

RIGHT TO DEVELOPMENT, DOES IT REALLY SERVE AFRICA FOR ITS DEVELOPMENT?

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Abstract:

The declaration on right to development voted by UN in 1986 had brought a lot of protestation because of its economic, political and legal reorder of the international community. In fact, among international law scholars, the idea behind right to development are very ambiguous and identify its proper use for developing countries will take long to reach a common consensus from western countries. So, for an effective implementation and enforceable respond from Western industrialized countries regarding the way they have to participate into Africa countries development (in the case of this article, France) has not only been debated among industrialized countries, but also with the concerned of the matter. The result is that they have to create and enforce measures that oblige the international community to seriously take right to development as a whole component of Human Rights as a tool of development. Hence, the legal and political significance of right to development lays on the implementation of right to development by french speaking countries on the domestic level before reach the international one.

Key words: Right to development, Right base approach to development, Human Right, western community, International politics, Africa governments.

Introduction

It is ironic how ideologies can be a handicap when the essence of it is to give incentive for a real manifestation and application of that idea. After a first and second generation of Human Rights, it looks like developing countries particularly African ones needed a special right to be attached to the pyramid of Human Rights. In fact, from the UN charter we can see that right to development has been mention and has taken live since 1960 through UNESCO or ILO (International Labor Organization). But its effectiveness was a mere charm, considering that social, economic and cultural development of developing countries have not known none improvement since the 60's. If in 1972, Judge Kaba M'Baye¹, first President of the Senegalese Supreme Court, considered the need of an explicit definition in order to implement the role of the international law scholars in the process of development in Africa's countries; it is because of the lack of consideration for the sake of the African countries by the west developed countries. According to him, the Right to Development as a Right of Man has to be understood as: "development is the right of all men, each man has the right to live better". He proposed a two-fold concept of development: a law of development as an objective right and the right to development as a human right and a technic of development. From this definition, right to development takes two propensities; legally, every country is subjected to allow its citizens to reach a certain level of development (economically, culturally and socially). More explicit, states are legally bound and own their citizens development through good life and comfort, peace and social living. On this point, anyone can ask its government some answers regarding the lack of development of its country. It's then the responsibility of every government to purchase the well-being of their citizen. The second propensity of M'Baye's definition is political. From a realist perspective, right to development is just a game of word in order to pretend satisfying developing countries on their claim of solidarity for their own development. Before 1993, Most of USA votes on the subject in all of the United Nations conventions, they voted against, and some (predominantly Western) states abstained². It is only during the World Conference

¹ M'Baye, "Le Droit du Developpement comme un Droit de l'Homme," *Revue des droits de l'Homme* 5, 503-534 (1972)

²See e.g. UN Doc. Commission on Human Rights Resolution 4 (XXXV) of 2 March 1979: Belgium, Federal Republic of Germany, France, Israel, Luxembourg, Malawi and United Kingdom, abstained; UN Doc. G.A. Resolution 41/128 of 4 December 1986: Denmark, Finland, Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom abstained. Only

on human Rights in Vienna (1993)³, where the right to development was for the first time unanimously recognized as a Human Rights; that particular attention has been dedicated to this right in fact, "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 fundamental Human Rights". From this point, it becomes more than an accommodation in respect to the UN charter. However, the international political consensus has abandoned the idea; only a pseudo political recognition instead of a legal was more adequate because they find no legal value to it. It showed the worries of power industrial countries, who doesn't want to hold the responsibility duty-bearers and those from the south right-holders; meaning that they don't want to see themselves obliged to give development aid⁴. Thus, this article stands on two theoretical frameworks for the need of the discussion. From a realism perspective, more political; right to development is confronted to efficiency due to the game of super power, industrialized countries that cannot low down their guard to allow developing countries to take over their place or lose their hegemony power. In this case, the north needs the south to be at the place there are now in order to control international politics and the south to continue looking at the western industrialized countries as the solution of all the poverty, conflict and sickness that retaining most developing countries to reach their potential of development. Consequence of this situation brings us to the legality aspect of the right to development. In fact, the legal framework for the right to development has a moral commitment as Human Rights because it is attached to Human Rights, and the majority of them are universal, at the same time, the majority of countries have ratified major Human Rights treaties, and some core universally valid because of customary Law⁵. From this point, the perspective of the obligation of wealthy countries to assist poor countries become more than a moral commitment but a right and a duty to do help and contribute for the development of poor countries. In the light of these two theories the question here is to know how useful is the right to development for Africa French speaking countries? What does a right to development mean, what should it look like and how sustainable it has to be in order to help those African French speaking countries to implement and strengthen their right against their oppressors?

