

Full Length Research

The Right to Development under the RTD Declaration, African Charter on Human and People's Right and FDRE Constitution: A comparative study

Dersolegn Yeneabat

lecturer of criminal justice and human rights law at school of law, Arba Minch university, Ethiopia

Accepted 13 November 2015

Despite different controversies accompanied to it, the right to development is recognized in different international, regional and national laws. Therefore, the basic theme of this research with a view to evaluate the United Nation Declaration on the Right to Development(UNDRD), the African Charter on Human and People Right(ACHPR) and the Ethiopian constitution(FDRE constitution) comparatively. The parameters for comparing the recognition of the right to development under these legal documents are basically the definition, content, and the right holders and duty bearers of this specific right. After assessing these legal documents, the paper concludes that though these documents have some similarities concerning the definition of development, the definition given by the FDRE constitution is broader, the definition given by ACHPR and UNDRD. Regarding the right holders, while UNDRD put individuals, people and states as beneficiaries, ACHPR put only peoples as the beneficiaries of the right to development. The FDRE constitution is different from the two instruments as it put the beneficiaries are nations, nationalities and peoples of Ethiopia. In terms of the duty bearers of the right to development three of these legal documents have similar stand in that they all put the state as the prime duty bearer.

key words: right to development, right holder ,duty bearer, content of the right to development, nature of the right to development, FDRE constitution, African Charter on Human and People's Right

Cite This Article As: Yeneabat D (2015). The Right to Development under the RTD Declaration, African Charter on Human and People's Right and FDRE Constitution: A comparative study. *Inter. J. Polit. Sci. Develop.* 3(11): 441-453

INTRODUCTION

The right to development is often termed a composite or metaright which encompasses civil and political, economic, social and cultural rights. It is among a 3rd generation (solidarity) right which is evolved recently. As far as it is a highly politicized agenda, it is the most contentious issues in the human right discourse both in

inter-governmental process and academic arenas. Therefore, Politicians and scholars battle on putting the exact definition, content and the right holders and duty bearers of the right development. The inter-governmental debate on the right to development is known as north - south debate. The developing countries (south) arguing

that the right to development must be far from charity, it has to base on entitlement. On other hand members of developed countries (north) want to associate the right to development with charity, humanism or a matter of foreign policy.

The debate on the right to development is not limited on inter-governmental level but it extends to academic debate. Some scholars argue to the extent, not only the legal right but also the moral right to development is a non-existent 'unicorn.'¹ Others argue that the right to development constitutes a fundamental and important part of the human rights paradigm. It is the precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights.² However, despite of such academic and political controversies across the world, this specific right has been a subject of various undertaking at the international, regional and domestic level.

This research a comparative study that assesses the recognition of the right to development in UN right to development declaration, African charter on human and people's right and the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution). The comparison parameters are the definition, content, and the right holders and duty bearers of the right to development under each of the instruments. The United Nations Declaration on the Right to Development, the African Charter on Human and Peoples Right and.

This article is divided in to five parts including the first part that contains introduction. The second part examines definition and evolution of the right to development. while the third part focuses on the normative content of the right to development, the fourth one focuses on the implementation of the right to development by looking the duty bearers on the one hand and the right holders on the other hand and the final part provides concluding remarks.

Definition and Evolution of the Right to Development

Definition of the Right to Development

It was in 1972, the first definition of the right to development had been attempted by the Senegalese jurist called Keba M'baye. Keba M'baye in his lecture at the International institute of human rights in Strasbourg

¹ Donnelly, In search of the unicorn: The jurisprudence and politics of the right to development, California Western International Law Journal, 1985, p. 473

² Jaakko Kuosmanen, Eyes on the Unicorn: On the Nature of the Human Right to Development, Just World Institute Working Paper, University of Edinburgh, 2013, p. 2

asserted that:

To comprehend true development, the idea of 'a real improvement in living standards' must be taken into account; it is not a longer life for every person that matters but a better life. The civilization that is based on ever greater production and ever increasing consumption is, without a shadow of a doubt, as we are beginning to acknowledge it today, a civilization condemned to fatal contradictions and chaos.³

The other important and well recognized definition of the right to development was made up on the adoption of the declaration to the right development by the United Nations General Assembly in 1986 known as United Nations Declaration on the Right to Development (UNDRT). As per article 1 of the declaration, the Right to Development (RTD) is defined as:

The right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in and contribute to and enjoy economic and political development in which all human rights and fundamental freedoms can be fully materialized.⁴

According to Arjun Sengupta, the definition of the RTD in this declaration encompasses at least three crucial elements.⁵ First, the RTD is an inalienable part of human rights. Second, there is a particular process of economic, social, cultural and economic development in which all human rights and fundamental freedoms can be fully realized. Third, the RTD by virtue of which every human person and all peoples are entitled to participate and contribute to enjoy that particular process of development. Put differently, "the RTD refers to a process of development which leads to the realization of each human right and of all of them together and which has to be carried out in a manner known as rights-based, in accordance with the international human rights standards, as a participatory, non-discriminatory, accountable and transparent process with equity decision-making and sharing of the fruits of the process."⁶

Right to development was incorporated as one of the

³ Belachew M. The Politics Underpinning the Non-Realisation of the Right to Development, Mizan Law Review, Vol.5 No.2. December 2011, pp. 246-263 at p.252

⁴ The 1986 United Nations Declaration of the Right to Development Art 1

⁵ Arjun Sengupta, On the Theory and Practice of the Right to Development, Human Rights Quarterly, Johns Hopkins University Press, Vol. 24, 2002, pp. 837-889 at p. 846.

