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# The right to development at a constitutional moment: What could the Draft Covenant change?

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**Abstract:** *After decades of controversy, the United Nations process towards a legally binding instrument on the right to development (RtD) has reached a constitutional moment. The 2023 Draft International Covenant on the Right to Development (Draft Covenant) represents an important movement from the 1986 Declaration towards treaty-based legal obligation. Yet, conversion of a declaration into a covenant does not itself establish what, in substantive or structural terms, changes. That is my main interrogation in this chapter. I argue that the Draft Covenant should be assessed not only by whether it creates binding obligations, but also by whether it alters the distribution of decision-making power over development. I revisit the concept of development sovereignty as a conceptual lens: the legally protected capacity of peoples and states to participate meaningfully in determining the purposes, priorities and conditions of development, within a framework that protects human rights, equality and sustainability and recognises international interdependence. The Draft Covenant contains important elements of such architecture, including participation, self-determination, equitable distribution, non-discrimination, international cooperation and sustainable development. Nevertheless, significant gaps remain. It does not fully resolve the tension between development agency and international economic structures, nor does it sufficiently specify the consequences of conduct by powerful states and private actors that constrain development choices. I therefore argue*

*that the constitutional significance of the Draft Covenant lies less in the formal transformation of the RtD into a treaty right than in its potential to reorganise the legal relationship between development, sovereignty, participation and international responsibility.*

**Résumé :** *Après des décennies de controverse, le processus des Nations Unies visant à l'élaboration d'un instrument juridiquement contraignant sur le droit au développement (DaD) a atteint un tournant décisif. Le projet de pacte international sur le DaD de 2023 (projet de pacte) marque une avancée importante par rapport à la Déclaration de 1986, en instaurant une obligation juridique fondée sur un traité. Pourtant, la transformation d'une déclaration en pacte ne précise pas en soi ce qui change, tant sur le fond que sur la forme. C'est là l'interrogation principale que je soulève dans cet article. Je soutiens que le projet de pacte doit être évalué non seulement à l'aune des obligations contraignantes qu'il crée, mais aussi à celle de la manière dont il modifie la répartition du pouvoir de décision en matière de développement. Je revisit le concept de « souveraineté en matière de développement » comme prisme conceptuel : il s'agit de la capacité, protégée juridiquement, des peuples et des États à participer de manière significative à la définition des objectifs, des priorités et des conditions du développement, dans un cadre qui protège les droits de l'homme, l'égalité et la durabilité, et qui reconnaît l'interdépendance internationale. Le projet de pacte contient des éléments importants de cette architecture, notamment la participation, l'autodétermination, la répartition équitable, la non-discrimination, la coopération internationale et le développement durable. Néanmoins, d'importantes lacunes subsistent. Il ne résout pas entièrement la tension entre l'action en faveur du développement et les structures économiques internationales, pas plus qu'il ne précise suffisamment les conséquences des comportements des États puissants et des acteurs privés qui restreignent les choix en matière de développement. Je soutiens donc que l'importance constitutionnelle du projet de pacte réside moins dans la transformation formelle du droit au développement en un droit conventionnel que dans son potentiel à réorganiser la relation juridique entre développement, souveraineté, participation et responsabilité internationale.*

**Key words:** *right to development; Draft International Covenant on the Right to Development; development sovereignty; international cooperation; constitutionalism*

## 1 Introduction

The right to development (RtD) has always occupied an unusual position in international human rights law. It is simultaneously familiar and contested; universal in its language, yet deeply shaped by disagreements about the structure of the international economic order and expressed as an individual and collective entitlement while requiring action by states, peoples and the international community. The adoption of the United Nations (UN) Declaration on the Right to Development in 1986 (DRtD)[1] marked a decisive normative moment, but the Declaration remained a General Assembly declaration rather than a treaty. In October 2023, the Human Rights Council decided to submit the Draft International Covenant on the Right to Development to the General Assembly for consideration, negotiation and subsequent adoption.[2]

I use the expression 'constitutional moment' deliberately. The issue is not simply whether the RtD should become legally binding. Treaty status matters, but it does not by itself answer what legal relationships the proposed instrument would reorganise. A treaty can bind without transforming. It can restate existing norms, consolidate scattered principles or establish procedures without materially altering the distribution of power that determines whether rights can be realised. For the purposes of this article, 'constitutional' is used in a functional and analytical sense. It does not suggest that the Draft Covenant would itself be a constitution, or that treaty adoption would automatically reorder the international system. Rather, the term asks whether the proposed instrument could structure the exercise of development-related power: Who may set priorities; who must participate; which constraints are legitimate; how resources and responsibilities are distributed; and what forms of accountability are available. A 'constitutional moment',

1 UN General Assembly Declaration on the Right to Development GA Res 41/128 (4 December 1986) (DRtD).

2 UN Human Rights Council Resolution 54/18 'The right to development' UN Doc A/HRC/RES/54/18 (12 October 2023). https://docs.un.org/en/A/HRC/RES/54/18 (accessed 10 July 2026).

therefore, is a moment of possible normative reorganisation, not a claim that a settled constitutional order already exists.

My central question is what exactly does the Draft Covenant[3] change? The contemporary development environment makes this question urgent. Persistent poverty, debt pressures, illicit financial flows,[4] unequal access to finance and technology, and asymmetries in international economic governance affect the capacity of states and peoples to determine and implement development priorities. Development therefore, is also a question of power: Who determines permissible choices; who bears the costs; and whose interests shape the institutional environment in which development takes place? Existing scholarship has examined the Draft Covenant's added value, its relationship with the 1986 Declaration, its implications for international cooperation and its potential contribution to global justice.[5] In this chapter, I raise a different question, which is whether the Draft Covenant changes the constitutional relationship between development, sovereignty and international responsibility. My central claim is that the most important potential contribution of the Draft Covenant is neither the formal elevation of the RtD to treaty status nor the multiplication of duties of international cooperation. Its deeper significance lies in the possibility of constructing a legal order in which development is understood as a domain of collective decision making and protected agency. I refer to this possibility as development sovereignty and revisit this concept as an analytical framework for assessing the potential constitutional significance of the Draft Covenant. Rather than treating sovereignty solely as formal independence or authority over territory and natural resources, development sovereignty concerns the legally structured capacity of peoples and states to determine and pursue development priorities within a framework of human rights, equality, participation, sustainability and international law. Its distinctive contribution lies in bringing together four interrelated

3 UN Human Rights Council 'Draft International Covenant on the Right to Development' UN Doc A/HRC/54/50 (18 July 2023).

4 For further developments, see GEK Kamga, SD Kamga & A Kwesiga (eds) *Right to development and illicit financial flows from Africa* (2024).

