Workshop on Regional Arrangements for the Promotion and Protection of Human Rights

Room XVIII, Palais des Nations, 21 and 22 October 2019

**Theme: Enhancing Cooperation between United Nations and Regional Human Rights Mechanisms, on Racism and Implementation of the Durban Declaration and Plan of Action**

**Session: The Critical Links between the Right to Development, the Sustainable Development Goals and the Durban Declaration and Plan of Action & Racism**

**The RTD in relation to the DDPA & Racism and & the SDGs – Shyami Puvimanasinghe**

**“I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character” –** **Martin Luther King,** **‘I Have a Dream’**.

Dr. King recalled the unacceptable realities of People of African descent denied of their freedom - crippled by the chains of discrimination - living on a lonely island of poverty in the midst of a vast ocean of material prosperity - as exiles in their own land. He also recognized - that our destiny is intertwined, with the destinies of others, so too, our freedom. ‘We cannot walk alone’.

These words are in many ways resonant with the realities of our times – when just 8 individuals own the same wealth as 3.7 billion others, the poorer half of humanity. Economic inequalities intersect with a wide range of other inequalities, both local and global. Race and ethnicity, religion and colour, along with gender and other forms of discrimination, still go to the heart of violations of human rights. Today we see a rise in racism, racial discrimination, xenophobia and related intolerance, including against people of colour, ethnic and religious minorities, migrants and indigenous peoples, revived by rising nationalism and populism across the world. Evolving crises like climate change will see new waves of migrants, including from the world’s small islands, and humanity and solidarity will be key to ensuring that all can live and let live with dignity.

Intersectionalities, for example of race and poverty in the case of People of African Descent, underline the need to promote and protect all human rights of all people – their Civil and Political Rights, Economic, Social and Cultural Rights, and their Right to Development, with equal attention to them all, in view of their indivisibility and interdependence. We are obliged to do so under the Universal Declaration of the Human Rights, the Vienna Declaration and Programme of Action and the Declaration on the Right to Development.

Left unaddressed, inequality and discrimination can fuel the flames of violent conflict and war.

**DDPA & DRTD** **- Article 19, DDPA**: We recognize the negative economic, social and cultural consequences of racism, racial discrimination, xenophobia and related intolerance, which have contributed significantly to the underdevelopment of developing countries and, in particular, of Africa and resolve to free every man, woman and child from the abject and dehumanizing conditions of extreme poverty to which more than one billion of them are currently subjected, to make the right to development a reality for everyone and to free the entire human race from want.

* Equality and non-discrimination;
* Primary responsibility of combating racism, racial discrimination, xenophobia and related intolerance to States, DDPA also calls for Partnerships: international and non-governmental organizations, political parties, national human rights institutions, the private sector, the media and civil society at large;
* Specific recommendations to combat discrimination against Africans and persons of African descent, Asians and persons of Asian descent, indigenous peoples, migrants, refugees, minorities, the Roma and other groups;
* Gender dimension of racial discrimination and attributes a key role to women in the development of programmes to combat racism and intolerance – Gender empowerment and advancement and the full participation of women in the development process;
* Reinforcement of national institutions. Concrete recommendations in the areas of national legislation and the administration of justice;
* The DDPA urges governments to provide effective remedies, recourse, redress and compensatory measures to victims and to ensure that victims have access to legal assistance so they can pursue such measures. It also recommends the creation of competent national bodies to adequately investigate allegations of racism, racial discrimination, xenophobia or related intolerance.

