

Khair, Sumaiya , Shawkat Alam , and Muhammad Ekramul Haque , ed. Implementation of Sustainable Development in the Global South: Strategies, Innovations, and Challenges. Oxford: Hart Publishing, 2024. Bloomsbury Collections. Web. 19 Nov. 2024. <<http://dx.doi.org/10.5040/9781509963782>>.

Accessed from: www.bloomsburycollections.com

Accessed on: Tue Nov 19 2024 15:04:31 Greenwich Mean Time

Copyright © Philippe Cullet. Sumaiya Khair, Shawkat Alam and Muhammad Ekramul Haque, and contributors severally 2024. This chapter is published open access subject to a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International licence (CC BY-NC-ND 4.0, <https://creativecommons.org/licenses/by-nc-nd/4.0/>). You may re-use, distribute, and reproduce this work in any medium for non-commercial purposes, provided you give attribution to the copyright holder and the publisher and provide a link to the Creative Commons licence.

5

Promises and Perils of Economic Development

PHILIPPE CULLET

I. Introduction

Development has been framed around the pursuit of growth.¹ In a context where colonisation had left most colonised countries extremely poor and often poorer than they were before colonisation, the central policy prescription for newly independent countries became to ‘develop’ as fast as possible. It is in this context that the world became structured into ‘developed’ and ‘developing’ countries – a division that has endured under different terms over the decades.² This division led to development policy being framed around the idea that the ideal is what ‘developed’ countries have achieved and ‘developing’ countries are trying to catch up.

This framing has worked out for some countries but it has failed many other countries. This is reflected in the vast gap in human development index scores between countries with very high human development and the 46 least developed countries, small-island developing states and more generally the majority of small developing countries.³ The failure of development affects developing countries first but there is also a broader failure, which affects even those countries with the highest development indicators.

This crisis was first highlighted in the early 1970s when the idea that there were ‘limits’ to growth was popularised.⁴ This logically coincided with the rapid growth of an environmental consciousness of the dangers that unchecked use of natural resources was causing to the world. In the meantime, the understanding that (economic) development is going to cause catastrophic environmental upheaval is well recognised in mainstream policy, with the global climate crisis being at

¹ G Rist, ‘Is “Development” a Panacea? How to Think beyond Obsolete Categories’ (2010) 30(3–4) *Canadian Journal of Development Studies* 345.

² For an account of the way in which countries are currently classified see, for example, United Nations, ‘World Economic Situation and Prospects’ (2023) 115.

³ United Nations Development Programme, *Human Development Report 2021/2022* (UNDP, 2022).

⁴ DH Meadows and others, *The Limits to Growth* (Universe Books, 1972).

the centre of the news cycle on a regular basis.⁵ Yet, neither destructive droughts, heatwaves nor floods have managed to shake belief in development as the solution to the world's problems and development is still seen as a marker of 'progress'.⁶

If mainstream policy-making is yet to reflect the failure of 70 years of 'development' to foster the well-being and the basic realisation of the human rights of all human beings, increasing inequalities, the global climate crisis and the Covid-19 pandemic have all contributed to an increasing awareness that the way forward must be a new path. This is not confined to the margins, and the 2020 Human Development Report recognised that '[b]usiness as usual simply will not work'.⁷ This does not yet mean that economic development is no longer at the centre of policy attention but, at least, it is now recognised that 'economic growth is more means than end'.⁸

In this broader context where economic growth has been seen as the answer to all the problems faced by individuals and countries, it is an immense challenge to question what has seemed to be the most central part of every government's policy for decades. This sometimes seems to pit the Global North and Global South against each other, with the latter justifiably arguing that a simple brake on economic growth will spell further catastrophes for their own populations. However, there are other answers that do not lead to the conundrum of restricting developing countries' options where basic human rights for all have not yet been realised. The solution lies in a multi-pronged strategy that moves away from the current model of development. This involves redistribution from North to South and from rich to poor within every country – something that has never sufficiently happened. At a broader level, this involves moving away from sustainable development that has failed to prioritise the environment and people over economy.

This chapter starts by engaging with (sustainable) development and the emphasis on economic growth that has been the marker of success for decades. It examines policy developments around sustainable development and the progressive push for an alternative framing. The next section then moves on to focus on issues of inequality and redistribution. A much more determined focus on both would go a long way towards addressing not only the massive poverty that still affects most of the world, but also impoverishment caused through the process of development. The third section then moves on to consider ways to frame a new paradigm to displace (economic) development as the main measure of well-being. The limitation of the lack of an effective rights framework in sustainable development calls for a different approach. In this context, the evolving discourse on rights of nature constitute one of the ways in which a clear priority can be given

⁵ R Kunelius and A Roosvall, 'Media and the Climate Crisis' (2021) 3(1) *Nordic Journal of Media Studies* 1.

⁶ UNGA Res 77/212 (15 December 2022) UN Doc A/RES/77/212.

