

The Right to Development

**A Review of the Current State of the Debate for the
Department for International Development**

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The content of this report is my own responsibility, and the views expressed in it do not represent official UK policy. Comments are welcome and should be sent to: lh.piron@odi.org.uk

Acronyms

ACP	African, Caribbean and Pacific countries
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPR	Civil and Political Rights
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	International Convention on the Rights of the Child
CHR	(UN) Commission on Human Rights
CESCR	(UN) Committee on Economic, Social and Cultural Rights
CCA	(UN) Common Country Assessment
DFID	(UK) Department for International Development
DRTD	Declaration on the Right to Development
ESCR	Economic, Social and Cultural Rights
EU	European Union
FCO	(UK) Foreign and Commonwealth Office
GA	(UN) General Assembly
GoR	Government of Rwanda
HIPC	Heavily Indebted Poor Country (Initiative)
IE	(UN) Independent Expert (on the Right to Development)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDTs	International Development Targets
IFIs	International Financial Organizations
ILO	International Labour Organization
IMF	International Monetary Fund
LDCs	Least Developed Countries
MoU	Memorandum of Understanding
NIEO	New International Economic Order
NEPAD	New Partnership for Africa's Development
NAM	Non Aligned Movement
NGO	Non Governmental Organisation
MDGs	Millennium Development Goals
OHCHR	Office of the (UN) High Commissioner for Human Rights
OEWG	Open-Ended Working Group on the Right to Development
OAU	Organisation of African Unity (now African Union)
OECD	Organisation for Economic Co-operation and Development
OECD DAC	OECD Development Assistance Committee
ODA	Overseas Development Assistance
PRGF	Poverty Reduction and Growth Facility
PRSP	Poverty Reduction Strategy Papers
RTD	The Right to Development
UK	United Kingdom
UN	United Nations
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
US	United States (of America)
VDPA	Vienna Declaration and Programme of Action
WB	World Bank
WTO	World Trade Organization

Executive Summary

The objective of this report is to assess the relevance of the Right to Development for development policy and practice, and to make practical recommendations to the UK Department for International Development (DFID).

The Right to Development is a relatively new human rights concept. Its content, nature and status are still contested by academic scholars, and the inter-governmental process aiming to reach a political consensus on its meaning and practical interpretation is highly politicised. This report defines it as containing the following core elements:

- (i) The human person is at the centre of development;
- (ii) The process of development should be respectful of all human rights. Development should in particular respect the rights of participation;
- (iii) Development should promote social justice; and
- (iv) States have the primary responsibility for realising the Right to Development at the national level, but also through appropriate international policies and international co-operation.

In past years, the Right to Development was interpreted by some as creating an international legal obligation on the part of developed countries to provide development assistance to developing countries. Such a legally binding obligation is rejected by developed countries, and is not supported by an analysis of the status of the Right to Development under international law.

Though the Right to Development is an academically and politically contested concept, the debates surrounding its interpretation can shed some new light on international development policy and practice. This report argues that the new “partnership approach” to development (one based on shared responsibilities and mutual commitments between developed and developing countries and international organisations) is fairly consistent with a contemporary interpretation of the Right to Development. However, such a partnership approach does not place human rights at the centre of the development process, and does not consider development as a human right.

This report makes a case for DFID, and other development agencies, to take the Right to Development debate seriously. This is not because the Right to Development is, in and of itself, a useful concept that should, for example, replace the internationally agreed objective of eradicating world poverty. The justification is more pragmatic, and is grounded on the importance of the United Nations as a key pillar of peaceful international relations, and for the promotion and protection of human rights.

At the practical level, there appears to be a gap between the United Nations human rights standard-setting processes and current development thinking. Decisions reached in United Nations arenas can be important, such as the 1990s series of World Conferences, and new human rights norms and commitments can influence international development policies. Development agencies should therefore be more involved in the United Nations human rights debates as they

relate to international development policies and approaches. They should make sure that human rights discussions take into account the consensus reached in development arenas, and should also identify ways in which human rights debates can inform development policy and practice. This is especially important for agencies promoting rights-based approaches.

At the theoretical level, some of the discussions around the Right to Development may shed some innovative light on emerging issues in both the development and human rights policy arenas. These include:

- (i) The nature of “mutual commitments and shared responsibilities” in a partnership approach to development, and in particular how to monitor the implementation of these commitments by all parties, and what are appropriate and effective accountability and enforcement mechanisms;
- (ii) The practical impact of human rights-based approaches to development, including distinguishing between human rights as an inspirational force and their function in facilitating the use of legal norms, and judicial, administrative or political enforcement mechanisms;
- (iii) The impact of globalisation on the realisation of human rights and the responsibilities of non-state actors, including international agencies; and
- (iv) How to enhance the accountability of governments and donors to the beneficiaries of development assistance.

The main practical conclusions reached by this report are that:

1. Efforts should be made to reduce the gap between development meetings and United Nations human rights mechanisms that relate to development and international assistance. It may be possible to improve the quality and relevance of Right to Development discussions so that they inform other processes.
2. Efforts should also be made to ensure greater consistency within the United Nations system so that human rights procedures (including the Right to Development mechanisms) and agencies developing policies on human rights, development and related issues work together. This would enhance the contribution of the United Nations human rights system to mainstream development policy and practice.
3. Governments need to reach a clear position on the proposal made by the United Nations Independent Expert on the Right to Development for a “development compact” which would help operationalise the Right to Development. It may be that the “compact” should be seen as a theoretical model which could help existing approaches better integrate human rights commitments and reflect the “reciprocal obligations” of developed and developing countries.
4. Developing countries governments need to be involved in discussions concerning rights-based approaches to development assistance. The Right to Development inter-governmental debate does not create such an opportunity as it is too politicised. But it would be important to hear from developing countries officials how they see their national development strategies as contributing to the realisation of human rights, and how this relates to the Right to Development.

1. Introduction

The United Nations (UN) have played a fundamental role in bringing human rights to the fore of international and national policy and practice. By adhering to the UN Charter, states parties recognised that human rights are a subject of international, and not just domestic, concern. As a result, since the Second World War, an international human rights framework has been developed, providing the UN with the legal authority to codify human rights, to create mechanisms to clarify the nature of states obligations and to monitor their fulfilment.

The UN is also a leading institution in the domain of development policy and practice. Its legitimacy in the eyes of developing countries derives from the fact that (apart from the Security Council), they are given equal representation, and can press for reforms of the international system. Other international development institutions, which may be more respected by developed countries, do not offer the same equal opportunities for the creation of a consensus on the ordering of international relations, including development policy and practice.

Bringing human rights and development concerns together is a fairly recent phenomenon. It is only in 1997 that the UN Secretary General pledged to “renew the United Nations” and to “mainstream” human rights throughout its activities, including development. The growing acceptance of the relevance of human rights-based approaches to development not only “empowers” the beneficiaries of development, by purporting to make them the active participants of the development process, and by giving greater legitimacy and moral force to their demands. It also fundamentally requires greater accountability from all actors in the development process: through legal, administrative, or political mechanisms, individuals, as right-holders, can make claims on the conduct of individual and collective agents, including states, which, as duty-holders, can be held responsible for not meeting their obligations.

The Right to Development (RTD) is a relatively new addition to the international human rights framework. It was first proclaimed by the Organisation of African Unity (OAU) and included in 1981 in the African Charter on Human and Peoples’ Rights. In 1986, the UN Declaration on the Right to Development (DRTD) was adopted. The RTD was later reaffirmed in the 1993 Vienna and 2000 Millennium Declarations. This report defines it as containing the following core elements:

- (i) The human person is at the centre of development;
- (ii) The process of development should be respectful of all human rights. Development should in particular respect the rights of participation;
- (iii) Development should promote social justice; and
- (iv) States have the primary responsibility for realising the Right to Development at the national level, but also through appropriate international policies and international co-operation.

The DRTD is not a clear document, and the RTD remains a controversial concept. The above is only an interpretation of its less contested elements. The academic and inter-governmental processes have so far failed to agree a meaning around which consensus could be built, and which would allow

development practitioners to focus on the implementation of the right in development policy and practice.

The debates surrounding the RTD are concentrated in the UN human rights arena, and remain highly politicised between Northern and Southern governments. In particular, agreements reached in the various development fora are not always replicated at the Commission on Human Rights. The Independent Expert on the Right to Development has made positive contributions to the debate. His proposal for a “development compact” needs to be given serious consideration as it may lead to a politically acceptable solution. The “compact” may need to be further defined in a manner consistent with current best practice, or presented as a theoretical framework to guide real partnership agreements.

The most controversial element of the RTD lies in the international implementation of the right. In the past it was seen by some as giving rise to an obligation of developed states and international organisations to provide development assistance to developing states. However such a human rights obligation of a legally binding nature cannot be grounded in international law. The current controversy surrounds the process of globalisation, the equal participation of developing countries in that process, and its relation to human rights.

This report makes a case for DFID and other development agencies to take the RTD seriously. This is not because it is, in and of itself, a useful concept which should, for example, replace the internationally agreed objective of eradicating world poverty. However, two other reasons can be put forward. At the practical level, the UN standard setting process does not reflect current development thinking. Development agencies should be involved in this international policy making process, which may have real practical consequences for them. At the theoretical level, the debates surrounding the RTD may shed some innovative light on emerging issues, such as on: (i) the nature of “mutual commitments and shared responsibilities”; (ii) rights-based approaches; (iii) globalisation; and (iv) the accountability of governments and donors in the development process.

This report is based on a review of academic articles, UN documents, international policy statements, and interviews with selected individuals from Northern and Southern governments, international organisations, and civil society, including academics and faith-based groups.

The report has the following structure. Section 2 presents the RTD concept based on a close reading of the DRTD, and an interpretation of the legal debates. Section 3 presents the political debate surrounding the RTD, and a mapping of the positions of the main players. Section 4 compares the RTD debate and the current development consensus, and shows how a more active involvement by development agencies could make a positive contribution. Section 5 compares current DFID policy to the RTD. Finally, section 6 draws practical conclusions. The Declaration on the Right to Development can be found at Annex I. Some more detailed research or technical points are presented in Annexes II - V. References and the list of persons consulted can be found at Annexes VI-VIII.

2. The Right to Development: A Controversial Concept

The Right to Development remains to this day a controversial concept. This section provides an overview of academic and legal debates. First, the historical origin of the concept is presented. An interpretation of the main elements of the Right to Development is then put forward. The section concludes with a summary of the debates on its nature and status under international law.

2.1 Historical background¹

The Right to Development (RTD) was first proposed by a Senegalese jurist, Keba M'baye, in 1972. It was first given legal recognition in the 1981 African Charter on Human and Peoples' Rights, and was later incorporated into the global human rights framework through the adoption in 1986 of the Declaration on the Right to Development by the United Nations General Assembly.² The 1993 Vienna Declaration and Programme of Action³, the 2000 Millennium Declaration⁴, and most recently, the Durban Declaration and Programme of Action⁵ reaffirmed the RTD as a universal and inalienable human right.

The origin of the concept must be set in the ideological debates of the 1960s and 70s. The Non Aligned Movement (NAM) campaigned for the creation of a more just international economic order (the New International Economic Order which is explicitly mentioned in the 1986 Declaration). NAM countries declared development to be a human right and used United Nations mechanisms to try to influence international economic relations and the international human rights system. In addition, the debate was also marked by the consequence of the Cold War, which reinforced the distinction between on the one hand civil and political rights, and on the other, social and economic rights.

Several mechanisms have been established by the United Nations Commission on Human Rights to reach a consensus on the RTD. There is currently an Open-Ended Working Group (which met in Geneva on 25 February - 8 March 2002) with a mandate to monitor and review progress, and an Independent Expert preparing studies on the current state of the implementation of the right.⁶

The following sections attempt to present the legal debates surrounding the content, nature and status of the RTD. However, as will be shown in section 3,

¹ See Annex II for a chronology of the progression of the RTD in United Nations instruments.

² The US voted against the Declaration; 8 other states, including the UK, abstained.

³ The Vienna Declaration and Programme of Action reaffirms "the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights." Para.10.

⁴ The Millennium Declaration states: "We are committed to making the right to development a reality for everyone and to freeing the entire human race from want." Para. 11.

⁵ The Durban Declaration recalls the commitment of the Millennium Declaration "to make the right to development a reality for everyone" (Para.19) and affirms "the solemn commitment of all states to promote universal respect for, and observance and protection of, all human rights, economic, social, cultural, civil and political, including the right to development, as a fundamental factor in the prevention and elimination of racism, racial discrimination, xenophobia and related intolerance." Para. 78.

⁶ The Open-Ended Working Group and the Independent Expert were established pursuant to Commission on Human Rights Resolution 1998/72.

the debates at the Commission on Human Rights continue to remain highly politicised, following a North-South divide reminiscent of the 1970s.

2.2 Specifying the content of the RTD

The Declaration on the Right to Development (DRTD) is not a very clear document, and as a result, the content of the RTD has been the subject of many interpretations. The following components seem to constitute the core content of the right. Most provisions are consistent with current development thinking.

Comprehensive development The DRTD places the human person at the centre of development. Development is not defined solely in terms of economic growth, but as a “comprehensive” and multi-faceted “process”, with social, cultural, political as well as economic elements (Art. 2(1), 4(2), and 8(1)).

Respect for all human rights The development process should be respectful of all human rights and fundamental freedoms, and help the realisation of rights for all (Art. 1 and 6). Failure to observe rights constitutes an obstacle to development (Art. 6(2)). The realisation of the RTD cannot justify violations of human rights.⁷

The DRTD affirms that human rights are indivisible and interdependent. This entails that equal attention should be given to economic, social and cultural rights as to civil and political rights, and that human rights should be addressed in an integrated manner, and not through the separate realisation of individual rights. This is consistent with the general affirmation of the equal status to be given to all human rights at the 1993 Vienna World Conference on Human Rights, which followed the end of the Cold War.

Participation The DRTD requires that states and the international community formulate appropriate development policies. As the human person is at the centre of development, the processes through which such policies are developed should be participative.⁸ The right of women to participate, and the duty of the state to ensure their participation, is emphasised.⁹

Social justice The DRTD also requires that the development process promote social justice, including the “fair distribution of the benefits” of development for individuals (Art. 2(3)) and “equality of opportunity for all” in access to basic resources and services, and the eradication of all social injustices (Art. 8(1)).

International co-operation The realisation of the RTD requires not only appropriate national policies, but also suitable international conditions for

⁷ Vienna Declaration and Programme of Action (VDPA): “While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.” Para. 10.

⁸ DRTD Art. 2(3): “... 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...”; Article 1(1): right of individuals and peoples to “participate in, contribute to, and enjoy” development; the human person as an “active participant and beneficiary” of the right to development; Article 8 (2) encourage “popular participation.”

⁹ DRTD Art. 8: “Effective measures should be undertaken to ensure that women have an active role in the development process.”

development, with appropriate international policies and co-operation (Art. 3 and 4). This requirement also includes the creation of a New International Economic Order (Art. 3(3)) as well as international peace and security, including disarmament (Art. 7). The nature of the duty to formulate appropriate international development policies and the provision of “effective international co-operation” is one of the most controversial elements of the DRTD.

Self-determination The DRTD establishes that development “implies the full realisation of the right of peoples to self determination” (Art. 1(2)). The provisions on self-determination have been interpreted by some not just to refer to a reaffirmation of the independence and equality of nations, but so as to strengthen the rights of persons belonging to minorities and indigenous groups to determine for themselves the processes and forms of development that are appropriate for their cultures and circumstances.¹⁰ Self-determination here means that, as a minimum, minorities must enjoy the right to participate in the design and implementation of a genuine sustainable development policy.¹¹

2.3 Clarifying the nature of the RTD

If the core content of the RTD is relatively straightforward, clarifying the nature of the right is more problematic. What kind of right is it? Who are the duty-holders and rights-bearers? How can it be implemented, monitored, and enforced?

A human right The RTD was promulgated in the DRTD, and reaffirmed at the Vienna World Conference. As a result, it can be acknowledged as part of the international human right framework. But is it a new separate right? And as a “third generation right”¹², how does it relate to other rights?

The debate remains open. Current interpretations see the RTD as:

- The aggregate of economic, social and cultural rights;
- The economic dimension of the right to self-determination;
- A new right creating new obligations, for example, against developed countries for the provision of Overseas Development Assistance (ODA);
- Only an “umbrella right”, a useful shorthand to describe all rights;
- The right to a particular process of development;
- The application of already recognised international rights to new spheres of international activity;
- The right of people affected by the development process to realise their human rights through development processes; or

¹⁰ Art. 5 states that, as precondition for the RTD, “States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from ... refusal to recognise the fundamental rights of peoples to self-determination”. More recently, the 2001 General Assembly Resolution stated: “special attention should be given to persons belonging to minorities”, A/RES/56/50, Para. 16.

¹¹ For an application to Tibet and Xinjiang in China, see Michele Radin, “The Right to Development as a Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights”, *Washington Law Review*, 1993.

¹² The concept of “third generation rights” was prevalent in the mid to late 80s, but is now seldom discussed. See Allan Rosas, “So called rights of the third generation”, in *Economic, Social and Cultural Rights*, ed. Eide et al., 1995. It emphasised the collective dimension of rights, and the concept of “solidarity” rights. On this see James Crawford, ed. *The Rights of Peoples*, 1998.

- A programmatic tool to mainstream human rights principles into development.

Right-holders Who are the subjects and beneficiaries of the RTD? Traditional approaches to human rights law hold that individuals are the bearers of rights, who can make claims against the state for the promotion, protection, and fulfilment of the obligations or duties contained in the right and owed by the duty-holder.¹³

The RTD promotes “people-centered development” and under some interpretations¹⁴ makes individuals holders of the right to development (Art. 2).¹⁵ However, the DRTD also refers to “peoples” as right-bearers (Art. 1 (1)). This was the main emphasis in the preparatory debates for the DRTD. The Working Group on the RTD has also listed groups, presumably meaning minorities, as beneficiaries.¹⁶

The state is not explicitly mentioned as the subject of the RTD. The DRTD can however be interpreted as introducing the notion in Art. 2 (3) that states are also right-holders, for example, that they have the right to formulate appropriate national development policies. Under international human rights law claims are held against states; this interpretation would imply that states can have human rights claims against other states, and possibly against the international community (for example if the international community constrains the ability of states to develop national development policies).¹⁷ This interpretation which is defended by some academics and developing states¹⁸ goes against the traditional approach whereby human rights obligations are held by states towards their own populations. This is an evolving area of international human rights law.

Duty-holders The DRTD clearly holds that the primary duty-holder is the state (Art. 2(3) and 3). The individual also has duties in the realisation of the RTD: (i) to be the active participant (Art. 2(1)) and (ii) collectively as a member of a community (Art. 2 (2)).

