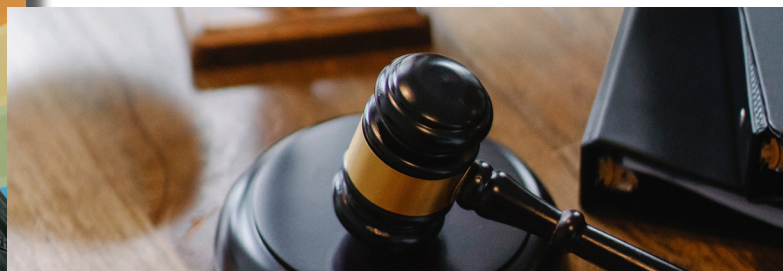




Roundtable Dialogue on



Litigation of the Right to Development in Domestic Courts in Africa

Venue:

Senate Hall, University of Pretoria
Hatfield Campus

Date:

23 March 2023

Time:

8:40 – 11:00 SAST

Background

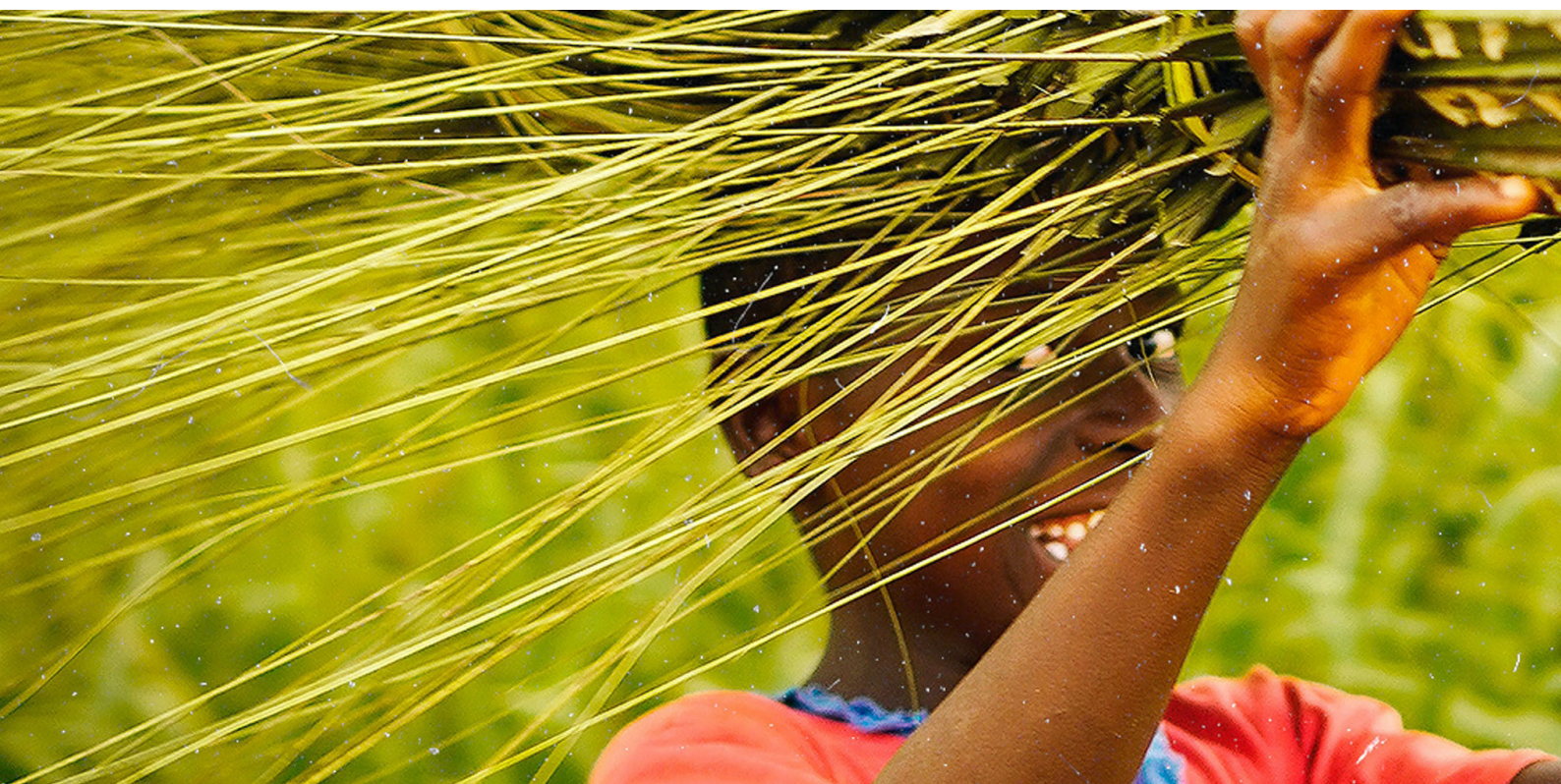
The right to development traces its origins to a complex culmination of thought. Firstly, as a right attributed a composite definition as an entitlement that can legitimately be claimed by individuals or by a collective of persons, in contrast to the basic individualistic nature of human rights. Secondly, as a right designed by and originating from the global south, specifically Africa, it has been met with contestations of both its existence and justiciability. This complex positioning of this right, with regard to its legal nature and conceptual clarity, even in the face of the Declaration of the right to development and the ongoing discussions at the UN on a treaty of right to development, continues to inhibit its realisation.