5 MA Tadeg 'The prospect of an international binding treaty on the right to development: A gateway to global justice' (2025) 25 *African Human Rights Law Journal* 485, 488-510; SK Wissmann 'The Draft International Covenant on the Right to Development and its implications for cooperation in global health crises' (2024) 17 *Law and Development Review* 417, 440-451.

dimensions: decision-making autonomy, participatory legitimacy, resource agency, and relational responsibility. These dimensions provide a framework for examining whether the Draft Covenant could change who determines development priorities, how that authority is exercised, what constraints may legitimately be imposed and how responsibility is allocated when development agency is undermined. Development sovereignty does not mean an unrestricted right of states to pursue any economic policy, nor does it reproduce sovereignty as simple non-interference. Rather, it connects autonomy with accountability and sovereignty with interdependence.[6] The concept is important because the RtD has often been discussed through two separate vocabularies. One focuses on entitlement, asking what individuals and peoples may claim. As it was argued, being a sovereign state is intimately bound up with the pursuit of the national economic project, and being the government of a sovereign state has come to entail a duty to provide for the material well-being of the populace.[7] The other focuses on international cooperation, asking what states and international institutions must do. Development sovereignty connects these dimensions by asking a prior constitutional question: Who has the legal capacity to determine the purposes and conditions under which development takes place? This question is particularly significant for the Global South. Formal independence does not necessarily produce effective development autonomy. States may possess sovereign authority while operating within international economic arrangements that significantly constrain fiscal choices, access to technology, trade policy, debt management and natural resource governance. The result can be a distinction between formal sovereignty and effective development agency. Development sovereignty is concerned with closing that gap without converting sovereignty into an unrestricted claim of state discretion. I elaborate on these matters in the following parts, starting with the review of the transition from the Declaration to the Covenant.

6 A Sen *Development as freedom* (1999) 3-20.

7 D Williams 'Managing sovereignty: The World Bank and development in sub-Saharan Africa' *Mondes en développement*, https://shs.cairn.info/journal-mondes-en-developpement-2003-3-page-5?lang=en (accessed 15 July 2026).

## 2 From Declaration to Covenant: From political commitment to treaty obligation

### 2.1 Normative architecture of the 1986 Declaration

Article 1(1) of the DRtD recognises the RtD as an inalienable human right. The provision identifies every human person and all peoples as rights holders and links development to participation, contribution and enjoyment. Article 1(2) connects RtD with self-determination and sovereignty over natural wealth and resources. These features are important because the Declaration does not treat development merely as an economic outcome. It treats development as a process in which rights holders must participate and whose benefits must be fairly shared. Article 2 reinforces this orientation by describing the human person as the central subject of development and by recognising corresponding duties for individuals and states. The Declaration therefore contains an important constitutional idea even before the emergence of the Draft Covenant, that is, development is not simply something that governments deliver. It is a process in which peoples possess legal and political agency. The Declaration nevertheless remained a General Assembly declaration rather than a treaty. Its legal status, therefore, limited the mechanisms through which its obligations could be invoked, supervised and enforced. The distinction between declaration and treaty should not, however, be overstated. Declarations can contribute to the development of international norms and can influence treaty interpretation, institutional practice and state behaviour. The problem is that a declaration does not provide the same consent-based treaty framework for determining obligations, implementation and institutional review. The Draft Covenant responds to this limitation by proposing a legally binding instrument. The 2023 text is the product of several stages of drafting and intergovernmental negotiation, including the 2020 draft Convention and the 2022 second revised text.[8] In July 2023 the Chair-

8 UN Human Rights Council Working Group on the Right to Development 'Draft Convention on the Right to Development, with commentaries' UN Doc A/HRC/WG.2/21/2/Add.1 (20 January 2020), https://digitallibrary.un.org/record/4018146?v=pdf (accessed 15 July 2026); UN Human Rights Council 'Second revised text of the draft Convention on the Right to Development' UN Doc A/HRC/WG.2/24/2 (30 November 2022), https://digitallibrary.un.org/record/4018148?ln=es&v=pdf (accessed 15 July 2026).

Rapporteur submitted the Draft International Covenant on the Right to Development to the Human Rights Council. In October 2023 the Council adopted Resolution 54/18 and decided to submit the draft to the General Assembly for consideration, negotiation and subsequent adoption. The process has continued at the General Assembly. The Assembly adopted Resolution 79/170 on the Right to Development on 17 December 2024 and Resolution 80/207 on 18 December 2025. These resolutions demonstrate continuing General Assembly consideration of the RtD, but they should not be confused with adoption of the Draft Covenant as a treaty. As I am writing these lines in October 2026, the Draft Covenant remains a proposed instrument. Its eventual legal status will depend on the subsequent intergovernmental process and the requirements for treaty adoption and entry into force.

The change from declaration to covenant, therefore, is legally significant. A treaty creates consent-based obligations for state parties under international law. Once a treaty enters into force for a state, the state is bound by the treaty in accordance with the principle *pacta sunt servanda*. Treaty status can also provide institutional mechanisms for reporting, review and interpretation. Yet, formal binding force is only the first layer of change.

## 2.2 Why treaty status matters

First, treaty status changes the legal status of the commitments. A declaration principally operates through interpretation, political commitment and normative development. A treaty establishes consent-based legal obligations for parties. Second, treaty status can alter the interpretive environment of existing rights. The RtD would no longer stand only as a declaration adopted by the General Assembly; it would operate alongside the international covenants and other human rights treaties. The relationship between the RtD and existing rights would consequently become a matter of treaty interpretation and institutional practice. Third, treaty status creates an institutional question. The Draft Covenant establishes mechanisms for implementation, reporting and expert review. Articles 26 and 28 respectively provide for a Conference of State Parties and an implementation mechanism consisting of independent experts. The latter would be empowered to make suggestions and general recommendations, review obstacles to implementation and

consider requests by rights holders concerning adverse effects associated with failures by states to comply with the duty to cooperate.

These institutional provisions matter because they create the possibility of transforming broad principles into continuing processes of review and accountability. They do not, however, create a fully developed international adjudicatory regime equivalent to those established under some other human rights treaties. The constitutional significance of the Draft Covenant must therefore be assessed with institutional modesty. None of these changes automatically alter the political economy of development. A treaty can impose duties while leaving the underlying distribution of economic power without change.

