

Poverty

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I. Introduction

The contemporary challenge of poverty eradication entails not only improving the situation of the poor living in least developed countries but also of millions living in middle-income countries such as Brazil, China, India and South Africa. Economic growth and a rise in national incomes have resulted in greater inequalities and social gaps, which deepen the severity of poverty. Thus, addressing poverty requires structural change and not just overcoming lack of income, food or shelter.

The global poor, condensed by Paul Collier in the expression “the bottom billion”,¹ face social, cultural and political challenges, characterized by the absence of access to basic services, goods, resources and utilities and in restrained capabilities. Arjun Sen Gupta, former Independent Expert on both the question of human rights and extreme poverty (2004-2008) and the right to development (1999-2004), depicted extreme poverty as “a combination of income poverty, human development poverty and social exclusion” (E/CN.4/2005/49, para. 22). Substantively, these challenges involve parallel processes of marginalization of the poor, including persistent discrimination, insecurity and denial of justice and redress, which inevitably require different measures and approaches and which are often outside the control of the poor. Sen Gupta argued, “People living in poverty are typically victims of discrimination on grounds such as

birth, property, national and social origin, race, colour, gender and religion. Patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination” (A/63/274, para. 29).

This issue may be addressed in the context of the human right to development, which is composed of several norms concerning the process of development. Starting from the principle that all human rights must be realized in development processes,² the right to development considers development as a process that encompasses economic, social, cultural and political aspects.³ It requires raising both living standards and the capabilities of the poor. This chapter will analyse theories regarding the definition of poverty and how the right to development tackles poverty within the context of these theories. In doing so, it will first examine the connection between development processes and poverty through the lens of the right to development.

The right to development as an “umbrella right”⁴ focuses on two novel features: fair distribution of the benefits of development and popular participation. Specific attention will be given to these two elements—which distinguish this right from other economic,

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¹ Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (New York, Oxford University Press, 2007).

² “Report of the Independent Expert on the right to development” (see A/55/306, paras. 15-25).

³ Article 1 (1) of the Declaration on the Right to Development refers to “economic, social, cultural and political development”. See also footnote 13 below.

⁴ Amartya Sen, “Human rights and development”, in *Development as a Human Right: Legal, Political and Economic Dimensions*, Bård A. Andreassen and Stephen P. Marks, eds., 2nd ed. (Intersentia, 2010), p. 11.

social, cultural and political rights—to explore and explain the connection between the right to development and improving not only the living conditions of the poor, but also their capabilities, choices and level of empowerment.

Emphasis will be placed on efforts to eradicate poverty and address persistent inequality. This means ensuring that development measures aimed at improving the fulfilment of rights and access to services have a critical and transformative impact, which in turn would foster structural improvements. The chapter will also examine how participation contributes to inclusive pro-poor development practices. Finally, it will explore how the right to development can bring new insights to the understanding of poverty eradication from a human rights perspective at the global level.

II. Poverty and the right to development: a close relationship

Although the idea of charity for the underprivileged has been present in Western history from early times, the drawing of an arbitrary line to distinguish the poor from the non-poor can be traced back to England in the 1880s. The concept is accredited to Charles Booth,⁵ who undertook to classify London's society statistically into four categories on the basis of daily income.

The "poverty line" was then defined in strictly economic terms, independent of social aspects. Measurability and quantification were crucial for the success of this approach. Since Booth's work, many countries have adopted different criteria for the definition of poverty through income grouping. The World Bank played a major role in establishing the first unified international standard for the measurement of poverty in the 1990s with reference to those earning less than \$1 a day.⁶ In 2000 the United Nations consolidated this approach by adopting the Millennium Development Goals, particularly goal 1, aimed at the eradication of extreme poverty and hunger.

Although income-based poverty has spread during the twentieth century and beyond, the excessive focus on earning revenue has been the subject

of intense criticism, flowing from what is viewed as an oversimplification of the issue. New theories have emerged regarding the phenomenon of poverty as multidimensional, involving unsustainable livelihoods, lack of access to basic services, discrimination, social exclusion and restrictions on freedom to participate in the community and to explore one's capabilities. Multi-dimensionality has progressively become a dominant scholarly approach, including among economists.

Nobel economics laureate Amartya Sen was responsible for introducing the capabilities approach, which is concerned with social choice in terms of rights and freedoms, and indirectly draws on traditional utilitarian welfare economics.⁷ With time, academic knowledge spilled over into the international policymaking arena. Lately, international organizations have turned to a socioeconomic perspective on problems, inasmuch as all major multilateral institutions today consider poverty as multidimensional. The World Bank understands poverty as "pronounced deprivation in well-being, comprising many dimensions that range from low incomes and low levels of health and education, to the lack of voice, and insufficient capacity and opportunity to better one's life".⁸ The United Nations Secretariat, in particular the Division for Social Policy and Development of the Department of Economic and Social Affairs, shares this vision, perceiving poverty as entailing "more than the lack of income and productive resources to ensure sustainable livelihoods", to include "hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion as well as the lack of participation in decision-making".⁹ The United Nations Development Programme (UNDP) in its annual Human Development Report uses a three-fold Human Development Index encompassing health (life expectancy), education (mean number of years of schooling) and living standards (gross domestic product (GDP) per capita). This is a measure of human development and not necessarily of individual poverty. However, despite not being a poverty indicator per se, the Human Development Index is intrinsically related to poverty through this novel multidimensional outlook. Amartya Sen, an early proponent of the Index in the 1990s, recently proposed, in partnership with Oxford University, a framework called the Multidimen-

⁵ Charles Booth, *Life and Labour of the People in London*, 17 volumes (London, Macmillan, 1902-1903).

