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KEY LECTURE

The link between official development assistance and the right to development

by Hon. Geert Bourgeois, Minister-President of the Government of Flanders

on the occasion of the Right to Development in Africa Course 2017

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1. Addressing the audience

As head of the Government of Flanders and as minister responsible for the Flemish development cooperation, it is a great honour for me to give a lecture about the role of Official Development Assistance (ODA) for advancing the right to development.

The development assistance portfolio of Flanders started here in South Africa in 1994, very soon after the end of the Apartheid-regime. Flanders was one of the first donors to sign a declaration of intent to cooperate with South Africa. Ever since, placing stronger emphasis on international solidarity has been an important priority of each and every subsequent government of Flanders. The budget for development cooperation rose substantially, enabling structural development cooperation relations with Mozambique and Malawi, since 2002 and 2006, respectively.

Flanders may be considered a relatively new donor. Flanders has always been eager to align its aid to modern aid paradigms, as clearly demonstrated throughout the Flemish legislation on development cooperation of 2007. This legislation encompasses the good practices of development cooperation prevalent at that time, such as:

1. Providing untied aid;
2. Setting development cooperation priorities from nationally owned policies of our partner countries;
3. Provision of predictable aid, by means of mutually agreed country strategy papers that define the priorities for 5 years;
4. Tackling of aid fragmentation: Flanders' development policy focusses on a limited number of countries and priority areas.

Article 3 of the Decree of 2007¹ explicitly states that the Flemish development cooperation will focus on realising the right to development of poor and vulnerable populations in developing countries. Without question, this rights-based framework shaped the good international practices on efficient development cooperation, which were pivotal in setting out this legislation.

More recently, my government proposed a revision of this legislation, in order to align the legislative framework to the 2030 Agenda on Sustainable Development and the Addis Ababa Action Agenda on Financing for Development. At the end of the lecture, I will elaborate on the proposed legislative changes.

2. History of the right to development

Before elaborating on the role of ODA in advancing the right to development, I wish to outline the historic context in which the right to development came into being.

The concept has African roots, since it was first mentioned in the African Charter on Human and Peoples' Rights, set out in 1981.² Article 22 on the right to development in the African Charter states that:

“1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”

¹ Online available: <https://codex.vlaanderen.be/Portals/Codex/documenten/1016071.html>

² The charter has been ratified by all member states of the African Union except South Sudan, implying that all states parties are legally enjoined to implement the right to development at the domestic level.

The African Charter thus brings together two categories of human rights: *civil and political rights* on the one hand, and *economic, social and cultural rights* on the other hand. In so doing, the Charter led the way to consider all human rights as universal, indivisible, interdependent and related.

The message that human rights cannot be categorised, nor ranked, nor isolated from one another was ground-breaking at that time. This would de facto imply the end to the Cold War-influenced two track approach to the realisation of the Universal Declaration of Human Rights. It is now a fundamental cornerstone of our current discourse on human rights, but when the indivisible nature of human rights was first tabled at the United Nations General Assembly in 1986, the international community was well aware of the political consequences of this concept. Setting economic, social and cultural rights on equal footing with civil and political rights provided a legal argument to oppose the exclusive emphasis of the Western countries (at that time) on civil and political rights. In this sense, the right to development could have been used by developing countries as a crowbar to advocate for a global redistribution of resources.

Nevertheless, the member states of the United Nations reached a consensus in 1986 in the "Declaration on the Right to Development," which was adopted by the United Nations General Assembly resolution 41/128.

The whole-of-human-rights-approach was reconfirmed in this Declaration. Article 1 states that the right to development "is an inalienable human 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."

Under the Declaration, “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development” (Article 3). States have obligations at three levels: ³

(a) **internally**, through the formulation of national development policies and programmes affecting persons within their jurisdictions;

(b) **internationally**, through the adoption and implementation of policies extending beyond their jurisdictions; and

(c) **collectively**, through global and regional partnerships

The duty bearers are however not restricted to States. According to the Declaration, the responsibility to promote and protect an appropriate political, social and economic order for development applies to **all human beings**, including in their role as non-State actors.⁴ In this sense, private actors also contribute to creating ‘favorable conditions’ to realise the right to development.

If you allow me to simplify for the sake of clarity, in short: the right to development stresses that **all human beings** (both individuals and groups of people) **are entitled to all human rights** and that **all state (or non-state) actors bear a responsibility to fulfill this right**.