## 2.3 Continuity and innovation in the Draft Covenant

The Draft Covenant is neither a complete departure from the 1986 Declaration nor a simple repetition of it. Its architecture is heavily grounded in the Declaration and in existing human rights instruments. Article 3 develops principles concerning human rights-based development, self-determined development, sustainable development, the right and duty to regulate, solidarity and cooperation. Article 4 re-emphasises the inalienable RtD, and expressly recognises active, free and meaningful participation. The Draft Covenant also develops the obligations of states. Article 8 requires states to respect, protect and fulfil the RtD and addresses national development policies. Particularly significant is article 8(5), which protects each state's right and duty, on behalf of rights holders, to formulate, adopt and implement national development laws, policies and practices. Other states are required to refrain from measures that nullify or impair that capacity, including in the fields of international cooperation, aid, assistance, trade and investment. The provision is important for the concept of development sovereignty because it does two things simultaneously. It protects a sphere of national development authority while refusing to treat that authority as an unrestricted governmental prerogative. The state exercises development policy authority on behalf of rights holders. The commentary further clarifies that this authority cannot be used to deny citizens their right to determine development priorities.

The Draft Covenant consequently contains a tension that is central to this chapter. It seeks to protect policy autonomy without converting it into executive discretion. It recognises sovereignty while embedding

sovereignty within participation and human rights. The constitutional question is whether this tension can be translated into a coherent legal principle.

## 3 What does the Draft Covenant actually change?

### 3.1 From aspiration to obligation

The first change is normative. The Draft Covenant would transform the DRtD from an instrument whose principal force is declaratory into a treaty right. This matters because legal obligation changes the language of responsibility. States that become parties would be bound by the obligations they accept under the Covenant. Yet, the Draft Covenant also acknowledges continuity. Its architecture is grounded in the 1986 Declaration and existing human rights instruments. The drafting history indicates that the objective is not to invent an entirely separate body of rights but to provide the RtD with a binding framework. That continuity is both a strength and a limitation. It gives the Covenant a substantial normative foundation. At the same time, it means that its transformative effect cannot be assumed merely from the fact of codification. The distinction is familiar in international human rights law. The International Covenant on Economic, Social and Cultural Rights (ICESCR), for example, does not merely announce aspirations. Article 2(1) establishes obligations of progressive realisation and international cooperation, while the Committee on Economic, Social and Cultural Rights (ESCR Committee) has clarified that states retain obligations to respect, protect and fulfil rights within the framework of available resources. The Draft Covenant can therefore be understood as entering an existing legal architecture rather than creating the architecture from the beginning. The question is consequently not whether treaty status matters; it does. The question is what additional legal consequences follow when the RtD is situated within a treaty framework.

### 3.2 From development as outcome to development as process

The Draft Covenant retains the distinctive process dimension of the RtD. Development is not reduced to aggregate economic growth. Participation, contribution and enjoyment remain central, and the Draft recognises both individual and collective dimensions. This is

constitutionally important. If development is understood only as an outcome, governments and international institutions can claim success by reference to aggregate indicators while excluding affected communities from decision making. A process-based right instead asks whether people have meaningful opportunities to influence the decisions that shape their lives. Articles 17 and 18 respectively strengthen this orientation by recognising the development priorities and participation of indigenous peoples and peasants and other people working in rural areas. The significance of these provisions is not merely protective. They indicate that development decisions may themselves be rights-sensitive decisions requiring participation by affected groups. The African human rights system provides an important illustration. In *Endorois*, the African Commission on Human and Peoples' Rights (African Commission) linked development, participation, land, natural resources and equitable benefit sharing. The decision illustrates the proposition that development cannot be separated from the ability of affected peoples to participate in decisions concerning resources and territory.[9] The Draft Covenant, therefore, moves beyond a conception of development in which governments define the desired outcome and communities become beneficiaries. It opens the possibility of development being treated as a legally structured process of collective decision making.

### 3.3 From domestic responsibility to shared international responsibility

A further change concerns the distribution of responsibility. The DRtD has never been exclusively domestic. The Declaration links the realisation of the right to national and international measures, while the Draft Covenant develops obligations concerning international cooperation. This is significant because many constraints on development originate outside the territorial control of developing states. Trade rules, financial conditions, technology regimes, debt relations, climate policies and cross-border corporate activities can affect domestic development choices. The Draft Covenant in its article 9 addresses obligations to respect, protect and fulfil, together with a duty to cooperate and provisions concerning

9 *Centre for Minority Rights Development & Another v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).

international organisations. Article 13 is especially important as it addresses cooperation in relation to international conditions necessary for the realisation of the RtD and refers to areas including finance, technology, international economic governance, debt sustainability and development cooperation. The provision reflects the proposition that development cannot be understood entirely within domestic borders. At the same time, shared responsibility must not become diluted responsibility. If every actor is responsible in the abstract, no actor may be clearly accountable in practice. The challenge resembles a broader difficulty in international human rights law. Transnational effects are real, but legal responsibility cannot simply be inferred from the existence of global inequality.

### 3.4 From state-centred sovereignty to participatory sovereignty

The Draft Covenant also preserves the role of peoples and individuals. Participation is not a decorative principle. It challenges a purely state-centred conception of development and suggests that development sovereignty must ultimately belong to people as well as governments. Article 8(5) is especially significant because it protects the capacity of states to formulate and implement national development policies, while expressly situating that authority on behalf of rights holders. It reads as follows:[10]

> States Parties recognise that each State has the right, on behalf of the rights holders, and also the duty to formulate, adopt and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realisation. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to international cooperation, aid, assistance, trade or investment, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Covenant and international law.

This is where the Draft Covenant's constitutional promise becomes most visible. The RtD can be understood as a claim to participate in the making of the development order itself. This conception is different from the idea that development policy is simply an area of executive

10 Draft International Covenant on the Right to Development (n 3).

discretion protected by sovereignty. The state remains an essential actor, but the source and purpose of its development authority are linked to rights holders. Sovereignty, therefore, becomes mediated through rights. The concept of development sovereignty emerges precisely at this point. It provides a vocabulary for understanding sovereignty not simply as the exclusion of external interference but as the legally protected capacity to determine development priorities through legitimate, participatory and rights-compatible processes.