⁶ New Economics Foundation, *How Poor Is 'Poor'?: Towards a Rights-Based Poverty Line* (April 2008), available from www.neweconomics.org. The World Bank currently defines "extreme poverty" as average daily consumption of \$1.25 or less. See <http://data.worldbank.org>.

⁷ Amartya Sen, *Commodities and Capabilities* (Amsterdam, North Holland, 1985) and Amartya Sen, *Development as Freedom* (Oxford, Oxford University Press, 1999).

⁸ See World Bank, *World Development Report 2000/2001: Attacking Poverty* (New York, Oxford University Press, 2000).

⁹ See <http://social.un.org/index/Poverty.aspx>.

sional Poverty Index, using 10 indicators to reinforce the tripartite structure.¹⁰

Along with the use of indices to grasp the complexity of the concept of poverty, a trend to examine poverty through a human rights lens has emerged. The focus here is on the aspects of poverty that reflect situations of human rights violations; this builds upon the proposition that poverty is a denial of human rights.¹¹ The lack of access to food prevents the poor from breaking free from hunger. Vulnerability to retrenchment without social protection subjects them to income insecurity. Discrimination experienced in social and political life deprives them of their dignity. These circumstances are regarded as violations of human rights because they affect the ability of people to live a dignified life.¹²

In her report to the General Assembly, the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, elucidates State policies as essential factors in the poverty-human rights contention: "States have long recognized that poverty is a complex human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other economic, civil, cultural, political and social rights. Poverty is not an autonomous choice, but rather a multifaceted situation from which it may be difficult, if not impossible, to escape without assistance" (A/66/265, para. 5). Sepúlveda argues that the poor are often regarded as "authors of their own misfortune, who can remedy their situation by simply 'trying harder'"; they are also perceived as "lazy, irresponsible ... dishonest, undeserving and even criminal" (ibid., para. 7). Penalization and stigmatization distance these people from social policies and weaken empowerment efforts, thus sustaining and magnifying their large-scale destitution.

As mentioned above, the current understanding of poverty goes beyond income deprivation and addresses an array of social impairments and misplaced policies. This multidimensional perspective is consistent with the right to development as articulated in the Declaration. Recognition of the inherent relationship between poverty and the denial of human

rights is integral to the right to development, which emphasizes the indivisibility and interdependence of all human rights. Thus, failure to respect, protect and fulfil basic entitlements and the principle of non-discrimination would constitute violations of the right to development. In this regard, the High Commissioner for Human Rights explicitly referred to the clear link between poverty and non-fulfilment of the right to development when she said, "It's not an act of nature that leaves more than 1 billion people around the world locked in the jaws of poverty. It's a result of the denial of their fundamental human right to development."¹³

Article 1 (1) of the Declaration states that "every human person and all peoples are entitled to *participate in, contribute to, and enjoy* economic, social, cultural and political development" (emphasis added). One could claim that these three aspects would constitute a normative core of this right and each must be appropriately interpreted in order to realize the full empowering potential of the right. "Participate" could be understood as knowing and taking part in debate, public hearings and consultations concerning development initiatives. "Contribute" could add to participating, since it conveys the idea of having one's disapprovals, critiques and proposals taken into account and jointly partaking in the tailoring of policy. Furthermore, "enjoy" would correspond to an actual equitable benefit from development outcomes to individuals and peoples. This broad interpretation is consistent with the wording of the Declaration's preamble, which constitutes the lens through which the text can be interpreted.¹⁴

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Therefore, it could be argued that this right basically has a twofold specificity: *sensu lato* popular participation, and fair distribution of benefits resulting from development. *Sensu lato* participation comprises both "participate" and "contribute", and fair distribution of benefits is an unfolding of the "enjoy" core.

The dominant economic paradigm tends to compress the problem of poverty into statistics, with

¹⁰ Oxford Poverty and Human Development Initiative, *Multidimensional Poverty Index*. Available at www.ophi.org.uk/policy/multidimensional-poverty-index/.

¹¹ Siddiq R. Osmani, "Human Rights and Poverty: Building on the Capability Approach", *Journal of Human Development*, vol. 6, No. 2 (2006), p. 206.

¹² Sen, "Human rights and development", p. 3.

¹³ "Declaration on the Right to Development at 25", statement made on the twenty-fifth anniversary of the Declaration, available at www.un.org/en/events/righttodevelopment/.