**“We do not want freedom without bread, nor do we want bread without freedom. We shall have both.” Nelson Mandela**

India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before. India's great moral leader Mohandas Gandhi famously said that there is enough on Earth for everybody's need, but not enough for everybody's greed. Today, Gandhi's insight is being put to the test as never before.**UN Declaration on the Right to Development 1986 - Development is a Human Right**

**Builds on:**

**UN Charter** - ‘We the Peoples’ – international cooperation

**UDHR** - All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to a social and international order wherein all rights and freedoms can be fully realized

**International Covenants** - ICCPR and ICESCR

**DRTD**

**Preamble:**

‘Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,’

‘Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind’,

‘Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’,

**Article 1.1**

“an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (Article 1.1)

**Article 5**

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid , all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

**DRTD Principles and Elements**

People-centred development: “The human person” is the central subject, participant and beneficiary of development

A human rights-based approach: Development should be carried out in a manner “in which all human rights and fundamental freedoms can be fully realized”

Participation: “Active, free and meaningful participation” of all individuals and peoples

Non-discrimination: “No distinction as to race, sex, language or religion” **(Article 6)**

Equity: “Fair distribution of the benefits” of development

Right of peoples to self-determination including full sover­eignty over all their natural wealth and resources

Equality, non-discrimination, participation, accountability and transparency

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of human well-being

The human person is the central subject, active participant and beneficiary of the RTD

States must act to eliminate human rights violations of all forms

States should promote international peace and security and disarmament and use released resources for development

Equality of opportunity for development is a prerogative for both nations and individuals who make up nations

States have a duty to cooperate to create an enabling local and global environment for development and to eliminate obstacles to development

The RTD requires appropriate national and international development policies and an enabling social and international order to realize all rights and freedoms

**Rights Holders:** The human being, both individually and collectively

* + All individuals
  + All peoples and the entire population
  + Emphasis on women, children & other groups

**Duty bearers:**

* States have the primary responsibility to respect, protect and fulfil the RTD at three levels (A/HRC/15/WG.2/TF/2/Add.2, )

i) Internally through national policies and programmes

ii) Internationally, through policies extending beyond their jurisdictions

iii) Collectively, through global and regional partnerships

* International Community
* All human beings, and all those whose actions and/or omissions have an impact on human rights and on the environment in which these rights are fulfilled

**DDPA & 2030 Agenda and SDGs** – The links have been made by my colleague Gaynel Curry. Critical links ‘Leave No One Behind’ – Equality and Non-Discrimination and all human rights including the RTD must be at the heart of SDG Implementation

The 2030 Agenda is universal and applies to all countries and peoples. At the same time it recognizes the need for international cooperation, global partnership and Means of Implementation in SDG 17 and the a,b,c, Targets in all the Goals, because of global inequalities and asymmetries in development recognized in SDG 10, which addresses inequalities within and among countries

Para 16 of the Agenda - Globally, progress on economic development has been uneven particularly for Africa, Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, and for developing countries more generally. The Agenda also recognizes the vulnerabilities of countries in conflict and post-conflict, and the need to address them

The DRTD and sustainable development provide alternative paradigms in development thinking that place human rights including equality and non-discrimination, at the heart of national and international development. Economic and development policies at all levels must integrate the RTD and all HR to achieve sustainable development and the SDGs for all. The RTD integrates the 3 UN Pillars (and Environment), and seeks to redress systemic and structural injustices.

**The RTD in Global and Regional Human Rights Instruments and Systems**

**Inter-American Human Rights System**

**Charter of the Organization of American States 1948**

Details the concept, rights and duties of integral development, the overall purpose of which should be the “establishment of a more just economic and social order that will make possible and contribute to the fulfilment of the individual” (art. 33)

Integral development is the common and joint responsibility of Member States (art. 31), preferably through multilateral organizations (art. 32)

Cooperation among States in this regard “should include the economic, social, educational, cultural, scientific and technological fields, support the achievement of national objectives of the Member States, and respect the priorities established by each country in its development plans, without political ties or conditions (art. 32)

**American Convention on Human Rights 1969**

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires

**African Human and Peoples’ Rights System**

**African Charter on Human and Peoples ’ Rights 1981**

Article 22

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

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

**Arab Charter on Human Rights 2004**

Article 37

The right to development is a fundamental human right. All State Parties shall establish development policies and take measures to ensure this right. They must give effect to the values of solidarity and cooperation among them and, at the international level, to eliminate poverty and achieve economic, social, cultural and political development. In accordance with this right, every citizen shall have the right to participate in the development, and contribute to and enjoy the benefits, of their goods and fruits of their labour.

