

# Introduction on concepts and approaches: Globalization, Poverty and the Right to Development Debate

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# Main trust of the module

This course addresses

- Thinking about the relationship between development and international human rights
  - Shifts in the conceptualization of development
- Human rights in the development discourse
  - the “right to development”, “rights-based development” and “development as freedom”
- Localized ideas of “rights”, “development”, and “civil society”
- Human rights in the practices of international development agencies
- HRBA and selected human rights issues
  - (poverty reduction, business, climate change, MDGs, human rights programming)

# Dimensions of the module

## *Conceptual*

- Poverty as a human rights issue – (global poverty, poverty as a HR violation? the RtD and social justice - the value added issue)
- HRBAD – its theoretical foundations, practical examples, the HRBA to programming, human rights framing

## *Global dimension*

- HR and the MDG; legal empowerment, governance and inclusive development

## *National, local dimensions*

- “Localized practices”: HR and civil society
- Right to Development and poverty eradication
- Human rights approaches to development and poverty eradication

## *Vulnerability, contemporary issues*

- Recent developments: Business, climate change
- Other themes – disability and human rights, women, indigenous people, etc

# Outline of the lecture

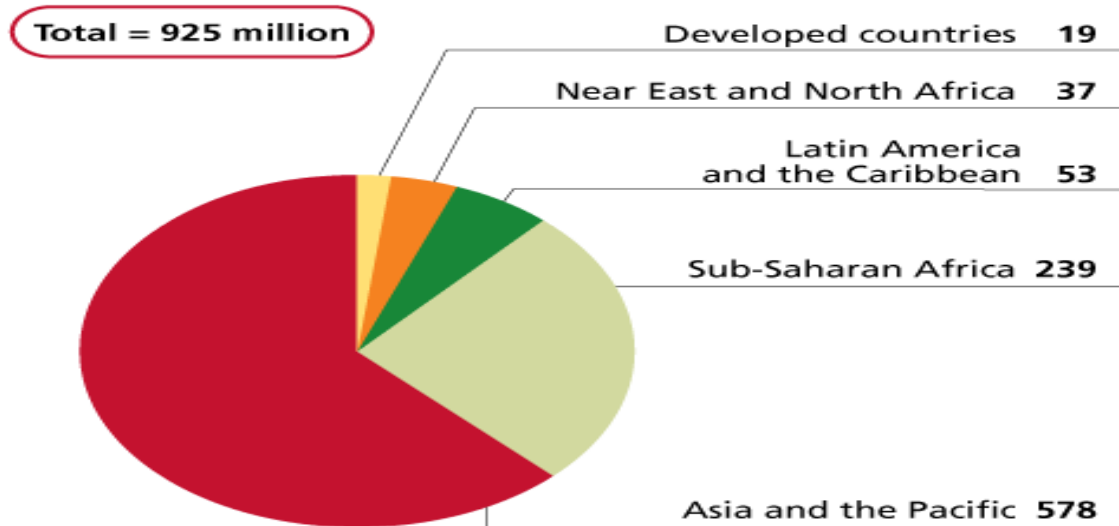
- Global poverty
- Definitions of poverty: Critical issues
- Human rights and development: Two interrelated debates
- Human Rights and development – legal bases
- The concept of development
- The political-legal path of the RtD
- The RtD – any practical value?
- Problems, critical arguments and obstacles
- Concluding discussion: RtD - value added?

