

Human Rights and Social Development: Interdisciplinary Perspectives on Theory and Practices

National University of Vietnam

CAL6009

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Main trust of the course

The course addresses

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

Outline

1. Global poverty and human rights
2. Some issues on global poverty and development
3. Human rights and development/poverty eradication: Two interrelated debates
4. The Right to Development (RtD)
5. RtD – relevance? Cases?

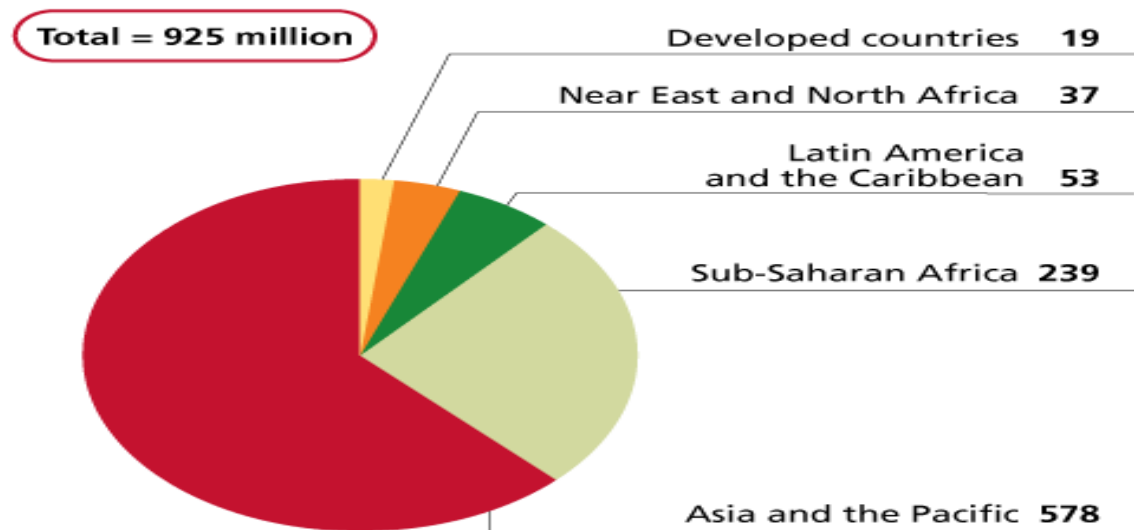
Literature ref.

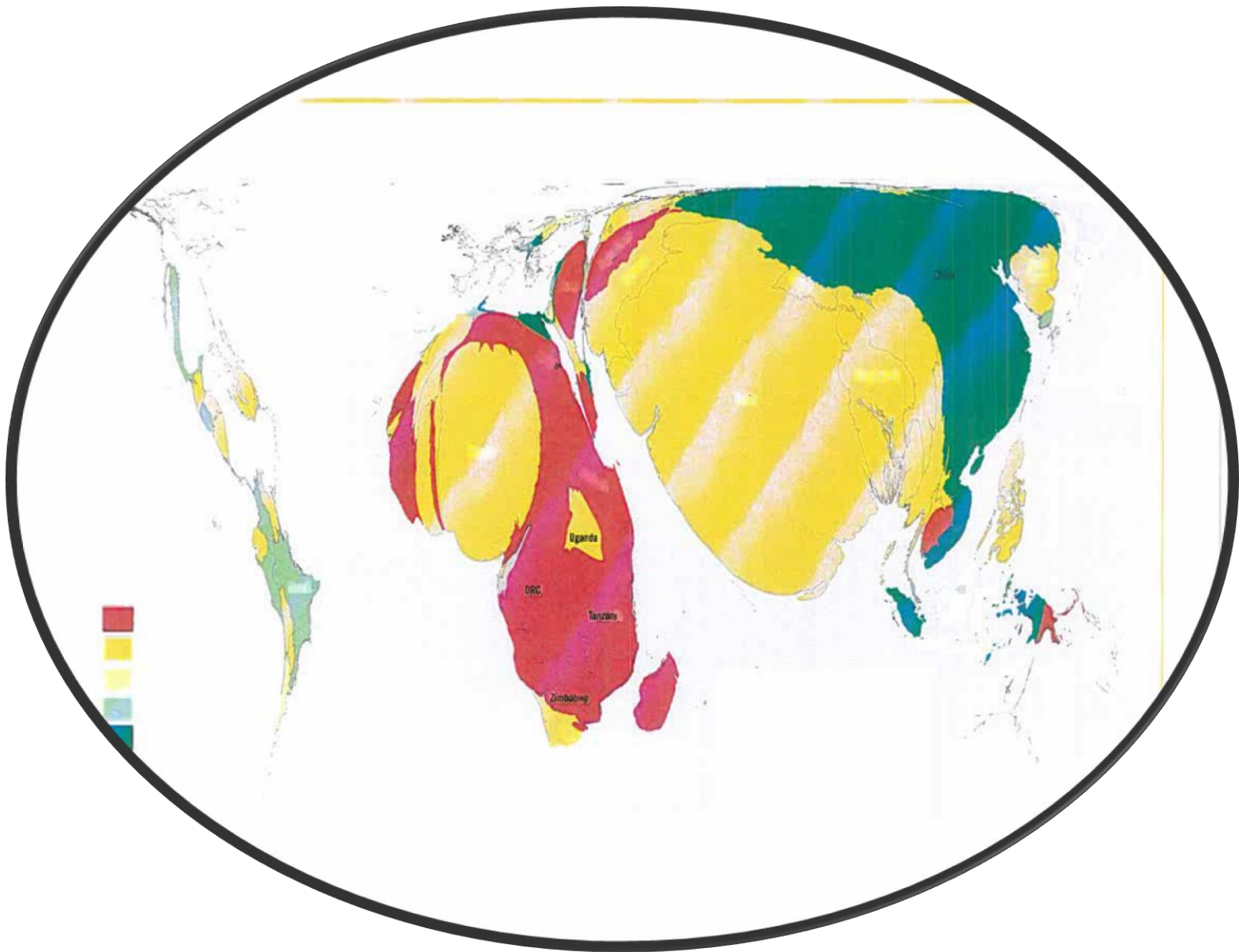
Global poverty as a human rights violation?

