

THE ROLE OF THE RIGHT TO DEVELOPMENT IN THE HUMAN RIGHTS FRAMEWORK FOR DEVELOPMENT

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ABSTRACT

The integration of human rights into the practice of development cooperation has been increasingly debated during the last decade, particularly thanks to Amartya Sen and UNDP work. However, while a consensus seems to exist around the core principles of an “appropriate” development process, there are still a number of different interpretations of how human rights and development relate, and what is meant by rights-based approaches.

This paper addresses the idea that the concept of right to development, correctly understood as “the right to a process of development in which all human rights and fundamental freedoms can be fully realized”, following the definition of Arjun Sengupta, can be a very useful tool to provide a common normative framework to this discussion.

Little attention has been given to identifying the extent to which the concept of the right to development and a human rights–based approach to development differ. Whether the two paradigms have many common points, as the emphasis given to concepts like equality, freedom, participation and non discrimination, there are also some important differences. Expressed simply, the right to development is broader than the human rights–based approach, because it involves a critical examination of the overall development process, including financial allocation, and priorities in international development cooperation. Thus, the right to development cannot be equated with a rights-based approach to development, because it not only prescribes certain rules according to which development should be realized, but also defines development itself as a human right.

This definition has important consequences not only in terms of theoretical debate, but also in its practical implications related to policy-making and international cooperation. The most important of these consequences is a shift, in the discourse of international development cooperation, from a context of need/charity/aid to a context of right/responsibility/cooperation, both at the individual and at the collective point of view.

KEYWORDS

**RIGHT TO DEVELOPMENT – HUMAN RIGHTS APPROACH –
INTERNATIONAL COOPERATION – RESPONSIBILITY**

INTRODUCTION

At the beginning of the 21st century, the convergence between human rights and development cooperation is finally become a real possibility. During the last two decades, in fact, we have assisted to a double process of acknowledgment, fundamental to reach a new perspective in development theory: on the one hand, the traditional distinction between civil and political rights, form one side, and economic, social and cultural rights, on the other, has finally been overcome, and nowadays the majority of scholars and development practitioners acknowledge the indivisibility and interdependence of all human rights; on the other hand, the concept of development evolved from the original equation with the economic growth, integrating new, relevant dimension and becoming more adherent to real people needs: the result of this process is that concept of human development that is nowadays, at least in theory, overwhelming accepted.

Two actors cast the groundwork of this double process: Amartya Sen and Mahbub ul Haq. Sen's work, together with the developments provided, above all, by Martha Nussbaum, is the milestone that permitted to unlock the reasoning about development and poverty from the narrow schemes of economic growth and macroeconomic performances, shifting the attention from income poverty to a more complex and dynamic analysis. The work of the Mahbub ul Haq as Director of the UNDP made operational Sen's ideas and developed them with the help of experience acquired on the field, emerging as one of the most effective tools to mainstream human rights paradigm into development practices.

It is within this framework that grew the idea of a human rights-based approach to development, intended as a new way to foster development with a particular attention to the protection, the fulfilment and the promotion of all human rights. Nowadays, a new consensus has emerged about what are the main characteristics that a human rights-based approach to development should include: popular participation, non discrimination, empowerment of the poorest and most disadvantaged groups, clear connection between duties and responsibilities, along with a comprehensive and integrated vision of development process. Generally, this approach proposes a shift into the attention of development theorists and practitioners from the outputs of development process to the ways in which these outputs are generated in the process itself

As some authors have noted, however, even into this common perspective, a large range of shades exists, depending on what element is considered the most relevant. Only in recent years these difference have become to be highlighted, and an additional effort seems necessary to clarify the way in which each approach articulate the relation between human rights and development.

This paper addresses the idea that the Right To Development (RTD), correctly understood as the right to a process of development in which all human rights and fundamental freedoms can be fully realized, following the definition of the UN Independent Expert on the RTD, Arjun Sengupta, can be a very useful tool in providing a common normative framework for human rights approaches to

development. The concept of RTD, in fact, whether it shares with the others human rights approaches to development the emphasis given to elements like equality, freedom, participation and non discrimination, it also includes something more: it not only prescribes certain rules according to which development should be realized, but also defines development itself as a human right. This additional element has important consequences both at the theoretical and at the practical level. First, the definition of development as a human rights implies a new critical consideration of development process in all its aspects, from financial allocation to priorities of international development cooperation. Second, it imposes a shift, in the discourse of international development cooperation, from a context of need/charity/aid to a context of right/responsibility/cooperation, both at the individual and at the collective point of view, with important, practical consequences for all the stakeholders, including NGOs and non-state actors.

The paper will be organized as follows: first, I will remind the most relevant aspects of the consensus existing around human rights approaches to development and I will try to provide the coordinates necessary to correctly understand the concept of RTD; then, I will analyze the extent in which the RTD approach differs from the others human right approaches to development and I will try to clarify the theoretical and practical implications that the assumption of the RTD approach implies. In the last part, I will make a brief comparison between the RTD paradigm and the paradigm nowadays overwhelming adopted, the one linked with the UN Millennium Development Goals.

1 – HUMAN RIGHTS-BASED APPROACHES TO DEVELOPMENT: CONSENSUS AND DISCUSSION

That human rights and development can be conceived in a joined paradigm is a quite recent acquisition in development theory. It is only in the Nineties that the theory of human development, on one side, and the recognition of the indivisibility and interconnection of all human rights, on the other, opened the space for such a convergence. More than 15 years later the publication of the first Human Development Report by the UNDP, however, whether a large consensus has emerged about the necessity to face development challenges with attention to human rights dimension, the articulation between these two elements is still on debate. Many UN bodies, national development cooperation agencies, international and national NGOs have started to mainstream human rights into development practice, as first suggested by the UNDP, but there is no agreement about the opportunity to strategically adopt a human rights-based approach to development.