⁷ United Nations Development Programme, *Human Development Report 2020 – The Next Frontier – Human Development and the Anthropocene* (UNDP, 2020) 9.

⁸ *ibid* 6.

to the environment, moving away from the balance and integration that has been at the centre of the sustainable development discourse since the late 1980s. This may be linked to pre-existing (human) environmental rights as eco-human rights to ensure that the complementary strengths of the two framings can be made to work together.

II. (Sustainable) Development: Failure to Effectively Address the Primacy of Economic Goals

The focus of development on economic growth has come under increasing scrutiny over time. This is what led to the framing of the concept of 'sustainable development', as a way to address some of the critiques. The early policy framing of sustainable development in the 1992 Rio Declaration centred around the idea of integrating development and environment.⁹ This constituted a major change compared to the emphasis on economic growth that had been the hallmark of previous decades. At the same time, even in this early version, there was no implied challenge to the idea of development per se or to the idea that economic growth would be the main vehicle for progress.¹⁰ This was the original compromise from which the notion did not recover.¹¹

One of the promises of sustainable development was the focus on poverty reduction. As such, this was not new, since 'development' had been seeking to lift countries and people out of poverty.¹² The underlying rationale was that poverty is a static baseline and that development is a positive move forward. In this view, development can only be seen as something positive.

The focus on extreme poverty eradication has remained a constant priority over decades, even though this ideal has not yet been achieved. This is still reflected in the Sustainable Development Goals (SDGs) whose Goal 1 is the eradication of absolute poverty.¹³ Yet, even in 2015, poverty remained primarily framed in economic terms, though other dimensions were also taken into account. The framing of poverty through a dollar figure is problematic in multiple ways. It reflects an account of poverty eradication as linked to economic growth and thus seems to fail to take into account the fact sustainable development was premised in the first place on displacing the importance given to economic growth in view of its

⁹ UNGA 'Report of the United Nations Conference on Environment and Development by UNGA Res 47/190' (3–14 June 1992) UN Doc A/CONF.151/26/Rev.1 (Vol I) Principle 2.

¹⁰ A Bernier, 'La face cachée des sommets de la Terre' (2022) 819 *Monde diplomatique* 1, 23.

¹¹ JE Viñuales, 'Sustainable Development' in L Rajamani and J Peel (eds), *Oxford Handbook of International Environmental Law* (Oxford University Press, 2021) 285.

¹² JH Adler, 'Development Theory and the Bank's Development Strategy – A Review' (1977) 14(4) *Finance and Development* 31.

¹³ Sustainable Development Goals and Targets, UNGA Res 70/1 (21 October 2015) Goal 1 UN Doc A/Res/70/1.

negative environmental and social side-effects. This is a perspective that seems to endure even though crises like the Covid-19 pandemic are known to have thrown hundreds of millions of people back in poverty. Yet, the UN General Assembly was still calling in 2022 for a New International Economic Order premised on the idea that international trade is ‘an engine for development and sustained economic growth, as well as the eradication of poverty’.¹⁴ More generally, it is now well-understood that poverty is ‘multidimensional’ and must be addressed in its multiple forms.¹⁵

Another disturbing dimension is that development can also lead to impoverishment, which is the antithesis of poverty eradication.¹⁶ This is, for instance, the case of forced displacement linked to development interventions such as large dams or mining. The idea that displacement may be a cost for some people for the greater benefit of society and that the displaced people should be grateful for their displacement that will allow them to enjoy ‘the fruits of science and technology for better health and have a higher quality of lifestyle’ is generally not palatable any more.¹⁷ At the same time, the recognition that some people suffer in the name of betterment and progress puts in question the legitimacy of the idea of development. Further, this provides a reminder that the yardstick should not be aggregate economic growth but rather, the impacts of development on the poorest and most marginalised. In other words, the benefits of developmental activities should first of all go to the poorest – something that often fails to happen.¹⁸

Overall, it is unclear that there was ever any strong will to challenge the pre-eminence of economic growth in international policy-making. In fact, starting at the 1972 Stockholm Conference, member states agreed ‘not to invoke environmental concerns as a pretext for discriminatory trade policies or for reduced access to markets’.¹⁹ There are thus some intrinsic contradictions in the framing of environmental policy over the past 50 years.

The lack of prioritisation eventually led to pragmatic ways of addressing the ‘integration’ of environment, society and development. In principle, environmental and social impact assessment is the main tool that is used to balance the competing interests of infrastructure, environment and people.²⁰ This is a compromise because it is not undertaken until relatively late in the project cycle, by which time

¹⁴ UNGA Res 77/174 (14 December 2022) UN Doc A/RES/77/174.

¹⁵ See UNDP and OPHI, *Global Multidimensional Poverty Index 2023* (United Nations Development Programme (UNDP) and Oxford Poverty and Human Development Initiative (OPHI), 2023).