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 distribution





Vietnam in comparison: Trend in Poverty (%) – last 12 years

Year	1998	2002	2004	2007	2009	2010
Poverty	37.0	28.9	19.5	14.8	12.3	10.6

Unemployment rate: 2,29% (current)

Global poverty – some critical issues

- What is poverty? – contested
 - Narrow, broad, economics, capability, social exclusion, etc.
- Global poverty – poverty not just be understood as local or national issue – global structures?
- 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
- Key terms: Poverty alleviation, poverty reduction, poverty eradication; poverty production

Global Poverty and Development

Mary Robinson: 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”

A philosophical discourse: Thomas Pogge:

- World/Global Poverty and Human Rights
- People in affluent Western liberal democracies are harming the world's poor and have a responsibility to eradicate it
- Domestic *cleptocrats* but international institutions facilitate and worsen global poverty (e.g by borrowing to national autocratic rulers (in the name of its people)
- And poverty is a result of systemic harms, and a human rights violation
- Conclusion: Reform of world institutions, cosmopolitanism (in tradition of Kant, Kwame Appiah etc.)

Global Poverty and Development

- A human rights discourse
 - Philip Alston: Ships passing in the night
 - The global development agenda (notably MDGs) have much in common with human rights commitment; still apart – why?
 - Progress but blame on both the development community and human rights community
 - Commission on Legal Empowerment of the Poor:
 - By legal empowerment – people living in poverty can get out of poverty
- Is poverty a human rights violation?

Human rights and development/poverty eradication: 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?

Human Rights and Development - general

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”

Development: Historical origins?

Social development and progress – prerequisites

- **reason** (and the capability of planning) as the primary source for legitimacy and authority (limits of planning?)
- **social progress** - societies can **improve** through and by changing their social, political, and economic structures
- society is not organic and natural
- people *themselves* may change society and their way of life, but:
 - *K. Marx in 18th Brumaire* (1852): “Men 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, neo-conservatism, neo-liberalism, socialism, new (sceptical) radicalism

The political-legal path of the RtD

- Adoption of the two main human rights Covenants 1966: Keba M'Baye (Senegal): We need a 'right to development' (1972)
- The Declaration on Social Progress and Development in 1969 (little effect): sets forth principles, objectives, means, and methods to eliminate obstacles to social progress, particularly inequality, exploitation, war, colonialism, and racism. Does not declare a right to development
- 1977: HR Commission - 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
 - scope and contents of a RtD
 - 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 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 1998-2002)
- High Commissioner Mary Robinson - high priority to the RtD

Arjun Sengupta (India), UN Independent Expert on the Right to Development (10 June 1937 – 26 September 2010)



The contents/nature of the RtD

From the Preamble of the Declaration:

“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, 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 fulfillment 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 there from.

The contents/nature of the RtD, cont'd

- Indivisibility, interdependence of rights, ref to the two Covenants (ICCPR and ICESCR)
- Definition of development as unity of other human rights - a **composite** right, a **meta-right** (Sengupta)
- The individual is the central **subject and beneficiary** (object) of development
- 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 a **guideline**, or **criteria for evaluation of development** policies and programmes
 - Work of the Task Force on the RtD
- Development compacts?

RTD – any practical value today?

Recent ref.: HCHR May 2012:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12120&LangID=E>

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;
 - Examined 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

1. Beneficiaries

- Who is the beneficiary, duty-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

2. Violence and legal enforcement

- When is the right violated, how to measure?
- Justiciability issue, and an integrated approach
- The politicisation of rights – making the right to development a political priority at the expense of other rights? A legal instrument?

3. Value added?

- Human rights as goals of development
- Public policies and international efforts to be measured by HR standards
- As a programmatic right standard by which development is being judged and evaluated that entails the human rights sectors in a comprehensive way.
- Focus on *participation in* and *democratisation of **and in*** development
- Focus on the legal obligations of states in conducting human rights conducive public policies / governance
- Continued and more focused debate on international responsibilities, and imperfect obligations

Development-related rights and cases

Student assignment? Research these two cases and prepare for presentation and discussion in class:

- A case from the African Charter: *SEREAC (Ogoni people) v Nigeria*, October 2001
- A case from the ICCPR: *Lopez Ostra v. Spain* (environmental protection), violation of Article 8 of European Convention (right to respect for his private and family life, his home and his correspondence)

SEREAC (Ogoni people) v Nigeria, African Commission on H&PR October 2001

- A case under the the African Charter on Human and People's Rights
- Case: Military government of Nigeria involved in oil exploration (with Shell) causing environmental degradation and health problems from contamination of the environment
- Violation was found on the individual rights to nondiscrimination (Article 2), life (Article 4), and property (Article 14), the right to health (Article 14) and the right to protection of the family (Article 18)
- Violation of collective rights Article 24 requiring the State "to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources