Development Ethics as Reflected in the Right to Development

Stephen P. Marks

Introduction ........................................................................................................................................... 1

Ethical Grounding of the Declaration on the Right to Development .............................................. 3

Enhancement of people’s well-being ................................................................................................. 4

Equitable sharing in benefits of development ................................................................................ 4

Empowerment to participate freely in development ..................................................................... 5

Environmental sustainability .......................................................................................................... 7

Promotion of human rights ............................................................................................................ 8

Promotion of cultural freedom, consistent with human rights ....................................................... 9

Promotion of integrity over corruption .......................................................................................... 11

Practical Impact of the RTD on Development .............................................................................. 12

References ......................................................................................................................................... 13

Introduction

One of the most salient contradictions of human rights in international development is the fact that there exists a human rights instrument that directly addresses all agreed-upon ethical principles of development, as defined in this handbook (See Chapter 1 above.) and yet implementation of that instrument is mired in “political theatre” and consequently is inoperable. Indeed, the Declaration on the Right to Development (DRTD), which was adopted by UN General Assembly (GA) on 4 December 1986 (UN 1986), addresses directly all seven values analyzed by this handbook and efforts to clarify the meaning of its ten articles through expert inputs provided to the United Nations have been even more explicit on these ethical principles.

The starting point of ethical development is the proposition that there are value-based differences between worthwhile development and undesirable maldevelopment and that worthwhile development cannot be reduced to economic growth. The first Human Development Report (HDR), published in 1990, affirmed, “we are rediscovering the essential truth that people must be at the centre of all development.” (UNDP 1990, iii) Fourteen years earlier, the DRTD affirmed, “The human person is the central subject of development and should be the active participant and beneficiary of the right to development.” (UN 1986, Article 2.1) The text and its subsequent interpretation also address enhancement of well-being, equitable sharing, empowerment, environmental sustainability, human rights, cultural freedom and anti-corruption. It is a complete catalogue of ethical development, defined as a human right itself, and universal in character by virtue of its formal adopted by the highest institution representative of all states.
This chapter examines the ethical underpinnings of the DRTD, the expanding interpretation of its ethical content, and its political and legal significance.

While all the concerns of ethical development are found in the DRTD, the context for its adoption was not directly the result of the emergence of ethical thinking among economists. It was rather a diplomatic move by newly-independent countries, belonging roughly to the Non-Aligned Movement (NAM) to assert their priority concerns in the context of the Cold War and failed efforts to establish a “New International Economic Order (NIEO).” The idea of a human right to development also builds on a number of principles of international cooperation, reaffirmed in UN documents since 1944. Frustrated with the East-West rivalry dominating debates, developing countries supported Senegal’s initiative to have the UN declare development itself a human right. As declarations on NIEO were not affecting real power relations, NAM sought to use its majority in the General Assembly to establish the normative basis and the blueprint for the creation of a more just international economic order. Their intention was to use the human rights framework through the declaration on the right to development to oblige those countries that dominate the international economy to accept greater responsibility for eliminating the causes of poverty, to pay more for raw materials extracted from developing countries, to provide more aid, and to improve the terms of trade in favour of developing countries.

Senegalese Judge Kéba M’Baye was the first to propose, in a lecture he delivered in 1972, that development be defined as a human right. (M’Baye 1972, 503) In 1977, with Senegal as chair, the Commission on Human Rights requested a study on “the international dimensions of the right to development,” (UN 1977) using the expression for the first time as though there were a recognized right to development. Pursuant to that request, the UN secretariat produced in 1979 a 161-page study (Alston 1979 and OHCHR 2013, 7-16) providing the basis for what became the UN Declaration on the Right to Development, adopted eight years later by the UN General Assembly. That study was written by Philip Alston, who went on to chair the Committee on Economic, Social and Cultural Rights, among other mandates for the UN, and to be a prominent human rights professor and scholar. His study covered a wide range of legal and political dimensions of the right and specifically addressed ethical aspects of the right to development, which are worth reproducing in full as they have lost none of their salience nearly forty years later:

Consideration of the ethical aspects of the human right to development raises a variety of issues which were referred to during the relevant debate at the thirty-third session of the Commission on Human Rights in 1977. These range from the relatively pragmatic view that it is in the best interests of all States to promote the universal realization of the right, to the view that there are fundamental philosophical values which can be said to underlie the right to development in its broadest sense. These issues encompass in particular the following arguments:

