

**A CRITICAL DISCUSSION/ANALYSIS OF THE RIGHT TO DEVELOPMENT AS AN
INDIVIDUAL AND COLLECTIVE RIGHT**

by

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SUMMARY

The purpose of the essay is to critically discuss and analyse the right to development as an individual and a collective right, and or both at national as well as at the international level. The main objective being to ascertain whether there is distinct dichotomy between the right to development as an individual and a collective right.

Having critically analysed the right to development as an individual and a collective right or both, I attempted to critically discuss both the active and passive subjects of the right - so-called right-holders and duty-bearers respectively, at national as well as at international level.

The juridical status of the right has been critically examined. It is clear that the right is legally binding on all states. The right is universally recognised as a human right enjoying international legal status.

Title of dissertation:

A critical discussion/analysis of the right to development as an individual and collective right.

Key terms:

Development right; Individual; Collective; OR both; Active subjects; Passive subjects; National; International; Right's juridical status.

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A CRITICAL DISCUSSION/ANALYSIS OF THE RIGHT TO DEVELOPMENT AS AN INDIVIDUAL AND COLLECTIVE RIGHT

INTRODUCTION

The purpose of this essay is to examine and analyse the nature of the right to development as an individual and/or collective right critically, in order to:

- determine whether or not there is a distinct dichotomy between the right to development as an individual and a collective right, and
- identify the right-holders (active subjects) and real right-bearers (passive subjects) of this right.

The nature of the Right to Development as a human right, whether individual or collective, is the subject of an ongoing debate, which is shrouded in uncertainty. On the one hand, there are several academic commentators who strongly argue that the right to development, if it exists at all, must be primarily or exclusively an individual right¹ because the right of the state to development is a right of a different kind (see 1. below). Another category of academic commentators insists that the right to development is exclusively a collective right with the state as subject (see 2. below).² Other authors argue that the concept of the right to development is both an individual and a collective right (see 3. below).³

Broadly speaking, there are four schools of thought regarding the right to development as:-

- exclusively an individual right (industrialised states);
- a collective right of peoples (internal dimension);
- collective right of state as well as an individual right (external dimension), and
- both an individual and collective human right (internal dimension).

The right to development was originally conceived as one of the human rights of individuals. Garcia-Amador refers to the Philadelphia Declaration of the International Labour Organization Conference of May 1944, as authority for a remote expression of this right at the individual level.⁴ The origin of the right to development has also been linked to the developing world, when

the Group of 77 adopted the Declaration of Algiers in 1967, which described the right in terms of a collective “peoples right” within the framework of a “New International Economic Order”.⁵

The internal dimension of the right to development supposes that the collectivity is comprised of individuals, who remain the central subject of the right, while the external dimension supposes that the right to development is a collective right of the state and an individual right analogous to the right to self-determination. The critical discussion of the right to development as an individual human right and a collective right is intended to reveal who the subjects of the right to development - the so-called active subjects of the right or right-holders are, and to identify the duty-bearers or passive subjects of the right to development.

1. THE RIGHT TO DEVELOPMENT AS AN INDIVIDUAL RIGHT

This section of the essay recounts the views of some of the most well-known authorities in the field. Garcia-Amador, Espiell, Donnelly and Rich have all presented arguments in favour of the concept of the right to development as an individual human right. The emphasis on the individual aspects of the right rather than the collective aspect is typical of the approach popular in the West, which regards municipal law as the starting point (instead of public international law) and focuses on the realisation of the individual’s right to development as a human right.

The Philadelphia Declaration affirms that “all human beings” irrespective of race, creed or sex have the right to pursue both their material well-being and spiritual freedom in conditions of freedom and dignity, of economic security and equal opportunity.⁶ Sometime after this conference, the right to development continued to be conceived as a human right of the individual and was implied in some of the rights enumerated in post-war universal and regional instruments.⁷

During the next stage of the evolution of the right to development, the concept was again described as a human right attaching to the individual. The Chief Justice of Senegal, Keba M’Baye, couched the concept in these terms in his first lecture series to the 1972 study session of the International Institute of Human Rights in Strasbourg.⁸

Garcia-Amador⁹ quotes Espiell with approval to the effect that recognition of the existence of a human right to development may follow from a systematic interpretation of the International Covenants and other conventions, declarations and resolutions which proclaim and protect the socio-economic rights of individuals. For Espiell,¹⁰ the right to development is an individual human right similar to the right to meet, to strike, and to unionize. These individual rights belong to each person and are distinguished from other collective human rights in that they can be implemented only by the agreement of many wills. According to him, the right to development would not pose any problem when analysed as an individual human right to development. He argues that the right to development would be an individual right in its beginning and its end, and a collective right in its implementation.¹¹ Thus, seeing the right to development as an individual right belonging to all individual human beings, does not mean that there is no further scope for the collective aspect in the implementation phase.

Espiell states that the right to development as an individual right has not yet achieved classification as an independent right. Rather, it is the consequence of domestic and international recognition of economic, social and cultural rights of man, in particular the right to live, which implies the right to live in a full and integral manner. The author expresses his view with regard to the right to development as an individual human right as follows:

“... this individual right is the necessary outcome of the generic recognition of human rights, of their conceptualization resulting from mankind’s necessary progress and from the means required to accomplish the ultimate end of common welfare.”¹²

Espiell insists that the right to development is an individual human right because the right to full development is a consequence of mankind’s unanimous acceptance of the right to live. It is the basis of the collective right of states and communities to development. Nevertheless, the community cannot impose upon its members the ideas of development which the members have not yet accepted freely and spontaneously.¹³ In part, this explains why he is adamant that the right should be regarded as an individual right. Yet, he concedes that it is when the right to development is considered as a collective and an individual right at the same time, that the idea of development acquires its true meaning.¹⁴

The recognition of the right to development as an individual right implies the imposition of

obligations on the state, collective persons or public entities and on the international community to promote and protect human rights, both regionally and universally.¹⁵ The right to live and to develop may be held by groups, but are quite explicitly the rights of the individuals. Donnelly acknowledges this fact and states that there is no conceptual problem even in the African Charter's clear and explicit distinction between human and peoples' rights. He regards human rights as individual rights.¹⁶

Roland Rich¹⁷ has identified an important distinction between the right to self-determination and the right to development. While many commentators refer to the right of self-determination as a precondition for the enjoyment of individual human rights, the right to development is widely said to be a right of peoples and, simultaneously, a right of individuals.¹⁸

With reference to Abi-Saab's report on the right to development at the Hague Workshop, where a distinction was made between the individual and collective right of development, Garcia-Amador remarks as follows:

"If the right to development as an individual does not take us far, we have to fall back on the alternative of the right to development as a collective right."¹⁹