Other relevant Articles include:

Article 39

Young persons have the right to be afforded the most ample opportunities for physical and mental development

**Association of Southeast Asian Nations (ASEAN) Human Rights Declaration 2012**

A section of the ASEAN Human Rights Declaration (2012) is devoted to the right to development. In paragraph 37, Member States recognize that the implementation of the right to development requires effective development policies at the national level as well as international cooperation, and that States should mainstream aspects of the right to development into ASEAN community building as well as work with the international community to promote development

See also:

Paragraph 35 (definition based on the UN Declaration on the RTD)

Paragraph 36 (On the duty to adopt development programmes including sustainable development and progressive narrowing of the development gap in ASEAN

**Abu Dhabi Declaration 2016**

Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation (OIC) adopted Abu Dhabi Declaration in 2016.

The Declaration urged the OIC Member States to take concrete and urgent actions to:

* reinvigorate political will for implementing the RTD;
* mainstream human rights and the RTD norms into development plans and ensure system-wide coherence to bridge implementation gaps;
* strengthen international cooperation with multilateral development institutions to address persistent challenges and create linkages with the ongoing international initiatives like the SDGs taking into account national circumstances and priorities

**CASE LAW EXAMPLES of Right to Development and Sustainable Development**

**African Commission on Human and Peoples’ Rights**

The Commission defined the substantive and procedural nature of the RTD, especially in the case of Centre for Minority Rights Development (Kenya) and Minority Rights Group (on Behalf of Endorois Welfare Council) v Kenya (2009). The complaint concerned the eviction by the Kenyan government of the semi-nomadic pastoralist Endorois community from their ancestral land at Lake Bogoria in central Kenya in the 1970s, so that a national game reserve and tourist facilities could be built there instead. The Endorois community had practised a sustainable way of life inextricably linked to their ancestral lands since time immemorial. The arguments were based on: (1) the violation of the Endorois’ right to participation in decisions affecting their land and development; and (2) their rights to self-determination, natural resources, and ancestral land.

The case reached the African Commission after the Kenyan courts failed to acknowledge and remedy the alleged rights violations. The complaint was based on the allegation that the process of evicting this community from their ancestral lands violated their property, spiritual, cultural, and economic rights, as well as their right to effectively participate in decisions affecting their own land and development. Substantively, due to the eviction and relocation, the RTD of the Endorois community was compromised as that pertaining to peoples, in social, cultural, religious, and material terms; and, procedurally, they were denied rights by not allowing for sufficient participation in decisions regarding their lands. The case illustrates, for example, that security of tenure and land inter alia is an essential component of the RTD for indigenous peoples. Indigenous populations in Africa have at times been placed in vulnerable situations due to forced evictions from their lands in favour of economic activities.

As regards enforcement of the Commission’s decision, even though the 2010 Kenyan Constitution and the 2016 Community Land Act (Kenya) provided for greater protection of basic human rights, minority and ethnic communities’ rights, and communal land rights, in 2016, the → Committee on Economic, Social and Cultural Rights (CESCR) expressed concern about the procedural rights involved, recommending that the government of Kenya implement the decision without delay and ‘ensure that the Endorois are adequately represented and consulted at all stages of the implementation process’ (UN CESCR (2016) regarding land management activities.

Other RTD cases in the African Human Rights system include: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (2001) (ACommHPR); Democratic Republic of Congo v Burundi, Rwanda and Uganda (ACommHPR) (2003); Kevin Mgwanga Gunme et al v Cameroon (ACommHPR) (2009); Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan (ACommHPR) (2009); and most significantly, the decision of the → African Court on Human and Peoples’ Rights (ACtHPR) in ACommHPR v Republic of Kenya (Judgment) (ACtHPR) (2017).