(a) The fundamental character of development: the promotion of development is a fundamental concern of every human endeavour;

(b) The international duty of solidarity for development: in international relations there exists a duty of solidarity which is solemnly recognized in the Charter;
(c) Morality of interdependence: the increasing interdependence of all peoples underlines the necessity of sharing responsibility for the promotion of development;

(d) Economic interdependence: it is in the economic best interests of all States to promote universal realization of the right to development;

(e) The maintenance of world peace: existing economic and other disparities are inconsistent with the maintenance of world peace and stability;

(f) The moral duty of reparation: the industrialized countries, former colonial powers and some others have a moral duty of reparation to make up for past exploitation.

These are a variety of ethical arguments which may be considered to support the existence, in ethical terms, of a right to development. (OHCHR 2013, 9-10)

The UN study also anticipated the major issues that remain contentious today. Thus, the drafters of the DRTD were presented with ethical aspects, which they considered along with their political and legal preferences. In the context of the Cold War in the late 1970s, the political climate was highly charged with ideological positioning on practically every issue. North American and European delegations to the drafting committee agreed only to accept a general moral (not legal) commitment to human development and rejected the idea of using the right to development to affirm a legal obligation to transfer resources from North to South or to codify any specifics regarding any of the issues contained in the declaration. This tension continues today.

**Ethical Grounding of the Declaration on the Right to Development**

The human right to development was finally proclaimed by the UN General Assembly on 4 December 1986 in the Declaration on the Right to Development, (UN 1986) by a recorded vote of 146 in favour, 1 against (United States) and 8 abstentions (Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom). Being a resolution of the General Assembly, the Declaration does not create any legal obligations, although it has the potential for carrying the weight of moral and political obligations.² It was a compromise document of 16 preambular paragraphs and ten articles setting out a core definition; an enumeration of rights and duties of individuals and states; a commitment to the elimination of massive human rights violations and to international peace and security; a reiteration of the principles of non-discrimination, interrelatedness of rights, and participation; and an enumeration of steps states should take at the national and international levels to realize this right. A considerable body of commentary has appeared in support of the Declaration, mainly in human rights publications, but critical and skeptical views have also emerged in legal and political writings.³ The ethical dimensions are more rarely addressed.

All seven principles of development ethics figure prominently in the normative content of the right to development, as set out in the Declaration and subsequently interpreted by various expert bodies of the United Nations, especially the High-Level Task Force which functioned from 2004 to 2010, In its final proposal of criteria and sub-criteria for the RTD, (UN 2010b, Annex) it provided detailed suggestions for a core norm, three attributes, 18 criteria, 69 sub-criteria and 150 indicators. It is thus in those
references, as well as the text of the DRTD itself, that one may find a high degree of congruence with the seven principles of ethical development. The contribution of the RTD to each principle will be reviewed below.

**Enhancement of people’s well-being**

The dimension of ethical development that seeks to define development as enhancement of people’s well-being correlates directly with the definition of the right to development. Indeed, the second preambular paragraph of the DRTD defines development as “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 the benefits resulting therefrom.” (UN 1986, preamble, emphasis added) Article 2 establishes the right and duty of states “to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals…” (UN 1986, art. 2 (3), emphasis added)

The language of well-being had become fairly common in UN standard-setting in the development field. The term appears in Article 55 of the UN Charter and in numerous development-related documents adopted in the decades preceding the DRTD. For example, Article 8 of the 1969 Declaration on Social Progress and Development defines the “primary role and ultimate responsibility” of States as being to ensure “the social progress and well-being of its people.” (UN 1969, art. 8)

In assessments of the right to development since the adoption of the DRTD, the centrality of well-being has been regularly highlighted. For example, the Independent Expert on the Right to Development, Dr. Arjun K. Sengupta, wrote that “[t]he concept of well-being in this context extends well beyond the conventional notions of economic growth to include the expansion of opportunities and capabilities to enjoy those opportunities, captured in the indicators of social and human development, which in turn expand substantive freedoms.” (Sengupta 2013, 69) He further explains that “The concept of well-being here is broader than the concept of ‘human development,’ as it incorporates social, political and cultural processes into the economic process of realizing rights and freedoms.” (Sengupta 2013, 71)

**Equitable sharing in benefits of development**

“The fair distribution of benefits resulting therefrom” is part of the definition in the DRTD preamble. Article 8 (1) stipulates that States “shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.” Article 2(3) defines appropriate national development policies as those that are that “aim 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 the benefits resulting therefrom.”