¹⁶ U Ramanathan, ‘Rethinking Poverty: A Socio-Legal Enquiry’ (2019) 15 *Socio-Legal Review* 84, 92.

¹⁷ *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664, [241].

¹⁸ DT Greenwood and RPF Holt, ‘Growth, Inequality and Negative Trickle Down’ (2010) 44(2) *Journal of Economic Issues* 403.

¹⁹ Report of the United Nations Conference on the Human Environment (5–16 June 1972) UN Doc A/CONF48/14/Rev1 (1972).

²⁰ N Craik, ‘The Assessment of Environmental Impact’ in E Lees and JE Viñuales (eds), *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2019) 876.

vested interests have been built around taking the project forward. At worst, partly constructed projects may be allowed to be completed regardless of their consequences because of the amount of time and money already invested in them.²¹

More broadly, the attempt to reconcile the different dimensions of sustainable development has not succeeded in addressing their competing nature. This has led to a situation where (economic) development generally prevails.²² This is well illustrated in the case of the international trade and intellectual property regimes. The proposed reform of the World Trade Organization (WTO) has been pending for more than two decades and with it, any hope for strengthening social and environmental protection measures remains on hold.²³ At the same time, dozens of bilateral agreements adopted since the beginning of the century have further tightened existing investment, trade and intellectual property rules at the expense of the environment and people.²⁴ The limited progress that can be identified has been generally by way of transparency measures, such as procedural guarantees, a number of which have been adopted as non-binding measures, such as in the case of mining.²⁵

Even assuming that sustainable development could achieve the balance and integration on which it was initially premised, policy instruments progressively moved away from this framework. This is well illustrated by the introduction of the concept of green economy at the 2012 Rio+20 summit.²⁶ This would have displaced integration and balance in favour of prioritising the economy, or as put by Dasgupta watering 'down the developmental dimensions of sustainable development'.²⁷ In 2015, the SDGs constituted a sort of mainstreaming of environmental concerns in development policy. Yet, the environmental content of SDGs is relatively minor. In addition, while there is a goal that specifically calls for 'sustained' growth,²⁸ there is no similar prioritisation of the environment. In fact, the first mention of the environment simply calls for decoupling 'economic growth from environmental degradation'.²⁹

²¹ *Antarsingh Patel v UoI* Appeal No 26/2012 (National Green Tribunal, New Delhi (Principal Bench), Judgment, 9 August 2012) [20].

²² Viñuales (n 11) 300.

²³ For an account of the difficult and limited progress with regard to environmental aspects, for example, R Tarasofsky and A Palmer, 'The WTO in Crisis: Lessons Learned from the Doha Negotiations on the Environment' (2006) 82(5) *International Affairs* 899.

²⁴ S Alam, 'Natural Resource Protection in Regional and Bilateral Investment Agreements – In Search of an Equitable Balance for Promoting Sustainable Development' in S Alam, JH Bhuiyan and J Razzaque (eds), *International Natural Resources Law, Investment and Sustainability* (Routledge, 2017) 108.

²⁵ Extractive Industries Transparency Initiative (EITI), 'The EITI Standard 2019'.

²⁶ UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication – A Synthesis for Policy Makers* (UNEP, 2011).

²⁷ C Dasgupta, 'Reflections on the Relationship between the "Green Economy" and Sustainable Development' in UNCTAD, *The Road to Rio+20 – For a Development-led Green Economy* (UN, 2011) 33, 35.

²⁸ Sustainable Development Goals and Targets (n 13) Goal 8.

²⁹ Sustainable Development Goals and Targets (n 13) Goal 8.4.

Over time, the potential of sustainable development to give effective prioritisation to the environment and society has been questioned.³⁰ In response, alternative concepts, such as degrowth or ecological democracy have been proposed.³¹ Degrowth emphasises the problem with the prominence given to economic growth without actually calling for negative economic growth. The central point is to highlight the need to move away from a framing that gives priority to economic growth as the main vehicle for eradicating poverty and addressing environmental harm. In other words, it is a shift from a quantitative to a qualitative understanding of well-being.³² The call for a focus on qualitative well-being is in keeping with the progressive understanding that development is more than economic growth – as reflected in the human development index – or that poverty must be looked at in its multidimensional aspects, rather than mostly in its economic dimension.

Degrowth is often seen as a diversion from the imperative of economic poverty eradication. Yet, the actual questions are elsewhere. The first is the need for a reduction of consumption in the Global North. The second is the essential need for resource redistribution among and within countries. This would go a long way towards addressing the overall breaching of planetary boundaries while ensuring the vast majority of the world's population sees its standard of living improve dramatically.³³ One of the starting points for a new future is to share existing resources, rather than compete while contributing to destroying the bases of humankind's life on Earth.

