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# Exposé

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## 1. Introduction and background of the research

The right to development, a third-generation human right embodied particularly in the United Nations Declaration on the Right to Development (1986), entitles every human person and all peoples to participate in, contribute to, and enjoy economic, social, cultural and political development, with a view to realizing all human rights and fundamental freedoms.<sup>1</sup> Nevertheless, western and non-western countries, in particular developing countries, differ sharply in their interpretation and implementation of the right to development. This has led to, inter alia, the non-existence of a specific human rights treaty governing this right and unclear approach to its implementation. Though with continuous efforts of an array of the UN special mechanisms, task force and working group in developing guidelines and standards for the implementation and realization of this right, limited progress has been achieved in this regard.

In 2018, the United Nations Human Rights Council decided in its resolution 39/9 by a vote that the Working Group on the Right to Development should commence the discussion to elaborate a draft legally binding instrument on the right to development through a collaborative process of engagement, including on the content and scope of the future instrument.<sup>2</sup> This is an unprecedented stride in the history of the right to development.

China, as one of the biggest developing country, has cast an affirmative vote in the resolution adoption process and has served as a strong advocate of this right over the past several decades. It is thus of importance to study the views of this country on the scope of the right to development and its implementation, in order to contribute to the development of this right both in theory and practice. The research may also benefit the negotiation process of the legally binding instrument, taking into account the divisive positions of States upon this right and the indefinite timeframe for the consultation thereof.

Having a relatively short history of incorporating the western concept of human rights in its domestic system, China has always placed the right to subsistence and development as the primary and basic human right.<sup>3</sup> In such a context, the doctoral research aims to: firstly discuss what the right to development entails through analysing various human rights treaties, and UN

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<sup>1</sup> Article 1, United Nations Declaration on the Right to Development (1986), A/41/128.

<sup>2</sup> Human Rights Council, 'The right to development' (2018) A/HRC/RES/39/9.

<sup>3</sup> Chinese State Council Information Office, 'The Right to Development: China's Philosophy, Practice and Contribution' (2016).

declarations and resolutions; secondly explore how China has conceptualized human rights in a relatively short period which has led to the prioritization of the right to development, and further analyze how China has interpreted and implemented this right by its own means and methods at national and international levels; and lastly assess to what extent China has contributed to the progressive development of this right and present potential limits of China's approach in implementing this right in comparison with other developing countries, such as South Africa, Pakistan/India and Brazil.

## 2. Status of the research

This part will address the status of the research regarding the right to development and China's perspectives in this regard. A literature review brings forward several observations.

### 2.1. Inadequate exploration on the implementation of the right to development

As the right to development involves economic, social, cultural and political development of individuals and peoples,<sup>4</sup> yet there is no dedicated international legal instrument that governs this right, academia defers sharply on the ambit and content of this right. The advocates have strongly promoted the right to development as an inalienable and fundamental human right, including taking it as a rights-based process of development.<sup>5</sup> However, some scholars have disputed that the right equates to a simple sum of all human rights or an amalgamation of all the existing individual human rights, while others have critiqued the non-justiciability of this right.<sup>6</sup> In addition, a few sceptics questioned the expansion of the right to development to individuals in addition to peoples.<sup>7</sup> Although there is a certain amount of international literature on the right to development, there is limited exploration on the implementation of this right due to the above controversies. Since the UN Working Group on the Right to Development is in a process of negotiating a legally binding instrument on this matter, it is of value to scrutinize this right

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<sup>4</sup> Supra 1.

<sup>5</sup> Arjun Sengupta, 'On the Theory and Practice of the Right to Development' (2002) 24(4) Human Rights Quarterly 837, 845–846.

<sup>6</sup> Jack Donnelly, 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development' (1985) 15(3) California Western International Law Journal 473, 481; Amartya Sen, 'Human Rights and Development' in Bard Andreassen and Stephen Marks (eds), *Development as a Human Right: Legal, Political and Economic Dimensions* (Harvard School of Public Health, Cambridge, 2006), 2-3.

<sup>7</sup> Noel G. Villaroman, 'Rescuing a Troubled Concept: An Alternative View of the Right to Development' (2011) 29/1 Netherlands Quarterly of Human Rights 13.

through the angle of a specific State.