Former High-Level Task Force member Raymond Atuguba, in his study for the OHCHR, was very outspoken on fair distribution: “To say that the benefits of development are unfairly distributed is a contradiction in terms. Development, in the
real sense of the word, implies fair distribution of resources in an equitable manner.” (Atuguba 2013, 112)

In her study on poverty in relation to the RTD, Irene I. Hadiprayitno identified fair distribution of the benefits of development as one of “two novel features” of the right to development (the other being popular participation, to be discussed in the next section). (Hadiprayitno 2013, 137). She begins by analyzing what “fair” means in the theory of justice according to John Rawls in terms of both formal equality and distributive justice, (Hadiprayitno 2013, 140) and concludes, “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” [and thus] “underscores the potential of the right to development as a framework of processes for facilitating a fuller realization of other human rights.” (Hadiprayitno 2013, 142)

Beyond the impact on the full range of human rights, “the right to development … 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.” (Hadiprayitno 2013, 142) Finally, she draws attention to the extension of fairness under the RTD to intergenerational fairness, noting that the 1993 Vienna Declaration and Programme of Action call for the RTD to be “fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.” (Hadiprayitno 2013, 141) Such developmental needs include, for example, employment, education, health, nutrition, housing facilities, crime prevention and the well-being of children and thus resources must be allocated in these areas so that the outcomes are share equitably. Hadiprayitno identifies two duties of States regarding fair distribution, “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.” (Hadiprayitno 2013, 142)

The High-Level Task Force addressed equitable distribution in Attribute 3 (“Social justice in development”) and devoted three criteria and nine sub-criteria to this issue. Criterion 3(a) calls on states to “[p]rovide for fair access to and sharing of the benefits of development” and gives content to this criterion through four sub-criteria: 3(a)(i) Equality of opportunity in education, health, housing, employment, and incomes 3(a)(ii) Equality of access to resources and public goods 3(a)(iii) Reducing marginalization of least developed and vulnerable countries 3(a)(iv) Ease of immigration for education, work and revenue transfers

**Empowerment to participate freely in development**

As mentioned in the previous section, popular participation was one of the “two novel features” of the right, reiterated in the preamble (“free and meaningful participation in development”), as well as in Article 1 (“every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development”, and Article 2(3) (“active, free and meaningful participation in development”). In addition, article 8 (2) calls on States to “encourage popular
participation in all spheres as an important factor in development and in the full realization of all human rights.”

Already in 1979, Alston described participation as “a central factor in realization of the right to development” and noted that “[p]opular participation as an integral part of the development process has long been accepted as an ideal at the international level and is increasingly being incorporated into national development strategies.” (Alston 2013, 14) Drawing on numerous older references he concludes that “Participation should be viewed both as a means to an end and as an end in itself. As a prerequisite for realization of the right to development, it is required at all levels ranging from the local through the regional and national to the international.” (Alston 2013, 14)

In 1990 the UN organized a Global Consultation on the Right to Development, which considered participation to be “the right through which all other rights in the Declaration on the Right to Development are exercised and protected,” adding that “the forms, quality, democratic nature and effectiveness of participatory processes, mechanisms and institutions are the central and essential indicators of progress in realizing the right to development [which also] … applies to the equality and democratic character of intergovernmental bodies, including financial and trade institutions.” (OHCHR 2013, 62) The Global Consultation even proposed criteria for participation, including “the representativeness and accountability of decision-making bodies, the decentralization of decision-making, public access to information and responsiveness of decision makers to public opinion…[as well as] from a subjective perspective based on the opinions and attitudes of the people affected—in other words, their confidence in leaders, feeling of empowerment and belief that they are affecting decisions.” (OHCHR 2013, 62)

The High-Level Task Force included “a national and global enabling environment conducive to … participatory … development” as part of the core norm. Further, one of the three attributes of the RTD is on “Participatory human rights processes” (Attribute 2), with a criterion 2 (c) on “Establishment of a framework to facilitate participation” and two associated sub-criteria: 2(c)(ii) “establishment of a framework to facilitate participation” and 2(c)(iii) “Procedures facilitating participation in social and economic decision-making.” Under criterion 2(d) (“Promote good governance at the international level and effective participation of all countries in international decision-making”) is a sub-criterion 2(d)(ii) on “Genuine participation of all concerned in international consultation and decision-making.” All of these sub-criteria have associated indicators.