This article discusses the meaning and the possible implementation of the Right to development for some Africa countries particularly the speaking French's one. Hence, the article in the first part will discuss the political aspect and the total refusal of the north to accept their role in the development of those countries and in the second part the legal bind between that right and the north and between those developing countries and their populations.

Right to development, political denied by western countries, the France case

Realism perspective argues that the international arena is anarchy and every states fight for the well-being of their population. From that perspective, it is understandable that USA doesn't want to be responsible for the irresponsibility of Africa countries which are not engaging in the global world with all the necessary tools and face the reality of their weaknesses. After the independence of most French speaking countries in Africa, France has made sure to keep its hegemony on them by signing a couple of contracts regarding the way they have to sell their raw material, conduct political and economic affairs. For instance, Twenty years after decolonization France is still importing significant raw materials, and its energy dependence on Africa had risen from 30% in 1950 to 80% between 1988-89, including 100% uranium imports from Gabon and Niger during 2000-2012, which is the key nuclear powered for France, and 70% of oil company Elf-Aquitaine's world-wide extractions is from African deposits⁶. Africa accounted for less than 5% of France's foreign trade at the end of the last century, while the trade balance between them was as a very less level compare to France and its EU partners, which can have only increased with Economic and Monetary Union⁷. France's economic ties in Africa have run as deep as political and security ones, in January 1994 with the 100% devaluation of the CFA (franc des Colonies françaises d'Afrique; a currency region which had been settled by France to the French franc for decades), in order to better control the flow of exchange of economic

between 1996 and 2000, Commission on Human Rights Resolutions on the right to development has been adopted without a vote see UN Doc. E/CN.4/1996/15 of 11 April 1996.

³ UN Doc. A/CONF. 157/23, Vienna Declaration and Program of Action, World Conference on Human Rights of 12 July 1993, § 10

⁴ See World Conference on Human Rights, Vienna, 14-25 June 1993, Vienna Declaration and Program of Action, 12 July 1993

⁵ See Universal Declaration of Human Rights, supra note 2

⁶ Martin p.9-10,1995

⁷ Marchal p.360, 1998

operations of Africa former colonies, France investment in Africa has grown considerably. It is in the same way some contract between some countries such as Tunisia, Algeria or Gabon still have not been updated although the expiration of contract and the need of re-adapting those contracts to current reality of the international economic sphere. France is still buying the salt at the same price they used to since the decolonization in Tunisia, and in Gabon when the new president recently elected Ali Bongo tempted to revise the term of the economic and political relation with France, they tried to evict him by replacing him with a more suitable ally to serve the interest of France; Jean Ping. It is clear from these facts that it is in no advantage for France to recognize the right to development to Africa French speaking even admits their claim as any kind of right or as an obligation for them to help Africa to develop. When Sékou Touré the first President of Guinea decided in 1958 to get out of French colonial empire, and opted for the country independence, the French colonial government in Paris got so mad, and in a counter reaction, the French administration in Guinea destroyed everything in the country which represented what they called the benefits from French colonization. The purpose of this outrageous act was to send a clear message to all other colonies that the consequences for rejecting France would be very high. Sylvanus Olympio, the first president of the Republic of Togo, a tiny country in West Africa, found a middle ground solution with the French. He didn't want his country to continue to be a french dominion, therefore he refused to sign the colonization continuation pact that De Gaulle proposed, but agree to pay an annual debt to France for the so called benefits Togo got from french colonization. On June 30, 1962, Modiba Keita, the first president of the Republic of Mali, decided to withdraw from the French colonial currency FCFA which was imposed on 12 newly independent African countries. For the Malian president, who was leaning more to a socialist economy, the decolonization pact with France was a trap, a burden for the country development. On November 19, 1968, like, Olympio on January 13, 1963, Keita will be also the victim of a coup carried out by another ex-French Foreign legionnaire, the Lieutenant Moussa Traoré in Mali and Etienne Gnassingbe in Togo⁸. Regarding these examples of the hegemony of France, it is quite obvious that the former Colon gains nothing to support the development of its old colonies but actively keeping a strong hold on his colonies whatever the cost, no matter what. Same in 2002 in Cote d'Ivoire with Gbagbo actually accused of crime against humanity for not giving much preferences to France in economic or military state contract rather than being pro Chinese, they orchestrated an internal insurrection in the country in order to remove him from the power, the result of the insurrection evolved into internal war among the new President Alassan Watara partisans who is a pro France and him (Gbagbo's partisan). Also, in Mali 2012, Amadou Toumani Touré the former President of Mali who was not serving the interests of France has been overthrown to be replaced by someone more manageable. In fact, Areva a french company in the exportation of Uranium and the number one in the sector; exploits most of the uranium resources between the frontier of Mali and Niger. Because of the poverty and the sad situation of the population (touaregs in majority) living in that region, a group of rebel (former military militia during the Khadafy revolution in 2012, and supported by ATT) of that region decided to take responsibility to redress the situation. In response to their request, the government turned over to Areva to ask subvention for water irrigation, electricity, better situation in the region, but Areva instead denied its responsibility and refused to bring any support or contribute for the development of the region. Furious, the people of the region (the touaregs) revolted and wanted to declare secession, France couldn't allow itself to lose its interest in the region so they created a situation through push to establish a military control in the country in order to continue their activities⁹.