⁶ Ibid

basic rights in African Charter on Human and People's Right (ACHPR) when it was adopted in 1981. The Charter is the only legal binding regional instrument containing an express recognition of the RTD across the world. Right to development is considered as a uniquely African contribution to the international human right discourse so far as it puts obligatory standards that states cannot bargain away or negotiate. this charter, apart from recognizing the definition of the right to development in advanced way than the definition UNDRTD, it recognized this specific right as an independent and intrinsically linked to the enjoyment of other rights i.e. social, cultural, economic and civil rights.⁷

The FDRE Constitution also recognized the RTD as a fundamental democratic right under article 43.⁸ The constitution defines the RTD as a right which includes the right to improved living standards, the right to sustainable development and the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community. The detail constitutive elements of the right to development under the Declaration, ACHPR and FDRE constitution will be discussed more under section three.

The Evolution of the Right to Development

though the concept of the right to development has got much recognition after the conclusion of WWII, its origin traced back to the Philadelphia Declaration on international labor conference which was held in 1944.⁹ For instance, Universal Declaration of Human Rights (UDHR) which is adopted in 1948 under article 28 recognized and proclaimed that RTD is an entitlement

⁷ *ibid*

⁸ Article 43 read as:

1. The Peoples of Ethiopia as a whole, and each Nation, Nationality and People [Emphasis added] in Ethiopia in particular have the right to improved living Standards and sustainable development.
2. National [Emphasis added] have the right to participate in national development and. in particular, to be consulted with respect to policies and Projects affecting their community.
3. All International agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to Sustainable development.
4. The basic aim of development activities shall be to enhance the capacity of Citizens [Emphasis added for development and to meet their basic needs.]

⁹ Nienke V. The Right To Development And State Responsibility Towards Idealism Without Realism (unpublished), p.5

"to a social and international order in which the rights and freedoms set forth in the declaration can be fully realized."¹⁰ Nevertheless, it doesn't mean that there was a clear and wide range of consensus on the ways how such entitlements have to be realized, though there was a clear stand on the importance of cooperative state action towards right to development.¹¹

The concept of the RTD started to be evolved as a separate right since 1960's due to the decolonization movements in which many African states gets their independence. As stated above, it was by Senegalese jurist Keba M'baye that the foundational base of RTD was articulated in 1972.¹² similarly, another well-known scholar named Raule Prebisch through the concept of dependency theory firmly argued that developed countries must support their former colonies whose poverty was emanated from their exploitive undertakings.¹³ This stand of Raule Prebisch was seriously taken by developing countries as a position in major international debates. Accordingly, they eagerly needed to restructure the global economic system through a New International Economic Order (NIEO)¹⁴ that continued as a serious bone of contention between developing and developed countries in the 1970's.¹⁵ This caused for the loss of more than two decades for the adoption of the declaration of the RTD. Thus, after many ups and downs for decades the declaration on the right to development adopted in 1986 by the UN General Assembly. During the adoption, from the member states of the United Nations 146 vote in favor, 8 abstentions and one against.¹⁶ The US was very critical to the matter and given its vote against the adoption of the declaration. This opposition of US was emanated from the ideology of Cold War in which US took everything which is different from its position as potential communist.¹⁷

The debate on the issue of the right to development not lasted in such a way, rather academicians were also part of the debate over the issue particularly regarding the concept of rights and obligations particularly in line with human rights perspectives.¹⁸ Legal positivists strongly argue that the issues of human right are specific and put clear obligation on the duty holders. Put in other words,

¹⁰ Universal Declaration of Human Rights, 10 December 1948, art 28.

¹¹ *Supra* note 3,p.5

¹² Khurshid I. The Declaration on the Right to Development and Implementation, Political Perspectives, Graduate Journal, vol.1,20007,p.4

¹³ Felix K, Towards the Implementation of the Right to Development, Fried Rich Ebert Stiftung,p.11

¹⁴ *Supra* note 3,p.4

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *Supra* note 8

¹⁸ *Supra* note 7,p.5

human rights are those which are justifiable which only incorporates civil and political rights but does not incorporate social, economic and cultural rights particularly the right to development.¹⁹ On the other hand, other scholars who advocate a behavioral approach denies the necessity of justiceability for all human rights this accept that obligation encompasses a wide range of human right issues including the right to development.

As time goes on, the conception towards RTD became changed and the first agreement was reached at Vienna World Conference on Human Rights where 171 Heads of State anonymously adopted the Vienna Declaration and Programme of Action in 1993²⁰ where right to development was described as “integral part of fundamental human rights.”²¹ However, it is plausible to remember that even before the acceptance of the RTD by the UN; it had been recognized in regional human rights charter specifically in African Charter.²² Most importantly, since the adoption of Vienna declaration, the reference to RTD are available in most of the crucial international human right instruments and major UN documents, including the Millennium Declaration, which states, “we all are committed to make the right to development a reality for everyone and to freeing the human race from want.”²³ Further, different UN and other international organizations arranged and designed their programs in accordance to right based approach to development.

Content of the Right to Development

Though the consensus on the issue of right to development are becoming better from time to time, yet the precise meaning, content and status of the RTD are still contentious issues that are open to debate. For instance, the question in what respect the RTD add new right to the existing human right regime notably the right to self-determination, the right to political and other participation and economic, social and cultural rights remains controversial.²⁴ Some argue that the RTD is a

¹⁹ *ibid*

²⁰ *Supra* note 9, p.11

²¹ Vienna Declaration and Program of Action para.10: the world conference on human rights 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 human rights.