Flávia Piovesan, a former member of the High-Level Task Force, wrote a study for the OHCHR on “Active, free and meaningful participation in development,” in which she explained that the DRTD “is the only international instrument that makes the nature of participation in development so explicit, emphasizing that States should encourage, promote and ensure free, meaningful and active participation of all individuals and groups in the design, implementation and monitoring of development policies.” (Piovesan 2013, 105) She further clarifies “active” as meaning that “[p]eople should be active participants in development and implementing developing projects rather than treated as passive beneficiaries;” and “meaningful” and “effective” as reflecting “the people’s ability to voice their opinions in institutions that enable the
exercise of power [with] material capacities and the material conditions on which meaningful political participation depends.” (Piovasan 2013, 106-106)

The High-Level Task Force drew on the OECD and the World Bank indicators for measuring empowerment, which take human rights into account. (UN 2010a, para. 18) It assessed several international programs from the perspective of their contribution to empowerment and participation. (UN 2010a, paras. 46, 48, 49, and 59)

Hadiprayitno, in her paper on poverty for the OHCHR publication, noted that “Meaningful participation and empowerment are reflected by the people’s ability to voice their opinions, recognizing the citizenry as the origin of and the justification for public authority” and enumerated several procedural and substantive “forms by which populations can participate in development through mechanisms such as public consultation, information and decision-making with special consideration given to the participation of vulnerable groups, in particular taking the gender, race and ethnicity perspectives, giving voice to the deprived and the vulnerable.” (OHCHR 2013, 105)

**Environmental sustainability**

Although the DRTD was drafted fourteen years after the 1972 Stockholm Declaration, which enunciated as Principle I that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations,” (UN, 1973, 4) the DRTD contains no explicit concern over the environment or climate change. The issue was mentioned occasionally but did not figure prominently in the work of the various bodies dealing with RTD. For example, in 1989, the open-ended Working Group of Governmental Experts on the Right to Development, created in 1981, was told by its chair Alioune Sène that “the deterioration of the environment and the ecological balance,” was among the “other threats” (along with many development and peace issues) that should be considered but this concern was not expressed in the working group’s own deliberations, conclusions or recommendations. (UN 1989, Annex II, 13)

By the time the High-Level Task Force began its work, there was no doubt that global climate issues would be an integral part of its work. In its examination of the Paris Declaration on Aid Effectiveness, the Task Force welcomed the provisions on environmental sustainability in the Accra Agenda for Action and the Busan Partnership for Effective Development Cooperation. (OHCHR 2013, 473).

It also commissioned a study by Marcos Orellana on “Climate change, sustainable development and the clean development mechanism,” in which the author proposed to “look into the future and identify a role for the right to development in addressing the climate change crisis.” (OHCHR 2013, 321) After examining the relationship between climate change and the Millennium Development Goals, the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, and the Clean Development Mechanism (CDM), he discusses how the right to development can effectively address the climate change crisis and specifically urged that the attributes of the RTD adequately reflect the need for a non-carbon, sustainable development path in a climate-constrained world. He concludes that the RTD “is central to effectively addressing the climate change crisis,” and specifically to “help unlock
In its final report, the Task Force introduced sustainable development into Attribute 1 (“Comprehensive and human-centred development policy “) and its criterion 1(g) (“Promote and ensure access to benefits of science and technology”) through a sub-criterion 1(g)(v) on “Green energy technology.” The principal focus on sustainable development was in criterion 1(h) (“Promote and ensure environmental sustainability and sustainable use of natural resources”), with these three relevant sub-criteria:

1(h)(i) Prevent environmental degradation and resource depletion
1(h)(ii) Access to natural resources
1(h)(iii) Sustainable energy policies and practices

Under Attribute 3 (“Social justice in development”) the Task Force included criterion 3(b) (“Provide for fair sharing of the burdens of development”) and focused on climate change in sub-criterion 3(b)(i) (“Equitably sharing environmental burdens of development”) and specifically through indicators on “availability of climate change funds for developing countries, multilateral agreements to reduce negative environmental impacts, and distribution of contribution to climate change.”