Garcia-Amador argues that this remark does not display preference for the collectivity over the individual, but conveys that much can be achieved for the individual by considering the right to development as a collective right as a matter of legal policy. The Covenants attach the right to development to individuals, as recognised in post-war general, regional treaties and other non-conventional instruments. A right to development which goes beyond what has been achieved by the two UN Covenants on Human Rights would be a collective right to development.²⁰

Resolution 39/46, which was adopted by the UN General Assembly in 1979, two years after the Commission on Human Rights called for a study on the international dimension of the right to development, emphasises that equality of opportunity for development is the prerogative of nations and individuals within nations.²¹ In 1985 the notion of the right to development was given further impetus by the UN General Assembly and its Special Committees by way of a series of resolutions intended to advance this right as a human right because the central purpose of development has been the realisation of the individual human person's potentialities in

harmony with the community.²² Implicit in this purpose is the idea that the human person is the subject and not the object of development.²³

The Charter of the Organisation of American States (OAS), as amended by the Protocol of Buenos Aires, contains regulations with clear references to the right to development as an individual right. Article 43 (a) of the Charter provides:

“All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security.”²⁴

This regional international instrument (OAS) treats the right to development as a right of the human person.²⁵ The right to development as an individual right has also been advanced as an individual human right by U.N. General Assembly resolutions relating to the New International Economic Order.²⁶

Criticism against this approach includes the point that international human rights, by creating rights on the international level which need to be enforced against the state to which the individual belongs, do not create the means by which states may be held accountable for violations in their domestic spheres. In the case of developing states, individual claims to this effect may contribute to weaken the state even further.²⁷ One may ask whether such an atomistic approach reflects the extent to which people live in communities.

2. THE RIGHT TO DEVELOPMENT AS A COLLECTIVE RIGHT OF PEOPLES (INTERNAL DIMENSION)

Some academic commentators and authors hold a strong view that the right to development is not an individual human right, but a collective right of peoples since it has collective orientation rather than individual orientation. Would its classification as a collective right pose a threat to individual rights or cause a conflict between individual and collective rights?

Authors such as Crawford and Sieghard have identified several categories of collective rights in

general human rights texts.²⁸ The rights are listed as follows:

1. self-determination and equality of rights;
2. rights relating to international peace and security;
3. permanent sovereignty over natural resources;
4. rights in relation to development;
5. rights in relation to the environment; and
6. rights of minorities.

Crawford has added a seventh category of collective rights to Sieghard's list, namely the right of groups to existence. Both authors list the right to development as a collective right with peoples as subjects of the right.²⁹ Crawford declares that the seven categories are collective rights which have been "sufficiently clearly formulated in terms of collective rights", and have achieved recognition in at least one international human rights instrument in treaty form.³⁰

The Banjul Charter is the human rights instrument in which the right to development is recognized as a collective right of peoples. The Organisation of African Unity adopted the African Charter on Human and Peoples' Rights which was approved in January 1981 by the OAU Ministerial Conference in Banjul, the Gambia.³¹ The emphasis of the instrument is on the protection of both individual human rights and rights of peoples against alien domination. As for the right to development, Article 22 reads:

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

Peoples have this right and the state bears the concomitant responsibility. Crawford treats the possible differences between a right to development as a right of peoples or a right of states in the same way as the differences with regard to the right of permanent sovereignty over natural resources. He concludes that the right to development is as well integrated into the body of international practice as is the right of permanent sovereignty. He treats the right to development as a collective right of peoples and of states and make no distinction between the two.³² Nevertheless, by implication, he confirms the notion of the right to development as a collective right of states against other states at the international level.

Kunig has argued that the right to development ought to be seen as a collective right of peoples, based on the ground that development is necessarily a collective venture and process, and also because an individual cannot develop all by himself.³³ Since many development processes or activities require collectivity, I go along with this view in part. The right could be exercised collectively by peoples to improve their health and the education of their children and of future generations. The provision of sufficient schools, clinics and hospitals, roads leading to and from these institutions, and possibly the provision of the effective means of communication would demand collective action. Nevertheless, at the international level, a state possessing the right against others may construct dams or roads and devise tourism projects without the involvement of other states. Similarly, at national level, the subjects of the right to development (citizens and peoples), may exercise this right individually. The owner of a small-holding may improve and expand it for the purpose of vegetables and fruits production all by himself. Moreover, the fact that collective action is required to realise a right does not mean that the right is a collective right.

In 1981 the UN General Assembly declared the right to development to be an inalienable human right. It found the notion of the right as a collective right unacceptable, based on the ground that as a collective right it poses a threat to traditional individual rights.³⁴ Moreover, there was concern that a conflict between individual and collective rights could be fuelled by classification of the right to development as a collective right. Triggs argues that the first criticism has been countered by the U.N. General Secretary's argument that the individual and collective dimensions of the right to development are complementary, and that the second criticism has been met by the 1986 Declaration on the Right to Development, which stresses that all human rights are indivisible and interdependent.³⁵ The criticism that recognition of collective rights (peoples' rights) would endanger traditional human rights boils down to a misunderstanding of the interdependent relationship between collective and individual rights.³⁶ It follows that the right to development, exercised at the national level or in its internal dimension, is a collective right of peoples held with respect to the state which they inhabit, while individuals are the ultimate primary beneficiaries of development processes.

3. THE RIGHT TO DEVELOPMENT AS A COLLECTIVE RIGHT (EXTERNAL DIMENSION) AND COMBINATIONS OF THIS VIEWPOINT

This section will indicate that states may and do hold rights on the international level and may be the subjects of the right to development. Authors and commentators such as de Vey Mestdagh and Garcia-Amador strongly support the external dimension of the right to development as a collective right of states at the international level. Bedjaoui's viewpoint is that the right to development is considered as a right of peoples and of states at the international level. There is a general consensus among scholars that the right to development of states, viewed as a collective right, is the right of states at the international level against other states.

States ought not to be seen as holders of individual human rights.