¹⁴ Sengupta, "The human right to development", in Andreassen and Marks, p. 21.

economic development and aggregated figures of economic growth being treated as the origin of as well as the solution to poverty. However, even among the countries that experienced marked economic growth, extreme poverty continues to affect significant parts of the population. In this context, one needs to look at the arrangements behind development processes: how institutions are carrying out development projects and how policies are shaped; which priorities they uphold; and, most importantly, how such arrangements benefit some and victimize others. Displacement, food insecurity, unemployment and vulnerability to morbidity may result from development projects and policies that emphasize economic growth only.

Adverse impacts of the development process resulting in extreme poverty habitually occur because of people's inadequate command over the distribution of benefits. As illustrated by the phenomenon of economic growth along with the emergence of the "bottom billion", growth is not necessarily neutral, let alone pro-poor; it can also be anti-poor.¹⁵ Additionally, development policies imposed from above, without any opportunity for the beneficiaries to participate in the decision-making process, may also lead to an increase in poverty. It is essential to have opportunities to correct and intervene in policies, not only to ensure that development will fulfil basic needs, but also that it will achieve its critical transformative value. In both instances, vested interests may impose policies on people who are perceived as powerless. Human rights offer a framework for challenging these trends, as they provide legal protection of human dignity, and development processes must be undertaken in a context of accountability in order that those living in disadvantaged and vulnerable positions do not face negative impacts as a result.

The right to development helps to close this protection gap. Indeed, it requires that the primary emphasis in designing development policies be placed on how to protect people from possible adverse consequences and, in particular, from the abuse of power at the initial and execution stages of development processes. The right to development entitles rights holders to a fair distribution of benefits and to participation. The next section will discuss the connection of these two entitlements with the structural improvement of capabilities, choice and power in the eradication of poverty.

III. Fair distribution of benefits

A quite distinguishable feature of the right to development is the fair distribution of the benefits of development, which is reaffirmed several times in the Declaration. Article 8 (1) calls on States to "undertake, at the national level, all necessary measures for the realization of the right to development and ... ensure ... fair distribution of income". In a similar vein, article 2 (3) affirms that: "States have 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, on the basis of their ... participation in development and in the fair distribution of the benefits resulting therefrom." Although the concept of fair distribution is repeated several times, the Declaration does not explain how it ought to be implemented.

In order to understand what a fair distribution of benefits is, one must first analyse what "fair" means in this context. A brief reference to justice theories is useful to clarify the concept of fairness. One can consider justice—or fairness¹⁶—an overarching concept, which encompasses both equality (or formal equality) and equity (or substantive equality). Such a divide is evidenced in the work of John Rawls, who proposes that justice is an ethical concept encompassing two main principles. The first is described as the principle of liberty where "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others".¹⁷ This is what could be called "formal equality", where everyone is equal and discrimination is forbidden. *Sensu stricto* equality would translate essentially into something situated outside of law while the precept of non-discrimination appears as its legal expression. The second principle relates to social and economic inequalities and applies to the distribution of income and wealth and to the design of organizations that make use of differences in authority. Offices of command must be accessible to all.¹⁸ Therefore, distribution of income and wealth is determinant for attaining justice. Rawls's second principle relates to Aristotelian distributive justice, which refers to the sharing among people with regard to proportionality considerations.¹⁹ In this framework, fairness demands combining formal equality—also enshrined in the Declaration's anti-discriminatory general principle—with substantive equality. Complying with the

¹⁵ Bas de Gaay Fortman, *The Political Economy of Human Rights: Rights, Reality and Realization* (New York, Routledge, 2011), p. 148.

¹⁶ For the purposes of this chapter, the words "justice" and "fairness" shall be used interchangeably.

¹⁷ John Rawls, *A Theory of Justice* (New York, Oxford University Press, 1971) p. 60.

¹⁸ *Ibid.*, p. 61.

¹⁹ *Ibid.*

right to development would therefore require both of these elements.

Far from being an abstract speculation, this twofold concept of fairness has already had tangible implications in various international human rights instruments, which recognize that the achievement of a substantively equalitarian society cannot rely solely on *de jure* restrictions. The Human Rights Committee affirmed in its general comment No. 4 (1981) on gender equality: "Firstly, article 3, as articles 2 (1) and 26 insofar as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights." The International Convention on the Elimination of All Forms of Racial Discrimination similarly states in article 1 (4): "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination ..." Also, the Convention on the Rights of Persons with Disabilities reaffirms this idea in article 5 (4): "Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination ..." In brief, fairness demands action.

Development processes that unravel because of existing, marginalizing structures violate the right to development since the provision on the fair distribution of benefits implies that development processes must have beneficial effects and that these effects must be fairly distributed among the beneficiaries of development. In other words, development processes are to be designed to serve impartially and to be favourable to all the beneficiaries of development, and in particular to those who are vulnerable to the adverse effects of development projects or programmes. The concept of fair distribution of benefits should be interpreted in a holistic manner; this demands recognition that, in many cases, pursuing human-centred development requires the economic means for realizing many human rights entitlements.²⁰ However, the normative goals contained in the right to development also

demand that the structure of production and institutional arrangements be adjusted to serve this ideal.