²² *Supra* note 9, p.11

²³ Laure-Hélène P, *The Right to Development, A Review of the Current State of the Debate for the Department for International Development*(unpublished), 2002, p.9

²⁴ Asbjorn Eide et al, *Economic, Social and Cultural Rights* (A Textbook), 2nd ed. MARTINUS NIJHOFF PUBLISHERS, The Hague, The Netherlands, 2001, pp. 126

derivative right which did not added practical and legal value to the existing human right system.²⁵ The core norms and criteria's of the RTD were accommodated by the existing human right framework and human right bodies. On the other hand the prominent scholar Sengupta, argue that, the RTD formulated in the declaration adds something unique to the legal human rights paradigm.²⁶ He claims that the RTD is not simply an umbrella right rather it is more than the sum of the set of rights and duties. Sengupta further asserts that, an approach pursuing the realization of human rights through the right to development takes somehow more satisfactorily into consideration the interdependency of human rights than the approach focusing on these rights separately.²⁷ Sengupta's argument is taken as a valid in the sense that it brings the comprehensive development which aims to improve human and peoples well-being and unifies civil and political rights with economic, social and cultural rights. The recognition of the content of the right to development under the UNDRTD, African Charter and FDRE constitution comparatively.

The Content of the Right to Development under UNDRTD

Though, this declaration which is adopted in 1986 is a soft law which lacks binding effect on member states, it is a good beginning and puts profound importance on the progress of the RTD at the international level. The terms and clauses of the declaration were formulated in a vague and ambiguous way due to the result of serious compromises happened during the adoption of the declaration. Thus, it creates intergovernmental and academic debate on the specific content of the right. Though the contents of the RTD under this declaration are divergent and still controversial, the following elements can be taken as common provided that these elements are not exhaustive.

A. Comprehensive Development

The right to development puts human person at the center of the development process.²⁸ The declaration

²⁵ Arne Vandenbogaerde. *The Right to Development in International Human Rights Law: A Call for Its Dissolution*, Netherlands Quarterly of Human Rights, Vol. 31 No. 2, (2013), p. 187-209

²⁶ Arjun Sengupta, *The Right to Development - Report of the Independent Expert on the Right to Development*, UN Doc E/CN.4/2000/WG.18/CRP.1 Para22 (sept.2000).

²⁷ *Ibid*

²⁸ Paragraph 5, 13, art 2(1), of the preamble of the declaration provides that “the human person is the central subject of the

aims to improve the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and fair distribution of the resulting benefits. The declaration defined development as a comprehensive and multi-faceted process with social, cultural, political and economic development.²⁹ In other words, the declaration recognized development as a comprehensive process that goes beyond economics and covers social, cultural and political fields to achieve the continuous improvement of the well-being of the entire population and of all individuals.³⁰

B. Respect for All Human Rights

The declaration recognized the RTD as development process that must respect all fundamental rights and freedoms. This process should have designed to help the realization of all fundamental rights and freedoms for all. Based on the declaration the right to development recognized as a human right, which integrated economic, social, and cultural rights with civil and political rights in the manner that was envisaged at the beginning of the post-World War II human rights movement.³¹ In other precise words, the right to development is the measure of respect of all other rights.

C. Participation

The declaration put as active, free and meaningful participation is the cornerstone of development process.³² The right to participation ensures that no one is left out on any ground and whatsoever in the involvement of development process and enjoying the fruit of development.³³ This right highlights the prohibition of any

development process and that development policy should therefore make the human being the main participant and beneficiary of development.”

²⁹ Paragraph 2 of the preamble of the declaration offers development as a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.

³⁰supra note 4, Article 2(3)

³¹ Supra note 5 p. 841

³² supra note 4, Article 2(3)

³³ The Declaration refers to the 'active, free and meaningful participation in development' of all individuals (second preambular paragraph and Article 2(3)); the right of individuals and peoples 'to participate in, contribute to, and enjoy' development (Article 1(1)); the human person as an 'active

discrimination and draw attention the need for transparency and accountability in the development process. It underscores the involvement of beneficiaries at all stage (formulation, implementation, monitoring and evaluation of development policies). Moreover, the right pinpoints youths, women, indigenous peoples, minority groups and other vulnerable groups must participate in their development endeavors.

D. Social Justice

The RTD requires that the development process should promote social justice, specifically the fair distribution of benefits of development and equality of opportunity for all in accesses to basic resources and services and the eradication of all social injustice.³⁴ The concept of social justice contains two bundles of rights that basically include the right to equal opportunity and access to resources and the right to fair distribution of the benefits of development. These aspects of the right to development relate, of course, to the concepts of non-discrimination and equality and the whole range of protection of economic and social rights.³⁵

E. Self-Determination

The DRTD establishes that development “implies the full realization of the right of peoples to self-determination.”³⁶ The provisions on self-determination have been interpreted not just to refer to a reaffirmation of the independence and equality of nations, but so as to strengthen the rights of persons belonging to minorities and indigenous groups to determine for themselves the processes and forms of development that are appropriate for their cultures and circumstances.³⁷ Self-Determination at this juncture refers to; minorities and indigenous must enjoy the right to participate in the design and implementation of a genuine sustainable development

participant and beneficiary' of the right to development (Article 2(1)); the need to ensure that 'women have an active role in the development process' (Article 8(1)); and the need for states to 'encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights' (Article 8(2)).

