



MONASH University
Castan Centre for Human Rights Law

The Right to Development at Monash University Faculty of Law

Submission to the Office of the High Commissioner for Human Rights

December 2015

Prepared by Adam Fletcher

The Castan Centre for Human Rights Law thanks the Office of the High Commissioner for Human Rights for the opportunity to comment on teaching and study of the right to development (RTD) in the lead-up to the 30th anniversary of its adoption.

The following perspectives on the RTD come from Castan Centre Directors and Associates, who teach undergraduate and postgraduate courses in the Faculty of Law at Monash University. As requested, they are set out according to the questions posed in the attachment to your email to Professor Sarah Joseph (Centre Director) of 27 November 2015.

Teaching at Monash University Faculty of Law

Is the right to development, as elaborated in the 1986 UN Declaration on the Right to Development, a component of any course in your university or research? If yes, please provide details.

Yes, the Faculty of Law has a subject *International Human Rights Law and Development* (postgraduate) which specifically examines a rights-based approach to international development.¹

There is also the subject *Economic, Social and Cultural Rights and International Law* (postgraduate),² which examines (amongst other things) 'the existence of obligations across boundaries regarding Economic, Social and Cultural (ESC) rights' and the 'duties of international development and cooperation of the rich States towards the poorer States.' In the *Human Rights, Business and the Global Economy* (postgraduate) course,³ it is treated as a prologue to issues including economic development, business activity and aid, and the impact they have on human rights.

The subjects *Introduction to Transitional Justice* (undergraduate)⁴ and *Transitional Justice* (postgraduate)⁵ deal with issues that are relevant to this area – for example the ideas that many atrocities stem from issues relating to systemic injustice, and that reparations programs should include mechanisms aimed at securing redistributive justice/economic, social and cultural justice. The teaching does not, however, frame the conversation within the right to development paradigm.

Otherwise, the RTD is mentioned (but not necessarily explored in any depth) in the Faculty's undergraduate human rights law courses. Sometimes it is taught as an approach to human rights than a substantive right in itself. It can also be a launching pad for a discussion of how

¹ Subject outline available at: <http://www.monash.edu.au/pubs/handbooks/units/LAW5380.html>

² Subject outline available at: <http://www.monash.edu.au/pubs/handbooks/units/LAW5364.html>

³ Subject outline available at: <http://www.monash.edu.au/pubs/handbooks/units/LAW5345.html>

⁴ Subject outline available at: <http://www.monash.edu.au/pubs/handbooks/units/LAW4242.html>

⁵ Subject outline available at: <http://monash.edu.au/pubs/2016handbooks/units/LAW5418.html>

new rights evolve and of political trade-offs and negotiations behind the relevant treaties/instruments, as well as enforceability.

Finally, there are courses focussing on human rights and development in the Monash Faculty of Arts,⁶ but we are not in a position to comment on their content.

2030 Agenda for Sustainable Development

How do you see the role of the right to development in implementing the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, and conversely, the role of the new agenda and goals in realizing the right to development?

[SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development]

A recent survey, commissioned by the Asylum Seeker Resource Centre (a prominent Australian NGO), revealed that the Australian community at large is not particularly receptive to the language of human rights obligations.⁷ The Australian Government also displays scepticism in this area;⁸ even more so when it comes to ESC rights.⁹ As such, it may be that the using the language of rights is not the best way to promote implementation of the Sustainable Development Goals (SDGs) in Australia.

In addition, a complex right such as the RTD can be difficult to communicate effectively and persuasively – particularly so in the face of scepticism about ESC rights generally. The concept of redistributive justice can resonate when equated with ‘equal opportunity’ or a ‘fair go,’ which are preferred phrases for Australian politicians when talking about rights issues. However, the breadth of the RTD’s scope (from poverty alleviation to elimination of violations of other rights; from sovereignty to disarmament) tends to suggest to the lay observer that it overlaps with, or even subsumes other rights.

⁶ See Faculty of Arts, *Major in Human Rights*: <http://www.monash.edu.au/pubs/handbooks/aos/human-rights>

⁷ See Asylum Seeker Resource Centre: *Refuge from our Rhetoric: Finding words that work to change the asylum seeker debate*, <http://www.asrc.org.au/refuge-from-our-rhetoric>

<http://www.ruralaustraliansforrefugees.org.au/wp-content/uploads/2015/11/Refuge-From-Our-Rhetoric-Outlined-1.pdf>

⁸ See eg ‘Abbott says Australians ‘sick of being lectured to by UN’ after scathing report on asylum policies, *ABC News Online*, 9 March 2015: <http://www.abc.net.au/news/2015-03-09/tony-abbott-hits-out-united-nations-asylum-report/6289892>

⁹ See eg response to Parliamentary Joint Committee on Human Rights from Minister for Employment in the committee’s 25th Report of the 44th Parliament – available at: http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2015/25_44/25th%20report.pdf?la=en (see pp 201 & 231).

As a moral concept, the RTD (in the sense of the right to sustainable conditions which enable the realisation of other human rights) is compelling and useful. It embodies important ideas for human rights, the links between rights abuses and poverty, the fact that development is more than just economic development, the need for good institutions and governance and the idea that aid is a duty rather than just generosity. However, most of those ideas can be extrapolated from simpler concepts, such as individual ESC or civil and political rights (for example the right to an adequate standard of living or freedom of speech), or other cross-cutting but better established human rights concepts (for example discrimination and participation).

The RTD's strongest suit is perhaps its articulation of a duty to provide foreign aid. Framing the SDGs as components of a pre-existing legal obligation, rather than an optional performance measure for States to target, could bolster aid advocacy. However, it is arguably more manageable to focus on extraterritorial obligations in relation to individual civil and political and ESC rights. For example, rather than speak of poverty alleviation (at least to a domestic audience), the Australian Government prefers to announce targeted foreign aid programs such as its current one focussing on promoting gender equality in the pacific region.¹⁰

Overall, as human rights lawyers, we see the RTD as an 'umbrella' right which States will tend to either dismiss as insufficiently concrete, or (more dangerously) prioritise as an excuse to do less (or nothing) for more basic 'building block' human rights.

Suggestions for Global Capacity-Building

We welcome your thoughts if any, on how the right to development can be better integrated in university teaching of human rights, development and related courses as well as in academic research.

Having a specific course on Development and Human Rights, as the Monash Faculty of Law does, creates a forum for discussion of the RTD in the context of human rights law. However, the course also acknowledges the RTD's limitations as outlined above. Integrating developing nations into a global economy which is stacked both against them (particularly against vulnerable people) and against the environment clearly does not represent the path to long-term sustainability.

In our view, when integrating the RTD into law courses, it is appropriate to ensure that alternative perspectives from other courses/fields are considered to place it in a practical and meaningful context.

¹⁰ See DFAT, *Overview of Australia's Pacific Regional aid program*:
<http://dfat.gov.au/geo/pacific/development-assistance/Pages/development-assistance-in-the-pacific.aspx>

As with many subjects, there is more scope for detailed discussion at the postgraduate level than the undergraduate, where priority is usually given to basic civil and political and ESC rights. The RTD is just one of many rights which do not receive detailed coverage at this level.

As far as research goes, Faculty members and students continue to publish relevant material, including for example, in the text *The International Law of Human Rights*¹¹ and in the *Netherlands Quarterly of Human Rights*.¹²

¹¹ OUP 2011; 2nd Ed current under revision.

¹² Villaroman, N, 'Rescuing a troubled concept: An alternative view of the right to development' (2011) 29(1) *Netherlands Quarterly of Human Rights* 13-53 (attached).