to development, it must ensure the fulfillment of all the human rights consistent with equity and justice.

5. Characteristics of the Process of Development with Equity

It is important to appreciate the full significance of the point that the right to development associates development with equity and justice. Any human rights approach to economic and social policy may be constructed on the basis of justice because it follows from a notion of human dignity and of a social contract in the drawing of which all members of the civil society are supposed to have participated. But not all theories of justice are based on equity. The Universal Declaration of Human Rights contains elements to show that equity was one of its concerns. However, the Declaration on the Right to Development is, without question, founded on the notion that the right to development implies a claim for a social order based on equity. Not only do several of its articles clearly call for equality of opportunity, equality of access to resources, equality in the sharing of benefits and fairness of distribution, and equality in the rights to participation, its preambular paragraphs also call for the New International Economic Order. And the tenor of the debates that took place at the United Nations and other international fora during the period of the negotiation and adoption of the draft left no one in doubt that what the proponents of the right to development were asking for was an economic and social order based on equity and justice. 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.

The significance of the North-South divide among the countries in the world economy may have become diluted in the contemporary interdependent world. But the essential spirit of the demand for equality would still remain in force in all forms of international cooperation envisaged in the realization of the right to development. Within a national economy, also, development as a human right, according to the Declaration on the Right to Development, has to be firmly rooted in equity. The claim that the right to development is a human right is a claim for a process of development with equity and justice. The states parties which have acceded to this demand have taken on the obligation to deliver such a process of development through programs of national policy and international cooperation. In other words, the policy programs that are designed nationally and internationally must take fully into account the concerns and the requirements of equity.

Article 1 of the Declaration, as we have noted above, talks about the right to development as a right to the process where all fundamental freedoms are realized. At the time it was drafted, this way of defining development, which other General Assembly resolutions around that time described as expansion of well-being of all individual members of a community, purported to go beyond looking at development simply in terms of growth or income or opulence. Today, especially after the publication of Amartya Sen's book *Development as Freedom*, referred to above, the development process can be most aptly described as expansion of substantive freedom or "capabilities of persons to lead the kind of lives they

value or have reasons to value.” Indeed, it is possible also to identify the capabilities with human rights as propounded in the Universal Declaration of Human Rights.²⁰

One advantage of that would be to situate such human rights firmly in a theory of justice that would bring out the logical implications of a concept of equity. That would hopefully improve our ability to operationalize the notion of equity and fairness embedded in the right to development.

The Universal Declaration of Human Rights recognizes a form of equity inherent in human dignity with equal and inalienable rights as the foundation of freedom and justice; that all men are born free and equal in dignity and rights; that all are equal before the law; and that all are entitled to equal protection against discrimination and that everyone has the right to freedom of thought, religion, expression and opinion. It is possible to build up a whole structure of relationships with equity on the basis of political and civil rights. But in the Universal Declaration everyone has a right to an adequate standard of living for health and well-being, including food, clothing, housing, medical care, and necessary social services, without mentioning that it should be equitable. The Declaration of the Right to Development, however, states (Article 8) that for the realization of the right to development, the states shall ensure “equality of opportunity for all in the access to basic resources, education, health services, food, housing, employment and the fair distribution of income.” This together with its emphasis on every person being entitled to “participation in, contribute to and enjoy” the development process where “fundamental freedoms can be fully realized,” should be seen against the preambular statements, viz., “equality of opportunity for development is a prerogative of nations and of individuals who make up nations,” to appreciate the central message of equity and justice in the right to development.

Quite clearly the right to development was elaborating on a concept of development that did not deny the importance of the growth of income and output which enhanced the expansion of basic resources and the opportunities for development. But it had to be realized in a manner that ensured a fair distribution and equality in access to the resources and expanded the fundamental freedoms of the individuals. These freedoms, as Sen points out today, should be seen as both “the primary end” and “the principal means” of development, both in a “constitutive role” and in the “instrumental role.”²¹ All individuals have the right to freely choose to participate in the development process and partake in the decision making.

That development is not related only to the growth of GNP has been known to the economists from the very beginning, even from the times of Adam Smith. But most of them were persuaded to accept the principle of maximizing the per capita GNP as the basis of their strategies of development, because as W. A. Lewis, the Nobel laureate in development economics, wrote in *The Theory of Economic Growth*, the growth of output per head “gives man greater control over his environment, and thereby increases his freedom.” The right to development does not deny this positive impact of the growth of GNP. But it calls for additional policy actions to accelerate the expansion of these freedoms together with equity and justice.

There were many economists and policy makers who were also influenced by the Kuznets’ thesis that income growth and income equality are negatively related, which meant that policies to increase equality may actually lead to reduce growth. Empirical research has actually failed to substantiate that thesis on the basis of experiences of developing countries. But even those who did not subscribe to this thesis did not always plead for adopting policies that would alter the structure of the development process based on consideration of equity. They would rather follow policies that maximized the growth of GNP and then adopt some redistribution measures to improve the lots of the poorest and the worst off. This was the case with the famous “minimum needs approach,” according to which the international agencies such as the World Bank tried to help the developing countries to supply the poor with provisions that met these minimum needs.

The right to development is proposing a qualitatively different approach, in which considerations of equity and justice are primary determinants of development. Not only that, the whole structure of

²⁰ See Martha Nussbaum, “Capabilities, Human Rights and the Universal Declaration,” in *The Future of Human Rights*, ed. Burns H. Weston and Stephen P. Marks (New York: Transnational Publishers, 1999).

²¹ Amartya Sen, *Development as Freedom*, p. 16.

development is shaped by these determinants. For example, if poverty has to be reduced, the poor have to be empowered and the poorest regions have to be uplifted. The structure of production has to be adjusted to produce these outcomes through development policy. The aim of the policy should be to achieve this with the minimum impact on other objectives such as the overall growth of output. But if there is a trade-off such that growth will be less than the feasible maximum, that will have to be accepted in order to satisfy the concern for equity. This development process has to be participatory. The decisions will have to be taken with the full involvement of the beneficiaries, keeping in mind that if that involves a delay in the process, that delay should be minimized. If a group of destitute or deprived people have to have a minimum standard of well-being, a simple transfer of income through doles or subsidies may not be the right policy. They may actually have to be provided with the opportunity to work, or to be self-employed, which may require generating activities that a simple reliance on the market forces may not be able to ensure.

The rights approach to development requires us to re-examine the ends and means of development. If improvement of well-being of the people based on the enjoyment of rights and freedoms is the objective of development, economic growth consisting of the accumulation of wealth and gross national product would not be an end in itself. It can be one of the ends, and can also be a means to some other ends, when "well-being" is equivalent to the realization of human rights. As Sen would have put it, a prosperous community of slaves who do not have civil and political rights cannot be regarded as a community with well-being.

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