



INTERNATIONAL LAW AND THE RIGHT TO  
DEVELOPMENT:

A PRAGMATIC APPROACH FOR AFRICA

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## 1. Introduction

*Our guiding light must be the needs and hopes of peoples everywhere...we must aim to perfect the triangle of development, freedom and peace.*<sup>1</sup>

In 2016 the world will celebrate the 30<sup>th</sup> anniversary of the United Nations Declaration on the Right to Development (UNDRTD).<sup>2</sup> Undoubtedly, by next year a flurry of activity will have arisen around this topic, and the milestone anniversary will be commemorated with countless symposia, speeches and newly published books around the world. Such heightened interest is desirable. However, inevitably it also draws our attention to the fact that since 1986 the United Nations has sought to fully establish this human right, with debatable levels of success.<sup>3</sup>

Amidst solemn rhetoric from many relevant stakeholders about the problem of sustained underdevelopment in various parts of the world, repeated calls for action have been required on the part of prominent global thought leaders. For example, in 2011 on the occasion of the 25th anniversary of the UNDRTD, the UN High Commissioner for Human Rights, Ms Navi Pillay issued a clarion call for the world to take practical steps to implement the right of millions of children, women and men to enjoy a life of dignity, freedom and equal opportunity, stating:

*I am duty-bound to raise this anniversary call. We must end discrimination in the distribution of the benefits of development. We must stop the 500,000 preventable deaths of women in childbirth every year. We must free the millions of children from hunger in a world of plenty. And we must ensure that people can benefit from their country's natural resources and participate meaningfully in decision-making. These are the kind of issues addressed by the Declaration, which calls for equal opportunity and a just social order. ... It's not an act of nature that leaves more than one billion people around the world locked in the jaws of poverty. It's a result of the denial of their fundamental human right to development.*<sup>4</sup>

That was three years ago. Sadly, the persistent scepticism about both the practical and legal efficacy of the Right to Development (RTD) remains relatively unchanged and human rights activists have not fully embraced this right as a practical tool for legal advocacy.<sup>5</sup> As far back as 1984, prior to the UNDRTD, it was already argued that the RTD debate '...marks a crisis in legal theory, because it encompasses a determined attempt to place material content before form and yet retain whatever advantages are supposed to attach to the use of legal language.'<sup>6</sup>

In this inaugural lecture I contend that the RTD is not optimized today because, as currently interpreted, the right prominently suggests external state obligations, particularly on the part of developed countries. Unfortunately, these external obligations appear impracticable for many donor countries in relation to developing countries in Africa and elsewhere. Notably, the global language of 'development as a right' has far outpaced the actual level of currently accepted state responsibility in international relations by developed countries, particularly in international economic relations and international economic law.<sup>7</sup> To achieve practical effectiveness of the RTD in relation to development in Africa, a more pragmatic approach needs to be adopted, focusing primarily on the negative legal obligations of states (on both sides of the divide) not to inhibit the development of African peoples. I propose this delineation as a well thought out solution to the dilemma regarding the implementation of the RTD in Africa, justifying my position by looking at Africa's underdevelopment through the lens of both its historical and current socioeconomic landscape. This idea is not particularly novel, but rather seeks to return the RTD discourse to basics by demarcating a more tangible, implementable and justiciable legal obligation for duty-bearers which could be an effective tool for tackling underdevelopment in Africa.

The Right to Development appears to mean many things to many people. Judge Keba M'Baye, a distinguished Senegalese jurist, is credited with initiating the discourse on the concept of 'development' as a human right in a 1972 lecture held at the International Institute of Human Rights in Strasbourg, where he asserted that 'every man has a right to live and a right to live better.'<sup>8</sup> The developing countries that promoted a right to development at the time referred primarily to economic development and sovereignty over natural resources, in essence seeking to re-attempt the push for a New International Economic Order (NIEO) movement.<sup>9</sup> More recently, Amartya Sen has expressed development as '...a process of expanding the real freedoms that people enjoy.'<sup>10</sup> While over the years the concept of development as a

right has expanded significantly in scope,<sup>11</sup> content and implementation, it remains nebulous in terms of concrete entitlements and obligations, justiciability and enforcement. However, leading scholars in this area have sought to bring some much-needed clarity to the conceptualization of the RTD as well as to the legal obligations that it carries.<sup>12</sup>

The UNDRTD and the RTD it propagates allude to both an individual and a collective right. The actual holders of this collective right are ‘the people’, with obligations resting on national governments as well as a duty of international cooperation amongst governments.<sup>13</sup> In this lecture I will explain how the conceptualization and application of the RTD experienced a metamorphosis within the global human rights agenda in the 1990s, when the idea of development changed from economic growth to human development.<sup>14</sup> While it is important to consider the development of the human being as a whole as a priority, conceptual inflation and the need to balance North and South interests have resulted in less clarity. The RTD remains controversial to the present day, with debates continuing to rage in academia and policy circles, generating copious academic commentary on the nature and extent of the right,<sup>15</sup> but limited practical efficacy. The latter is due, among other things, to international political posturing in spite of sustained commitment from stakeholders to promote this right under the existing UN international law and sustainable development framework. As a result, legal analysis of the RTD remains critical because the persisting ambivalence about the nature of the right as well as the duties that it confers on individuals, peoples and governments impedes its realization.<sup>16</sup>

Remarkably, an element that is scarcely examined in the literature on the RTD is that, prior to the UNDRTD, Article 22 of the African Charter on Human and Peoples Rights (African Charter or Banjul Charter) of 1981 conferred a legally binding right to development on African peoples.<sup>17</sup> This Peoples’ Right to Development (PRTD) is currently the only explicit hard law dedicated solely to the right to development.<sup>18</sup> The relevance of this regional right to analysis of the universal RTD lies in its contextual guidance regarding the original intent of the African developing country players who initiated this right at the regional level, as well as the continent’s contribution in the area of jurisprudence on the PRTD so far. In this lecture I will explore what ‘pragmatic development’ means (or ought to mean) in a contemporary African context, and what role international human rights law and development policy can play in helping to solve Africa’s chronic underdevelopment in the future.

With the 2015 deadline for the attainment of the world’s Millennium Development Goals (MDGs) at hand, while there has been improvement, the development statistics regarding a large part of Sub-Saharan Africa still contrast sharply with the situation in other regions of the world, particularly OECD countries.<sup>19</sup> Africa still accounts for less than one per cent of global trade.<sup>20</sup> Yet, the continent has much to offer the world in terms of its people and resources.<sup>21</sup> Indeed, having condemned Africa to complete darkness merely a decade ago, even *The Economist* is cautiously optimistic about the continent’s economic forecast today.<sup>22</sup> As if it has gone full circle from the era of decolonization and independence, Africa again seems potentially to be on the cusp of a transformation, with the opportunity of leapfrogging over the past mistakes of other regions and learning from their successes in its quest for sustainable development. The ongoing discussion on the global post-2015 Development Agenda to succeed the current MDGs is an opportunity for Africans to help define what ‘development’ should be in contemporary Africa, and what matters most to the continent’s peoples as they strive to break out of poverty and underdevelopment.<sup>23</sup> However, the choices that Africans make today through their leaders will determine whether the continent will continue in a vicious cycle of underdevelopment or make the critical changes needed to enable it to progress.

This inaugural lecture focuses on the future of the RTD as a legally enforceable right. It is recognized that, as currently formulated, the RTD has failed to attain universal consensus on its nature and scope. After a comprehensive analysis of the emergence of the RTD, and how the conceptualization of the right has undergone a metamorphosis within the international law and development arena, I turn to the historical context of the continent as a backdrop to the right to development in its current state in Africa. Then I examine what development as a ‘right’ ought to mean in international law and in practice in the contemporary African framework and beyond. Finally, I will introduce ideas for further research during my tenure here, focusing on the interrogation of multilateral development partnership agreements by West African states as a pilot study for the practical application of the RTD.

## 2. Development as a Right

The milestones in the evolution of the universal Right to Development, and later rights-based development, are well demarcated in the literature.<sup>24</sup> Generally, the International Bill of Rights comprising the 1948 Universal Declaration of Human Rights (UDHR),<sup>25</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>26</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both from 1967, are presented as the precursors to the RTD.<sup>27</sup> Although none of these international instruments expressly mentions the RTD, Article 22 of the UDHR states as follows:

*Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*<sup>28</sup>

Furthermore, Article 28 of the UDHR states that: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.'<sup>29</sup> Margot Salomon has noted that the RTD derives its 'intellectual origins and legal claims'<sup>30</sup> jointly from Article 28 and Articles 55 and 56 of the United Nations Charter.<sup>31</sup> It is upon this foundation that the building blocks of the United Nations Declaration on the Right to Development, and the RTD that it proclaims, are laid down under international law.

Originally perceived as a 'third generation' or 'solidarity' right,<sup>32</sup> the RTD was explicitly established by Article 1(1) of the UNDRTD, which states as follows: 'The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.'<sup>33</sup> Furthermore, Articles 2(3) and 3(3) declare a duty on states to formulate appropriate national development policies, and to cooperate with each other in ensuring development and eliminating obstacles to development respectively.<sup>34</sup>

It is now generally accepted that these provisions allude to both an individual and a collective right, and that the actual holders of this collective right are 'the people', with obligations resting on national governments as well as a duty of international cooperation amongst governments.<sup>35</sup> From the outset, this issue caused tension between developing and developed countries over the RTD when the former argued that a collective right to development existed, as opposed to the traditional model of human rights, which confers rights on individuals, typically against abuses from their own governments.<sup>36</sup> Furthermore, the developing countries argued that they (the states) were the right-holders (presumably on behalf of their citizens) while developed countries were the duty-bearers under the Declaration.<sup>37</sup> These underlying tensions, inherited from deep-seated North-South disagreements over the years, have continued to simmer, and long-standing political posturing has infused both the rhetoric and the practical application of the RTD.<sup>38</sup> Within the UN system, progress in application of the RTD has been hindered by these political considerations, as developed countries have largely continued to refuse interpretations of the UNDRTD that legally require them to give aid to particular developing countries, while developing countries continue to clamour for more aid and concessions, a fairer international trade climate, access to technology and debt relief from developed countries, contending that they face serious developmental challenges as well as a real threat of marginalization in the globalization era.