It goes without doubt that these are beautiful principles and wonderful goals. However, from a legal point of view, the right to development suffers from various loopholes. As long as everyone is responsible for realising everything, it is nigh impossible to define clear obligations of any party or to attribute non-compliance. This means that in a courtroom, no party,

³ According to the high-level task force on the implementation of the right to development, (A/HRC/15/WG.2/TF/2/Add.2, annex)

⁴ United Nations Human Rights Office of the High Commissioner, Frequently Asked Questions on the Right to Development, fact sheet No. 37, page 4-5

deprived of its right to development, can claim fulfillment of the right or demand recovery for damage related to non-compliance.

This legal vacuum may have played a role in the willingness of UN member states to accept the Declaration on the Right to Development in 1986. It allowed researcher Peter Uvin to remark (in a somewhat provocative manner):⁵

“This was the kind of rhetorical victory that diplomats cherish: the Third World got its right to development, while the First World ensured that the right could never be interpreted as a greater priority than political and civil rights, that it was totally non-binding, and that it carried no resource-transfer obligations”

3. The right to development in relation to the global development arena (the 2030 Agenda on Sustainable Development)

However, one should not validate the right to development merely on its legal status. The recognition of the right to development by the UN could be seen as a first symbolic milestone towards a greater synergy between the development and human rights communities. The key message that all human rights are interconnected and essential to achieve long-term sustainable development has become a political reality. The Declaration has been used as an important reference document to underpin global agendas on sustainable development and development cooperation with a human rights approach.

⁵ Uvin, P. (2007) ‘From the Right to Development to the Rights-Based Approach: How ‘Human Rights’ Entered Development’ in *Development in Practice*, Vol. 17, No. 4/5, pp. 597-606.

I refer for instance to:

- The Rio Declaration on Environment and Development (1992),
- The Vienna Declaration and Programme of Action (1993),
- The Millennium Declaration (2000),
- The Monterrey Consensus on Financing for Development (2002),
- The Declaration on the Rights of Indigenous Peoples (2007),
- The Addis Ababa Action Agenda on Financing for Development (2015),
- The 2030 Agenda on Sustainable Development (2015).

The Addis Ababa Action Agenda and the 2030 Agenda on Sustainable Development, in particular, will lead the priorities on future ODA and non-ODA allocations to a considerable extent.

These new agendas build on lessons stemming from 15 years of implementing the Millennium Development Goals. The MDG's focused on the realisation of economic and social rights, which have demonstrably contributed to poverty reduction throughout the world. However, an evaluation of the MDG achievements revealed that much of the progress had been achieved by targeting the low hanging fruit. People already on a good track towards escaping poverty received an extra pat on the back. In fact, too often the interventions aimed at reaching the MDG's have fought the symptoms instead of the root causes of poverty & lack of access to basic social services. By identifying the eradication of extreme poverty through tackling its root causes as the central aim of the 2030 agenda, the international community is now obliged to "fish in deep water", and to target the most disadvantaged, and less reachable people.

A socio-economic agenda alone will not be sufficient to reach these results. The need to fulfill all human rights principles and standards is now strongly reflected in the new global agenda on sustainable development. At the same time, development becomes the responsibility of all, not only of governments. The private sector and knowledge institutions up to the individual citizen carry a responsibility to adapt their behaviour or business model, based on sustainable development concerns. This multi-actor

approach undoubtedly reflects the already mentioned sharing of responsibilities that is built into the right to development paradigm.

But there is much more that connects our common new agenda to the right to development. The 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals with 169 targets has 3 fundamental principled elements. The latter direct the focus onto the root causes of unsustainability. Not coincidentally, these principles reiterate the discourse that was already enshrined in the Declaration of the Right to Development.

1. **Universal:** unlike the MDG-agenda, which was focused on the international actions of developed countries (support from North to South), the SDG-agenda focusses on the three levels of obligations according to the right to development: internally, internationally and collectively.
 - a. By including the internal dimension, the responsibility of developing countries to create the enabling environment for development is underlined. Development is a collective responsibility of all countries (both donor and receiving countries).
 - b. For developed countries, the inclusion of the internal dimension should create awareness that the globe is one huge interdependent system. Even decisions on (seemingly strictly) interior policy can have important side effects on the enabling environment for the right to development elsewhere. In this sense, the need to promote policy coherence for sustainable development becomes even more important.

At the same time, this principle rightfully transforms all countries into developing countries. From now on all countries have to make the effort to transition to a new state of higher, sustainable development that

encompasses all of their citizens (current, but also future generations). As a result, all countries will also be monitored and will have to report.⁶

2. **Inclusive:** The 2030 Agenda reaffirms the responsibilities of all States to “*respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national and social origin, property, birth, disability or other status.*”. This paragraph is almost literally a copy of the Declaration on the Right to Development (1986). Furthermore, states promised to endeavour to prioritise measures for those who have been left the furthest behind (para 4).