Furthermore, after its inclusion in the Declaration on the Right to Development, the entitlement to a fair distribution of benefits was again reaffirmed in part I, paragraph 11, of the Vienna Declaration and Programme of Action, which extends the notion of equitable access to the benefits of development to embrace the notion of intergenerational fairness: "The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations." Such developmental needs include, for example, employment, education, health, nutrition, housing facilities, crime prevention and the well-being of children.²¹

Fairness, particularly in terms of equality, is not simply a theoretical and moral concern. The requirement of the distribution of wealth originating from development also has concrete consequences for the enjoyment of other protected human rights. Michael Marmot, in a study on the impacts of social discrepancies in health standards, has acknowledged the impact of social disparities on the living conditions of society as a whole, even among the non-poor.²² Findings indicate that the mere existence of inequalities is reflected in differentiated enjoyment of the right to health. There is a huge gap in the life expectancy of people living in the same city in the United Kingdom and between the poor black neighbourhoods and well-off white counties in the United States.²³ Though many developing countries still lack disaggregated data to allow similar analysis, the pattern seems to be recurrent wherever inequality exists. These findings are striking since in developed countries such as the United Kingdom and the United States health-care services are widely available and the extremely poor are far fewer in number when compared to most developing countries. Therefore, how can social imbalances, by themselves, have such a considerable impact on the enjoyment of this human right? Marmot

²⁰ As Amartya Sen has argued, "development economics was born at a time when government involvement in deliberately fostering economic growth in general, and industrialization in particular was very rare, and when the typical rates of capital accumulation were quite low. That situation has changed in many respects, and, while that may suggest the need to emphasize different issues, it does not in any way invalidate the wisdom of the strategies ... suggested" (Amartya Sen, "Development: which way now?", *The Economic Journal*, vol. 93 [December 1983], p. 752).

²¹ The General Assembly, in its resolution 45/87, entitled "World social situation", states in its preamble that "the pace of development in the developing countries should be accelerated substantially in order to enable them to achieve [policies and practices that hinder social progress], especially to meet the basic needs for food, housing, education, employment and health care and to struggle against scourges which endanger the health and well-being of their population".

²² Michael Marmot, "Health in an unequal world", lecture before the Royal College of Physicians, London (18 October 2006), published in *The Lancet*, vol. 368, No. 9552 (9 December 2006), p. 2083.

²³ Donald Acheson, *Independent Inquiry into Inequalities in Health Report* (London, The Stationery Office, 1998); Mel Bartley, *Health Inequality: An Introduction to Theories, Concepts and Methods* (Oxford and Cambridge, Polity Press, 2004); Lisa F. Berkman, "Social epidemiology: social determinants of health in the United States: are we losing ground?", *Annual Review of Public Health*, vol. 30, Issue 1 (2009), pp. 27-41.

considers good health to be intrinsically related to the elements of capabilities and freedoms as put forward by Amartya Sen. He asserts:

Above a level where material deprivation is no longer the main issue, absolute income is less important than how much one has relative to others. Relative income is important because, as Sen states, it translates into capabilities. In rich countries, autonomy and social inclusion might influence disease through their effect on health behaviours such as nutrition, smoking, or alcohol, or through more direct neuroendocrine pathways, i.e., chronic stress. Similarly, at the community level empowerment could lead to better availability of resources for health, or operate through psychosocial processes linked to social capital.²⁴

The evidence found in relation to the right to health shows that inequality can indeed play a significant role in the realization of human rights and that the question is therefore not simply a moral argument against social injustice. A case could also be made for other rights, such as the right to education—years of schooling and highest grade reached differ substantially between poorer and richer segments of the population—or freedom of expression and assembly, which the dispossessed feel unable to exercise for material or psychological reasons. If inequality is an obstacle to the enjoyment of human rights, an equitable distribution of wealth becomes a decisive variable for the overall system of protection of human rights, as well as for the advantages stemming from development.

The analogy can be extended to address the negative effects of development processes. Important among such effects is the increasing vulnerability of people resulting from large-scale development projects. Such vulnerabilities may point to Governments' failure to meet their obligations to respect, protect and fulfil fair distribution of benefits. To meet their obligations, it is essential that States structure their budgets, legal systems and development projects so as to avoid or minimize harm, and ensure that those who reap the benefits are held accountable for compensating for damage from any harmful effects on the population.

The Special Rapporteur on extreme poverty and human rights in her country missions has added practical recommendations on how States could undertake a fair distribution of benefits. In her report on her visit to Timor-Leste, Sepúlveda voiced concern about adequate budgetary allocations for social policies and called on the Government to ensure "that social protection programmes reach the most vulnerable as a matter of priority" (A/HRC/20/25/Add.1, para. 84

(e)). In her report on the her mission to Paraguay, she observed the unfair situation in that country, where the poorest 10 per cent of population pays 18 per cent of their income in taxes while the richest 10 per cent pays only 4.6 per cent of their income; moreover, the country is the only one in Latin America to not have income-based taxes (A/HRC/20/25/Add.2, para. 44).