The human rights-based approach to development, broadly understood, is a perspective that considers traditional goals of development activity, as the provision of health or educational services, food or shelter, as human rights. At the theoretical level, it represents an attempt to harmonize the main elements of human development theory with the normative framework of internationally recognized human rights. These two visions, in fact, share a common set of principles and values, that touches

all the relevant aspects of development activity and that provides a sort of picture of what an “adequate” development process should be. Between these principles, the ones that enjoy the highest degree of consensus are:

- attention to the process of development;
- direct linkage to rights;
- participation and empowerment;
- non discrimination;
- attention to the most vulnerable groups;
- accountability;

As we can see, many of these principles are not something new in development theory and practice, but, reinterpreted in the light of human rights standards, they acquire a new relevance.

The first element of human rights based approaches is that they consider development in its nature of process. This implies, primarily, a new consideration of the means-goals relation. In the traditional theory, the judgment about the means depends on their degree of effectiveness in reaching the goal. The human rights perspective imposes a consideration of the means in their specific nature: their adherence to the human rights standards, their capacity to empower poor people and disadvantaged groups, their cultural, economic, political and social sustainability. In this way, a human rights approach to development shift the attention from the outputs of development process to the dynamics set out, from the feasibility of means to their intrinsic value, from the results to the process in itself.

If this aspect, in some extent, can be conceived as common to other perspectives, what represents a real innovation in relation with the traditional point of view is the introduction of the direct linkage with the international human rights normative framework. Integrating human rights in development activities means, in this perspective, not only avoiding activities and programmes that are expressly against the spirit of human rights framework (e. g. projects that reinforce discrimination against individuals or groups, or which involve large-scale evictions or displacement of persons or which are top-down implemented), but it means expressing civil, economic, political and social targets in terms of human rights, taking into account human rights norms in every stage of development project, from needs assessment to project evaluation. This is maybe the most relevant added value of the human rights approach: the core of human rights treaties, covenants and international instruments, as well as the interpretations, recommendations and guidelines provided by treaty bodies, UN agencies and other international mechanisms, are a great tool to enhance accountability, transparency, and clarity of development programs and activities and to build consensus around them.

The “Bill of Human Rights”¹ provides clear indications about how to make projects in health, agriculture, education or governance work for the promotion and protection

¹ Conventionally, are considered part of the “Bill of Human Rights” the seven international Human Rights Covenants and Conventions adopted after 1945 (ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, CMW).

of human rights. Generally, these guidelines are based on some fundamental principles: accountability, participation, non discrimination, empowerment.

Accountability is particularly important in development process. Identifying clearly duty-holders and rights-holders in a specific context and situation can be of great use to enhance the transparency and the effectiveness of the implemented project. The human rights approach to development, for its normative nature, can help this identification. Furthermore, the human rights paradigm is not limited to state authorities, but takes into account the whole range of potentially relevant actors, including individuals, private companies and the international community. This is essential to identify all the levels of responsibility and to implement effective mechanisms of prevention and redress.

Participation is a common “pillar” of human rights and human development concepts. That people could have the control over the fundamental choices of their lives, taking part in all those mechanisms and processes that can affect them, is a goal of most of the development strategies. The value added of human rights-based approach is that it enhances this aspect, providing a normative framework for its exercise, its monitoring and advocacy. In the same way, empowering people involved in development projects is a central target not only for human rights approach. But conceiving economic and social goals in terms of human rights, this approach makes persons, communities and groups active actors of the empowerment process. In other words, changing the paradigm from aid provision to rights claim, the beneficiaries of the project become the real directors of it, acquiring the possibility to take control over the different activities.

The universality of human rights imposes a particular attention to equity and non discrimination. Vulnerable groups and minorities become consequently the first reference for human rights approaches. This choice affects development projects management in every step: a preliminary identification of disadvantaged groups in each specific context is required, the needs assessment must be centred on these groups’ rights and needs, through an accurate targeting based on specific data disaggregated for sex, ethnicity, condition, religion and any other category that could affect the enjoyment of human rights, activities implementation must avoid any risk to reinforce the inequalities that already exist, and specific reference to national and international human rights instruments must be taken into account.

If all these aspects are common to all rights-based approaches to development, even into this framework a certain degree of discussion still exists about how to articulate the relation between human rights and development. In a recent study², Stephen Marks enumerated seven different approaches to development, each affirming to adopt a human rights perspective: the holistic approach, the human rights based approach, the capabilities approach, the social justice approach, the RTD approach, the responsibilities approach and the human right to education approach. All these perspectives share the idea that promotion and protection of human rights are

² Stephen P. Marks, *The Human Rights Framework for Development: Seven Approaches*, Harvard University 2003.

fundamental dimensions of development process, but each one identifies a different element as the key to unify human development and human rights perspectives, The lack of an exhaustive normative framework between all these approaches does not jeopardize their importance, but it is clear that with a common paradigm their degree of clarity and effectiveness could grow stronger.

2 – THE RIGHT TO DEVELOPMENT: A CONCEPTUAL FRAMEWORK

The RTD has a quite recent history³. Conceptualized first during the 70s, particularly in UN fora, as a tool to achieve that New International Economic Order pursued by developing countries, this right was officially affirmed in 1981 by the Organization of African Unity⁴ and then, in 1986, by the UN with the Declaration of the Right to Development. This text, that remains the most important reference on this topic, was adopted by the UN General Assembly Resolution 41/128 with 149 votes in favour, 8 abstentions (Denmark, Finland, Federal Republic of Germany, Island, Israel, Japan, Sweden and United Kingdom) and with the USA casting the only vote against. During the Nineties, then, the RTD was reaffirmed ad a fundamental human rights in many international meetings, including the 1992 Earth Summit in Rio de Janeiro⁵, the 1993 World Conference on Human Rights in Vienna⁶, the 1995 International Conference on Social Development in Copenhagen⁷ and the 2000 UN Millennium Declaration⁸.

Despite its constant reaffirmation, the discussion around the rights to development grew slowly and the most of the debate was characterized by an high degree of politicization. It is at the end of the Nineties that the debate became more interesting: in 1998 an Open-Ended Working Group was created by the UN Commission of Human Rights⁹, and an Independent Expert was called to present analysis and studies regarding the content of this right, followed in 2004 by an High Level Task Force. The work of Mr Arjun Sengupta was very helpful to explain the different dimensions implied in the RTD and the consequences following his affirmation. His six Reports not only explain in detail the content of this right, but also propose ways for its concrete realization.