III. Development and the Global South: Failure to Ensure Substantive Equality

The focus of (sustainable) development policy on poverty alleviation has been one of the main sources of its legitimacy. This worked as a consensus building exercise for decades, to the extent that it could be shown that absolute poverty was consistently decreasing. The Covid-19 pandemic shattered this certitude with the massive increase in poverty that accompanied it.³⁴

Even without the pandemic, it was already apparent that decades of 'extreme' poverty reduction measures had not had the desired results. First, the limited goal

³⁰ N Eisenmenger and others, 'The Sustainable Development Goals Prioritize Economic Growth over Sustainable Resource Use: A Critical Reflection on the SDGs from a Socio-Ecological Perspective' (2020) 15 *Sustainability Science* 1101.

³¹ A Kothari, F Demaria and A Acosta, 'Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy' (2014) 57 *Development* 362.

³² V Liegey, 'Éloge de la décroissance' (2021) 811 *Monde diplomatique* 20.

³³ J Hickel, 'Is it Possible to Achieve a Good Life for All Within Planetary Boundaries?' (2019) 40(1) *Third World Quarterly* 18.

³⁴ DG Mahler and others, 'Updated Estimates of the Impact of COVID-19 on Global Poverty: Turning the Corner on the Pandemic in 2021?' *Work Bank Data Blog* (24 June 2021), blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-turning-corner-pandemic-2021.

of eradication of extreme poverty was only envisaged by 2030 and the likelihood of reaching this landmark was already doubted on the basis of long-term trends.³⁵ Second, the mainstream measure of absolute poverty at \$2.15 is very low and eradicating it does not necessarily imply that everyone will enjoy the realisation of the basic content of all their rights. An increase of the poverty line to \$5 would have led, for instance, to a finding that poverty rates had hardly changed between the end of the Cold War and the mid-2010s.³⁶

Further, there is no universal goal to eradicate poverty itself, with SDGs only seeking to reduce by half the number of people living in poverty.³⁷ This puts into question the very focus on poverty eradication as the right lens of approach. Indeed, poverty is not only yet to be eradicated but also, over the past few decades, inequalities have increased overall.³⁸ This is problematic, even from an economic point of view since inequality is no longer understood as beneficial for growth.³⁹

In policy terms, there is concern about inequality between people, as well as inequality between states. The former was not formally part of the framing of sustainable development policy until 2015 when SDG 10 foregrounded inequality as a major issue.⁴⁰ Yet, SDG 10 lacks in ambition. For instance, its first target only seeks to ensure that the income growth of the bottom 40 per cent of the population should be higher than the national average.⁴¹ This approach is equivalent to seeking a reduction in income inequality, as measured by the share of the bottom 40 per cent of the population in national income.⁴² The problem is that this fails to address overall income inequality and is framed in such a way that the target can be realised while income inequality increases overall. It also fails to address the fact that inequality increases are created mostly at the top end of the income scale.⁴³

Inequality has remained on the policy agenda in the aftermath of the Covid-19 pandemic.⁴⁴ At the same time, the latest UN General Assembly resolution on a New International Economic Order only mentions inequality in the preamble and it still affirms that growth is what needs to be looked after since 'persistently

³⁵ D Woodward, 'Incrementum ad Absurdum: Global Growth, Inequality and Poverty Eradication in a Carbon-Constrained World' (2015) 4 *World Economic Review* 43.

³⁶ P Edward and A Sumner, 'Global Inequality and Global Poverty Since the Cold War: How Robust is the Optimistic Narrative?' Global Challenges Working Paper Series No 1, University of Bergen (2016).

³⁷ Sustainable Development Goals and Targets (n 13) Goal 1.2.

³⁸ United Nations Development Programme, *Human Development Report 2019* (UNDP, 2019) 111.

³⁹ O Galor, 'Inequality, Human Capital Formation and the Process of Development' Working Paper 17058, National Bureau of Economic Research (2011) 1, reminding readers that 'the Classical viewpoint ... underlined the beneficial effects of inequality for the growth process'.

⁴⁰ Sustainable Development Goals and Targets (n 13) Goal 10.

⁴¹ Sustainable Development Goals and Targets (n 13) Goal 10.1.

⁴² E Anderson, 'Equality as a Global Goal' (2016) 30(2) *Ethics and International Affairs* 189, 193.

⁴³ R van der Hoeven, 'Can the SDGs Stem Rising Income Inequality in the World?' in PAG van Bergeijk and R van der Hoeven (eds), *Sustainable Development Goals and Income Inequality* (Edward Elgar, 2017) 208.