So many facts illustrate the role played by France to maintain Africa in poverty and underdevelopment. Right to development will remain no more than an idea either than an asset when the governing of these countries contribute to better serve France in order to squander the resources of the country to their advantage. Just as France has supported new leaders to safeguard its interests, it has also forced itself to preserve the centralized and socialized free-market-suspicious model of government institutions in its former colonies; with much of its development funding going to central governments instead of sub-state or non-state actors, personal ties and political networks had been more prioritized; as mention in (Bruce Crumley, Time Magazine/ Paris Friday, July 09, 2010), Jean-Christophe Rufin, recently ambassador to Senegal, believes that "the old shadowy, compromising, the cynical habits of trading political and business favors has just gotten more manipulative and opaque in Africa countries since Sarkozy was president". Such prioritizing of central governments and indeed the wretched levels of education, economic dynamism and political maturity initially bequeathed by colonialism has arguably perpetuated social and democratic

⁸ 14 African Countries Forced by France to Pay Colonial Tax For the Benefits of Slavery and Colonization

By: Mawuna Remarque KOUTONIN, January, 2014

⁹ Seneweb.com, Iraq, Afghanistan, Libye, Mali Toujours la même Guerre.

underdevelopment in many former colonies and encouraged reliance on France, hence political, security and economic developments relationship has been stronger ever than the colonial time. Africa is rich and the wealthier continent in the entire planet; however, we are considered as the most miserable in the world trade market. Why then? The answer is that people at the head of our countries don't serve the population interest considering that Right to development gives the opportunity to each state to do good to their population through aids, cooperation and investment. If the Internationale financial arena is characterized by the liberalization of trade goods and services; no regulation and privatization; the trade rules established the framework of the World Trade Organization (WTO) Agreement; in theory unrestricted capital flows; the macroeconomic policies of international financial institutions; and the extraordinary development of information and communication technology offer a wide possibility to conduct and improve development activities; in other words Globalization; the open door which allows each state to act as possible as efficiently to increase the living standard of each people in a nation. It is the place to renegotiate contract for better advantage and allow new investors to explore new areas. If some Africa states still cannot operate considerably in the international sphere, it's because of their leaders. Corruption and mal governance is the key element in the power of the north onto the south countries. It is clear that we cannot completely extinguish corruption even though in some situation it serves to boost economy and development, but we can limit its power because western industrialized countries use it as leverage to control our leaders, for instance, in the case of France, Africa countries detain the power to control their faith by cutting the long standing fake relationship with the former colon by starting using the aid fund to do something creative and constructive for their country; for example, Khadafy challenged America, France and Italy for many years until they find an ally in Libya corrupting him to overthrow Khadafy because the dictatorship system were obstructing those powerful states to interfere in the domestic affair of Libya and control their petrol resources, also standing on the argument that the dictatorship system was not adequate to allow Libya to reach its potential in term of economic development. The idea here stands on democracy values in order to bring the Libyan population to support the revolution. But in China, we see dozen of dozen of American and french companies, and they don't dare criticize the regime. Right to development is more a state duty than an international community one. Another thing, consensus among our governing is a necessity for the peace and development of Africa nations. Yet, in Gabon, recently, when there was an insurrection regarding the reelection of Ali Bongo, under the demand of France, and its own interest, (Sassou, Congo Brazzaville president, ruling through its grand's son in Gabon and its son in Congo when he retires¹⁰) SASSOU NGUESSO, supported Jean Ping to overthrow Ali because its presence at the head of Gabon was not serving its personal interest and continue to receive the support of France in order to hold the power in its own country until its last breath. As aforementioned, good governance has been regarded as one of the key elements to lighten the idea that right to development can be seen as a full right, responsibility and demand from; one side by the State to population of a state and another side by the international community to the developing countries; however, these element are more closed to state responsibility than international community one. The point here is not democracy, but a duty that a state has to supplement and fulfill its obligations to improve the living standard of its subject by providing education, food, health, favorable economic opportunities; simply say provides general public goods. One thing is clear in the view of the international community, rights in the fields of education, health, social security, work, housing and other domains of economic, social and cultural rights really affect the way development is promoted both in national policy and international cooperation, hence, it has to be controlled and distributed according to the good will of those who rules the world. In this regard, even though right to development is incorporated in every stage of international cooperation or national agenda, it cannot be regarded as such because it runs against the interests of industrialized countries.