But what is, in sum, the RTD? Sengupta defines it as follow:

³ Even if some normative basis can be found in articles 54 and 55 of the Universal Declaration of Human Rights, the recognized pioneers of RTD affirmation are Keba M'Baye and Karel Vasak. M'Baye, first President of Senegalese Supreme Court, was the first to introduce the concept in 1972, while Vasak coined for it the definition of "third generation human rights". With regard to the UN fora, fundamental was the work of the Commission for Human Rights, that in 1977 affirmed for the first time the RTD as a fundamental human right with the Resolution 4 (XXXIII) and created the first Working Group to study the international dimension of the RTD.

⁴ See: African Charter on Human and Peoples' Rights, art. 22. The acknowledgement of the RTD in the African Charter is very relevant. This text, in fact, is the only legal-binding international document containing an explicit affirmation of the RTD. This importance, however, is weakened by the fact that the Charter affirms the RTD only as a peoples' rights and not as an individual right.

⁵ Rio Declaration on Environment and Development, Principle 3;

⁶ Vienna Declaration and Programme of Action, par. 10;

⁷ Copenhagen Declaration and Programme of Action, par. 26 (j)

⁸ UN Millennium Declaration, UN Doc. A/Res/55/2, par 11 and 24;

⁹ Resolution 1998/72;

“the right to a process of development in which all human rights and fundamental freedoms can be fully realized”¹⁰,

This definition strictly follows the content of the first Article of the 1986 Declaration, which says:

“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”¹¹.

The first element that must be highlighted, then, is the definition of development in terms of right. Such a definition has clear implications: to assert that a subject (a person, a community, a State) has a specific right means that this subject is entitled to claim against another subject that his right is respected, and this other subject has the duty to respect or to fulfil that right. Therefore, the first element of a human rights discourse is the clear identification of rights-holders and duty-bearers.

The 1986 Declaration answers to this necessity identifying the human being at the centre of its framework:

“The human person is the central subject of development and should be the active participant and beneficiary of the right to development”¹².

Subject of the RTD is both every human person, in his double essential character of individuality and relatedness, and all peoples. This means that the process of claim is double: an individual has the right to claim his RTD realized by his own country, and the country has the same right in relation with the international community. The RTD is an individual right, a collective right and a right of solidarity, which poses a necessary correlation between the realization of this right at the individual and at the collective level. In this sense equity, social justice and democratic participation become essential aspects of development process, understood as:

“a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”¹³,

The Declaration underlines the fundamental role of the concepts of equity and justice: only in a framework of equity in access to development process and of fair distribution of its benefits the RTD can be realized both for the individual and for his community. And the first guarantee of this equity is the free and meaningful

¹⁰ A. Sengupta, *First Report of the Independent Expert on the Right To Development*, UN Doc. E/CN.4/1999/WG.18/2, par. 47.

¹¹ UN Declaration on the Right to Development (DRD), adopted by the UN General Assembly with the Resolution 41/128, 4 December 1986, art.1 (1).

¹² DRD, art. 2 (1);

¹³ DRD, Prologue;

participation of people in the political and economic choices that drive this process, As we can see, the RTD shows here its debt to the human development theory.

Correlated with this broad individuation of right-holders, the Declaration provides a broad definition of the duty-bearers: the responsibility to fulfil the RTD is up to individuals, States and international community, together but each with a different degree.

The first level of responsibility is the individual one. The individual-community, as first beneficiary of the RTD, is also his first responsible. On the one side, in fact, the realization of the RTD requires that everyone respect rights and freedoms of the others; on the other side, the commitment of the whole community of individuals (at local, national and international level) is indispensable to create that environment of equity and social justice necessary to make development a right for all.

As the Declaration states, however, the States have the primary responsibility for the respect, the promotion and the fulfilment of the RTD. At the level of their internal activity, they have specific duties to formulate adequate development policies which aim to offer to the whole community the possibility to develop, to take actions to promote a favourable environment for the realization of the RTD, to take resolute steps to eliminate the massive and flagrant violations of human rights and to promote the realization of all human rights, without distinction between political and economic rights.

“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”¹⁴

But what most characterizes the 1986 Declaration is its individuation of duties up to States as international actors. These duties vary from the full respect for the principles of international law concerning friendly relations and cooperation among States to the duty to cooperate to strengthen the respect of human rights and to realize the RTD:

“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”¹⁵.

The strong link between individual and community is proposed again at States level. The duty to realize the RTD is up both to the single State as international actor and to the community of States. This acknowledgment implies not only that rich countries must provide aid to developing ones, but also that the whole international

¹⁴ DRD, art. 8 (1);

¹⁵ DRD, art. 3 (3);

community, including developing countries, must take the necessary steps to remove the structural causes of underdevelopment, through the implementation of democratic and participatory mechanisms. It is easy to understand that such a perspective would imply revolutionary consequences in political and economic relation between States. It is not surprising, then, that this represents the most controversial aspect of the RTD.

The second relevant element that the Declaration offers in article 1 consists in defining the right to the development as a human right. Development, in this context, abandons every narrow economic characterization, tied up to the mere economic growth, to become entitlement to the full realization of all human rights and fundamental freedoms. To affirm that a determined process of development is the object of a fundamental human right it is an affirmation rich of concrete implications. As Arjun Sengupta wrote:

"Recognizing a right as a human right raises that status of the right to one with universal applicability and articulates a norm of action for the people, the institution or the State and international community on whom that claim is made. It confers on the implementation of that right a first priority claim to national and international resources and capacities and furthermore, obliges the nation state and the international community, as well as other agencies of society including individuals, to implement that right"¹⁶.