3.1 A COLLECTIVE RIGHT OF STATES (EXTERNAL DIMENSION) AND AN INDIVIDUAL RIGHT

Garcia-Amador³⁷ states that the distinction between the right to development as an individual right and as a collective right becomes relevant when we consider the content of the right in each case. As a collective right, and more particularly a collective right of states, the right to development shows a content different from that of an individual right.³⁸ As a collective right of states, this right reflects the following aspects:

1. The right to development may be claimed erga omnes by a state which is "master in its own house" and is opposable, by the possessor state, against all others.³⁹
2. The right to development may be claimed by a state, the active protagonist in international relations, against other states. This right may be exacted by the claimant-state not only from other states but also from the entire international community.⁴⁰

Viewed as a collective right of states, the right to development is opposable erga omnes by a state against others and the international community.⁴¹ It becomes clear, therefore, that only at the international level may the right to development be ascribed to states. Only in the international system is it practicable for a state to exact its right to development as a collective right against others. Advocates of the right to development as a collective right of states warn that recognition of a right of states on the national level could be abused to justify human rights violations committed in the quest for

development.⁴² It is de Vey Mestdagh's opinion, for example, that the right to development should not be seen as a material human right of individuals, or of states at all, on account of the dangers which inhere in the idea of ascribing human rights to states. To his mind, the right to development as an individual right is merely an aggregate and, therefore, a wasteful multiplication of human rights; as a collective right, the right is available only to states in the international system.⁴³ States are not ascribed human rights at the national level, for states may abuse their international right to development to distract world attention from infringements on the human rights of individuals. States cannot be holders of human rights for the historic political function of human rights is to protect the individuals against certain abuses by states. States may use their human rights to infringe the human rights of the individuals and refuse to provide certain minimum goods, services and equal opportunities to all individuals.⁴⁴ Donnelly states that in the modern era, this vital historic political function has been performed more widely and more effectively by human rights than any social practice.⁴⁵ Donnelly blames the present state of international law and politics for the absence of a meaningful national dimension for a collective right to development in practice.⁴⁶ He declares that the danger of a right to development of states could be reduced if restricted to a right of states in international relations, (i.e. a right of the state against other states and the international community).

Okafor has pointed out that de Vey Mestdagh does not advance any reason why the right to development cannot be a collective right of peoples.⁴⁷ Nevertheless, the communist perspective may explain this oversight: that individuals and peoples can attain development only through political, economic, and social progress of the state.

When deliberating on the right to development in 1986 experts from Scandinavian countries took the position that the right to development be commonly described as a collective right pertaining to states and nations.⁴⁸ The Netherlands found the notion of the right to development as a collective right acceptable provided that collectivity is recognized and understood as made up of individuals.⁴⁹

3.2 A COLLECTIVE RIGHT OF STATES AND PEOPLES, AND AN INDIVIDUAL HUMAN RIGHT

Mohammed Bedjaoui's viewpoint is that the right to development is considered as a right of peoples and of states (at the international level).⁵⁰ He states that the right to development cannot be an individual human right unless it is first a right of peoples or of states. Only a collective and community approach to the right to development as a collective right of states at international level⁵¹ will enable us to identify the real nature of the development problem and the appropriate solutions to be applied to the international problem of underdevelopment.⁵²

Bedjaoui confirms that the right to development is a human right since the individual is the ultimate primary beneficiary of the international legal norms, and that development is nonetheless proclaimed within a defined framework operating among states. Therefore the right to development cannot be claimed by the individual against the international community or other states, unless claimed through the individual's own state. The citizens' right to development is best secured by the state at international level. Thus, the right is presented as a collective right of state held against or with respect to other states or the international community.⁵³

3.3 THE RIGHT AS A HUMAN AND PEOPLES' RIGHT (EXTERNAL DIMENSION)

The emphasis of the African Charter on Human and Peoples' Rights is on the protection of both individual human rights and rights of peoples against alien domination. Article 22 provides:

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

The inclusion of a right to development in the Banjul Charter is a significant indicator of the importance with which the African States regard the right.⁵⁴ The right is seen as a

collective right of African States on the international level, as well as an individual right of each African State which may be exacted from others by the possessor state. The relevant provision in the African Charter is also open to the interpretation that African states are under an obligation to co-operate for the purpose of encouraging development, and that all states are called upon to co-operate to implement the right.

A dispute which arose between Botswana and Bophuthatswana in 1981 illustrates the external dimension of the international right to development.⁵⁵ The erst-while Bophuthatswana Government informed the Botswana Government that it intended to construct a big dam along the Molopo river at Disaneng Village, District Molopo. The notification was done in the spirit of friendly relations between states and their co-operation towards the improvement of the world economy. The Botswana Government refused to hold negotiations with the Bophuthatswana authorities on the ground of lack of recognition of the homeland regime. The Masire administration sent a message to the South African Foreign Affairs Department that the negotiations be conducted by the latter. All efforts by the Bophuthatswana Government to commence negotiations failed, and on that ground the Bophuthatswana Government proceeded with the project as planned. After the construction of the dam, the Botswana Government claimed that the project constituted a breach of its right to development, because this partial blockade of the natural watercourse was partially depriving it of the water resources necessary for the development of Botswana. Although there was no political and administrative co-operation between these two states and the South African Department of Foreign Affairs, the matter was later resolved. Fortunately, the Batlharo Ba Ga Masibi Tribal Authority Council, owing to proper consultation, adopted a resolution in terms of which the erst-while Bophuthatswana Government was authorised to construct the dam provided that the residents received sufficient compensation and were resettled at the state's expense (transport and other removal services).

The dispute may have provided an opportunity to enforce the right at national level (internal dimension of the right to development). The residents of Disaneng Village could have instituted a claim against their national government, as subjects and

beneficiaries of the right. This theme will be developed under 4. and 5. below.

4. THE RIGHT TO DEVELOPMENT AS BOTH AN INDIVIDUAL AND COLLECTIVE RIGHT (INTERNAL DIMENSION)

There are some authors, academics, commentators and jurists who see the right to development as both an individual and a collective right belonging to individuals and all peoples. The Dakar Conference concluded along similar lines. The English text of the conclusion is contained in the UN Secretary-General's Report of 1979.⁵⁶ In this report, the Secretary-General stated that the enjoyment of the right to development involves a careful balancing of the interests of the collectivities on the one hand, and those of the individual on the other. The report states that it would be a mistake to regard the right to development as necessarily attaching only at one level exclusively.⁵⁷

The African Jurists regarded the right as both individual and collective at the 1978 Hague Workshop, held under the auspices of the Hague Academy of International Law and the United Nations University. They concluded that the creditors of the right in question are individuals, peoples and states. Thus the jurists' conclusion is reflective of the logic that the right to development is both individual and collective. Later (in 1981) the jurists' position was incorporated into the African Charter on Human Rights and Peoples Rights. To indicate the individual and collective characteristics of the right, the relevant articles in Chapter One, (under the heading: "Human and Peoples' Rights") use expressions such as "every individual" and "all peoples".⁵⁸

According to article 20 paragraph 1 of the African Charter all peoples have the right to existence. They have an inalienable right to self-determination to freely determine their political status, and to pursue their economic and social development according to their own chosen policy. Article 22 paragraph 1 attaches the right of economic, social and cultural development to the collectivities (all peoples). Paragraph 2 of article 22 places states under separate and collective obligations to ensure the exercise of the right to development by individuals and all peoples.