³⁴supra note 4, Article 2(3) and 8(1)

³⁵ Supra note 25 p. 128

³⁶ supra note 4, Article 1(2)

³⁷ Art. 5 states that, as precondition for the RTD, “States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from ... refusal to recognize the fundamental rights of peoples to self-determination”.

policy.³⁸

3.2 Content of the Right to Development in African Charter on Human and People's Right

The preamble of the charter highlights the special emphasis given to RTD by stating that it is:-

Essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.³⁹

Moreover, though it is in a general manner, this specific provision spells out the normative basis of the RTD. This generality makes formulation of the specific content of the right problematic. Where vagueness and ambiguity in the provisions of the charter happened the African commission on Human and Peoples Right has a mandate to provide authoritative interpretation. Art 61 and 62 of the African charter empowers the commission to interpret the charter by reference to other international and regional human right jurisprudences. Further, due to the existence of implied right theory in the African human right system the commission can also interpret elements of one right by referring another right. It is because of this reason that the African Commission on Human and Peoples' Rights (African Commission), in its landmark decision of the *Ogoniland* case⁴⁰ stated that the right to food implicitly incorporated in the right to development. Moreover, the commission further elaborates the content of the RTD in *Endorois* case.⁴¹ The Commission also emphasized the *constitutive* and *instrumental* role of the right to development serving both as a means and an end to achieving other fundamental freedoms.⁴² The Improvement of the well-being of the entire population and of all individuals is the end or goal of development, and the means of development have to be fair and participative.

As to the interpretation of the commission, the right to development has procedural as well as substantive

³⁸ Michele Radin, "The Right to Development as a Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights", *Washington Law Review*, 1993. Pp. 15

³⁹ Paragraph 7 of the preamble of the African charter

⁴⁰ Available at <http://www.righttoenvironment.org/ip/uploads/downloads/OgoniCaseProf.Coomans.pdf>

⁴¹ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya - 276 / 2003

⁴² Paragraph 277 of *Endorois* Case decided in Banjul, The Gambia at the 46th Ordinary Session of the African Commission on Human and Peoples' Rights held from 11 – 25 November 2009

elements. The violation of either the procedural or substantive elements of the right to development will be a violation of article 22 of the African Charter. The commission declares that the right to be consulted and the right to participation in development process are key components of the RTD.⁴³ In its decision the commission acknowledges five elements (normative content) of the RTD. These are, the development process must be equitable, non-discriminatory, participatory,⁴⁴ accountable and transparent, with equity and choice as important and main themes in the right to development.

The decision provided by the African commission indicates the similarity of elements of the right to development in the African charter and the UNDRTD. In both instruments the right to development contains specific elements of respect for all human rights, the right to free, active and meaningful participation, attainment of social justice and self-determination. Article 22 of the charter and the decision of the African Commission does not mention political development as one element of the right to development. Thus, it is possible to conclude that African human right system is more limited in scope, as it does not mention political development separately.

The Content of the RTD in FDRE constitution

Like all other human rights, the implementation of the RTD requires first and foremost its domestication to the

⁴³ Ibid paragraph 280 – 295

⁴⁴ In Africa in addition to Charter and the African commission interpretation on the RTD in *Endorois* case there is African Charter for Popular Participation in Development and Transformation (Arusha 1990). Paragraph 8 of this charter puts popular participation at the center of development process. It states that 'the heart of Africa's development objectives must lie the ultimate and overriding goal of human-centered development that ensures the overall well-being of the people through sustained improvement in their living standards and the full and effective participation of the people in charting their development policies, programmes and processes and contributing to their realization. African countries must realize that, more than ever before, their greatest resource is their people and that it is through their active and full participation that Africa can surmount the difficulties that lie ahead. Moreover paragraph 10 of the Charter offers popular participation is both a means and an end. As an instrument of development, popular participation provides the driving force for collective commitment for the determination of people-based development processes and willingness by the people to undertake sacrifices and expend their social energies for its execution. As an end in itself, popular participation is the fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times.

national level. Based on this line of understanding RTD is enshrined under the FDRE constitution under art 43 of the constitution in a way that provides the normative content of the right in the Ethiopian legal framework. The right to improve living standard, the right to sustainable development and the right to participation in national development are guaranteed in the constitution.

1) The Right to Sustainable Development

Despite its importance, the concept of sustainable development isn't yet clearly defined in the FDRE constitution. The notion of sustainable development was predominantly the result of Rio Declaration on Environment and Development. Though the concept is difficult to define, it is good to use the definition forwarded by *Gro Harlem Brundtland*. He defines the concept as "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁴⁵ Further, sustainable development contains three interdependent and mutually reinforcing pillars; economic development, social development and environmental protection.⁴⁶

Sustainable development contains both substantive and procedural elements. The substantive elements are sustainable utilization of natural resource, the integration of environmental protection and economic development, the right to development, the pursuit of equitable allocation of resources both with the present and future generations (intra and inter-generational equity), and the internalization of environmental costs through the application of the 'polluter pays' principle.⁴⁷

⁴⁵ In 1987, the United Nations World Commission on Environment and Development released the report *Our Common Future*, now commonly named the '*Brundtland Report*' after the commission's chairperson, the then Prime Minister of Norway *Gro Harlem Brundtland*. Chapter two of the report included what is now one of the most widely recognized definitions: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The *Brundtland Report* goes on to say that sustainable development also contains within it two key concepts. These are "the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

⁴⁶ Ibid

⁴⁷ Principle 3-8 and 16 of the Rio Declaration on Environment and Development (United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992 AGENDA 21

So we can interpret the right to sustainable development recognized under the FDRE constitution includes the right to sustainable utilization of natural resource, the integration of environmental protection and economic development programs, the right to development which is the right of rights, the pursuit of equitable allocation of resources both with the present and future generations (intra and inter-generational equity).

