The 13th session of the Expert Mechanism on the Right to Development

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Implementation of the mandate and programme of work –
Focused thematic discussions
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The role of regional mechanisms in realizing the right to development

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Unofficial transcript of the oral statement by Hon. Dr. Litha Musyimi-Ogana, Commissioner of the African Commission on Human and Peoples' Rights

I'm very delighted to join you this afternoon to discuss a topic that is right to development and in particular, the role of regional mechanisms in realizing right to development. I think the first question we should ask ourselves, so what is right to development? Then the second question is, is it equitable? Then the third question is, where is the imbalance? But allow me to keep those questions aside and try to respond to the assignment that we have been given. We've been asked to share our experience and our understanding of the role of regional mechanisms in realizing the right to development.

The African Commission on Human and Peoples' Rights, approaches the right to development as a binding legal right, and an enforceable collective entitlement of peoples, firmly grounded under Article 22 of the African Charter on Human and Peoples' Rights. This right is not aspirational. It imposes clear obligations on States to ensure that all peoples can participate in, contribute to, and benefit from development with due regard to their freedom, identity and equal access to resources. From the Commission's perspective, development is therefore not reducible to economic growth. It is a human rights process defined by participation, equity, accountability and respect for communities' ways of life.

This position is grounded in the Commission's jurisprudence. We have cases adjudicated by the Commission with regard to right to development, and I would like to quote what we call the SERAC case, that is Social and Economic Rights Action Centre v. Nigeria, which established that State obligations exist to prevent exclusion and harm in development processes. We also have another case against indigenous people, by indigenous people against the Republic of Kenya, by the way I'm here to attend the 25th Session of the UN Permanent Forum on Indigenous Issues, because that is my mandate. I'm the commissioner in charge of indigenous communities and minorities in Africa, and that's why I happened to be in New York, actually, not for right for development, but when they had that I was in town, they asked if I could speak to this, and I was very ready to do that. So, I want to give a case of right to development from an indigenous community, and this is a case where an indigenous community in Kenya, took government to court and won. We want to say that communities do have a right to development, too, and indigenous communities and minorities have a right to development. The Commission has clarified that the right to development is both procedural and also substantive, and that failure to ensure participation and equitable beneficiation constitutes a violation of Article 22 of the African Charter.

In operational terms, regional mechanisms perform three core functions. The first function they perform is to provide authoritative interpretation as part of their mandate. Through its jurisprudence, the Commission has clarified that the right to development is intrinsically linked to other charter rights, including the right to participation, right to natural resources, right to governance, and right to environmental protection. The second role is to offer direct supervisory engagement with States through communications or cases they receive and adjudicate from citizens against States or companies in extractive industries, for example, reporting procedures and through country missions.

We undertake country missions, and when we go on country missions, we do engage with communities on this. Regional mechanisms enable the Commission to address structural barriers such as exclusion, marginalization, and inequitable distribution of development benefits. The third role that they play is to contribute to normative development in the African context. For example, this has included, among other things, advancing standards on the rights of Indigenous Peoples and communities, particularly where development processes affect land resources and identity. The Commission's jurisprudence, together with that of the African Court.

For those of you are hearing about the African Commission and African Court for the first time, the African Union has got about over 10 organs, and each organ has got a specific function. The Commission is the human rights organ of the African Union, and actually it is the oldest. This year we are celebrating 45 years because the Charter was adopted in 1981 in Kenya, and the Commission itself was established 40 years ago. We are having a double celebration of the Charter for 45 years and the Commission 40 years. We also have another sister organization called the African Court, which was established much later through a protocol of the Commission. I think the protocol is very famous out here. It is Maputo Protocol. It is one of the protocols of women's rights. This is the work of the Commission. We've given birth to protocols within the AU, which address issues of human rights, whether it's rights for women, rights for children, rights for Indigenous Peoples.

I'm mentioning the Court, because we are sister organizations. The cases that come to us, and we are able to pass them to the Court if we cannot adjudicate. But in terms of mandate, the Commission is highly, almost 100% ratified by the AU, because 54 members have ratified the Human Rights Charter, while 34 have ratified the Court. We have the blanket cover for the whole continent. Of course, Morocco is the only country that has not ratified, and we are trying to bring them back. But with 54 ratifications, that means we provide a bigger blanket in terms of human rights. So, what the Court cannot cover, we cover. But it's important to mention that we work closely with the Court. We wish to say that the Court, and it calls that failure to ensure meaningful participation and consultation in development processes constitutes a violation of the right to development.

However, we have challenges, which I would like to highlight very briefly. These include the gaps in domestic implementation. This is not just an African thing. In many cases and countries, judgment is passed, and sometimes the victims don't get their words on time or there's delay, and they have to follow up. There's also limited awareness of the certain rights. So, the Commission amplifies these rights. There's also fragmentation between regional and international frameworks. And what we have done, tried to do as a Commission is to come up with what we call the Addis Ababa Roadmap. We have sat with the United Nations Human Rights and agreed on how to work together, what constitutes global and when it comes to Africa, where we work together. Through the Addis Ababa Roadmap, we are able to close inner gaps that would emanate from the UN. Then we will have to be able to know where to come in. Therefore, I would like to conclude by saying that the Commission's position is therefore clear.

Realizing the right to development requires a shift from policy commitments to rights-based implementation, grounded in law, supported by institutions, and responsive to the lived realities of our people. Going forward, priority must be given to strengthening cooperation between regional and global systems, enhancing visibility and use of regional jurisprudence and ensuring that development processes are inclusive, participatory and accountable.

I thank you.

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