It is clear that the African Charter recognizes, guarantees, and attaches the right to development

to individuals. Article 2 proclaims:

“every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as”

My assessment of the article is that its text should be understood as saying that all rights including peoples’ rights provided for in the articles 19 to 24 also belong to individuals. It should be borne in mind that the individual cannot exercise the right to self-determination and development or existence without the support and cooperation of the group/community to which he/she is a member. In order to provide proper protection to the individual, it is necessary to recognise those collective centres utilized by individuals to express their rights.

While it may be so that the African Charter attaches peoples’ rights such as self-determination and development both to individuals and collectivities, the Charter is not too generous in conferring rights on individuals that will allow them to assert collective rights such as the right to development. It remains a mystery why the drafters of the Charter did not include an article that delineated the right to development more clearly. It would appear as if they preferred the right to be implied from the article which attaches the right to existence to all peoples. I would suggest an article with the following wording:

“Every individual and all peoples shall have a right to development, by virtue of which they shall determine their political status, and pursue their economic, social and cultural development in a general condition favourable and conducive to the exercise of a right to development.”

Article 20(1) which attaches the right to existence to all peoples in clear terms, serves as a basis for this argument.

The Report and Draft Seoul Declaration of 1985 drawn up by the International Law Association’s First Subcommittee formulates the principle relating to the right to development together with, and on the basis of the general principle of economic sovereignty.⁵⁹ Makarczyk describes the link as follows:

“The principle of permanent sovereignty is based on the right to self-determination of peoples, which is one of the foundations of the progressive development of a right to development of individuals and peoples as a human right, recognized by international law, a right which should be respected by all

states and which is based on the concept of human dignity.”⁶⁰

Makarczyk ⁶¹ states that the junction between the right to development, and self-determination and human rights was introduced to the ILA due to its links with the work of the UN Human Rights Commission. The right to development was taken out of its strictly state context on the basis of the notion that it is a right of individuals and peoples grounded in international treaties. The text of the Seoul Declaration reads:

“The right to development is a principle of public international law in general and of human rights law in particular, and is based on the self-determination of peoples.”⁶²

Makarczyk states, further, that the right to development as a human right means that all individuals and all peoples should freely partake of the fruits of their toil both individually and in common (collectively) through the state in order to implement the provisions of articles 55 and 56 of the UN Charter.⁶³ The Seoul Declaration advocates a right of individuals and peoples, and it imposes certain concrete obligations and duties on states both with regard to their internal and international policies as is the case with the Banjul Charter.

Makinson ⁶⁴ states that the right to development and cultural identity are often presented as borne by both individuals and collectivities, with the emphasis on peoples’ rights, such as the right of peoples to self-determination, of minorities, of groups to existence etc.⁶⁵

Bulajic ⁶⁶ accepts that the right to development has been recognized by the UN as the inalienable human right of every person and all peoples, but sees the developing countries as the main area of application. The author claims that equality of opportunity for development is a prerogative both of the nations and individuals who comprise nations. The author says that as in the case of the right to self-determination, the right to development is both an individual as well as a collective right.⁶⁷ I disagree with Bulajic’s view that the human right to development belongs particularly to every person in developing countries. To my mind, the right should not be restricted to developing countries’ peoples, but should attach to all peoples in developing, and underdeveloped countries, or peoples who want to attain self-determination and independence, peoples whose right to development are at stake or affected by development processes or groups who are excluded from development activities e.g. women. Their human right to development

requires guaranteed protection. The basis of my argument is that development refers to constant comprehensive improvement and promotion of the well-being of the entire population, whether located in the USA, England, Germany or in less developed countries (measured in terms of the yardsticks of economic growth, per capita income, literacy etc) for example African countries such as Malawi, Botswana or Zimbabwe.

In 1981, 1982 and again in 1984, the UN General Assembly reaffirmed the notion of the right to development as an inalienable right to development belonging to individuals and peoples.⁶⁸

The 1986 Declaration on the Right to Development (Article 1 (1)) defines the right to development as follows:

“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.”

Article 1 paragraph 1 indicates that the right to development is both individual and collective, attaching to every person and all peoples at both national and international levels. The human right to development implies the full realization of the right of peoples to self-determination, which includes the exercise of their inalienable right to full sovereignty over all their natural resources and wealth.⁶⁹ When discussing the right to development, the right to self-determination surfaces because the latter is a forerunner to the former.⁷⁰ It is asserted by Bedjaoui that the right to development flows from the right to self-determination and is of the same kind. If we accept this contention, it follows that the right to development is one of the collective rights belonging to individuals and all peoples.

It is strongly and convincingly argued by Bulajic that the right to development as a human right must include the right of every individual to benefit fairly from so-called constant and comprehensive development in society.⁷¹ The right could be seen as a right that requires joint action by communities or groups of individuals working for a common goal in a spirit of solidarity.⁷²

In conclusion, an individual person should be seen as a subject of the right to development under international law, otherwise, the right to development could be regarded merely as a collective right of a people (nation) or state, and the individual as the object of the right.⁷³ At the same time, the right to development is regarded as an independent human right and as a prerequisite for the enjoyment of other human rights, and could also be seen for both individuals and states as a right of access to the means necessary for the realization of human rights defined in international instruments.⁷⁴

Having critically analysed the right to development as an individual right and as a collective right of peoples, as well as a collective right of states, it has to be reiterated that the individual and collective dimensions of the right to development cannot be entirely disjoined as there is an interdependent relationship between the two dimensions. The theme of the next section is the active subjects of the right. Who are the active subjects of an individual dimension as well as a collective dimension of the right to development?

5. THE SUBJECTS OF THE RIGHT TO DEVELOPMENT

An analysis of the active subjects of the right to development depends on whether the right is viewed as an individual human right, a collective right of peoples (peoples' right), a collective right of states or as an individual right (external dimension of the right to development). An analysis of the holders of the right to development depends on whether the right is viewed as belonging to individuals, groups of peoples or all peoples, states, minorities, communities, NGO's, national organisations or international communities and organisations.

If the right to development is viewed as an individual right, the active subjects of the right are individuals. Thus the assertion implies a need to recognize the right to development of every human being, without any distinction on the basis of sex, religion, race, ideology or nationality.⁷⁴

If we accept the view that the right to development is an individual human right it is obvious that the central subjects, active participants and primary beneficiaries of the right are all human beings (all individuals). This right is held equally against one's national government and the international community. De Waart expresses the same view.⁷⁵

In 1984 the Working Group of Governmental Experts on the Right to Development⁷⁶ were almost in full agreement in recognizing both individuals and peoples as the holders of the right to development. During its ninth session, the following definition of the right to development as a human right emerged as a possible working basis:

“The right to development is the inalienable human right by virtue of which every individual, and all peoples pursuant to the right of self-determination, are entitled to participate in, contribute to and enjoy a comprehensive political, economic, social and cultural order, in which all human beings are fully respected and can be fully realized.”⁷⁷

After prolonged discussion the Working Group recognized by consensus that the human being is the central subject of the right to development and that any development policy should have the individual as the main participant in and primary beneficiary of development.⁷⁸

Viewed as a collective right of peoples the active subjects of the right to development, are peoples who hold the right against their national governments. Viewed as a collective right in Municipal Law, the potential holders or active subjects of the right to development are collectivities such as provinces, regions, districts, municipalities and communities whose development must be promoted, encouraged and protected.⁷⁹

When the right to development is considered in its collective dimension in international law, the subjects of the right to development include all states, particularly developing or underdeveloped countries, all peoples, and international communities.⁸⁰ Large organisations, non-governmental organisations acting as agents of governments, international organisations and transnational corporations are also regarded as subjects of the right at international level.