Significantly, in the midst of (or perhaps because of) the political jostling, the conceptualization of 'development' as a universal, inalienable, justiciable right as well as the express definition, scope and delimitation of the RTD have both continued to be the subject of much discourse over the years.<sup>39</sup> As a result, since its formal initiation in the mid-1980s, the RTD has yet to live up to its full potential as a legal tool in the hands of lawyers, human rights activists, governments and others. A main reason for this is that the specificity of the right remains unclear, particularly in

relation to the duty-bearers and their obligations. Furthermore, lawyers of the positivist school of thought believe that if a right is not legally enforceable, it cannot be regarded as a human right, and should only be accorded the status of a social aspiration.<sup>40</sup>

Although the UNDRTD is a declaratory statement of the UN General Assembly, elements of the RTD have subsequently been echoed in various treaties,<sup>41</sup> and arguments have been made that the UNDRTD has now attained the status of customary international law.<sup>42</sup> However, the RTD's direct justiciability has hardly been tested.<sup>43</sup>

Leading commentators have viewed the RTD as a composite right of all universal human rights.<sup>44</sup> In fact, Judge Bedjaoui famously valorized the right as 'the alpha and omega of human rights.'<sup>45</sup> However, some critics of the RTD have not embraced it as a full legal right in itself, claiming it is more of an 'umbrella' right covering human rights that already exist in legally binding treaties.<sup>46</sup> According to Peter Uvin, from its inception, the RTD has fundamentally lacked legitimacy.<sup>47</sup> He wrote the following about the UNDRTD and the RTD it confers:

*This was the kind of rhetorical victory that diplomats cherish: the Third World got its right to development, while the First World ensured that the right ... was totally non-binding, and that it carried no resource transfer obligations ... even in its watered down form, the right to development amounted to a rich country vs. poor country debate, as it had been from the beginning ... the DRD was politically engineered to be bad law – vague, internally contradictory, duplicative of other already codified rights, and devoid of identifiable parties bearing clear obligations. ... Affirming that all people have the right to development, and that such development consists of and is realized through the realization of every existing category of human rights, adds nothing to our knowledge. It adds only verbiage.<sup>48</sup>*

Despite Uvin's extremely cynical viewpoint regarding its origins, the RTD has continued to evolve. When the concept was first expressed by developing countries in the early 1970s, 'development as a right' emerged in relation to economic development and sovereignty over natural resources on the heels of the New International Economic Order movement.<sup>49</sup> Since then the RTD has broadened far beyond the notion of economic growth to encompass human development in its totality and human development practitioners and international human rights advocates, which once co-existed in parallel, have begun to intermingle considerably.<sup>50</sup> The concept of human development was institutionalized by the United Nations Development Programme (UNDP) in 1990, with the launch of its Human Development Reports. These reports focus on human well-being, and not economic growth, as the purpose and end of development.<sup>51</sup> Today, human rights and human development both share a common goal of 'human freedom' based on the well-being and dignity of human beings everywhere.<sup>52</sup> This convergence has been termed a 'rights-based approach to development' and covers all human rights.<sup>53</sup> For instance, according to the UN Office of the High Commissioner for Human Rights: 'a rights-based approach to trade is a conceptual framework for the processes of trade reform that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.'<sup>54</sup> Nevertheless, the unresolved issues around the conceptualization, legality and justiciability of the RTD still persist.

In 1993, at the Vienna World Conference on Human Rights, the RTD was reaffirmed unanimously.<sup>55</sup> The conference also resolved some of the main controversies relating to the RTD at the time, and the right was main-streamed within the UN human rights system, enjoying a place of prominence on the agenda. Brigitte Hamm has noted that after the Vienna World Conference the RTD became part of the mandate of the UN High Commissioner for Human Rights (UNHCHR), and has since been a major topic of discussion within the Commission on Human Rights and other UN human rights organs.<sup>56</sup>

The renewed focus on the RTD then took the form of instituting a follow-up mechanism by the appointment of an Independent Expert in 1998 (and later a High Level Task Force) as well as the establishment of an Open-Ended Working Group on the RTD (WG) by the UN Economic and Social Council on the recommendation of the Commission on Human Rights.<sup>57</sup> The High Level Task Force (HLTF) supporting the WG also articulated the 'core norms' of the RTD as 'the right of peoples and individuals to the constant improvement of their well-being and to a national and global environment conducive to just, equitable, participatory and human-centred development respectful of all human rights.'<sup>58</sup> Prior to this, the Independent Expert on the RTD at the time, prominent Indian economist Arjun Sengupta, further

articulated the RTD in his reports.<sup>59</sup> He stipulated four key components of the RTD, stating ‘The human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be fully realized.’<sup>60</sup> He noted as follows:

*The process is not the same thing as the outcome of the process, although in the right to development both the process and the outcome of the process are human rights. It is possible for individuals to realize several rights separately, such as the right to food, the right to education or the right to housing. It is also possible that these rights are realized separately in full accordance with human rights standards, with transparency and accountability, in a participatory and non-discriminatory manner, and even with equity and justice. But even then, the right to development may not be realized as a process of development if the interrelationships between the different rights are not fully taken into account.*<sup>61</sup>

Sengupta expounded on the wording of the UNDRTD,<sup>62</sup> and built on the seminal work of Amartya Sen theorizing development as freedom.<sup>63</sup> Sen views the RTD less as a legal entitlement and sees it more in terms of social ethics and public reasoning. He asks why complete feasibility should be a condition of cogency of human rights when the main objective of human rights is our working towards expanding both their feasibility and their actual realization. In sharing his understanding that some human rights are not yet fully recognized, and may never be fully attainable under present global conditions and circumstances, Sen reminds us that this does not negate their being ‘rights.’ He described this as follows:

*The duty of any third person in support of human rights cannot but be somewhat inexactly perceived, since much will depend on what others are doing and what can be effective and how. ... Ambiguity of obligation, however, whether in law or in ethics, does not indicate that there are no obligations at all ... indeed, such loosely formulated obligations belong to the important category of duties that Immanuel Kant called “imperfect obligations,” to which he attached great importance.*<sup>64</sup>

While the above may give some comfort to proponents of the RTD, Stephen Marks and Bard Andreassen have commented on this notion, stating that a human right is still required to create rights and obligations with a sufficient degree of justiciability in order to be considered a right properly so called.<sup>65</sup> Likewise, Arjun Sengupta has said that, while obligations can be fulfilled on the basis of ethics, without legal enforcement, we still need to formulate binding legal obligations on the RTD, stating that ‘however long and arduous it may be to reach consensus, it is worth the effort to reach such a consensus in order to make the right to development a proper human right, comparable to the other internationally accepted human rights.’<sup>66</sup> In my opinion, this line of reasoning supports the position that the RTD as it currently stands ought to be curtailed into a more practicable legal obligation, which can be effectively implemented.

Indeed, in recognition of this need for legal clarity for the RTD, at the direction of the Human Rights Council, the WG and the HLTF have undertaken significant work on the legal issues pertaining to an international treaty on the RTD in recent years.<sup>67</sup> The HLTF was mandated to craft possibly legally binding guidelines which may eventually become a treaty on the RTD, paying special attention to criteria for evaluating global partnerships, as identified in MDG8, which deals with global partnerships for development.<sup>68</sup> Unsurprisingly, the highly political nature of the assignment led to a particularly divisive manifestation of the usual political posturing of states.<sup>69</sup> More recently, there has been a persuasive call for a comprehensive Framework Convention on the RTD as a way of creatively delivering on the promises of the RTD while avoiding a political stalemate, but this solution is still being debated in academic circles.<sup>70</sup> However, the other side of the coin is that the adoption of a legally binding treaty for the RTD carries the risk of perpetrating the political deadlock whereby states refuse to ratify or implement such a treaty. As a result, the underlying structural issues pertaining to the difficulties of implementing a legally binding obligation on the RTD are not resolved.

Therefore, my argument is that a more pragmatic approach to utilizing the RTD in a focused and effective manner, which entails delimiting the external legal obligation of the duty-bearer under the UNDRTD, would be useful and possible.<sup>71</sup> As currently defined the RTD implies both internal and external state obligations. However, more attention is given to the external obligations particularly on the part of developed countries, because the global rhetoric of

development as a right has far outpaced the reality of currently accepted levels of state responsibility in international relations. As a result, particularly within the ambit of international economic law, states are unwilling to bear any legal obligations with positive financial obligations linked to the implementation of the RTD.

However, Thomas Pogge and Margot Salomon have argued that states are obliged to desist from imposing and perpetrating an ‘unjust global institutional order.’<sup>72</sup> In addition, Salomon augmented her theory by stating that, because of the existing asymmetry of the global system, states have ‘an obligation to remedy that violation and prevent its continuation.’<sup>73</sup> These two theories, in general, lack specificity, and therefore, have limited practicability.

Arjun Sengupta has stated that the RTD requires both negative (prevention) and positive (promotion or protection) actions.<sup>74</sup> I propose that in the short-to-medium term the RTD be implemented as a negative external obligation, with its scope delimited to preventive obligations that are legally enforceable. For instance, an obligation for developed states not to impose unfair trade agreements on developing states, and for developing states not to enter into such agreements, which are detrimental to and adversely affect the lives of their citizens.<sup>75</sup> This proposition is realistic, in light of the history and score card of the RTD over the last three decades, and is likely to give the RTD some much-needed traction if legally adjudicated by individuals and peoples across the world.

Perhaps the most convincing arguments in support of this lecture’s proposition for the application of a delimited scope of the RTD come from David Beetham, when he questioned the ‘inflationary tendencies’ of the RTD.<sup>76</sup> Beetham sees the dangers of conceptual inflation or ‘terminology creep’ to which the RTD seems to be intrinsically prone, particularly under the pressure of attempting to achieve political consensus. In identifying the current over-emphasis on the non-economic dimensions of development, as seen in the definitions of thought leaders in this area,<sup>77</sup> Beetham has suggested that this over-emphasis hinders our ability to decipher when the RTD has been infringed upon by international economic agreements or domestic policies.<sup>78</sup> He supports the claim that the RTD has experienced a metamorphosis since the 1990s with the advent of human development, and prefers to narrow the definition of the RTD to a minimum core meaning, which is clearly distinct from other human rights. Finally, Beetham finds the idea of concentrating on the original RTD concept floated by developing countries in the 1970s, promoting individuals’ and people’s right to economic development, appealing.<sup>79</sup>

I contend that the economic aspects of the RTD do appear to have been de-emphasized in recent years, yet these economic rights are essential for the attainment of human development and are, indeed, a prerequisite to breaking the current cycle of poverty and underdevelopment within the unjust global order.<sup>80</sup> I therefore align with Obiora when he argues as follows:

*... the United Nations Development Program has correctly conceived of development in terms of “human development.” It has in turn viewed the concept of human development itself as denoting the creation of “an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests.” If this is what development means or ought to mean in our time, then the RTD should in turn mean the right to that kind of development; the right to the creation of the stated type of environment. ... this can be viewed as encompassing three main aspects: the right to the means of creating that environment, the right to a process of creating that environment, and the right to the benefits that flow from the creation of such an environment.*<sup>81</sup>

Thus, my proposition is not to pursue economic rights to the neglect or detriment of other human rights, but rather to ensure that this important economic element of development as a human right, and what it connotes in the current global order, receives adequate attention in international human rights law, and from states. Affirming the right to development of individuals and peoples as the right to an enabling environment for development that is ‘equitable, sustainable, participatory and in accordance with the full range of human rights and fundamental freedoms,’ Flavia Piovesan has noted that such a development-enabling environment must be free from structural and unfair obstacles to development domestically as well as globally.<sup>82</sup>

In summary, the RTD has certainly succeeded in deepening the conversation on development as a right. In spite of its shortcomings, the RTD has brought important innovations to the universal human rights framework. It underlined

the idea of collective rights (rights of peoples) at a universal level, where that concept was previously relatively unknown and unaccepted and the dominant ideology of a right-holder was an individual. The RTD also echoes Article 28 of the UDHR in seeking international cooperation among states.<sup>83</sup> It recognizes 'the structure and operation of the international economic system as essential determinants of development.'<sup>84</sup>

It has been demonstrated above how the RTD underwent a transformation from an economic right to a comprehensive human-centred process in the 1990s with the advent of human development. Nevertheless, tensions between near parallel areas of international law are still very much in evidence. As Olivier De Schutter has observed: 'The current system of global governance is fragmented among different and sometimes conflicting regimes that result in an imbalance between states' obligations under trade and investment agreements on the one hand, and human rights treaties on the other hand.'<sup>85</sup> Nevertheless, there has been some traction, as rights-based development continues to penetrate into more areas of international human rights law. However, the desirability or otherwise of the incursion of rights-based development into international law remains debatable. Therefore, international lawyers are correct to remain concerned about the legality, efficacy and justiciability of the RTD for its continued relevance and effectiveness in international law over time.