According to the DRTD, states have a duty of co-operation (Art. 3(3)), both individually and as members of the international community, to formulate international development policies (Art. 4(1)). This echoes Art. 55 and 56 of the UN Charter, Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Art. 28 of the Universal Declaration of Human Rights (UDHR). (See Annex III for a review of this legal debate).

¹³ See in particular CESCR General Comment 14 on the nature of a state obligation.

¹⁴ See Jack Donnelly, “In Search of the Unicorn: the Jurisprudence of the Right to Development”, *California Western International Law Journal*, 1985.

¹⁵ Art. 2, DRTD states: “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”. However, under some interpretations, a person could be the passive object of the right, and not its active subject.

¹⁶ Report of the Working Group on the Right to Development on its Second Session E/CN.4/1994/21, pp. 9-10.

¹⁷ Anne Orford, “Globalisation and the Right to Development”, in *People’s Rights*, ed. Alston, 2001.

¹⁸ Bedjaoui, “Unorthodox Reflections on the Right to Development”, *International Law of Development: Comparative Perspectives*, ed. Snyder and Slinn, 1987.

National implementation The RTD is therefore to be realised by states for their own people, through appropriate policies. How the right is to be implemented at the national level is not fully thought out. The DRTD also offers little advice on how to prioritise national resources in the realisation of the right. The debate at the Commission on Human Rights now acknowledges the importance of good governance at the national level to facilitate the realisation of the RTD. But there is little advice on how states can be held accountable by their own citizens for the realisation of the RTD. And according to some academics, some developing states have no intention of implementing the right at the national level, and are only concerned with its usefulness to make claims at the international level.¹⁹

International implementation More controversially, the DRTD seems to create a right to an international environment conducive to development. At the conceptual level, the idea that there can be obligations based on a general duty to help and assist so as to meet important needs and respect human dignity is understandable.²⁰ There could be for example a general individual duty to assist, with no specific required action to meet this general duty. At the international level, this could be translated as a general duty of co-operation between states, in particular a duty owed by the international community and by developed states towards developing states (as explicitly stated in DRTD, Art. 4(2)).

Turning to the practical level, it is far from clear how such an obligation could be defined and realised. For example, what is the most conducive international environment? This is a contested concept, which varies as definitions of development evolve. How can one ascribe blame for the failure to create such an environment? How can an individual, or a state, hold a claim against the international community? And how can individual states, through bilateral activities, or as members of international organisations, assess whether they are adequately meeting their duty of international co-operation and creating the most conducive international environment?

The claim is also made that International Financial Institutions (IFIs), in particular the World Bank (WB), International Monetary Fund (IMF), and World Trade Organization (WTO), as key international development actors, have a role to play in the realisation of the RTD. It is however not obvious how international organisations, which are not party to international human rights instruments, can be held responsible for the realisation of human rights.²¹

¹⁹ Yah Ghai, "Whose Human Right to Development?", Commonwealth Secretariat, 1989.

²⁰ See Stephen Marks, "The Human Rights Framework for Development: Five Approaches", 2001, quoting a Kantian distinction between perfect and imperfect obligations. An imperfect obligation is based on a general duty to help. See also Overseas Development Institute, "Economic Theory, Freedom and Human Rights: the Work of Amartya Sen", ODI Briefing Paper, November 2001.

²¹ Though the international human rights obligations of international organisations is a contested concept, there are three avenues to argue that they hold such obligations: (i) as organisations with international legal personality bound by general norms of international law; (ii) as specialised UN agencies, bound by the UN Charter; and (iii) through the international human rights obligations of member states. See François Gianviti, "Economic, Social and Cultural Human Rights and the IMF", IMF, 2001. The CESCR is using this third option in its review of state

Enforcement and monitoring mechanisms It is far from clear how the RTD is to be realised through appropriate international and national policies. However, even if a consensus was reached on what such policies would entail, how would the beneficiaries -subject or object- of the RTD be able to enforce their rights, monitor the process of development, and hold the duty-holders to account?

2.4 International legal status of the RTD

Annex III reviews three main debates concerning the international legal status of the RTD:

- (i) Though the RTD has met the procedural requirements²² to become a new internationally recognised human right, the Declaration on the Right to Development is not a legally binding treaty. A review of other sources shows that the RTD is not legally binding under international law and that states other than parties to the African Charter on Human and Peoples' Rights cannot be held legally accountable for its implementation. This is not to deny the *moral or political force* the DRTD.
- (ii) The RTD is often interpreted as including a duty to provide international assistance, which would possibly be legally binding. This could have a considerable practical impact on development policy and practice. However this obligation may be moral or political, but cannot be regarded as binding under international law.
- (iii) Finally, it can be shown that other instruments under international human rights law can be interpreted as giving rise to obligations on states equivalent, but not identical, to those that some derive from the DRTD.

reports. See for example, "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan", E/C.12/1/Add.67, September 2001.

²² It was endorsed by the General Assembly of the United Nations, and reaffirmed in later conferences, including more recently at the UN Millennium Summit. See Alston's substantive and procedural requirements for conjuring new human rights: Philip Alston, "Conjuring Up New Human Rights: a Proposal for Quality Control", *American Journal of International Law*, vol. 78, 1984, at pp. 614-616.

3. The Right to Development: the Political Debate

The lack of consensus on the meaning and status of the Right to Development (RTD) is not confined to the world of legal scholars. The United Nations (UN) is the main arena where the inter-governmental political debate takes place. The mechanisms established by the Commission on Human Rights (CHR) have failed, so far, to arrive at a political consensus on the meaning of the RTD, and, more importantly, on its practical implications. This section reviews the political controversies surrounding the RTD. It offers a mapping of the positions held by the main protagonists of the debate: Northern and Southern governments, international organisations, and civil society groups.

3.1 Processes where the RTD is debated

A review of the proceedings, communiqués and statements of UN and other international meetings reveals that the RTD is principally debated and referred to in UN fora. The explanation for this includes the fact that: (i) the Declaration on the Right to Development (DRTD) is a UN declaration; (ii) the RTD is a human rights concept in the process of being conceptualised in UN fora; and (iii) the UN is where the views (and votes) of developing nations can outnumber that of developed nations.

In order of importance, the UN fora where the RTD is discussed are:

- (i) Annual meetings of the *Commission on Human Rights* (CHR) in Geneva; annual 5 to 10 days meetings of the Open-Ended Working Group on the RTD, and discussion of the reports of the Independent Expert on the RTD;
- (ii) Annual *General Assembly* debates in New York (at the Third Committee);
- (iii) The RTD is explicitly mentioned in the mandate of the *Office of the United Nations High Commissioner for Human Rights* (OHCHR); a Research and Right to Development Branch has been set up and organises seminars; the RTD also forms part of the mainstreaming by OHCHR of human rights in UN activities and the promotion of rights-based approaches to development, such as through the UN Development Group (in particular its ad hoc Working Group on the RTD and its sub-group on Common Indicators);
- (iv) *Other Charter-Based* mechanisms such as CHR Special Rapporteurs on education, food, adequate housing and the Independent Experts on structural adjustment and foreign debt and on extreme poverty. In addition the *Sub-Commission on the Promotion and Protection of Human Rights* has commissioned reports on: globalisation, transnational corporations, the fight against extreme poverty; the right to drinking water and sanitation (recommended to CHR); and income distribution (concluded in 1997). The Sub-Commission is also due to hold the first annual meeting of the Social Forum in 2002.²³ This Forum may provide a mechanism to co-ordinate UN human rights discussion on poverty and development.

²³ Sub-Commission Resolution on the Social Forum, E/CN.4/Sub.2/RES/2001/24, 2001.

- (v) *Treaty Bodies*, in particular the Committee on Economic, Social and Cultural Rights (CESCR) which examines, *inter alia*, international co-operation in relation to the implementation of economic, social and cultural rights;
- (vi) The RTD is also mentioned in *other UN mechanisms*, such as the World Conferences; UN Conference on Trade and Development (UNCTAD), the Least Developed Countries Conferences, and the Millennium Summit.

3.2 The political debate

The "academic" arguments presented in section 2 take on a political meaning in the context of the discussions of the Open-Ended Working Group on the Right to Development, the mechanism established by the Commission on Human Rights (CHR) to further define the concept and its practical implications. The debate is polarised between Northern and Southern states. Though a number of concrete ideas have been put forward (in particular that of the Independent Expert (IE) for a development compact), the commitment to reach a political consensus is poor.

There was sufficient political will at the CHR in 1998 to pass a procedural resolution, so as not to highlight substantive areas of disagreement. However, since then the negotiations have become more politicised, and resolutions at the CHR and General Assembly (GA) in 2001 were taken on basis of a vote, a public acknowledgement of the lack of consensus. As will be shown in section 4, the consensus reached in other fora, in particular development fora, is usually not translated at the CHR. This may be problematic for development agencies, as the consensus reached on the importance to be given to the Millennium Development Goals is at times undermined.

At the theoretical level, the main points of disagreement concern: (i) the nature of the RTD (duty and rights holders), and in particular what is the appropriate balance between its national and international levels; and (ii) the relationship between human rights and development. At the practical level, the main sources of disagreement concern the manner in which the inter-governmental discussion is taking place, and what are the most acceptable next steps. Table 1 identifies the main issues in the RTD debate. Section 3.3 provides a more detailed mapping of the positions.

Table 1: Northern and Southern Views on the Right to Development

Issue	North	South	Other views
Nature of the right	A synthesis right which encompasses all rights	A new, separate right	Right to a process
Right holder	Only a right of individuals, not a collective right or right of states	Mostly a collective right and a right of states	Also a right of peoples, minorities, indigenous groups
Duty holder	States have the primary responsibility for the realisation of the RTD	Duty of the international community to provide resources. Also need a conducive international environment	Participation by non state actors at national and international levels

National implementation of the right	Includes national good governance, e.g.: rule of law, no corruption, freedom of expression, free markets	Includes economic growth, resources transfers and removal of other constraints at the international level	
International economic order	This should be discussed in other fora. Progress made to date to respond to demands for reforms is highlighted	CHR should discuss: decision making processes at IFIs; debt relief; market access; intellectual property rights; technology transfers; etc [Note: it is not clear how these processes relate to the CHR or to human rights obligations]	It is legitimate to discuss the human rights aspects of development at the international level, but this should not be politicised
Relationship between human rights and development	Violation of rights cannot be justified in the name of development. Should not prioritise basic ESC rights (such as the right to food, health and primary education). For some, the proposed prioritising of 3 rights can be useful for practical purposes	Some argue ESC rights should be prioritised over CP rights, and that development is a pre-requisite for the realisation of some rights	Millennium Development Goals can be seen as encompassing ESC rights
Rights-based approach to development	Some support a rights-based approach as an element of the RTD and recommend the development of human rights indicators	Some see a rights-based approach as creating new conditionalities and are cautious on human rights indicators	
Commission of Human Rights mechanisms	Need to first agree on the definition of the RTD. The Independent Expert should focus on practical assessments. Working Group should have consensual discussions. Some reject 2001 and 2002 Working Group Conclusions	Need to look at the practical realisation of the RTD and should not redefine the RTD. IE should assess impact of IFIs on development. Need to discuss permanent follow-up mechanisms	
Development compact	Concern at duplication with other international mechanisms; too mechanistic; not a suitable role for DAC	Some endorse it, some fear it could be used as a form of conditionality, or may reduce available resources for HIPC/PRSP	Compact approach used elsewhere, e.g. Global Compact and MoU Rwanda / UK
Permanent follow-up mechanism	Too early to discuss. Opposed to a RTD Convention, RTD in International Bill of Rights; or to monitoring of IFIs	Options: Convention; monitoring of IFIs; annual report on the RTD or on the implementation of existing international commitments	Role of national human rights institutions / courts in monitoring the RTD at national level

3.3 Mapping²⁴

Northern governments Northern governments recognise the RTD as a human right. But it is a right of individuals (including individuals as members of groups), not a right of states. States have the primary responsibility for realising the RTD. This requires good governance at the national level. There is also an international dimension to the RTD, in particular the role of the International Financial Institutions (IFIs), but it should not be over-emphasised at the expense of the national dimension. The RTD does not consist in an obligation to provide assistance, nor in a right held by states against other states. It would be more appropriate to discuss the international dimension of the RTD in development fora. A consensus on the RTD has not yet been reached - there is a need to make the concept more operational. It is too early to discuss a permanent follow-up mechanism. The IE's proposal for a development compact should be explored further but there are some concerns about duplicating existing processes, such as Poverty Reduction Strategy Papers (PRSPs), UN Development Assistance Frameworks (UNDAF) and UN Common Country Assessments (CCA).

The Northern group is not homogenous. Voting patterns differ as is shown in the table below, indicating positions at the 2001 Commission on Human Rights (which has a restricted membership) and the General Assembly. Differences can be linked to general attitudes towards human rights (such as the US view of economic, social and cultural rights) as well as to differing international development policies (such as between countries which have fully endorsed poverty eradication and instruments such as budget support and those that continue to prefer project-based approaches). The need to take a vote in 2001 related to some delegations' reservations to the Chairperson's Conclusions, which some felt did not adequately reflect the Open-Ended Working Group (OEWG) discussion.²⁵ A consensus was reached at the end of the 2002 OEWG.²⁶ This consensus broke at the 2002 CHR and a vote was taken.

Table 2: Northern Voting Patterns on the Right to Development in 2001-02

	For	Abstention	Against
CHR 2001	EU (except UK)	UK, South Korea, Canada	US, Japan
GA 2001 Yes: 116 No: 3 Abstain: 42		EU, Australia, Canada, New Zealand, South Korea	US, Japan, Israel
CHR 2002 Yes: 38 No: 0 Abstain 15		EU (including UK), Canada, Japan, South Korea	(US not 2002 CHR member)

Southern governments NAM countries and China argue that the RTD is a right of states and a collective right of peoples to development (not in the sense of minority rights), and that it has an international dimension. The RTD should not be re-defined; the focus should be on its practical implementation. There is an obligation of international co-operation, but it is not just about charity and the

²⁴ This section is based on statements made at the OEWG and CHR between 1999 and 2002, on interviews held in November-December 2001 and February 2002 and other UN / internet material.

²⁵ See E/CN.4/2001/26 section G (Chairperson's Conclusions) and Annex III (with comments submitted by the US, New Zealand, Canada, Australia, Japan, EU, Switzerland, Latin America).

²⁶ See E/CN.4/2002/28 Annex II (Conclusions) and Annex IV (comments submitted by the US).

RTD cannot be reduced to international development assistance, nor to national poverty eradication programmes. The responsibility for the RTD cannot remain at the national level: globalisation, international trade, foreign domestic economic policies, foreign debt and intellectual property rights constrain national development efforts. The international agenda should include: greater and more effective participation by developing countries in international decision-making, a truly open multilateral trade system reflecting development needs of all nations, a new international financial architecture releasing resources for productive investment, an effective prevention and response capacity to deal with international financial crises, and sustainable and integrated world wide economic growth. Southern states think it is time to discuss permanent follow-up mechanisms. Some argue in favour of a Convention, or at least a mechanism to monitor the implementation of the RTD at the international level. There is no consensus on the development compact.

International organisations International development organisations are not usually active in the RTD debate - this is the prerogative of states. They are however invited to attend the OEWG on the RTD, and to present their attempts to integrate (or not) human rights concerns into their policies and programmes.

The *Office of the High Commissioner for Human Rights* (OHCHR) has a special responsibility for the RTD and for mainstreaming human rights across the UN system. It is mandated to follow and review progress made in the promotion and implementation of the RTD, to submit annual reports to the GA / CHR and interim reports to the OEWG. It services the Working Group and other meetings on the RTD. The *United Nations Development Programme* has followed the lead of other UN agencies (in particular UNICEF) in developing a rights-based approach to development, and is working in collaboration with OHCHR.²⁷ Its contributions to RTD debates are constructive.

The *European Union* has not formally adopted a rights-based approach to development, but human rights form part of its development agenda. Though the Cotonou Agreement between the EU and African, Caribbean and Pacific (ACP) countries does not mention the RTD, it is consistent with the DRTD. In particular EU policy closely integrates development assistance, trade and debt relief.

The *World Bank's* attitude towards human rights appears to have shifted in recent years - the cautious views expressed in the 1998 policy paper²⁸ have been replaced by a constructive attitude with the OHCHR and human rights NGOs. The WB Representative to the United Nations in Geneva has made a number of conceptual contributions to the RTD debate and argues that poverty eradication is the most effective way to implement the RTD.²⁹ The *International Monetary Fund* does not accept that it has an obligation to promote and protect human

²⁷ See UNDP, *Integrating Human Rights with Sustainable Human Development*, 1998 and UNDP, *Human Development Report: Human Rights and Development*, 2000.

²⁸ World Bank, *Development and Human Rights: The Role of the World Bank*, 1998.

²⁹ Alfredo Sfeir-Younis, Special Representative to the United Nations and the World Trade Organization, the World Bank, "Will the RTD Ever be Fully Implemented? Conditions and Realities facing Developed and Developing Countries", Statement to the Open-Ended Working Group on the RTD, February 2001.

rights, nor that the ICESCR applies to it. It argues that it does contribute to putting in place the pre-conditions for economic, social and cultural rights to be realised, by promoting macroeconomic stability and poverty reduction strategies. The *World Trade Organization* has made some interventions on the RTD but does not have a clear position on human rights. Its system of preferential treatment for developing countries (e.g. longer transition periods, technical assistance) can be seen as a recognition that “the obligation to liberalise in favour of developing countries is greater on the part of developed countries.”³⁰

Other international organisations which have participated in RTD debates include: UNCTAD, the Joint UN Programme on HIV-AIDS (UNAIDS), the Food and Agriculture Organization, UNESCO, UNICEF, UNFPA, the International Labour Organization, and the International Office for Migration.