2) The Right to Improve Living Standard

In a similar fashion with sustainable development, the right to improving living standard is not defined under the FDRE constitution. The standard of living is the level of wealth, comfort, material goods and necessities available to certain socio-economic class in a certain geographic area.⁴⁸ The standard of living encompasses factors such as income, class disparity, poverty rate, quality and availability of employment, quality and affordability of housing, etc...

The standard of living is closely related to the quality of life that includes material and intangible aspects of human life.⁴⁹ Improving standard of living resulted in enhancing the general wellbeing of mankind which is the central them of the RTD. This right enables mankind to live the life they want to live. The constitution guarantees to the Ethiopian nations, nationalities and peoples the right to development which encompasses the right to improve life standard as one element.

3) The Right to Participation and to be Consulted

On top of the above rights, "the right to participate in national development" and "the right to be consulted with respect to policies" are one of the issues to be discussed as elements of the RTD under article 43(2) of the FDRE Constitution. In this regard, the principle of participation according to which all beneficiaries and agents involved with implementation of the RTD are entitled to participate in, contribute to, and enjoy the result of the process of development.

The writer believes that participation plays a pivotal role in the implementation of the RTD. Hence, it can be considered as one essential element of the RTD. From this stand point, the inclusion of this concept in the FDRE Constitution reflects expression of sovereignty of the people and that the form, quality, democratic nature and effectiveness of participatory process, mechanisms and institutions are the central

⁴⁸ Available at <http://www.investopedia.com/terms/s/standard-of-living.asp#ixzz1VUli2yEI>

⁴⁹ Ibid

and essential indicators of progress for the realization of the RTD in the Ethiopian context as well. so far as popular participation enhances the productive capacity of the people, considering it as an indispensable input in the realization of the RTD is not doubtful.

The stand of the FDRE constitution is a little bit different from the African charter and UNDRTD. In this constitution the RTD consists of the right to sustainable development which includes a number of rights including the RTD itself, the right to improve living standard of the people and the right to participation. Moreover, the constitution broadens the RTD to incorporate the right to improve the living standard that includes the enjoyment of civil, political, economic, social and cultural rights. Therefore, it not wrong to argue that the scope of the RTD recognized in the FDRE constitution is broad than the African charter and UNDRTD.

However, unlike the UNDRTD, the FDRE constitution did not expressly incorporated the right to self-determination as an element of the right to development. This right is provided as a separate right to the Ethiopian nation nationalities and peoples.⁵⁰ Nevertheless, as the FDRE constitution stands now, one can still argue that the Ethiopian nation, nationalities and peoples have the right to self-determination in their development process.

4. Duty Bearers and Beneficiaries of RTD

Implementation of human right requires identifying who is the duty bearer and who is beneficiary or the right holder of the right to development though categorizing these issues is not an easy task. In addition to Philosophical debates on the foundational basis, there are also legal debates surrounding the content and correspond right holder and duty bearer of the RTD. For instance, to what degree it is a positive right? Who are the right holders? Who are the correlative duty bearers (nationally and internationally)? What is the stringency of the correlative duties? in this regard, while Some argue that putting specific agent responsible for the violation/implementation of the right to development is very difficult ,others oppose this argument and avow that it is possible to specify both duty bearer and holder of the right.⁵¹ Despite such controversies, there is some consensus regarding some contents and right-duty correspondence of the RTD all over the world. Thus, the following part deals about the right holders and duty bearer of the right to development under UNDRTD, ACHPR and the FDRE Constitution comparatively.

Right Holders and Duty Bearers of the RTD under UNDRTD

The duty bearers of RTD

According to the Declaration, the “primary responsibility for the creation of national and international conditions favorable to the realization of the RTD” lies with states.⁵² The declaration contains an internal and external dimension regarding the right to development by making the distinction between states acting at the national level and states acting at international level.

States acting nationally have certain obligations towards people within their jurisdiction to facilitate and manage the process of development described in the Declaration. Further, the declaration provides the vital role of international cooperation among the states in compliance to the UN Charter. In other words, the duty to formulate appropriate policies for the RTD is not limited in the states boundaries, it has transcends effect. The other duty bearer under the RTD declaration is global institutions. Duty bearers of the right to development under the declaration are discussed as follows.

A. State at National Level

States acting nationally should undertake “all necessary measures for the realization of the RTD” including the formulation of “appropriate national development policies” and ensuring “equality of opportunity for all in their access to [...] resources” and distribution of the benefits.⁵³ State should encourage popular participation in all spheres and required to take steps “to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social, and cultural rights.”⁵⁴ The declaration also stress that the right to development could be enhanced by adoption and implementation of policy, legislation and other measures at the national and international levels.⁵⁵ Further, the state must adopt development strategies, approaches and programmes informed by the interest and aspiration of the people; which integrate values and economic, social, cultural, political and environmental realities. Moreover, Art. 2(3) of the declaration provides that the state has the right and duty to formulate appropriate national developmental 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.

⁵⁰ FDRE constitution, Article 39

⁵¹ Supra Note 5 p. 857

⁵² *supra* note 4, preamble and Article 3(1)

⁵³ *Ibid* art 2 and 8.

