

# A critical assessment of the right-based approach

## Una evaluación crítica del enfoque basado en derechos

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**Francisco Medina Poblete<sup>1</sup>**  
(franciscomedinapoblete@gmail.com)

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### ABSTRACT

The fields of human rights and development have a long tradition dating back to the World War II period, and their articulation is part of a dynamic process in the relations between states and between states and citizens, being the Rights-Based Approach (RBA) , a proposal to manage this articulation. But after 30 years of the emergence of the approach, what are the contributions and limitations of its applicability today? Through a literature review, the essay discusses the context in which RBA emerges, its core components, and the approach viability. In the conclusion, recognising the political component as the core component of the RBA, the essay highlights how despite an adverse context, the approach can generate contributions at the national level to advance the enjoyment of the Right to development.

### KEY WORDS

Rights-Based Approach (RBA), human rights, critical assessment, participation, democracy.

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<sup>1</sup> Máster (MSc) en Development Administration and Planning, University College London, Reino Unido. Administrador público con experiencia profesional y académica en las áreas de planificación estratégica, gestión y control de proyectos, y procesos de desarrollo, con énfasis en las áreas de: gobernanza institucional, desigualdades urbanas y desarrollo territorial. ORCID: <https://orcid.org/0000-0001-9611-1212>

## INTRODUCTION

The human rights and development fields have a long tradition dating back to World War II; however, they had a different institutional trajectory until the end of the century, when a new dialogue between rights advocates and development practitioners began (Archer, 2009). The Right-Based Approach (RBA) is one of the results of this dialogue, and this essay proposes a critical review of the approach. Therefore, identifying its core components, proposals and challenges is required. However, this essay does not pretend to suggest a definition of the Right-Based Approach (RBA). Instead, the essay aims to provide elements that allow us to balance the contributions of RBA in articulating development processes and human rights.

To this end, the essay begins with the historical context of the Right to development, and then, in section two, explains how, from the articulation between human rights and development the Right Based-Approach (RBA) emerges. The third section focuses on RBA components, the RBA's understanding of the development process and the relationship between States and State-citizen. Section four explains how the expansion of the RBA and some current factors challenge the viability of the Right to development. Finally, in the conclusion, recognizing the political component as the core component of the RBA, the essay highlights how, despite an adverse context, the approach can generate contributions at the national level to advance the enjoyment of the Right to development.

## THE DECLARATION ON THE RIGHT TO DEVELOPMENT

The articulation of human rights and development is part of a dynamic process in the relationships between States and between States and citizens. Perhaps the first step to incorporate human rights in development was the idea of the Senegalese jurist M'Baye, who proposed in 1972 the Right to development to enhance the conditions for the third world countries in the global political economy, trade, investment, aid, and information flows (Uvin, 2007). However, the principles invoked by the Right to development were not new. They came from anti-colonialism struggles

for the Right to self-definition and social justice, explaining the hostility of powerful international actors regarding the language of rights (Cornwall and Nyamu-Musembi, 2004).

In 1986, developing countries had a victory when the United Nations recognized the Right to development, which was defined as the “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” (OHCHR, 1986). For Subedi (2021), from the declaration of the Right to Development can be identified six core themes: (1) a compressive and multifaceted understanding of the development process; (2) affirmation that human rights are indivisible and interdependent, (3) participation is a key component for the process of development; (4) social justice; (5) international cooperation approach to collaborate with more disadvantage countries, ; (6) respect for the Right to self-determination.

For Cornwall and Nyamu-Musembi (2004), the 1986 declaration was a milestone in favour of the third world within the UN, contributing to a fairer New International Economic Order (NIEO) where both the terrain of development (economy) and the terrain of human Right (law and activism) become to interact between them. Nevertheless, it was at the Second UN World Conference on Human Rights in Viena (1993) that the world reaffirmed the Right to development and overcame the division between “those who denied that economic, social, and cultural rights could be regarded as human rights, and those who believed that economic, social, and cultural rights were not only fully justifiable human rights but were essential even necessary, to realize the civil and political rights”(Sengupta, 2002, p. 841). However, for Subedi (2021) there is still a division between the North and the South based “on the legal status and implications of the right to development”, which can indeed be seen by checking at the votes taken by the North and the South on these issues.

In 1998, at a summit of the Non-Aligned Movement in Durban, under President Nelson Mandela's leadership, the idea of a legally binding instrument emerged. Yet, only after 20 years, in 2018, the Human Rights Council adopted Resolution 39/9, which, in addition to reaffirming the 1986 declaration, decided that the Right to Development Working Group shall “commence the discussion to elaborate a draft legally

binding instrument on the right to development” (UN, 2018, p. 5).