Table 3: Views of Selected International Organisations on the Right to Development

	EU	IMF	WB	UNDP
Human Rights Policy Documents	1991 Resolution on human rights; 1995 Decision on democracy clauses; 2000 Cotonou agreement	None	1998 policy paper	1998 policy paper; 2000 Human Development Report on Human Rights and Development
Human Rights and Development	Specific aid for human rights projects. Suspension clause: can withdraw aid when human rights violations	Not in Articles of Agreements. Not open to more progressive interpretations	Not in Articles of Agreements. But acknowledges direct and indirect impact on ESCR and CPR. Some operational guidelines mention human rights (e.g. indigenous people).	Committed to human rights mainstreaming. Collaboration with OHCHR: 1998 MoU and 1999 HURIST project
Development Process	Cotonou; other agreements	PRSPs PRGF	CDF PRSPs	CCA UNDAF
Country Level Co-ordination	Ad Hoc	PRSP process	PRSP process Consultative Groups	UNDP Round-tables
Right to Development and CHR Debate	Participation mostly through EU member states and common EU position	No active participation. Presentation of IMF views and update on programmes	Active participation by Geneva representative. Attempts to better define RTD	Contributes concrete ideas to debate. Pilots funded through HURIST programme

Non-Governmental Organisations There are few non-governmental organisations (NGOs) actively involved in the RTD debate, probably because the concept remains unclear, the debates highly politicised, and not conducive to practical discussion. In Geneva, the *Franciscans International*, and in the UK, *Rights and Humanity*, seem to be the most engaged, and are attempting to facilitate the inter-governmental discussions. *Rights and Humanity* in particular is

³⁰ Hoe Lim, WTO External Relations Officer, Working Paper “Trade and Human Rights: What’s the Issue”, May 2001 (not an official WTO document). For a fuller discussion of the WTO and human rights, see Caroline Dommen, “Raising Human Rights Concerns in the World Trade Organization: Actors, Processes and Possible Strategies”, *Human Rights Quarterly*, vol.24, 2002.

highlighting the existence of a growing consensus on approaches to international assistance (e.g. on PRSPs) which it says is consistent with the RTD.³¹ *Minority Rights Group* is exploring how the RTD could help promote the rights of minorities and indigenous peoples in the development process. Mainstream human rights organisations have no official position on the RTD. *Amnesty International* and *Human Rights Watch* have undertaken some work in the area of economic and social rights, including on the role of transnational corporations, but not on the RTD. Some development NGOs using a rights-based approach are cautiously engaging in the debate. For example *Oxfam* sees it as a useful entry point on the responsibility of non-state actors for development and new "partnership approaches". But most development NGOs seem to prefer to campaign on specific rights (e.g. women's rights). Some faith-based groups are also using the concept, grounding it on religious teachings in support of greater social justice.

Table 4: Views of Civil Society Organisations on the Right to Development

Type of CSO	CSOs active in the debate	Main issues
Human Rights NGOs	Rights and Humanity Human Rights Council of Australia Minority Rights Group	CHR debate facilitation Rights-based approaches to development Minority rights
Development NGOs	Oxfam, Save the Children Europe-Third World Centre American Association of Jurists	Rights-based approaches to development International economic order
Faith-based organisations	Franciscans International, Lutheran World Federation, Dominicans for Justice and Peace, some Catholic groups	CHR debate facilitation International economic order Pro-poor development
Women's organisations	NGO Committee on the Status of Women, including International Federation of University Women	Women's rights
Research institutions	Harvard School of Public Health (US) Centre for Development and Human Rights (India)	Support to the IE Development compact idea
Southern organisations ³²	Centre for Development Alternatives (Sri Lanka) <i>Also see Table 5</i>	Self determination (indigenous rights) International economic order

A number of NGOs have made statements on the RTD at the CHR, but very few make an effort to analyse the right. The main issues raised are: (i) the negative impact of globalisation on development and human rights, including structural adjustment and transnational corporations; and (ii) the rights of indigenous peoples. Very few NGOs have made statements on the national implementation of the RTD. Even less have made constructive comments on concrete proposals such as a legal instrument or the development compact.

³¹ Rights and Humanity "An Emerging Consensus on the Right to Development: Some Current Initiatives Relevant to the Implementation of the RTD", September 2000.

³² The research was unable to conduct a detailed study of Southern-based CSOs views on RTD outside of formal statements made at the CHR.

Table 5: Issues of concern to Non Governmental Organisations

Issue	Organisations and Sub-Issues
<p>International economic order leads to violations of the RTD: neo-liberal policies, such as in land reform, lack of debt relief, and structural adjustment policies</p>	<ul style="list-style-type: none"> • Pax Romana, Transnational Radical Party, Movimiento Cubano por la Paz y la Soberanía des los Pueblos, American Association of Jurists, Indian Movement Tupaj Amaru, Europe-Third World Centre, Commission for the Defence of Human Rights in Central America, etc • Free-markets and genetically modified plants negatively affect small farmers (International Federation of Rural Adult Catholic Movements) • Need fair prices for African products (Coordination des ONGs Africaines) • Crimes against humanity (genocide of indigenous peoples, slave trade and colonialism) have led to the growth of developed nations (International Association Against Torture) • Financing for Development conference is important but neo-liberal policies and IFIs violate the RTD. Ethical globalisation is needed (Pax Romana, International Federation of Rural Adult Catholic Movements, Movement Against Racism and for Friendship Among People)
<p>Transnational Corporations violate the RTD</p>	<ul style="list-style-type: none"> • International League for the Rights and Liberation of Peoples, Indian Movement Tupaj Amaru, Europe-Third World Centre, North South XXI, International Institute for Non Aligned Studies
<p>Right of peoples to self determination</p>	<ul style="list-style-type: none"> • RTD is a right of peoples (Indian Movement Tupaj Amaru, International Fellowship of Reconciliation) • Includes the right of peoples to exploit their natural resources (Indian Movement Tupaj Amaru, European Union of Public Relations, World Muslim Congress) • Forced resettlement is a violation of the RTD (International Indian Treaty Council, Society for Threatened Peoples)
<p>Poverty reduction and development assistance</p>	<ul style="list-style-type: none"> • Elimination of poverty is best means of promoting RTD (International Movement of Apostolate in the Independent Social Milieu, International Federation of Rural Adult Catholic Movements) • Need international order based on solidarity, justice, peace. RTD is not just about ODA – need mutual reciprocity and partnerships (Indian Council of Education, Franciscans International) • Concerned at intensification of poverty; need more ODA (International Confederation of Free Trade Unions -ICFTU, Afro-Asian Solidarity Organisation) • Need guiding principles to encourage human rights responses to poverty reduction (World Federation of Trade Unions)
<p>Good governance and national policies</p>	<ul style="list-style-type: none"> • Good governance, combating corruption, reduction defence expenditure, political system providing freedom of choice and opportunity (Pax Romana, International Institute of Peace, ICFTU) • RTD implies food sovereignty and national agricultural policies (International Federation of Rural Adult Catholic Movements) • Role of civil society, women, HIV-AIDS, and education, mentioned
<p>Violence and Conflict</p>	<ul style="list-style-type: none"> • Sectarian extremist movements and terrorisms threaten realisation of RTD (International Institute for Peace) • Need to focus on RTD in areas of conflict – in particular Kashmir and Palestine (World Muslim Congress, Himalayan Research and Cultural Foundation, Afro-Asian People's Solidarity Organisation, International Islamic Federation of Student Organisations, European Union of Public Relations)
<p>Working Group discussion</p>	<ul style="list-style-type: none"> • Need for a Convention (Arab Organisation for Human Rights) • OECD DAC cannot play a role in the "development compact" as it only represents developed countries (Europe-Third World Centre) • Should call for a total re-evaluation of development policies (Europe-Third World Centre, American Association of Jurists)

4. The Right to Development and Current Development Debates

This section reviews the relevance of the Right to Development (RTD) for development policy, by comparing the RTD to the current development paradigm. Discussion of the RTD is mostly limited to the United Nations human rights processes and does not seem to have much influence on current development thinking. However, RTD debates can shed new light on some key human rights and development issues relevant for both the RTD and current development policy and practice. These include: (i) rights-based approaches; (ii) poverty and human rights; (iii) globalisation; and (iv) the accountability of donors.

This section concludes that the proposals of the Independent Expert on the RTD, in particular that of a “development compact” which enhances the accountability of all the parties, may offer the best way out of the current political stalemate, as both Southern and Northern governments remain open-minded. The compact may need to be further defined in a manner consistent with current best practice, or presented as a theoretical framework to guide real partnership agreements.

4.1 The Right to Development outside the United Nations

One indicator of the relevance of the RTD consists in reviewing whether or not, and how, the RTD is mentioned in development debates. A review of international policy statements reveals that the RTD is rarely mentioned outside the UN or G77 debates. For example, the RTD is not referred to in mainstream international economic and development fora, such as, in 2001, the G8 *Final Official Notice* or the World Trade Organization *Doha Ministerial Declaration*.

The main concern of fora dominated by Southern states (such as the 2000 *First Group of 77 South Summit* or the 2001 *3rd UN Conference on Least Developed Countries*) is the need to make globalisation benefit all countries.³³ The RTD is usually mentioned as part of the internationally recognised human rights framework. But there is no explanation of its value added for development thinking, nor of its direct contribution to programmes of action. Some statements do not refer at all to the RTD, focus on the unjust international economic order and do not give much importance to poverty eradication.³⁴

Further research would be needed to assess the importance of the RTD in regional and national processes. It appears however that the concept of the RTD is rarely used at these levels. For example, though the RTD is explicitly mentioned in the *African Charter on Human and Peoples' Rights*, an instrument of the Organisation for African Unity (OAU), it is only mentioned in passing in the *New Partnership for Africa's Development* (NEPAD), a key OAU development statement (see Annex IV for a case study of NEPAD). South Africa may be one of the few countries that mention the RTD in their National Human Rights Action Plan.³⁵

³³ See the G77 *Havana Declaration and Programme of Action*, April 2000 and the UN *Brussels Declaration and Programme of Action for the Least Developed Countries*, May 2001.

³⁴ See *Marrakech Declaration of G77 and China*, prepared for UNCTAD X, September 1999.

³⁵ See *Rights and Humanity*, 2000, pp. 28-33.

A brief review of NGO statements at international development events reveals that hardly any NGOs make references to the RTD, though there are, at times, references to the promotion and protection of specific rights. For example, the International Confederation of Free Trade Unions argues that the *WTO* should include core labour standards to protect the workers' rights, but does not mention a human rights approach nor the RTD in particular. In the context of the *Financing for Development* process, the Danish United Nations Association seems to be one of the few NGOs advocating for the integration of human rights and development based the principles of the RTD.

4.2 International consensus on development

Simply looking at whether or not the RTD is mentioned in international statements may not reveal the full extent of its current relevance. This section reviews the "international consensus" around development assistance and assesses whether or not it appears to have been influenced by the RTD debate, or at least corresponds to some of the principles of the RTD.

Millennium Development Goals There is an international consensus around the International Development Targets (IDTs), now called the Millennium Development Goals (MDGs), following the endorsement of the UN Millennium Declaration by heads of states at the Millennium Summit in 2000. These have also been endorsed by international organisations, such as the Organisation for Economic Co-operation and Development (OECD), the IMF, the World Bank, and the EU, including with ACP countries as part of the Cotonou agreement.

The MDGs are derived from a series of commitments made at UN conferences in the 1990s. Most of these conferences included references to the RTD in their final declarations and programmes of action, and can be interpreted as further advancing the principles of the RTD.³⁶

Poverty eradication The core of the MDGs is the objective of halving, by 2015, the proportion of people living in extreme poverty. Policies of most international development institutions, such as the IFIs and bilateral agencies, have now been restated around this objective. Poverty is defined not only in terms of income, but also in terms of capabilities and opportunities. Poor people's own experiences have been used to confirm the multidimensional nature of poverty.³⁷

The RTD is not phrased in terms of poverty eradication, and cannot be reduced to it. However, a focus on poverty eradication can be said to be consistent with the RTD's concern with social justice, respect for human rights and participation.

³⁶ For example the *Copenhagen World Summit on Social Development's* Commitment 1 on the creation of an "economic, political, social, and legal environment that will enable people to achieve social development" can be seen as consistent with the principles of the RTD.

³⁷ See for example *A Review of World Bank Participatory Poverty Assessments: Consultations with the Poor*, Poverty Group, World Bank, September 1999 and *World Development Report 2000-01: Attacking Poverty*.

Current approaches to development Some of the elements of the current “development paradigm” include the principles of: (i) a broad concept of development, including its social elements; (ii) effective partnership between donors and recipients; (iii) national leadership and ownership of the development process; (iv) support to national development plans and poverty reduction strategies; (v) improved aid effectiveness; and (vi) efforts to make globalisation work for the poor, including better ODA targeting.³⁸

These elements can be said to be consistent with the DRTD. For example the primacy given to the national realisation of the RTD, through the formulation of adequate national policies, echoes the principle that international assistance should support the implementation of national development plans, for example around the Poverty Reduction Strategy Papers (PRSPs). However, there is no evidence that current approaches to development best practice were directly derived from a concern to better realise the RTD as defined in the DRTD.

Justification for international assistance On some interpretations, the RTD is seen as a right of developing nations to receive development assistance. This is certainly inconsistent with the justification given for the provision of development assistance by developed countries. The OECD’s *Shaping the 21st Century: the Contribution of Development Co-operation* provides the most straightforward justification for international assistance. It represents the collective views of development ministers, heads of agencies and other senior officials responsible for development co-operation. The motives for official assistance are:³⁹

- (i) Humanitarian: a compassionate response to extreme poverty and human suffering: the “moral imperative of support for development is self-evident”;
- (ii) Enlightened self-interest: political stability, social cohesion, human security and economic prosperity in developing countries benefit developed countries in terms of access to markets and international stability; and
- (iii) International solidarity: people from all nations can come together to address common problems, and deal with issues that know no borders, such as environmental protection.

The OECD report, and most international development policy documents, does not refer to international co-operation as an international duty or an obligation owed to developing states. Though states provide international assistance, such practice cannot be construed as an endorsement of a legally binding duty to give aid. In addition, such policy statements usually make no references to the UN Charter nor to the legally binding UN or regional human rights, which could be interpreted as creating a legal obligation to give aid, or at least for international co-operation. (See Annex III for details).

Development partnerships The OECD document, as well as a number of recent international development policy statements, makes references to *mutual*

³⁸ For the latest international statement of this consensus, see the *Monterrey Consensus – Final Outcome of the International Conference on Financing for Development*, March 2002.

³⁹ OECD, *Shaping the 21st Century: The Contribution of Development Co-operation*, 1996, p. 6.

commitments and shared responsibilities between developing and developed countries towards the goal of poverty eradication. For example, when endorsing the IDTs, heads of states and agencies declared: "In accepting these goals, the international community makes a commitment to the world's poorest and most vulnerable - and to itself."⁴⁰ Such statements are not of a legally binding nature, but they do have some force as political and moral commitments.

One way in which this principle of commitment is expressed is through the concept of "development partnerships" between developing and developed countries, and international development organisations. Such effective partnerships require policy dialogue and participation of developing countries in international decision-making processes. The OECD report lists as part of its "stronger compact for effective partnership" the following series of undertakings:⁴¹

- (i) Joint responsibilities of developing and external partners: minimising conflict, combating corruption, creating the conditions to generate enough resources for development;
- (ii) Developing country responsibilities: sound macro-economic policies, social development, accountable government, capacity building, climate favourable to enterprise and savings, sound financial management and good relations with neighbours; and
- (iii) External partners responsibilities: reliable and appropriate assistance, opportunities for developing countries in international trade and investment, effective aid, capacity building, information technology, better co-ordination.

These undertakings constitute a way of concretising the nature of the mutual obligations or commitments of developed countries, developing countries and the international community in working together towards meeting the MDGs. A number of other international policy documents follow a similar approach.

Box 1: Shared Responsibilities and Mutual Commitments Quotes

NEPAD, 2001: "A new global partnership based on shared responsibility, mutual interest and binding agreements"

G8 Official Notice, Genoa, 2001: "We will also seek enhanced co-operation and solidarity with developing countries, based on a mutual responsibility for combating poverty and promoting sustainable development". Also acknowledgement of reciprocal obligations e.g. on corruption.

LDCs Programme of Action, 2001: Partnership based on mutual commitment by LDCs and their development partners. Spirit of solidarity and shared responsibility. Common but differentiated responsibilities of developing and developed countries.

Havana Programme of Action, 2000: "We strongly believe that such co-operation would need to be approached in a manner which is perceived by developing countries to be equitable and fair and that will lead to fostering of political will of all countries to build a constructive dialogue based on the spirit of partnership, common but differentiated responsibility, mutual benefit and genuine interdependence".

⁴⁰ IMF/OECD/UN/WB, *A Better World for All: Progress Towards the International Development Targets*, June 200, p. 2.

⁴¹ OECD, *Shaping the 21st Century*, pp. 14-15.

4.3 Human rights and development: key issues for the RTD debate

The previous section has argued that there are a number of similarities between the RTD and current development practice. A case could even be put forward to show that actions undertaken to realise “mutual commitments and shared responsibilities” for development could constitute the current manner in which the RTD is being implemented at the national and international levels.

However, current development policy and practice do not fully respect some of the principles behind the RTD. Some differences include: the primacy given to the MDGs; the lack of an acceptance of a legal obligation to provide assistance; and the growing acceptance in the development community of the linkages between globalisation and development outcomes which is not fully reflected in UN debates on the RTD.

The main difference is the lack of a shared acceptance of the centrality of human rights for development. Whereas the DRTD holds that development is a human right, the current development consensus does not put the realisation of human rights as the main objective of development. Narrowing the gap between the two debates would require: (i) an endorsement of rights-based approaches by development actors; (ii) a clearer conceptualisation of the links between the MDGs and the RTD; (iii) agreements on the links between globalisation and rights; and (iv) accountability mechanisms for development.

The Right to Development and rights-based approaches In the words of the Working Group on the Right to Development: “The right to development is more than development itself; it implies a human rights approach to development, which is something new”.⁴²

The 1990s have seen an increased debate on the integration of human rights into development practice. Through the United Nations system, human rights are now being “mainstreamed” into development.⁴³ Both the United Nations Development Programme (UNDP) and the World Bank have published policy papers on development and human rights.⁴⁴ Through the United Nations Development Assistance Frameworks (UNDAF) and Common Country Assessments (CCA), human rights are being integrated into mainstream development processes and UN officials are receiving training in human rights. Some bilateral development agencies have also developed rights-based approaches.

Whereas a consensus seems to exist around the core principles of an “appropriate” development process, the acceptance of a human rights-based approach to development is much more problematic. There are still a number of

⁴² E/CN.4/1995/11, 4 September 1994, Para.44.

⁴³ See *Renewing the United Nations, A Programme for Reform*, A/51/950, 14 July 1997

⁴⁴ UNDP, *Integrating Human Rights with Sustainable Human Development*, 1998; World Bank, *Development and Human Rights: The Role of the World Bank*, 1998; and UNDP, *Human Development Report: Human Rights and Development*, 2000.

different interpretations of how human rights and development relate, and what is meant by rights-based approaches.⁴⁵ In addition, some Southern governments are concerned that it may be the source of new conditionalities, whereas some donors fear the creation of legal rights that could be claimed against them by the beneficiaries of development assistance.