⁴⁴ UNGA Res 76/175 (16 December 2021) UN Doc A/RES/76/175.

high levels of inequality pose a challenge to robust growth and sustainable development.⁴⁵

The second level is inequality between states. This conversation starts from the idea that international law is fair because it recognises the sovereign equality of states. This formal equality is understood as satisfying the demands of equity. The limitations of this framing have been obvious for a long time. Decolonisation was the trigger for a progressive but limited understanding that ‘preferential’ measures would need to be adopted to address actual inequalities between states, as soon as it became apparent that legal equality was not going to necessarily ensure substantive equality.⁴⁶ This was first done mostly in the context of international economic law where the legitimacy of differential treatment for developing countries was established.⁴⁷

This early framing is what has allowed a growing number of differential measures in the law of sustainable development, in particular since the 1980s. One of the ironies is that the recognition that formal equality as an insufficient basis for fair and legitimate law and policy-making was already enshrined in the 1992 Rio Declaration through its Principle 7.⁴⁸ Yet, it took until 2015 for inequality to be officially recognised as a framing concern concerning sustainable development.

The need for measures to foster substantive equality rather than formal equality were and remain controversial.⁴⁹ Thus, in the aftermath of the setting up of the WTO in 1995, formal equality became again the expected framing principle for trade relations. Overall, the special and differential treatment measures that had been added in the previous decades remained in place but the Uruguay Round was marked by ‘increasing pressure exerted by developed countries for reciprocal obligations and concessions from developing countries.’⁵⁰ In the end, developing countries ended up focusing on preserving what existed rather than pushing for further enhancement.⁵¹

This is despite the fact that the developed/developing country categorisation remains a crucial marker of inequality and differential treatment in favour of countries with low human development is still a priority. This is not entirely

⁴⁵ UNGA Res 77/174 (14 December 2022) UN Doc A/RES/77/174.

⁴⁶ P Slinn, ‘Implementation of International Obligations Towards Developing States: Equality or Preferential Treatment?’ in WE Butler (ed), *Control over Compliance with International Law* (Nijhoff, 1991) 165.

⁴⁷ NK Kale, ‘The Principle of Preferential Treatment in the Law of GATT: Toward Achieving the Objective of an Equitable World Trading System’ (1987/88) 18 *California Western International Law Journal* 291.

⁴⁸ UNGA, ‘Report of the United Nations Conference on Environment and Development by UNGA Res 47/190’ (3–14 June 1992) UN Doc A/CONF.151/26/Rev 1 (Vol I) Principle 7.

⁴⁹ cf S Pahuja, *Decolonising International Law – Development, Economic Growth, and the Politics of Universality* (Cambridge University Press, 2011) 46.

⁵⁰ H Youssef, ‘Special and Differential Treatment for Developing Countries in the WTO’ Working Paper, South Centre (1999) 15.

⁵¹ J Whalley, ‘Special and Differential Treatment in the Millennium Round’ CSGR Working Paper No 30/99, University of Warwick (1999) 11.

unacknowledged, as witnessed in the various climate finance pledges made since the beginning of the century.⁵² Yet, the extent to which this contributes to addressing inequality is unclear. In the case of the \$100 billion per year pledge made in 2009, the lack of clarity on what would count makes it difficult to even assess. An OECD estimate for 2020 puts finance provided and mobilised at \$83.3 billion.⁵³ The same figure is estimated by Oxfam to have a real value of only \$21 to \$24.5 billion.⁵⁴ In addition, a very small percentage of climate finance is allocated as grants.⁵⁵

Another crucial element is that the pendulum has swung away from large multilateral deals. Two distinct examples exemplify this. The first is the Paris Agreement, which formally remains a multilateral deal. Yet, the reformulation of the principle of differential treatment with the addition of ‘in the light of different national circumstances’ is what led to the ‘nationally determined contributions’ where each state decides on its own level of ambition.⁵⁶ This has led to the current situation where aggregate pledges are insufficient in terms of the objectives of the Paris Agreement.⁵⁷ The second example is the move away from multilateral deals in international economic law. In this case, the emphasis on bilateral deals has ensured that countries with low human development are much less able to rely on the strength that multilateral bargaining can bring. As a result, their sovereignty has been repeatedly restricted in ways that do not foster substantive equality but rather the interests of countries with high levels of human development. This is, for instance, the case of international investment agreements that tend to favour foreign investors over host states.⁵⁸

Overall, even where inequality is recognised as a problem, effective measures are not necessarily taken to address it, because of competing understandings of equality and equity. Where equity is equated with formal equality, substantive inequality may not raise equity concerns. In the real world where resources are limited and infinite economic growth is impossible, inequality calls for framing the response in terms of redistribution. There has never been a consensus over redistribution because it mobilises concepts, such as distributive justice. Thus, the principle of ‘common but differentiated responsibilities’ is framed in Principle 7

⁵² J Timmons Roberts and others, ‘Rebooting a Failed Promise of Climate Finance’ (2021) 11 *Nature Climate Change* 180.

⁵³ OECD, *Aggregate trends of Climate Finance Provided and Mobilised by Developed Countries in 2013–2020* (OECD, 2022).

⁵⁴ OXFAM, *Finance Shadow Report 2023 – Assessing the Delivery of the \$100 Billion Commitment* (OXFAM, 2023).