# Global poverty as a human rights violation?

## Poverty as the main human rights challenge of our time

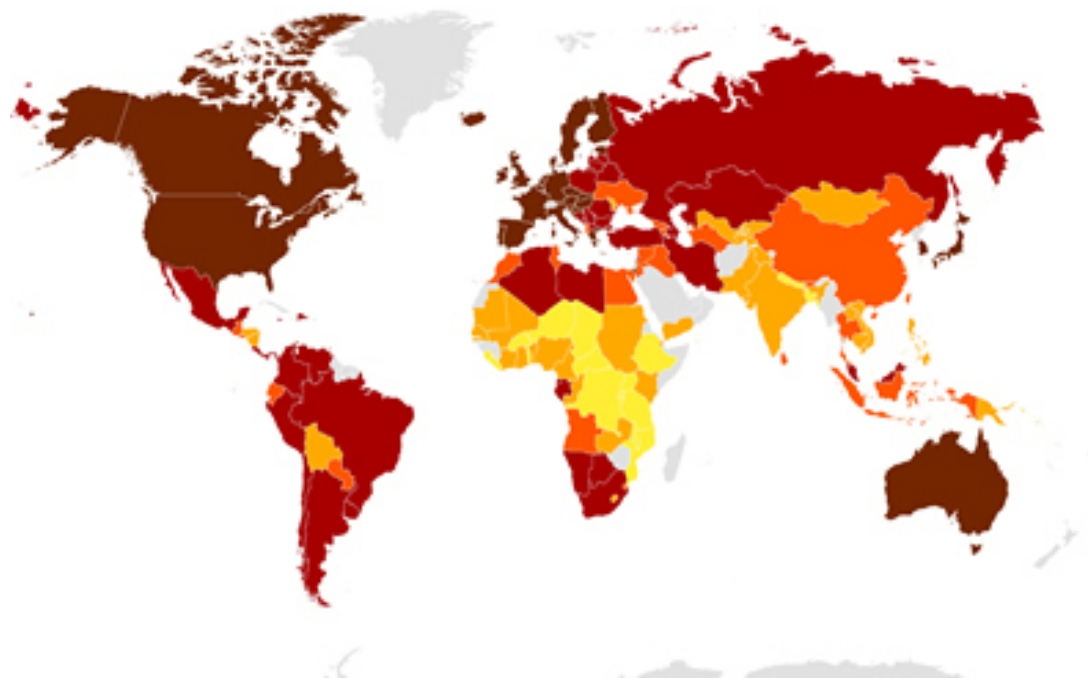
- 300-400 million chronically poor (lifetime, no change)
- Total – 925 million extremely poor (1,5 USD/day; alternative figures 1.5-2.5 billion people)
- Every day, 20.000 children die from easily preventable diseases
- Every day, 1.400 women die from diseases associated with maternity
- “Sliding-back” countries: In 46 countries people are poorer today than in 1990. In 25 countries more people go hungry than a decade ago (Chronic Poverty Report 2008-09)

## Geographical



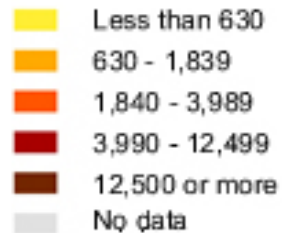
# World Poverty map 2009

Proportion of people living on less than US\$1 a day



**Poverty map**  
GNI per capita  
Atlas method  
(Current US\$)

Source: World Bank 2009



# Global Poverty and development: Moral responsibility

## A political-philosophical discourse

- **Thomas Pogge** (German philosopher): World/Global Poverty and Human Rights
  - People in affluent Western liberal democracies are harming the world's poor - **responsibility to eradicate it**
  - Much blame should be directed at **cleptocrats** (*bad governance, poor public policies*), but claims that **international institutions facilitate and worsen global poverty** (external borrowing, lack of distributive justice)
  - And poverty is a result of **systemic harms**, “poverty is a human rights violation”. Reform of world institutions

# Poverty – critical issues

## What is poverty? – contested

- Narrow vs multi-dimensional
- Measured by **GNP versus a comprehensive measure** (Sen, Sengupta)
  - An income component
  - A human development component with reference to human capability
  - Social exclusion





# Poverty – critical issues

## Conceptual ambiguities:

- Poverty alleviation, poverty reduction, poverty eradication
- Power and poverty production

## Why worry about global poverty?

- **Normative reasoning**: reduce the suffering of other people (altruism)
- **Causality and self-interest**: supporting the poor creates a safer world, new markets, prevent terror
- **Causality and responsibility** – the rich have created conditions for poverty. Critique of globalisation

# Poverty – critical issues

## “Invisible disempowerment”

Mary Robinson HCHR (1997-2002)

Statistics fail to bring out the humiliation, **hopelessness**, and the **lack of dignity** involved:

“the lack of self respect, indignity and humiliation of a refugee camp, the invisibility of helplessness in the face of violence, including violence caused by those in uniform who should protect”

# Global Poverty and development: Interdisciplinary approaches

Human rights law and economics – the lack of interaction?