Before proceeding to discuss the right to development in Africa under the African Charter of Human and Peoples' Rights of 1981, I will give a succinct overview of the continent's socio-economic history to add some context to my thesis. I argue that Africa's historical development patterns, and the continent's position in the current international order lend strong credence to the need for a pragmatic delimitation of the scope of the RTD in order to progress on a trajectory that would aid the attainment of the desired development outcome.

### 3. Africa's Journey into the New World Order

*A man who does not know where the rain began to beat him cannot say where he dried his body.* - **Igbo proverb**

*An awareness of one's own cultural identity and past is a fundamental condition for sustainable autonomous development.* - **HRH Prince Claus**<sup>86</sup>

Chinua Achebe, one of Nigeria's most notable literary icons, spent much of his life advocating through his writings the need for us to look back in history in an attempt to identify where we went wrong as a nation, and in a wider sense as a continent. Metaphorically speaking, he repeatedly stated that: 'we must know where the rain started beating us.'<sup>87</sup> It is only through balanced knowledge and appreciation of Africa's past that we might know who we are, and only then might we fully understand where we ought to be going and how to get there. This section focuses specifically on the history of West Africa, in light of the orientation of the research proposition that I will present towards the end of this inaugural lecture. The overview below helps us place Africa's underdevelopment in context and, perhaps, shed some light on what African peoples consider to be their development priorities in contemporary times.

Much has been written over the years about the history of the continent of Africa before the advent of the slave trade, on the effects of the slavery era as well as on colonialism. Nevertheless, in the context of the RTD it is important to properly frame the discourse by providing a concise overview of West African history, as a case in point for the rest of the continent.<sup>88</sup>

That there were thriving societies with rich cultures on the continent of Africa before the advent of slavery in 1444 AD<sup>89</sup> is not in question.<sup>90</sup> It would be most interesting to attempt to envisage what the uninterrupted evolution of West African societies, devoid of the dual shocks of slavery and colonialism, would have developed into by the present time. However, since we will never know what might have been, we should at least understand what was.

Although slavery and trade in slaves already existed actively around parts of Africa, commercial scale trade in West African slaves developed in the 15<sup>th</sup> century, due to forces of demand and supply emanating from Europe. However, European merchants were not alone in their culpability. They did not go inland to carry out kidnapping raids by themselves, but remained on the coast. The raids were carried out by African middlemen who hunted down their weaker brothers and sisters like animals and sold them into slavery in exchange for hard liquor, arms, cowries, iron bars, European clothes and beads.<sup>91</sup> For the next 389 years this human exploitation continued spreading across continents into a lucrative, multifaceted international trade until 1833, when the slave trade era ended.<sup>92</sup>

The colonial era that followed centred on political and economic power with an unabated monopolistic international trade system and grossly unfair terms of trade. The Berlin Conference of 1884 divided the continent into pieces of cake shared among the colonial powers, and each power assumed exclusive political and economic control of its allotted territories without any consultation whatsoever with, or the consent of, the indigenous population.<sup>93</sup> Therefore, terms of governance and trade continued to be imposed on the colonies by the colonial powers. Again, a particular class of African elite was culpable and benefitted from this societal order. However, towards the end of the 19<sup>th</sup> century, as more Africans began to acquire western education and to imbibe diverse world knowledge, they began to challenge the *status quo* and agitate for the right to participate in the discussion around the governance of their own affairs.<sup>94</sup>

The melting pot was the 1940s. As young, educated Africans grew into a dynamic force on the continent and around the world, significant events such as the spread of communist ideology and a second world war altered the configuration of the global landscape. In the aftermath of World War II, the United Nations Charter was signed in San Francisco at the conclusion of the UN Conference on International Organization.<sup>95</sup> In its preamble, the Charter refers to reaffirming 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.... (and promoting) social progress and better standards of life in larger freedom.' States were attempting to recreate a world order that was to ensure peaceful coexistence for all. In the preceding year, the primary global players had already gathered at Bretton Woods to create a new financial system for the

world.<sup>96</sup> The debate about the place for ‘development issues’ within the context of the current international economic order can be traced to the initial conception of these Bretton Woods institutions and the multilateral trading system.<sup>97</sup> As Christine Lagarde so elegantly put it in her recent Richard Dimpleby lecture:

*....1944. In the summer of that year, the eminent economist, John Maynard Keynes, and a delegation of British officials, embarked on a fateful journey across the Atlantic. The crossing was risky—the world was still at war and enemy ships still prowled the waters. Keynes himself was in poor health. But he had an appointment with destiny—and he was not going to miss it. The destination was the small town of Bretton Woods in the hills of New Hampshire, in the northeastern United States. His purpose was to meet with his counterparts from other countries. Their plan was nothing less than the reconstruction of the global economic order. The 44 nations gathering at Bretton Woods were determined to set a new course—based on mutual trust and cooperation, on the principle that peace and prosperity flow from the font of cooperation, on the belief that the broad global interest trumps narrow self-interest. This was the original multilateral moment—70 years ago. It gave birth to the United Nations, the World Bank, and the IMF—the institution that I am proud to lead. The world we inherited was forged by these visionary gentlemen—Lord Keynes and his generation. They raised the phoenix of peace and prosperity from the ashes of anguish and antagonism. We owe them a huge debt of gratitude.<sup>98</sup>*

What Ms Lagarde omitted to mention was that, during the same period, open, free and non-discriminatory trade was also being promoted in earnest to forge good relations between states and create a conducive environment for world peace.<sup>99</sup> However, the liberalization of world trade that had originally been billed for agreement at that very conference was effectively side-lined at the time.<sup>100</sup> This exclusion of the global trade agenda was mainly due to growing resistance to the initiative from within the British government. Factions within that government resisted the idea of reducing trade barriers because of the imperial preference system already in existence for British colonies. Furthermore, fearing foreign competition in agriculture, proponents of the discretionary use of quantitative restrictions were extremely vocal in their opinions at the time. Thus, the pre-independence trading patterns of many developing countries (former colonies) were perpetuated, the most common feature being continued over-reliance on their former colonialists as principal trading partners.<sup>101</sup>

Still, championed by the secretary to the US Department of State, Cordell Hull, the United States proposed the formation of an International Trade Organization (ITO).<sup>102</sup> The vision for the ITO was ambitious. It was meant to be a comprehensive charter including provisions on important areas, such as competition policy, labour standards, investment guidelines and rules on economic development.<sup>103</sup> The Chair of the International Trade Conference, American economist Clair Wilcox, was quoted by William Diebold as stating:

*If the peoples who now depend upon relief are soon to become self-supporting, if those who now must borrow are eventually to repay, if currencies are permanently to be stabilized, if workers on farms and in factories are to enjoy the highest possible levels of real income, if standards of nutrition and health are to be raised, if cultural interchange is to bear fruit in daily life, the world must be freed, in large measure, of the barriers that now obstruct the flow of goods and services.<sup>104</sup>*

A good number of developing countries were enthusiastic about the ITO,<sup>105</sup> but in the end the US Congress withheld ratification of the Havana Charter because of concerns from its own domestic constituents, and the ITO was stillborn.<sup>106</sup> Instead, the 1947 Protocol of Provisional Application stipulating the interim operation of the General Agreement on Tariffs and Trade (GATT), precursor to the World Trade Organization (WTO), remained the custodian and enforcer of ‘free and fair’ international trade rules for nearly 50 years.<sup>107</sup>

Starting with Ghana in 1957, at independence, African developing countries assumed all pre-existing international obligations entered into on their behalf before independence, thus perpetrating existing trade patterns.<sup>108</sup> Yet, from decolonialization to independence and its immediate aftermath, Africa’s founding fathers appeared to have clear visions and ideology for their countries’ development.<sup>109</sup> As more former African colonies gained their independence in the 1950s and 1960s, they joined the ranks of other developing countries at the UN clamouring for growth and change, and helped ensure that developing countries had a numerical majority at UN General Assembly meetings. In an attempt to grow their own economies and attain economic development, many of them implemented import substitution regimes,<sup>110</sup> which reflected the popular ideology of the day.<sup>111</sup> In support of this development quest,

the 1960s were designated as the first UN Decade for Development. In addition, in 1964 the United Nations Conference on Trade and Development (UNCTAD) was established to promote the integration of developing countries into the world economy in a 'development-friendly' manner and in 1967 the International Covenant on Civil and Political Rights (ICCPR)<sup>112</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both came into force.<sup>113</sup>

In the 1970s, these young developing countries collectively called for a New International Economic Order (NIEO)<sup>114</sup> in an attempt to realign the balance of world trade rules in their favour.<sup>115</sup> The objective of the NIEO was three-fold: first, to eliminate the economic dependence of developing countries on industrialized country patronage; second, to promote the accelerated development of the economies of developing countries based on the principle of self-reliance (by means of import substitution) and third, to introduce appropriate institutional changes for the global management of world resources in the interest of mankind as a whole.<sup>116</sup>

In Africa, critics argued that the NIEO was not fully representative of the interests of the continent's producers and exporters.<sup>117</sup> The Lagos Plan of Action for the Economic Development of Africa, 1980–2000 (LPA), adopted in 1980 by the now defunct Organization of African Unity (OAU),<sup>118</sup> noted in its preamble that the effect of unfulfilled promises of global development strategies has been more sharply felt in Africa than in the other continents of the world. Indeed, rather than resulting in an improvement in the economic situation of the continent, successive strategies have caused it to stagnate and become more susceptible than other regions to the economic and social crises suffered by the industrialized countries.<sup>119</sup> In fact, the NIEO did not yield the desired results for Africa because many African countries are import dependent, while developing countries with more open trade policies recorded greater levels of success in international trade.<sup>120</sup> The 1970s and 1980s saw rapid changes in world geopolitics, with the Cold War at play before its eventual demise.<sup>121</sup>

