

Inputs on a draft legally binding instrument on the right to development

July 25, 2019

Type of the instrument:

1. I propose the instrument be principally a treaty modelled not only on the basis of existing human rights treaties, but also reflecting some of their concretized principles, defining rights and corresponding obligations of States and non-state actors in relation to development practices.

Content of the instrument:

2. Provisions that should be referenced in the preamble:
 - a. UN Charter articles 55, 56, 103
 - b. UDHR articles 22, 28
 - c. Common article 2 of ICCPR and ICESCR
3. Considerations to be incorporated in the preamble:
 - a. To reflect what the HLTf referred to as the core norm of the RTD, that is, as a right to a national and international order favourable to just, equitable, participatory and human centred development.
 - b. Self-determined development.
 - c. Active and meaningful participation in development as an irreducible minimum.
 - d. Clear commitment to distinct and direct accountability in development partnerships.
 - e. Differentiation of responsibilities.
 - f. Acknowledgment of historical injustices and power asymmetries.
 - g. Embrace the ideology that development should deliver socioeconomic justice to the marginalized, discriminated and the historically oppressed.
 - h. Acknowledgment that development should now foster the realization of human rights as one of its core objects.
 - i. Reiteration that the individual and wellbeing is the subject of development.
 - j. Recognition that the global policy system is a significant determinant of development outcomes that constrain States' obligations in the realization of human rights, and therefore needs to reflect a rights ethos.
4. Formulation of the object and purpose: the object and purpose should clearly capture the redistributive agenda, reflecting principles of justice, equity participation and human

wellbeing in development. The object and purpose must reflect the aspiration to constrain all actors, State and non-state, with ideals underpinned by the treaty on the RTD. The object and purpose should entrench the principle of accountability in all its dimensions (responsibility, answerability and enforceability).

5. Elements to be included in the instrument and how it should be structured:
 - a. It should reflect the notion that the realization of rights is structurally contingent on global development practices.
 - b. It should reflect the sustainable development agenda as normatively based on, and operationally directed to the realization of human rights with the RTD as the guiding value.
 - c. As part of the implementation, enforcement of the RTD should emphasize that accountability of all actors is essential to the realization and materialization of development justice.
 - i. It should espouse clear obligations and duties of non-state actors.
 - ii. It should define and clarify the fact that development and human rights are interrelated and mutually reinforcing. This advances the object of the UN Charter of the promotion of social progress and development.
6. Duty bearers that should be included:
 - a. IFIs
 - b. TNCs
 - c. All intergovernmental organizations such as UNDP, WHO, UN, UNSC on the basis that these are organs of society bound by, and under a duty to respect human rights objects, norms and principles.
7. Obligations the instrument should concretize: it should embrace the Maastricht ETO principles but be more specific and particular to non-state actors. Both obligations of conduct and result must target non-state actors as well.
8. How the relationship with other rights and obligations under international law should be determined: the RTD should be treated as any other right, though its sui generis character of hybridizing conceptions of rights and development into a global redistributive agenda must remain dominant.

Institutional arrangements:

9. Type of institutional arrangements that should be foreseen: the two envisaged bodies and their processes do not envisage the incorporation of non-state actors. The treaty must find ways of engaging all actors into the implementation processes. Traditional

approaches modelled on statist international law cannot guarantee effective implementation.

10. Entity that should serve as the secretariat: OHCHR RTD unit.
11. Should there be a funding mechanism for covering institutional arrangements and implementing recommendations: Yes, but corporations should not be allowed to contribute as this may distort the human rights potential.

Compliance, monitoring and enforcement arrangements:

12. What type of compliance monitoring and enforcement process should be envisaged: I am in support of option A—a compliance committee with a facilitation and enforcement branch—provided that finer details be refined.

Final provisions:

13. Elements that should be specified in the final provisions:
 - a. Who can become a party to the LBI: **States.**
 - b. What is the desired number of ratifications for entry into force: [left blank]
 - c. Should reservations be possible: **yes.**
 - d. Should there be a clause on dispute resolution with respect to the interpretation or application of the instrument with jurisdiction of the ICJ: **yes.**
 - e. Should there be a clause concerning the possibility to denounce the agreement: **no.**