To affirm the RTD as a human right means therefore to recognize the priority to the realization of all the human rights and fundamental freedoms inherent in it. More, it means to recognize to all individuals and peoples the right to actively take part in a process of development in which can be fully realized all those rights that have been recognized as fundamental human rights in an indivisible and interdependent way:

"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"¹⁷

Affirming that human rights are indivisible and interdependent, the Declaration on the RTD report as misleading every attempt of to hierarchize human rights. Every human right needs, for its complete realization, the contemporary realization of all the other rights: the juridical system provided by the Bill of Human Rights appears as an organic whole. The affirmation of the RTD as human right, taken seriously, forces to recognize this indivisibility and it sets some precise practical consequences, first of all an essential restructuring of the different policies implemented by States, particularly with regard to international cooperation. As we will see, to pass from a vision founded upon the needs of the beneficiaries to a vision founded upon the rights of the subjects cooperating implies not only a radical change of perspective that involves all the relevant stakeholders, from international organizations to NGOs,

¹⁶ A. Sengupta, *Second Report of the Independent Expert on the Right to Development*, Un Doc. E/CN.4/2000/WG.18/CPR.1 par. 10

¹⁷ DRD, art. 6 (2)

from States to civil society, but it also implicates an as much radical change in the general political paradigm, in its goals and in its presuppositions.

In sum, the Declaration on the RTD highlights some fundamental concepts:

1. the human being, understood in his individuality and relatedness, is the centre of development process, that is a multitask process in which cultural, political and social aspects must be included;
2. the RTD is an inalienable human right, that every individual can revindicate against his own people and that every people can revindicate against the international community. This right is defined as the right to a process of development in which all human rights of the individual and the people are respected;
3. a shared and diversified responsibility exists for the realization of the RTD, that calls to action the single individual, the community to which he belongs, the State and the international community, with shared but differentiated duties;
4. human rights are indivisible and interdependent. This means that no right can be fully realized without the contemporary realization of all the others and that a State or a community can not pursue the realization of a human right to detriment of some other right;
5. the RTD is indissolubly connected with the concepts of equity, social justice and participation. This acknowledgment implies a redefinition, at national and international level, of political priorities, resources allocation and mechanisms for the implementation of the different policies.

3 – RIGHT TO DEVELOPMENT AND HUMAN RIGHTS-BASED APPROACHES TO DEVELOPMENT: A CRITICAL CONFRONTATION

From what we have seen, we can affirm that the RTD theory tries to articulate the fundamental conception of human development theory in the light of human rights normative framework. In this extent, the RTD approach is an example of human rights-based approaches to development. But if the RTD must provide a comprehensive conceptual framework to the different human rights approaches, it must contain something more.

Three appear the most relevant points that the RTD perspective adds to the human rights-based approach to development:

- the definition of development as a human right;
- the normative interrelatedness between human rights;
- the emphasis put on resources availability, including economic growth and international cooperation

As we have seen, many common points exist between these two perspectives. The emphasis to participation, non discrimination and empowerment is the same in both, as well as the reference to the human rights normative framework. But the first reason

why the RTD seems broader than the others human rights approaches is that it adds to the common elements the acknowledgment of development itself as a human right. But what does it mean that development is a human right?

As we have seen, human rights-based approaches to development affirm that development process must be coherent with international human rights standards. In this perspective, human rights are a fundamental part of development process, both in the sense of being means to achieve development and in the sense of providing the normative framework for development activities. But development and human rights remain two different concept, each one with a definite characterization and particular implications.

The RTD perspective brings this idea to its ultimate consequences; if human rights are entitlements of every individual regardless his status or condition, and if development is conceived as the process in which all human rights and fundamental freedoms can be fully realized, development itself is a human right.

Defining development in terms of human rights, the RTD approach reverse the relation means/purposes in development process: human rights and fundamental freedom are not only a mean to achieve human development, but they are the goals of development in itself, as an indivisible and interrelated whole. This does not mean that other components, like economic growth or technological transfer, lose their relevance, but they assume the role of instruments to achieve a broader goal.

But understood as the right to a process, the RTD, shows further consequences. First of all, we can say that, if any activity aimed to improve equality and justice or to strengthen the respect of a human right is consistent with the RTD approach, such an action is not the same as realizing the RTD. The RTD, in fact, requires attention not only to the outcomes, but most of all to the processes that lag behind inequalities and human rights violations. As Sengupta says:

“while the reduction of poverty or improving the lots of the most vulnerable or the poorest section of the population will satisfy some index of justice, to realize the right to development, viewed as a right to a process, will require looking at the elements that contribute to the dynamics of sustained poverty reduction and human development”¹⁸.

The second point regards the link of causality that the RTD puts between human rights, according to which the realization of a human right cannot be effective without the contemporary realization of all the others. In the human rights approach framework, it is possible to conceive that human rights are realized separately, through action which aim to strengthen several specific rights and which follow the human rights approach criteria (participation, non discrimination and so on). In the RTD perspective, at the contrary, what is important is the creation of a sustainable process for the realization of all human rights and fundamental freedoms, as a interrelated and indivisible whole.

To explain this concept, the Independent Expert used the image of a vector, in which the elements are all the recognized human rights, economic growth and other

¹⁸ A. Sengupta, *Second Report...*, quoted, p. 21

economic variables. This vector has two main characteristics: the coherence with human rights approaches and the interrelatedness of rights:

“First, each of the elements or the rights will have to be realized according to the rights-based approach as we have spelt out above. This means that the right to development as a whole, will also have to be realized in a rights-based manner that is transparent, accountable, participatory and nondiscriminatory, as well as equitable and just. Secondly, all these elements are interdependent in the sense that the level of realization of a right, say the right to health, depends on the levels of realization of other rights, such as to food or to housing, or to liberty and security of person or to freedom of expression that includes freedom of information. Similarly, the realization of all these rights in a sustainable manner over time depends upon the rates of growth in per capita consumption, output and employment”¹⁹.

Understood in this way, the RTD has an improvement when all the elements are positive, or at least when there is a constant improvement of some elements, with no regression in other elements. Being in fact the elements of such a vector human rights, and having all human rights an equal value, a trade-off in which we can sacrifice some of them and have however a positive general value is not possible. Therefore, if a human right is violated the RTD does not improve, even if there is an improvement in all other human rights.

In short, the requirement for improving the realization of the RTD will be that at least some of the rights can be increasingly realized while none other deteriorates in realization or is violated, whether they be civil or political or any of the economic, social and cultural rights, and there be a sustained growth of overall resources.