Despite the fact that both decades were designated as the second and third UN Development Decades respectively, the UN's international development strategy had not yet proven effective in reducing suffering for the one billion poorest people in the world, millions of who lived in Africa at the time.<sup>122</sup> The 1990s saw many African countries groan under the weight of Structural Adjustment Programmes (SAPs) propagated by the Washington Consensus and neo-liberalists.<sup>123</sup> Globalization became unpopular because it was blamed for the growing inequity between as well as within countries.<sup>124</sup> Indeed, with the advent of globalization, it became clear that African countries could not develop along the same economic patterns as industrialized countries had. That era has passed. Globalization implies the integration of countries into the world economy through increased trade, investment, short-term capital flows and international migration of skilled and unskilled labour. It is widely believed that this process is associated with faster economic growth, higher standards of living, and expanding opportunities for technological development and cultural advancement for participating countries. However, there have clearly been losers in the globalization experiment.<sup>125</sup> Furthermore, it is now well-established that there is a clear link between the international trading system and the enjoyment of human rights of peoples, because economic growth through globalization and trade liberalization may increase the supply of resources required for the furtherance of all human rights, thus leading to development. However, as Africa has experienced first-hand, the positive dividends of globalization are far from automatic.<sup>126</sup> Flavia Piovesan has concluded that 'the right to development demands a form of globalization that is both ethical and sympathetic.'<sup>127</sup>

At the turn of the century, across the continent, prominent African leaders called for an African Renaissance, which materialized as the New Partnership for Africa's Development (NEPAD), a vision and strategic framework for Africa's renewal, presented through the auspices of the OAU/AU, along with its peer review mechanism.<sup>128</sup> The Millennium Development Goals (MDGs) were another set of development commitments which African countries adopted, along with the rest of the world, and the region saw some progress in crucial development areas such as poverty eradication and education, especially in Sub-Saharan Africa, the world's least-developed region.<sup>129</sup> In particular, MDG8, which seeks to develop a global partnership for development, feeds into the ongoing discourse on international cooperation and the RTD pertaining to all human rights, including challenges relating to development within the global economic order.<sup>130</sup>

The African development experiment is a fascinating, yet tragic one. The unique combination of its antecedents gives the continent a peculiar position in the world. Nevertheless, it is far too simplistic to blame select historical events for the continent's current predicament. Africa's problems are complex.<sup>131</sup> When analysed through the prism of the current international legal order as it has evolved from around the end of World War II, juxtaposed beside Africa's development trajectory from decolonization till the present, we gain a clearer understanding of how some international legal frameworks contribute to the cycle of underdevelopment and poverty in Africa. According to the UN High Commissioner for Human Rights,

*Today, the ideological edifices of the dominant economic models of the nineteenth and twentieth centuries are crumbling under the weight of the realities of the twenty-first. Growing inequalities, global poverty, systemic deprivation, hunger, unemployment, environmental degradation and social unrest raise human rights imperatives that cannot be deferred to the invisible hand of the market, the pilfering hand of the greedy few or the repressive hand of autocratic regimes...people are demanding a human rights-based approach to economic policy and development, with the right to development at its centre.*<sup>132</sup>

Africans are struggling for their development, but it is not an easy task. It is, perhaps, for this reason that Upendra Baxi has stated categorically that any effort to assert or progress the RTD legal discourse too often 'presents an irritating moral nuisance' to ascendant global neo-liberalism.<sup>133</sup> Therefore, Africans urgently need a more pragmatic approach to the solution of the current cycle of underdevelopment, domestically and regionally, as well as utilizing international law. In the international human rights arena, as the rhetoric of the past three decades has shown, positive legal obligations to force developed countries to provide Africa with aid will never work. Conceptual inflation or terminology creep has overreached and is not practicable. While some have called for the abolition of the RTD or have simply ignored it, others have conscientiously lobbied for a legally binding framework convention; but the political landmines are deep-seated and extensive. However, a negative obligation not to hinder Africa's development could be acceptable, and is already implied within the RTD architecture.

A narrower but clearer definition of states' obligations with respect to RTD would also contribute to more effective enforcement of the RTD on a global level. Regional jurisprudence related to the RTD in Africa can inform the debate of what enforcement of the universal RTD on the international level can and should look like.

#### 4. The Peoples' Right to Development in Africa

In 1981, the African Charter on Human and Peoples' Rights (African Charter, also known as the Banjul Charter) was adopted by all African states to promote and protect the human rights and basic freedoms of Africans across the continent.<sup>134</sup> The African Charter was drafted with the intention of reflecting African traditions and values, and a uniquely African conceptualization of human rights.<sup>135</sup> Based on the wordings of the African Charter and the duties it imposed on states as well as individuals, at least on paper, the African system became an example of a human rights regime that is more duty-oriented, particularly on individuals, than the universal human rights system.<sup>136</sup> Significantly, the Charter went further than the universal human rights framework of the day, as well as beyond both the European and American regional human rights systems, by pioneering the introduction of the first legally binding article expressly conferring an individual and collective right to development.<sup>137</sup>

Article 22(1) of the African Charter provides that: '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.' Article 22(2) complements this position by presenting the duty of states, individually or collectively, to ensure the exercise of the right to development.<sup>138</sup> In Article 22, the drafters of the Charter appear to draw from both Article 22 of the Universal Declaration of Human Rights of 1948 (UDHR)<sup>139</sup> and Article 1(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>140</sup> in an attempt to convey a comprehensive right, with an attendant duty.

However, although the 'Peoples' Right to Development' (PRTD) had been long anticipated by African human rights activists since the 1960 and 1970s, the volume of advocacy on Article 22 of the African Charter has been far less than expected. Out of over 220 Communications submitted to the African Commission on Human and Peoples' Rights (the African Commission) since its inauguration in 1987,<sup>141</sup> only a total of seven have expressly relied on Article 22 in their claims. The first of these claims was submitted in 1994 against the government of Zimbabwe, but was later withdrawn.<sup>142</sup> Furthermore, of these seven Communications, only four were decided on the basis of the merits of the case.<sup>143</sup>

As a result, the African Commission has had only a handful of opportunities to make pronouncements on the PRTD. For example, the African Commission was deprived of an important opportunity to make an express pronouncement on Article 22 in its landmark decision involving the Nigerian government in 2001, *Social and Economic Rights Action Centre (SERAC) v Nigeria (Ogoni case)*,<sup>144</sup> when it made a number of important development-related pronouncements on the African Charter. In that case, SERAC alleged that the (then) military government of Nigeria had been directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People of Southern Nigeria. In finding the Nigerian government to be in violation of, *inter alia*, Articles 21 and 24 of the African Charter, the African Commission stated that:

*45. Firstly, the obligation to respect entails that the state should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio-economic rights, this means that the state is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.*

*46. At a secondary level, the State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This is very much intertwined with the tertiary obligation of the State to promote the enjoyment of all human rights. The State should make sure that*

*individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building Infrastructures.*

The Commission went on to state that the last layer of obligation requires the state to fulfil the rights and freedoms it freely undertook under the various human rights regimes by actively deploying the state machinery towards the practical realization of such rights.<sup>145</sup>

The first two Communications in which Article 22 was directly raised and recommendations were given, based on the merits of the case, were delivered by the African Commission in 2003. *Association pour la sauvegarde de la paix au Burundi v Kenya, Uganda, Rwanda, Tanzania, Zaire (DRC), Zambia*<sup>146</sup> was initiated in 1996 by a non-profit organization based in Belgium. The case was brought against all of Burundi's neighbours, comprising the countries in the Great Lakes region of Africa (Tanzania, Kenya, Uganda, Rwanda, Zaire (now Democratic Republic of Congo), Ethiopia, and Zambia), challenging an embargo imposed by them on Burundi. The embargo was instituted by a resolution adopted in July 1996 at the Great Lakes Summit following the unconstitutional change of government in Burundi after the overthrow of the country's democratically elected government and the installation of a government led by a retired military ruler, with the support of the country's military. The resolution was later supported by the UN Security Council and by the Organization of African Unity (OAU). The claimant relied on, *inter alia*, Article 22 of the African Charter because the embargo prevented Burundians from having access to means of transportation by air and sea. Correctly, the African Commission found no violation on the part of the respondent states, who had a legitimate interest in peace and security in the region.

The second case was *Democratic Republic of the Congo v Burundi, Rwanda and Uganda*,<sup>147</sup> again stemming from a regional conflict.<sup>148</sup> Here, the African Commission found that the respondents' barbaric acts committed in violation of Congolese peoples' rights to cultural development guaranteed by article 22 of the African Charter, were also 'an affront on the noble virtues of the African historical tradition and values enunciated in the Preamble to the African Charter.'<sup>149</sup> In addition, paragraph 95 stated that, '[t]he deprivation of the right of the people of the Democratic Republic of Congo, in this case, to freely dispose of their wealth and natural resources, has also occasioned another violation – their right to their economic, social and cultural development and of the general duty of states to individually or collectively ensure the exercise of the right to development, guaranteed under article 22 of the African Charter.'<sup>150</sup>

In 2009, the African Commission seized the opportunity presented by *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*,<sup>151</sup> to expound on the concept of peoples' rights.<sup>152</sup> In finding Sudan in violation of, *inter alia*, Article 22, the African Commission interpreted the content of a 'peoples' right' under the African Charter by stating that an important aspect of defining 'a people' would be identifying the characteristics which a particular people may use to identify themselves, through the principle of self-identification, or which other people may use to identify them. The African Commission indicated that such characteristics may include the language, religion, culture, the territory they occupy in a state, common history, and ethno-anthropological factors.<sup>153</sup> The significance of this articulation by the African Commission on the composition of a people lies in the attempt to crystallize the conceptualization of who a people are in order to determine those who can legitimately benefit from the peoples' rights conferred by the African Charter. The African Commission noted that the complainants do not deserve to be dominated by a people of another race in the same state, and that their claim for equal treatment arose from alleged underdevelopment and marginalization, a form of collective punishment which is prohibited by Article 22.<sup>154</sup>

These three Communications on the PRTD were primarily submitted as a result of regional or national conflict situations. It is a step in the right direction that advocates saw it fit to raise and rely on Article 22 of the African Charter as part of their claims. However, unlike the *Ogoni case*, these Communications did not present a solid opportunity for the African Commission to elaborate fully on the nature, rights and obligations attributable to the PRTD.