⁵⁵ A Goswami and AA Rao, *Beyond Climate Finance – Climate Ambition in the Global South Requires Financial System Reforms* (Centre for Science and Environment, 2023).

⁵⁶ United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79 (Paris Agreement) Art 2.2, 4.2.

⁵⁷ UNGA Res 77/165 (14 December 2022) UN Doc A/RES/77/165, para 7.

⁵⁸ M Chi, ‘Reforming International Investment Treaties for an Equitable Natural Resource-Related Investment Governance Regime’ in ML Fremuth, J Griebel and R Heinsch (eds), *Natural Resources and International Law – Developments and Challenges* (Nomos/Hart, 2021) 291.

of the 1992 Rio Declaration in such a way that it does not entail an enforceable duty of redistribution.⁵⁹ This is not because such a formulation is impossible – in fact, an earlier version of the principle sought to emphasise the responsibility of developed countries and singled out their duties to provide the resources and technologies.⁶⁰

The arguments for distributive justice are well-rehearsed.⁶¹ Yet, over the past couple of decades, the discourse has shifted away from this basic structural issue towards highlighting the changing status of new Global South resource-rich countries. This reflects a changing reality that needs to be addressed, such as through more individualised differentiation. At the same time, even if the likes of Brazil, China, India and South Africa have become leading economic powers, this does not stop India from having the highest child wasting rate,⁶² hence confirming that, at least to a certain extent, calls for North–South redistribution remain fundamentally valid.

IV. Beyond Development: The Promise of a Rights Framework Prioritising Nature and People

The optimism that characterised the Agenda for Sustainable Development in the second half of the 2010s has now given way to severe concerns that half of the goals are ‘moderately or severely off track’ and 30 per cent have ‘seen no movement or regressed below the 2015 baseline.’⁶³ There is thus a crisis of confidence in the ability of the development model that has been at the centre of international policy-making for decades to achieve even the limited goals set in 2015.

The answer to the current crisis requires, however, much more radical rethinking. The post-pandemic economic crisis is a symptom of a much bigger crisis of an economic development model that has failed to eradicate poverty after decades of failed promises. Further, the current economic model is unsustainable because its consumption-based framing leads to natural resources exhaustion and massive pollution. In addition, development is the root cause of anthropogenic climate change, which has led to the global climate crisis threatening human life on Earth as it exists today. The combination of these different factors calls for a new approach.

⁵⁹ The US sought to make this clear, with its statement that principle 7 cannot be interpreted as creating any obligation or liability for the North. See Report of the UN Conference on Environment and Development (Rio de Janeiro, 3–14 June 1992), UN Doc A/CONF.151/26 (Vol IV) (1992).

⁶⁰ Principles on General Rights and Obligations – China and Pakistan – Draft Decision, Preparatory Committee for the UN Conference on Environment and Development, 4th session, UN Doc A/CONF.151/PC/WG.III/L.20/Rev.1 (1992).

⁶¹ P Cullet, *Differential Treatment in International Environmental Law* (Ashgate, 2003).

⁶² K von Grebmer and others, *Global Hunger Index: Food Systems Transformation and Local Governance* (Bonn/Dublin, Welthungerhilfe/Concern Worldwide, 2022) 10.

⁶³ Report of the Secretary-General (special edition) ‘Progress Towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet’ (2023), UN Doc A/78/80-E/2023/64, para 4.

The first priority is to frame policy in terms of priorities, rather than the amorphous idea of balance and integration of sustainable development that has allowed for economic growth to dominate.⁶⁴ Nature needs to come first, followed by people and the economy. In other words, it is necessary to call into question the premise of human development framed in 1990 by the UNDP as an opposition between people and trees.⁶⁵ Today, in what we know as the Anthropocene, even the UNDP advocates that ‘the opposition of people and nature needs to be re-examined’.⁶⁶

In other words, there is now a mainstream recognition from within the discourse of development that nature and humankind are interdependent. This will be insufficient to ensure sustainability, as long as the ideology of sustainable or human development prevails. Putting nature first is then a way to reflect the need to ensure that policy-makers remember at every step that human well-being depends on a healthy environment.

This new emphasis and prioritisation requires a different framing from sustainable development, which has been consensual in part because of its lack of specificity. There exist different ways to move forward. One of the lacunae of the existing policy framing is the lack of reliance on a rights discourse. This has the potential to make a crucial difference for the most marginalised, and is indeed one of the central premises of human rights, which often remain one of the few safeguards that people can hope to mobilise against the state, in countries where they operate. This missing link has in fact been taken up in recent years with the proposal to adopt a convention on the right to development.⁶⁷ This could strengthen the amorphous right recognised in the 1996 UN General Assembly resolution.⁶⁸ At the same time, even if it were adopted, it is a question of too little too late. At this juncture, new thinking is needed to address the various crises caused by development, and this cannot be achieved through this same framework.