Right to Development, Legal aspect: discussion on right base approach to development and Human Right approach to development

- Right base approach to development

From an interpretation of M'Baye's definition of Right to Development, "Development" is a particular process which searches for the realization of the well-being and expansion of freedom as a Human right; hence, development is a full right incorporated into the principles of Human Rights and seen as a particular right that each person, state, or country can hold onto any other country, person, state which prevent one to fulfill or enjoy its rights. To emphasize, a human rights approach to development recognizes in the first the legal obligation of members of human rights treaties to development cooperation and development efforts

¹⁰ Le Club de Media part, <https://blogs.mediapart.fr/jecmaus/blog/040916/afrique-centralecongo-brazzagabon-pourquoi-sassou-nguesso-soutient-il-jean-ping>, MER. 26 AVR. 2017 ÉDITION DE LA MI-JOURNÉE

and so goes beyond human rights as the content of development policy. Regarding the third world, Right to Development is more than a principle or prescription on universal recognition of the duty of the international community to participate in the development of the developing countries. It's a right because the majority of states which have signed the Vienna Convention on Human Rights in 1993¹¹, have agreed to be linked to any chapter or articles of the convention, and Right to development find a place in the article 10 of the convention. Moreover, it has been accepted as such by the different nations which have ratified it, adopting it even opening for signature during international convention or treaty, creating legal binding obligations on those states which have ratified it, and or by expressing the consensus of the international community on the meaning of a particular human rights through a declaration or other resolution. In fact, from a basic understanding of right, the claim of African countries, in this case, Africa french speaking countries, it is justified to say that their claim against France to support or contribute for the development of their countries is rightful and legal, moreover, in a human rights standard, to have a right means to have a claim to something of value on other people, institutions, a state, or the international community, who in turn have the obligation of providing or helping to provide that something of value but as a claim it needs to be argued and stand on legal facts; any attempt to justify the use of rights have to be preceded by specifying the nature of the valuable elements that are considered as entitlements, and then precise the party who have the corresponding duties to bring about the fulfillment of those rights. In this case the argument developed by right base approach focuses on the duty of the state not on the one of the international community¹². On this point, the fact that, poor countries are claiming a right to be developed, a more rightful international redistribution of resources against developed countries can be considered as an irresponsibility of what should be their duty instead of the one of western countries (in our case FRANCE); also right to development as a human rights should be focused on the states responsibility. Hence, from a right base approach perspective which stands more on legal certainties, it exposes two important elements for the legality of right to development: one about claims and one about processes, simple said one about ends and one about means¹³. In this view, it tries to determine each party responsibility in order to determine their implication. In our case, France against Africa french speaking countries, one side is African as claimant and the other side France as the defendant, but this scenario can only be theoretical. In fact, African, they have not been able to identify the problem or have not put necessary measures to define the real problem preventing them to reach a certain level of development and continue to serve the interests of France instead of the of the one of their population. To emphasize, duties, and mechanisms that can promote respect and adjudicate the violation of rights and brings out a root cause of their late development by focusing primarily on matters of state policy lack in term of argumentation to sustain their claim. Moreover the definition of right to development (The right to development is an inalienable human rights 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 realized¹⁴), lack of clarity hence, possesses no binding obligations. However, any law becomes legally binding when political consensus recognizes and practices it. As all western countries, France cannot support an international law which does not serve its interests. Therefore, justifying its role in the lack of development or hold France as main responsible of that under-development will defy the international political order characterizing the hegemony of power country on poor country. Yet, for any right to be empowered and stand as right it needs to be implemented by those which recognize it as such. The flaws of right base approach to development are the inconsistency of the basic responsibility of France in Africa french speaking country under-development, the absence of any violation from France of basic Human rights if not tangible facts linking them to their involvement in that matter; also, the capitalism system that govern the international economic community gives more power to the stronger regarding the anarchic environment that international relation arena has created; more sustainable, these Africa countries have accepted to be subjected to the unfair and unbalance economic cooperation that link them to the former colon by not taking advantage of the globalization, the definition of their partnership has been defined under a common grant and there is a need for renegotiation now under new banner with the globalization.¹⁵ Globalization has brought new figures and more opportunities to counter the old system put in place by some developed countries. For instance, China has found its way into that system; moreover