- Philip Alston: “Ships passing in the night”
  - The global development agenda (notably MDGs) have much in common with human rights commitment; still apart – why?
  - Increasingly more communication between human rights community and development community

Can law help people living in poverty?

- Commission on Legal Empowerment of the Poor:
  - ***legal empowerment*** – using law to get people living in poverty out of poverty

# Human rights and development: Two interrelated debates

- The Right to Development (RtD) as a human right
  - In what sense is there is there, if at all, a human right to development?
- The Human Rights Approach to Development (HRBAD)
  - Are there any agreed principles for and means of implementing national and international development policies that are advancing human rights as the goal of social, economic, cultural and political development?
- In both of these approaches we will see that soft human rights law is **nested inside** hard human rights law

# Human Rights and development – legal bases

References in international human rights law:

- Preamble, Article 1 (3) and Article 55 of the UN Charter requires states to promote development and human rights
- Common article 1 of the ICESCR and ICCPR “the right of self-determination include the right of all people to “freely pursue their economic, social and cultural development”
- Article 28 of UDHR:

Everyone is entitled to a ***social*** and ***international order*** in which the rights and freedoms set forth in this Declaration can be fully realized
- World Conference on human rights 1993 (Vienna)

“... 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”

# The notion of development

## Social development and progress – origins in the Era of Enlightenment

- **Reason** as the primary source for legitimacy and authority
- **Social progress** - societies can **improve** through and by changing their social, political, and economic structures
- Society is not organic and natural: Social constructivist view
- People *themselves* may change society and their way of life, but:
  - *K. Marx in 18<sup>th</sup> Brumaire* (1852): “Men [sic.] make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past ”

## Changing conceptions of development

- Modernisation, dependency, participation, neo-liberalism

# The political-legal path of the RtD

- Adoption of the two main human rights Covenants 1966: K. M'Baye (Senegal): “We need a right to development”
- The Declaration on Social Progress and Development in 1969
- 1977: Human Rights Commission – requested a study on *the international dimensions* of the right to development
  - a structural approach; how were international and global issues linked/obstacles to human rights realization (as “root causes” of HRVs)
- 1981: African Charter on Human and People’s Rights (Article 22)
  - 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
  - **States shall have the duty**, individually or collectively, to ensure the exercise of **the right to development**

# The political-legal path of the RtD (cont'd)

1981 [Working Group of Governmental Experts](#) was mandated by ECOSOC to study

- the [most effective means to ensure the realisation of the RtD](#)
- Submitted a report (1985) [without being able to resolve its internal differences](#) (Western countries vs. the non-aligned group of countries)

1986 The report suggested [a draft Declaration to the GA, which adopted it in December 1986](#) (Res 41/128): US against / 8 abstentions: FRG, Israel, Japan, UK and 4 Nordic countries

- The Declaration [not binding](#), but “reflects general international law”
- Reconfirmed at the [World Conference on Human Rights](#) in Vienna 1993
- In 1998, appointment of an open-ended Working Group of Experts , and an [Independence Expert on the RtD](#): Prof Arjun Sengupta (5 reports 1999-2004)
- High Commissioner Mary Robinson - high priority to the RtD



Arjun Sengupta  
UN Independent  
Expert on the Right to  
Development  
(1999-2004)



# The contents/nature of the RtD

## The RtD Preamble

“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 there from.....”

# The contents/nature of the RtD, cont'd

## 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.....the .....right to full sovereignty over all their natural wealth and resources

# The contents/nature of the RtD, cont'd

## 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 .....as well as .....duties to the community.....
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 there from

# Sengupta on the RtD

- Six reports between 1999 and 2004
- Enforceability of collective rights via the implementation of development programs possible even without their being converted into legal rights
- Justiciability did remain a superior course of action
- National governments are obliged to pursue paths of developments (adopt appropriate national and local policies) that ensure that human rights are progressively implemented
- If the right to food, education, health are regarded as components of a human right to development, the state has to accept the primary responsibility of delivering the right either on its own or in collaboration with others
- Provide for the required resources to facilitate such delivery: physical, financial and institutional

# The contents/nature of the RtD, cont'd

## **Definition** of the Right to Development:

RtD, which is an inalienable human right, is the right to a particular process of development in which all human rights and fundamental freedoms can be fully and progressively realized”

Many **types of development**, only some are consistent with human rights  
equity and state accountability  
Rights-based economic growth (sustainable development?)