Promotion of human rights

It is to be expected that a norm emerging from the UN’s human rights institutions would build in promotion of human rights. Indeed, already the preamble to the DRTD reiterates “that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.” The promotion of human rights in the context of the RTD is further articulated in Article 1 of the DRTD, which qualifies the development to which all have a right as being “development, in which all human rights and fundamental freedoms can be fully realized.” The DRTD further clarifies, in Article 9(2), that “Nothing in the present Declaration shall be construed as … implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.” Thus, a country that invokes its development needs, presumably in pursuit of the objectives of the DRTD, to weaken its human rights promotion and protection would be in violation of the DRTD. Since the RTD emerged out of concern for the socio-economic conditions of low income counties, one might assume that the reference to “violation of the rights” in the UDHR and the Covenants was aimed at economic, social and cultural rights. However, Article 6 lays this matter to rest by recalling that
human rights “are indivisible and interdependent” and that “equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.” The final paragraph of Article 6 eliminates all ambiguity regarding respect for civil and political rights in the RTD context: “States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.”

The proposition that development policies and practices to which all have a right must be human rights compliant is, however, a matter of some controversy. Most developing countries acknowledge that the RTD calls for human rights to be part of the development process but bristle at the interpretation of the RTD as a pretext for human rights conditionality on aid or trade or as a basis for questioning internal policies and practices. An official statement of the Non-Aligned Movement (NAM) expressed this concern by arguing that the RTD is not about a “human rights-based approach to development” but rather “requires a development approach to human rights.” (UN 2009) The statement has merit as long as a development approach to human rights does not imply a sequential relation between development and human rights, such that human rights are a luxury that come after a certain level of development is achieved. This interpretation would be contrary to development ethics and, as explained above, to the clear wording of the DRTD itself.

The Task Force was attentive to this potential misinterpretation and included in the core norm that the right to development aims at “development respectful of all human rights.” In Attribute 2, on participatory human rights processes, the first criterion (2(a)) is to “Establish legal framework supportive of sustainable human-centred development,” by which is meant, as the three related sub-criteria specify, ratification of relevant human rights treaties, responding to international human rights monitoring and review procedures, and providing national legal protection of human rights. Similarly, criterion 2(b) calls for states to “Draw on relevant international human rights instruments in elaborating development strategies” by which is meant applying a human rights-based approach in national development strategies and in the policies of bilateral and multilateral institutions and agencies. Criterion 2(c), which relates to non-discrimination, access to information, participation, and effective remedies, also draws on the application of human rights by calling for remedies for violations of human rights, facilitate participation through respect for freedom of assembly and association, freedom of speech, and accountability of duty bearers. Other sub-criteria call for non-discrimination through constitutional or legal protections specifically for women and equal rights for citizens regardless of race or ethnicity, as well as vulnerable groups.

Promotion of cultural freedom, consistent with human rights

Of the seven principles of ethical development, promotion of cultural freedom received the least attention in the elaboration of the RTD. Nevertheless, it appears in Article 1 (1) of the DRTD, which defines the right as including “economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (emphasis added).” The references to all human rights and to the ICESCR incorporate by reference the four rights relating to culture in Article 15 of the ICESCR (participation in cultural life, intellectual property rights from artistic or literary
production, intellectual freedom for creative activity, and international cooperation in the cultural field).