¹¹ Vienna Declaration and Program of Action, U.N. GAOR, World Conference on Human Right, U.N. Doc A/CONF.157/24 (1993), reprinted in 32 I.L.M (1661), 1993

¹² Amartya Sen, Development as Freedom 227-31, 1999

¹³ Sengupta 2000a: 568

¹⁴ (www.unhch.ch/html/menu3/b/74.htm)

¹⁵ Adam sneyd, Right to Development, Globalization and Autonomy online compendium, 23rd August,2008

countries like Ethiopia are improving their development standard. One thing that African french speaking have not understood is that human rights in a natural sense are ambiguous, rights such as right to life, liberty or free speech, even those laws forbidding from killing, imprisoning, or silencing an individual who has a claim to such freedoms are more tangible one and comprehensive one that a state is expected to protect. Unfortunately for the former french colonies, nothing seem to move on, the objective of right to development is more closed to a reshaping of the international economic order in their view; it supposed to be a key to make them understand that it's a tool for more concentration on what is relevant to fight back against France and become effectively sovereign. Also, the claim of these Africa countries cannot be sustainable if they don't start to recognize, incorporate and implement human rights as a core element of their development. Working on satisfying the need of their population; reduce the influence of the former colon in the political affairs of their countries, meaning act as a sovereign country. The claim of these Africa countries has to look more like their property protection, not a need but a right in its all sense; develop mechanism of accountability in order to prove their claim against France in its involvement in the underdevelopment of those countries. In other words, if claims exist, methods for holding to account those who violate claims must exist as well and serve as leverage. If not, the claims lose meaning, and only justiciable legal remedies are suitable remedies. Many forms of social counter-power or administrative mechanisms, open discussion, and shared ideological constraints can also be used as mechanisms of accountability. And as a proof, Africa french speaking countries could stand on the France-Afrique cooperation to support their claim and give more political value to it, otherwise, although they seem to stand on a clear and legal basis, the nature of the claims and the duties created by right to development claims will only be political and constantly shifting matter; for what is legally feasible is never fixed, but a concern of political struggle¹⁶. Here comes the relation between Human right and development.

- *Human Right approach to development*

The human rights approach to development argues that any process of change that is being promoted through development assistance have to be participatory, accountable, and transparent, with equity in decision-making and sharing of the fruits or outcomes of the process¹⁷, simple said, the idea is to respect human dignity and individual autonomy, to help the poorest including minorities and other vulnerable groups, often discriminated; human rights approach to development searches to create opportunities for every actors in development process, opportunities that are not dependent on the desire of a benevolent outsider, but directed through institutions or state and procedures well established and legal. On this basis, the international community is entitled to contribute and participate into the development process of under-develop countries. On one side let's see how the human rights approach to development is sustainable. The mainstream international human rights law concept can be summarized in three statements: Firstly, human rights are individual rights, the active subject, the right holder is the individual, and it is only individuals who have human rights. Secondly, human rights are claimed against the state, they contain claims against the government. Thirdly, all human rights are indivisible and interdependent. There is no room for conceptual prioritization of certain rights or a set of rights. Hence, the international community has to make the right to development a valid, concrete obligation, and the procedures for carrying out the obligations have to be worked out so that the rights can be fulfilled through appropriate social arrangement. On the other side, as consensually recognized, Right to development bears all the necessary legality to be enforced and claims to be heard in front of a court. A country can be developed by many different processes. In fact, development can occur through gross domestic product (GDP) development with the richer groups, which have greater access to financial and human capital, becoming increasingly prosperous, or the poorer sections lagging behind or deprived; industrialization, without the increased income spreading over all the sectors, with the small-scale and informal sectors are getting increasingly marginalized. We also have the impressive growth of the export industries with increased access to global markets, but without integrating the economic country side into the process of growth and not breaking the structure of a dual economy. All these may be regarded as development in the conventional sense. However, they will not be regarded as a process of development, as objects of claim as human rights, if these are not accompanied by a process where equal opportunities were provided. Economic growth, attended by increased inequalities or disparities and rising concentrations of wealth and economic power, and without any improvement in indicators of social development, education, health, gender balance and environmental protection respecting the human rights standards and, what is most important, if such growth is associated with any violation of civil and political rights, it cannot fulfill the human right to development. In this regard, France-Afrique cooperation has violated many African rights