A further difference between human rights-based approaches and RTD framework can be found in the attention that the latter gives to economic and political concerns. According to the RTD, each person and each people has the right to be free to develop himself, that is to have structural impediments to his development removed. In this sense, what the RTD affirms is not only a right, but a meta-right, following Amartya Sen’s definition. Under the RTD, individuals and peoples have the right to have adequate development policies implemented, both at national and at international level. For “adequate” policies we must intend policies that are participatory, non discriminatory and equitable, that respect, promote and fulfil all human rights as indivisible and interrelated, that pursue equal access to development possibilities and fair distribution of the benefits resulting from it, by individuating remote and near causes of underdevelopment and all the levels of responsibilities linked to them. In this sense, the RTD perspective implies not only, as the others human rights approaches, an highlighted attention to the protection and promotion of human rights in development process, but it implies a new consideration of political priorities, financial allocation and international responsibilities:

“To recognize a right as a human right raises its status to a right with universal applicability and it articulates a norm of action for the people, the institution or the state and the international

¹⁹ Ibid., par. 24;

community against which the claim is formulated. It confers to the realization of that right the priority in relation with resources and with the national and international possibilities and besides it forces the state and the international community as every other actor of the society, including the individuals, to realize that right.”²⁰

The peculiarity of this meta-right is that it remains valid, even when the right in itself is not realized at the moment. To be valid, however, it must satisfy two conditions: to clearly identify the relations between rights and duties and to be, at least in theory, realizable in a concrete and verifiable way.

With regard to the first point, we have seen that recognizing the RTD as a human right means to make it a priority at the political level. Each actor, according with its responsibilities and with the different circumstances, must do whatever he can to realize it. This framework reveals that obligation implied in the RTD is an example of what Amartya Sen calls, with kantian terminology, an “imperfect obligation”. Such an obligation provides a broader explanation of the link right/duty that the narrow one traditionally accepted in national and international law. Here, the duty to fulfil a specific right is not claimed against a specific actor, but it is addressed to everyone who has the power to do it. In this sense, the right in object becomes a norm of action for every agent involved. In the case of the RTD, as we have seen, this claim can be addressed to many actors, both at the national and at the international level.

At the national level, states must provide the highest attention to this right, abstaining to violate any human right, creating mechanisms for a significant popular participation, elaborating strategies to reduce poverty and inequalities and supporting them with adequate financial resources. At the same time, NGOs and civil society must act as a vehicle of information and representation of popular claims, particularly those of the most underrepresented and disadvantaged groups and communities.

At the international level, States must fulfil their duty to cooperate, not only assuring an adequate, stable and effective financial and technical assistance to developing countries, but also acting to eradicate all those structural inequalities (regarding questions like global governance, market access and debt) that lay behind underdevelopment. NGOs and civil society have a specific role also at the international level, operating as the first aid deliverers but also as a constant tool of pressure on governments commitments.

With regard to the theoretical feasibility of the RTD, this is maybe the most debated issue. There is no doubt, in fact, that no consensus has been reached about specific mechanisms and procedures to implement this right, even in those fora (like the Open-Ended Working Group) specifically devoted to this purpose. However, analyzing the political debate that surround the RTD, it seems that the most remarkable points of disagreement regard political questions more than theoretical

²⁰ U. Villani, “L’evoluzione del diritto allo sviluppo nel diritto internazionale”, *Volontari e Terzo Mondo*, n. 4/1997, p. 47;

ones²¹. The debate, in fact, is characterized from its beginnings by an high degree of politicization, the different groups (OECD countries, NAMA group, etc.) trying above all to underline others' responsibilities and to hide their own. Actually, this behaviour is not surprising, given the content of the RTD and the possible consequences of its implementation. It is enough to think about two fundamental points: the duty of international cooperation, always refused by OECD countries²², and the duty to respect and fulfil political and economic rights at the same pace and with the same attention, duty that could generate some problem to many governments, both in developed and in developing countries. It is clear, in fact, that a full acknowledgement of the RTD would make contradictory not only the behaviour of those developing countries that affirm that a total or partial denial of civil and political rights is functional to the achievement of economic and social rights, but also the behaviour of those developed countries that privilege civil and political rights, sometimes affirming that economic and social rights are not justiciable.

The notion of "imperfect obligation", however, does not ask an immediate political feasibility, but a theoretical one. In this sense, many proposals have been advanced to implement the RTD, showing at least its theoretical feasibility. Between these proposals, the most comprehensive and discussed is that of the Independent Expert for the creation of Development Compacts. Let us briefly see its fundamental aspects:

1. international community should indicate some priorities to start the implementation of the RTD (e.g. the right to food, the right to education and the right to health), without the purpose of hierarchizing human rights but for feasibility reasons;
2. a regular place of meeting should be appointed, in which representatives of international institutions, donors and receiving countries can discuss and work together on a concrete program of development;
3. the country that wants to start to realize the RTD through a development compact should ask for it to the international community, that will provide the necessary support to realize a national development program, according to the principles of the RTD and including specific claims to donors;
4. a working group, composed by OECD-DAC, donors governments, UN agencies (included representatives of the High Commissioner for Human Rights) and International Financial Institutions should analyze the program presented by the applicant country, approving the objectives and establishing correspondent obligations for the international community;
5. the applicant country should propose special development programs with clear evaluation benchmarks, working with civil society and starting with conforming its legislation to international and regional human rights standards;

²¹ For a detailed review of the political debate around the RTD see: Laure-Helene Piron, *The Right to Development .A review of the current state of the debate for the Department for International Development*, ODI, 2002; Stephen P. Marks, *Obstacles to the Right to Development*, Harvard University, 2003.

²² See for example Development Assistance Committee, *Shaping the 21st Century. The contribution of international cooperation*, OCSE, Paris, 1996, p. 5;

6. the real Development Compact should then be agreed, specifying the duties of the countries and all the correspondent duties of international actors, so to assure transparency and verifiability;
7. the different international actors involved should discuss what structural measures to undertake, both at multilateral and bilateral level, to guarantee the effectiveness of the established program (debt cancellation, market access, etc.)²³.