Cultural development is not the same as cultural freedom. Denis Goulet, in defining development ethics, noted “development means, ultimately, the quality of life and the progress of diverse societies towards enhancement values expressed in their cultures.” (Goulet 1997, 1168) His approach suggests a protective function of development ethics regarding culture: “the task of development ethics is to assure that the painful changes launched under the banner of development do not result in antidevelopment, which destroys cultures.” (Goulet 1997, 1169) He also notes that “development means, ultimately, the quality of life and the progress of diverse societies towards enhancement values expressed in their cultures.” (Goulet 1997, 1168) Cultural freedom is the only principle of development ethics that is qualified by being “consistent with human rights.” The purpose of this qualification is to avoid an interpretation of the concept that would justify practices consistent with local traditional practices but that run counter to universally accepted human rights, such as various form of corruption, honor killing or female genital mutilation. The RTD, being imbedded in a framework of promotion and protection of human rights, is explicit in requiring, as the previous section demonstrated, that it never be used as a pretext for violating human rights.

There are also occasional specific concerns with cultural values in the RTD. The 1990 Global Consultation pointed out that “[p]revailing models of development have been dominated by financial rather than human considerations. These models largely ignore the social, cultural and political aspects of human rights and human development, limiting the human dimension to questions of productivity.” (OHCHR 2013, 60) Specifically, “all cultures and peoples form part of the common heritage of humankind and have a dignity and value that must be respected. Both environmental and cultural considerations should therefore be an integral part of national, regional and international development strategies.” (OHCHR 2013, 60) The Global Consultation considered that participation was “the primary mechanism for identifying appropriate goals and criteria for the realization of the right to development and assuring the compatibility of development activities with basic human and cultural values.” (OHCHR 2013, 62) Interestingly, the 1990 Global Consultation included “intellectual and cultural needs” among the issues that must be addressed in the criteria for measuring progress in the realization of the right to development. (OHCHR 2013, 62) The cultural dimension was also linked to participation: “Participation is also the primary mechanism for identifying appropriate goals and criteria for the realization of the right to development and assuring the compatibility of development activities with basic human and cultural values.” In its recommendations for action to the UN system, the Global Consultation called for a program of assistance for each country that would meet “specific requirements regarding all aspects of the right to development in an appropriate environmental and cultural framework.” (UN 1990 in OHCHR 2013, 64)

In her report for the Global Consultation, Tamara Kunanayakam drew on several UN studies on self-determination to bring out the cultural dimension of development. For example, in a 1980 study for the UN, Héctor Gros Espiell wrote: “Every people ... has the right to determine and establish the cultural regime or system under which it is to live; this implies recognition of its right to regain, enjoy and enrich its cultural heritage, and the affirmation of the right of all its members to education and culture.”(OHCHR 2013, 41, citing Gros Espiell 1980, para. 158) She adds, still quoting
from Gros Espiell, "[t]he cultural aspects are essential for effective participation ‘in order that a people may be aware of its rights and consequently be fully capable of fighting for their recognition and implementation.’” (OHCHR 2013, 41, citing Gros Espiell 1980, para. 160)

Cultural freedom is particularly important for indigenous peoples. Former Task Force member Nicolaas Schrijver contributed a paper on “Self-determination of peoples and sovereignty over natural wealth and resources,” in which he noted that “[u]nder international human rights law, the rights of indigenous peoples with regard to their traditional lands and the natural resources are inextricably linked to the right to enjoy their culture and to preserve their identity and natural environment.” (Schrijver 2013, 99) Another paper for the Task Force by Koen De Feyter on indigenous peoples notes that the DRTD does not mention indigenous peoples and “[n]owhere is the need for a specific indigenous peoples’ development plan acknowledged.” (De Feyter 2013, 161) However, the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007 (resolution 61/295), includes, according to De Feyter, “a right to development that is specific to indigenous peoples and recognizes their distinctness as peoples with their own histories, territories and beliefs, as well as their notions of poverty, well-being and development.” (De Feyter 2013, 163) He notes that “[t]he indigenous right to development appears in the Declaration as a purely collective right, held by indigenous peoples only” and that “indigenous peoples have a right to say no to a project that is based on a concept of development that the group does not share.” (De Feyter 2013, 163) He concludes that “Indigenous rights have evolved to the extent that the concept of ‘people’ in the Declaration on the Right to Development is to be understood today as including indigenous peoples.” (De Feyter 2013, 168) Therefore, their cultural freedom is also integral to the right to development.