More importantly, the RTD cannot be equated with a rights-based approach to development. The DRTD not only prescribes certain ways of going about development,⁴⁶ but also defines development itself as a human right. Given the controversy surrounding the RTD, and in particular what it means for development to be a human right, it appears unhelpful, at this stage, to link the two debates too closely. The RTD debate is unlikely to offer a way forward to reach consensus on rights-based approaches. But further research and discussion of rights-based approaches could contribute to the creation of a consensus on the RTD, especially if more Southern governments take part in this process, and positively endorse these approaches.

Poverty eradication and human rights There is an international consensus on the objective of eradicating world poverty, as expressed through the MDGs. The UN Millennium Declaration clearly links the RTD to this objective: “We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.”⁴⁷

The MDGs, and their predecessors the IDTs, are based on agreements reached at a series of UN conferences during the 1990s. Though the MDGs are not phrased in human rights terms, and do not refer to the results of the UN World Conference on Human Rights, they can be interpreted as setting a number of rights-based development principles.⁴⁸ In particular, the MDGs can be construed as indicators of economic, social and cultural rights.

Box 2: The MDGs and the Right to Education

Millennium Development Goal of achieving universal primary education: “Ensure that, by 2015, children everywhere, boys and girl alike, will be able to complete a full course of primary schooling”.

The right to education, as provided for in Art. 13 of the ICESCR: “The State Parties to the present Covenant recognise the right of everyone to education (...)” (Article 13 (1)) and “that, with a view to achieving the full realisation of this right: (a) Primary education shall be compulsory and available free to all” (Art. 13(2)).

It is also possible to define poverty eradication in terms of human rights. The Committee on Economic, Social and Cultural Rights (CESCR) holds the view that “poverty constitutes a denial of human rights” and regrets that “the human rights dimensions of poverty eradication policies rarely receive the attention they

⁴⁵ See for example Stephen Marks, “The Human Rights Framework for Development: Five Approaches”, François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, Working Paper, April 2001.

⁴⁶ Ibid. p. 11.

⁴⁷ United Nations Millennium Declaration, 2000, Para. 11.

⁴⁸ For an analysis of human rights and global social policy principles see Clare Ferguson, 1999.

deserve.”⁴⁹ Though United Nations human rights instruments do not directly mention poverty, the current broad definition of poverty as the lack of basic capabilities to live in dignity corresponds to a number of articles in international instruments, in particular in the International Covenant on Economic, Social and Cultural Rights (ICESR).⁵⁰

The RTD could therefore be construed as a right to having the MDGs met, an aspect of which could include a right to having effective poverty eradication policies developed and implemented in a manner respectful of all rights. Existing mechanisms to hold states accountable for the realisation of this right could include the CESCR, which has developed a body of comments and guidelines on the realisation of economic, social and cultural rights (ESCR), and the Human Rights Committee, which monitors civil and political rights (CPR).

However, this is not a politically feasible proposition. Poverty eradication is rarely expressed in terms of human rights in international policy documents, and the realisation of human rights rarely described as the main objective of development. Human rights are more often mentioned negatively, for example in terms of human rights violations, which are seen as obstacles to poverty eradication⁵¹ or which may lead to the withdrawal of development assistance.⁵² Human rights are mentioned at times instrumentally, as a “prerequisite for sustainable development”⁵³ or as a qualitative factor in the development process and an aspect of “good governance.”⁵⁴ This latter interpretation seems to give primacy to civil and political rights as part of governance, as opposed to adhering to the interdependence and equality of all rights in development.

Globalisation The DRTD may be at its most useful, though also the most controversial, in the emphasis it places on the international context for development. As has been shown, this is controversial from a legal standpoint: (i) there is no legally binding obligation to provide aid, and (ii) the suggestion that non-state actors, such as international organisations, can be duty-holders, or that states may hold human rights claims against other states, is problematic. It is also controversial from a political standpoint as this is probably the most politicised issue within the inter-governmental debate: (i) Southern governments use it to demand a more just international economic order, whereas (ii) Northern governments claim that the human rights impact of international policies and institutions cannot be studied, or at least should not be studied in the context of the RTD debates at the CHR.

However, the international aspect of the RTD is useful in the context of an increased interest in the impact of globalisation on development, and in particular

⁴⁹ E/C.12/2001/10, 10 May 2001, Paras. 1 and 2.

⁵⁰ Ibid. para. 7.

⁵¹ IMF et al., *A Better World for All*, 2000.

⁵² See for example the EU's 1991 Directive on Human Rights, Democracy and Development and the 2000 Cotonou Agreement with ACP countries.

⁵³ IMF et al., *A Better World for All*, p. 20.

⁵⁴ “Essential to the attainment of these measurable goals [the IDTs] are *qualitative factors* in the evolution of more stable, safe, participatory and just societies. These include capacity development for effective, democratic and accountable governance, the protection of human rights and respect for the rule of law.” OECD, *Shaping the 21st Century*, p. 2.

on poverty eradication measures. The DRTD may provide an entry point for a human rights approach to globalisation, in particular the international structural obstacles to the realisation of rights at the national level, and how an individual, as the subject of the right to development and the active beneficiary of development, can relate to international organisations and international policies. Such a discussion could only be worthwhile at the CHR if negotiators at the inter-governmental level were willing to look at the issues in good faith.

Accountability mechanisms A human rights approach to development means that the beneficiaries of development have legitimate claims and entitlements against the duty-holders. This requires mechanisms through which such claims can be enforced and monitored. The DRTD cannot establish a monitoring mechanism as it is non-binding. But a missing aspect of the DRTD is the lack of recommendation for suitable accountability mechanisms to allow the right-holders of the RTD to hold the duty-holders accountable for the process of development.

Given the primary responsibility of the state for the RTD, it could be argued that the accountability framework is that of the state towards its citizens. This would go beyond a call for participative processes of programme design and implementation, by identifying and requiring mechanisms through which citizens can challenge the state's implementation of the RTD. This could include judicial mechanisms, administrative processes, and even political processes, for example through elections and the free determination of national development objectives.

Accountability mechanisms for individuals are harder to envisage at the international level. How could a citizen of a developing country hold an entitlement, or make a claim, against an international development NGO, a bilateral aid agency, a multilateral organisation, or even the international community as a whole? It could however be argued that international actors involved in national development processes should find ways of enhancing their accountability to national actors, whether governments, the public at large or the specific recipient of an aid project.

Accountability mechanisms could also be envisaged between the parties to international or bilateral development commitments. This does not require creating new human rights mechanisms to monitor the implementation of the RTD at the international level, but setting up suitable procedures to monitor the implementation of the "mutual commitments and shared responsibilities" agreed to in most development agreements (e.g.: to the MDGs). NEPAD may be the starting point for such a model on a regional level. Claims against the international community as a whole or against international organisations could also be assessed against existing multilateral agreements.

4.4 The Development Compact

The Independent Expert on the Right to Development, Prof. Arjun Sengupta, has presented four reports⁵⁵ to the Open-Ended Working Group on the Right to

⁵⁵ E/CN.4/1999/WG.18/2, E/CN.4/2000/WG.18/CRP.1, E/CN.4/2001/WG.18/2, 2001, and E/CN.4/2002/WG.18/2.

Development, with the objective of identifying a manner in which the RTD can be realised and implemented immediately. His main recommendation lies in the proposal that “development compacts” should be established between specific countries and the international community to realise the RTD.

A new interpretation of the RTD The Independent Expert (IE) views the RTD as a *right to a particular process of development*, which facilitates and enables all fundamental freedom and rights to be realised, and which expands basic capabilities, and the abilities of individuals to enjoy their rights. The RTD cannot be equated with the right to the outcomes of development, nor with the sum of existing human rights. It refers not just to the realisation of individual rights, but also to the way in which these rights are realised and development facilitated.

The image of the RTD as a “vector” illustrates how the RTD is a composite right, which should be realised in a manner that takes into account the effects of component rights on one another, as well as the resulting outcome. The vector improves if there is an improvement in all the elements of the vector, or at least in one element while no other one deteriorates. Translated into a human rights language, an improvement in the realisation of the RTD requires the promotion or improvement of at least some human rights, while no other deteriorates.

This interpretation is useful in that it offers a way out of the traditional tension between on the one hand the declared interdependence and indivisibility of all rights, and on the other, the need to prioritise certain actions and policy areas given the resource and capacity constraints on developing states. The IE proposes to focus on the realisation of three basic rights: the right to food, education and health, which can be seen as constituting core elements in the realisation of the RTD, as long as no other right decline, and a rights-based approach is followed. Though some commentators argue that this approach threatens the equality of all rights, it may be more realistic from a development perspective. It allows for a sequencing of rights-based development interventions, taking into account resource constraints and the need to prioritise.

Rights-based approach The IE defines a rights-based approach as “a manner that follows the procedures and norms of human rights laws, and which is transparent, accountable, participatory, and non-discriminatory, with equity in decision-making and sharing of the fruits or outcomes of the process.”⁵⁶ This view differs from rights-based approaches held by most development agencies in that it not only includes an empowerment-approach to development (through a transparent, non discriminatory process), but also requires that *the objectives of development be “realised as human rights.”*⁵⁷ By contrast, most development agencies hold what may be described as an instrumentalist view, where human rights are not the main objective of development.

For the IE, the objectives of development “are to be regarded as entitlements, or as rights that can be legitimately claimed by individuals as rights holders, against corresponding duty holders, such as the state and the international community.”⁵⁸

⁵⁶ E/CN.4/2002/WG.18/2, 4th report of the Independent Expert, Para. 4.

⁵⁷ Ibid., Para. 22.

⁵⁸ Ibid., Para. 22.

This approach requires a clear identification of the rights-holders and duty-bearers, and an assessment of “whether the state parties or the other duty holders have fulfilled their obligations and whether the procedures followed are consistent with the rights-based approach to development.”⁵⁹

The IE’s interpretation of a rights-based approach is controversial, but has the benefit of allowing for a practical implementation of the RTD. It is controversial in that it holds that duty-holders can be monitored, their culpability for not facilitating a process of development identified, and their commitments enforced.⁶⁰ Its weakness in the context of the politicised debates around the RTD is that it assumes, rather than demonstrates, that the international community has “reciprocal obligations” to realise the RTD.⁶¹

Practical implementation of the RTD The process through which the RTD is to be realised can be identified with a programme of development policies, assigning precise roles to all the agents – this includes fully identifiable obligations and duties of states, transnational corporations, local authorities, multilateral agencies, civil society, and the international community.

The IE argues that existing mechanisms for development co-operation fail to adequately set out the duties and obligations of donors and of the international community. Current programmes to implement the RTD set conditionalities on developing countries, which are not matched by “reciprocal obligations” of the international community: “A successful programme is thus as much dependent upon the appropriate design of the programme, the detailed specification of responsibilities and a fixing of the accountabilities, as on recognising the mutuality of the obligations and the reciprocity of the conditionalities.”⁶² The IE proposes the adoption of “development compacts” as an implementation of the RTD at the country level. By contrast, he suggests that more radical reforms may be needed at the international level.

Box 3: The development compact

This is a proposed country-specific agreement establishing reciprocal obligations between developing countries, the UN system, international financial institutions and bilateral donors. Developing countries would be under the obligation to realise the RTD, and the international community under an obligation to provide resources and share the costs of development. If the developing country fulfils its part of the bargain, the international community would need to take the corresponding measure, and provide resource transfers and technical assistance as previously agreed. A special fund pooling resources would be set up.

Developing states would need to accept to design and implement their national development programmes in a rights-based manner, including participation by civil society, national incorporation of human rights instruments and a monitoring role for national human rights institutions. The OECD’s Development Assistance Committee (DAC) could organise a support group which would scrutinise, review and approve the national development policies of the developing country, and identify financial burden sharing and the specific responsibilities and duties of the parties to the compact.

⁵⁹ Ibid., Para. 7

⁶⁰ Ibid., Para. 52

⁶¹ Ibid., see in particular Para. 42

⁶² Ibid., Para. 54.

Evaluation The proposals of the IE constitute a breakthrough when compared to earlier discussions of the RTD at the UN. In particular, it has moved the debate away from the simplified discussion of a legal right to receiving development assistance. And his analysis and proposals seem acceptable to both Southern and Northern governments. Though some aspects of his framework may be overly technical (such as the “vector” image), the definition of the RTD as the right to a *process of development* allows a focus on the programmes, policies and approaches through which states and the international community aim to facilitate development. The IE also usefully highlights the need to clarify the relationship between recipient and donor countries. As was shown in section 4.2, the principle of “mutual commitments and shared responsibilities” has been widely acknowledged by development agencies, but the practical implication of this approach has not yet been given much substance. Once commitments have been made, there is a need to ensure the realisation of the commitments. This may require monitoring mechanisms, greater transparency and accountability in development processes.

There is however a number of practical difficulties with the development compact proposal. First, it is not evident that new compacts should be set up specifically to realise the RTD. Existing agreements, in particular around the MDGs at the national level, could be interpreted in a manner respectful of the RTD as defined by the IE. Annex IV provides two case studies. Second, this approach requires that development programmes be set with the realisation of human rights as their main objective. This is practically not feasible, and may not necessarily be desirable. The current consensus around the MDGs may provide a suitable objective; it is unlikely that all developing countries would endorse development partnerships based on a human rights language. Third, there are a number of technical difficulties with the development compact as currently put forward: the creation of an external “support group” may weaken country ownership of development as they would be excluded from such a group; it is not clear how participation by non state actors (e.g. civil society) or other tiers of government will take place in the definition of the development programme; a trust fund approach goes against the current principle that it is better to support states through their own budget systems; the OECD DAC does not have operational capacity; and the approach to cost-sharing is vague.

There seems to be three possible ways for governments to respond to the compact proposal: (i) to accept the current proposal; (ii) to focus on existing development partnerships as a way of implementing the compact; or (iii) to altogether reject the idea of a compact as a way of realising the RTD at the national level. There are costs to setting up new development processes, and the IE’s evaluation of the failure of existing mechanisms needs to be assessed against the benefits and drawbacks of his proposal for a development compact. It also remains to be clarified to what extent the IE proposes developing actual new agreements, or uses the compact image as a way of presenting a “partnership approach to development”, based on human rights as the main objective of development. An analysis of case studies may help to resolve this debate, in particular if they showed that developing countries felt that current development partnerships are satisfactory mechanisms to implement “mutual commitments and shared responsibilities” for development.

5. A Review of DFID Policy

This section reviews DFID policy and practice, including its conception of a rights-based approach to development, and compares it with the principles behind the Right to Development (RTD). It argues that DFID's experience could make a valuable contribution and enhance the quality of the inter-governmental debates on the RTD, in particular on poverty eradication, development partnerships, rights-based approaches and globalisation. DFID's stance on the importance of making globalisation work for the poor could possibly narrow the gap between Northern and Southern views on the international dimension of the RTD. DFID expertise and credibility with Southern development partners may also possibly contribute to enhancing trust.

It is also clearly in DFID's interest that its approach to development, and that of like-minded donors, influence the standard setting process of the UN, which is currently dominated by non-development experts. UN decisions may lead to policies and requirements going against agreements reached between developing countries Finance and Development ministries and development agencies.

5.1 DFID and the Right to Development

DFID's interpretation DFID recognises that the Right to Development forms part of the international human rights framework,⁶³ but does not ground its approach to development assistance on the basis of the Declaration on the Right to Development (DRTD). There is no mention of the RTD in the two White Papers, and only a passing reference in the Target Strategy Paper (TSP), *Realising Human Rights for Poor People*. Though DFID recognises "the need for an environment of international co-operation", the stress is very much put on the role of national governments as the primary duty-holders. Development assistance is also made conditional on the degree of commitment of recipient governments.

Box 4: DFID and the Right to Development

"The Right to Development sets out the need for an environment of international co-operation which enables the development of all countries of the world. Development, however, also requires that national governments ensure that their efforts are effectively focused on actions which accelerate the elimination of poverty. The Right to Development sets out the obligations of national governments to support the institutions and processes to ensure that this will happen." (Para. 3.9)

"States have obligations to respect, protect and ensure the realisation of human rights. It is the role of the international community to support those governments that are taking seriously their obligations to ensure the progressive realisation of all rights and to encourage other governments to follow suit." (Para. 3.8)

Source: DFID Target Strategy Paper, *Realising Human Rights for Poor People*, 2000

A duty to provide assistance As discussed earlier, the DRTD is interpreted by some as creating a legal obligation to provide development assistance. DFID

⁶³ The RTD is listed as a UN instrument setting accepted human rights standards in a particular area, *Realising Human Rights for Poor People*, p. 11, Box 3. [Human Rights TSP]

holds a position similar to that of other development agencies and does not accept that it is under any form of *legal* obligation to provide assistance. Memoranda of Understanding and similar agreements between DFID and recipient governments are not legally binding. DFID does enter into binding agreements, for example it is under an obligation to make payment to multilateral development banks,⁶⁴ and its contribution to EU regional programmes, except the European Development Fund, are bound by treaty obligations.⁶⁵ But this is not equivalent to accepting a general legal obligation to provide development assistance.

Instead, UK development assistance is grounded on two premises: (i) a moral duty to alleviate poverty and social exclusion at home and abroad; and (ii) enlightened self-interest derived from the interdependence of the world: "Making globalisation work more effectively for the world's poor is a moral imperative. It is also in our common interest. Many of the world's challenges - war and conflict, refugee movements; the violation of human rights; international crime, terrorism and the illicit drugs trade; the spread of health pandemics like HIV/AIDS; and environmental degradation - are caused or exacerbated by poverty and inequality."⁶⁶ The events of 11 September 2001 further confirmed that poverty and instability overseas can threaten international and domestic peace and stability. They are at the source of an enhanced sense of urgency and importance given to the provision of international assistance and effective international co-operation not just by DFID, but across the UK government.

Box 5: The impact of 11th September 2001

"The alliance we have forged against terrorism since September 11th [...] confirms a profound and pervasive truth: that in the new global economy we are, all of us, the richest countries and the poorest countries, inextricably bound to one another by common interests, shared needs and linked destinies; that what happens to the poorest citizen in the poorest country can directly affect the richest citizen in the richest country; and that not only do we have inescapable obligations beyond our front doors and garden gates, responsibilities beyond the city wall and duties beyond our national boundaries, but that this generation has it in our power - if it so chooses - to abolish all forms of human poverty."

Gordon Brown, Chancellor of the Exchequer to the Federal Reserve Bank, New York, 16 November 2001

A broader debate The review of the RTD debates has demonstrated that the arguments on the existence, or not, of a duty to provide development is only a narrow aspect of the RTD. As will be shown in the next sections, there are a number of parallels between elements of the DRTD and current DFID policy and practice. DFID's experience could make a valuable contribution and enhance the quality of inter-governmental debates on the RTD where disagreements persist, for example on poverty eradication, development partnerships, rights-based approaches and globalisation. Conclusions reached at the UN may also shed new light on these issues for development policy makers.