Large-scale infrastructure development projects frequently fail to guarantee a fair distribution of benefits. In particular, the poor do not benefit from megaprojects, such as the construction of dams,²⁵ and mega-events, such as international sports competitions, which may push them further into vulnerability. Not only do the poor suffer material losses, but the projects also disrupt social life and displace people from their communal habitats. In accordance with the right to development, States have the duty to adopt, first, measures to protect against damage caused by an unjust distribution of development benefits and, second, to ensure access to remedies for harm caused by or attributable to development programmes, policies or projects. The issue of large-scale development projects has become a major subject on the human rights agenda, both domestically and internationally. Social movements, activists and experts have called attention to the adverse effects of such projects. The former Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living presented in a 2007 report basic principles and guidelines on development-based evictions and displacement, condemning disruptive development initiatives and recommending the adoption of policies that provide for popular participation, adequate compensation and proper resettlement schemes (A/HRC/4/18, annex I). Likewise, the current Rapporteur, in her 2009 report, referred to major international sports events such as the Olympic Games and the football World Cup, addressing the State's role in implementing pro-poor development (A/HRC/13/20, paras. 36-67).

The idea of equity in terms of the fair distribution of benefits underscores the potential of the right to development as a framework of processes for facilitating a fuller realization of other human rights. It addresses States' obligations to deal with structural and systemic factors attributable to increasingly com-

²⁴ Marmot, "Health in an unequal world", *The Lancet*, p. 2087.

²⁵ An example is the construction of the Sardar Sarovar dam in India, which, while causing displacement and loss of land and livelihoods for millions living around the Narmada Valley, also delivered benefits for some people. See Ranjit Dwivedi, "Why some people resist and others do not: local perceptions and actions over displacement risks on the Sardar Sarovar", The Hague Institute of Social Studies, Working Paper Series No. 265 (December 1997), p. 4.

plex combinations of development actors, processes and consequences. Notably, development processes must be adopted to take account of the connections and disconnections among development-related actors, policies and laws in a non-homogeneous and non-harmonious society.

IV. Participation

Beyond the fair distribution of benefits, equity, as understood in the context of the right to development, also calls for the creation of equal opportunities in addressing social exclusion. Social exclusion results from either the systematic exclusion of poor people from having choices and using their capabilities, or more circumscribed social, political, economic or cultural barriers to their participation. Whether through deliberate or circumstantial marginalization, social exclusion reinforced and perpetuates poverty.²⁶ Temporary access to income or a temporary fulfilment of basic needs does not generally address such deeper facets of poverty. The entitlement of participation as stipulated in the Declaration on the Right to Development seeks to advance social inclusion, in particular promoting the central role of individuals and peoples in the decision-making on and evaluation of development processes.

Scholars highlight at least two benefits of participatory development. First, a Government that makes key decisions without transparency and without providing its population adequate access to information makes it impossible for people to develop informed opinions about policies that are critical to their lives and well-being; this weakens the accountability of decision-making.²⁷ The policies derived from that process are not only in accordance with popular interests, but have also attained accountability through a justified decision-making process.

Second, participation might add to the process of empowerment of the people. This means that through participation, people can actually learn by reacting to and assessing development policies. It develops the self-reliance necessary among, for instance, rural people seeking redress for damages or injuries.²⁸ In

particular, empowerment implies people's capacity to claim and exercise their rights effectively.²⁹

The Declaration on the Right to Development suggests two ways of looking at participation. The first approach considers participation as an entitlement initiated by the State. Under article 2 (3), quoted above, States are obliged to design development policies through a process of participation. A second approach to participation emphasizes the perspectives of right holders. Article 8 (2) of the Declaration says: "States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights." Notably, the term "popular participation" implies the necessity of an enabling environment to facilitate initiatives from the right holders themselves.

Articles 2 (3) and 8 (2) emphasize participation as a cross-cutting principle for implementing the right to development, which led Konrad Ginther to characterize this right as a "participatory right".³⁰ Participation has been emphasized both as a means to an end and as an end in itself. In this way, participation may serve as a tool that is "effective in mobilizing human and natural resources and combating inequalities, discrimination, poverty and exclusion".³¹ Yet, the effectiveness of participation has to be assessed subjectively, based on the views of the affected persons.³² In other words, the entitlement of participation allows people to make decisions collectively, actively and with genuine power, to choose representative organizations and to have freedom of democratic action free from interference.³³

This way of looking at participation is useful because, as stated above, poverty reduces individuals' and communities' capacity to exercise their voice and power to take part in development processes. In some circumstances, structures of participation may require top-down initiatives in which the State invites participatory actions during the formulation and execution of development policies. However, such initiatives may not be sufficient to empower the poor.³⁴ By contrast, it

²⁶ Stephen C. Smith, *Ending Global Poverty: A Guide to What Works* (New York, Palgrave Macmillan, 2005), p. 127.

²⁷ Joseph Stiglitz, "Participation and development: perspectives from the comprehensive development paradigm", in *Democracy, Market Economics and Development: An Asian Perspective*, F. Iqbal and Jong-il You, eds. (Washington, D.C., World Bank, 2001), p. 52.