## THE ORIGIN OF THE RBA

According to Uvin (2007), during the 1990s, the isolation of the development enterprises from the human rights system began to change for the following reasons: (i) the end of the Cold War, (ii) the manifest failure of structural adjustment programmes; (iii) the need of redefining development as being about more than economic growth. Indeed, there were various alternatives to incorporate human rights discourses and practices within the development industry. Thus, in the middle of the '90s, the Right Based approach (RBA) became the dominant medium to articulate human rights discourses and development practices (Miller, 2017) instead of other alternatives such as incorporating human rights through the agenda of 'good governance, which was considered a 'rhetorical-formulaic incorporation' to the continuation of the status quo (Uvin, 2007).

The acceptance of the RBA by those who before were reluctant to the language of rights, obey to; (i) the end of the Cold War, (ii) the NGO's activism, (iii) a shift in aid delivery from sector-specific or project-based intervention to direct budget support to governments, (iv) rights as a way of re-politicizing participation, and (v) the link between the discourse of 'rights-based approaches' and the conception that human rights duties do not go beyond of one's 'own State (Cornwall and Nyamu-Musembi, 2004). The quick engagement of international agencies with the RBA during the 90s could have two interpretations: on the one hand, the intention to colonize the human rights discourses, or, on the other, that these declaratory statements were the first steps in the process of a genuine change of paradigm (Cornwall and Nyamu-Musembi, 2004).

Thus, at least normatively, incorporating human rights in policy statements and guides for interventions becomes more frequent in the international aid arena. For example, organizations such as the World Bank, the United Kingdom's Departments for International Development and the Swedish International Development Cooperation, international NGOs (Oxfam, Save the Children, ActionAid, and CARE), and local grassroots NGOs and social movements adopted the RBA (Cornwall and Nyamu-Musembi, 2004). Also, in 1997, the Secretary-General called on all UN system

entities to mainstream human rights into their various activities and programmes within the framework of their respective mandates. Since then, the United Nations has been integrating and articulating human rights and development processes through the Human Rights Based Approach (UN, 2003), which is defined as “the application of the norms and standards set out in international human rights law to development-related policies and practices” (PNUD, 2007, p. 2).

Nevertheless, it is relevant to highlight that the RBA differs from the human rights-based approaches to development. Having a more robust moral claim to legitimacy, the latter use human rights as standards for assessing development interventions. On the other hand, the RBA represent a broader approach (normatively and legally) linked to a more expansive discourse of rights underpinning development (Miller, 2017). Thus, the RBA gathers a set of rights that underpins the development. For Sengupta (2002), the RBA allows the unification of political and social, economic, and cultural rights whereby the process of development leads to “the realization of each human right and all of them together” (p. 846). Therefore, it is possible to argue that while the human rights approaches seek to achieve development through human rights, on the other hand, the RBA seek to satisfy human rights through development because, without development, human rights cannot be realized (Hamm, 2001).

## THE CORE ELEMENTS OF RBA

As previously argued, the RBA responds to the challenge of articulating human rights, which are systemic with a set of principles from which policies are derived, and development practices, which are pragmatic, sometimes generating inconsistencies and discriminatory effects (Archer, 2009). The RBA foundations are intrinsically rooted in understanding development as a human right. Thus, the integration of rights as a development objective is a central goal of the RBA (Hamm, 2001; Miller, 2010; Hickey and Mitlin, 2009). The current Special Rapporteur reinforces this idea on the Right to development, Surya Deva points out that the Right to development must be seen as an end, but it must also be seen as a means, as it contributes to the realization of political, social, cultural and economic dimensions of human rights (2023).

By understanding development as a right, there is a re-definition of the nature of the problem, focusing on the root causes, the objectives and duties of development actors, and the mechanisms whereby the development process is carried out (Uvin, 2007). This re-definition implies a shift from benevolent and technical development interventions to practices based on rights (Gready, 2008), replacing interventions based on needs more strategically and incorporating rights as a goal in development practices (Miller, 2010).