## 4 Development sovereignty as a constitutional framework

### 4.1 Understanding development sovereignty

The language of sovereignty has traditionally been associated with territorial authority, independence and non-intervention. As generally observed, at the heart of state sovereignty is a tension. On one hand, it promises collective freedom and autonomy. On the other, sovereignty is laden with expectations.[11] In the development context, however, sovereignty has another dimension. Decolonisation gave rise to demands for the recognition of the permanent sovereignty of peoples and nations over their natural wealth and resources, for the promotion of their economic independence, and for the freedom of states to determine the exploration, development and disposition of their resources in accordance with their national interests and national development.[12] Development sovereignty builds on this history but gives it a human rights orientation. I review the concept here as an analytical rather than a pre-existing legal term of art. My purpose is to identify a dimension of the RtD that is easy to overlook when attention is concentrated on assistance, cooperation or development outcomes. Development sovereignty means the capacity of people and the state through which it governs to determine and pursue development priorities without illegitimate external constraint, while remaining subject to human rights, participation, equality, sustainability and international law. The concept therefore contains a deliberate tension. Williams writes that '[a]t the heart of state sovereignty is a

11 Williams (n 7).
12 UN General Assembly Resolution 1803 (XVII) Permanent Sovereignty over Natural Resources (14 December 1962), Preamble and arts 1, 2 & 6.

tension'.[13] The point is relevant here because sovereignty carries both a promise of collective autonomy and expectations that states pursue national development. The contribution of 'development sovereignty' should be understood in relation to, rather than as a replacement for, adjacent concepts. The New International Economic Order and the 1974 Charter of Economic Rights and Duties of States foregrounded the demand for a more equitable international economic order and greater control by developing states over their economic choices.[14] Permanent sovereignty over natural resources focuses more specifically on peoples' and states' authority over natural wealth.[15] 'Policy space' identifies the room available to governments to pursue development policies within international economic rules. Third World Approaches to International Law (TWAIL) scholarship, in turn, exposes the historical and structural inequalities through which international law has constituted sovereignty and development.[16] Development sovereignty draws on these insights but makes a distinct, rights-based move. It treats development agency as a capacity that must be shared between states and rights holders, exercised through meaningful participation, and constrained by equality, sustainability and accountability. It therefore does not simply rename economic sovereignty or policy space; it offers a framework for assessing whether formal autonomy translates into participatory and rights-compatible development capacity. It protects autonomy while rejecting arbitrariness. It recognises sovereignty while rejecting domination. It recognises state authority while treating participation by rights holders as a condition of legitimate development governance. Four elements follow from this definition.

The first is decision-making autonomy. Development priorities should not simply be imposed from outside. States and peoples require meaningful space to determine their economic, social and environmental priorities.

13 Williams (n 7).
14 M Bedjaoui *Towards a new international economic order* (1979).
15 N Schrijver *Sovereignty over natural resources: Balancing rights and duties* (1997).
16 S Pahuja *Decolonising international law: Development, economic growth and the politics of universality* (2011); A Anghie *Imperialism, sovereignty and the making of international law* (2005).

The second is participatory legitimacy. Those affected by development decisions must have meaningful opportunities to participate in their formulation, implementation and review.

The third is resource agency. Peoples and states require effective capacity to mobilise and use resources for agreed development purposes. Ownership of resources is insufficient if the institutional arrangements governing extraction, taxation, financing and distribution deprive rights holders of meaningful control.

The fourth is relational responsibility. Sovereignty cannot be invoked to justify conduct that violates the rights of others or undermines the common conditions of human development.

These elements distinguish development sovereignty from an unrestricted doctrine of national policy autonomy. The concept is therefore closer to constitutionally mediated autonomy than to classical sovereignty.

### 4.2 Distinguishing development sovereignty from classical sovereignty

Classical sovereignty is principally concerned with supreme authority within a territory and independence in relation to other states. Development sovereignty is concerned with the capacity to exercise meaningful authority over development choices. The distinction matters because formal sovereignty may coexist with substantial dependency. A state may possess the legal power to legislate while having limited fiscal space, technological capacity or bargaining power. It may own natural resources formally while depending upon external capital to exploit them. It may possess a sovereign currency while facing severe external financial constraints. Development sovereignty therefore asks whether formal authority is accompanied by meaningful capacity. This approach does not deny international law. Rather, it recognises that sovereignty itself is structured by international law. The Vienna Convention on the Law of Treaties, for example, recognises in article 26 the binding force of treaties through *pacta sunt servanda*, while treaty interpretation in article 31 requires good faith interpretation in accordance with ordinary

meaning, context and object and purpose.[17] Sovereignty does not exist outside law; it is exercised through legal relationships. Development sovereignty similarly treats the international legal order as both a source of constraint and a possible source of protection.

## 4.3 Development sovereignty and self-determination

Development sovereignty is closely connected to self-determination but is not identical to it. Common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) recognises the right of all peoples to self-determination and to pursue their economic, social and cultural development. Self-determination, therefore, provides an important foundation. Yet, development sovereignty focuses more specifically on the continuing institutional capacity to make development choices after formal political independence has been achieved. This distinction is particularly important for post-colonial states. The attainment of political independence did not eliminate economic dependency. International markets, financial institutions, debt relations, investment structures and technology regimes can continue to affect the range of choices available to formally sovereign states. Development sovereignty consequently asks a practical question that classical self-determination does not always answer: What conditions must exist for peoples to exercise meaningful control over their development after political independence? The question also has an internal dimension. Self-determination cannot simply mean that governments speak for peoples. The Draft Covenant's emphasis on participation suggests that development sovereignty must be exercised through institutions capable of giving rights holders a meaningful role.

## 4.4 Development sovereignty and permanent sovereignty over natural resources

The concept also builds on permanent sovereignty over natural resources. The principle emerged during decolonisation as a response to external

17 Vienna Convention on the Law of Treaties (1969), https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 15 August 2026).

control of natural wealth. General Assembly Resolution 1803 affirmed the right of peoples and nations to permanent sovereignty over their natural wealth and resources.[18] The African Charter on Human and Peoples' Rights (African Charter) in its article 21 similarly recognises the right of peoples to freely dispose of their wealth and natural resources and requires that this right be exercised in the exclusive interest of the people.[19] Development sovereignty is broader. It concerns not only ownership or control of resources but also the institutional choices through which resources are converted into development. Resource extraction can therefore be formally sovereign while remaining inconsistent with development sovereignty if communities are excluded, environmental costs are externalised or revenues do not produce equitable benefits. The distinction is important because resource sovereignty can itself become overly state-centred. A government may control a resource in the name of the nation while communities located on resource-rich land have little influence over extraction decisions. Development sovereignty requires the state's resource authority to remain connected to participation, equality and benefit-sharing.