Bedjaoui insists that the right to development has an effective meaning and content, only when it has a state as its subject and beneficiary at the international level.⁸¹ According to the author the right to development cannot be an individual human right unless it is first a right of states. Thus it may be argued that states are first-holders of the right later to be transferred to individuals as a human right to development, because the author recognizes the individual as the ultimate beneficiary of the international legal norms.⁸²

Academic commentators and authors such as De Waart, Rich, Crawford & Sieghard hold the view that the right to development has both an individual and a collective dimension. They see as the central subjects of, active participants and primary beneficiaries of the collective and individual dimensions of the right, all individuals, all peoples and states.

In his 1979 report, the United Nations Secretary-General expressed the view that individuals, collectivities and states are subjects of the right to development.⁸³ This view found wide support both in the academic community as well as the public service sector. I support the view, provided that states are viewed as passive subjects of this right in the context of rights and duties.⁸⁴ States may be regarded as subjects of the right because states have the right to pursue their own economic, social, cultural and political development in an international environment conducive to the process of comprehensive and progressive development. A number of international and regional organizations make it their business to render financial developmental assistance to underdeveloped or developing states, e.g. the Asian Development Bank, International Reconstruction and Development Bank and Development Bank of Southern Africa.

Financial assistance is regarded as the most important factor in the development process. Private financial assistance originates from non-profit making institutions, foundations, religious groups, large private organisations and international organisations. Government or government sponsored institutions may provide public financial assistance.⁸⁵

In bilateral relations financial assistance takes the form of government to government financial transfers, whereas international institutions such as the World Bank, the International Bank of Reconstruction and Development, International Monetary Fund and regional development banks such as the Development Bank of Southern Africa make financial transfers in the multilateral context.⁸⁶

The Council of Europe/Parliamentary Assembly, in its 1983 report, states that states are widely seen as subjects of the right to development.⁸⁷ The report indicates the states may have a right to development in the context of rights and duties, and not as a human right of individuals. The report of the Council contains echoes of the conclusion reached by the African Jurists in a

Conference held in Dakar where it was agreed that the creditors of the right to development are individuals, peoples and states.⁸⁸ The better and most acceptable view seems to be that the holders of the right to development in its individual dimension are individuals, in its collective dimension all peoples and states. During the deliberations on the Draft Declaration on the Right to Development in 1985 and 1986 prior to the adoption of the 1986 Declaration the Soviet Union experts insisted upon recognition of the right of all states and peoples to peaceful, free and independent development as the main aspect of the right.

According to Macalister-Smith, states, peoples, minorities and individuals have been advanced and identified as holders or potential holders and beneficiaries of the right to development.⁸⁹ The subjects of the right to development are thus beneficiaries of the right at both national and international levels. Only at international level are states viewed as beneficiaries of any result of the right to development. Most proponents of the state as holder of the right to development also argue that the right is held by peoples as well, and that internally the primary holders of the right are peoples against their states.⁹⁰

Donnelly observes that the right to development appears in most lists of the third generation human rights. He further states that individuals, minorities, peoples and states have all been identified as holders of the right to development.⁹¹ This view is not widely shared by commentators. Most of them argue against collective third generation human rights.⁹²

To sum up: although peoples, minorities, and states (developing or underdeveloped) are advanced as subjects and beneficiaries of the right to development, I suggest that the better approach would be to regard peoples and states as transitory holders of the collective right in its internal and external dimension, and the recipients of the benefits resulting from progressive development. The basis of this argument is that individuals are the ultimate beneficiaries of the international as well as national legal norms of development. The following practical example serves as the basis of the above argument. The South African government may approach other states, the international community or international organisations created to encourage realization of the right to development, and ask for assistance (such as financial aid and expert knowledge in the field of technology, engineering, economics and computer science) in order to put in place

development projects (such as construction of large dams, freeways, bridges and the provision of houses to disadvantaged individuals or peoples). Here the state is exercising its right to development at the international level. If funds/knowledge are made available the South African government will receive them in its capacity as temporary subject of the right and recipient beneficiary. Once the funds and expert knowledge have been used for the intended purpose, individuals are likely to benefit from dams, freeways and houses.

The above practical example and the argument that the individual human being is the central subject of and beneficiary of the right to development are based on one of the most widely quoted definitions of the right to development which includes the following:

- the realization of the potentialities of the human person in harmony with the community as the central purpose of development;
- regarding the human person as central subject and not object of development;
- respect for human rights, which is fundamental to the development process;
- full participation of the human person in shaping his own reality, and
- a degree of individual and collective self-reliance as an integral part of the process of development.⁹³

6. THE DUTY-BEARERS OF THE RIGHT TO DEVELOPMENT

The central subjects as well as the primary beneficiaries of the right to development in its internal and external dimensions, individual and collective aspects have been analysed in the previous section. The objective in this section is to identify the passive subjects of the right to development at both national and international levels. As stated above, the analysis of the central subjects and beneficiaries of the right to development will depend on whether the right is viewed as an individual right or as a collective right of peoples or states. Similarly, the identification of the duty-bearers of the right to development will depend on whether the right is seen as an individual or collective right or both.

As an individual right, the recognition of the right to development implies the imposition of duties and obligations on the state, collective persons or public entities and the international community.⁹⁴ The obligations result from the principles and norms created for the purpose of

promoting and protecting human rights both regionally and internationally.⁹⁵

Under municipal law,⁹⁶ the duty-bearers of the right to development as a collective right are states, that is the national governments of developing states and various levels of collectivities including corporations.

At regional level, in Africa, the passive subjects of the collective right to development are all African States. The 1981 African Charter, in Article 17(3) provides that the promotion and protection of moral and traditional values, that is the right to cultural identity of a collectivity recognized by the community, is the duty of the state. According to Article 22(2), states have the duty, individually and collectively, to ensure the exercise of the right to development.⁹⁷

Okafor considers development to be a right of individuals as well as of peoples.⁹⁸ As a right of individuals, the international duty-bearers are thought to be the United Nations, the developed world and the state concerned. As a right of peoples at international level, the bearers of obligations are the United Nations and the developed world. The author identifies as bearers of obligations to promote development the United Nations, nations of the North and every nation-state.⁹⁹

Included among the duties of states as duty-bearers of the right to development are: the formulation, adoption and implementation of a policy framework; legislative and administrative measures at national level, and formulation, adoption and implementation of international instruments aimed at creating and maintaining national as well as international public and civic orders free of obstacles to development.