²⁸ U.J. Lele, *The Design of Rural Development: Lessons from Africa* (Baltimore, Johns Hopkins Press, 1975), p. 150.

²⁹ Jakob Kirkemann Hansen and Hans Otto Sanno, "The implications and value added of a rights-based approach", in Andreassen and Marks (see footnote 4), p. 62.

³⁰ Konrad Ginther, "Participation and accountability: two aspects of the internal and international dimension of the right to development", *Third World Legal Studies*, vol. 11 (1992), pp. 55-57.

³¹ "Global Consultation on the Right to Development as a Human Right" (E/CN.4/1990/9/Rev.1), para. 150. See also chapter 3 in this publication.

³² Rajeev Malhotra, "Towards implementing the right to development: a framework for indicators and monitoring methods", in Andreassen and Marks (see footnote 4), p. 258.

³³ E/CN.4/1990/9/Rev.1, para. 147.

³⁴ In this regard, Yash Ghai once explained that "[a] participatory process should avoid the perils of spontaneity and populism. It must address the

is through bottom-up actions, in which rights holders take the initiative themselves, that the loss of voice and power imbalances can be remedied.

Apart from the strong reference to participation, and more specifically to free, active and meaningful participation, in the Declaration on the Right to Development, its value has been reaffirmed by States in other forums. In the early 2000s, the Commission on Human Rights mandated the drafting of guiding principles on extreme poverty and human rights, in an attempt to develop a coherent theoretical framework on the subject. Draft guidelines were submitted to the Human Rights Council at its second session in 2006. Pursuant to Council resolution 12/19, the Independent Expert on the question of human rights and extreme poverty presented a report containing her recommendations for improving the draft guidelines. While elaboration of these principles is an ongoing process, in her report Sepúlveda asserted the importance of participation in the guiding principles and recommended “the creation of specific mechanisms and institutional arrangements through which persons living in extreme poverty can effectively and meaningfully participate in all stages of decision-making processes that affect them ... [and] measures to remove obstacles to participation, such as lack of meaningful and accessible information and opportunity costs, and create enabling conditions for the inclusion of persons living in extreme poverty in participatory processes”. She added that “[t]hese measures should include enhancing the capacity of individuals, community-based organizations, social movements and other non-governmental organizations that give visibility to those in extreme poverty” and emphasized the role of institutional arrangements and mechanisms for effective popular participation (A/HRC/15/41, para. 48).

The full incorporation of the right to development into the structure of the State³⁵ can promote social inclusion and address structural obstacles, such as the centralization or abuse of power, misallocation of resources or lack of democratic processes that lead to marginalization and impoverishment. Such obstacles may occur in the rules and regulations as well as

issue of whether the people are sufficiently prepared, both psychologically and intellectually, to engage in the process; how to solicit views of the public and special and organized groups and how to analyse, assess, balance and incorporate these views. The engagement cannot be ‘one off’ but must be continuous and include fresh opportunities to comment on the draft and meaningful forms of participation afterwards. Transparency and integrity throughout the process are essential to win and sustain people’s trust and confidence and to guard against the dangers of manipulation.” Yash Ghai, “Redesigning the State for ‘right to development’”, in Andreassen and Marks (see footnote 4) p. 185.

³⁵ *Ibid.*, p. 182.

social practices and political procedures that govern not only development processes but also the implementation of human rights. In this respect, incorporating the entitlement to participation in domestic legal orders becomes crucial in order to create a firm legal basis for people to assess their participation in all stages of development, to address the culpability for development harms³⁶ and to seek compensation for lost entitlements, including social exclusion. This legal basis for participation remains necessary since there is still no other well-established *modus operandi* for integrating participatory processes in development.

V. The global environment, poverty and the right to development

While the obligation of States towards their own populations in relation to the right to development is largely accepted, at least in principle, international agreements on trade and market relations also influence how States control domestic resources and how people benefit from development. The intricacies and interconnections of the global economy reflected in international agreements on trade, investment, finance and market relations pose critical challenges for efforts to eradicate persistent poverty. With the increasing transfer of capital and resources in an era of globalization, certain structural obstacles to developing countries’ anti-poverty strategies lie beyond the control of those countries. Furthermore, the causes of and possible solutions to unsustainable foreign debt, the widening gap between rich and poor and the absence of equitable multilateral trade, investment and financial systems implies that it is increasingly impossible to assume that the Governments of developing countries can act in isolation to eradicate poverty.

Scholarly works on the connection between international arrangements in trade and market relations, especially trade liberalization, and inequality and poverty have led to mixed conclusions.³⁷ Global trade negotiations are widely criticized for having failed to incorporate poverty reduction considerations. The insistence of affluent countries on asymmetrical protection of their markets through tariffs, quotas, anti-dumping duties, export credits, as well as subsidies to domestic producers greatly impairs export opportunities for poor countries and regions.

³⁶ Osmani, “Human rights and poverty: building on the capability approach”, p. 336.

