

The Right to Development: An Interview with Dr Arjun Sengupta*

The Declaration on the Right to Development was adopted by General Assembly resolution 41/128 of 4 December 1986. In 1998, the existing UN Open-Ended Working Group on the Right to Development and the mandate of the Independent Expert on the Right to Development were established. Since then, Dr Arjun Sengupta has been the Independent Expert on the Right to Development until this year, ending his six-year term. In accordance with his mandate, Dr Sengupta produced six reports in response to the questions raised by the Working Group. In doing so, Dr Sengupta has created a better understanding of the right to development and has provided invaluable work for others to benefit from through academic articles and practical suggestions for the enhancement of the right to development. The *Essex Human Rights Review (EHRR)* was delighted to have the opportunity to pose Dr Sengupta the following questions for the first issue of the *Review*.

EHRR: Could you please explain the basis of the understanding of the right to development.

AS: The right to development is the right to a process of development in which all human rights and fundamental freedoms are realized. This definition is derived from the definition of development itself. Development is a process. Development is not an event that happens on a particular day, nor is it a final product that materializes at a particular hour. We can only say whether a country is more developed or less developed, compared to other countries or to its own past performance. It is only by convention that we categorize countries as developed if they have crossed a per capita income of say \$2,000 or \$3,000. A per capita income is not necessarily the best measure of development in terms of the well-being of the population. Indeed, the logical way would be to construct an index of well-being and then build a consensus about a level of that well-being index, below which countries can be identified as less developed and above which as more developed. But the index itself might change over time, so that development may continue to be described as a process.

The right to development goes further in identifying the notion of well-being with the realization of fundamental freedoms, so development becomes a process of improvement of well-being or the improved realization of fundamental freedoms – something along the lines of Amartya Sen’s notion of development as freedom. All human development indicators in Sen’s framework become indicators of freedoms. When those freedoms are identified with rights which are claimed, as entitlement, by the people, we get development as realization of human rights. The indicators of food, health, education, shelters, and so on are seen as the right to food, the right to health, the right to education, the right to shelter or housing and so forth., which have to be realized as entitlements and consistent with human rights standards (or as rights-based, as we often called them). The preamble of the Declaration on the Right to Development described development as an economic, social and political process, to highlight that these rights are not only economic, social and cultural rights but also civil and political rights. In other words, in a human rights framework - development is a process of realization of all human rights. When that process of development is claimed by the people as a human right itself, we get the right to development.

* This interview was prepared by Ditte Johanne Horndrup, with assistance of Judy Robertson and Mukul Saxena. The questions posed to Dr Sengupta were raised by students of the University of Essex in an informal survey.

As all rights must be identified with corresponding obligations we must be able to specify the obligations corresponding to the right to development. Each component of that right to development is itself a human right and is associated with the corresponding obligations of policies and public actions related to the particular sector concerned with that specific right. For example, the right to food must be fulfilled through adoption of an appropriate policy to ensure the access to, and availability of food, in a rights-based manner (that is, with equity, non-discrimination, participation, accountability and transparency). In a similar manner, the obligations corresponding to all other rights will have to be identified in terms of sectoral policies. The right to development is the right to a composite process of realizing all the rights and the corresponding obligation is a development policy that harmonizes and builds on the sectoral policies and a programme for a rights-based economic growth, which relaxes the resource constraints for the realization of all the rights taken together. The duty-bearers are both national authorities and the international community and other financial, trade and technological institutions, including corporate bodies. Each of these agents should be assigned specific responsibilities to realize the right to development.

EHRR: Based on the Declaration on the Right to Development, you have developed the understanding of this right as the right to the realization of all human rights, that is, the full range of economic, social, cultural, civil and political rights. Furthermore, the process to the realization of these rights is also a right inherent in the right to development. If so, when can we say that the right to development is fulfilled? If the right to development consists of a 'process of development' that aims to achieve the full range of human rights, could the right to development then be perceived to be fulfilled when appropriate programmes have been designed and implemented in a country, even if the human rights that are aimed at fulfilment are yet to be fulfilled? Or is the right to development fulfilled only when the realization of all human rights has been achieved – and what will be the indicators/benchmarks for that realization?