The situation has since been partly remedied by the African Commission's landmark decision in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois case)*.<sup>155</sup> Here, the complainants allege violations of the PRTD resulting from the displacement of the

Endorois Community, an indigenous community in Kenya, from their ancestral lands without adequate consultation or compensation for their loss of property, the disruption of the community's pastoral enterprise or the right to practice their religion and culture as the Endorois people.<sup>156</sup> According to the Endorois people, by creating a game reserve on their land over 30 years ago, the Kenyan government disregarded national law, Kenyan Constitutional provisions and, most importantly, numerous articles of the African Charter, including the right to development.<sup>157</sup> Citing the African Commission's reasoning in the *Ogoni case*, the Endorois Community noted the importance of choice to the rights holders' well-being and the 'liberty of their action,' which is tantamount to the choice embodied in the right to development and must, therefore, be respected by the Kenyan government. In pronouncing their findings of violation of the complainants' PRTD by the respondents, the African Commission stated as follows:

*277. The African Commission is of the view that the right to development is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to development. The African Commission notes the Complainants arguments that recognising the right to development requires fulfilling five main criteria: it must be equitable, non discriminatory, participatory, accountable, and transparent, with equity and choice as important, overarching themes in the right to development.*

*278. In that regard it takes note of the report of the UN Independent Expert who said that development is not simply the state providing, for example, housing for particular individuals or peoples; development is instead about providing people with the ability to choose where to live. He states "... the state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available". Freedom of choice must be present as a part of the right to development.*

On the issue of development as a choice, the African Commission went on to quote a Report produced for the UN Working Group on Indigenous Populations requiring that 'indigenous peoples are not coerced, pressured or intimidated in their choices of development.'<sup>158</sup> The African Commission was of the view that, if the government of Kenya had created conditions to facilitate the PRTD in this context, the game reserve would have aided the development of the Endorois as they would have made an informed decision and actively benefited from it. However, the forced evictions eliminated any choice as to where they would live.<sup>159</sup>

Finally, the African Commission enumerated the duties of the Kenyan government, stating that it 'bears the burden for creating conditions favourable to a people's development. The Respondent State, instead, is obligated to ensure that the Endorois are not left out of the development process or benefits. The African Commission agrees that the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the Respondent State did not adequately provide for the Endorois in the development process. It finds against the Respondent State that the Endorois community has suffered a violation of Article 22 of the Charter.'<sup>160</sup>

While the jurisprudence from the *Endorois case* is extremely helpful, the PRTD is still being considered from the position of the state's internal obligations to its own citizens.<sup>161</sup> What remains untested is the external duty of an African state to any group of African people. Furthermore, the African Commission, correctly, drew from the RTD and other regional instruments and jurisprudence in reaching its decision. However, care should be taken not to import concept inflation and, along with it, the unresolved debates about the nature and duties of the RTD into the realm of the PRTD, which may distort its justiciability.<sup>162</sup>

At present, jurisprudence on the PRTD within Africa may not have had much impact in the universal human rights arena. However, as African states continue to enter into important economic partnership agreements with non-African states, it would be interesting to see how the universal system of human rights would react to the pronouncement of a violation of the PRTD arising from such an agreement. Already, in agreements such as the Lomé Conventions, in the framing of their economic policies states were required to take into account the interests of other states through adequate consultation procedures. However, these provisions were not tested.<sup>163</sup>

Apart from the difficulty in adjudicating socio-economic cases on the continent,<sup>164</sup> this presumed lukewarm attitude from advocates might be attributed to the fact that while Article 22(2) of the African Charter confers an

obligation on paper on African states, individually and collectively, to 'ensure' that the PRTD is protected or attained, there is insufficient guidance as to what this duty entails in practice and how the duty could or should be achieved. Thus, a perceived vagueness about the level of legally enforceable implementation of a state's duty to ensure African peoples' development could be responsible for the minimal application of Article 22 by advocates across the continent.

Despite these limitations of this regional framework for the RTD in Africa, the Commission's pronouncements are nonetheless crucial in this debate at the international level.<sup>165</sup> In practice, while the scope of the PRTD is still evolving, in particular with respect to the external obligations of states, the PRTD is the first right to development that, at least in theory, is legally enforceable. Although the external obligations of African states have not been tested yet, I believe that the African Commission might be willing to make a pronouncement on the extent of these obligations of African states because it has expressly stated that the African Charter confers rights to all African peoples without regard to their geographic location.<sup>166</sup>

As we look to the future of the PRTD and its contribution to international human rights law, more Africans must deliberately and actively engage in Article 22 advocacy with a view to realizing the continent's development. The justiciability of the PRTD presents a germane opportunity to African peoples, which should be fully maximized. However, in order to challenge a state's action as a violation of the PRTD, Africans and African peoples must first have an in-depth understanding of what they believe their 'development' to be (or ought to be), and the negative obligations that can be imputed on states for the violation of that right.

## 5. Conclusion – Africa Rising

*In fact it is impossible to 'develop' another person or country from outside; people develop themselves, and so do countries. HRH Prince Claus<sup>167</sup>*

The universal Right to Development has undergone fundamental change in its meaning and scope since its inception almost thirty years ago. When the RTD was first introduced in the 1970s, development was synonymous with economic growth and GDP. However, by the 1990s, the concept of development was expanded to encompass human development in its totality. While this expansion was a welcome progression, it came at a significant cost to the RTD as the broadened scope diluted the ability to use and legally apply the RTD beyond state borders. In addition, while the scope has been broadened, there is still a lack of clarity with respect to what obligations states have.

As the brief overview of the history of African development has demonstrated, states' affirmative obligations to support the development aspirations of smaller African states have not yielded the desired results but rather contributed to the perpetuation of the cycle of underdevelopment, particularly in economic terms. Furthermore, since the extent to which these affirmative obligations can be legally enforced is unclear, it is questionable whether they are suitable to address the critical development challenges of today. Therefore, I propose reframing the RTD obligations of states to focus on negative obligations instead, at least in the interim. This approach would appear to be more practical from an enforcement perspective and could allow African peoples to take charge of their own development. The opportunity presented by the ongoing post-2015 Development Agenda dialogue should be seized and maximized by African people and states as a platform to give input into this important agenda that will, undoubtedly, have a significant impact on the direction of the continent's development come 2030.

Once the extent of states' obligations regarding the RTD is concretely defined, the question becomes how these obligations can and should be enforced. The PRTD, though a regional concept, can be used as a case study of how such enforcement could work on an international level. While the PRTD in Africa shares some of the challenges of the universal RTD with respect to the definition of scope, it does take the concept of a right to development a step further by providing a stronger basis for legal enforcement of the right. Although the extent of existing jurisprudence is limited to internal obligations of states towards their own people and the extent of external obligations of states has not yet been tested, there are indications that the African Commission could adjudicate on external obligations in a similar vein in the future.

The onus is now on the African people to leverage the existing framework to further refine the RTD on a regional level, which in turn can and should contribute to the strengthening of the global RTD.

One such opportunity to test the boundaries of the PRTD lies in the sub-regional economic agreements currently being negotiated with the European Union. As the holder of the Prince Claus Chair I will have the opportunity to revisit the conceptualization of the Right to Development (RTD) and its implications, with special emphasis on the context of West Africa's development predicaments and newly emerging regional and inter-regional development partnerships. Specifically, my work will be examining the West African Economic Partnership Agreement with the European Union (EU-WA EPA),<sup>168</sup> considering how this agreement impacts on the rights of West Africans as guaranteed by both the RTD as well as the African system of human rights. The pertinence of this trade partnership agreement stems from the fact that it is now well-established that there is a clear link between the international trading system and the enjoyment of human rights of peoples, because economic growth through globalization and trade liberalization may increase the supply of resources required for the furtherance of all human rights, thus leading to development.<sup>169</sup>

The new basis for shaping the continent's development partnerships should be to pursue development and equity for its peoples, underpinned by the pragmatic application of the RTD discussed above. The research will revisit the African interpretation of the RTD and seek to identify implementable ensuing parameters for development partnerships between West African countries and their industrialized trading partners in the economic arena.

Ultimately the project seeks to focus attention on the practical significance of the notion of the RTD and to support interpreting it as entailing a negative obligation not to inhibit the development of African peoples. The research will question whether the RTD places obligations on West African states and their development partners prohibiting them from negotiating terms of agreement that could be harmful to Africans and infringe upon their right to development, since true global partnership must curtail self-interest for the sake of the greater good. In the end, 'the right to development requires that considerations of equity and justice should determine the whole structure of development.'<sup>170</sup>

## Words of Gratitude

Mere words of gratitude cannot adequately convey the depth of my appreciation for the opportunity being given me today to deliver a professorial inaugural lecture at the age of 40, before an overwhelmingly distinguished audience, at such a prestigious citadel of learning. As many here can attest, this is no small feat.

I thank everyone here present for taking time out from your busy schedules to attend this lecture, some of you coming from very far away. In particular, I thank my parents, Professor Folabi Olumide and Mrs Folasade Olumide. You have an unwavering belief in my abilities, and I can attest that your love and support has kept me firmly on the path I am following today.

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Deserving of special mention are my mentors, Pastor and Pastor (Mrs) Wale Adefarasin, Dr and Mrs Adewunmi Desalu, Justice Adesuwa Oke-Lawal, and my Godmother, Dr Doyin Abiola, who have been pillars of support and prayers over the years, and I thank them all for their encouragement, particularly in trying moments.

My students and numerous mentees are a constant source of pride and inspiration, and I thank them for keeping me evergreen. I especially thank Mr Tola Onayemi for excellent research assistance towards this inaugural lecture.

Special thanks to my entire family, particularly my brothers and sisters - Yomi and Oyinkan Badejo-Okusanya, Rotimi and Dolapo Olumide, Tunji and Funmi Fadahunsi-Jones - as well as the entire Oduwole clan for their continued support over the years.

Our two beautiful children, Segioluwa and Babatise, thank you for your unconditional love and for your understanding. I learn from you every day! And to the person who completes me: my husband, my life coach, my angel investor – Olatunde Tikare Oduwole – my *every* success in life is yours.

The above is a brief summation of many parts of my life journey that has brought me to this point. It explains who I am - a highly favoured child of my creator - *this* is my very essence. To me, everything the world could scoff at – a young, black, female academic from Nigeria – it is by these very attributes that I am most blessed, and what I have said to you today derives its authenticity primarily from these attributes.

*Ese pupo, e ku aduro ti* (which literally means, 'Thank you all very much for staying with me.').

*Ik heb gezegd.*

## Endnotes

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<sup>1</sup> Kofi Annan, *In larger freedom: Towards Development, Security and Human Rights for all* (Report of the Secretary General of the United Nations for Decisions by Heads of State and Government in September 2005, UN DOC. A/59/2005 United Nations 2005) 5.

<sup>2</sup> UN General Assembly, *Declaration on the Right to Development : Resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128 [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm) accessed 14 April, 2014.

<sup>3</sup> See Tamara Kunanayakam, 'The Declaration on the Right to Development in the context of United Nations standard-setting' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013)17-48.

<sup>4</sup> 25th Anniversary of the Declaration on the Right to Development website [www.un.org/en/events/righttodevelopment/](http://www.un.org/en/events/righttodevelopment/) accessed 14 April 2014.

<sup>5</sup> Arne Vandebogaerde, 'The Right to Development in International Human Rights: A Call for its Dissolution' (2013) 31/2 NQHR 187.

<sup>6</sup> Anthony Carty, 'From the Right to Economic Self-Determination to the Right to Development: A Crisis in Legal Theory' (1984) 3 Third World Legal Studies 73, 75.

<sup>7</sup> Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 137.

<sup>8</sup> Judge Kéba M'Baye, '*Le Droit au Développement Comme un Droit de L'Homme* [The Right to Development as a Human Right]', *Leçon inaugurale de la Troisième Session d'enseignement de l'Institut International des Droits de L'Homme* [Inaugural Address of the Third Teaching Session of the International Institute of Human Rights] (July 3, 1972), in (1972) 5 *Revue des Droits de L'Homme* [Human Rights Journal] 503 cited in Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 138; see also Isabella Bunn, 'The Right to Development: Implications for International Economic Law' (2000) 15 No. 6 American University International Law Review 1426.

<sup>9</sup> Asbjorn Eide, 'Human Rights-Based Development in the Age of Economic Globalization: Background and Prospects in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 220, 228.