³⁷ David Dollar and Aart Kraay, “Trade, growth and poverty”, *The Economic Journal*, vol. 114, Issue 493 (February 2004), p. 493.

To address the workings of the global political economy that increase poverty, the Declaration on the Right to Development includes the general duty of all States to cooperate with each other in ensuring development and eliminating obstacles to development (art. 3 (3)). In article 4 (1) the Declaration proclaims: "States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development." This article reflects the role of the State within the international community to ensure that the external setting is supportive of a human-centred development process. However, it does not specify what steps must be taken by the State in its role as facilitator of an enabling environment for the right to development.³⁸ However, the way in which this role would be exercised touches upon the international context of power relationships and hierarchies and on how these relations affect the poor at the domestic level.

Thomas Pogge's invocation of the "negative moral duty" of the international community to avoid causing harm is pertinent here. In the context of economic, social and cultural rights, the positive duty to rescue people from life-threatening poverty is frequently recognized. However, Pogge notes, a focus on positive duty can deflect attention from more stringent negative duties, in particular, the negative duties not to expose people to life-threatening poverty and to shield them from harm, which demand urgent consideration.³⁹ Crucially, these duties do not lie exclusively at the domestic or international level. Thus, Pogge underscores Governments' responsibility for their populations, but rejects a narrow "explanatory nationalism" that would view domestic choices as sole determinants of countries' trajectories.⁴⁰ An exclusive focus on global political, economic and institutional relationships would likewise be misleading. Pogge considers that global-level failures to meet negative duties make it urgent to recognize the multiple and interconnected levels of poverty eradication. In particular, national solutions to poverty may be futile in the face of grave global inequalities; such inequalities, Pogge argues, stem from global institutional arrangements that impose unjust and avoidable burdens.

Concretely, developing countries are thus called on to design their economic institutions and policies so as to curb severe poverty within their borders. As stated above, not only are such domestic measures diverse and context-specific—one country might maximize open and free markets, while others might emphasize labour-intensive policies or accelerate investments in health care, education and infrastructural development—but they may also have consequences for other countries. Changes in the control and availability of productive land may influence a country's agricultural investments in other countries, with implications for those countries' efforts at poverty eradication.⁴¹ States thus must consider the effects of their policies on other countries and be accountable for the impact of those policies. Since the impact of resource control and benefits distribution transcend national boundaries, States are obliged to contribute to institutional reform aimed at protecting the victims of poverty, through international cooperation based on social justice.⁴² With regard to the obligation not to cause harm, scholarly and policy debates tend to focus on how international arrangements affect the poor, but they should also assess various ways of promoting choices, capability and power through the control of resources and the distribution of benefits as part of the general duty of all States to cooperate in eliminating obstacles to development, as stipulated in the Declaration. The right to development asserts that international cooperation should be conceived and executed through a multilateral process that grants equal access to both developed and developing countries, as well as multilateral agencies and international institutions.⁴³ The issue of political voice has become the central debate in global efforts on poverty reduction from the human rights perspective. However, while scholarly discussion on poverty and human rights advances, politicians and economists continue to be reluctant to move the discussion from economic growth or increase in per capita GDP through technocratic policies to dealing with poverty in a human rights-informed way. For example, promoting human rights through international development cooperation on the basis of resource and benefit control aimed at enhancing people's choices, capacities and power is at times perceived as unwarranted interference in domestic affairs. Critics of international development cooperation often resist raising concerns over what they perceive as non-economic factors in dealing

³⁸ See, for example, James Crawford, *The Rights of Peoples* (Clarendon Press, 1988), p. 159.

³⁹ Thomas Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge, Polity Press, 2008), pp. 23-25.

⁴⁰ Thomas Pogge, "Do Rawls' two theories of justice fit together?", in *Rawls's Law of Peoples: A Realistic Utopia?*, Rex Martin and David A. Reidy, eds. (Oxford, Blackwell Publishing, 2006), pp. 206-226.

⁴¹ Joachim von Braun and Ruth Meinzen-Dick, "'Land grabbing' by foreign investors in developing countries: risks and opportunities", International Food Policy Research Institute, IFPRI Policy Brief 13 (April 2009).

⁴² Pogge, *World Poverty and Human Rights*, p. 26.

⁴³ Sengupta, "The human right to development", in *Andreassen and Marks* (see footnote 4), pp. 43-44.

with development partners. These challenges have contributed to a sustained disconnection between programmes aimed at the eradication of poverty and human rights policies.