One of the discourses that has attracted increasing attention in recent years is rights of nature. This is used, first, to emphasise the need for an ecocentric perspective to environmental protection to counter or rebalance the anthropocentric frameworks that have marked environmental policy over the past 50-odd years. The second key element is to frame nature protection in terms of rights, in part in reaction to the often limited implementation and enforcement of environmental protection standards.

Some of the literature on rights of nature implies that the main contribution of the new language is its ecocentric perspective. This comes in part from an understanding of rights of nature as having emerged in the context of a 1972 article about

⁶⁴ UNGA Res 70/1 (2015) UN Doc A/RES/70/1, para 2.

⁶⁵ United Nations Development Programme, *Human Development Report 1990* (Oxford University Press, 1990) 62.

⁶⁶ United Nations Development Programme, *Human Development Report 2021/2022* (UNDP, 2022) 22.

⁶⁷ UN Human Rights Council, ‘Revised Draft Convention on the Right to Development’, UN Doc A/HRC/WG.2/23/2 (2022).

⁶⁸ UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128.

whether trees should have standing.⁶⁹ This is one of the elements that make rights of nature potentially controversial as reflecting a pure conservationist perspective, which may be opposed to people's needs and rights. Yet, this early mooring has been overtaken more recently through the implementation of a number of rights of nature regimes. These include broad recognition of rights of all nature, as in the case of Ecuador where the protection is framed at the constitutional level.⁷⁰ Other examples include protection of specific elements of nature, such rivers, animals or a sea.⁷¹

The development of these existing regimes is sometimes led by indigenous peoples who have lived in the environment to be protected.⁷² The resulting regimes are strongly informed by the lived experience of people who depend on these environments. As a result, rather than reflecting an opposition between the natural and human environment, they tend to integrate both, but in a manner that gives priority to nature. This has been the case both in the Global North and Global South where one of the central contribution of rights of nature regimes is to give nature-dependent people more control over their surrounding environment.⁷³ The extent to which this will be transformative in practice is yet to be ascertained but, for example, the change of perspective implied in a legal regime that moves from absolute sovereign control to a distinct entity being the human face of the river, constituted of one government representative and one indigenous representative, as in the case of the Whanganui River in New Zealand, is significant.⁷⁴

One of the elements that transpires through rights of nature is the need to rethink the place of property rights, in particular land rights. This is crucial insofar as the dependence of economic development on natural resources is directly linked to access, usually mediated through property rights, as in the case of water rights linked to land rights.⁷⁵ A rejection of the model of property rights brings in itself a completely different perspective to the relationship between nature, society and economy since it removes a link that often contributes to giving primacy to exploitation driven by profit. This was, for instance, a central part of the discussions between the Crown and the Maori concerning the Whanganui river, as the latter did not want control to be framed in terms of property rights.⁷⁶

⁶⁹ CD Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

⁷⁰ Constitution of the Republic of Ecuador, 2008.

⁷¹ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 (New Zealand); *Narayan Dutt Bhatt v Union of India* [2018] SCC OnLine Utt 645 (Uttarakhand High Court, India); Ley 19/2022 de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su Cuenca (Spain).

⁷² D Takacs, 'We Are the River' (2021/2) *University of Illinois Law Review* 545, 555.

⁷³ T Collins and S Esterling, 'Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand' (2019) 20 *Melbourne Journal of International Law* 1; P Wesche, 'Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision' (2021) 33 *Journal of Environmental Law* 531.

⁷⁴ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, s 18.

⁷⁵ TG Puthucherril, 'Riparianism in Indian Water Jurisprudence' in R Iyer (ed), *Water and the Laws in India* (Sage, 2009) 99.

⁷⁶ D Takacs, 'Standing for Rivers, Mountains – and Trees – in the Anthropocene' (2022) 95 *Southern California Law Review* 1469, 1496.

Overall, rights of nature are particularly important because they put forward a clear prioritisation for the environment. At the same time, this is not a perspective detached from human societies but one that understands society within the context of the environment in which it lives and on which it depends. In this context, the economy becomes subsidiary to both nature and society.

Rights of nature are also not entirely detached from the rights language more generally. They constitute both an ecocentric counter and an additional dimension to existing (anthropocentric) environmental rights. In the diverse contexts where rights of nature reflect indigenous perspectives in particular, there is no opposition but rather synergies between ecocentric and anthropocentric perspectives. A link can thus be drawn with the right to a clean environment.⁷⁷ This is an appropriate comparison to the extent that it highlights the priority that needs to be accorded to nature, in the same way that human rights highlight the priority that needs to be given to each individual.