It is universally accepted by scholars and governments, that states have the right to formulate, internally and internationally, development policies for the purpose of improving the living standards of individuals and all peoples. Similarly, states have the duty and primary responsibility to ensure that the development process produce the desired results. Every state, as a passive subject of the right of development, has a positive duty to its citizens to protect and promote their right to development. The U.N. World Summit for Social Development held at

Copenhagen from 06 to 12 March 1995 bore this out. Its report states that governments (all states) should promote and protect all human rights and fundamental freedoms including the right to development bearing in mind the interdependent and mutually reinforcing relationship between democracy and respect for human rights, and should make public institutions more responsive to the needs of the people by ensuring that decisions are based on accurate data and taken with the full participation of those who will be affected.¹⁰⁰

States have the duty and obligation individually or collectively to ensure the exercise of the right to development.¹⁰¹ States are responsible for the constant improvement of the well-being of the entire population and all individuals on the basis of their active, free and meaningful participation in development.¹⁰² It is the responsibility of states to ensure that the benefits resulting from development are fairly distributed to the active subjects of the right or those whose rights to development are most at stake. States have the duty to co-operate with each other in ensuring development and for the purpose of eliminating any possible obstacle of development, and to facilitate the full realization of the right to development by formulating international policies for this purpose.¹⁰³

It should be noted that Article 2(2) of the Declaration on the Right to Development imposes duties on all human beings, individually and collectively, to promote an appropriate economic, social, cultural and political development. Article 2(2) attaches the right to all human beings as holders of the right and on the other hand imposes duties on individuals as duty-bearers.

Paul states that those in control of development processes have the duty and obligation to protect and promote recognized human rights through development.¹⁰⁴ To achieve this, the development actors or controllers should be held accountable to peoples (right-holders) or those whose rights and interests in development are most affected. Human persons are the central subjects, active participants and primary beneficiaries of the human right to development.¹⁰⁵ The right-holders may be prevented from benefiting from development projects or activities if those in control of development projects fail to properly carry out their duties and obligations. A project may fail if: employment opportunities created by tourism or large scale construction projects go to imported labour; peoples whose rights are most at stake because of forced removals and

resettlement are not properly compensated, or certain groups are excluded from access to resources. The denial of full and effective rights of participation in development process, in particular to women, constitutes a violation of fundamental rights central to human rights and other basic rights.¹⁰⁶

7. THE LEGAL STATUS OF THE RIGHT TO DEVELOPMENT

Opinion has founded the right to development on the United Nations Charter, on the Universal Declaration of Human Rights and the Human Rights Covenants, on the principle of self-determination and on the right to life. Thus the notion of the right to development is considered to be a synthesis of a large number of human rights and even as the totality of the means available to make economic and social rights effective for the masses of the people who are grievously deprived of them. Jean Rivero shared this view in a paper on human rights and the establishment of a NIEO, presented at a meeting of human rights experts in Paris in 1978.¹⁰⁷

The right to development is not just one of the declared human rights, it is a key element of the NIEO and an attempt to implement the principal mandate of the United Nations Charter. The legal status of the right to development has been the subject of an intensely divisive jurisprudential debate among international lawyers. The general trend among scholars and lawyers is that for one jurisprudential reason or the other the right to development enjoys juridical ranking in contemporary international law. This affirmation of a legal status with respect to the right to development is also usually tied up with an affirmation of the legislative or quasi-legislative capacity of the U.N. General Assembly and the endorsement of the principles of the NIEO as normative requirements of the contemporary law of nations.¹⁰⁸

Authors such as Espiell, Garcia-Amador and Rich endorse the right to development as a positive international legal right. Furthermore, it has been argued that the General Assembly resolutions including UNDRD are new sources of the law of nations or evidence of widespread opinio juris.¹⁰⁹

It is argued that Article 55 of UN Charter imposes a legal duty on the UN to promote high standards of living, full employment, economic and social progress and development, while

Article 56 legally binds all Member-States to take joint and separate action in cooperation with the UN. It is argued that the right to development (UNDRD) is legally binding on all states because the General Assembly resolutions constitute compulsory sources of international law. At international level, the right to development is universally recognised as a human right enjoying international legal status.¹¹⁰

8. SOUTH AFRICA'S RECONSTRUCTION AND DEVELOPMENT PROGRAMME

The Reconstruction and Development Programme is defined as follows:

“The RDP is an integrated, coherent socio-economic policy framework. It seeks to mobilise all our people and our country’s resources toward the final eradication of apartheid and the building of a democratic, non-racial, non-sexist future.”¹¹¹

The RDP may be interpreted as a collective right of peoples at national level, in particular those whose right to development had been seriously affected by the apartheid system in the form of forced removals and resettlement, the creation of separate self-governing territories and independent homelands based on racial grounds, and the exclusion of women’s full effective and active participation in almost all development projects in the name of the development process.¹¹²

Viewed as a collective human right to development, the central subjects or right-holders of the RDP should be those whose rights to development have been affected by the apartheid system. These right-holders represent the primary beneficiaries of the RDP. All employment opportunities created by the RDP projects should benefit them. Ideally, equal employment opportunities should be created both in the private and public sectors. Economic and job security is, after all, one of the cardinal aspects of development.

9. CONCLUSION

Most scholars and Governments agree that the right to development is both an individual and collective human right attaching to individuals and all peoples. As a collective right of states, the right may be utilised in the course of a state’s external relations.

The African Jurists had long agreed that the right to development is both an individual and

collective right of individual human beings and all peoples. The African Charter on Human and Peoples' Rights recognises that the right is both an individual as well as a collective right, by using expressions such as "every individual" and "all peoples". The 1986 Declaration on the Right to Development is an international instrument in which the right is seen both as a collective and an individual right.

Individual and collective rights cannot be entirely disjoined. There is no distinct dichotomy between the right to development as an individual and collective right. Indeed, the notion of the right to development is referred to by some authors as a "two-headed right of individuals and peoples."

Human beings are the central active subjects, participants and holders, and primary beneficiaries of the human right to development.

States viewed as duty-bearers i.e passive subjects of the right to development have the right and the duty to formulate and implement a development policy with a view to improve and protect the living standards of all peoples. In the South African situation, the state is obliged to formulate and implement a national reconstruction and development policy. States have the duty, both individually and collectively, to ensure the exercise of the right by creating conditions favourable for development processes.