## 2.2. Limited research on the right to development through China's perspective

The topic of this research, with a focus on the largest developing country and the firm supporter of the right to development-China, has only been studied by a small number of Chinese scholars from different angles. Some have focused on analyzing the interlocking between the policies of the Chinese Communist Party and the protection of the right to development,<sup>8</sup> whereas others have examined the implementation of this right in China from a detailed perspective, such as equal regional development, international cooperation, and right to development for a specific group (e.g. persons with disabilities).<sup>9</sup> There is a need to systematically research on China's interpretation and implementation of this right, including studying the connection between this approach and the UN standards and guidelines, and to explore China's potential contribution to the development of international human rights law in this dimension as well as pertinent limitations. Furthermore, there are scarce comparative studies between China and other countries, especially developing countries, in terms of the implementation of the right to development. The selection of emerging countries, e.g. South Africa, Pakistan/India, and Brazil as comparison samples to critique China's approach of defining and implementing the right to development with a view to identifying relevant limitations will bring interesting angles to this study. Nevertheless, such comparison may be confined to certain parameters due to the limitations of this research.

These factors have galvanized the author, as a former Chinese government official dealing with human rights matters and currently a UN staff, to develop this thesis.

## 3. Research questions

With the objective of obtaining a full picture of the right to development through the lenses of China, the dissertation will attempt to answer an overarching research question and several supporting sub-questions.

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<sup>8</sup> Xigen Wang, 'China's Theoretical Innovation and Practical Contribution to the Right to Development' (2017) 16 *Journal of Human Rights* 5.

<sup>9</sup> Kun Yao, 'Positively Lead Sustainable Development and Effectively Implement the Right to Development: A Chinese Perspective' (2018) 17 *Journal of Human Rights* 394; Ruixue Wang, 'On the Pluralistic Nature of the Right to Development' (2019) 18 *Journal of Human Rights* 774.

**Main question:** How does China view and implement the right to development, and further affect the evolution of such right?

The main research question is structured with the objectives in three-fold: it is dedicated to exploring how China defines the right to development through analysing its legislation, policies and judicial practices; examining the ways of its implementation of this right based upon legal and factual analysis; identifying China's potential contribution to the progressive development of the international human rights in this regard.

In connection with the above objectives, the following sub-questions have been developed:

- **Sub-question 1:** What does the right to development entail under the current international legislative and policy framework?
- **Sub-question 2:** How does China interpret the right to development?
- **Sub-question 3:** How has China implemented the right to development at different levels, in particular at the national and international levels?
- **Sub-question 4:** What is the impact of China's approach on the progressive development of this right, including both positive contributions and lessons learned?

## 4. Proposed outline

The structure of the proposed dissertation is closely linked to the research questions and can be divided into five chapters. These will cover the following main points:

### 4.1. Chapter I: Introduction of the right to development under the current international legislative and policy framework

This chapter is aimed at identifying the doctrine with regard to the right to development, in particular on the basis of the United Nations Declaration on the Right to Development, core international human rights instruments and regional human rights treaties, such as the African Charter on Human and Peoples' Rights (art. 22)<sup>10</sup> and the Arab Charter on Human Rights (article 37)<sup>11</sup>. Thereby a historic overview of the establishment and development of this right within the realm of the United Nations and other organizations will be explored. In addition, this chapter

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<sup>10</sup> Organization of African Unity, African (Banjul) Charter on Human and Peoples' Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

<sup>11</sup> League of Arab States, Arab Charter on Human Rights, 15 September 1994.

will introduce the international debates over the right to development under the auspices of the United Nations Human Rights Council, including the negotiation on a new international legal instrument on this right. This will set a basis for exploring China's perspectives on the right to development in the next chapters.

## 4.2. Chapter II: Conceptualization of human rights in China and its intrinsic linkage with the prioritization of the right to development

China has oriented the right to development as a primary and fundamental human right, among other human rights. This position is articulated in its National Human Rights Action Plan (2016-2020) and a white paper on the right to development both issued by the Chinese State Council Information Office in 2016,<sup>12</sup> and is reiterated by the Government of China at an array of diplomatic occasions. In this context, this chapter aims to analyze how western concept of human rights has been incorporated in China's legal system and why China has placed the right to development as the priority of its human rights obligations.