## 4.5 The four constitutional pillars of development sovereignty

### *4.5.1 Decision-making autonomy*

The first pillar is decision-making autonomy. States and peoples must retain meaningful capacity to determine development priorities. This does not mean that every external condition is unlawful. States voluntarily enter treaties, accept financial commitments and participate in international organisations. International cooperation inevitably produces obligations. The question is whether the cumulative structure of those obligations leaves meaningful capacity for rights-compatible development choices. Article 8(5) of the Draft Covenant is important in this regard because it protects the state's capacity to formulate, adopt and implement national development laws, policies and practices while requiring other states to refrain from nullifying or impairing that

18 UN General Assembly 'Permanent Sovereignty over Natural Resources' GA Res 1803 (XVII) (14 December 1962).

19 African Charter on Human and Peoples' Rights, https://au.int/en/treaties/african-charter-human-and-peoples-rights (accessed 12 June 2026).

capacity. Decision-making autonomy is therefore relational. It concerns not absolute independence but protection against forms of external constraint that make development authority merely formal.

### *4.5.2 Participatory legitimacy*

The second pillar is participatory legitimacy. Development choices affect land, natural resources, infrastructure, taxation, public services and environmental burdens. Those affected by such choices should not be treated merely as passive recipients. Participation, therefore, has constitutional significance. It is a condition for legitimate development governance. The Draft Covenant in article 4, together with its provisions of articles 17 and 18 on indigenous peoples, peasants and other rights-holder groups, provides a foundation for such an interpretation.[20] The principle should extend beyond formal consultation to access to information, meaningful opportunities to influence decisions, non-discrimination and accountability. Participation is particularly important where development decisions redistribute benefits and burdens. A community may formally benefit from a development project while bearing disproportionate environmental or social costs. Participation allows such distributive questions to enter the legal assessment of development.

### *4.5.3 Resource agency*

The third pillar is resource agency. Development requires resources. Fiscal capacity, natural resources, technology, infrastructure, knowledge and access to markets all influence what governments and communities can achieve. Resources, therefore, ask not simply whether resources exist, but whether rights holders possess meaningful capacity to mobilise and use them. This is why illicit financial flows are relevant to the RtD. When resources leave countries through unlawful or abusive mechanisms, the resulting loss can reduce the fiscal resources available for public services and development priorities.[21] The issue is consequently not merely

20 Arts 4, 17 & 18 Draft International Covenant on the Right to Development (n 3).

21 For further developments, see GEK Kamga 'Linkages between illicit financial flows and the non-realisation of the right to development in Africa' (2019) 52 *Comparative and International Law Journal of Southern Africa* 169-192.

financial crime but the relationship between resource retention and development agency. Resource agencies also require attention to natural resources. Permanent sovereignty over natural resources provides an important legal foundation, but development sovereignty adds questions concerning participation, distribution, sustainability and accountability.

### *4.5.4 Relational responsibility*

The fourth pillar is relational responsibility. Sovereignty cannot become a legal justification for conduct that violates the rights of others. The principle is equally applicable internationally and domestically. States must respect the rights of individuals and peoples within their jurisdiction. Powerful states and other actors must also consider the effects of conduct that produces foreseeable and significant consequences beyond territorial borders. This does not establish unlimited extraterritorial responsibility. A disciplined approach must consider legally relevant connections such as effective control, foreseeable and significant impact, contribution to harm or the ability to regulate an activity. Relational responsibility consequently completes the concept. Development sovereignty is not isolation. It is autonomy exercised within a network of legal responsibilities.

## *4.6 Development sovereignty and constitutionalism in the Global South*

The concept has relevance to constitutionalism in the Global South because many post-colonial constitutional orders face the tension between formal legal autonomy and structural dependency. Constitutionalism ordinarily concerns limits on public power, protection of rights and the organisation of legitimate authority. Development sovereignty extends this inquiry into the economic conditions within which constitutional choices are made. A constitution may formally protect equality, socio-economic rights and democratic participation while the state's fiscal capacity is severely constrained. Conversely, a government may invoke development to justify policies that undermine participation, equality or environmental protection. Development sovereignty provides a framework for navigating between these possibilities. It protects development agency without placing development beyond constitutional scrutiny. It also places international economic structures

within the constitutional conversation. Trade, debt, investment and financial governance are not necessarily external to constitutionalism when they materially affect the capacity of states and peoples to realise rights. The concept therefore has a dual function. It protects developing states against illegitimate external domination while also protecting rights holders against the misuse of development authority by their own governments.

## 5 Reconstructing the Draft Covenant through development sovereignty

### 5.1 Participation as constitutional agency

Participation is one of the strongest foundations for development sovereignty. The Draft Covenant preserves the idea that individuals and peoples are entitled to participate in development. This matters because development decisions frequently involve distributive choices concerning land, natural resources, infrastructure, taxation, public services and environmental burdens. A RtD that does not include meaningful participation risks becoming a technocratic entitlement to an outcome defined by governments or international institutions. The constitutional implication is that participation should be understood as a condition of legitimate development policy, not merely consultation. The relevant standard should include access to information, meaningful opportunities to influence decisions, non-discrimination and accountability for decisions taken.[22] The significance of participation becomes particularly clear where development projects affect indigenous peoples and rural communities. The Draft Covenant's recognition of specific groups reinforces the idea that development governance must respond to differentiated vulnerabilities and forms of knowledge. Participation also changes the conception of the rights holder. Individuals and peoples cease to be merely beneficiaries of development and become participants in defining its content. This is an important constitutional transformation. Constitutional rights are generally not limited to the receipt of state benefits. They also structure the exercise of public power. If development

22 Art 4 Draft International Covenant on the Right to Development (n 3); arts 1-2 DRtD (n 1).

is a human right, development decisions should consequently be capable of being assessed as exercises of public authority.