The Ogiek case relates to the violation of various rights of the Ogiek community (rights to life, property, natural resources, development, religion, and culture), who were prevented from ‘securing ownership and use of their ancestral land on which they depend for their social, economic[,] and cultural existence, after being demanded by the Government of Kenya to move out of the Mau Forest Complex’ (ACommHPR). The persistent denial of land rights compromises other human rights, such as religious, cultural, and developmental rights, as they are crucial for the livelihoods and survival of peoples. The Court’s decision in this case provides evidence that the RTD is justiciable.

Similarly, Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) addressed several human rights (rights to life, food, water, property, health, family, wealth, natural resources, and a satisfactory environment) of the Ogoni people in Nigeria, in relation to their development. Most of these cases deal with the violation of the RTD relating to the rights to self-determination, property, and natural resources of indigenous peoples.

**RTD Jurisprudence from South Asia**

In India, the RTD has been mentioned in 29 Supreme Court judgments and 77 High Court judgments between 1990 and 2015. It has been invoked to support the rights of women, children, persons with disabilities, *Dalits*,[[1]](#footnote-1) *Adivasis*,[[2]](#footnote-2) and minorities including religious minorities, in the face of discrimination in education, labour, succession, land acquisition, and property, among other issues. Indian courts of law have applied the RTD in relation to Constitutional Article 21 on the right to life, and the rights to property, shelter, and food, as well as to Articles 14, 15, and 16 on the rights to equality, equal status, and equal opportunity of minorities. In *Madhu Kishwar vs. State of Bihar* the defendant had excluded Adivasi women from inheriting property. The Court called for an amendment of the discriminatory law to ensure that women have an active role in the development process, as required by DRTD Article 8, which mandates that appropriate economic and social reforms must be carried out with a view to eradicate social injustice.

In *Murlidhar Dayandeo Kesekar vs. Vishwanath Pandu Barde*, the court cited various sources to illustrate the idea of justice with emphasis on the rights of the “less privileged,’ especially *Dalits* and *Adivasis.* He cited *inter alia* theUniversal Declaration of Human Rights (Articles 1, 3, 17, 22, and 25); the DRTD, including its definition of development in the Preamble and Articles 1, 2, 3, 4, 8, and 10; and Articles 14, 15, 16, and 21 of the Indian Constitution (on the right to equality, non-discrimination, and the right to life). The Court in *Mrs. Valsamma Paul vs. Cochin University*, said the RTD had become part of the Indian Constitution and is, thus, enforceable: “The principles embodied in the Covenant on the Elimination of the Discrimination against Women and the concomitant right to development became an integral part of the Constitution of India and the Human Rights Act and became enforceable.”

Gender and race, religion and ethnicity, colour and class, poverty and indigeneity, and other markers of identity often intersect to produce economic, social as well as environmental injustice, which reverse development gains. The above cases illustrate how the RTD links the social pillar of sustainable development with economic, social and environmental justice and development. In an intersectional view of the contours of poverty and race, pollution and discrimination, environmental justice has been defined[[3]](#footnote-3) as “the principle that all people and communities are entitled to equal protection of environmental and public health laws and regulations.” The RTD can play a vital role in combating discrimination against the various groups addressed in the DDPA - Africans and persons of African descent, Asians and persons of Asian descent, indigenous peoples, migrants, refugees, minorities, the Roma and other groups. In Africa and South Asia, it has been especially useful to uphold the rights of indigenous peoples and vulnerable minorities.

Enhanced civic space and public participation in decision - making, along the lines of the right to development’s core principle of free, active, and meaningful participation – including through voice and representation for marginalized groups, can empower the disempowered. The RTD and all human rights, provide pathways to economic and social justice, inter- and intra-generational equity, climate and environmental justice, all essential to sustainable development. Likewise, the SDGs provide an opportunity to galvanize global, regional, and local actions and resources to implement universal goals and targets that could contribute substantially to the promotion and implementation of the RTD and all human rights.