⁵⁴ *supra* note 4, Article 8&6

⁵⁵ *Ibid*

B. State at the International Level

Obligations of states acting internationally correspond with the RTD's external dimension. With respect to this, the Declaration is forthright in emphasizing the crucial importance of international cooperation or contribution of global development partnerships towards the realization of the RTD. Article 3, paragraph 3 of the declaration, stated that, states have the duty "to cooperate with each other in ensuring development and eliminating obstacles to development" and should fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence and mutual interest. This is reiterated in Article 6, which states, "all States should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms."⁵⁶

Furthermore, the declaration stated that states have the duty, individually and collectively, to formulate international development policies to facilitate the realization of the right to development.⁵⁷ It recognizes that sustained action is required to promote rapid development of developing countries and that as a complement to their development endeavors. Effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development. When we see the obligation to cooperate under the RTD is based upon Article 4 of the Declaration in conjunction with the preamble, which in turn refers to the obligation to cooperate as included in the UN Charter.⁵⁸ It entails, among other things, that states must cooperate in an effective manner in formulating international development policies, complementing the efforts of developing states as well as actualizing equitable economic relations and a favorable economic environment at the international level.

⁵⁶ supra note 4, Article 6

⁵⁷ *ibid*, Article 4(1)

⁵⁸ UN Charter art.1(3), art 55: "(...) the United Nations shall promote: 1. higher standards of living, full employment, and conditions of economic and social progress and development; 2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and 3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."; and art 56: "All Members pledge themselves to take joint and Separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

C. International Organizations

Although not literally advanced by the Declaration, the external dimension of the obligation is considered to include forms of cooperation in the framework of International Organizations (IOs). However, to what extent these obligations can actually bind IOs and how international organizations which are not party to international human rights instruments can be held responsible for the realization of human rights as such is far from clear.⁵⁹ Regarding the international human right instruments concerning this specific issue, UDHR is the first instrument which lays such duty on the international organization. According to the declaration not only everyone is entitled to an adequate standard of living for himself and his family;⁶⁰ but also he is entitled to an international order in which his rights can be fully realized.⁶¹ These provisions compel international order makers to ensure their actions are conducive to the realization of human rights specifically in determination of development policies and the creation of development condition for states. International Financial Institutions (IFIs), in particular the World Bank (WB), International Monetary Fund (IMF), and World Trade Organization (WTO), as key international development actors, have a role to play in the realization of the RTD. The organizations have amoral obligation to respect human rights; they have a negative duty not to harm the poor.

The Right Holders of RTD under UNDRTD

A. Individuals

This corresponds with the internal dimension of the RTD. The right correlate to the obligations of states owed towards their own people. It fits the prevailing view that a state has the primary responsibility for the realization of human rights on its territory. The UNDRTD states that the right to development is an inalienable right by virtue of which every human person and all peoples are entitled to participate in.⁶² The individual nature of the right is highlighted under the concept of "all individuals." UNDRTD made human person as the central subject of the right to development. The right under the declaration includes right to participate in the process of development and the right to an equal share of the benefits.

⁵⁹ Nienke Vander Have, *Towards Idealism without a sense of Realizing* p.11

⁶⁰ UDHR, Article, 25

⁶¹ *Ibid*, Article 28

⁶² supra note 4, Article 1(1) and 2(3)

B. People

As previously stated, the RTD also has a clear collective dimension and contains many rights which have collective nature. Though UNDRTD has made reference to people's right, to whom the term 'people' refers in the context of the RTD is far from clear. This was actually among the controversial issues on the preparatory steps of UNDRTD. Even today, there is no well-developed jurisprudence under the international level as to the exact meaning of people. Some refers territorial interpretation of a people as referring to a state's population. But this type of interpretation has encountered a great deal of resistance. However, the most accepted interpretation is currently seems to lean towards seeing them as groups that do not cover the entire population of a state.⁶³ In this regard, the Working Group on the RTD has also listed groups, presumably meaning minorities, as beneficiaries. Moreover, from the context of the article we can understand that which all peoples are entitled to participate indicates the RTD is a process aiming at the constant development of the collectives, communities or groups. However, it would not be wrong to argue that it is not a problem whether the RTD is collective or individual right; the right to development must be understood as the right of human race in general.

C. The State

States usually are duty bearers of human right. Human rights are seen as inherent to human beings and not to states. This outlook is manifested at the Global Consultation on the RTD held in 1990. Serious objections were made to the idea of recognizing states as the beneficiaries of the RTD.⁶⁴ Despite such controversies, state is the right holder under the DRTD. Though the declaration does not explicitly mentioned state as subject to RTD, it could be inferred from the external dimension in which states are obliged to cooperate and assist each other. The provision could also be interpreted further that, the state has right to claim them against the international community at large. According to some writers the RTD is the collective right of developing countries to the establishment of a new international economic order and underscores the role of international cooperation for its realization.⁶⁵ Here one may ask a question, since a state is not human how can a state claims human right? In this regard Sengupta has noted that, there may be a slight nuance between the role

of a rights-holder and the beneficiary of a right.⁶⁶ Even though, a collectivity, such as a state, is acknowledged as a rights-holder for the purpose of asserting a certain right on behalf of its constituents, and still individuals may be the ultimate beneficiaries.⁶⁷

