Africa’s Contribution to the Advancement of the Right to Development in International Law

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1 Introduction

The Right to Development appears to mean many things to many people. Judge Kéba M’Baye, the distinguished Senegalese jurist, is credited with initiating the discourse on the concept of ‘development’ as a human right in a 1972 lecture held at the International Institute of Human Rights in Strasbourg, where he asserted that ‘every man has a right to live and a right to live better.’

The developing countries that promoted a right to development at the time referred primarily to economic development and sovereignty over natural resources, in essence seeking to re-attempt the push for a New International Economic Order (NIEO) movement.

However, the conceptualization and application of the RTD experienced a metamorphosis within the global human rights agenda in the 1990s, when the idea of development shifted from economic growth to human development.

While it is important to consider the development of the human being as a

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3 Report of the Secretary-General, ‘The emergence of the Right to Development’ in Office of the High Commissioner for Human Rights, Realizing the Right to Development: Essays in
whole as a priority, conceptual inflation and the need to balance North and South interests have resulted in less clarity. The RTD remains controversial to the present day, with debates continuing to rage in academia and policy circles, generating copious academic commentary on the nature and extent of the right, but limited practical efficacy. The latter is due, among other things, to international political posturing in spite of sustained commitment from stakeholders to promote this right under the existing UN international law and sustainable development framework. As a result, legal analysis of the RTD remains critical because the persisting ambivalence about the nature of the right as well as the duties that it confers on individuals, peoples and governments impedes its realization.

Remarkably, an element that is scarcely examined in the literature on the RTD is that, prior to the UNDRSD, Article 22 of the African Charter on Human and Peoples Rights (African Charter or Banjul Charter) of 1981 conferred a legally binding right to development on African peoples. This Peoples' Right to Development (PRTD) is currently the only explicit hard law dedicated solely to the right to development. The relevance of this regional right to the analysis of the universal RTD lies in its contextual guidance regarding the original intent of the African developing country players who initiated this right at the

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5 Isabella Bunn, ‘The Right to Development: Implications for International Economic Law’ (2000) 15 No. 6 American University International Law Review 1426, 1434. Judge Koroma has commented that “in the international law related to development and globalization, even if the law itself does not directly favour developed countries, the application of this law in the current geo-political realities disparately impacts developing countries in a negative way”; see also Abdul G. Koroma, “International Law and Multiculturalism”, in S. Yee and J.-Y. Morin (eds.), International Law and Multiculturalism: Essays in Honour of Edward J. McWhinney (2009), p. 79, Section IV.


7 Nienke van der Have, ‘The right to development: Can states be held responsible?’ in Dick Foeken et al. (eds.) Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America (Brill 2014) 157, 159.