3. **Comprehensive:** The new agenda fills in the gaps left behind by the Millennium Development Goals. In so doing, it looks for system-wide changes in the society, instead, of aiming at fragmented (and thus less sustainable) results. Alongside a wide range of social, economic and environmental objectives, the 2030 Agenda promises “*more peaceful, just and inclusive societies which are free from fear and violence*” with attention to democratic governance, rule of law, access to justice and personal security (in Goal 16), as well as an enabling international environment (in Goal 17 and throughout the framework). Goal 10 aims for the reduction of inequality. It therefore covers issues related to all human rights, including economic, civil, cultural, political, social rights and the right to development.⁷

⁶ In this context, it is worthwhile to mention that this year Belgium produced its first national voluntary review, including important data on the efforts from Flanders to promote the implementation of the Agenda 2030 within its own territory and beyond.

⁷ United Nations Human Rights Office of the High Commissioner, Human Rights and the 2030 Agenda for Sustainable Development, online available at <http://www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx>

So, ladies and gentlemen, these 3 principles clearly demonstrate that the Declaration on the 2030 Agenda for Sustainable Development is indebted to the Declaration on the Right to Development. The reference has also been made explicit, with the last sentence of paragraph 10 in the UN resolution on the 2030 Agenda: *“The new Agenda is informed by other instruments such as the Declaration on the Right to Development.”*

It seems that 30 years of the UN approved Right to Development has culminated in an international framework of goals that put human rights on the front of sustainable development. This is another important step in bringing human rights advocates and development practitioners together.

4. The history of increased overlap between the human rights - and the development communities

One may wonder why this has taken so much time. The past three decades have shown that the vocabulary, instruments, means,... of the development industry vis à vis human rights advocacy differed considerably.

Development industry has focused on technological interventions, for example finding a solution to increasing agricultural production, linking agricultural activities to market development and job creation, and so on.... Governments of developing countries were partners in translating the technological measures into development progress.

Human rights advocacy on the other hand has focused specifically on political and civil rights, which were seen as political and confrontational in the cold war era. The West was preoccupied with political & civil rights, while the Soviet Bloc underlined social, economic and cultural rights.

Consequently, for a very long period, the development community did not see any practical need to adopt a human rights approach. For this community, there was no merit in the adoption of the confrontational language of human rights advocates, thereby jeopardising the good working relationship with the authorities of developing countries...⁸

But when the Berlin Wall came down, it also tore down the foundations of the Cold War logic behind the separation of the two main categories of human rights.⁹ The 1993 World Conference on Human Rights and the Vienna Declaration both endorsed the interrelatedness between democracy, development and ALL human rights.

One decade later, the Millennium Development Goals stepped up official development assistance (ODA): ODA rose from 0,22% of GNI (aggregate of all OECD-DAC countries) in 1998 to 0,32% of GNI in 2005.

Since the beginning of the new millennium, aid effectiveness was on top of the global development agenda, leading to the Paris Declaration in 2005, which is formulated around 5 pillars: Ownership, Alignment, Harmonisation, Managing for Results and Mutual Accountability. The effectiveness agenda made donors understand **that development cannot be realised in the absence of human rights**. It goes in both directions: human rights cannot be realised until sufficient levels of development are attained. Donors are now increasingly aware that human rights are instrumental in making development cooperation more effective, for example through improved governance.

⁸ This doesn't contradict that some human rights catchphrases could already be tracked in the glossy brochures of development organisations at that time. For instance, actors working on agriculture have rebranded their activities in a way that they contribute to the 'right to food'. This rhetorical endorsement had more to do with strategies to attract donor funding and less to do with an effective human right based approach.

⁹ Political, civil rights vs. social, economic and cultural rights

5. Human rights and development cooperation in practice

I am aware that this mutual relationship between human rights and development might seem rather conceptual or academic. But when it comes to the decision to support development projects, this is a very concrete concern. Let me illustrate this with a project proposal in the education sector. A development agency could build a school and train teachers for three years. The project goals could easily be met and all progress reports would be flagged green. What might look like a good project at first sight, could eventually become a very inefficient investment of taxpayers' money, if donors fail to take human rights into account (or fail to take a close look at the effects throughout a longer time horizon). Why? Because aid to one specific school could soon be counteracted by unattained human rights in the developing country. Imagine how the sustainability of the aid is influenced:

- If politicians aren't accountable for the delivery of good quality education (cf. no local elections or parents do not have voting rights);
- If there is no democratic control to ensure that teachers receive a decent wage;
- If the poor and most disadvantaged pupils aren't served;
- If the government doesn't prioritise education or children's rights.