⁶⁴ DFID is "bound to make a relevant payment to a multilateral development bank", *International Development Bill 2001*, part II, section 11 (1).

⁶⁵ See *European Communities Act, 1972*.

⁶⁶ DFID, *Eliminating World Poverty: Making Globalisation Work for the Poor*, White Paper on International Development, December 2000, p. 14. [WP11]

5.2 DFID general policy and practice

Poverty eradication DFID is committed to achieving the MDGs. The new International Development Bill places poverty eradication at the centre of UK development assistance: “The Secretary of State may provide any person or body with development assistance if he is satisfied that the provision of assistance is likely to contribute to a reduction in poverty”. Development assistance is defined as: “(a) furthering sustainable development in one or more countries outside the United Kingdom or (b) improving the welfare of the population of one or more such countries.”⁶⁷ Poverty eradication requires growth with equity and protection of the poor from economic shocks.⁶⁸

Aid-effectiveness and selectivity DFID is committed to reverting the decline in ODA. But more aid will not necessarily lead to better results. DFID is working with other international and bilateral organisations to enhance the effectiveness of international assistance. Specific proposals for reform include the harmonisation of donor procedures, and better co-ordination between donors.⁶⁹

Enhancing aid effectiveness also requires a better targeting of aid on poorer countries, and on poor populations within countries, as well as toward countries with a commitment to poverty eradication, better governance and effective pro-poor policies: “international support is conditional on economic, social and environmental policies which will systematically reduce poverty.”⁷⁰ This may be viewed by developing countries as a new form of conditionality.

Partnerships DFID recognises that “over prescriptive aid conditionality has a poor track record” and that “development agencies themselves can be part of the problem.”⁷¹ Aid-effectiveness also requires putting recipient governments in the lead. New approaches include supporting the Poverty Reduction Strategy Paper (PRSP) processes, providing sector-wide funding (SWAps) and budget support, which are less distortionary than other approaches.

But this will only be effective when the conditions are right, that is when recipient governments are committed to poverty eradication. Under such conditions, a “partnership” approach can be put in place, with mutual obligations and shared, but differentiated, responsibilities between developed and developing countries. The case studies the UK / Rwanda Memorandum of Understanding and the New Partnership for Africa’s Development, provide concrete examples (see Annex IV).

Globalisation The growing interdependence and inter-connectedness of the modern world offer opportunities and risks for poorer countries. DFID agrees that it is important to consider the impact of global policies on poor people, particularly

⁶⁷ *International Development Bill*, 2001.

⁶⁸ DFID, *Halving World Poverty by 2015: Economic Growth, Equity and Security*, 2000. [Poverty Reduction TSP]

⁶⁹ See DFID and HM Treasury, “The Case for Aid for the Poorest Countries”, and the *Monterrey Consensus: Final Outcome of the Financing for Development Conference*, both March 2002.

⁷⁰ WP II, p. 91.

⁷¹ WP II, p. 92.

in the areas of trade, investment, financial regulation, the environment and debt. It has taken a number of positive steps to address some of the global structural obstacles to poverty eradication and to strengthen the position of developing countries in international fora, such as capacity building to enable developing countries to participate more effectively in global trade negotiations.⁷²

DFID also recognises the impact that developed countries may have on development opportunities in the developing world, and that “the distinction between domestic and international policy is increasingly blurred.”⁷³ For example, DFID acknowledges the role that developed countries play in international money-laundering and corruption processes.⁷⁴ DFID is also committed to enhancing the consistency of UK policies towards developing countries, so that, for example, unfair subsidies or trade restrictions do not undermine development assistance.⁷⁵ CHR discussions of the international dimension of the RTD would benefit from exposure to these DFID policies on globalisation.

5.3 DFID’s Human-Rights Based Approach to Development

DFID on human rights DFID’s 1997 first White Paper affirmed the UK government’s “commitment to human rights and a more ethical foreign policy” and defined human rights in terms of international legal instruments.⁷⁶ The Secretary of State’s 1998 speech in honour of the 50th anniversary of the Universal Declaration of Human Rights (UDHR) further clarified DFID’s view. It reaffirmed DFID’s commitment to developing a “rights-based approach to development” and to honour the UDHR through “a new effort to do all in our power”...“by progressive measures, national and international, to secure [human rights] universal and effective recognition and observance”.⁷⁷

Box 6: DFID and Social and Economic Rights

The “Government has committed itself to using our influence to seek the realisation of the social and economic rights contained in the UDHR for all the people of the world. We pledge specifically to work to secure the attainment of the international poverty eradication targets that derive from the great United National conferences of the past decade.”

Source: DFID, All Human Rights For All, Secretary of State Speech, 3rd December 1998.

Some of the distinctive elements of DFID’s position include:

- (i) A rights-based approach means “making people the central purpose of development”;
- (ii) There is a need to redress the balance and give sufficient importance to economic, social and cultural rights;

⁷² See DFID, Poverty Reduction TSP and WP II, and *Doha WTO Ministerial Statement*, 2002.

⁷³ DFID, WP II, p.19, Para. 42.

⁷⁴ DFID, *A DFID Perspective on Tackling Corruption in Development*, 2000.

⁷⁵ DFID, WP II, p. 19, Para. 43.

⁷⁶ DFID, *Eliminating World Poverty: A Challenge for the 21st Century*, White Paper on International Development, 1997, p. 16, Para 1.20 and panel 1, p. 17. [WP I]

⁷⁷ DFID, *All Human Rights For All, Secretary of State Speech*, 3rd December 1998, p. 10.

- (iii) Poverty eradication and the international development targets are interpreted as a reaffirmation of social and economic rights.

A rights-based approach The 2000 TSP, *Realising Human Rights for Poor People*, sets out in more details DFID's interpretation of a rights-based approach to development. It is defined as "empowering people to take their own decisions, rather than being the passive objects of choices made on their behalf."⁷⁸ Development is not about charity; poor people have a right to expect their governments tackle poverty and exclusion. The strategy for integrating a rights perspective into development is based on:

- (i) **Participation**: enabling people to realise their rights to participate in, and access information relating to, decision-making processes affecting their lives;
- (ii) **Inclusion**: building socially inclusive societies, based on the values of equality and non-discrimination, through development which promotes all human rights for all people; and
- (iii) **Fulfilling obligations**: strengthening institutions and policies which ensure that obligations to protect and promote the realisation of all human rights are fulfilled by states and other duty bearers.

Box 7: DFID Target Strategy Papers and Human Rights

Education TSP recognises that education is a human right and notes that "the human cost of failing to enable all people to realise the right to basic education on an equitable basis are incalculable." It refers to the UDHR and the Convention on the Rights of the Child (CRC), but not to ICESCR's Art. 13. It argues that progress in realising the right to education contributes to the attainment of other rights, e.g. education contributes to improved health outcomes. It makes a commitment to developing a better understanding of rights-based approach to Universal Primary Education, including monitoring of CRC's Art. 28. But there is no mention of domestic enforcement mechanisms of the right to education.

The document argues that funding agencies also need to deliver on the commitment made in Dakar that no country seriously committed to Education for All will be thwarted by a lack of resources. This can be achieved either through better use of existing resources or international assistance. Support through SWAps requires new ways of working and it is recommended that a Code of Conduct be developed to ensure that both governments and funding agencies are clear on their roles and responsibilities and joint commitments. It makes a reference to the EU's Code of Conduct for Education Sector Funding Agencies.

Women TSP notes that the struggle for gender equality is part of the wider struggle for all human rights for all: equality of opportunity for women, and equity of outcomes. Women should have equal rights and entitlements to development, and the exercise of these rights should lead to outcomes that are fair and just. It notes that the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration form the IDTs framework for gender equality. The document is not constructed around CEDAW obligations and monitoring of its implementation. It does however mention the rights of the child, and sets CRC implementation as an objective.

Health TSP mentions health as a fundamental human right reflected in the UDHR, but it does not mention ICESCR's Art. 12. It could have used the rights framework further: for example reproductive health targets are not phrased in terms of reproductive rights.

⁷⁸ DFID, Human Rights TSP, p. 7.

Water TSP recognises the right to enjoy healthier and more productive lives. This requires access to safe water and sanitation. In this context CRC's Art. 24(2)(b) is quoted.

Food Security consultation document describes food as a human right, as enshrined in international conventions (ICESCR Art. 11 and CRC Art. 24(2)(c)).

Urban Poverty TSP notes that urban centres are often areas of social exclusion where rights cannot be claimed (for example given the lack of formal property rights). DFID should encourage participation in the process of urban development so that the urban poor can claim their rights.

Poverty Reduction and Governance TSPs mention supporting measures to empower the poor to claim their rights as a priority.

Source: DFID strategies for achieving the IDTs

Human rights can be used to achieve two different goals: (i) to serve as an inspirational, mobilising force; or (ii) to facilitate access to a range of legal norms and enforcement mechanisms.⁷⁹ DFID can be said to hold an “empowerment approach” which focuses on the inspirational aspects, and downplays legal and other mechanisms that can be used to hold governments to account. In addition, DFID does not often use the *language of human rights*. Participatory processes or social inclusion may indeed be related to human rights values, but are often interpreted without a rights connotation in the mainstream development context.

DFID holds an instrumentalist view of human rights, and rarely sees rights as more than a means to achieving other developmental objectives. At the conceptual level, the primacy given to poverty eradication remains, and is not replaced by the objective of the realisation of all rights. This conflicts with the DRTD. However, some of the DFID strategy papers for the realisation of the MDGs, and in particular the Education TSP, put forward some interpretations of the goals as human rights objectives. This does not radically alter the MDGs but implies that human rights principles and mechanisms can contribute to the realisation of the MDGs. (See Box 7).

Implementation. In terms of operationalising a rights-based approach, DFID policy *does not require* using the language or concepts of human rights obligation in policy dialogue, programmes or projects. Using a rights language would make the obligations of states and entitlements of citizens clearer. But this tends to be resisted by Southern governments, which see such a language as a form of conditionality. However, explicitly using a rights-language could become a powerful tool for Southern governments in their negotiations with international and bilateral organisations, to resist policies or programmes that may have adverse consequences from a human rights perspective.

DFID *does recommend* taking human rights into account in the design of programmes and in policy dialogue. However, as is shown below, DFID practice is mixed, and evolving. For example:

- There appears to be a growing reference to human rights in DFID policy papers, such as Country Strategy Papers (CSPs). DFID Peru in particular is

⁷⁹ See Philp Alston, “The shortcomings of a “Garfield the Cat” Approach to the Right to Development, *California Western International Law Journal*, 1985, pp. 512-513.

- promoting rights-based programmes and planning to fund a pilot project on the RTD with Harvard University and the Independent Expert on the RTD;
- Support to governments has at times been halted in cases of gross human rights violations: for example, suspension of assistance to Nigeria under Abacha and explicit reference to human rights violations in the Burma CSP.⁸⁰ But this is not consistently applied: DFID does not engage in a human rights dialogue with Vietnam though it provides budget support;
 - DFID has developed a programme to help strengthen the OHCHR. The focus is on building core management systems and enhancing its ESCR work. Progress on the Institutional Strategy Paper's objectives is reviewed regularly;⁸¹
 - A number of projects and funds are specifically dedicated to the promotion and protection of specific rights (Governance Funds, Women and Children Rights Projects);
 - Some programmes, though not presented in terms of human rights, are clearly aimed at promoting and protecting rights (such as Safety, Security and Access to Justice Programmes); and
 - DFID does not necessitate human rights impact assessments as differentiated from social and governance appraisals (as is demanded by certain NGOs and the CESCR⁸²), but encourages participatory rights assessments. There is however no requirement to set out how all projects help states fulfil their internationally binding human rights obligations as described in the core UN treaties.

5. Comparison of DFID policy and RTD debate

Table 6 compares some of the key issues of the RTD debates with DFID policy and practice. It shows that there are few areas of major conflict between DFID's approach to development and the interpretation of the RTD put forward in this paper. On a number of points, such as the national ownership of the development process and on globalisation, DFID practice can be said to be more progressive than current CHR discussions. This indicates that DFID could make a valuable contribution to the RTD debate, allow it to become better informed, and more in line with current development policy and practice. DFID could also assist in developing a better dialogue with Southern governments at the CHR, some of which are DFID's development partners.

⁸⁰ "Burma has one of the worst human rights record in Asia [...] None of the criteria necessary for DFID to consider partnership with the Government are satisfied", DFID, *Burma Country Strategy Paper*, July 2000, Para. A4.

⁸¹ DFID, *Working in Partnership with the United Nations Office of the High Commissioner for Human Rights*, October 1999. [OHCHR Institutional Strategy Paper]

⁸² See for example "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan", E/C.12/1/Add.67, September 2001 which encouraged Japan to introduce "human rights impact assessments".

Table 6: Comparison between DFID's position and key issues in the RTD debate

RTD Debate	DFID Position
1. Basic Issues	
Approach to Development	DFID's <u>definition of development</u> is consistent with the Declaration on the Right to Development: pro-poor development requires both growth and equity; it is a comprehensive and multifaceted process.
Human Rights and Development	DFID has an <u>instrumental</u> approach to human rights. It advocates to give due attention to <u>economic and social rights</u> .
Rights-based approaches	An <u>empowerment</u> view of the rights-based approach. DFID does not require placing <u>development as a human right</u> at the centre of development policy and practice, and does not require using human rights language in discussion with partners.
Poverty and Human Rights	The <u>MDGs</u> and the objective of poverty eradication can be interpreted as a reaffirmation of economic and social rights.
National and International Levels	DFID recognises the <u>respective roles</u> of developing and developed countries and international organisations in the development process. "Developing countries must lead the effort for greater poverty reduction in their countries. But developed countries and international institutions must support them in this process." (WP/II, p. 19).
2. National Implementation	
Participation	DFID is committed to enabling people to realise <u>their rights to participate</u> in, and access information relating to, the decision-making processes that affect their lives. A national development strategy should be designed and led by the national government in consultation with civil society. This includes participation of civil society, women and minorities.
Social Justice	DFID is committed to social justice, and advocates for poverty reduction strategies based on <u>economic growth with equity</u> . Programmes focus on <u>vulnerable groups</u> , and their access to goods and services.
Good Governance	DFID is also providing technical and financial assistance to <u>build institutional capacity</u> to allow states to develop appropriate policies. "If developing countries are to maximise the benefits of globalisation, they need effective systems of government and action against corruption [...], ensure respect for human rights, and to promote safety, security and access to justice for all." (WP/II, p. 19). Examples include: supporting economic, public expenditure and financial management reforms; building the capacity of states to undertake social audits, poverty monitoring, better targeted social policies and participatory policy development practices.
National Ownership of the Development Process	DFID is one of the lead donors supportive of mechanisms which <u>enhance developing country ownership and responsibility</u> for development processes through, <i>inter alia</i> , Poverty Reduction Strategy Papers which co-ordinates international assistance around a country's own development plan, budget support, programme aid and sector-wide approaches (SWAPs) which are less distortionary than projects.
Regional Plans	See DFID contribution to NEPAD.
Development Compact	Though DFID is supportive of "partnership approaches", there are a few inconsistencies with the proposals for a development compact:

	<p>The principle of <u>developing country lead</u> in the development process, the growing importance of PRSPs and the policy objective of using a country's own development strategy as the basis for DFID's Country Strategy Papers entails that DFID is not in a position to require that new development strategies be prepared to meet the development compact ideals. Existing partnerships could be viewed through a development compact lens to facilitate RTD discussions. The UK / Rwanda MoU is an example which is now being picked up by other donor countries. It is not clear if new agreements would be needed to realise the RTD through a compact.</p> <p>The overarching objectives of DFID policy are not expressed in terms of human rights but of <u>meeting the MDGs</u>. Though this does not lead to a direct conflict between RTD and DFID policy, it means that DFID does not insist on using the language of human rights to conceptualise its relationship with developing countries. At a practical level, it means that DFID could support (but not require) national development plans expressed in terms of meeting human rights obligations, and using national human rights institutions as part of the national participatory evaluation of the implementation of national poverty reduction strategies.</p>
<p>3. International implementation</p>	
<p>Globalisation</p>	<p>DFID is committed to a <u>development trade round</u> at the WTO and to strengthening the capacities of developing countries to participate effectively in the international trading system. It has funded the <u>Advisory Centre on WTO Law</u>, an independent body assisting developing countries settle WTO disputes. It accepts that the positive aspects of the <u>General Agreement on Trade in Services</u> should be preserved to protect vulnerable economies, and argues in favour of <u>better access to markets</u>, including through EU reforms. It is funding the <u>Africa Trade and Poverty Programme</u> which aims to enhance African governments' capacity to formulate, negotiate and implement trade reform strategies. It recognises developing countries' concerns about <u>international property rights</u> and is supporting a Commission looking at how global rules might be adjusted to serve poor countries.</p> <p>Other areas where DFID is committed to enhancing the positions of developing countries, and recognises the inter-linkages between globalisation and national development include: <u>debt relief</u>; <u>aid untying</u>; the <u>international financial system</u>; and international aspects of <u>corruption and money laundering</u>.</p> <p>DFID recognises the particular responsibility on the part of developed countries to ensure <u>consistency in impact of policies on developing countries</u>. To this end, DFID has increased its participation in government-wide debates which affect developing countries, such as arms trade and export credit guarantees, money laundering, and conflict prevention.</p>
<p>International Governance</p>	<p>DFID is committed to encouraging the IMF and the WB to "support open and broad debate within countries about the design of their policies, and encourage independent assessment of the impact of these policies on the poor and the environment." (WP II, p. 52).</p> <p>It is also committed to ensuring that developing countries are fully involved in the discussions at <u>G8 and OECD</u> that affects their interests. (WP II, p. 101).</p>
<p>Duty of Co-operation and the Nature of International Development</p>	<p>DFID does not accept that it is under a <u>legal or human rights obligation to provide development assistance</u>. The obligation to provide assistance is described both in moral and enlightened self-interest terms. It is not grounded on the RTD, nor in an obligation of international co-operation as could be derived from international human rights instruments.</p>

Assistance	DFID agrees with the view often expressed at the Commission on Human Rights that the <u>decline in ODA</u> should be reversed, and the UN objective of 0.7% of GNP should be reached. DFID itself has increased its budget and is on track to meet its ODA/GNP target of 0.32% for 2001.
Donor Accountability	<p>DFID policy stresses the importance of <u>accountability</u> in the development process, including in the provision of assistance by developed countries and international institutions. DFID recognises that development agencies are political actors: "donors make themselves accountable in developing and transitional countries through regular publication of statements of their development policy, reports on programme implementation and a willingness to be questioned by democratic parliaments and civil society." (Governance TSP, p. 29).</p> <p>DFID is committed to greater <u>transparency</u> in the operation of all development programmes, including the involvement of developing country governments in deciding how funds are allocated, and be kept informed on commitments, disbursements and missions. Reviews of programmes should be broadened to representatives of developing countries and civil society.</p>
Peace and Security	This is a policy area mentioned in the DRTD (Art. 7) but less central to current RTD debates. DFID has acknowledged the linkages between poverty eradication and the <u>prevention of conflict</u> . DFID does not advocate for "general and complete disarmament" but supports assessing appropriate levels of military expenditure to balance national security and development objectives. The new International Development Bill will allow DFID to become more engaged in security sector reform.