### 5.2 Self-determination becomes development governance

The Draft Covenant's treatment of self-determination provides another foundation. The 1986 Declaration expressly links the RtD with the right of peoples to self-determination and sovereignty over natural wealth and resources. The Draft retains this conceptual connection.[23] This is important for development sovereignty because resource control is often the point at which formal sovereignty meets international economic power. States may possess ownership over resources while depending heavily on foreign capital, technology and markets. The legal question, therefore, is not simply who owns the resource, but who determines the terms on which it is developed and who receives its benefits. Self-determination must consequently be understood as an ongoing process of development governance rather than an event completed at independence. This interpretation also gives content to the collective dimension of the RtD. Peoples are not merely aggregations of individuals. They can possess legitimate interests in land, natural resources, culture and development priorities that require collective participation.

### 5.3 Equitable distribution as an internal constitutional limit

Development sovereignty must also be distributive. A state cannot claim development sovereignty simply because it controls policy or if the benefits of development are captured by narrow elites while vulnerable communities bear the costs. Equality and non-discrimination therefore operate as internal limits on sovereignty.[24] The Draft Covenant's rights-based conception of development supports this approach. Development must be compatible with human rights. The result is a conception of sovereignty that is neither purely external nor purely governmental. It is sovereignty exercised for and with rights holders. This point is important because development can produce both aggregate gains and profound inequality. A project may increase gross domestic product (GDP) while

23 Art 1(2) Draft International Covenant on the Right to Development (n 3); art 5 DRtD (n 1).

24 Arts 3, 16 & 20 Draft International Covenant on the Right to Development (n 3).

displacing communities. Natural resource exploitation may generate export revenue while producing environmental degradation. Fiscal reform may increase state revenue while disproportionately affecting vulnerable households. Development sovereignty, therefore, requires attention to the distribution of benefits and burdens. The concept does not prescribe a single economic model. It instead establishes a constitutional requirement that development choices remain compatible with equality, non-discrimination and human rights.

### 5.4 International cooperation as enabling sovereignty

The Draft Covenant places substantial emphasis on international cooperation. This is appropriate because the RtD is partly relational. However, cooperation should be interpreted through the concept of development sovereignty.[25] The critical distinction is between enabling and constraining forms of international engagement. Finance that expands fiscal and developmental choices may strengthen agency. Conditionality that removes meaningful policy space may weaken it. Technology transfer can strengthen agency; technological dependence can weaken it. Debt restructuring can restore fiscal capacity; unsustainable debt obligations can narrow it. These propositions do not establish that a particular form of conditionality, financing or debt is unlawful. They identify the kinds of effects that a rights-based assessment should examine. This does not mean that every external constraint violates the RtD. States remain bound by international law and may voluntarily undertake obligations that constrain policy choices. The point is instead that the cumulative structure of international obligations should not render development agency merely formal. Article 8(5) is particularly important because it directs attention to measures that may nullify or impair a state's development-policy capacity.[26] Article 13 reinforces this by placing international cooperation within the architecture of the right. International cooperation should therefore be understood not merely as assistance from richer states to poorer states. It is a legal relationship in which all relevant actors possess responsibilities.

25 Art 13 Draft International Covenant on the Right to Development (n 3).
26 Art 8(5) Draft International Covenant on the Right to Development (n 3).

## 5.5 Sustainable development as intergenerational sovereignty

The Draft Covenant in article 24(b) makes an important normative addition by expressly connecting the RtD with sustainable development and responsibilities towards present and future generations. This prevents development sovereignty from becoming a justification for ecological exploitation. Sovereignty over development must therefore include responsibility towards future generations. A development strategy that destroys ecological systems or permanently compromises the resource base of future generations cannot readily be described as the exercise of genuine development sovereignty. This dimension is especially important for resource-rich developing states. The existence of natural resources does not automatically justify their immediate exploitation. The relevant question is how resources can be used to advance development while preserving the conditions necessary for future generations. Sustainability, therefore, operates both as a substantive limitation and as a temporal dimension of sovereignty.

## 5.6 Extraterritorial effects and transnational power

The Draft Covenant also raises the question of conduct originating outside a state's territory. This is crucial because contemporary development constraints are often produced transnationally. The conduct of states, corporations and other economic factors can affect communities beyond territorial borders. Trade restrictions, financial decisions, corporate practices, technology arrangements and investment structures may have consequences for development choices elsewhere. The emerging human rights understanding of extraterritorial responsibility does not provide an unlimited basis for holding states responsible for every global inequality. A more disciplined approach would focus on legally relevant connections such as effective control, foreseeable and significant impact, contribution to harm or the ability to regulate an activity. Such an approach would make development sovereignty compatible with established principles. The Draft Covenant adopts the established human rights framework of obligations to respect, protect and fulfil the RtD and requires state parties to regulate business activities within their jurisdiction that may impair the enjoyment of the RtD, including where such activities have foreseeable effects outside their territory. At the same time, the Covenant grounds these obligations in situations where

states are in a position to exercise authority or regulation, rather than establishing unlimited extraterritorial responsibility.[27]

## 5.7 Development sovereignty in the contemporary African context

The conceptual argument is not abstract. Current development conditions illustrate why the capacity to determine development policy matters. Recent World Bank poverty estimates demonstrate the continuing scale of extreme poverty in sub-Saharan Africa.[28] These figures do not by themselves establish a violation of the RtD. They demonstrate, however, the material conditions within which development agency must operate. Debt provides a second illustration. Recent reporting by the United Nations Economic Commission for Africa has drawn attention to debt-service pressures, sustainable finance and the need to preserve fiscal space for development.[29] These concerns illuminate the relationship between formal sovereignty and practical policy space: A government may retain legal authority over its budget while a significant share of available revenue is committed to debt service. The point is not that debt repayment is inherently inconsistent with the RtD. States are generally required to honour lawful financial commitments. The point is that the RtD must be capable of addressing situations in which the cumulative structure of debt, financing and external obligations materially narrows the choices available for fulfilling human rights.

The same logic applies to illicit financial flows. If resources generated within a country leave the country through unlawful or abusive practices, the loss is not simply an economic problem. It can diminish the fiscal resources available for health, education, infrastructure and

27 UN Human Rights Council Draft Convention on the Right to Development with Commentaries UN Doc A/HRC/WG.2/21/2/Add.1 (2020) arts 8-12 and commentary; Committee on Economic, Social and Cultural Rights General Comment 24 State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities UN Doc E/C.12/GC/24 (2017) paras 25-37.

28 World Bank 'September 2025 global poverty update from the World Bank: New data and regional classifications' (30 September 2025), https://blogs.worldbank.org/en/opendata/september-2025-global-poverty-update-from-the-world-bank--new-da (accessed 9 August 2026).