Very likely, the project results could be washed away by the human right context. This example demonstrates that the so called '*enabling environment*', as mentioned in the Declaration on the Right to Development, clearly defines the long-term effectiveness and sustainability of any development assistance. From a taxpayer's perspective, it might than be better not to support a single school in this institutional context, but to rather support the developing country in realising the right to education. Indeed, it would not lead to nice pictures of a school building, but the long-term results of the aid would be much more self-sustaining. This is a specific human rights motivated choice donors are increasingly willing to make.

6. The way forward for donor countries (the case of Flanders)

Now that the development community and the human rights advocacy are on the same page, roughly 30 years after the adoption of the UN Declaration of the Right to Development, much will depend upon the way donors and governments implement the sustainable development goals. After all, reaching agreement on the declaration on the 2030 Agenda on Sustainable Development is not the end of the process, it's only the beginning.

Currently, observers consider the full integration of human rights in development policy, at the conceptual, institutional and operational levels, to be fragmented and partial.¹⁰ This shouldn't come as a complete surprise. The concept of the right to development doesn't give any guidance on how we should understand development in all its dimensions, nor does it provide a clear set of steps needed to implement this right. It also doesn't provide any guidance on the implications of this right for identifying, prioritising, monitoring, or evaluating specific development projects, which makes it extremely difficult for development agencies to put the right into practice. Therefore, the right to development is essentially not suited for implementation by development agencies, whose activities are led by clear technical guidelines, policy priorities (of donor and recipient country) and observed local circumstances. If both communities would engage in translating the right to development into more practical guidelines and criteria, the gap between both human rights and development communities could be further closed.

¹⁰ David D'Hollander, Axel Marx, Jan Wouters, Integrating human rights into development cooperation: A comparative assessment of strategies and practices of donors, Leuven Centre for Global Governance Studies, PAPER NR. 15, APRIL 2014, page 27

In the meantime, donor countries have so far integrated human rights into development cooperation through mainly 3 strategies:

1. Using political dialogues with partner countries to advocate for human rights
2. Supporting specific projects, programmes or budget support, directly targeted at the realisation of specific human rights in the partner countries (vertical approach)
3. Integrating human rights and good governance into development cooperation as a whole (horizontal approach)

The Government of Flanders is one of many donors that combines all these strategies to take human rights into account. Recently, my government has proposed to adjust the Decree on Development Cooperation, to make sure that **good governance, gender and human rights are fundamental principles** that define our support for projects. Prioritising these themes as criteria should build a legislative safeguard to guarantee that activities of the Flemish development cooperation proactively promote these fundamental principles.

Another important element of realising the right to development is **making sure that development funding is spent effectively**. This means making sure the aid is demand driven and is part of an international division of labour in the partner countries. The European consensus on Development is therefore an important instrument to harmonise our contribution with other donors, to reduce fragmentation and to concentrate on a limited number of focus areas.

The human rights based approach does of course entail much more than just providing effective aid. It aims for active support to attain all human rights, with a specific focus on the most vulnerable populations. This is why our government proposed *'inclusiveness'* as a guiding principle within our legislation on development cooperation. Flanders will focus its contribution on those **"who are left behind"**, the most vulnerable, disadvantaged populations.

7. Conclusions

Ladies and gentlemen, I wish to close this lecture with 4 concluding remarks:

1. The right to development is not legally binding, but should be seen as **an international political commitment**. It is encouraging that the 2030 Agenda on Sustainable Development inherited 3 fundamental principles of the right to development.
2. **ODA will remain an important source of finance which contributes towards the realisation of the right to development**. It is the only North-South flow that complies with clear development criteria. The share of ODA compared to the Global National Income (GNI) of developing countries may decrease in the next decades, especially in Upper Middle Income Countries (UMIC). For South Africa, ODA currently accounts for less than 0,5% of GNI. South Africa thus carries a huge responsibility to ensure fair distribution of the wealth (that is clearly already present) to advance the living conditions of all human beings within its territory. In UMIC, ODA should therefore focus on catalytic funding, unleashing the potential to reduce inequality and to realise human rights in the long term. ODA should leave no one behind and focus on the most vulnerable populations.
3. The **interdependent and indivisible nature of all human rights** demands a clear commitment of developing and developed countries to put freedom of speech, good governance, law and justice,... on equal footing with socio-economic development. Consequently, we should be aware that unwillingness to aim for the realisation of political and civil rights by developing countries could lead to a corresponding unwillingness by developed countries to invest in socio-economic development. From a taxpayer's perspective, it makes sense that ODA funds are targeted to activities with a real chance of achieving a long-term impact on development. The right to

development is therefore the common responsibility of both donor and recipient countries.

4. 30 years after the adoption of the Declaration on the Right to Development, donor countries are still uncertain about the actual operational consequences of this right. If the international community aspires to the universal adoption of the right to development by the development community, then **a clear set of criteria or practical steps to implement this right is needed.**

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