Interdependence of rights – if one human right is violated – the right to development suffers too. A **composite** right

A **meta-right** (Sen, 1984): A meta-right to something x can be defined as the right have policies  $p(x)$  that genuinely pursue the objective of making the right to x realizable”

## **Collective-individual rights:**

The individual - central subject and beneficiary of development

A group or collective right – the right is enjoyed individually but exercised collectively (the right is enjoyed together with other members of a group)

# The contents/nature of the RtD, cont'd

## Process and outcome:

Importance of participation (information, association, organisation, expression etc)

## Basic needs and social justice:

article 2.3: “the fair distribution of the benefits resulting from” development

National policies (art 2.3, 3.1, 8) and international cooperation (art 3,4,7)

RtD as guidelines and **criteria for evaluation of development policies** and programmes  
- Work of the High Level Task Force on the RtD

## Development compacts? **A practical solution**

Mechanism for ensuring “mutuality of obligations” between a national government that follow a rights-fulfilling development path and the international community to cooperate to enable the implementation of needed development programs

# The RtD – any practical value?

## High Level Task Force on the implementation of the right to development

- established by the Commission on Human Rights (res 2004/7), and ECOSOC
- examined the obstacles and challenges to the implementation of the MDGs in relation to the right to development;
- Examine social impact assessments in the areas of trade and development at the national and international levels;
- Examined best practices in the implementation of the right to development.
- MDG 8, on a global partnership for development
  - criteria for evaluation of global partnerships with the aim to improve their effectiveness in support of the realization of the right to development
  - Economic Commission for Africa/Organization for Economic Co-operation and Development-Development Assistance Committee: Mutual Review of Development Effectiveness in the context of the New Partnership for Africa's Development
  - Paris Declaration on Aid Effectiveness
  - African Peer Review Mechanism



# Problems, critical arguments and obstacles

Who is the rights-holder of the RtD

- Who is the beneficiary, rights-holder, what is the substantive content, and what are the enforcement remedies
- The rights to development as a struggle on the ownership and (perhaps) direction to the global human rights project

When is the RtD violated?

- When violated, how to measure?
- Justiciability issue, and an integrated approach
- Is the RtD a way of diverting concern about other rights violations
  - making the right to development a political priority at the expense of other rights? An escape manoeuvre?

## Concluding discussion: RtD - value added?

- Human rights as **goals of development**
- National public policies and international efforts to be **measured by HR standards**
- Focus *on participation in and democratisation* of development
- Still unsettled: **international responsibilities**, and the question of **“imperfect obligations”**

## Student assignment:

- *Kiobel vs Royal Dutch Petroleum*
- A case from the ICCPR: *Lopez Ostra v. Spain* (environmental protection), violation of Article 8 of European Convention of Human Rights

Find these cases on the internet. Study ***one of the cases*** and prepare for presentation and discussion in class.

1. The facts of the case
2. The legal issue involved
3. How the case has been resolved
4. What is the “development” contents of the case

**Or**

Read the article “Human Rights priority for Việt Nam” in *Việt Nam News* of November 8, 2013 (p. 3):

If Vietnam is elected to the UN Human Rights Council

1. Do you think it is a good idea that Viet Nam becomes member of the Council. Explain your view.
2. If Vietnam is elected to the Council, what should be its (Vietnam’s) main priorities of in the Council?
3. Which issues should it give priority to in international human rights work? Should it pay attention of any development issues – if so, which ones and why?

Class presentations may be by use of power point, and should not take more than 15 minutes. You may work in groups of 2 or 3 people! Presentation dates – Tuesday 12 or Friday 15 November.