29 UN Economic Commission for Africa 'African experts seek to innovate on debt reform, sustainable finance and fiscal resilience' (2025), https://www.uneca.org/stories/african-experts-seek-to-innovate-on-debt-reform%2C-sustainable-finance-and-fiscal-resilience (accessed 9 August 2026).

social protection.[30] Development sovereignty, therefore, includes the capacity to retain and mobilise resources for democratically determined priorities. The 2025 Africa Sustainable Development Report provides a further indication of the structural challenge. The Report identifies significant financing constraints and concludes that progress towards the Sustainable Development Goals (SDGs) remains insufficient to achieve the 2030 targets at the current pace.[31] Again, these facts do not establish legal breach. They demonstrate why the RtD must be concerned with the conditions under which states and peoples can act. The African context, therefore, illustrates the difference between formal development authority and effective development capacity. Development sovereignty seeks to bring these two dimensions closer together.

## 6 Constitutional limits of the Draft Covenant

### 6.1 The problem of policy space

The Draft Covenant's most important limitation is the distance between recognising development agency and protecting the policy space required to exercise it. The text contains principles that support policy autonomy, but it does not establish a comprehensive legal regime governing the interaction between the RtD and international trade, investment, debt, taxation, intellectual property and financial governance.[32] This gap matters because domestic development policy is increasingly conditioned by international rules. A state may have formal sovereignty but limited practical choices. If the Covenant is interpreted without paying attention to these structural conditions, its promise of development sovereignty will remain largely domestic and therefore incomplete. The problem is not that international economic law necessarily prevents development. International economic relations can also expand development possibilities. The constitutional question

30 GEK Kamga 'Manufacturing underdevelopment: Coins trafficking as illicit financial flows in disguise' in Kamga and others (n 4) 241-255.

31 African Union Commission 'UN Economic Commission for Africa, UN Development Programme and African Development Bank Africa 2025 Sustainable Development Report' (2025), https://www.uneca.org/2025-africa-sustainable-development-report (accessed 9 August 2026).

32 Arts 8(5), 13 & 21 Draft International Covenant on the Right to Development (n 3).

is whether the legal order provides mechanisms for identifying when external rules materially undermine rights-compatible development choices. Article 8(5) provides a starting point, but its eventual interpretation will be crucial. If the provision is understood narrowly as protecting governmental policy discretion, its constitutional effect will be limited. If it is interpreted as protecting the capacity of rights holders and states to determine development priorities within international law, it could have broader significance.

### 6.2 The ambiguity of international obligations

The Covenant's international dimension is potentially transformative but also legally difficult. Obligations of cooperation are expressed in part through general duties concerning international conditions, finance, capacity building and economic governance. The challenge is to translate these commitments into standards capable of identifying breach without converting every adverse development outcome into an internationally wrongful act. An effective framework should distinguish duties to respect, protect and fulfil. It should also identify the circumstances in which states must take separate and joint action.[33] The principle of international cooperation can guide interpretation, but it cannot simply be transformed into a universal obligation to remedy every development deficit. Legal responsibility must remain connected to the specific obligations created by the Covenant. The distinction is particularly important in relation to global economic structures. International institutions and states may have significant influence over development conditions but influence alone does not establish legal responsibility for every consequence.

### 6.3 Non-state actors

Another limitation is the role of non-state actors. Contemporary development is profoundly influenced by multinational enterprises, financial institutions, rating agencies, technology companies and other private actors. A state-centred treaty can address these actors indirectly through regulation, but the effectiveness of that approach depends on

33 Arts 8-13 Draft International Covenant on the Right to Development (n 3).

domestic capacity and the willingness of states to regulate powerful economic interests. The Draft Covenant should therefore be interpreted consistently with existing developments concerning business and human rights. The UN Guiding Principles on Business and Human Rights establish a framework based on the state duty to protect, the corporate responsibility to respect human rights and access to remedy.[34] Development sovereignty requires states to preserve the regulatory capacity necessary to protect rights against private powers. This is another reason why development sovereignty cannot be equated with state sovereignty. A state that is formally sovereign but unable or unwilling to regulate private actors may provide little meaningful protection to rights holders. At the same time, private actors cannot automatically be treated as equivalent to states under international human rights law. The legal architecture of the Draft Covenant remains principally state centred. The challenge is therefore to strengthen state responsibility for regulating private conduct without collapsing the distinction between public and private legal responsibility.

### 6.4 Accountability and implementation

The final limitation concerns remedies. Recognition of a right is meaningful only if institutions can determine whether it has been violated and provide an appropriate response. The Draft Covenant's reporting and implementation mechanisms are important, but their effectiveness will depend on independence, resources, access and the willingness of states to engage with findings. Article 28 establishes an implementation mechanism for independent experts. Its functions include making suggestions and general recommendations, reviewing obstacles to implementation and considering requests by rights holders concerning situations in which their RtD has been adversely affected by failures to comply with the duty to cooperate. Domestic courts and regional human rights bodies may also become important sites for translating the Covenant into concrete standards, particularly where the Covenant is incorporated or otherwise used as an interpretive source in

34 UN Guiding Principles on Business and Human Rights, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed 20 August 2026).

domestic and regional law. The African human rights system could be particularly important in this regard because the African Charter already recognises a collective RtD under article 22.

## 7 What could the Draft Covenant constitutionally change?

The answer to the question in the title can now be stated with greater precision. First, the Draft Covenant could change the legal status of the DRtD by moving it from declaration into treaty law. This would transform the nature of the legal commitments assumed by states that become parties. Second, it could consolidate the right as a multidimensional right involving participation, contribution, enjoyment and self-determination. Development would consequently be understood not simply as an economic outcome, but as a rights-based process. Third, it could strengthen the international dimension of responsibility by treating development as a matter that cannot be confined to domestic policy. International cooperation would become part of the legal architecture of the right rather than merely a matter of political preference. Fourth, it could create an institutional framework within which the right can be reported upon, reviewed and interpreted. The proposed Conference of State Parties in article 26 and independent expert mechanism in article 28 of the Draft Covenant provide the foundations for continuing institutional development.