6. Conclusion

This report makes a case for DFID and other development agencies to take the Right to Development (RTD) seriously. The RTD should certainly not replace the Millennium Development Goals and the overarching objective of poverty eradication. But debates surrounding the RTD can inform development policy and practice, and, at some point, the inter-governmental processes on the RTD may reach decisions with practical consequences for development agencies.

The main practical conclusions reached by this report are that:

1. Efforts should be made to reduce the gap between development meetings and United Nations human rights mechanisms that relate to development and international assistance. It may be possible to improve the quality and relevance of Right to Development discussions so that they inform other processes.

2. Efforts should also be made to ensure greater consistency within the United Nations system so that human rights procedures (including the Right to Development mechanisms) and agencies developing policies on human rights, development and related issues work together. This would enhance the contribution of the United Nations human rights system to mainstream development policy and practice.

3. Governments need to reach a clear position on the proposal made by the United Nations Independent Expert on the Right to Development for a “development compact” which would help operationalise the Right to Development. It may be that the “compact” should be seen as a theoretical model which could help existing approaches better integrate human rights commitments and reflect the “reciprocal obligations” of developed and developing countries.

4. Developing countries governments need to be involved in discussions concerning rights-based approaches to development assistance. The Right to Development inter-governmental debate does not create such an opportunity as it is too politicised. But it would be important to hear from developing countries officials how they see their national development strategies as contributing to the realisation of human rights, and how this relates to the Right to Development.

5. Areas for further research and thinking include:

- (i) The nature of “mutual commitments and shared responsibilities” in a partnership approach to development, and in particular how to monitor the implementation of these commitments by all parties, and what are appropriate and effective accountability and enforcement mechanisms;
- (ii) The practical impact of human rights rights-based approaches to development, including distinguishing between human rights as an inspirational force and their function in facilitating the use of legal norms, and judicial, administrative or political enforcement mechanisms;
- (iii) The impact of globalisation on the realisation of human rights and the responsibilities of non-state actors, including international agencies; and
- (iv) How to enhance the accountability of governments and donors to the beneficiaries of development assistance.

The Right to Development

**A Review of the Current State of the Debate for the
Department for International Development**

ANNEXES

Laure-Hélène Piron

April 2002

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ANNEX I DECLARATION ON THE RIGHT TO DEVELOPMENT

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

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,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering 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,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Declaration on the Right to Development:

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and

complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

3. 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 active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

2. The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Article 4

1. 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.

2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Article 5

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Article 6

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

3. 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.

Article 7

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and 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. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 9

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or 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.

Article 10

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

ANNEX II CHRONOLOGY

1944 Declaration of Philadelphia concerning the aims of the International Labour Organisation (ILO): "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity" (Principle II (a), incorporated as an Annex of the Constitution of the ILO)

1945 United Nations Charter Articles 55 and 56

1948 Universal Declaration on Human Rights Article 28

1957 General Assembly (GA) Resolution 1161 (XII) "a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace

and security, social progress and better standards of living, and the observance of and respect for human rights and fundamental freedoms”

1962 GA Resolution on Permanent Sovereignty over Natural Resources asserts the right of states to control the development of their natural resources (despite contractual obligations to foreign companies); this is now accepted as part of customary international law

1964 First UN Conference on Trade and Development demand by Southern countries for more equitable distribution of the world’s resources

1968 Teheran International Conference on Human Rights “The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community” (Para. 12); and “The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development” (Para. 13)

1969 Declaration on Social Progress and Development the primary conditions of social progress and development include "the right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference"

1969 Declaration on Social Progress and Development states that social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and compliance with human rights and fundamental freedoms

1972 Keba M’baye Senegalese jurist, first mention of the right to development at the Inaugural Lecture to the International Institute of Human Rights, Strasburg

1974 Charter of Economic Rights and Duties of States sets out a framework of obligations for a New International Economic Order (NIEO) emphasising the rights of lesser developed states to substantive equality in international economic relations

1977 Commission on Human Rights resolution 4 (XXXIII) contains the first explicit mention of the RTD in a UN resolution, recognises the right to development as a human rights and invites the Secretary General of the United Nations to undertake a study on the “international dimensions of the RTD as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the NIEO and the fundamental human needs”

1978 UNESCO Declaration on Race and Racial Prejudice affirmed the RTD

1979 Report of the Secretary General on the RTD considered by the Commission on Human Rights and recommendation for follow-up on regional and national dimensions

1979 The Hague Academy of International Law workshop on the RTD

1981 African Charter on Human and Peoples' Rights adopted by OAU, Article 22 proclaims the right of peoples to their development, and the duty of states, individually or collectively, to ensure the exercise of the RTD

1981-89 First Working Group on RTD of governmental experts, to study the scope and content of the RTD and to submit proposals for its implementation and a draft international instrument

1986 Declaration on the Right to Development adopted by the UN GA

1986 Declaration on the Progressive Development of Principles of Public International Law Relating to the Development of a New International Economic Order (International Law Association, Seoul) Para. 3.3 argues for the existence of a legal duty to provide international development assistance

1990 Global Consultation on the Realisation of the Right to Development as a Human Right, Geneva

1992 Rio Conference on Environment and Development Principle 3: "The right to development must be fulfilled so as to ably meet developmental and environmental needs of present and future generations"

1993 Vienna World Conference on Human Rights Para. 10: "The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights".

1993 High Commissioner for Human Rights' mandate includes the promotion and protection of the realisation of the right to development.

1993-95 Second Working Group to identify the obstacles to the implementation and realisation of the RTD

1994 International Conference on Population and Development, Cairo

1995 Fourth World Conference on Women, Beijing

1995 World Summit for Social Development, Copenhagen

1996 Research and RTD Branch established following Commission on Human Rights Resolution 1995/17 requiring RTD focal point at Centre for Human Rights (now OHCHR)

1996-97 Intergovernmental Working Group of Experts to elaborate a strategy for further practical measures for the implementation of the RTD

1998-present Open-Ended Working Group to (i) monitor and review progress made in the promotion and implementation of the RTD; (ii) review reports and other information and (iii) prepare sessional report to the CHR; met in September 2000, January-February 2001, and February-March 2002; mandate renewed for 1 year in 2001; request 2 year renewal in 2002

1998-present Independent Expert Professor Arjun Sengupta, mandate to study the current state of progress in the implementation of the right to development as a basis for a focused discussion; mandate renewed for 3 years in 2001 and asked to produce a preliminary study on the impact of international economic and financial issues on human rights

2000 Millennium Summit and Declaration: “We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.” (Para. 11).

2000 G77 Havana South Summit and Programme of Action “We stress that democracy, respect for internationally recognized human rights and fundamental freedoms, including the right to development (...) are an essential part of the necessary foundations for the realization of people-centered sustainable development” (Para 12)

2001 OHCHR Expert Seminar on Human Rights and Poverty

2001 Committee on Economic, Social and Cultural Rights statement on human rights and poverty, recognising the link between poverty and the RTD

2001 Third United Nations Conference on Lest Developed Countries, Brussels

2001 World Summit for Social Development and Beyond, Geneva

2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban

2001 New Partnership for Africa’s Development launched, Abuja

2001 World Trade Organisation 4th Ministerial Conference, Doha

2002 (25 February- 8 March) 3rd meeting of the **Open-Ended Working Group on the RTD**

2002 (March) **Financing for Development Conference**, Monterrey

2002 (18 March-26 April) **Commission on Human Rights**, Geneva

2002 (September) **Rio + 10: World Summit on Sustainable Development**, Johannesburg

ANNEX III INTERNATIONAL LAW AND THE STATUS OF THE RIGHT TO DEVELOPMENT

1. Introduction¹

This annex reviews three main debates concerning the international legal status of the Right to Development (RTD):

- (i) Though the RTD has met the procedural requirements² to become a new internationally recognised human right, the Declaration on the Right to Development (DRTD) is not a legally binding treaty. A review of other sources shows that the RTD is not legally binding under international law and that states other than parties to the African Charter on Human and Peoples' Rights cannot be held legally accountable for its implementation. This is not to deny the *moral or political force* the DRTD.
- (ii) The RTD is often interpreted as including a duty to provide international assistance, which would possibly be legally binding. This could have a considerable practical impact. However this obligation may be moral or political, but it cannot be regarded as binding under international law.
- (iii) Finally, it can be shown that other instruments under international human rights law can be interpreted as giving rise to obligations on states equivalent, but not identical, to those that some derive from the DRTD.

2. The status of the RTD

The RTD is not fully accepted as creating binding obligations under international law. It is part of the body of law being developed, *lex ferenda*, not that of established law, *lex lata*. To help resolve the debate, it is necessary to examine under which source of law the RTD is being established and recognised as giving rise to legal obligations.

Sources There are four principal sources of international law³ that can create international legal obligations:

- (i) International conventions or treaties;
- (ii) International custom as evidence of a general and consistent practice of states accepted as law and followed by them from a sense of legal obligation;
- (iii) General principles of law recognised by "civilised nations" – that is, common to the major legal systems (as a supplementary source); and

¹ See Ian Brownlie, "The Human Right to Development", Commonwealth Secretariat, 1989 for a clear and more detailed, but early, analysis of the legal aspects of the RTD debate.

² It was endorsed by the General Assembly of the United Nations, and reaffirmed in later conferences, including more recently at the UN Millennium Summit. See Alston's substantive and procedural requirements for the conjuring of new human rights: Philip Alston, "Conjuring Up New Human Rights: a Proposal for Quality Control", *American Journal of International Law*, vol. 78, 1984, at pp. 614-616.

³ See Art. 38(1) of the Statute of the International Court of Justice and Henkin et al., *International Law: Sources and Materials*, 3rd edition, 1993, p. 51.

- (iv) Judicial decisions and the teachings of the most highly qualified publicists of the various nations (as a supplementary source).

Treaties The DRTD is not a treaty, only a UN General Assembly Resolution, which is a non-binding pronouncement (“soft law”). The only treaty which explicitly mentions the RTD is the African Charter on Human and Peoples’ Rights.⁴ It is however only binding on African states which are party to it. (As will be shown below, some treaties include provisions similar to elements of the DRTD, but not identical to it.)

Practice of state as evidence that RTD is accepted under customary international law Do states behave as if there is a RTD, which would allow one to advance the claim that it is part of customary law? For some, state practice is evolving in direction of RTD⁵, but that would entail a clear agreement on what the RTD and the state practice consist in. State practice must be uniform, consistent and well established; but it must also reflect *opinio juris*, a psychological element whereby the states feel bound. As will be shown below, OECD states do provide development assistance, but deny that they are under a legal obligation to do so.

Supplementary sources There is no evidence that the RTD is referred to in national legal systems. There is also no evidence that a consensus has been reached amongst “eminent jurists” on the RTD. There is at least one judicial decision referring to some of the constituent principles behind the RTD.⁶ But this is not enough to ground the RTD as a legally binding obligation under international law.

3. A legal duty to provide international assistance

The most controversial aspect of the DRTD is whether or not the RTD gives rise to a legally binding obligation to provide and receive international development assistance. This claim is derived from the suggestion that developed nations have a duty to make reparations to former colonies (a claim still made in NEPAD or the 2001 Durban World Conference on Racism). This proposition is defended by academics and practitioners such as Bedjaoui⁷ and by the International Law Association,⁸ but is rejected by OECD states providing assistance.

⁴ Article 22 of the African Charter:

“(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. (2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development”.

⁵ Roland Rich, “The Right to Development: A Right of Peoples?”, 1988, pp. 46-50.

⁶ Court of Arbitration Guinea – Guinea (Bissau) Maritime Delimitation Case referred to the “legitimate claims” of the parties as developing States and to the “right of the peoples involved to a level of economic and social development which fully preserves their dignity” (Award of 18 February 1983, International Law Reports (ed. Lauterpacht) vol. 77, p. 635 at p. 689 (Para. 123), quoted in Ian Brownlie, “The Human Right to Development”, Commonwealth Secretariat, 1989 at p.2. Further research would be needed to see if judicial decisions have referred to the 1986 DRTD or to Art. 22 of the African Charter.

⁷ Mohammed Bedjaoui, “Some Unorthodox Reflections on the ‘Right to Development’”, in *International Law of Development: Comparative Perspectives*, ed. F Snyder and P. Slinn, 1987.

⁸ Declaration on the Progressive Development of Principles of Public International Law relating to a New International Economic Order, Seoul, 1986, Para. 3.3 (see quote in Annex II).

DRTD The DRTD does not contain a direct reference to the legal duty to provide assistance. It states that there is a duty to co-operate with other states, and to formulate appropriate international development policies so as to ensure development.⁹ These are general requirements. But there is no specific duty owed by a state to another state, or to its people.

Binding treaties The duty to provide assistance has also been derived from an interpretation of the UN Charter. Through its Articles 55 and 56, member states have made a commitment to the realisation of human rights and to economic and social development, and have pledged to take joint and separate actions for their realisation.¹⁰ The Charter is a legally binding treaty, so under this interpretation a legal obligation could be created. Other binding treaties open to a similar interpretation are the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹ and the Convention on the Rights of the Child (CRC).¹² However, some see the wording of the relevant Charter articles as too vague; they only refer to a commitment to realising social and economic development, and not to providing international assistance.

Two General Comments of the Committee of Economic, Social and Cultural Rights (CESCR) shed another light on the nature of the obligations found in these treaties. General Comment 12 states that, so as to comply with their general obligations in relation to the right to health, state parties have to respect the enjoyment of the right to health in third countries, and prevent third parties from violating the rights in other countries.¹³ States should also provide the necessary assistance when required and make resources available, and have an obligation to ensure that their actions, as members of international organisations, take due account of the right to health.

⁹ Art. 3(3): States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. Art. 4(1): States have the duty to take steps, individually and collectively, to formulate international development policies; Art. 4(2): As a complement to the efforts of developing countries, effective international co-operation is essential.

¹⁰ Art. 55: The United Nations shall promote: "(a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Art. 56: "All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55."

¹¹ Art. 2: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

¹² For example, Art. 4: "States Parties shall undertake all appropriate legislative, administrative and other measures for the rights recognised in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources, and where needed, within the framework of international cooperation." Also see Art. 24(4) on health and 28(3) on education: "State Parties shall promote and encourage international co-operation in matters relating to [health / education...]. In this regard, particular account shall be taken of the needs of developing countries."

¹³ "The Right to the Highest Attainable Standard of Health", CESCR General Comment 14, E/C.12/200/4, July 2000.

General Comment 3 clarifies the nature of legal obligation under Art. 2(1) of the ICESCR.¹⁴ It involves taking steps to progressively realise the right. This entails taking deliberate, concrete and targeted actions towards meeting the obligations in the Covenant. The available resources cover both resources available domestically, and those available through international co-operation. The CESCR has now developed the practice of asking state parties to review their implementation of their obligations under Art. 2(1) (as well as Art. 11, 15, 22 and 23) concerning international assistance and cooperation.¹⁵

The CESCR thus argues that ICESCR and Charter Art. 55 and 56 establish that international co-operation for development is an obligation of all states. The question is whether this obligation is (i) legally binding; (ii) tantamount to the provision of development assistance to specific states; and (iii) whether developing nations can make a claim on developed states to receive such assistance. However, even if states were to fully agree that they are under a duty to co-operate internationally in the process of development, this is not equivalent to saying that states are under a duty to provide the result, i.e. development, or specific amounts of international financial or technical assistance.

A similar analysis can be made of the Universal Declaration on Human Rights¹⁶, regarded by some as part of customary human rights law, and others as “soft law”. The right to an international order in which rights can be fully realised is a statement of intent. It may require progressive steps and specific actions on the part of developing and developed countries. But this refers at a general level to international co-operation, not to clear legal obligations owed by certain states to other states.¹⁷

Customary law States do give international assistance, and not just on the basis of charity. It can be argued that the provision of Overseas Development Assistance (ODA) by all the OECD member states is a consistent practice, even if aid is provided at different levels. However these states repeatedly refuse to say that this practice is based on any form of legal obligation. The often-quoted 0.7% GNP target is not a legally binding agreement, but a political statement of intent.¹⁸ States give aid for specific objectives, in particular to assist developing countries reduce poverty - which is a shared goal of all countries. But states do not give aid unconditionally. Evidence of commitment to the MDGs is often required.

Under environmental law (Framework Convention on Climate Change, 1992) or maritime law (UN Convention on the Law of the Sea, 1982, Art 141), or human rights law (Art 2(3) ICESCR) there is a recognition that different responsibilities under international law fall on developing and developed states, and that “more” can be expected the latter. This also applies to international trade agreements (such as the EU trade preferences for ACP

¹⁴ “The Nature of States Parties Obligations (Art 2, par.1)”, CESCR General Comment 3, E/1991/23, Annex III, 1990.

¹⁵ See for example, “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan”, E/C.12/1/Add.67, September 2001 which also encouraged Japan to increase its ODA towards 0.7% of GDP.

¹⁶ Article 28: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully recognised.”

¹⁷ Philip Alston argues that the RTD gives “greater operational context” to the interpretation of Art. 28 as establishing the principle that respect for human rights is “an open-ended obligation applying to all societal relations whether at the local, nation or international level”, P Aslton, “Garfield the Cat Approach”, p. 515.

¹⁸ The 0.7% target was first enunciated by the Pearson Commission in 1968 and was then included in UN General Assembly Resolution / Least Developed Countries conference in 1970.

countries under the Cotonou Agreement). This entails a recognition under international law that states can have different obligations based on their level of development. These agreements also presuppose some principle of international solidarity (though perhaps they are only realistic assessments of what can be achieved). Can an obligation to provide assistance be derived from these provisions for differentiated treatment under international law? Not in the monetary sense, but there is a recognition that some states may need assistance to meet their international obligations (though this cannot justify human rights violations). It should be however noted that the DRTD does not make a direct reference to such preferential claims.

4. Other aspects of the DRTD and other legally binding treaties

Finally, a comparison of the DRTD with existing binding treaties reveals that some provisions of the DRTD find their equivalent in binding treaties. As a result, it may not be necessary to argue on the basis of the DRTD to ground these specific principles under international law. It may be more powerful to defend those obligations through existing UN Treaty-Based mechanisms and national incorporation of the Treaties. However, the remaining value of the DRTD is that it combines these provisions together within one framework.