Those in control of development processes or reconstruction and development projects have the duty to protect and promote active and effective local participation, by being responsive to local problems. The more decentralised development projects, activities and planning process are, the better. Development actors should ensure that women are accorded full and effective participation, and that employment opportunities benefit the local community. The decentralisation of the RDP in South Africa, in order to ensure that it concentrates on local community and answers local problems, is a positive step on the road to the future.

It is important to dispel the view that the human right to development is a very soft international law not yet to be taken seriously as law commanding recognition and respect. Commentators

who see the Declaration on the Right to Development as inchoate law should know that the right is better perceived as a set of international principles of constitutional proportions calling via Article 10 of the Declaration for the creation of an expansive regime of human rights law to be applied to many various sectors and kinds of international organisations.

It should be borne in mind that the right to development is universally recognized by states as legal right thus enjoying the status of international law. It is hoped that the enforcement of the right will be promoted by the efforts of popular organisations, NGO's, activists, and scholars at local, national, and international levels. Once the Working Group on the Right to Development has identified obstacles to the implementation of the right, such obstacles have been addressed and ways and means of realising the right have been identified, the right will be more easily enforceable against all states.

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2. F. Snyder & P. Slinn International Law of Development: Comparative Perspectives (1987) ed. at 89-91.
3. J. Donnelly "In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development" 1985 California Western Int'l L J 473.
4. F.V. Garcia-Amador The Emerging International Law of Development: A New Dimension of International Economic Law (1990) at 49.
5. Espiell 1981 Texas International Law Journal 192-194.
6. Garcia-Amador at 49.
7. Ibid.
8. Ibid. at 51.
9. Ibid.
10. Espiell 1981 Texas International Law Journal at 196.
11. Ibid.
12. Ibid. at 198.
13. Ibid. at 201.
14. Ibid 192-193; 201. Espiell quotes Juan Antonio Carrillo Salcedo of Spain with approval on the point that the right to development has been clearly identified as a human right and a right of all peoples individually and collectively. Espiell states that in his lectures, Carrillo Salcedo clearly stated that the right to development is a human right of individuals and serves as a foundation of the right of peoples and underdeveloped nations

to development. The author uses Salcedo's view as a basis of his analysis of the right to development as an individual human right.

15. Ibid. at 199.
16. Donnelly "Third Generation Rights" in C. Brölmann et al (eds) Peoples and Minorities in International Law (1993) at 134. The author states that many individual human rights are exercised by individuals in their capacity as members of social groups, e.g. the rights to freedom of association and assembly which are held by individuals, but can only be exercised collectively. The fact that these rights are exercised collectively, similar to the right to development, is no reason to conclude that the individual human rights are held by collective groups (pp 133-134).
17. R. Rich "The Right to Development: A Right of People?" in J. Crawford (ed) The Rights of Peoples (1992) at 45.
18. Ibid.
19. Garcia-Amador at 54.
20. Ibid.
21. General Assembly Res 39/46 of 1977; see also G. W. Kanyeihamba "Human Rights and Development with Special Reference to Africa" in Snyder & Slinn (eds) (1987) at 225.
22. M. Bedjaoui "Some Unorthodox Reflections on the 'Right to Development'" in F. Snyder & P. Slinn (eds)(1987) at 90.
23. Kanyeihamba in Snyder & Slinn (eds) (1987) at 225.
24. Espiell "The Organisation of American States (OAS)" in K. Vasak & P. Alston (eds) The International Dimension of Human Rights vol 2 (1992).
25. Espiell 1981 Texas International Law Journal at 205.
26. Ibid. at 204.
27. Bedjaoui in Snyder & Slinn (1987) 115.
28. Crawford The Rights of Peoples (1992) at 56.
29. Ibid. at 57.
30. Ibid.
31. P.T. Muchlinski "'Basic Needs' Theory and 'Development Law'" in Snyder & Slinn (eds) at 255 and 267 note 71; also Crawford (1992) at 65, 195 - 202
32. Crawford 65-66.

33. O. C. Okafor "The Status and Effect of the Right to Development in Contemporary International Law: Towards a South-North 'Entente'" 1995 African Journal of International and Comparative Law at 870.
34. G. Triggs "The Rights of Peoples and Individual Rights: Conflict or Harmony?" in Crawford (ed) (1992) at 154.
35. Ibid. at 155.
36. Ibid. at 156.
37. Garcia-Amador at 56.
38. Ibid. at 57.
39. Bedjaoui in Snyder & Slinn (eds) (1987) at 101.
40. Ibid.
41. Ibid. at 108.
42. The Haque Workshop 16 - 18 October 1979, at 108.
43. Okafor 1995 African Journal of International & Comparative Law at 870.
44. Donnelly in Brölmann et al (eds) (1993) at 124.
45. Ibid. at 125.
46. Donnelly 1985 California Western International Law Journal 500.
47. Ibid.
48. Bulajic Principles of International Development Law (1993) 2nd ed, at 373.
49. Ibid. at 374.
50. Bedjaoui in Snyder & Slinn (eds) 1987 at 89.
51. Ibid. at 91.
52. Ibid. at 99.
53. Ibid. at 90-91.
54. Muchlinski in Snyder & Slinn (eds) at 256.
55. Information relating to this controversial Disaneng Dam dispute was obtained from the Office of the Premier North-West Province, previously the Department of the Presidency, Bophuthatswana Government, Traditional Authority Affairs section, Tel 0140-

292062/292015. Chief Masibi or the Tribal Secretary (tel no: 0140 Disaneng No 5) is the contact person concerning the resolution taken by the Batlharo-Ba-Ga-Masibi Tribal Authority Council at Disaneng. The Department of Foreign Affairs RSA can throw more light on this matter. According to Mr Medupe, first house-owner, situated about 1km from the Dam, the construction started in 1975 by the Department of Public Works and was completed in 1980 by two private construction companies. On 24 April 1981 the Dam was opened officially by the then President of the Republic of Bophuthatswana.