However, these changes do not necessarily amount to constitutional transformation. The decisive issue is whether the Covenant changes the terms on which development choices are made. If the treaty is implemented merely as another reporting instrument, its transformative effect will be modest. If it is interpreted as protecting development agency, requiring meaningful participation, preserving legitimate policy space and addressing transnational constraints, its constitutional significance will be greater. This is where development sovereignty provides an analytical test. A provision is constitutionally significant, on this analytical account, to the extent that it

- increases the capacity of rights-holders to determine development priorities;
- protects them against coercive or discriminatory interference;
- expands meaningful access to resources, information and decision making;
- protects legitimate policy space;
- requires participation in development decisions;

- creates accountability where external or internal power undermines those capacities; and
- ensures that development remains compatible with equality, sustainability and human rights.

Applied to the Draft Covenant, this test produces a differentiated assessment of its potential constitutional significance. Article 8(5) provides the strongest basis for protecting development agency because it addresses national development laws, policies and priorities, thereby opening space to question external measures that impair a state's capacity to pursue its chosen development objectives. Its significance, however, lies not in establishing an unrestricted right to determine national priorities, but in supporting development choices that remain compatible with human rights and other applicable international obligations. Article 4 supplies an essential participatory dimension to this autonomy. By requiring active, free and meaningful participation, it supports an understanding of development in which people are not merely beneficiaries of state policy, but participants in determining its priorities and direction. Read together, these provisions suggest that development sovereignty must protect both the capacity to make development choices and the participation of those whose lives are affected by them.

Article 13 extends this analysis beyond the domestic sphere by bringing international cooperation into the normative framework of the RtD. Its potential constitutional significance lies in recognising that development agency may be constrained by international economic arrangements and the conduct of external actors, and that the realisation of the right cannot always be assessed exclusively through the actions of national governments. Nevertheless, the provision's transformative potential depends on the identification and interpretation of sufficiently clear obligations of cooperation and responsibility. It should not be understood as establishing automatic liability for development deficits or as resolving, by itself, the tensions between development priorities and competing international obligations. Article 28 complements these substantive provisions by providing an institutional mechanism through which implementation may be examined, interpretative approaches developed and obstacles to the realisation of the right identified. Yet, the existence of an independent expert mechanism does not, in itself, guarantee effective accountability. Its contribution will depend on the

scope of its mandate, its independence and resources, and the extent to which its findings receive meaningful consideration and follow-up.

Taken together, these provisions offer complementary, rather than equivalent, possibilities for constitutional change. Article 8(5) addresses the distribution of power over development priorities; article 4 supplies the participatory conditions necessary to legitimise its exercise; article 13 situates development agency within the wider framework of international cooperation; and article 28 provides a potential institutional avenue for interpretation and scrutiny. The Draft Covenant thus contains elements from which a more substantive framework of development sovereignty could emerge. It does not, however, establish that framework in its entirety or guarantee its practical realisation. Its constitutional significance ultimately depends on whether these provisions are interpreted and implemented in ways that meaningfully strengthen the capacity of peoples to shape their development, protect legitimate policy space, address relevant transnational constraints and hold the exercise of development power accountable to human rights. The Draft Covenant's potential constitutional moment, therefore, lies not simply in the codification of the RtD in treaty form, but in the possibility of changing the legal and institutional conditions under which development priorities are determined, pursued and scrutinised.

The foregoing analysis can be understood through four interrelated dimensions of development sovereignty. Decision-making autonomy concerns the capacity to determine development priorities without illegitimate external domination. Participatory legitimacy requires that those affected by development decisions have meaningful opportunities to influence them. Resource agency concerns the practical capacity of peoples and states to mobilise and use resources in pursuit of collectively determined priorities. Relational responsibility requires that the exercise of development authority remain compatible with human rights, the rights of others and applicable obligations of international cooperation. Together, these dimensions provide an analytical framework for interpreting the Draft Covenant's potential constitutional significance.

This framework also reframes sovereignty itself. Sovereignty becomes neither a shield against international responsibility nor a licence for governments to determine development priorities without meaningful participation. Rather, it denotes a legally structured capacity to pursue development choices within a framework of rights, participation and

reciprocal responsibilities. The principal constitutional possibility of the Draft Covenant lies in its potential to give greater normative and institutional effect to this understanding of sovereignty, while leaving its full realisation dependent on interpretation, implementation and accountability.

## 8 Conclusion

The Draft International Covenant on the Right to Development arrives at a constitutional moment. The international community has moved beyond the question of whether development should be recognised as a human right and towards the harder question of what legal order is required for that right to be realised. The transition from declaration to treaty is important, but it should not be mistaken for the end of the constitutional inquiry. A treaty can create binding obligations without fundamentally changing the distribution of development power. The deeper question is whether the legal framework can protect the agency of peoples and states in determining the direction of development. I have described such agency as development sovereignty. It provides a bridge between self-determination, economic policy space, participation, resource control, equality, sustainability and international responsibility. It rejects both extremes: a purely state-centred sovereignty that can suppress rights, and an international cooperation model that can reduce developing states to recipients of externally defined priorities. The concept, therefore, places agency at the centre of the RtD. The Draft Covenant already contains many of the elements needed for this conception. Its recognition of participation, self-determination, equitable development, international cooperation and sustainability creates the foundations of a more constitutional understanding of development.

Its weaknesses are equally important. It leaves unresolved the precise legal relationship between the RtD and international economic structures. It does not fully determine how responsibility should be allocated where transnational power constrains development choices. Its implementation mechanism remains institutionally cautious. Its state-centred structure means that much will depend upon the willingness and capacity of states to regulate private actors and translate international commitments into domestic institutions.

These limitations do not make the Draft Covenant insignificant. They demonstrate instead that treaty adoption would be the beginning

of a constitutional process rather than its completion. The Covenant should therefore be understood neither as a complete constitutional settlement nor as a mere restatement of the 1986 Declaration. Its ultimate significance will depend on whether states, international institutions, courts, expert bodies and civil society use it to make the distribution of development power legally visible. This requires an understanding of the RtD that is more demanding than a claim to development benefits. A person or community should not merely ask whether development has occurred. They should also be able to ask who determined its objectives, who participated in the decision, who controls the resources involved, who bears its costs and who is accountable for its consequences. That is the constitutional dimension of development sovereignty. The question is consequently not simply whether the Draft Covenant changes the law. It is whether it changes who is entitled to participate in determining the conditions under which development occurs. If the final instrument protects that capacity in a meaningful and enforceable form, it could mark an important constitutional development in international human rights law: a movement from a RtD towards a right to have a meaningful say in determining development itself.

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