For example, the participation principle of the DRTD is complemented by similar treaty-based obligations, such as Art. 14 of the Convention on the Elimination of All Forms of Discrimination Against Women¹⁹, or Art. 7 of the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries No 169.²⁰ Additional references to the right to participate in the development process can be found in non legally binding documents, such as the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.²¹ For some commentators, this creates an obligation on the part of international development agencies, both bilateral and multi-lateral, to ensure sufficient participation in their development projects, including participatory human rights assessments.²²

Social justice objectives of the DRTD can be seen as a reformulation of the rights of non-discrimination and equality, as they relate in particular to the development process and its outcomes. (See ICCPR and ICESCR, CERD and other instruments.)

The provisions of the DRTD on self-determination find their equivalent in legally binding treaties, such as in Art. 1 and 2 of ICESCR which emphasise that “by virtue of” the right to self determination, peoples enjoy the right to “freely pursue their economic, social and cultural development” and to “freely dispose of their natural wealth and resources.”

¹⁹ States Parties shall ensure to rural women the right to “participate in the elaboration and implementation of development planning at all levels” Art. 14 (2) (a).

²⁰ “The peoples concerned shall have the rights to decide their own priorities for the process of development as it affects their lives... In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

²¹ “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority which they belong to or the regions in which they live, in a manner not incompatible with national legislation”, Article 3, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

²² See for example James Paul, “The Human Right to Development: Its Meaning and Importance”, *The John Marshall Law Review*, vol. 25, 1992.

ANNEX IV CASE STUDIES

1. Introduction

This annex reviews two processes in which the Department for International Development is actively engaged, and which merit comparison with the Independent Expert's proposal for a "development compact" between developing and developed states. They can both be said to be representative of a "shared responsibility and mutual commitments" approach to development. They both compare better to the development compact proposal in terms of potential for national ownership, but they are weaker on the integration of human rights norms and principles into development practice. This annex ends with a brief analysis of PRSPs and suggestions for additional case studies.

2. UK / Rwanda Memorandum of Understanding (MoU)²³

The UK/Rwanda MoU may well provide the nearest practical example to a bilateral "development compact". It is however more in line with current development best practice.

The MoU is a legally non-binding document which sets out understandings reached between the UK and the Government of Rwanda (GoR) on the elements of a development partnership to support Rwanda's National Development Vision 2020. For its part, the UK recognises that Rwanda "should be treated as a special case for development assistance" and makes "a long-term commitment to help Rwanda meet the International Development Targets". Support will be provided for at least 10 years at the same financial level on the basis of continued adherence by GoR to its own commitments. GoR's commitment to achieving its National Development Vision is defined in terms of jointly agreed indicators, which are monitored annually by independent consultants. The commitments made by both parties are reviewed annually during Aid Talks. The MoU is a public document.

The benefits of the MoU for GoR is that it guarantees a stable level of donor assistance, including budget support, over a substantial period. This allows a better integration of external assistance with internal resources, and limits some of the external burdens caused by cumbersome bilateral assistance procedures. From the point of view of the UK, the MoU creates some guarantees that assistance will be spent on pro-poor policies and provides an entry point to build the capacity of GoR to develop and implement such policies. It also allows the UK to engage in high-level policy dialogue, not only in areas of UK support, but on the agenda set out in the MoU. DFID's assessment of the process to date is that GoR has met its commitments, and that DFID has been able to get better political access. GoR is keen to sign MoUs with other bilateral agencies as it provides a guarantee of bilateral funding; other bilateral agencies have expressed an interest in signing MoUs with GoR.

The MoU approach is complementary to donor co-ordination around the Poverty Reduction Strategy Paper (PRSP) process, which is well advanced in Rwanda. Some MoU targets are similar to Poverty Reduction and Growth Facility (PRGF) targets, but they are not identical. The benefits to the UK is that it allows to keep an open line of discussion on issues which may not be included in GoU's PRSP, such as on governance issues.

²³ Understanding on the development partnership between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic in Rwanda, *Rwanda Country Strategy Paper*, DFID, September 1999, pp. 9-12.

The MoU cannot be described as a fully “equal partnership”. UK commitments are much easier to meet (stable disbursement and timely provision of technical assistance), whereas GoU commitments are more complex to achieve. The review process does not allow for direct Rwandan (either government or civil society) questioning of DFID policy or implementation. The independent monitors have been Northern-based, though information from Rwandan sources have been used. The participative nature of the monitoring process could be better achieved if Rwandan institutions, such as the National Unity and Reconciliation Commission, had sufficient capacity and independence to monitor the process of national development and provision of international assistance.

Comparing the MoU to the development compact proposal, it should be noted that MoU commitments are not expressed in human rights language, and are not explicitly grounded on a human-rights based approach to development. However, some of the commitments, such as good governance (including grassroots democracy and popular participation) and poverty reduction are consistent with the right to development approach. Human rights institutions could be involved in the review process.

More importantly, the MoU gives a greater level of ownership to Rwanda than the compact approach would allow. There is no external review of GoR’s plans independently of existing development practices, such as the PRSP. There is no burdensome “trust fund” approach; instead resources are provided through the budget and national capacity is built. There is no anonymous allocation of financial burden on the part of developed countries: Rwanda and its bilateral partners can discuss, negotiate and agree the levels of support, and commitments.

3. The New Partnership for Africa’s Development (NEPAD)²⁴

The New Partnership for Africa’s Development was adopted in October 2001 as the African Union was created to replace the Organisation of African Unity. It is a continental strategy developed by African leaders, which is to be implemented with African resources and the support of the international community. Prime Minister Tony Blair is particularly committed to this approach, as is illustrated by his statement to the Millennium Summit: “We need a new partnership for Africa, in which Africans lead but the rest of the world is committed; where all the problems are dealt with not separately but together in a coherent and unified plan.”²⁵

NEPAD is based on a series of mutual commitments: “In proposing the partnership, Africa recognises that it holds the key to its own development. We affirm, that the *New Partnership for Africa’s Development* offers an historic opportunity for the developed countries of the world to enter into a genuine partnership with Africa, based on mutual interest, shared commitments and binding agreements.” It is also a commitment between African leaders to their people: “African leaders are making a commitment to the African people and to the world to work together in rebuilding the continent.”²⁶ Thus both the international and national (or in this case regional) dimensions of the Right to Development (RTD) are covered.

²⁴ *New Partnership for Africa’s Development* (NEPAD), agreed by the African Union, October 2001, Abuja.

²⁵ Speech by the Prime Minister, the Rt Hon Tony Blair at the Millennium Summit of the United Nations, 6 September 2000.

²⁶ NEPAD, p. 57.

The joint responsibilities of African leaders include: conflict prevention; promoting and protecting democracy and human rights and maintaining the rule of law; promoting the role of women in development; macro-economic stability; promotion of productive sectors, education and health.

The responsibilities and obligations of the developed countries and multilateral institutions include: conflict prevention; debt relief; reversing the decline in ODA; access to markets; promotion of investment; action on international aspects of corruption; capacity building; governance reform of multilateral institutions; and concrete commitments in education and health.

Elements of the new partnership include African leaders coming together, in co-ordination with OECD DAC, to mobilise resources (including external resources such as debt relief and increased ODA flows) as well as to reform the ODA delivery system. There is also a proposal to develop a charter underpinning this development partnership.²⁷

NEPAD can be compared to, and assessed against, the principles of the RTD. As in some of the RTD debates, NEPAD mentions the legacy of colonialism and the unequal international economic order as obstacles to development, but also recognises failures of African leadership. It also contains some similar objectives as the RTD: the promotion of peace and stability; people-centered development; poverty reduction and the IDTs; and a focus on women's participation in development. It is said to have "as one of its foundation the expansion of democratic frontiers and the deepening if the culture of human rights."²⁸

NEPAD is not grounded on a rights-based approach to development; nor does it place human rights as fundamental to development. It does specifically mention the RTD, but only in passing.²⁹ Human rights are mentioned as part of the good governance agenda, and not as the goal of development. And there is no mention of international human rights obligations. More importantly, the greatest possible link to the RTD has been missed: there is no mention of the African Charter, the only binding treaty which includes the RTD.

NEPAD asks the peoples of Africa to mobilise themselves to develop the continent, but specifies that it should be under the political leadership of their representatives.³⁰ "We believe that while African leaders derive their mandates from their people, it is their role to articulate these plans as well as lead the processes of implementation on behalf of their people."³¹ Overall control remains with the political leadership. There is no mention of mechanisms to allow African peoples to feed into the development of a national or regional strategy, to evaluate its impact, or monitor its implementation. Only broad commitments to democracy and political governance are made, but there is no detailed analysis of participatory politics, and there is no mention of civil society in this context.³²

Mechanisms to monitor the realisation of this new partnership are still being established. At present, two parallel processes are being set-up. The G8 will develop its own action plan in support of NEPAD (to be adopted in partnership with African countries at the G8 Kananaskis

²⁷ NEPAD, p. 37.

²⁸ NEPAD, p. 51.

²⁹ NEPAD, p. 10.

³⁰ NEPAD, p. 13.

³¹ NEPAD, p. 11.

³² NEPAD, pp. 17-18.

meeting in June 2002). African leaders are also setting up an institutional framework based on peer-reviews.³³ NEPAD does not seem to provide a direct accountability mechanism between the two parties. African leaders will not be able to hold G8 leaders to account for the implementation of their action plan, or the failure to deliver policy reforms (for example better access to EU markets). As noted above, there is also no accountability mechanism for the citizens of African countries. This could be done through the provision of information, or the involvement of national Parliaments in the process.

4. Poverty Reduction Strategy Papers³⁴

The IE's proposal for the introduction of development compacts should be primarily assessed against the contribution made by the introduction of Poverty Reduction Strategy Papers (PRSPs). These have become the main instruments for development assistance. The IMF/World Bank comprehensive review of PRSPs provides a substantial amount of primary information on which to base such a comparative assessment.

PRSPs were introduced in 1999 to facilitate debt relief for eligible countries through the Heavily Indebted Poor Country Initiative (HIPC), and to increase the quality and poverty focus of IMF and World Bank assistance to low-income countries. Interim PRSPs are required to allow IFIs support to continue whilst full PRSPs are prepared on the basis of certain core principles which include: broad-based participation in formulation and implementation, country-leadership and country-ownership, and partnerships between governments and other actors. PRSPs are seen as a considerable improvement on past approaches, as they (theoretically) put developing countries in the lead in the preparation of national development plans to meet national priorities. Multilateral and bilateral assistance strategies are now being developed around PRSPs-based dialogues with governments.

PRSPs do not fully correspond to some of aspects of the development compact. For example, they usually do not put human rights as the objective of national development, and do not mention human rights obligations or use human rights language. But countries could take a rights-based approach to PRSPs. (OHCHR is developing human rights guidelines for PRSPs that will highlight the contribution of a rights-based approach.³⁵)

In practice the development of PRSPs is still often influenced by IFIs policy options and motivated by a desire to obtain debt relief and concessional finance, as opposed to a commitment to poverty eradication or to the realisation of the RTD. There is however a genuine effort on the part of donors to reform their development policies and operational approaches. Though the development compact language of "reciprocal obligations" is not used in the context of PRSPs, there is clearly an understanding on the part of developing countries that they can expect support as a result of developing PRSPs, and a commitment on the part of donors to provide the resources to implement PRSPs. How PRSPs contribute to realising "mutual commitments and shared responsibilities" requires further research.

³³ The peer review process originated in the notion of governance indices as mechanisms to promote dialogue by UN Economic Commission for Africa "Compact for African Recovery: Operationalising the Millennium Partnership for African Recovery Programme", April 2001. The details of this review process have not been finalised but the March 2002 meeting of the NEPAD implementation committee did reviewed an African Peer Review Mechanism based on a self-assessment system.

³⁴ See www.worldbank.org/poverty/strategies for further details on PRSPs.

³⁵ Paul Hunt, Manfred Nowak, and Siddiq Osmani, "Human Rights and Poverty Reduction Strategies" a Discussion paper prepared for OHCHR, February 2002.

5. Other case studies

With funding from the Dutch government, pilots on the RTD and the “development compact” are being developed by the Independent Expert, Harvard University and OHCHR.³⁶ The pilot countries are at present: India, Bangladesh, Sri Lanka, Mali, Ghana, Cambodia, and also possibly the Philippines, Indonesia, Egypt, and Peru. These empirical studies will assess the needs and potential elements of the RTD as they relate to the rights to health, education and food. The outcomes should be followed closely, and progress reported at the CHR. The pilot studies will include:

- An analysis of the place of the right to development and a human rights-based approach to development in the country’s current development process;
- Consideration of how the right to development and human rights principles can be integrated into the development process;
- Recommendations concerning relevant modalities of international co-operation aimed at integrating the right to development and a human rights-based approach to development into the country’s development process for the future; and
- Practical projects to show how the human rights-based approach to development can be put into practice. The objectives of each project and the approach to realising these objectives will be decided through a participatory process involving the local community that will be affected by the project.

Other case studies could be prepared, comparing existing development partnership mechanisms to the RTD and to the proposal for a development compact, so as to inform Open-Ended Working Group and Commission on Human Rights discussions.

Rights and Humanity, in its 2000 paper, already covers:³⁷

- National: South Africa (the Right to Development is included in South Africa’s National Human Rights Action Plan);
- Regional: The Alliance for Sustainable Development in Central America;
- International: Poverty Reduction Initiatives: Comprehensive Development Framework, Poverty Reduction Strategy Papers, UNCTAD X, and the WTO Integrated Framework for Least Developed Countries.

Other international processes to be examined would include:

- 20/20 concept and World Summit for Social Development;
- 3rd UN Least Developed Countries Conference (see box below);
- Common Country Assessments / UN Development Assistance Frameworks;
- Financing for Development Conference outcomes; and
- Millennium Development Goals reporting mechanisms.

³⁶ François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, “Right to Development Project Document”, October 2001.

³⁷ Rights and Humanity, “An Emerging Consensus on the Right to Development: Some Current Initiatives relevant to the implementation of the Right to Development”, Background Papers for a seminar on the Right to Development, September 2000.

National and regional processes could also be studied, and evidence provided of how the concept of the RTD is relevant to current practice, whether it is actually mentioned by developing countries, and whether a “development compact” would improve development practice, in terms of respecting RTD principles. In addition to assessing the integration of human rights principles in national development strategies (as in the Harvard pilots), the objectives of the case studies should be to assess:

- The existing development partnerships between developed and developing countries;
- The effectiveness of accountability mechanisms (to citizens, to recipient governments and to donor governments); and
- How these processes have an impact on the international environment for development.

Box 8: Brussels Declaration and Programme of Action for the Third United Nations Conference on Least Developed Countries (LDCs)

Another objective of the Programme of Action is to contribute to the renovation and invigoration of partnership between the LDCs and their development partners by promoting mutual and shared responsibility as well as greater participation and integration of the LDCs in the global economy. (Para. 13)

This partnership is based on mutual commitments by LDCs and their development partners to undertake concrete actions in a number of interlinked areas set out in the Programme of Action. It is entered into in accordance with the Charter of the United Nations and with full respect for national sovereignty. This partnership will be nurtured and strengthened by mutual collaboration of partners through relevant international forums and processes. While LDCs should assume ownership of designing and formulating appropriate national policies of their own will and choice to create conditions conducive to development and continue to have the primary responsibility for effective implementation of those policies and measures, the full implementation of the Programme of Action is the shared responsibility of these countries and their development partners. The strengthened partnership for development necessitates adequate external support from the LDCs’ development partners. (Para. 14)

The development partners will assist in the implementation of the Programme of Action through the commitments undertaken herein in a spirit of genuine solidarity and shared responsibility. (Para 16)

A new spirit of international co-operation must prevail, based on the principle of getting common benefits, but also on the common, but differentiated, responsibilities of developed and developing countries. (Para 19)

ANNEX V NOTES ON SELECTED INTERNATIONAL DONOR GOVERNMENTS, INTERNATIONAL ORGANISATIONS AND NGOS

1. Selected donors

AUSTRALIA: Australian Agency for International Development

Aid policy: Focus on poverty reduction and sustainable development.

Rights-based approach: All activities under the aid programme contribute to the promotion and protection of human rights. However, AusAid does not support such a rights-based approach because there is no clear understanding on what it means; it might limit and pre-determine mechanisms for delivering aid, and it does not sufficiently address the role and responsibilities of developing countries in dealing with the human rights of its citizens.

Right to Development: Development assistance is not grounded on the RTD. AusAid is sceptical about the operational value of the RTD and the development compact, in particular in the practical area of trade-offs between rights.

Human Rights and Globalisation: Does not support the inclusion of human right standards in programme conditionalities at the World Bank or the IMF as it would be a diversion from their core mandates; international trade and investment machinery already promotes beneficial human rights outcomes.

Source: Interview; Report of the Secretary General on Globalisation (Australian reply) A/56/254, 2001; AusAid submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs and Trade, February 2001.

CANADA: Canadian Ministry of Foreign Affairs and Canadian Agency for International Development

CIDA purpose: to promote sustainable development in developing countries in order to reduce poverty and to contribute to a more secure, equitable and prosperous world. CIDA policy based on foreign policy objectives: (i) promotion of prosperity; (ii) protection of Canada's security within a stable global framework and (iii) promotion of Canadian values and democracy and the rule of law, and culture.

CIDA policy on poverty reduction to ensure that ODA genuinely and sustainably assist in reducing the number of poor people in developing countries and in improving their living conditions. Canada has subscribed to the commitment of the international community as reiterated in DAC Shaping the 21st Century and the WSSD. Six ODA priorities, one of which is a fundamental commitment to support efforts of developing countries to meet their basic human needs, and commits 25% of ODA to basic human needs. Implementation strategy requires a global partnership of all channels of cooperation and the international community, Developing countries have the primary responsibility for meeting basic human needs of poor people in their country. Canada also supports the 20/20 initiative which encourages governments of developing countries to allocate 20% of their public expenditure to basic social services, and asks developed countries to allocate 20% of their ODA to these sectors.

Policy on human rights, democratisation and good governance: Objective is to enhance the will and capacity of developing country societies to respect the rights of children, women and men, and to govern effectively and in a democratic manner. Takes action through dialogue and programmes. Attempts to avoid the negative effects of projects (e.g. displacement) by consulting on the development of promising approaches for the assessment of human rights impacts of programs and policies and resolving problems with the affected groups. In situations of extreme human rights violations, need to respond with a co-ordinated international approach. "Rights-based" approach to development not explicitly mentioned. No mention of the RTD in the list of human rights.