Scholarly and political debates have begun searching for alternative structures and mandates in order for the International Monetary Fund, the World Bank and the World Trade Organization to take greater account of human rights.⁴⁴ Both the Fund and the World Bank currently require a poverty reduction strategy paper as a prerequisite for granting loans or financial assistance to States. In a joint review of these poverty reduction strategies the World Bank and IMF affirmed that country-driven approaches with broad-based participation are core principles of their policy.⁴⁵ These approaches strengthen a country's environment for governance and accountability, and are premised on participation contributing to higher-quality strategies. Similar debates are also taking place in official development assistance (ODA) forums such as the Organisation for Economic Co-operation and Development, which conditions aid on respect for human rights standards, transparency, accountability and participatory involvement. Developing countries and civil society have repeatedly criticized the way aid is often used as a neocolonial tool by developed countries, imposing policy conditionalities on developing countries and tying aid to commercial, political and military interests of donors.⁴⁶

In contrast, South-South cooperation is an increasingly influential source of ODA, as countries like Brazil, China, India, Saudi Arabia and the Bolivarian Republic of Venezuela emerge as donors. This form of aid is based on the principles of non-interference in internal affairs, equality among development partners and respect for their independence, national sovereignty, cultural diversity and identity, and local content.⁴⁷ Nonetheless, civil society organizations have also voiced concerns over these "neutral" aid arrangements, after witnessing systematic human rights violations, poor working conditions and non-compliance with environmental safety regulations⁴⁸ with no penalization or withdrawal of aid from donors. Furthermore,

key elements of the right to development also seem to be overlooked, as there is hardly ever any mention of citizens' or even parliamentary participation in steering these initiatives. ODA from the emerging donors has been restricted to the Government-to-Government level, pursued in purely commercial undertakings and with little opportunity for civil society participation.⁴⁹ With the lack of transparency, there is little room for assessing a fair distribution of benefits, and even less for the possibility of constructive participation.

At the international level, the Millennium Development Goals are by and large the internationally agreed goals for global efforts to eradicate poverty. Closely connected to the subject of poverty and the right to development are goals 1 and 8, which respectively aim to eradicate extreme poverty and to develop a global partnership for development. However, the deadline for reaching the Goals is only a few years away, and priorities will need to be revisited. Soon the post-2015 Development Agenda will be redesigned, and the economic focus on poverty is likely to be revised to include a multidimensional perspective to the phenomenon. If this takes place, the elements of popular participation and fair distribution of benefits will certainly become eligible for inclusion as indicators, and development may start to be seen and assessed as a measure of how well States implement the right to development.

Furthermore, using such a holistic assessment tool, it is also imperative to inquire into how national policies support or reject the existing institutional arrangements at the international level to identify different standards imposed by Governments and non-State actors who are benefiting from these arrangements. Reforms of institutional arrangements pertaining to the rules, relationships, values and practices structuring the global economy have a profound impact on global economic distribution, just as those within a State have a profound effect on domestic economic distribution and participation in development policies.

VI. Concluding remarks

Poverty is a complex human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living.⁵⁰ The right to development is a framework

⁴⁴ For a comprehensive analysis on this topic, see Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Oxford, Hart, 2003); or Willem van Genugten, Paul Hunt and Susan Mathews, eds., *World Bank, IMF and Human Rights* (Nijmegen, the Netherlands, Wolf Legal Publishers, 2003).

⁴⁵ World Bank and International Monetary Fund, "2005 review of the PRS approach: balancing accountabilities and scaling up results" (September 2005).

⁴⁶ Reality of Aid, "South-South development cooperation: a challenge to the aid system?", Special Report on South-South Cooperation, 2010, p. 1.

⁴⁷ *Ibid.*, pp. 1-2.

⁴⁸ *Ibid.*, p. 14.

⁴⁹ *Ibid.*, p. 16.

⁵⁰ Committee on Economic, Social and Cultural Rights, "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10), para. 8.

in which such a perspective becomes a human rights concern. It establishes that systemic denials of control over resources and distribution of the benefits of development are human rights violations insofar as they negatively affect the capacity, choices and power of those living in vulnerable and disadvantaged conditions.

The right to development emphasizes the relationship between rights and duties to assess the processes pertaining to development. The connection is made in the entitlement to a fair distribution of benefits. This entitlement implies that non-fulfilment takes place whenever development does not deliver benefits for everyone concerned or, conversely, harms or otherwise negatively affects rights holders. The entitlement to participation adds the requirement that the rights holders be meaningfully engaged in the process of development. The aim is to qualify the development process as a comprehensive effort that combines the fulfilment of basic needs and the advancement of choices and capabilities.

Human rights traditionally regulate the relationship between the State and its citizens. With regard to development processes, one would need another equation. As argued in this chapter, development is

a complex domain with a multiplicity of actors and processes, which should all be addressed in such an equation. The Declaration on the Right to Development is based on the assumption that the dominant actors in the international economy will assume greater responsibility for the damages, imbalances and inequalities that originate from their practices. With its attendant concepts of social inclusion and equity in both the national and global contexts, the right to development draws on established development discourses as well as human rights in order to consolidate its position as a fundamental driver of development policy.

Following the 25-year mark, it is time to consider new sources of institutional support, revitalize the right to development and foster its incorporation into the international economy. A shift in focus onto a fair distribution of benefits and participation as stipulated in the Declaration on the Right to Development could facilitate such incorporation, for example, in the current trade negotiations, which appear to skirt human rights considerations, and in other institutional settings. Such a shift would also have implications for productivity in the international economy and lead to a re-examination of international economic and trade policies in the light of their impacts on social exclusion and the elimination of persistent poverty.