In the past two centuries, history has witnessed the evolution of human rights in China through extreme transformation of political and social dynamics. This process has spanned over the imperial, the republican and the communist phases. The last phase (1949-now) can be further broken down into various sub-periods accompanied by divergent policy priorities, with China finally managing to build its own "hybrid" human rights system. In the author's view, this system and its evolution has played a vital role in leading to the utmost significance attached to the right to development by China. This may also coincide with other developing countries' historical experience and have an implication on the interpretation of this right.

## 4.3. Chapter III: Theory evolution: interpretation of the right to development by China

This chapter aims to explore how China has interpreted the right to development based upon a comprehensive study of its legislation and public policies, and examine to what extent China has aligned its proposition with the current international standards, especially the UN Declaration, international human rights treaties and other documents. The preliminary research demonstrates that China has largely followed the paradigm set forth by the UN Declaration, while having further developed the scope of this right which will be thoroughly discussed in Chapter V.

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<sup>12</sup> Chinese State Council Information Office, National Human Rights Action Plan of China (2016-2020), 29 September 2016; Supra 3.

Acknowledging the right to development as both an individual and collective human right, China has underpinned this right by six theoretic pillars, namely, effectively realizing economic development, enhancing political development, promoting cultural progress, promoting social development, accelerating environment-friendly development, and promoting common development of its and other peoples.<sup>13</sup> This structure has also been guided by the five-sphere integrated plan featuring innovative, coordinated, green, open, and shared development.<sup>14</sup> In addition, the Chinese decision-making level has established two goals: Two Centenary Goals and the Chinese Dream of the Great Rejuvenation of the Chinese Nation, through which the importance of the right to development has been reinforced. In late 2019, President Xi Jinping also put forward a new concept of the “right to live a happy life” upon which the dissertation will analyze its interlinkage with the right to development.

Pursuing the people-centred development approach, China proposes that the people’s well-being and all-around development should be taken as both the starting point and ultimate goal of China’s human rights work.<sup>15</sup> This approach is compatible with the UN Declaration (Article 2) and its scope will be closely examined in this chapter.<sup>16</sup>

#### 4.4. Chapter IV: From theory to practice: implementation of the right to development in China

The right to development imposes obligations in two-fold, with one requiring individual States to ensure equal and adequate access to essential resources, while the other obliging the international community to promote fair development policies and effective international cooperation.

This chapter focuses on analyzing how China has implemented the right to development at different levels, particularly at the national and international levels, and using the guidelines and standards on the implementation of the right to development produced by the Special Rapporteur on the right to development and the Working Group on the Right to Development as benchmarks to examine to what degree China has followed these “soft laws” in practice. More specifically,

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<sup>13</sup> Supra 3.

<sup>14</sup> China’s Position Paper on the Implementation of the 2030 Agenda for Sustainable Development, Ministry of Foreign Affairs <P.R. China, [https://www.fmprc.gov.cn/mfa\\_eng/wjbxw/t1357701.shtml](https://www.fmprc.gov.cn/mfa_eng/wjbxw/t1357701.shtml)> accessed 31 March 2021.

<sup>15</sup> Supra 12.

<sup>16</sup> Supra 1, art. 2 “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”.

the author will study the implementation from two angles: (1) probing into the Chinese system that enables the implementation of this right, including from legislative, administrative, and judicial perspectives; (2) utilizing the six theoretic pillars upheld by China with regard to the right to development to examine the specific implementation. The first five pillars are dedicated to the implementation of this right at the national level, while the last pillar is devoted to relevant implementation at the international level, including extraterritorial implementation of this right.

At the national level, the dissertation will explore the implementation of this right at the dimensions of economic, political, cultural, social, and environment development with selected issues and parameters for each dimension. These issues may include poverty reduction; participation in the decision-making process, including meaningful participation in setting development priorities; culture development for specific groups, such as ethnic minority and elderly people; construction of a fair social security system, such as protection on the equal access to education and health services; and environmentally-friendly development, including actions on climate change.

With regard to the last theoretic pillar on common development, the dissertation will discuss China's strong opposition of using unilateral coercive measures for the extraterritorial implementation of the right to development, while elaborating on the promotion and protection of this right by China at the international level through bilateral, trilateral, and multilateral cooperation, in particular with other developing countries, in line with the requirement set forth by the UN Declaration, UN Charter and other relevant human rights treaties.