This proposal has suffered some criticisms, above all with regard to its excessive mechanistic procedure. Besides, it is clear that the generalized adoption of such a proposal would need a huge increase of available resources devoted to development cooperation. Some industrialized countries have advanced the concern of a possible duplication of already existing tools, while some developing countries have advanced some doubts about the possibility that such tool could hide new forms of conditionalities.

Beyond the criticisms, nevertheless, the real value of this proposal consists in indicating the fundamental elements of a coherent implementation process of the RTD, identifying above all a control procedure of that shared and diversified responsibility that we described and showing a concrete way to go out from the sterile opposition of different political positions.

4 – PRACTICAL IMPLICATIONS OF A RIGHT TO DEVELOPMENT APPROACH TO DEVELOPMENT: FROM CHARITY TO RESPONSIBILITY

The Declaration on the RTD, as we have seen, assigns the main responsibility for its implementation to States. These, at the level of their international action, have the duty to set appropriated policies of development. From what we have seen until here, we can say that appropriated development policies are those that foresee concrete and verifiable mechanisms for the realization of every single right included in the RTD, as well as of the RTD itself and of the economic and technical elements linked to its realization, through procedures which are compatible with the international human rights standards. This means that such actions must be carried out in a rights based manner, that is in a participated, verifiable, transparent, equitable and not discriminatory way, and with particular attention to the indivisibility and interdependence of all rights.

Some direct implications of a similar approach are:

- the necessity to coordinate the initiatives with different local stakeholders (NGOs, local communities, etc.), involving the population in every level of the decisional process, to increase its sense of ownership of the projects implemented;

²³ For a detailed description of Development Compacts proposal see: A. Sengupta, *Fourth Report of the Independent Expert on the Right to Development*, UN Doc. E/CN.4/2002/WG.18/2, par. 56-74;

- the necessity to identify, also at the legislative level, clear obligations in correspondence with the precise individual rights of the citizens, so to realize that correspondence rights-duties essential for the affirmation of human rights;
- the necessity to give absolute priority to such initiatives in the context of general public policies, not only from the political, but also from the economic and financial point of view;
- the necessity to keep in consideration all the expressions of society, and particularly minorities and most disadvantaged groups, as well as the weakest and most exposed parts of the population, giving priority to the equitable distribution of development opportunities and benefits.

Being a question of realizing human rights, included the RTD, the State has the duty to respect, to protect, to promote and to fulfil such rights. Particularly, States must assure citizens against the violations of their rights, provide goods and services for their realization and promote human rights through education campaigns. Some of these obligations, as those linked with the supply of goods and services, represents political goals, which the state has to face from the political and moral point of view. Development strategies implemented at the national level have therefore to include all these issues, together with specific tools of quantitative and qualitative monitoring. In the case of the right to food, for instance, the indicators have to take into account not only possible variation in the availability and in the access to food, but also if this access has been guaranteed with equity, not discrimination and respecting all human rights. At the same time, the fulfilment of the right to food must, in the RTD framework, be fostered together with all the other linked human rights (e. g. the right to freedom of expression, the right to vote, the right to water, the right to health, the right to shelter, etc.).

As it is clear, such a process would be hardly possible at the single State level, particularly in the case of developing countries. Therefore, the role of international community, both through direct intervention and policy coordination, is vital to achieve the RTD, particularly in the actual context of globalized economy:

The main international legal documents, starting from the UN Charter, state clearly the obligation of States to cooperate among them for the achievement of development. From this obligation descends the idea that international community and multilateral institutions have to collaborate with every State to assure that all human rights, which are entitlements of all individuals without regard to their citizenship, are respected. Concretely, this activity of cooperation embraces two different levels: the richest States direct action, aimed to support through economic and technical aid development processes of the poorest countries, and the indirect action, aimed to create the political and economic conditions so that such a process of development can take place. Both these dimensions appear fundamental for the realization of the RTD. For what regards direct aid, in fact, it is clear that the possibility of a right-based development strategy, as the one spelt out before, in developing countries, depends strongly (if not entirely) from the will of international community to guarantee the economic, financial and technical resources essential to

its realization. In this sense, therefore, it is crucial that international community increases the total volume of ODA, and particularly that the richest countries finally respect their promise, too many times betrayed, to assign the 0,7%.of their GNP to this purpose.

As relevant, if not greater, it is the importance indirect actions that international community has to undertake to make the pre-conditions of development realizable: debt cancellation, technologies transfer, equitable markets access, including a renewal of the norms that regulate financial and commercial institutions, revision of the policies that regulate intellectual property rights, are only few examples of this activity, without which every direct economic investment is doomed to failure, absorbed by those dynamics of structural impoverishment that these problems provoke.

Also in this case, the key point is to reach a real integration of development and human rights international policies. The traditional trend of the industrialized countries to hold separate these two sets of policies it is, in the last years, under revision, not only by some UN agencies, but also by other multilateral institutions and governmental development agencies.

Two structural limits, however, seem difficult to be overcome, also in this new trend. In the first place, the relation between human rights and development is still conceived in an instrumental sense, according to which the respect of some human rights is considered only as an effective tool to accelerate development process. Such an idea, as it is evident, contradicts the very meaning of the RTD.

Secondly, and perhaps this is the fundamental knot to loosen, this perspective does not accept the idea that there are specific obligations for each of the different actors involved in development process, included those of the international community. While in fact it has become usual the practice to impose precise conditionalities on receiving countries governments in the disbursement of resources, on the other side the idea that specific obligations for donors can be correlated to these conditionalities is still refused. Such an imbalance generates a relation that is not only in contradiction with the prescriptions of the RTD, which foresee precise correlations between individual rights and collective responsibility, but that it is, in many cases, ineffective.

The RTD framework, taken seriously, provides a possible answer to these questions, pointing out an effective and comprehensive way to gather human development goals and human rights concerns in a common paradigm. An agreement on the fundamental points of the RTD normative framework would entail many consequences, both at the theoretical and at the practical level.

The most important one is, in my opinion, a shift in the discourse of international development cooperation, from a context of need/charity/aid to a context of right/responsibility/cooperation, both at States' and individuals' level.

To affirm the RTD means, from the social point of view, to pass from a conception founded upon the needs to a conception founded upon the rights of the inhabitants of the world, and such rights implicate correspondent responsibilities, at ethical and political level.