Right to Development: Stresses the indivisibility of all rights, but also the need to prioritise the use of scarce resources in the development process. Not comfortable with IE proposal of describing RTD as "right to a process" nor of implementing RTD by fulfilling a few rights. Realisation of RTD is primarily a national obligation; state obligations under human rights instruments are dependent on action by the state party itself. The Working Group should discuss good governance, rule of law and democracy as important elements in the realisation of the RTD. Canada's approach to development assistance is said to already be consistent with IE's recommendations (e.g. poverty reduction, non discrimination, effective participation in development process).

Source: Interview and policy documents: statements at United Nations, Government of Canada, *Policy for CIDA on Human Rights, Democratization and Good Governance*, (no date given) and Government of Canada, *CIDA's Policy on Meeting Basic Needs*, 1997

FINLAND: Ministry of Foreign Affairs and its Department for International Development Co-operation

General: Has adopted objective of poverty eradication. Economic growth is not sufficient: need democratic decision-making, social policy mechanisms and social security systems for the implementation of human rights.

Development and human rights: Respect for human rights is an essential pre-requisite for sustainable development. Need to protect the rights of vulnerable groups in the context of development. Objectives: take human rights into account in all bilateral projects, increase the number of projects specifically designed to promote human rights, incorporate human rights in monitoring and take into account of human rights in sectoral assistance. Expertise on human rights issues strengthened by appointment of advisers on human rights, governance, democracy, and human rights training.

Globalisation and human rights: Economic liberalisation emphasises the importance of economic, social and cultural rights. Flow of information makes it easier to monitor human rights across borders. NGOs have an important contribution to make to human rights monitoring and treaty bodies should cooperate with them. Governments have a responsibility to regulate the operating practices of companies on their territory to ensure respect for human rights - home states of transnational corporations have a role to play. Corporate responsibility can be derived from international criminal law, but also when functions are governed by public law. There is no firm established practice here. Supports the Global Compact which allows for dialogue on human rights with businesses. May need to have a EU code of conduct for companies.

ILO is primary forum to develop standards on working life, but the WTO is developing and there are opportunities for promoting human rights. Need better coordination between ILO and WTO. WTO membership prevents possibility of unilateral trade sanctions in response to poor human rights record. Civil and political rights do not come under the scope of the WTO in its system of agreements: but it can be seen as dealing with economic and social rights through the special treatment accorded to developing countries

Finland is committed to human rights in its trade policy. Its June 2001 White Paper on the management of globalisation includes respect for human rights.

The Right to Development: The implementation of all human rights is an essential requirement for sustainable development. The RTD is a right of the individual and a responsibility for sustainable development. The government hopes a bridge can be built between developing and industrial nations. The RTD is a human right, or a way of looking at human rights. The government views with caution suggestions that obligations between states can be derived directly from the RTD. Requires right of participation and good government.

Source: Interview; Reports by the Minister of Foreign Affairs to the Foreign Affairs Committee of Parliament on the Human Rights Policy of the Finnish Government, 1998 and 2000; Report of the Secretary General on Globalisation (Finnish reply) A/56/254, 2001

DENMARK: Ministry of Foreign Affairs and Danida

General: *Has adopted the goal of poverty eradication, and a partnership approach, which requires policy dialogue.*

Right to Development: Changed Danish position at 1996-98 Commission on Human Rights, making RTD a priority area. This was based on a recognition that human rights is now a cross-cutting development issue, Denmark is an important donor, RTD can be used to integrate human rights into development, and that the RTD is here to stay as an issue. RTD discussions should be focused on the practical implementation, and based on an assessment of existing development mechanisms

Source: Interview and *Denmark's' Development Policy: Partnership 2000*

NETHERLANDS: Ministry of Foreign Affairs

Human Rights policy: A position on human rights as part of foreign policy was developed as early as 1979, with progress reports published in 87, 91 and 97. The 2001 Memorandum on Human Rights Policy, prepared by the Human Rights and Peace-Building Department of the Ministry of Foreign Affairs, and submitted to the Foreign Affairs Committee of the House of Representatives of the States General, is the latest policy statement. It highlights the importance of protection of human rights in conflict and the links between human rights and development. It also notes that human rights policy is shifting from norms setting to practical application.

Human Rights and Development: Poverty represents a comprehensive violation of human rights: this is not just limited to economic and social rights, but also to civil and political rights. The poor live in situations of illegality, by working in the informal sector, and are vulnerable to harsh police action. By exercising civil and political rights, people can strive for

the improved implementation of all rights. The human rights conventions provide a legal framework within which governments can be held accountable in respect of their obligation to their citizens. As a result, a rights-based approach to development includes: the participation of civil society in decision-making, and the accountability of government to civil society. This requires a focus on good governance, which includes respect for human rights. Specific recommendations include: explicitly including human rights when choosing sectors and implementing sector-wide approaches; calling governments to account in policy talks regarding their international human rights obligations; and joint country analyses with other donors, highlighting the link between human rights and poverty. Human rights should also remain an autonomous objective of foreign policy.

Right to Development: The RTD sees the individual as pivotal to development, and entitled to participate in and co-determine the development process. The RTD should view the individual citizen as the subject, and not only the object, of the RTD. The Dutch government regrets that so little progress has been made at the Working Group on the RTD, and believes that the work of the Independent Expert could act as a stimulus. EU countries need to stay engaged in the debate.

Funding project on the RTD with the François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health; the Independent Expert on the RTD (and the Centre for Policy Studies, New Delhi) and the OHCHR. Objective is to obtain information on government policy and practice in relation to the rights to food, primary education and health, and of assessing the extent to which the population is involved in the formulation and implementation of government policy. Pilots to be developed in India, Cambodia, Mali, Ghana, Bangladesh, Sri Lanka and possibly Egypt, Philippines, Indonesia and Peru, with DFID Peru. Also Dutch support for OHCHR-UNDP HURIST project, which includes pilots on the RTD.

Source: Interview; 2001 Memorandum on Human Rights Policy; and Kanta Adhin, "Sustainable Poverty Reduction and Human Rights: some views from a Dutch Perspective", Human Rights Division, Dutch Ministry of Foreign Affairs, prepared for a workshop on human rights, assets and livelihood security, and sustainable

NORWAY Ministry of Foreign Affairs

According to Øyvind Thiis ("Norwegian Development Assistance and the Right to Development", *Human Rights in Developing Countries Yearbook 1996*, ed P. Baehr et al. , Kluwer Law International, The Hague, 1996) there is hardly any reference to the RTD in official policy documents. But the principles of the Declaration reflected in development thinking. The *North-South and Aid Commission* independent evaluation of Norwegian South Policy which applied a human rights perspective. Norwegian South Policy for a Changing World, report from the Commission on North-South and Aid Policies, Submitted to the Royal Norwegian Ministry of Foreign Affairs, 1995

SWEDEN: Ministry of Foreign Affairs and Swedish Agency for International Development

Human Rights and Foreign Policy principles: Swedish Foreign policy shall promote human rights; human rights are central to Sweden's relation with other countries; Sweden can and will influence other countries respect for human rights as this is legitimate; human rights regulate the relation between the individual and the state; human rights are universal,

indivisible and all human beings are equal in dignity and rights. Foreign policy should be consistent – human rights integrated in development and in trade relations. Greater weight should be attached to economic and social rights. A rights-based approach to development should be developed.

Democracy, Human Rights and Development: Through development co-operation Sweden aims to achieve respect for human rights – fundamental liberties, adequate protection and satisfactory standards of living. Sweden will promote democratisation and respect for human rights by basing its initiatives on international human rights conventions, policy dialogue, human rights projects and integration of human rights and democracy in all aspects of development co-operation. Democracy is seen as the structural equivalent of the norms that are expressed in the human rights conventions, and provides a format on how to organise a society based on human rights. SIDA support to OHCHR.

Right to development: Sweden led the EU position at the UN in 2001. RTD is a right of individual. International co-operation is not a legal obligation. Disappointed by little progress at CHR, but it is important to keep discussing the issues. The Independent Expert's proposals should be examined, but they need to add value to current development practice.

Source: Interviews; *Human Rights in Swedish Foreign Policy, 1998*; *Democracy and Human Rights in Sweden's Development Co-operation, 1998*; Pro-memoria: a democracy and human rights approach to development, March 2001

SWITZERLAND Swiss Agency for Development and Cooperation

Development co-operation principles:

- Ensuring sustainability, through supporting its partners' own initiative in reducing poverty, dismantle the structural causes of conflict and bringing relief to those in need
- Looking to the future, including globalisation
- International dialogue: international cooperation an indispensable part of foreign and worldwide domestic policy; development institutions accord special priority to the problems and concerns of the poorest countries
- Principles of cooperation include cooperative partnership with countries (government and / or civil society). Can suspend relations when the conditions for partnership do not exist.

Human Rights and Development: Promoting human rights, democracy and the rule of law is one of the main objectives of Swiss foreign policy and development co-operation. Human rights are a development objectives; a minimum standard of human rights is required as a pre-requisite for development; human rights provide a favourable framework for development; human rights are binding standards under international law. Guidelines have been developed to help promote human rights through political dialogue and projects, with both support for civil society, preventing the negative effects of programmes, a more sophisticated approach to conditionality, and only as a last resort, and integrating human rights as a transversal element.

Right to development: The Human Rights Guidelines describe the RTD a noted political declaration which is not (yet) legally binding. Switzerland is not a member of the UN, but is developing its position on the right to development, and rights based approaches.

Source: Interview, Promoting Human Rights in Development Co-operation, Guidelines 1998, SDC, Strategy 2010, 2000

2. International organisations

European Union

Development Policy: Poverty eradication as the new objective of the EU development assistance (November 2000 Joint Council / Commission statement). Links trade and development (“Everything but Arms” trade initiative May 2001). EU needs to disburse resources available and commitment to examine means and timeframe for each EU member’s achievement of UN ODA targets of 0.7% of GDP and 0.14-20% for LDCs (Laeken European Council conclusions December 2001).

Human Rights Policy: 1991 Resolution of the Council of Ministers on Human Rights, Democracy and Development linked the provision of development assistance with human rights, including the possibility of suspension. Human rights conditionality in Cotonou and other EU instruments, based on May 1995 Council decision on the inclusion of respect for democratic principles and human rights in agreements between the community and third countries. In case of serious violations of human rights or of other essential elements referred to in Article 5 of the Lomé Convention, the EU could request consultations under the procedure referred to in article 366a and may decide to suspend development co-operation or other aspects of the Convention. Can fund activities to promote human rights and democratisation through budget line Chapter B7-70.

Right to Development: 2000 Cotonou Agreement with ACP countries is a legally binding treaty between developed and developing countries. It makes no direct reference to the RTD but Articles 2 (fundamental principles of the partnership) and 9 (the fundamental elements) are a restatement of key principles of the RTD. The Cotonou partnership is based on 5 pillars: political dimension, participatory approaches, focus on poverty reduction, framework for economic and trade co-operation, and a reform of financial cooperation.

Assessment: Karin Arts in 1996 compared EU development policy and practice with the Declaration on the Right to Development. She concludes that the EU has a mixed record, but that formal EC development policies incorporates some aspects of the RTD: comprehensive notion of development, broadening notion of development to include good governance; assistance for democracy, rule of law and human rights; human rights clauses in co-operation agreements; and most importantly: contract approach with modalities of co-operation, such as common institutions and specification of rights and duties of the parties. Lomé IV did not mention the RTD because it did not want to create obligations incumbent on particular identifiable states. She also notes (i) the inequality between states in this relationship and (ii) how in practice development policy has not had the impact to guarantee the outcome of the DRTD.

Source: EU communications, decisions and resolutions; EU statements on RTD; Karin Arts, “Implementing the Right to Development? An Analysis of European Community Development and Human Rights Policies”, 1996

International Monetary Fund

Human Rights: The IMF seems to see human rights as (i) good governance; (ii) social and economic rights; and (iii) poverty reduction. It argues that it is under no obligations to promote and protect economic and social rights under its Articles of Agreements. It is not a

party to the ICESCR and under ICESCR Article 24, its mandate is not affected by the ICESCR. If member states would like the IMF to take human rights into consideration, they are free to change its Articles of Agreements. The narrower focus of the IMF should be kept so that it can perform its function more efficiently.

Development and human rights: The IMF is a monetary agency, not a development agency. It provides technical assistance and financial resources to help its members overcome balance of payment difficulties that hamper their development efforts. Social rights in the ICESCR will not be realised unless certain economic pre-conditions are in place: economic growth and structural reforms. The IMF argues that it should not subject countries to human rights conditionalities – it does not have the expertise to do so, and constructive engagement may be a better approach. It recognises that it has provided assistance to countries with poor human rights records and that it must be aware of the impact of the policies it recommends.

Development Compact and PRSPs: The IMF recognises that PRSPs may not integrate human rights; however, developing states are not prevented from doing so. A number of PRSPs pay special attention to the basic social needs of the poor, and to the protection of indigenous rights. PRSPs meet a number of the characteristics recommended by the IE. But it is not clear how the obligations contained in the Development Compact proposal could be enforced.

Source: IMF statements at meeting on Human Rights and Extreme Poverty, February 2001, Sub-Commission, August 2001 and Open-Ended Working Group on the RTD, February 2002; Working Paper “Economic, Social and Cultural Human Rights and the IMF”, François Gianviti, IMF General Counsel, May 2001; Sérgio Pereira Leite, “Human Rights and the IMF”, *Finance and Development*, December 2001, Vol. 38, no.4

United Nations Development Programme

Human Rights Policy: 1998 policy paper on human rights and development; 2000 Human Development Report on Human Rights and Human Development; Human rights focal point in Geneva. Work on human rights indicators in New York through the UN Development Group.

Collaboration with OHCHR: 1998 OHCHR/UNDP Memorandum of Understanding; HURIST programme: launched 1999 to develop methodologies, best practice and opportunities on how to mainstream human rights in sustainable human development; other human rights mainstreaming activities: link to RTD pilot projects with Harvard University / Independent Expert; human rights training of UNDP staff.

Right to Development: Constructive participation in debates. Sees the RTD as a programmatic tool and a composite right. Highlights the need to develop core minimum contents to economic, social and cultural rights; expresses doubts that the RTD should only be focused on three rights – governments should decide what are their priorities. There are a number of compact approaches to development, but they do not always follow a rights based approach.

Source: Interview; UN statement 2001; *Integrating Human Rights with Sustainable Human Development*, 1998; Patrick van Weerelt, “A Human Rights-based approach to development programming in UNDP – adding the missing link”, 2001

World Bank

Human Rights: Conservative 1998 policy paper on human rights. WB thinking has evolved since. More open to discussion with OHCHR and NGOs on human rights (e.g. OHCHR contribution on PRSP and human rights). 2000/2001 World Development Report discussion of problem of attacking poverty in terms of opportunity, empowerment and human security

Right to Development: Attends meetings on the RTD; argues that the concept needs to be better defined. Constructive role in with several papers by Geneva Representative on the RTD: RTD needs to be better defined, made compatible with economic analysis, RTD is the envelope for the totality of rights but can be made larger than the sum of its parts: "the RTD is an organising principle (a paradigm) that allows societies within their own culture, values and belief systems to establish the entitlements over the existing productive assets"; development compact proposal needs to be further defined, the core of the RTD is the process of wealth creation; also argues that absolute poverty is the principal violator of human rights and of the right to development, and that new partnerships can assist developing countries combat poverty and materialise all rights

Source: Interview, UN statements, and Alfredo Sfeir-Younis, "The Political Economy of the Right to Development: Is Mainstreaming a New Ethic of Development and Utopia?", Geneva, December 2000.

4. Non Governmental Organisations***Rights and Humanity***

The organisation has acted as a consultant to Sengupta and to FCO to help identify a consensus position on the RTD. It sees the RTD as a composite right (of existing rights as set out in the Covenants) and has value in itself: it is a right to a process, how you go about development, and places individuals at the centre of development. There is a growing consensus on international development goals, poverty eradication, gender mainstreaming. Many initiatives are promoting the right to development even if they are not described as such. RTD has been included in the South African National Human Rights Action Plan. Poverty eradication strategies can be considered a first step in its implementation. . DRTD does not create a new legal obligation to give aid, but can be used as a framework for action. There already are existing obligations of international assistance. Commission is too politicised and lack development expertise. Sceptical about a development compact as too bureaucratic; no need to set up a new instrument; should rather use existing mechanisms such as UNDAF, CCA, PRSP, CDF. Also does not agree with approach of focusing on three basic rights: RTD is not about individual rights but getting the environment right for development, with issues such as trade, debt, etc.

Source: Interview and written documentation prepared for CHR and Working Group, 2001

Franciscans International

NGOs have a role to facilitate a human rights-based approach to development. FI has organised informal seminars on RTD in Geneva to facilitate RTD Working Group. Position is grounded on the teachings of the church – see compilation of conciliar and pontifical texts: development is an inalienable, universal right, with corresponding duties, including that of international solidarity. RTD is a holistic concept that encompasses all human rights; it is a tool to operationalise the UDHR and ensure respect for human dignity. RTD requires

participation in decision-making, co-operation at community and international level. RTD debate should prioritise: poverty reduction; gender mainstreaming; non-discrimination; HIV/AIDS action; transparency and accountability; and empowerment of peoples through participation in decision making processes.

Source: interview and seminar reports

Minority Rights Group

RTD is a separate composite right; it is more than realising individual rights separately, but also entails a process in which minority groups can participate. There is a danger that the development processes disregard minority groups in the South. Even PRSP and other mechanisms may ignore the rights of certain groups, and states, as parties to international instruments, do not respect minority rights. MRG is going to work with the Independent Expert to look at issues of minority and indigenous group rights in the development process. This issue has not been looked at in depth.

Source: interview and MRG issues paper.

Save the Children

As part of the Child Rights approach. Widespread absolute poverty inhibits the full enjoyment of human rights – including that of children, who constitute a vulnerable group in society. RTD can be considered a measurement by which one can assess the level of implementation of the ICCOPR and ICESCR by members states. It is a bridge between the two and is also relevant to the CRC. All NGOS working with children are encouraged to submit relevant information.

Source: www.scfuk.org.uk/mcr/wgrd.htm

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Financing for Development Conference

www.un.org/esa/ffd

Franciscans International (seminars on RTD)

www.fiop.org/reports/rtd/index.html

Human Rights Internet (detailed annual reports on Commission on Human Rights)

www.hri.ca

New Partnership for Africa’s Development

www.nepad.org

Office of the High Commissioner for Human Rights

www.unhchr.ch

OHCHR - Human Rights in Development (updates on RTD mechanisms)

www.unhchr.ch/development

OECD DAC

www.oecd.org

UNDP

www.undp.org

World Bank

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