Furthermore, understanding development as a human right also redefined the state-citizen relationship (Hickey and Mitlin, 2009). Indeed, the Right to development re-politicizes participation and focuses on citizens' active engagement in solving problems and mobilizing political activism (Gready, 2008) rather than considering them passive recipients (Hickey and Mitlin, 2009). Therefore, it is key to understand that a central component of the Right to development is to recognize the agency of human beings. In this regard, for the Commission on Human Rights of UN the "right to development as the Right to a process of development is not just an umbrella right or the sum of a set of rights. It is the Right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value" (2002, p. 3)

For Piovesan (2013), three attributes are elemental to realizing the Right to development. First, a social justice component focuses on the most disadvantaged and excluded people in society, providing them with equal opportunities to access essential goods and services. This component of social justice is founded in the declaration on the Right to development, which "call for equality of opportunity, equality of access to resources, equality in the sharing of benefits and fairness of distribution, and equality in the right to participation" (Sengupta, 2013, p. 69). Regarding this attribute, Hamm (2001) points out that in the beginning, the Right to development referred to race, but the current implementation of development projects already considers other groups, such as women, people experiencing poverty, and children. Nevertheless, although women's equal Right to development has been recognized internationally in norms and text, style and structure keep a gap between voice and participation in decision-making (Banded, 2013; Piovesan and Fachin, 2018).

Another critical element is incorporating solidarity

and cooperation at the international level, as the Right to development stems primarily from a collectivist approach that encompasses the local, regional, and international levels. This component has posed important debates and challenges for international organizations, as the Right to development has its genesis in the anti-colonial struggles and disadvantages of the global South vis-à-vis the countries of the North. To advance international cooperation and the realization of the Right to development, power asymmetries between the North and the South must be reduced to facilitate "an environment that is transparent and non-discriminatory and promotes universal access and equity in the distribution of benefits from the development process to the countries" (Sengupta, 2013, p. 82)

The last element concerns political freedoms and democratic rights, where the principles of participation, accountability and transparency play a central role in empowering citizens and strengthening democratic density. In this approach, participation rather than being an instrument to increase the legitimacy of projects is a right, which implies the empowering of people to determine their path of development (Hamm, 2001). Regarding this component, most international agencies' strategies adopt two paths to address political rights. On the one hand, the increment of the capacity of duty bearer (State and non-state actors) and issues of accountability (more legalistic approach); and, on the other hand, empowering citizens to claim their rights and overcome the obstacles (more normative) (Cornwall and Nyamu-Musembi, 2004).

Finally, an extra component that can be considered for the realization of the Right to development is good governance. Hamm (2001) emphasizes the relevance of democratic institutions to guarantee stable and continuous participation in a broad sense based on political rights, in contrast with the narrow technical perspective.

Notwithstanding a range of interpretations about what measures need to be taken to integrate rights into development processes, the following could be considered the most significant:

- (Pressure for) formal rights as laid down within some legal system, stipulation, rules or regulations.
- Implementing such rights through legal campaigns and stronger links with the legal

profession.

- A more complete system of interconnected rights rather than single rights
- Adherence to international rights and a hierarchy of rights on local, national, and international scales.
- A perception of rights as a development goal to be achieved independent of other goals.
- The explicit acknowledgement that engaging with rights requires an overtly political approach (Hickey and Mitlin, 2009, p. 8).

## CHALLENGES OF THE RBA

Certainly, there is a diversity of actors who have adopted the approach, which reveals at least two things: first, the consensus on the potential importance of convergence between human rights and development discourses in changing development practices. Secondly, within the variety of practices and conceptualizations of RBA, the interpretation adopted will depend on the interest of each actor (Harris-Curtis, Marleyn and Bakewell 2005). This second effect is well presented by Gready's (2008) paradox of the expansion of human rights, whereby he argues that as the expansion of human rights as an approach increases, so do the challenges related to counter-appropriations of its meaning. In the same direction, the literature points out that the expansion of the RBA should not be seen as a problem because the idea that "one approach fits all messages" allows for covering multiple ways of incorporating human rights into the practices of development organizations (Miller, 2017).

However, for De Man (2018), the expansion of the RBA framework has negatively affected its credibility among some development practitioners, who consider unfeasible the implementation of the human rights framework due to its moral and legal pitfalls, emerging a tendency of rejection from development NGO's (Miller, 2017). Additionally, the approach's credibility has been challenged because some actors who adopt the RBA omit the Right to development from its vocabulary to avoid earlier struggles and controversies concerning global inequalities and the Right to development (Cornwall and Nyamu-Musembi, 2004).

On the other hand, the Special Rapporteur on the Right to development, in his report has identified six themes that make it difficult for actors to make progress in the enjoyment of the Right to development. These are (i) conceptual confusion about the meaning and scope of development, its value as a right and its legal applicability; (ii) limited capacities in some countries to develop actions to advance this Right; (iii) polarization on issues related to the duties that this Right would imply among states; (iv) lack of participation, with particular emphasis on the most vulnerable groups excluded from the benefits of development; (v) political, social and economic inequalities; (vi) neo-colonial and neo-liberal order that does not recognize the power asymmetries and injustices on which many of the advances of the North are based (Deva, 2023).