AS: Clearly it has to be based on some agreed convention in the same manner as we try to answer when a country is developed. In a right to development framework the answer can be straightforward. If each of the rights can be represented by an indicator like the human development indicators, we will have to set certain target values of these indicators to be realized at the end of the period. For example outcomes to be reached by the end of five years as a result of the process of development may be that: 90 per cent of the people must be secured the right to food, with availability of, and access to food; all children in the age group of 6 to 14 must go to school and enjoy the right to education within five years; there should be a primary health care centre within five kilometres of every household in that country; there should be a representative government in the local communities (districts or communes) in at least over half of the country. However, within that period of five years, there should be targets for fulfilling each of these rights every year, which would constitute the process of development. We may not be able to achieve all these targets every year for all the five years. But as long as no right is violated or there is no retrogression in the fulfilment of any of these rights, we may consider the process of development as being realized. If the outcomes at the end of the five years fall short of the target, we should recognize that the right to development has not been fully realized, although it has not been violated either. Our aim then would be to implement better policies to realize these rights more effectively in the next five years. In this framework, the process of development is a continuum and the aim is the progressive realization of all the rights to the extent feasible. It is quite possible that some of the rights will be fulfilled better and faster than others and the concern then would be whether the duty-bearers are making their best efforts in implementing policies and using their resources to the maximum extent possible to realize all those rights.

Adopting appropriate development policies and implementing them is the obligation of the duty bearers who will be judged by: Whether these policies are rights consistent; whether they are making

their best efforts and using the available resources to the maximum extent possible; and whether the full extent of the international cooperation has materialized and been effectively utilized.

EHRR: The right to development has rights-holders at the centre, thus drawing on a rights-based approach, as distinct from an interest-based approach. However, given that all rights have corresponding duties and obligations, and given that the international community, including developed countries, also have duties and obligations, as stated in the Declaration on the Right to Development, one may find that the right to development is to a certain extent contingent on whether the developed countries accept these corresponding duties, and are willing to provide the financial funding and practical support necessary for the realization of this right. If so, then how plausible is this right, if the developed countries do not accept their share of the responsibility?

AS: There are several duty-bearers to carry out the obligations related to the right to development – the state authorities within whose jurisdiction the right-holders reside or belong; the international community of all other states which recognize the right; the non-state agents, including the multinational corporations whose actions have major impact on the right; and the international financial, development, trade and technological institutions which are owned by the signatories-states but which have their independent constitutions. Each duty-bearer has to carry out its duties irrespective of what others do, although in many cases the actions taken by any agent are very much conditioned by, and often contingent on, the actions taken by others.

Of all the duty-bearers, the rights instruments specify the Nation-States to be the primary duty-bearers, in the sense that they have to design and implement the policies that directly affect the right-holders; enact laws, rules and procedures, necessary for that purpose; establish new institutions and negotiate and work out the programmes of assistance and cooperation with other agents of the international community, with the purpose of fulfilling the right. It is true that in a globalizing world economy the operational flexibility of a Nation-State is very much constrained by international development and it may not be possible for them to implement the right in full without international cooperation. However that does not excuse them from not fulfilling their own obligations and from doing their best within their own constraints to realize the right.

EHRR: In relation to the above question, something often dealt with in the donor countries is the extent of the duties and obligations of the developed countries towards supporting the development process of developing countries. On the one hand, the right to development is about a continuing improvement of the quality and standard of living and thus one may suggest that the obligations of developed countries ‘continue’ until this process has finished. On the other hand, developed as well as developing donor countries also have obligations and duties towards individuals within their own borders. A donor country, or the population of a donor country, may then question the priorities of that country – for instance, the need for improving the national health care system, balanced against the international obligations towards elimination of poverty and the creation of equal opportunities for all. Taking this need for prioritization into consideration, how much claim can developing countries have on donor countries or the international community? Would a donor country be justified in withdrawing from international obligations towards the development of poorer countries on the basis that it needs resources to satisfy its own people’s right to development?