A final source of reflection on cultural freedom and the RTD is the paper by Susan Randolph and Maria Green on “Theory into practice: a new framework and proposed assessment criteria.” The authors observe that “Cultural preferences also shape development objectives, reflecting heterogeneous values, and preferences are also endogenous and so can change over time.” Applied to the task of RTD indicators, they conclude that a “balance needs to be struck between universally relevant indicators and contextually or culturally specific indicators, especially when it comes to monitoring implementation of the right to development with regard to States acting individually with regard to domestic development (the individual-internal component of the right to development).” (Randolph and Green 2013, 414)

In sum, while cultural freedom is not explicitly integrated into the DRTD as such, it is implied in the concepts of cultural development and cultural rights which do appear, and of cultural values, cultural heritage, and cultural dimensions, which are part of the interpretation of the RTD.

Promotion of integrity over corruption

The principles of transparency and accountability have been constantly reiterated by the various working groups and independent experts on the RTD and were incorporated by the High-Level Task Force into its core norm and criteria. In enumerating obstacles to the implementation of the RTD, the Global Consultation of 1990 clearly stated
“Corruption is also an obstacle to the realization of the right to development.” (UN 1990 in OHCHR 2013, 61) The Independent Expert argued that “respecting the principles of… accountability and transparency” was essential to realizing the RTD. (Sengupta 2013, 79) In proposing “Elements for a programme to implement the right to development”, he specified “[t]he exercise of implementing the overall plan and realizing individual rights must be carried out according to the human rights standards, that is, with transparency, accountability” (Sengupta 2013, 85).

Promotion of integrity over corruption was a salient feature of the work of the High-Level Task Force. In its 2005 report, it stressed “the importance of implementing a vigorous anti-corruption programme that eliminates misuse of aid and ensures that it meets its human development objectives.” (UN 2005, para. 58(c)) The attribute relating to the process of development (Attribute 2: Participatory Human rights processes) contains three criteria relevant to promotion of integrity over corruption: Criterion 2(c) “Ensure non-discrimination, access to information, participation, and effective remedies” includes sub-criterion 2(c)(vii) on “Mechanisms for transparency and accountability;” Criterion 2(d) “Promote good governance at the international level and effective participation of all countries in international decision-making” contains sub-criteria on aid recipients’ voice in aid programming and evaluation as well as in international decision-making; finally, criterion 2(e) “Promote good governance and respect for rule of law at the national level” contains three sub-criteria on government effectiveness, control of corruption, and rule of law (2(e)(i), (ii) and (iii)), with relevant indicators.

As recently as 2016, the President of the OWEWG argued that the RTD “requires a comprehensive and inclusive approach based on good, responsible governance” and thus “an environment that promotes the rule of law at the national and international levels; equal access to justice; reduction of corruption; accountable and transparent institutions; and inclusive, participatory and representative decision-making at all levels.” (UN 2016, paras. 30 and 32) Thus the concern over the anti-corruption principle of development ethics continues to occupy the attention of the UN body responsible for moving the RTD to the next stage. However, as the next section explains, the prospects for moving from the conceptualization of the RTD to its practical implementation seem dim.

**Practical Impact of the RTD on Development**

Beyond the power of an abstract concept of an international (moral or legal) obligation to pursue development that is comprehensive, human-centred and respectful of human rights, which is the essence of the right to development and of development ethics, the principal players in national and global development lack the incentives and political will to take this right seriously. While it is a sign of their value that all seven principles of development ethics have been incorporated into official RTD documents, it is disappointing that the ideas articulated in the 1979 UN secretariat paper, the 1990 Global Consultation, the early 2000s reporting by the Independent Expert and the detailed Task Force proposals of 2010 have not inspired action. In spite of the Task Force urging the Working Group to consider applying the criteria through context-specific reporting templates and to collect evidence of the difference, if any, of pro-right to development actions, (UN 2010c, para. 73) there is very little to show for nearly 40 years of effort. Since the consolidated findings of the Task Force, the Working
Group has collected comments and views by Governments, groups of Governments and regional groups, as well as by others (UN 2012a) and the Human Rights Council has called for the OEWG to “further consider, revise and refine the draft criteria and operational sub-criteria” (UN 2012b, para. 8) and “once considered, revised and endorsed by the Working Group,” they “should be used, as appropriate, in the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development.” (UN 2012b, para. 9(b)) In 2016 the Chair-Rapporteur of the OEWG, Zamir Akram from Pakistan, submitted, at the request of OEWG, a set of four “standards for the implementation of the right to development.” While acknowledging that the report of the Task Force was “also relevant” to the preparation of standards, Ambassador Akram utilized a different methodology from the policy-process-outcome employed by the Task Force. His standards relate to 1) political will, (UN 2016a, para. 28) 2) States cooperation “to create the political, economic and social environment necessary to allow the implementation of the right to development,” (UN 2016a, para. 29) 3) focus on the individual and national level “comprehensive and inclusive approach based on good, responsible governance,” (UN 2016a, para. 30) and 4) “the most basic or core human needs …: poverty, the right to food, water and sanitation, health, education, housing and gender equality.” (UN 2016a, para. 37) While these “standards” reflect some concepts of development ethics, they fall short of a systematic effort to provide guidance for the practice of the RTD as an intergovernmental commitment to shift from growth-based development to one reflective of development ethics.