These responsibilities do not touch only States as abstract entity (the governments or the "powerful" of the world) but they touch every single individual that is able to operate for the attainment of that purpose. This, in fact, is the essential characteristic both of that "imperfect obligation" and of that shared and diversified responsibility that we have seen characterizing the RTD. In other words, the passage to a real acknowledgement of the universal rights of all individuals changes the connotation of the concept of cooperation transferring it from the level of charity to the level of justice. At the same time, it changes the ethical value of the cooperation activity, from a right of charity as a performance of goodness to a duty of justice as a performance of civilization. In this perspective, it is no more a question of demonstrating ourselves sensitive toward world problems and of devoting a part of our surplus of time and money to help who is less lucky, but rather the main challenge is to face our individual and collective responsibilities in front of our pretension to be a correct and civil community. At the same time, from the point of view of the subject that advances a right, it is a question of affirming his own will to take on him the individual and collective responsibilities that such claim involves, in first place toward the other members of his own community, in terms of democracy, participation and transparency. Understood in this sense, as a complex of rights and mutual and reciprocally binding duties, the cooperation process can indeed turn into a process of equal partnership for development.

This framework results strengthened by the dynamics provoked by that contemporary phenomenon that we call globalization. An important aspect of the globalized complexity, in fact, is that the relations of action-reaction and cause-effect are strengthened not only in reference to the behaviour of States, but of all social actors. In this context, even if the ultimate political sovereignty remains in the hands of governments, corporations, lobbies and simple individuals have today an enormous power of incidence and transformation of the reality, and accordingly an increased responsibility. To make an example, we can think about the enormous weight reached by the phenomenon of private capitals flows, in the form of Foreign Direct Investments, not only among industrialized countries but also from these to the developing ones. This phenomenon, accompanied by the analogous practice of delocalization of productive enterprises, arises important questions, that go from the respect of States sovereignty and economic safety to the possibility of privatizing basic natural resources (as water), to the universality of workers or environmental rights. The solution of such a questions, if on one side it has necessarily to be found in a normative legal framework, on the other side cannot exclusively be confined to its juridical aspects. It is clear, in fact, that many of these problems can be resolved only in the framework of a transparent and responsible economic system, in which an important role should be played by information and by choices awareness of investors/entrepreneurs and of the end users of the good/services produced

In this view, very important appears the activity of those subjects which have the duty to inform and to educate individuals about these themes, as Non Governmental Organizations, schools and media.

NGOs, main actors of international cooperation and experienced of the daily life of many poor countries, have to strengthen their activity of lobbying, advocacy, campaigning and education, adopting expressly the human rights perspective as normative framework. This concerns not only the NGOs specifically working for human rights (as Amnesty International or Human Rights Watch), but also all the so-called development NGOs, that is those NGOs which carry out concrete projects in poor countries to help their development. Assuming human rights, and among these the RTD, as essential reference of this action can help not only to make the interventions on the field more effective and coherent and to inform public opinion on the connection that exists among political choices, lifestyles and economic interests, both in the North and the South of the World, but also to break those barriers of indifference and irresponsibility that too often jeopardize the results of development cooperation.

Schools, from their side, can find in the framework provided by the RTD the bases for an education that makes the students more responsible, making them feel an active part of the process of change brought by the globalization, in an integrated and interdisciplinary view that goes from right to economy, from philosophy to history of international relations.

Media have a major role in informing individuals and in forming public opinion, that public opinion that is then one of the fundamental engine of political choices of governments and of economic strategies of enterprises. A free and pluralist information, not enslaved to particular interests and above all careful to the contents and open to the world, is therefore a real pre-condition of that intercultural dialogue that is necessary to make the cooperation process work. Unfortunately, the political and commercial choices of the greater part of media push them very far from a real assumption of these responsibilities, and the examples in this direction could be many (from the so-called "forgotten wars" to the silence on the historical and political causes of underdevelopment).

5 – THE RIGHT TO DEVELOPMENT AND THE MILLENNIUM DEVELOPMENT GOALS

As we have seen, the RTD framework provides a comprehensive strategy for development cooperation. However, if at the theoretical level this strategy seems to satisfy the necessary requirements of coherence and feasibility, the situation of its political feasibility appears more complex. Besides the refusal of international community to recognize the existence of a binding duty to cooperate for development, in fact, development strategies implemented by international and governmental organizations still appear quite distant from the fundamental aspects of RTD.

At the beginning of the new Millennium, the international community has reached a new, unique consensus around a comprehensive platform for international cooperation, summarized in the Millennium Declaration and in the adoption of the Millennium Development Goals (MDGs). These MDGs embrace a great variety of

issues, from poverty eradication to education, from health concerns to building a new partnership for development. On these goals, international community has strongly invested, both in terms of resources and in terms of credibility.

In the last part of this paper, I will try to briefly outline the convergences and the differences that exist between the MDGs strategy and the RTD perspective.

The MDGs provide a comprehensive strategy of fight against poverty, clearly inspired by the human development theory. Next to income poverty, in fact, MDGs consider other forms of poverty as deprivation, like the lack of education and health. In this framework, MDGs strategy shares with the RTD paradigm some fundamental points:

- a clear statement of shared responsibility in development process, that includes specific references to the RTD;
- a consideration of poverty as a multidimensional phenomenon, that goes beyond economic concerns to embrace aspects like education, health, service provision and other individual and collective issues;
- a consideration, beyond the direct ones, of structural causes of underdevelopment, like debt, market access, technology gap;

Close to these common elements, however, several important differences exist between the two strategies.

The most evident is that MDGs are not phrased in terms of human rights, but in terms of development outputs to be reached. Actually, many studies have shown that it is possible to identify specific human rights norms behind each Millennium Goal²⁴. For example, article 25 of the Declaration of Human Rights, as well as articles 11 and 12 of ICESCR, article 24 of CRC and article 5 of CERD, seem to affect all the goals, providing a common framework of reference. In this sense, the Millennium Project explicitly affirms:

“The Millennium Development Goals are the world’s time-bound and quantified targets for addressing extreme poverty in its many dimensions—income poverty, hunger, disease, lack of adequate shelter, and exclusion—while promoting gender equality, education, and environmental sustainability. They are also basic human rights—the rights of each person on the planet to health, education, shelter, and security as pledged in the Universal Declaration of Human Rights and the UN Millennium Declaration”²⁵.