AS: The obligation of international cooperation is not only confined to providing financial assistance. It extends to cooperation in the areas of trade, technology, debt and international capital markets. Official Development Assistance (ODA) is only one element of this set of obligations, which may be very important for some developing countries. But trade, debt and technology transfer may have a much greater impact on many developing countries, if the developed countries follow faithfully the principles they propound. So, it is not true that the developed countries will be starved of their resources if they cooperate with the developing countries in realizing the right to development. The state authorities of the developed countries have obligations to their own citizens, to their own poor, homeless, jobless, the

destitute and those generally without medical care, which must be fulfilled by changing the priorities of their domestic expenditure and tax system. The modest assistance they provide to the developing countries is miniscule in relation to the excess spending and tax concessions in many areas. It will be very difficult for a developed industrial country to demonstrate that helping the poor countries with less than 0.1 per cent of their GNP prevents them from carrying out their national obligations. But they will have a genuine ground for withholding assistance to developing countries if these states keep violating human rights, including economic, social and cultural rights within their borders. International assistance provided directly to some developing countries is contingent upon the primary duty holder's carrying out their obligations. But other forms of international cooperation, like trade liberalization, or debt re-negotiations or a more liberal patent regime, are directed towards the developing world as a whole, as creating a favourable environment to realize the right to development. They must be fulfilled irrespective of the performance of other agents.

EHRR: If accepting that the judicial status of the right to development is not yet clear, the right may still mainly be perceived as a moral-based right. How would you argue for the right to development to be legally binding on the donor countries as duty-bearers in relation to populations in developing countries? If not legally binding and thus not imposing corresponding legal or economic obligations on all countries, but 'merely' moral obligations, then how do you recommend that developed countries proceed in their moral capacity as duty-bearers when this is often in contradistinction to their duties as independent states in the international political economy seeking to maximise economic profitability and political power?

AS: We must realize that moral rights involve the same binding obligations as legal rights, once the rights are properly defined and the obligations are clearly specified. The basic difference is that legal rights are legislated and encoded in a country's legal system, or customs and conventions, and therefore are justiciable. But recourse to the courts of law is not the only way of enforcing a binding obligation. Administrative systems, social norms, public action and peer pressure, as well as civil society movements, are several other ways of enforcing the obligations related to a right. Independent states in the international political economy may have many objectives, such as maximizing economic profitability and political power. But once certain obligations are recognized as flowing from human rights, their fulfilment trumps other objectives. However, in any actual concrete situation these objectives may not always be conflicting. A country trying to maximize political power can more often than not pursue that objective without violating human rights, and in fact by actively promoting human rights.

EHRR: What are your thoughts on the Cotonou Partnership Agreement between the European Union (EU) and the African, Caribbean and Pacific Countries – could it be regarded an example of your suggested Development Compact? If so, what are the prospects of its enforcement by the African, Caribbean and Pacific Countries?

AS: The Cotonou Partnership Agreement comes quite close to our notion of development compact, provided the obligations are clearly specified in human rights terms both for the developing and for the developed country partners. It is also important to have an independent monitoring system as well as a mechanism to arbitrate impartially on the charges of the different partners about the violation of obligations. If an African partner, for example, adopts all the policies leading to the realization of the right to development, including acceleration of their economic growth in a rights-based manner, the European Union or the developed country partners must ensure that the rights-based development policy is not disrupted because of a lack of international cooperation. The EU must own up to the responsibility of fulfilling the realization of the right to development of an African partner-country, if the state authority of that country follows the policies consistently with the human rights standards.

EHRR: You have posed strong arguments for special considerations in the development process in relation to minorities and indigenous peoples. Another vulnerable group in relation to a country's

development process is children. Why and how should children's special needs be taken into consideration in a right-to-development approach?

AS: Children's special needs must be taken into consideration in a right-to-development approach. The right of the child is a recognized human right and is therefore a component of the composite right to development. In fact, the interdependence between the rights, which is most characteristic of the composite right to development, is particularly relevant to the fulfilment of the right of the child. Furthermore, while the pace of the fulfilment of many of these rights may be extended in time, depending upon specific circumstances in a scheme of progressive realization of the different rights, the right of the child must be fulfilled immediately. Delaying that right for a child would really mean denying the right.