<sup>10</sup> Amartya Sen, *Development As Freedom* (Oxford University Press 1999) 35.

<sup>11</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 67.

<sup>12</sup> See *Infra* p. 8

<sup>13</sup> *Ibid.*

<sup>14</sup> Report of the Secretary-General, 'The emergence of the Right to Development' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 7.

<sup>15</sup> Isabella Bunn, 'The Right to Development: Implications for International Economic Law' (2000) 15 No. 6 American University International Law Review 1426; Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 137. According to Marks, the RTD has been part of international law terminology for three decades, with limited practical output in terms of planning and implementation as 'states express rhetoric support but neglect basic precepts in development practice.' 137.

<sup>16</sup> Isabella Bunn, 'The Right to Development: Implications for International Economic Law' (2000) 15 No. 6 American University International Law Review 1426, 1434.

<sup>17</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 22 [www.achpr.org/instruments/achpr/](http://www.achpr.org/instruments/achpr/) accessed 14 April 2014.

<sup>18</sup> Nienke van der Have, 'The right to development: Can states be held responsible?' in Dick Foeken *et al* (eds.) *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill 2014) 157, 159.

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<sup>19</sup> Nsongurua Udombana, 'The Summer has Ended and We are Not Saved! Towards a Transformative Agenda for Africa's Development' (2005) San Diego International Law Journal 5. Udombana quoted the defunct Organization of African Unity (OAU) as stating, 'We have noted, at the close of the 20th century, that of all the regions of the world, Africa is indeed the most backward in terms of development from whatever angle it is viewed and the most vulnerable as far as peace, security and stability are concerned.' In a similar vein, he noted that the New Partnership for Africa's Development (NEPAD) noted 'Africa remains the poorest continent despite being one of the most richly endowed regions of the world.'<sup>10</sup>, 18.

<sup>20</sup> United Nations Conference on Trade and Development (UNCTAD), *Economic Development in Africa Report 2013* (UNCTAD/ALDC/AFRICA/2013, United Nations Publication 2013).

<sup>21</sup> Nsongurua Udombana, 'The Summer has Ended and We are Not Saved! Towards a Transformative Agenda for Africa's Development' (2005) San Diego International Law Journal 5. Africa has immense wealth, potential, market and culture. Twenty percent of its total area is made up of forests, making it 'the planet's second lifeline with fabulous bio-diversity'. Africa is also endowed with immense mineral and energy resources such as petroleum, gas, uranium, and hydroelectric basins. Its mineral reserves account for about 30 percent of global mineral resources.

<sup>22</sup> See The Economist, 'The Hopeless Continent' cover page 13 May, 2000 *cf* The Economist, 'The hopeful continent: Africa rising' cover page 3 December, 2011.

<sup>23</sup> See United Nations Sustainable Development Knowledge Platform <http://sustainabledevelopment.un.org/focussdgs.html> accessed 14 April 2014; Report of the High Level Panel on the Post-2015 Development Agenda, May 2013, [www.post2015hlp.org/the-report/](http://www.post2015hlp.org/the-report/) accessed 14 April, 2014. See also The Belgium Development Cooperation, 'The Post 2015 Development Framework: Issues, Challenges, Opportunities' Stakeholder Meeting of the Belgian Development Cooperation High Level Session Background Note (2013) BRUSSELS / 07.05 2013 / 6TH EDITION 1.

<sup>24</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 67.

<sup>25</sup> The Universal Declaration of Human Rights. The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 by [General Assembly Resolution 217 A \(III\)](#). See [www.ohchr.org/en/udhr/pages/introduction.aspx](http://www.ohchr.org/en/udhr/pages/introduction.aspx) accessed 14 April, 2014.

<sup>26</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR 3d Comm., 21st Sess., 1496th plen. mtg., Annex, Agenda Item 62, at 16 U.N. Doc. A/RES/2200 (XXI) (1967). <http://treaties.un.org/>

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. GAOR 3d Comm., 21st Sess., 1496th plen. mtg., Annex, Agenda Item 62, at 3, U.N. Doc. A/RES/2200 (XXI) (1967). <http://www.un-documents.net/icescr.htm> accessed 14 April, 2014. See Matthew Craven, *The International Covenant on Economic, Social, And Cultural Rights: A Perspective On Its Development* (Clarendon Press 1998).

<sup>28</sup> See Article 22, UDHR [www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) accessed 14 April, 2014.

<sup>29</sup> *Supra* UDHR

<sup>30</sup> Margot Salomon, *Global Responsibility for Human Rights* (Oxford University Press 2007) 4; Margot Salomon, 'Legal Cosmopolitanism and the Normative Contribution of the Right to Development' in Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008) 17.

<sup>31</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI [www.un.org/en/documents/charter/](http://www.un.org/en/documents/charter/) accessed 14 April, 2014.

<sup>32</sup> Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 137. In the 1970s and 1980s the RTD was introduced as one of several rights belonging to a third 'generation' of human rights. The first generation consisted of civil and political rights conceived as freedom from state abuse. The second generation consisted of economic, social and cultural rights, claims made against exploiters and oppressors. The third generation consisted of solidarity rights belonging to peoples and covering global concerns such as development, environment, humanitarian assistance, peace, communication and common heritage.

<sup>33</sup> [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm) Resolution 41/128.

<sup>34</sup> *Ibid.*

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<sup>35</sup> Sakiko Fukuda-Parr, 'The Right to Development: Reframing a New Discourse for the Twenty-First Century' (2012) 79 No. 4 Social Research 839. RTD commitments have implications for numerous questions of public expenditure priorities, incentive policies, and regulation. They extend to both national and international domains, and apply to cooperative action with other states in areas of trade, migration, finance, technology transfer, environmental commons, peace and security.

<sup>36</sup> *Ibid.* As the developing countries advocated for the creation of a treaty that would codify the RTD as a new legal right with additional obligations, the developed countries maintained the position that RTD is an amalgam of other rights and does not incur new legally-binding obligations.

<sup>37</sup> Salma Yusuf and Jennifer Woodham, 'A Human Right to Development – Moving Beyond the Rhetoric' (2012) Institute of Human Rights Sri Lanka 1.

<sup>38</sup> Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 137, 141-42; The political positions in the UN RTD Working Group can be categorized roughly into four camps: The first camp comprises the most active members of the non-aligned group (NAM), a developing country relic of the Cold War era, sometimes called the 'Like-Minded Group' (LMG) namely Algeria, Bangladesh, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, and Vietnam. The LMG seeks to utilize the RTD to reduce inequities of international trade, the negative impacts of globalization, differential access to technology, the crushing debt burden, and similar factors they see as detrimental to the enjoyment of human rights and development. They also strongly support the idea that the RTD creates obligations on the international community to create better conditions for development. The second camp consists of more moderate developing countries that seek to implement human rights policies at a national level and cooperate with the donor community, international development agencies, and financial institutions. The third camp is made up of countries in transition and developed nations, such as the European Union, which typically support the RTD as a vehicle for constructive engagement between developed and developing countries, and seek to implement the RTD. Members of this group will support conservative resolutions or abstain. The fourth camp, led by the United States, consistently votes against RTD resolutions. Other members of this camp have included Japan, Denmark, and Australia, and smaller countries under the influence of the United States.

<sup>39</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in United Nations Human Rights Office of the High Commissioner (ed) *Realizing the Right to Development* (United Nations Publication HR/PUB/12/4, United Nations 2013) 67.

<sup>40</sup> *Ibid.* 74

<sup>41</sup> Tamara Kunanayakam, 'The Declaration on the Right to Development in the context of United Nations standard-setting' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 17-48.

<sup>42</sup> Nienke van der Have, 'The right to development: Can states be held responsible?' in Dick Foeken *et al* (eds.) *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill 2014) 157.

<sup>43</sup> Brigitte Hamm, 'A Human Rights Approach to Development' (2001) 23 No. 4 Human Rights Quarterly 1005; Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 67, 74.

<sup>44</sup> Fifth Report of the Independent Expert on the Right to Development, Prof Arjun Sengupta, Submitted in Accordance with Commission Resolution 2002/69, at 5, 6, U.N. Doc. E/CN.4/2002/WG.18/6 (2002); Forward by Ms Navi Pillay, UNHCHR in United Nations Human Rights Office of the High Commissioner (ed.) *Realizing the Right to Development* (United Nations Publication HR/PUB/12/4, United Nations 2013).

<sup>45</sup> Mohammed Bedjaoui, 'The Right to Development' in Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects* (Dordrecht: Martinus Nijhoff and UNESCO 1991) 1177, 1182.

<sup>46</sup> Pillay, *Ibid.* xxv; See Peter Uvin, *Human Rights and Development* (Kumarian Press 2004) 41; See also Arne Vandenberg, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31/2 NQHR 187; Yash Ghai, *Whose Human Right to Development?*, Occasional Paper, Commonwealth Human Rights Unit, 1989.

<sup>47</sup> Peter Uvin, *Human Rights and Development* (Kumarian Press 2004) 41; See also Arne Vandenberg, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31/2 NQHR 187.

<sup>48</sup> Uvin *Ibid.* 42-3.

<sup>49</sup> See Declaration on the Establishment of a New International Economic Order (NIEO), G.A. Res. 3201 (S-VI), U.N. Doc. (May 1, 1974).

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<sup>50</sup> United Nations Development Programme (UNDP), *Applying A Human Rights-Based Approach to Development Cooperation and Programming* (Capacity Development Group Bureau for Development Policy UNDP 2006).

<sup>51</sup> Kate Manzo, 'Africa in the Rise of Rights-Based Development', (2003) 34 *Geoforum* 34 (2003) 437.

<sup>52</sup> UNDP Report 2001, Partnerships to Fight Poverty. [www.undp.org/content/dam/undp/library/corporate/UNDP-in-action/2001/English/complete.pdf](http://www.undp.org/content/dam/undp/library/corporate/UNDP-in-action/2001/English/complete.pdf) accessed 14 April, 2014.

<sup>53</sup> *Ibid.*

<sup>54</sup> United Nations Human Rights, Office of the High Commissioner for Human Rights [www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx](http://www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx) accessed 14 April, 2014; Henry Steiner and Philip Alston, *International Human Rights In Context: Law, Politics, Morals* (2<sup>nd</sup> Ed, Oxford University Press 2000) 1311. In 1999, Mrs Mary Robinson, the then UN High Commissioner for Human Rights (UNHCHR) outlined the human rights dimension of an international financial, trade and development architecture with the aim of giving life to the copious statements in support of the right to development already available by this time.

<sup>55</sup> Vienna Declaration and Programme of Action, UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23 endorsed by General Assembly Resolution 48/121, 20 December 1993.

<sup>56</sup> Brigitte Hamm, 'A Human Rights Approach to Development' (2001) 23 No. 4 *Human Rights Quarterly* 1005.

<sup>57</sup> Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 *Harvard Human Rights Journal* 137. The Independent Expert was to present a study on the current state of progress in the implementation of the right to development to the working group at each of its sessions as a basis for a focused discussion, taking into account the deliberations and suggestions of the working group. The purpose of the working group was to monitor and review the progress of the Independent Expert and report back to the Commission. 139.