Moreover, it is also possible to individuate precise connection between the MDGs and the Declaration on the Right to Development, particularly with articles 3 and 4

²⁴ See for example: UN Committee on Economic, Social and Cultural Rights - UN Commission on Human Rights’ Special Rapporteur on Economic, Social and Cultural Rights, *The Millennium Development Goals and Economic, Social and Cultural Rights*, 2002; UNDP, *Human Development Report 2003. Millennium Development Goals: a Compact among nations to end human poverty*, 2003; UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, 2005; J. P. Alston, *A human rights perspective on the Millennium Development Goals*, 2005; A. K. Shiva Kumar. *MDGs and the Right to Development: Issues, Constraints and Challenges*, 2004

²⁵ UN Millennium Project. 2005. *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*. New York, p. 1

(duty to cooperate and to formulate adequate development policies), article 6 (non discrimination) and article 8 (right to education, to food, to shelter and to work).

This possible common framework, however, does not hide the different approach that is spelt out in the two paradigms. Two appear the main differences: the different attention put on development processes and the different degree of completeness and inclusiveness of goals.

The MDGs are conceived mainly in terms of development outputs, while the RTD paradigm aims to put the same relevance on development outputs and processes. This different approach implies many important consequences. Just to make an example, we can think about the different weight the concept of participation assume in the two strategies. While, according to the RTD, participation is not only a mean to accelerate development process, but the main component to assure a long-lasting and sustainable development process, in the MDGs strategy this aspect is underestimated. The Millennium Declaration, in fact, does not foresee any mechanism of participation, and no mention of this important issue is contained in the goals. Moreover, the MDGs seem bounded to a quantitative conception of development. Concerns like non discrimination, equality, share of benefits and sustainability appear not fully considered. If, for example, we have a country with 10 millions people living under the poverty line, we can try to reach the goal of halving poverty rates by progressively improving the general life conditions of all the people, or by sharply improving the conditions of 5 millions people running the risk to worsen the life of the other five millions. In the same way, the goal of universal primary education can be attained joining quantity and quality of schools and teaching, acting at the same time against all those aspects that prevent children to have a real education (poverty, domestic violence, parents' care, etc.), or simply building structures where lodging children some hours a day.

The second relevant difference regards the will of the strategy to be comprehensive and integrate. The RTD framework, as we have seen, advances the claim to integrate all the relevant aspects of an adequate development process: normative interconnectedness of all human rights, equal attention to goals and modality of implementation, clear identification of rights and correspondent obligations, equal emphasis on direct and indirect causes of underdevelopment.

Also the MGGs strategy claims to be comprehensive, but a comparison with the former shows some missing points. Let us consider, for example, two Goals: the Goal 3 on gender empowerment and the Goal 8 on the creation of a global partnership for development.

The object of Goal 3 is the unbalance between men and women. This problem, that affects in the same way many developed and developing countries, has many aspects, varying from domestic violence to unequal work access, from political representation to sexual rights. To face this fundamental problem, however, the Goal 3 chooses as concrete Target only the equality in access to education. If it is clear that in many cases education can be an extraordinary tool for women's empowerment, it is as much clear that, isolated from the other concerns, it is insufficient. It is enough to look at women condition in some Caribbean countries, where an equal access to

education has been almost achieved but a general equity between men and women is still very distant, because of the persistence of widespread violence against women, sexist stereotypes and disparities in work conditions. A really integrated and comprehensive strategy to face the problem of women empowerment should take into account, at the same time, all women rights, not only in themselves but as an essential part of the global development process.

In the same way, the Goal 8 affirming the necessity to build a global partnership for development, though it represents a step forward in the right direction, does not mention many important issues essential to reach the proposed goal. For example, the problem of development assistance is considered only in its quantitative aspect, while no consideration is given to questions as the stability or the quality of aid. The problem of market access is considered through benchmarks as tariffs, subsidies and investments, but fundamental questions as TRIPS or services liberalization are neglected. In the same way, problems like debt sustainability or global governance are considered only in some, partial aspects, and the individuation of responsibilities is limited to State actors.

Even if some of these differences can be explained considering that, while the RTD framework is a theoretical paradigm, the MDGs strategy is the result of a political compromise, the fact that the two strategies are inspired by two different, even if not opposite, approaches it is quite clear. What is important to underline, from our point of view, is that the integration of some points of the RTD framework into the MDGs strategy can turn out to be very useful. In particular, a better definition of mutual responsibilities, including for example the responsibilities of trans-national corporation or other private agents, an highlighted consideration of development procedures, especially concerning participation, non discrimination and empowerment, and a more direct link to international human rights standards can be very useful tools to foster development in a faster and more sustainable way.

CONCLUSION

The diffusion of human development theory has opened the way to a better inclusion of human rights concerns into development theory and practice. The human rights-based approaches to development try to face the challenge of joining human development and human rights paradigms, providing a description of the adequate modalities to foster development.

At the theoretical level, however, there is still some lack of consensus around how to articulate development and human rights. The RTD framework can contribute to light up such a debate. Understood as the right to a process of development in which all human rights and fundamental freedoms can be fully realized, in fact, the RTD shows an higher degree of integration and completeness than the others human rights-based approaches. In particular, the emphasis placed on concept like normative interrelatedness of human rights and duty of international cooperation can contribute

to clarify the fundamental elements of a development activity truly inspired to human rights standards.

If in theory the RTD paradigm has been constantly reaffirmed and seems to satisfy the criteria of coherence and feasibility, more complex appear the situation at the political level. No consensus has been reached about the integration of human rights standards into development practices and about the duty of international cooperation, and the development strategies nowadays overwhelmed accepted, like the one summarized in the MDGs, are not phrased in terms of human rights and seem to adopt a different, even if not irreconcilable, approach. This situation shows the necessity to continue the theoretical and practical examination, as well as the political advocacy, of the RTD.

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