**“The world has enough for everyone's need, but not enough for everyone's greed” –** **Mahatma Gandhi**

**Global extractivism and racial equality - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Tendayi Achiume – A/HRC/41/54**

This report explains *inter alia* why sovereign equality, the right to self-determination of peoples and the right to development are fundamental in achieving racial equality and non-discrimination, and must be understood as such in the elaboration of human rights standards and practices relating to all aspects of the extractivism economy.

**Para. 35:** ‘Notwithstanding these shifts, colonial-era sovereign inequality persists, and models of extraction that rely upon or produce racial, ethnic and indigenous exploitation remain a reality. Despite the vision of a new international economic order based on sovereign equality, which the Declaration on the Right to Development identifies as essential, the international economic order that underlies and structures the extractivism economy retains colonial inequalities. This means that, although international law has formally repudiated sovereign inequality, persisting sovereign inequality and foreign and international constraints on self-determination remain at the core of the extractivism economy. Indeed, some refer to this dynamic as reflecting a “‘commodity consensus’, i.e. a global constellation in which, in spite of the global politicization of the ecological crisis and climate change, the extractivist form of the appropriation of nature has remained the dominant global dynamic”. Within this dynamic, territories of extraction remain politically and economically subordinate in a global political economy characterized by sovereign inequality.’

**Para. 45:** ‘In the Declaration on the Right to Development, the General Assembly makes clear that, in fulfilling their national development obligations and duties, States should ensure equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income, and that women should have an active role in the development process. At a more fundamental level, the Special Rapporteur recalls that international human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. The principles of equality and non-discrimination are therefore codified in all core human rights treaties. Differences in treatment or human rights outcomes on grounds of race or ethnicity are not permitted as the prohibition of racial discrimination has been recognized as part of customary international law, imposing immediate and absolute obligations from which no derogation is permitted, even in a state of emergency.’

**Para. 65:** ‘States, multilateral actors and transnational corporations must anchor governance, oversight and evaluation of the extractivism economy in the principles of sovereign equality, the right to self-determination of all peoples and the right to development.’

In an era of globalization, there is increased need for responsible governance at all levels, renewed multilateralism and stewardship which upholds responsibilities to all, including future generations through a social and international order that enables the rights and freedoms of all people:

**Article 6, Johannesburg Declaration, World Summit on Sustainable Development 2002** –

“Our responsibility to one another, to the greater community of life and to our children”

**Principle 3, 1992 Rio Declaration on Environment and Development; Article 11, 1993 Vienna Declaration and Programme of Action –**

“The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations”

RTD requires rational planning, with human rights, equality and non-discrimination built into economic and development policy at all levels – local, national, regional and global

The RTD is built on the edifice of international cooperation. To close critical gaps, we need to advance the indivisibility of CPR, ESCR and RTD, and adopt integrated approaches to peace human rights and sustainable development. Enhanced collaboration between global and regional human rights mechanisms will provide practical means to nurture integrated approaches. The RTD is integral to almost all the regional human rights systems/mechanisms, providing a vital entry point for future collaboration on the RTD and DDPA/Racism, also in the context of the SDGs.

The DRTD calls for an enabling environment for development in which one can define one’s own destiny. But as Martin Luther King said in ‘I have a Dream’, our destiny is intertwined, with the destinies of others, so too, our freedom. ‘We cannot walk alone’.

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1. Means “oppressed.” Also known as “untouchables.” People of the lowest caste in India (https://en.oxforddictionaries.com/definition/dalit). [↑](#footnote-ref-1)
2. Means “first inhabitants.” Aboriginal tribal peoples in India before the second millennium BC and their descendants (https://en.oxforddictionaries.com/definition/Adivasi). [↑](#footnote-ref-2)
3. R.D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Boulder, CO: Westview Press, 2000). [↑](#footnote-ref-3)