¹⁶ Collin Leys, *The Rise and Fall of development Theory*, 1995

¹⁷ Frankovits and Earle 2000; Mukasa and Butegwa 2001; DFID 2000

because of the inconsistency and non-respect of Human Rights, for instance, in Benin-France cooperation plan with the hospital center of the Orlean's region, they were supposed to supply Benin with new medical materiel, instead, the equipment offered by their partners (France) was used equipment with an average age between 10 and 15 years said the Minister of Health Alassane Seïdou to the Beninese parliamentarians who had questioned the government on the subject¹⁸. Fortunately they refused the materiel. Here is an evidence of the bad faith and the strong will of France to keep its former colonies underdevelopment; hence the improvement of the well-being of an entire population has been violated. Human right approach to development clarifies the need and obligation that the international community has to carry out and respect the right of those, e.i poor countries and developing countries in order to create a balance in the society, unfortunately, the world organization is anarchy, and each states if not governments are more enthusiastic to keep those who cannot protect themselves or engage in globalization under their banner so as to rule the world; this is international politics and right to development cannot really be implemented in an environment like that. Although Human rights settled universal standards of achievement and norms of behavior for all states, civil societies, and the international community even have imposed inviolable obligations on all of them to make those rights achievable, the reality in practice is quite different. Recognizing the right to development as a human right raised the status of that right to one with universal applicability and inviolability, it has also specified a norm of action for the people, the institution or the state and international community on which the claim for that right is made, for that, the implementation of that right according to the international community mostly industrialized country is at first state priority before being at any international level. France cannot be regarded as a duty-bearer because that responsibility behoove to Africa states to take measure to develop their countries, and even though, human rights approach to right to development has to be constructed on the basis of justice because justice is seen as human dignity and social contract in which all members of civil society are supposed to participate, France cannot be held as a unique responsible for the late development of its former colonies. Moreover, the Declaration on the Right to Development is founded on the notion that the right to development implies a claim for a social order based on equity¹⁹, but does not imply that economic trade or cooperation development is subject to equal distribution of resources or equal rights to participate in development process. As aforementioned, Economic international arena is governed by capitalism idea so it makes the community an anarchy system where states fight for their interest. Right to development extols more socialism idea; in fact, human right approach to development focuses even more on socialism idea, it's true that we need more respect to human race by giving him the feeling that its life worth something and those who has the power to protect the weaker has the duty to do so, but in practice it is a utopia. There is nothing which can be done either by an individual or a collectivity without seeking profound interest first and pretend after to care for others. In this point, right to development which shares the idea that industrialized country should put in consideration the well-being of under or developing country into their cooperation plan forgot to integrate in its theory a fundamental point which is: what does industrialize countries gain by supporting an idea which diminish their influence on those which contributing to make them more richer. On this point, right to development, if until now is finding trouble to be applied it is because of its controversial ideas; process related to design the social arrangement, public action, and individual duties and assigning responsibilities to the different agents (duty bearer and right bearer). To emphasize, Article 2, paragraph 2 of the declaration of right to development: stipulates that all human beings, individually and collectively have a responsibility for securing the right to development, "as well as their duties to the community" with full respect for human rights and fundamental freedoms, and article 3: States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development. And 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"²⁰. These two articles imply interpretation even though articles 9 and 10 precise the role of each actors in the process of implementation of right to development. Articles 6 and article 7 emphasize the role of international community in the process of development of developing countries, but here again, who or what duty bears are really supposed to do, or to fulfill and what is the effective role of the plaintiff? Again article 4 is emphasized formally by putting an accent on the necessity to relate article 4 to article 1 which is the preamble in order to well interpret it; and article 55 and 56 states the role the international community has to play in the development process of

¹⁸ <http://www.seneleaks.com/benin-gouvernement-refuse-don-dequipements-medicaux-de-france/>

¹⁹ See Declaration on the Right to Development, *supra* note 2

²⁰ The Declaration on the Right to Development, adopted 4 Dec. 1986, G.A. Res. 41/128 U.N. GAOR, 41 st Sess., at 3, Annex, U.N. Doc. A/Res/41/128 Annex (1987), here in after Declaration on the Right to Development

developing countries, still, it doesn't enforce them on the procedure, which mean there are liberated on how to participate into international cooperation. For that reason, the declaration emphasized that State on national as well as international level they have to take measures in order to implement right to development, and it is the only way for that right to be regarded as a right.