The Right Holders and Duty Bearers of the RTD under the ACHPR

Duty Bearers of the RTD under the ACHPR

The ACHPR like that of the UNDRTD puts the state the primary duty bearer of the right to development. Article 22(2) of the ACHPR provides for the duty of states, 'individually or collectively', to ensure the exercise of the right to development. The charter is intended to create legal rights and duties to state parties to the ACHPR. African charter like that of UNDRTD incorporates two dimension of RTD. The duty of state to ensure exercise of right to development individually refers to the internal dimension of RTD. In this regard, state parties to the charter are duty bound to take all necessary measures for the exercise or realization of the right to development at national level. In the *Endorois* case the African Commission, while explaining the content of RTD impliedly mentioned what would be the duties of the state. According to the case, government is duty bound to avoid discrimination and should be accountable and transparent.⁶⁸ Above all, the commission explains the threshold of people's participation needed in development endeavors. In this respect, prior informed consent is the minimum standard to be achieved by states before undertaking any development endeavors in indigenous peoples' communities. The African Commission declared as "The State has a duty to actively consult with the said community according to their customs and traditions. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties"⁶⁹

Moreover, the African Charter for Popular Participation in Development provides that African Governments must adopt development strategies, approaches and programmes, the content and parameters of which are in line with the interest and aspirations of the people and which incorporate, rather than alienate, African values and economic, social, cultural, political and environmental

⁶³ Supra note 61, p.13

⁶⁴ Id

⁶⁵ Supra note 2, p. 11 &12

⁶⁶ Supra note 61, p. 13-14

⁶⁷ Id

⁶⁸ Serges Alain, *The Right to Development in the African Human Rights System: The Endorois case*, Centre for Human Rights, University of Pretoria, 2011 pg. 390

⁶⁹ Ibid

realities.⁷⁰

On the other hand, like UNDRTD the African charter recognizes the external dimension of RTD. The external dimension of the right is highlighted under the concept “collectively.” The African charter gives emphasis to the important role of cooperation to achieve development. The charter obliges members to cooperate each other in ensuring development and eliminating obstacles to development.

The Right Holders/Beneficiaries of the RTD under ACHPR

Article 22 provides that “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.” As it is clear from the provision of the charter the beneficiaries of the RTD are peoples. The charter explains the threshold of people’s participation needed in development endeavors and emphasizes on the realization of human rights as subscribed to the ACHPR. Unlike the UNDRTD the ACHPR does not explain individuals as beneficiary of the right to development. The ACHPR simply mentioned peoples as beneficiary of the right. Here one may ask question what does the word ‘peoples’ refers to, in this regard the African commission has passed different land marking cases. The *Endorois* case is one among which defines the concept of “peoples,” clarifies the beneficiaries of the RTD.

According to the decision of the African Commission:

The Endorois are an indigenous community and that they fulfill the criterion of “distinctiveness.” The African commission view that Endorois consider themselves to be a distinct people, sharing a common history, culture and religion...is satisfied that the Endorois are a “people”, a status that entitles them to benefit from provisions of the African Charter that protect collective rights... [T]he alleged violations of the African Charter are those that go to the heart of indigenous rights - the right to preserve one’s identity through identification with ancestral lands.⁷¹

Other jurisprudence also suggest the term people has five way of understanding; (1) subject to colonialism or alien domination (2) the population of the county as a whole (3) the African people in general (4) in some

⁷⁰ African Charter for Popular Participation in Development and Transformation, Arusha (ARUSHA 1990) page.10

⁷¹ Supra note 17, p.389

sense refers to the state as custodian of peoples right (5) to distinct people, various culture, ethnic, linguistic and other.⁷² Generally, the term people under the African charter refer to the collective nature of the right.

Like that of UNDRTD State is a beneficiary of RTD under the ACHPR. As it has stated above the African charter obliges members to cooperate each other in ensuring development and eliminating obstacles to development. This duty to formulate regional development policies to facilitate the realization of the right to development collectively implies state is also the beneficiary of this right.

The Right Holders and Duty Bearers of the RTD in FDRE Constitution

Duty Bearers of the RTD under the FDRE Constitution

Similar to the ACHPR and UNDRTD under the FDRE constitution the state is duty bound to ensure the Right to development. The constitution obliges all federal and regional legislative, executive and judicial organs at all levels to take responsibility and duty to respect and enforce the provisions related human and democratic rights enshrined under the constitution.⁷³ In addition to the provision dealing with the right to development, the constitution set socio-economic principles and objectives whereby all policies formulation and adoption are guided.⁷⁴ The constitution provides government at all level and at any time to promote the participation of the people in the formulation and implementation of national development policies and programs. Article 89 of the constitution illustrates that the government has the duty to hold, on behalf of the people, land and other natural resources and to deploy them for their common benefit and development. The government shall at all times promote the participation of the people in the formulation of national development policies and programmes. The participatory approach to sustainable development emphasized as one of the economic objectives where the government has a duty to support the initiatives of the people in their development endeavors.⁷⁵ From the right to sustainable development, it is possible to adduce that the government and citizens have the duty not to damage the

⁷² Mizanye Abate, Comparative Regional Human right system, Lecture delivered at the School of Law, Bahir Dar University, November, 2013

⁷³ FDRE constitution, Article 13(1)

⁷⁴ Ibid, Article, 85-92

⁷⁵ Ibid, Article 89(6)

environment and to ensure inter-generational equity. Moreover, the FDRE constitution imposes an obligation on the government and citizens to protect the environment.⁷⁶ To sum up, in the FDRE constitution duty bear of RTD, unlike the ACHPR and UNDRTD is limited in scope. It imposes a duty on the state and its citizens at the domestic level or does not lay any duty to the international community.