<sup>58</sup> Report of the High Level Task force A/HRC/15/WG.2/TF/2/Add.2, 8 March 2010 8.

<sup>59</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 67.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.* 78

<sup>62</sup> UN General Assembly, *Declaration on the Right to Development : Resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128.

<sup>63</sup> Amartya Sen, *Development As Freedom* (Oxford University Press 1999) 35.

<sup>64</sup> Amartya Sen, 'Human Rights and Development' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 6-7.

<sup>65</sup> Stephen Marks and Bard Andreassen, 'Introduction' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) ix.

<sup>66</sup> Arjun Sengupta, Preface in Stephen Marks (ed) *Implementing the Right to Development: The Role of International Law* 10; Salma Yusuf and Jennifer Woodham, 'A Human Right to Development – Moving Beyond the Rhetoric' (2012) *Institute of Human Rights Sri Lanka* 1, 5. Yusuf and Woodham note that Sengupta's definition places the duty to protect the RTD on all stakeholders, from individuals to the international community, which means that practically speaking, it is necessary to identify the obligations of each stakeholder and adopt legal mechanisms for the successful actualization of the RTD.

<sup>67</sup> Implementing Resolution 4/4 of the Human Rights Council, adopted March 30, 2007, which requires the HLTF to execute a work plan, the final phase of which might include 'consideration of an international legal standard of a binding nature.' Stephen Marks, 'A legal perspective on the evolving criteria of the HLTF on the right to development' in Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008) 72.

<sup>68</sup> *Ibid.* See also Fateh Azzam, 'The right to development and implementation of the Millennium Development Goals' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of*

<sup>69</sup> For a comprehensive analysis of the issue considered by the HLTF, see Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008).

<sup>70</sup> Koen De Feyter, 'Towards a Framework Convention on the Right to Development' (2013) The Friedrich-Ebert-Stiftung International Policy Analysis Dialogue on Globalization 17.

<sup>71</sup> Nienke van der Have, 'The right to development: Can states be held responsible?' in Dick Foeken *et al* (eds.) *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill 2014) 157, 160.

According to van der Have, citing Margot Salomon, the internal dimension of the RTD consists of obligations that states owe towards people within their jurisdiction to facilitate and regulate the process of development, while the external dimension consists of obligations of states towards peoples outside their jurisdiction and the obligation of all states to cooperate for the realization of the RTD. See Margot Salomon, *Global Responsibility for Human Rights* (Oxford University Press 2007); Margot Salomon, 'Legal Cosmopolitanism and the Normative Contribution of the Right to Development' in Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008) 17.

<sup>72</sup> *Ibid.* 164

<sup>73</sup> *Ibid.* 164

<sup>74</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in United Nations Human Rights Office of the High Commissioner (ed.) *Realizing the Right to Development* (United Nations Publication HR/PUB/12/4, United Nations 2013) 67, 74.

<sup>75</sup> Nienke van der Have, 'The right to development: Can states be held responsible?' in Dick Foeken *et al* (eds.) *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill 2014) 157, 160.

<sup>76</sup> David Beetham, 'The Right to Development and Its Corresponding Obligations' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 79.

<sup>77</sup> See Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006); Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008).

<sup>78</sup> Stephen Marks and Bard Andreassen, 'Introduction' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) viii .

<sup>79</sup> David Beetham, 'The Right to Development and Its Corresponding Obligations' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 79.

<sup>80</sup> Arjun Sengupta, 'The Human Right to Development' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 9,19; Flavia Piovesan, 'Social, Economic and Cultural Rights and Civil and Political Rights' (2004) 1 SUR INT'L J. HUM. RTS. 21, 27.

<sup>81</sup> Obiora Okafor, "'Righting" the Right to Development: A Socio-Legal Analysis of Article 22 of the African Charter on Human and Peoples' Rights' in Stephen Marks (ed.), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008) 52; See Arjun Sengupta, 'The Human Right to Development' (2004) 32 Oxford Development Studies 183, 192.

<sup>82</sup> Flavia Piovesan, 'Active, free and meaningful participation in development' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 103.

<sup>83</sup> Sakiko Fukuda-Parr, 'The Right to Development: Reframing a New Discourse for the Twenty-First Century' (2012) 79 No. 4 Social Research 839.

<sup>84</sup> Arts 3.1, 3.3 and 4.1 UNDRTD.

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<sup>85</sup> Oliver Dr De Schutter, 'The Role of Human Rights in Shaping International Regulatory Regimes' (2012) 79 No. 4 Social Research 785.

<sup>86</sup> *per* His Royal Highness Prince Claus of the Netherlands. Excerpt of the Prince's acceptance speech on the occasion of receiving an Honorary Fellowship at the Institute of Social Studies (ISS), 1988, reflecting his views on development and equity. Proposition 3 <http://princeclauschair.nl/23-propositions/> accessed 14 April, 2014.

<sup>87</sup> Chinua Achebe, 'Nigeria's Promise, Africa's Hope' The New York Times, January 15, 2011 [www.nytimes.com/2011/01/16/opinion/16achebe.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/01/16/opinion/16achebe.html?pagewanted=all&_r=0) accessed 14 April, 2014.

<sup>88</sup> Africa is a vast continent made up of 54 countries with diverse cultures and histories. However, some common trends and shared experiences do allow for generalization at the overview level.

<sup>89</sup> In 1444, commercial trade in African slaves commenced when Lancarote de Freitas, a tax-collector from the Portuguese town of Lagos formed a company to trade with Africa. On 8 August of that year he brought 234 kidnapped and enslaved Africans to Lagos, Portugal. This was the first large group of African slaves brought to Europe. [www.brycchancarey.com/slavery/chrono2.htm](http://www.brycchancarey.com/slavery/chrono2.htm) accessed 14 April 2014.

<sup>90</sup> In West Africa alone, there were the Ghana (900 AD), Mali (1235 AD) and Songhai (1335 AD) Empires.

<sup>91</sup> Obafemi Awolowo, *The Problems of Africa: The Need for Ideological Reappraisal* (1st Series, University of Cape Coast Kwameh Nkrumah Memorial Lectures Series Macmillan 1977) 20.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Therefore, in effect, West Africa's normal course of development was interrupted by these events and was put on hold for approximately 500 years.

<sup>95</sup> On 26 June 1945. It entered into force on 24 October of the same year. [www.un.org/en/documents/charter/intro.shtml](http://www.un.org/en/documents/charter/intro.shtml) accessed 14 April 2014.

<sup>96</sup> Douglas Irwin et al., *The Genesis of the GATT* (Cambridge University Press 2008) 78.

<sup>97</sup> *Ibid.*

<sup>98</sup> Christie Lagarde, 'A New Multilateralism for the 21<sup>st</sup> Century' (2014) The Richard Dimbleby Lecture, London, 3 February 2014. [www.imf.org/external/np/speeches/2014/020314.htm](http://www.imf.org/external/np/speeches/2014/020314.htm) accessed 14 April, 2014.

<sup>99</sup> Douglas Irwin et al., *The Genesis of the GATT* (Cambridge University Press 2008) 22-7. The Bretton Woods agreement was negotiated and signed in July, 1944, in Bretton Woods, New Hampshire, USA by all 44 members of the Allied Nations, the group of industrialized nations at the time. The agreement established an international monetary regime based on fixed (but adjustable) exchange rates and two institutions: the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (the World Bank). *See also The Genesis of the GATT* 43 (Cambridge University Press 2008).

<sup>100</sup> Douglas Irwin et al., *The Genesis of the GATT* (Cambridge University Press 2008) 43.

<sup>101</sup> Amrita Narlikar, 'Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO' (2006) *The World Economy* 1005, 1017.

<sup>102</sup> Douglas Irwin et al., *The Genesis of the GATT* (Cambridge University Press 2008) 43.

<sup>103</sup> John Barton et al., *The Evolution of the Trade Regime: Politics, Law and Economics of the GATT and the WTO* (Princeton University Press 2006) 35.

<sup>104</sup> William Diebold, *The End of the ITO* (Essays in International Finance, International Finance Section, Department of Economics and Social Institutions Princeton University Press 1952) 16 (out of print) *cited in* Amrita Narlikar, 'Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO' (2006) *The World Economy* 1005, 1017.

<sup>105</sup> The list of 53 signatories to the ITO agreement included—Afghanistan, Australia, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Ireland, Italy, Lebanon, Liberia, Luxembourg,

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Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Southern Rhodesia, Sweden, Switzerland, Syria, Transjordan, South Africa, the United Kingdom, the United States of America, Uruguay, Venezuela.

<sup>106</sup> Asbjorn Eide, 'Human Rights-Based Development in the Age of Economic Globalization: Background and Prospects in Bard Andreassen and Stephen Marks' (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 220.

<sup>107</sup> List of 23 original GATT '47 signatories—Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, the Czechoslovak Republic, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom and the United States. The GATT's two cardinal principles are the principle of non-discrimination embodied in the Most Favoured Nation (MFN) clause which states that no member should discriminate between trading partners, and the National Treatment clause states that foreign and local goods should be treated identically (i.e. no differentiation) once they are within a given market ( see Articles I and III of GATT 1947 respectively).

<sup>108</sup> Obafemi Awolowo, *The Problems of Africa: The Need for Ideological Reappraisal* (1st Series, University of Cape Coast Kwameh Nkrumah Memorial Lectures Series Macmillan 1977).

<sup>109</sup> *Ibid.*

<sup>110</sup> Import substitution is an economic policy that advocates the replacement of foreign imports with local production.

<sup>111</sup> John Barton et al., *The Evolution of the Trade Regime: Politics, Law and Economics of the GATT and the WTO* (Princeton University Press 2006) 161-162.

<sup>112</sup> International Covenant on Civil & Political Rights, G.A. Res. 2200A, U.N. GAOR 3d Comm., 21st Sess., 1496th plen. mtg., Annex, Agenda Item 62, at 16 U.N. Doc. A/RES/2200 (XXI) (1967). <http://treaties.un.org/>

<sup>113</sup> International Covenant on Economic, Social & Cultural Rights, G.A. Res. 2200A, U.N. GAOR 3d Comm., 21st Sess., 1496th plen. mtg., Annex, Agenda Item 62, at 3, U.N. Doc. A/RES/2200 (XXI) (1967). [www.un-documents.net/icescr.htm](http://www.un-documents.net/icescr.htm) See Matthew Craven, *The International Covenant On Economic, Social and Cultural Rights: A Perspective On Its Development* (Clarendon Press 1998) 6-29.

<sup>114</sup> See Declaration on the Establishment of a New International Economic Order (NIEO), G.A. Res. 3201 (S-VI), U.N. Doc. (May 1, 1974).

<sup>115</sup> Michael Trebilcock and Robert Howse, *The Regulation of International Trade*, (3<sup>rd</sup> edn. Routledge Publishers 2005) 471.

<sup>116</sup> See Declaration on the Establishment of a New International Economic Order (NIEO), G.A. Res. 3201 (S-VI), U.N. Doc. (May 1, 1974).

<sup>117</sup> Nsongurua Udombana, 'The Summer has Ended and We are Not Saved! Towards a Transformative Agenda for Africa's Development' (2005) *San Diego International Law Journal* 5, 17.