In practice, rights of nature can come to reinforce the rights language and benefit from its growing acceptability. On the one hand, the widely recognised right to a clean environment at the national and regional level has eventually been given formal, though non-binding, recognition in 2022 through a UN General Assembly resolution.⁷⁸ On the other hand, rights of nature that are not constrained by the limitations of international human rights can contribute to broadening the relevance of the rights language related to the environment. This is, for instance, the case with regard to the usual framing of human rights as individual rights. This limits the relevance of rights discourses since environmental issues often cannot be reduced to individual concerns. Existing rights of nature regimes confirm the need for a broader perspective and are frequently framed around existing community management and protection norms of the concerned environment. As a result, the rights and obligations linked to the environment may be conceived as collective in nature. In other words, there is ample scope for building on synergies between (human) environmental rights and rights of nature, which can be framed, for instance, in terms of eco-human rights.⁷⁹

In terms of scale, debates over rights of nature have until now often focused on relatively specific environments, in line with the fact that the push for a legal framework tends to come from people who depend on this environment or live in it. At the same time, there is no scale limitation and in fact, there are increasing debates about rights of nature applied to parts of nature as big as the seas.⁸⁰ This reflects two crucial elements. First, rights of nature tend to be framed at the

⁷⁷ LJ Kotzé and S Adelman, 'Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope' (2023) 34 *Law and Critique* 227.

⁷⁸ UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

⁷⁹ P Cullet, 'Confronting Inequality Beyond Sustainable Development – The Case for Eco-human Rights and Differentiation' (2022) 31(1) *Review of European, Comparative & International Environmental Law* 7.

⁸⁰ H Harden-Davies and others, 'Rights of Nature: Perspectives for Global Ocean Stewardship' (2020) 122 *Marine Policy* 104059.

local level and in that sense offer a distinct take on law and policy-making, since environmental and sustainable development policies have often been largely top-down. Second, rights of nature are not limited to a local context and can be applied in multi-scalar contexts. This is, for instance, true in the case of rivers, which may, as in the case of the Ganga, cross through various sub-national entities and be also transboundary at the same time.⁸¹ This is also true of an area of land protected through rights of nature whose protection has local to global impacts, such as in the case of forests and their relevance to tackling the climate crisis or addressing the sixth mass extinction of biodiversity.⁸²

The increasingly broad take-up of rights of nature in different parts of the world and in different contexts reflects a wider understanding that new thinking is needed. The attraction that rights of nature in this context is that they offer a way to rethink the different parameters that make up human civilisation without excluding any aspect. The real contribution that they make is not so much the ecocentric turn but rather the re-ordering of priorities within a context where society, livelihoods and economy are not excluded but are made subsidiary to the environment on which we depend for our survival. It is easier to identify these links at a local level and therefore it makes sense that such policy-making would have a marked bottom-up framing. At the same time, in the context of the global climate crisis whose impacts are increasingly evident at many levels, the relevance of rights of nature goes far beyond local environments, as in the case of transboundary rivers or forests, whose protection have positive impacts on the global environment.

V. Conclusion

The development model based on economic growth as a source of prosperity and increased well-being for all has been unsuccessful, in particular for the least well-off. Further, the idea that economic growth is the only real marker of successful welfare policies has failed, not only because poverty is far from being eradicated, but also because inequality has increased significantly in the past decades.

Different attempts have been made over time to address some of the perceived shortcomings of development framed mostly around economic growth. One of the major adjustments was the introduction of the concept of sustainable development. Initially, it reflected the realisation that economic growth's dependence on natural resources and economic growth's impact on the environment could not be sustained in the long term. Progressively, a broader understanding that included the links between society and economic growth led to framing sustainable development as centred around the three pillars of economy, society and environment, the latter remaining in practice the lesser partner.

⁸¹ For the judgment of the Uttarakhand High Court, see *Mohd. Salim v State of Uttarakhand* [2017] SCC OnLine Utt 367.

⁸² New Zealand, Te Urewera Act 2014.

The severe economic crisis of the late 2000s, and the crisis linked to the Covid-19 pandemic, have led to a realisation that a constant harping back to economic growth in times of crisis is not solving the issues arising. On the one hand, the Covid-19 pandemic led to a massive surge in poverty around the world. On the other hand, every attempt to address poverty through untrammelled economic growth causes further environmental harm and more specifically contributes to aggravating the global climate crisis.

At this juncture, policy-making must be radically rethought. A majority of countries of the Global South have not seen their relative position in terms of human development improve significantly over the past few decades. Further, hundreds of millions of people have seen their standards of living stagnate and for many, the push for development has been equated with impoverishment.

The lack of a rights framing in development policy is in part to blame for the present situation. The attempt to remedy this through a convention on the right to development arrives far too late. At this juncture, it is crucial to rethink the bases for thinking about improvements in welfare and well-being based on the principles of environmental protection, social justice and economic equity.

This must be through new conceptual tools. Rights of nature, together with existing (human) environmental rights can provide an answer to the current crises. They provide stronger bases for ensuring that nature, as well as the situation of the most marginalised, is effectively prioritised.