The political posturing continues. In 2016, the Human Rights Council instructed the Working Group to “finalize consideration of the criteria and operational subcriteria, preferably no later than the nineteenth session of the Working Group [2018],” and appointed a Special Rapporteur on the right to development. (UN 2016b, paras. 13 and 14) The General Assembly endorsed that decision by a vote of 146 in favor to 3 against, with 39 abstentions. (UN 2016c, paras. 6, 7 and 16) The call to the Working Group was reiterated in the 2017 Human Rights Council resolution. (UN 2017a, para. 17(c)) The fact that it was sponsored by Angola, China, Egypt, Eritrea, and Venezuela and was adopted by 31 to 11, with 4 abstentions is indicative of the lack of progress in accepting the RTD as a shared standard of development ethics.

It is unclear whether the appointment of the Special Rapporteur, who submitted his first report in 2017 (UN 2017b), the standards drafted by the chair-rapporteur, and the instructions to the OEWG to finalize its work will advance the effort since 2010 to move the right to development from political rhetoric to development practice. Should the political will be found to transform the core norm, attributes and criteria into a set of guidelines or framework instrument, it will enshrine all seven principles of development ethics into an internationally recognized human right.

References

Alston P. [“Report of the Secretary-General”] (1979) The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirement of the New International Economic Order and the fundamental human
needs: report of the Secretary-General, UN Doc E.CN.4/1334, 2 January 1979. This report is summarized in “The emergence of the right to development” in OHCHR (2013) 7-16.


UN (2005) *Report of the high-level task force on the implementation of the right to development on its second meeting*, UN Doc. E/CN.4/2005/WG.18/TF/3, 8 December 2005,

UN (2010a). High-level task force on the implementation of the right to development, *Consolidation of findings of the high-level task force on the implementation of the right to development*, UN doc. A/HRC/15/WG.2/TF/2/Add.1, 25 March 2010; in OHCHR, 2013, 469-484.

UN (2010b) High-level task force on the implementation of the right to development. *The right to development criteria and operational sub-criteria*, UN Doc., A/HRC/1.5/WG.2/TF/2.Add.2, 2 February 2010.

UN (2010c) *Report of the high-level task force on the implementation of the right to development on its sixth session (Geneva, 14–22 January 2010)*, UN Doc. A/HRC/15/WG.2/TF/2, 4 February 2010.

UN (2012a) Working Group of Governmental Experts on the Right to Development, Comments and views submitted during the session by Governments, groups of Governments and regional groups, as well as by other relevant stakeholders UN Doc. A/HRC/WG.2/13/CRP.1 and 2.


---

1 The documents supporting these principles are reviewed in “Annotations to the Declaration on the Right to Development and related United Nations System Instruments, Resolutions and Reports,” [Background paper to Global Consultation of 1990] UN Doc. HR/RD/1990/CONF.1, summarized in Tamara Kunanayakam The Declaration on the Right to Development in the context of United Nations standard-

2 On the nature of the obligations contained in the Declaration, see Marks (2010) 73-100.

3 Illustrative of this controversy is the exchange of views in Donnelly (1984); Donnelly (1985a); Alston (1985); Donnelly (1985b); Shelton (1985). See also Marks (2004) 137-168.

4 For the discussion of this report by the OEWG, see UN (2010c), paras. 35-47.