56. UN Secretary-General's report on the study of the International dimension of the Right of Development as a human right of the Individual in Relation with other Human Rights based on International cooperation, including the right to Peace, UN Doc E/CN 4/1334 of January 1979.
57. *Ibid.*, see also Garcia-Amador (1990) at 53.
58. African Charter on Human and Peoples Rights, Article 19 to 24, using the expression "all peoples". See Crawford (1992) at 193-199.
59. J. Makarczyk Principles of a New International Economic Order (1988) at 184.
60. *Ibid.* at 185, also see the Report and Draft Declaration of 1985 at 29.
61. *Ibid.*
62. *Ibid.*
63. *Ibid.* The 1992 UN Draft Declaration on the Rights of Indigenous Peoples, operative paragraph 5 provides: "Indigenous peoples have the collective right to exist... as distinct people and to be protected against genocide." Reference to collectivities and collective entitlements appear in the phrase: "indigenous peoples have collective and individual right to..." This implies recognition of the individual and collective right to development because individuals cannot exist without a right to development. The rights which the indigenous peoples have in this collective and individual form are: right of existence, to own, control and use land and to self-determination. See Brölmann et al, Peoples and Minorities in International Law, (1993) at 212-213.
64. D. Makinson "Right of Peoples: Point of view of a Logician," in Crawford (ed) Rights of Peoples (1992) at 72.
65. *Ibid.* at 57.
66. Bulajic Principles of International Development Law (1993) 2nd ed at 73, see also Commission on Human Rights' Report No E/CN 4/1984/13 and E/CN4/1985/62.
67. *Ibid.*
68. See UN General Assembly Res 36/133 of December 1981, also Bulajic at 364-365.

69. Article 1(2) of the Declaration on the Right to Development.
70. Bulajic at 94.
71. Bulajic at 374.
72. Ibid. at 373.
73. Bulajic at 73, notes that a single man is not the exclusive beneficiary of the concept of a right to development. Rather, the right must be exercised as a collective right for the benefit of the individual and a group/nation to which the individual belongs, and ultimately the states which have a duty to ensure the exercise of the right to development.
74. Ibid.
75. Espiell at 189 and 199.
76. Donnelly in Brölmann (eds) (1993) at 131 also see P.J.I.M. De Waart "The Inter-Relationship between the Right to Life and the Right to Development" in B.G. Ramcharan (ed) The Right to Life in International Law (1985) at 90.
77. Ibid. at 90-91. The Working Group has been established in 1981. In 1982 and 1983 respectively its mandate was renewed. This Working Group has contributed towards the adoption of the 1986 Declaration on the Right to Development by a roll-call vote: 146-1:8, that is 146 states in favour, 1 against and 8 abstentions. After the adoption of the Declaration the Working Group continued to exist. The current Working Group holds a new mandate. It was established under the chairmanship of Mr Ibrahima Fall, Assistant Secretary-General for Human Rights. It held its first session at the Palais des Nations, Geneva from 08-19 November 1993. The Working Group is commonly referred to as "The Working Group on the Right to Development". The mandate entrusted to it by the Commission on Human Rights in terms of Resolution 1993/32 is: (i) to identify obstacles to the implementation of the Declaration on the Right to Development, (ii) to recommend ways and means towards the realization of the right to development. See Doc E/CN.4/1994/21 of UN Economic and Social Council of 13 December 1993.
78. Ibid. at 90.
79. Ibid. at 91.
80. Espiell 1981 Texas Int'L Law Journal at 198.
81. Ibid.
82. Bedjaoui at 89.
83. Ibid at 90.
84. U.N. Doc E/CN4/1334 of 02 January 1979 and also see Garcia-Amador at 53-54.

85. Article 1(1) of the 1986 Declaration on the Right to Development expressly specifies that the right to development is an inalienable human right. It ascribes the right only to “every human person” and “all peoples”. States are not advanced as holders of the right, except in the context of rights and duties. See Articles 3,4,5 and 8 of the Declaration.
86. Garcia-Amador at 84 & 86.
87. Ibid. at 84.
88. Council of Europe/Parliamentary Assembly Doc. 5009 of 14 January 1983, see also B.G. Ramcharan at 95.
89. Garcia-Amador at 53-54.
90. P. Macalister-Smith “The Notion of Development as a Right: Reflections from an International Perspective” in M.P. Singh (ed) Comparative Constitutional Law (1989) at 328.
91. Donnelly 1985 California Western International Law Journal at 500. The author states that three major right holders have been identified: individuals, peoples and states, although occasionally it is suggested that minorities have a right to development. I suggest that indigenous peoples and those fighting for self-determination be included if they are under political and economic foreign domination.
92. Donnelly in Brölmann (eds) (1993) at 122.
93. States were regularly presented as holders of the right to development, most commonly by Soviet block States and commentators, by a wide range of underdeveloped states, the Director of the Division of Human Rights and various academic commentators. States may hold rights both nationally and internationally, but there is a serious objection to the claim that states have human rights because states are constrained by human rights. The rights of states may not take priority over the human rights of individuals. The 1986 Declaration on the Right to Development clearly, expressly specifies “every human person and all peoples” as holders of this right. The language of “every person and all peoples” is also adopted by Karel Vasak. See Donnelly in Brölmann (eds) at 124-125.
94. P.H. Brietzke “Consorting with the Chameleon, or Realizing the Right to Development” 1985 (15) California Western Int’ LJ 560, at 562.
95. Espiell 1981 Texas International Law Journal at 199.
96. Ibid.
97. Ibid.
98. Muchlinsk in Snyder & Slinn (eds) at 255 and J. Crawford (1992) at 65.

99. Okafor 1995 African Journal of International & Comparative Law at 870.
100. Ibid. at 871. It is usually understood that industrialised countries should be obliged to bear the costs involved in implementing a right of development. See Macalister-Smith in Singh (ed) (1989) at 317.
101. Report No A/CONF. 166/9 of 19 April 1995.
102. 1981 African Charter on Human and Peoples' Rights, Article 22(2), see also Crawford (1992) at 199. The Charter came into force on 21 October 1986.
103. Article 2(3) of the 1986 Declaration on the Right to Development.
104. Article 3(3) of the 1986 Declaration on the Right to Development.
105. J. C. N. Paul "The Human Right to Development: Its Meaning and Importance", 1991 (18) John Marshall Law Review 235 at 248.
106. Ibid. at 245.
107. Ibid.
108. Macalister-Smith in M.P. Singh (ed) 1989 at 317 see Garcia-Amador at 57.
109. Okafor 1995 African Journal of International and Comparative Law at 871-872.
110. Ibid. at 872. In a global consultation on the right to development held in Geneva in 1990, it was concluded that the right to development is indeed a human right, and that there is no common model of development universally applicable to all cultures and peoples. All development models must conform to international human rights standards. See Mansell & Scott, "Why bother about a Right to Development" 1994 (21) Journal of Law & Society 171 at 187.
111. Ibid. at 872-873. The right to development was reaffirmed in the Vienna Declaration and Programme of Action in 1993, adopted by the World Conference of Human Rights by all states as a universal and inalienable right and an integral part of fundamental human rights. E/CN.4/1994/21 at 4 paragraph 9.
112. ANC, Reconstruction and Development Programme (1994) at 1.
113. Ibid. at 3, 1.2.6. The ANC led Government of National Unity is responsible for the formulation, adoption and implementation of the Reconstruction and Development Programme, to ensure its exercise and realization in order to ensure that past disparities are eradicated and that the benefits resulting from RDP projects are fairly distributed among disadvantaged groups of individuals.

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