



QUESTIONNAIRE ON THE IMPLEMENTATION AND REALIZATION OF THE RIGHT TO DEVELOPMENT

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Implementation at the National, Regional and International Level as well as Obstacles towards the Realization of the Right to Development

1. At the International level the 1986 Declaration on the Right to Development marked a watershed moment in a process seeking to integrate civil, cultural, economic, political and social rights and the affirmation of their inextricability. The comprehensive understanding that the Right to Development entails the progressive realization of all civil, cultural, economic, political and social human rights and fundamental freedoms cannot be disputed. The 1993 World Conference on Human Rights held in Vienna also produced the monumental Outcome Document - the Vienna Declaration and Programme of Action. It confirmed the universality, indivisibility, interdependence and inter-relatedness of all human rights and fundamental freedoms. It was at this historic Conference that the member states of the United Nations unanimously recognized and acknowledged the Right to Development as a fundamental human right, as well as a process by which all human rights, whether civil or political, or economic, social and cultural, are progressively realized. Paragraph 5 of the Vienna Declaration and Programme of Action emphasizes that all human rights must be treated in a fair and equal manner, on the same footing, and with the same emphasis.
2. The Right to Development provides an integrated, holistic and cohesive framework for achieving just and equitable development for all, including the attainment of human dignity and equality. It is a guide for development in the areas of development aid, trade liberalization, investment promotion, market access and debt relief and will thus provide States with a better chance of attaining all the international agreed development goals

3. South Africa is guided by the instructive outcome of 14th NAM Summit, held in Cuba in 2006 urging the UN human rights machinery to ensure the operationalisation of the right to development as a priority and through the elaboration of a Convention on the Right to Development.
4. One of the most persistent accountability deficits has been in relation to the commitments to the global partnership for development envisaged under the MDGs. It is widely accepted that a global partnership for development has been unsuccessful thus undermining a fundamental principle of international law and a core purpose of the United Nations system, namely, international cooperation. A strengthened Global Partnership for Development, building on existing commitments, is crucial. These points on accountability should be framed by the principles on the Right to Development, as encapsulated in the Declaration on the Right to Development.
5. At the level of the Working Group on the Right to Development, although, South Africa has supported the work of the Working Group over the years, we are concerned that the current debates on the Working Group have not lead to tangible results. The focus on certain conceptual disjunctures at the expense of the protection of the victims cannot be supported.
6. At the regional level, the African Charter is one of the few hard law guarantees of the Right to Development that currently exist in the realm of international human rights. The Right to Development principles is also a central requirement in NEPAD's continental economic and social renewal and development paradigm.
7. Nationally, the South African constitutional dispensation has emphasized both and has focused on the economic, social and cultural rights to empower all South Africans, including the previously disadvantaged. Furthermore, there is a strong commitment to the justiciability of economic, social and cultural rights on the same par and with the same emphasis as the civil and political rights. The South African Constitutional dispensation and the accompanying adjudications by the Constitutional Court bear testimony to that conviction, which has given international impetus and momentum to the universal acceptance of the notion of justiciability of economic, social and cultural rights. In ensuring the practical realisation of socio-economic rights, the current Administration has prioritised, among others, the creation of descent jobs, access to education and health facilities, rural development and food security.
8. On the achievement on internationally agreed development goals, while acknowledging progress in achieving the MDGs over the past decade, South Africa is cognisant of the gaps and unevenness in achieving these development goals. Although much progress has been made, significant challenges remain, particularly for Africa. While Africa has made significant improvements and aims to foster sustainable transformative growth, the

mixed results recorded warrant intensified development efforts at national level, but also more significantly supported at the international level through collaborative efforts and arrangements based on collective efforts. A strengthened Global Partnership for Development, building on existing commitments, is thus crucial. It is in this context that the realization of the Right to Development can strengthen this Global Partnership to achieve the 2030 Agenda for Sustainable Development.

Policy and Legislative Measures at the National Level

9. To build upon Mr Arjun Sengupta's work, the Right to Development can be viewed as encompassing three main aspects: the right to the means of creating that environment, the right to a process of creating that environment, and the right to the benefits that flow from the creation of such an environment. The Declaration on the Right to Development which incorporates all human rights and recognises that all rights and freedoms are indivisible and interdependent, is therefore critical international instrument to support the attainment of the 2030 Agenda for Sustainable Development and its goals on ending poverty and hunger.
10. South Africa is focusing in this regard on the implementation of the National Development Plan: Vision 2030 which is attune to South Africa's realities and aims to address the triple challenges of poverty, inequality and unemployment, which continue to inhibit the country's development. Through the Government's concerted efforts, more people than ever have access to basic services. Additionally, the country's social protection system plays a crucial role in alleviating poverty and reducing inequality.
11. The plan draws extensively on the notion of capabilities including:
 - Political freedoms and human rights;
 - Social opportunities arising from education, health care, public transport and other public services;
 - Social security and safety nets;
 - An open society, transparency, disclosures and a culture of accountability; and
 - Economic facilities, work, consumption, exchange, investment and production.
12. Alongside hard work and effort, capabilities and the opportunities that flow from development enable individuals to live the lives to which they aspire. A developmental state builds the capabilities of people to improve their own lives, while intervening to correct historical inequalities. Neither government nor the market can develop the necessary capabilities on their own.
13. The New Growth Path policy framework also identifies poverty, unemployment and inequality as the stumbling block to attaining our economic freedom and the restoration of the dignity of those who lost out the most. The New Growth Path sets a target of 5 million jobs to be created by

2020. It identifies key Jobs drivers and sectors that will be supported in order to reach the country's set target. A commitment to real broad-based empowerment also underlies South Africa's efforts to create a more equitable society and to ensure the benefits of transformation accrue to millions of South Africans.

Trade and Investment

14. The Right to Development has been invoked in the Forresti Arbitration Case in which South Africa was sued for changes to its mining legislation. South Africa has the obligation to implement measures that will ensure an equitable share of its natural resources are redistributed to previously disadvantaged South Africans. In this context it was argued that states have permanent sovereignty over its natural resources and can decide how such resources will be allocated to achieve economic development goals. In order to facilitate the structural transformation of its economy, central to the Right to Development, requirements were imposed on all investors, domestic and foreign, to comply with various ownership, participation and redistributive targets on a non-discriminatory basis in favour of previously disadvantaged South Africans.
15. Special and Differential Treatment lies at the heart of the multilateral trading System. International trade agreements recognize the need for developing countries to develop their economies with certain protections in place. South Africa is a founding member of the WTO and has consistently fought for such flexibilities, most recently in the implementation of access to medicines in the context of TRIPS Agreement.
16. In the national context, the State has the obligation to progressively achieve economic, social and cultural rights subject to certain limitations. These rights are usually associated with the vertical relationship between the state and its citizen. There are many cases where such rights have been recognised, including enforcement through various processes. However there is also the constitutional dimension where rights are claimed between individuals on a horizontal basis where the state is not the primary actor. Here the state has a more facilitatory role and must ensure that an appropriate legal framework exists to ensure the achievement of social and economic rights even on that level. In this scenario South Africa has taken steps to implement so-called "compulsory licenses" to be issued for critical medicines. No compulsory licenses have ever been issued by South Africa however the legal means to do so has meant that multinationals have been willing to issue "voluntary licenses" in response to for example the HIV pandemic. The role of the Competition Commission is a good examples where anti-competitive behavior in the pharmaceutical or construction industries have been subject to oversight and rulings by the Competition Commission and Court. Unlawful price discrimination and collusive practices of foreign multinationals have often disturbed the right to social and economic equality for South Africans, government has taken appropriate domestic and multilateral action to ensure that such practices are prevented.