How can you claim something when it is not sustainable? In fact, the respect you give to your case gives influence to your argumentation so that the duty bearer is subject to consider it. In the claim of Africa french speaking countries; they have been for several years trying to diminish the influence of France in their country, but anytime a new president is elected the first country they choose to plead allegiance to, is France. The colonialism influence still remains and the chains linking them seem to be tightened every time African president are elected. Hence, the idea that they expect France to give them more opportunities in cooperation agreement should be their initiative, they have the power to impose themselves since France depends on Africa in every way (natural resources and intellectual talents), But as we know politic is a delicate matter which everybody cannot really understand if not trying to give plausible explanation to situation out of our understanding. The obligations related to the right to development are more in the nature of imperfect obligations, because the number of agents, individuals, states and the international community having different kinds of obligations, with no specific agent responsible for its violation. Moreover, correspondence cannot be established or that the obligation of the different agents or duty holders cannot be specified; for that reason obligations has to be formulated in a manner so that their accountability takes the form of enforceable remedies. Thus, for the right to development, as in the case of the economic, social, and cultural rights, the rights-duty correspondences, or the obligations of the different parties, can be regarded as accountability therefore can be established. The Maastricht Guidelines on Economic, Social, and Cultural Rights addresses the obligations to respect, protect and fulfill, and lay down enforceable remedies²¹. Four obligations, has been enumerated by Stephen Marks: two perfect and two imperfect. In the first category he places the obligations to respect meaning, prevent a state agent from denying a right and punish the agent for acts and omissions and protect meaning prevent third parties from violating rights. In this regard, the right to development involves the realization of all the civil, political, economic, social, and cultural rights, and therefore all the characteristics of the state obligations need to be applied equally to its implementation. But, in Africa, good governance is a problem in itself. Implementing right to development will request a lot off changes in the political system of those french speaking countries; because it will request to those governments to follow Human rights directives strictly, and also because the politicians of these countries are not ready to abandon their own interest for the well-being of their population, right to development becomes a utopia, a right without effect.

However, because it belongs more to a group or collective right, right to development can be enforced to those governments, in fact, It is often submitted that the right to development is not only a right of individuals, but also of groups or peoples, and of states. The reason for this collective component of the right to development is to be sought in the transfer of interstate issues like a new international economic order into the field of human rights. And also because Human rights is meant to protect against the state, or to make claims against the state, it can extend its authority upon right to development matters in order to force each party (duty bearer and right bearer) to participate into the process of development of Africa countries. From this point, African french speaking governments will have no choice to really implement human right in their countries and as a consequence it will propel the country development. To emphasize, development as a goal is the full realization of all human right meaning the right to life, to adequate food, to clothing, to housing and to medical care, and a minimum level of personal security, freedom of thought, conscience and religion. Moreover, development passes by the right to education, the right to participation in cultural and scientific life, the freedom of expression and the right of association and assembly. Each of these countries need to understand the meaning of development (depends on the outcome of the participatory decision making process), it cannot be implemented or enforce without a clear structure, for instance in China we always say there is no human rights, but what is human rights?, since 1987 to 2017 the development of this country has known a fantastic evolution and respect of citizen rights has been introduced in the political and economic system in way that the population through a full education system, food sufficiency, property rights, personal security etc. founds a way in a communist country. Compare to Africa countries in our case french speaking one, what is a human right, when it doesn't serve a population who doesn't know anything about it and just trying to figure out how to eat every each day, fear their security because the government is not doing its work, cannot really possess a valuable property because the state legal policies are ambiguous. So, those

²¹ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 Hum. Rts. Q. 691 (1998) here in after Maastricht Guidelines.

Africa french speaking countries need to solve these problems in order to integrate right to development in an agenda which values Human Being. To emphasize, two dimensions of right to development need to be mention, its collective and individual dimensions place the government of a developing country in the position of being both a creditor and a debtor. A developing country becomes a creditor because it receives development assistance. It becomes a debtor because it owes a duty to its people to allow and encourage the full development of individuals²². In this way, right to development should just be regarded on the direction of developing countries. It is the only way it can be really implemented and be enforced to industrialized countries as a political and legal right. For instance, if in 2006 Ivory Coast toxic waste dump law suit erupted after number of Ivorian got sick, it is because the government which is supposed to established measure in order to control what get in and get out from the country failed to do so. For west industrialized countries to stop undermining our rights, the initiative should start from Africa countries, hence, Africa speaking french countries should stop blaming France and counter attack by imposing themselves on forum such as France-Afrique cooperation, or individual states cooperation on matter such as mineral resources, military intervention (priority should be given to ECOWAS), economic co-operations cultural cooperation (Demanding the return to Africa of our cultural treasures), etc.

All of these presentations weave a unified challenge to identify a legal balance of what is a legitimate exercise of right to development by the state and what is the pretextual overbearance of international community particularly France who is most concerned with implementation of the right in its foreign policies out of full participation in former colonies development process. How can we reconcile the claim of former french colonies with the capitalist economic order and which actors are entitled, free from governmental obstruction and intrusion to effectively enforce the right to all parties?