In addition to the challenge associated with the applicability of the Right to development, it is also possible to recognize generic criticisms of the human rights framework. The following table classifies the critics according to if they are liked to issue of legitimacy or viability.

**Table 1: The RBA critics.**

Legitimacy (normative)	Viability (operational)
<p>There is no consensus on the best justification for human rights, and there is no reason to expect that such a consensus can be achieved.</p> <p>The Right to development cannot be considered as a natural right (the core idea behind human rights)</p> <p>One of the major criticisms against the human rights framework is that it mainly concentrates on actors' actions in the public sphere. Unfortunately, human rights are often abused, mostly in private daily lives.</p> <p>Some authors argue that states' wide discretion in fulfilling socio-economic rights does not make them rights at all but rather goals that states are legally bound to pursue.</p> <p>Only focusing on achieving technical legal changes to further the protection of human rights, such as more robust legal protection or constitutional reform, can come at the cost of advocating for social justice.</p>	<p>Human rights, as contained in the UDHR, dictate liberal, Western values, and no space is allowed for 'multi-culturalism', 'relativism', or 'contextualism'.</p> <p>Moral idealism fails to take account of realistic limitations and challenges (resources constrain).</p> <p>The human rights agenda is inherently discriminatory in its application, focusing on mass atrocities and grave violations of human rights and not on everyday oppressive structures and practices that affect millions of people.</p> <p>In international politics, realism theory focuses on power and state interests rather than on moral and ethical issues of human rights under the idealist tradition.</p> <p>The language of human rights is viewed as an elitist term that only belongs to a powerful few. Despite the expansive interpretations and guidelines given by human rights monitoring bodies, a limited conception of Rights occurs.</p> <p>New emerging networks of power that transcend national boundaries can pose a significant threat to human rights. This includes an increase in the transfer of power from states to powerful private economic actors.</p> <p>Positivist school argue that development rights are not legally enforceable. At best, it can be a statement of objectives (Justiciability of the second generation of rights)</p>

Source: Own elaboration based on Sengupta (2002) and De Man (2018).

## CONCLUSIONS

According to the discussion throughout the paper, RBA emerged from the interaction of two traditions, human rights and development, which have been characterized as spaces of political contestation. Integrating human rights into the development processes and achieving such rights are crucial because participation and equity are also human rights (Deva, 2023; Sengupta, 2002). Therefore, because the centrality of the approach is the participation of society in decision-making in development processes, especially considering the most vulnerable groups, the rights-based approach must be understood from a political perspective.

Certainly, the context in which the RBA emerged made it easy for its proposal to re-install the State and citizens as key actors in the development process to be well received internationally; however, nowadays, the interpretation and implementation of the RBA can depart from the Right to development (Uvin, 2007). This is explained by a consolidation of neoliberalism not just in the economic sphere but also in the social, cultural, and institutional spheres. This adverse context for the implementation of RBA has also increased because of a lack of credibility linked to the fact that (i) development processes have sometimes been used as mechanisms of oppression and domination; (ii) the omission of the Right to development from its vocabulary to avoid earlier struggles and controversies; (iii) limited capacities

in some countries to develop actions to advance this Right.

Nevertheless, the Right to development has significant pitfalls linked to establishing international enforcement mechanisms for states to respect, protect, implement, and cooperate internationally to fulfil the Right to development. Despite the permanent violation of the Right in the most vulnerable sectors, no international or national mechanism obliges the State to solve this violation of the Right. However, a big step occurred in 2018, when resolution 39/9 of the Human Rights Council decided to “commence the discussion to elaborate a draft legally binding instrument on the right to development” (UN, 2018, p. 5). Unlike in the 1990s, these measures have been taken in a context of increased polarisation between the global North and South countries, as demonstrated by the votes of both “blocs”, at least regarding rights to development.

Regarding enforcement mechanisms, it seems helpful to distinguish between the national and international levels because when applying the approach at a

national level, from a public policy perspective, the mechanisms to compel the State to enforce rights at the national level seem more feasible than in the international arena. Another advantage of using the RBA at the national level is that the content of the Right to development would be the product of a national deliberation, opening spaces for a multicultural approach application. Therefore, RBA at the national level could have an inclusive characteristic. Citizens could be recognized as active subjects of the development process and the approach, using the approach as a means and an end.

Finally, guaranteeing the Right to development as a right provides a political and legal element to empower citizens and generate collective actions to demand changes, thus serving as a first step to addressing social inequalities and re-politicizing the relationship between the State and citizens. Nevertheless, there is a traditional criticism that rights tend to individualize societies and have an “elitist” language because they alienate the most vulnerable sectors.

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