Right Holders of the RTD under the FDRE Constitution

As is has been previously stated the RTD in the FDRE constitution incorporated as fundamental democratic human rights. Article 43 of the constitution use terms like; "Nation Nationality and People," "Nationals" and "Citizens" to express the beneficiaries of the RTD. Moreover, this specific constitution Nations, Nationalities, least advantaged groups in economic and social development,⁷⁷ Peoples⁷⁸ and women⁷⁹ are among the beneficiaries of this right though provision does not consistently mention the beneficiaries of the RTD. though, by inference from provisions it is possible to argue that the provisions the beneficiaries of RTD in FDRE constitution are wide in scope, the constitution is more specific than the ACPHR and UNDRTD in mentioning the beneficiaries of RTD. Moreover unlike the UNDRTD the beneficiaries under the constitution are groups or collective but not individuals.

CONCLUSION

Though the origin of the RTD was trace back to the Philadelphia declaration, the right to development as separate human right was propagated by Keba M'baye in 1992. Nine years latter this right was incorporated in the African charter. Five years after the charter the RTD was incorporated in the UNDRTD. Further, nine years latter this right was incorporated in the FDRE constitution.

The definition of the RTD provides in these instruments are similar, though they define the concept in different perspectives. Likewise, the definition the content of the right in all these instruments is more or less similar. However, in terms of scope the FDRE constitution seems a little bit broader and the African charter narrower. In the former the right to sustainable development includes the right development as one element where as in the latter political development was not recognized separately.

In relation to the right holder and duty bearer, the

UNDRTD makes the state at the center of duty bearer at the national level and international level. Further, based on cosmopolitanism philosophy we can argue that, the international organizations are also the duty bearer of the RTD. The beneficiaries of the RTD in the declaration are individual as well as peoples. Nevertheless, the state is also perceived as a beneficiary of the right when it acts on behalf of its people. In AFCPHR in similar fashion state at national level is the primary duty bearer. The paper also shows state at regional level is responsible collectively to achieve the realization of RTD. Regarding beneficiaries of this right the charter makes peoples as ultimate beneficiaries of this right. There is no room for individuals to hold this right. Lastly, in FDRE constitution government is the only duty bearer and as regarding to the right holders of the RTD, the constitution illustrates different categories of peoples as beneficiaries of this right. This includes nationals, citizens, nationalities, nations and peoples.

REFERENCES

- 1) African Charter on Human and Peoples Right, 1981
- 2) African Charter for popular participation in development and transformation, Arusha (ARUSHA 1990)
- 3) Arjun Sengupta , On the theory and practice of the right to development, Human Rights Quarterly, Vol.24, No 4
- 4) Arjun Sengupta, the Right to Development - Report of the Independent Expert on the Right to Development, UN Doc E/CN.4/2000/WG.18/CRP.1 Para22 (sept.2000).
- 5) Arne Vandenberg, the Right to Development in International Human Rights Law: A Call for Its Dissolution, Netherlands Quarterly of Human Rights, Vol. 31 No. 2, (2013)
- 6) Asbjorn Eide et al, Economic, Social and Cultural Rights (A Textbook), 2nd ed. Martinus Nijhoff Publishers, The Hague, The Netherlands, 2001
- 7) Belachew Mekuria, The politics underpinning the non-realization of the right to development, mizane law review, 2011
- 8) Belay Getachew, critical analysis of the applicability of the right to development in the Ethiopian context, Addis Ababa university school of graduates(unpublished),2009
- 9) Bience Gawanas, The African Union: Concepts and implementation mechanisms relating to human rights
- 10) Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya - 276 / 2003
- 11) Donnelly, In search of the unicorn: The jurisprudence and politics of the right to development, California Western International Law Journal, 1985
- 12) Federal Republic of Ethiopia Constitution, 1995
- 13) Felix Kirchmeier, et al, towards the

⁷⁶ Ibid, Article 92(4)

⁷⁷ Ibid, Article 89(4)

⁷⁸ Ibid, Article 89(5) & (6)

⁷⁹ Ibid, Article 89(7)

- 14) implementation of the right to development, friedrich ebert stiftung
- 15) Jaakoo Kuomanen, (2012).eyes on the 'unicorn': on the nature of human right to development, jwi working paper.
- 16) Khurshid Iqbal, The declaration on the right to development and implementation, political perspectives graduate journal,vol.1,20007
- 17) Laure-Hélène Piron, The Right to Development, A Review of the Current State of the Debate for the Department for International Development(unpublished)
- 18) Michele Radin, The Right to Development as a Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights, Washington Law Review, 1993
- 19) Millennium Declaration, 2000
- 20) Mizanye Abate, Comparative Regional Human right system, Lecture delivered at the School of Law, Bahir Dar University(unpublished), 2013
- 21) Nienke Vander Have, Towards Idealism without a sense of Realizing
- 22) Nienke vander Have,the right to development and state responsibility towards idealism without realism(unpublished)
- 23) *Ogoniland* case, 2001 The Social and Economic Rights Action Center and the Center for Economic and Social Rights V. Nigeria
- 24) Rio Declaration on Environment and Development (United Nations Conference on Environment & Development Rio de Janerio, Brazil, 3 to 14 June 1992 AGENDA 21
- 25) Serges Alain Djoyou KamgaLic-en-dt, the right to development in the African human rights system: The Endorois case, Centre for Human Rights, University of Pretoria ,2011
- 26) The 1986 United Nations Declaration of the Right to Development
- 27) Universal Declaration of Human Rights, 10 December 1948
- 28) Vienna Declaration and Program of Action, 1993