<sup>118</sup> Organization of African Unity (OAU), *Charter of the Organization of African Unity*, 25 May 1963. The Charter was replaced by the Constitutive Act of the African Union in 2000. In 1980 at an OAU Extraordinary Summit between 28 – 29 April 1980, the Lagos Plan of Action was adopted. The commitments in the Plan and the Final Act of Lagos were translated into concrete form in Abuja, Nigeria in June 1991 when the OAU Heads of State and Government signed the Abuja Treaty establishing the African Economic Community (AEC). See Akin Oyebode, *International Law and Politics: An African Perspective* (Bolabay 2003) 224; see also [www.au.int/en/about/nutshell](http://www.au.int/en/about/nutshell); [www.uneca.org/oria/pages/history-background-africas-regional-integration-efforts](http://www.uneca.org/oria/pages/history-background-africas-regional-integration-efforts) accessed 14 April, 2014.

<sup>119</sup> Akin Oyebode, *International Law and Politics: An African Perspective* (Bolabay 2003) 222,229.

<sup>120</sup> Bela Balassa, *New Directions in the World Economy*, (New York University Press 1989) 17.

<sup>121</sup> Joseph Stiglitz, *Globalization and Its Discontents* (Penguin Publishers 2003) 244; Nsongurua Udombana, 'The Summer has Ended and We are Not Saved! Towards a Transformative Agenda for Africa's Development' (2005) *San Diego International Law Journal* 5, 43.

<sup>122</sup> Hans-Henrik Holm, 'A Banner of Hope? North-South Negotiations and the New International Development Strategy for the Eighties' (1981) *XVI Cooperation and Conflict* 197.

<sup>123</sup> Joseph Stiglitz, *Globalization and Its Discontents* (Penguin Publishers 2003).

<sup>124</sup> *Ibid.* 20

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<sup>125</sup> Sumitra Chishti, 'Globalization, International Economic Relations and the Developing Countries' (2002) 39 No. 3 *International Studies* 227.

<sup>126</sup> United Nations, Office of the High Commissioner for Human Rights, [www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx](http://www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx) accessed 14 April, 2014.

<sup>127</sup> Flavia Piovesan, 'Social, Economic and Cultural Rights and Civil and Political Rights' (2004) 1 'Sur - Revista Internacional de Direitos Humanos' 21, 27.

<sup>128</sup> NEPAD [www.nepad.org/about](http://www.nepad.org/about); See Bronwen Manby, 'Development, good governance and South-South cooperation: the African Peer Review Mechanism' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 217.

<sup>129</sup> African Development Bank Group, *Achieving the Millennium Development Goals Report 2013* [www.afdb.org/knowledge/publications/millennium-development-goals-mdgs-report/](http://www.afdb.org/knowledge/publications/millennium-development-goals-mdgs-report/) accessed 14 April, 2014.

<sup>130</sup> Sakiko Fukuda-Parr, 'A right to development critique of Millennium Development Goal 8' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 201; Fateh Azzam, 'The right to development and implementation of the Millennium Development Goals' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) 355.

<sup>131</sup> The continent's myriad of internal challenges are beyond the scope of this lecture.

<sup>132</sup> Navi Pillay, 'Foreword' in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (HR/PUB/12/4, United Nations, 2013) iv.

<sup>133</sup> Upendra Baxi, 'The Development of the Right to Development' in Upendra Baxi, *Human Rights in a Post Human World: Critical Essays* (Oxford University Press 2007) 124.

<sup>134</sup> African Charter [www.achpr.org/instruments/achpr/](http://www.achpr.org/instruments/achpr/) accessed 14 April, 2014.

<sup>135</sup> Oji Umzurike, *The African Charter on Human and Peoples' Rights* (Brill 1997).

<sup>136</sup> *Ibid*; Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals* (2nd edn, Oxford University Press 2000) 920.

<sup>137</sup> T.F. Yerima, 'The African Charter on Human and Peoples' Rights: A Critique, and in Comparison with Other Regional and International Human Rights Instruments' in Akin Ibidapo-Obe and T. F. Yerima (eds.), *International Law, Human Rights and Development* (Petoa Educational Publishers 2004) 63.

<sup>138</sup> See <http://www.achpr.org/instruments/achpr/> accessed 14 April 2014. Other treaties of the era with development components include: the International Convention on the Elimination of all Forms of Racial Discrimination; Declaration on Permanent Sovereignty over Natural Resources; Convention for the Prevention and Punishment of the Crime of Genocide; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

<sup>139</sup> Article 22 of UDHR states: 'Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.'

<sup>140</sup> Article 1(1) ICESCR states: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

<sup>141</sup> The African Commission was established to provide oversight and interpretation of the African Charter and is a quasi-judicial body. Although it only gives recommendations that are not legally enforceable judgments, these judgments are persuasive and generally well respected.

<sup>142</sup> Commission on Human and Peoples' Rights, comm. No. 155/96, (2001), 1. Centre for Minority Rights Development (Kenya) and Minority Group (on behalf of Endorois Welfare Council) v. Kenya (2009) Commission on Human and Peoples'

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Rights comm. No. 276/03 (decided on merits); 2. Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan (2009) Commission on Human and People's Rights comm 279/03-296/05 (decided on merits); 3. Socio Economic Rights and Accountability Project v. Nigeria (2008) Commission on Human and People's Rights, comm 300/05 (ruled inadmissible); 4. Bakweri Land Claims Committee v. Cameroon (2004) Commission on Human and People's rights, comm. No 260/02 (ruled inadmissible); 5. Democratic Republic of Congo v. Burundi, Rwanda, Uganda (2003) Commission on Human and People's Rights, comm. No 227/99 (decided on merits); 6. Association pour la sauvegarde de la paix au Burundi v. Kenya, Uganda, Rwanda, Tanzania, Zaire (DRC), Zambia (2003) Commission on Human and People's Rights, Comm. 157/96 (decided on merits); 7. William A. Courson v. Zimbabwe (1995) Commission on Human and People's Rights comm 136/94 (withdrawn).

<sup>143</sup> Four cases were decided on merit, two ruled inadmissible, and one was withdrawn.

<sup>144</sup> Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) Communication 155/96, Decided at the 30th ordinary session, Oct 2001, 15th Annual Activity Report.

<sup>145</sup> *SERAC v. Nigeria* (2001), Para 47.

<sup>146</sup> Association pour la sauvegarde de la paix au Burundi v. Kenya, Uganda, Rwanda, Tanzania, Zaire (DRC), Zambia (2003) Commission on Human and People's Rights, Comm. 157/96. Decided at the 33rd Ordinary Session held in Niamey, Niger from 15th to 29th May 2003. (*Burundi case*).

<sup>147</sup> Democratic Republic of the Congo v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003), Communication 227/99, *DR Congo v Burundi, Rwanda and Uganda*, Decided at the 33rd ordinary session May 2003, 20th Activity Report.

<sup>148</sup> DRC alleged grave and massive violations of human and peoples' rights committed by the armed forces of these three respondent countries in the Congolese provinces where there had been rebel activities since 2<sup>nd</sup> August 1998, and for which the Democratic Republic of Congo blames Burundi, Uganda and Rwanda.

<sup>149</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), [www.achpr.org/instruments/achpr/](http://www.achpr.org/instruments/achpr/) accessed 14 April 2014.

<sup>150</sup> *Ibid.* Article 22

<sup>151</sup> Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan (2009) Commission on Human and People's Rights comm 279/03-296/05 (*COHRE case*).

<sup>152</sup> The complainants alleged gross, massive and systematic violations of human rights by the Republic of Sudan against the indigenous Black African tribes in the Darfur region (Western Sudan), claiming that the Darfur region has been under a state of emergency since the government of General Omar Al-Bashir seized power in 1989. They further allege that this situation has given security and paramilitary forces a free hand to arrest, detain torture and carry out extrajudicial executions of suspected insurgents.

<sup>153</sup> *COHRE case*, Para 220.

<sup>154</sup> *Ibid.*

<sup>155</sup> Centre for Minority Rights Development (Kenya) and Minority Group (on behalf of Endorois Welfare Council) v. Kenya (2009) Commission on Human and People's Rights comm. No. 276/03 (adopted May 2009, approved by the African Union January 2010) paras. 22 and 297-8.

<sup>156</sup> Citing itself in the *Ogoni case*, the African Commission ruled that the Endorois are a 'people', a status that entitles them to benefit from the importance of community and collective identity in African culture which is recognised throughout the African Charter.

<sup>157</sup> Endorois case, Para 75.

<sup>158</sup> *Ibid.*, para 279.

<sup>159</sup> *Ibid.*, para 283, 290.

<sup>160</sup> *Ibid.*, para 290.

<sup>161</sup> Margot Salomon, *Global Responsibility for Human Rights* (Oxford University Press 2007); Margot Salomon, 'Legal

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Cosmopolitanism and the Normative Contribution of the Right to Development' in Stephen Marks (ed), *Implementing The Right To Development: The Role of International Law* (The Friedrich-Ebert-Stiftung/Harvard School of Public Health 2008) 17.

<sup>162</sup> David Beetham, 'The Right to Development and Its Corresponding Obligations' in Bard Andreassen and Stephen Marks (eds.) *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 79.

<sup>163</sup> Karin Arts, 'A Human Rights-Based Approach to the ACP-EU European Partnership Agreements: Issues and Implications' in Gerrit Faber and Jan Orbie (eds.) *Beyond Market Access for Economic Development: EU-Africa Relations in Transition* (Routledge, 2009) 279-303.

<sup>164</sup> Takele Bulto, 'The Indirect Approach to Promote Justiciability of Socio-Economic Rights of the African Charter on Human and Peoples' Rights' in Rachael Murray (ed.), *Human Rights Litigation and the Domestication of International Human Rights Standards in Africa* (PULP 2010) 134-167.

<sup>165</sup> Chidi Odinkalu, 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and Peoples' Rights' (2001) 23 *Human Rights Quarterly* 347.

<sup>166</sup> Koen De Feyter, 'Indigenous peoples' in United Nations Human Rights Office of the High Commissioner (eds.) *Realizing the Right to Development* (United Nations Publication HR/PUB/12/4, United Nations 2013) 159, 164.

<sup>167</sup> *per* His Royal Highness Prince Claus of the Netherlands. Excerpt of the Prince's acceptance speech on the occasion of receiving an Honorary Fellowship at the Institute of Social Studies (ISS), 1988, reflecting his views on development and equity. Proposition 2 <http://princeclauschair.nl/23-propositions/> accessed 14 April, 2014.

<sup>168</sup> Karin Arts, 'Lome/Cotonou Conventions' (2013), *Max Planck Encyclopaedia of Public International Law*, (Heidelberg and Oxford University Press)1-12.

<sup>169</sup> United Nations, Office of the High Commissioner for Human Rights, [www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx](http://www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx) accessed 14 April, 2014.

<sup>170</sup> Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-first Century' in United Nations Human Rights Office of the High Commissioner (ed.) *Realizing the Right to Development* (United Nations Publication HR/PUB/12/4, United Nations 2013) 69.