#### 4.5. Chapter V: Implication of China's approach on the progressive development of the right to development

This chapter intends to summarize the contribution of China's approach to the evolution of this right as well as the limitations of this approach that can serve as lessons learnt. Such contributions both in theory and practice may include:

##### 4.5.1. At the national level

Utilizing a people-centred approach and pursuing sustainable development for peoples; enriching the scope of the right to development by adding the element of environmental development; the introduction of public interest litigation for environmental damage; making use of applicable core international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW), for the implementation of the right to development for individuals, including through protection of the right to development for specific groups and respect fundamental freedom of choose by individuals.

#### 4.5.2 At the international level

Proposing the vision of establishing the “community with shared future for mankind” and promoting the right to development through international cooperation; promotion of south-south cooperation as a robust complement to the traditional north-south cooperation, including the establishment of the Belt and Road Initiative to enhance international cooperation for common prosperity; contributing to the realization of the United Nations 2030 Agenda for Sustainable Development, in particular on Goal 17 on strengthening the means of implementation and revitalizing the global partnership for sustainable development.

With regard to the limitations, the dissertation will use the implementation of the right to development by two or three other developing countries, especially emerging countries, to critique China’s approach in this regard. The preliminary research reveals that deficiencies of China’s approach may contain: over-reliance on policies of the government and communist party to address the right to development; non-direct-justiciability of this right; inadequate involvement of civil society organizations; insufficiency in the accountability regime for the violation of the right to development, especially the limitations of the current petition system.

In conclusion, this research will argue that China attaches great importance to the right to development based upon historical reasons and its realistic needs. While having found its own path to implement and promote the right to development, China intends to use this right as a breakthrough point to adjust the western-dominated human rights landscape by contributing “Chinese wisdom, solution and voice”. This is a significant movement in light of the right to development which deserves in-depth studies in the development of international human rights law.

## 5. Methodology

The dissertation will use a combination of methods, including doctrinal and legal analysis, historical method and comparative study.

### 5.1. Doctrinal and legal analysis

With regard to exploring the doctrine of the right to development, an analysis of legal and policy

documents within the UN, the African Union and the League of Arab will be undertaken to examine what this right entails in Chapter I of the dissertation. The focus will be on UN documents and instruments, including the United Nations Declaration on the Right to Development; various core international human rights instruments; UN reports issued by, inter alia, the Working Group on the Right to Development and the Special Rapporteur on the Right to Development. Furthermore, UN resolutions in relation to the right to development will be examined in terms of the scope of this right (Chapter I) and how China has contributed to the finalization of these “soft laws” (Chapter V).

In Chapter III, a thorough study on numerous legislation (Constitution and other specialized laws) and policies of China will be conducted to identify how China defines this right. The policies may include the National Human Rights Action Plan (2016-2020), 14<sup>th</sup> Five Year Plan and the Long-Range Objectives through the Year 2035, various white papers on the right to development and international cooperation, 19<sup>th</sup> report of the Communist Party of China (in particular the five-sphere integrated plan and four-pronged comprehensive strategy), etc.

In Chapter IV, the author will cite domestic cases in relation to China’s implementation of the right to development. Although the right is not directly provided in China’s Constitution or other laws, it is arguable that some cases, such as the public interest cases for environmental damage and administrative petition cases, would be used by China for its implementation of the right to development at the national level.

## 5.2. Historical method

The study will also reflect on the history regarding the development of human rights in China in Chapter II. For this purpose, a historical approach will be applied under which China’s government policy papers, statements and remarks in the past two centuries will be examined to analyze China’s incorporation of western concept of human rights and prioritization of the right to development in its domestic human right system. Academic literature in this regard will also be referred as appropriate.

## 5.3. Comparative study

Although the study will focus on China’s views over the right to development, it cannot avoid touching this topic from the angles of different countries. The thesis will utilize a comparative methodology to identify specificities, in particular limitations of China’s approach by comparing it with the propositions of other countries on this topic, such as South Africa, Pakistan/India and Brazil. Due to the research constraint, the study will only pick a small number of countries as

comparison samples, in particular under Chapter V.

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