Conclusion

This article has tried to legally and politically define right to development in such way to make it both politically and legally acceptable and relevant for international community and mostly for Africa countries in our case french speaking ones. In this article, the accent was put on the necessity that french speaking countries in Africa has to understand that, right to the development is a tool to strengthen their domestic economic and political policies in the way that it can influence international community to implement right to development in their cooperation with Africa countries. In our case study, France as duty bearer and former colonies as right bearer, all along the development of the argumentation of this essay, a number of cases have been provided in the way to show that the relationship between these two international entities is very ambiguous; and because of that ambiguity, Right to development finds hard time to be considered efficiently as a mechanism of development. In fact, the initiative of M'Baye to attract the attention of western industrialized countries to pay more attention into the development process of Africa countries was not well elaborated, right to development is not a new right or a new idea to be developed in order to be enforceable politically and legally, it has been mentioned in the Human Right declaration in many ways. Right to development is a reminder to those former colonies of France of their responsibility toward their citizen of the obligation that they have to provide a better life to their population. As aforementioned, right to development shouldn't be analyzed or regarded as a democracy necessity for its implementation, it is a matter of good governance and good governance can occur in many ways either the country is democratic or not. The numbers of laws elaborated by the declaration on right to development in its articles have emphasized the role of each actor in the development process even though those laws doesn't reflect the need of Africa countries. Yet, right to development in human right charter is a component of development process and for the implementation of development, right to development is a whole in the process of cooperation between Africa countries and western industrialized countries. To the extent that Africa countries had expectations on the Declaration, it received barely success, it is explained by the fact that the Declaration anticipated an economic theory that had not been intellectually, politically and legally developed to make it work in practical policy arenas. However, the success of that right entirely depends on how Africa countries mostly french speaking ones are willing to develop their countries, the hold of the colon on them has to be cut, new regulations in term of cooperation need to be taken, putting the interest of the state at first in order to serve the citizens. The state's exercises of power need to be recreated, a need for a strong legal infrastructure that would help to foster the ideas of responsibility, transparency, and change needs to be implemented. Although it is not clear what standards govern decision-making inside major economic and legal process when development mechanisms cannot be really determined, power and authority, transparency and openness has

²² R. Rich , The Right to Development as an Emerging Human Right, I.e., 326 ambiguous

to be invested solely in government and non-governing entities, in order to solve the problems of how development need to be regulated, controlled, appraised, and changed in the interest of the people.

References

- Ph. ALSTON, '*the Right to Development at the International Level*', in: R.-J. Dupuy ed, New York, 2000.
- Russel Lawrence BARSH, '*the Right to Development as a Human Right: Results of the Global Consultation*' Source: Human Rights Quarterly, Published by: The Johns Hopkins University Press, Vol. 13, No. 3 (Aug., 1991), pp. 322-338.
- John I. GOOGLAD, '*A realistic perspective on Human Rights in the school curriculum*', Publish in Raymond English, May 1986.
- M. Kenig-Witkowska, '*the UN Declaration on the Right to Development in the Light of its Preparatory Work: The Concept of Human Rights in Africa*', I.e., 282-283; I. Shivji, London 1989, 82.
- Stephen P. MARKS, '*Human Rights in Development: Claims and Controversies*', Source: The Bangladesh Development Studies, Published by: Bangladesh Institute of Development Studies, The Human Rights Approach to Development (March-June 2010, Vol. 33, No. 1/2, 0), pp. 1-23.
- MARKS and DUFFIELD, '*Global Governance and the New Wars: The Merging of Development and Security*', London: Zed Books (2000).
- K. MBAYE, '*Le droit au développement est-il un droit de l'homme?*', I.e., 68-69.
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, University of Minnesota, Maastricht, January 22-26, 1997.
- SCHCININ, MARTIN, '*Advocating the Right to Development through Complaint Procedures under Human Rights Treaties*'. In Bård A. Andreassen and Stephen Marks, eds., *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd Ed.). Antwerp: Intersentia, 2010.
- Arjun SENGUPTA, '*the Human Right to Development*' in Andreassen, Bård A and Stephen MARKS, eds, *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd Ed.). Antwerp: Intersentia, 2010. Arjun Sengupta, '*On the Theory and Practice of the Right to Development*' Source: Human Rights Quarterly, Published by: The Johns Hopkins University Press, Vol. 24, No. 4 (Nov., 2002), pp. 837-889
- Peter UVIN '*From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development*'. Source: *Development in Practice*, Published by: Taylor & Francis, Ltd. on behalf of Oxfam GB, Vol. 17, No. 4/5 (Aug, 2007), pp. 597-606.