In essence the right to development, as an inalienable human right, is about promoting and protecting the individual's and collective ability to participate in, contribute to and enjoy development in all aspects including the economic, social, cultural and political spheres. In order to realise this right, efforts such as initial legal recognition in the 1981 African Charter on Human and Peoples' Rights, and the UN Declaration on the Rights to Development have provided the necessary basis for its recognition and ultimate enforcement. There have also been various studies undertaken to elaborate and understand the application of this right in different contexts, and in the pursuit of remedy communities, civil society and academia have sought recourse and guidance from the international, regional and national judicial avenues. Specifically, adjudication and litigation

have created opportunities to address the controversies and scepticism of the right to development with for instance the African Commission on Human and Peoples' Rights addressing itself to the rights of communities to participate in development, and the realisation of the right to development as requisite for realising of economic, social and cultural rights.

This notwithstanding, the right to development continues to face hiccups especially in the face of challenges around balancing respect for human rights and national development agendas. Development continues to be driven by the private sector with minimal participation and consultation with communities affected by development decisions. Most private sector led development activities remain heavily associated with massive displacement of communities, illegal evictions and exploitation of communities, begging the question to whose benefit this development is.

Progress on the right to development continues to be inhibited by systemic shocks such as the coronavirus pandemic, corruption, state-capture and political instability, as well as the limitations of enforcement of international legislation and decisions. While over the years regional bodies have been tasked with adjudication on the right to development, as with international systems, they remain with subsidiary status in comparison to national adjudication bodies (courts of law or human rights remedy mechanisms). This leaves a gap in the contextual jurisprudence that could inform specific issues for each African nation. At least twenty-four Constitutions on the continent recognise the right to development or related rights both as expressly prescribed laws and in state objectives and directives principles of their constitutions. Some of these countries include Ghana, Malawi and Uganda whose courts have addressed themselves to other human rights including the rights to education, health, and right to work.



In the case of Ghana, even though the justiciability of the right to development has been determined by the national courts, they have not been afforded opportunity to address themselves to petitions on the right. Similarly, in Ethiopia, where the right to development is also justiciable, systemic challenges attributed to misunderstanding of laws and the evasiveness of the courts when tasked with addressing constitutional concerns continue to undermine general litigation on human rights including the right to development. While all this evidences the existence of a basis strong enough for the national courts to adjudicate the right to development, it also reveals that utilising litigation alone is not necessarily a straight path to realising the right to development.

Nevertheless, if pursued at national level, litigating the right to development would strengthen the needed jurisprudence to address the existing global contestations regarding the nature of this right and scope of its application. Using existing national frameworks and regional and international mechanisms including the ACHPR, pursuing public interest and strategic litigation, remain a viable means that could accelerate the realisation of the right. Similarly, not only does litigation create opportunities for application of a people centred approach in the interpretation of the right and strengthen rule of law through improving accountability mechanisms, but it could also strengthen governance by prompting reform. Adjudicating the right would further clarify and entrench the principles of human rights-based approaches to development that



advance equality and equity in all development decisions.

Over the years, the Centre for Human Rights, University of Pretoria in partnership with the University of Antwerp with support of the Flemish government, has held an annual advanced Human Rights Course on the right to development. In 2022, alongside the course, the Centre held a colloquium on the right to development in Africa. Among key recommendations from the colloquium was the need to need to explore using the African charter on Human and Peoples Rights and other domestic legal frameworks to litigate the right to development.

Therefore, this roundtable dialogue will address itself to the reasons why litigation has or has not been utilised to counter these challenges and ultimately as a means for the realisation of the right to development pursuant to sustainable development. It will also tackle the need for monitoring and documenting the use of litigation on the right to development, the opportunity for use of comparative jurisprudence between African judiciaries, spotlight existing cases and examine the impact of international human rights treaties at the domestic level.

Objectives of the roundtable:

- Assess the extent the African Charter on Human and Peoples' Rights can be used to adjudicate the right to development at national level.
- Examine and highlight the role of litigation in realisation of the right to development in Africa so far.
- Discuss and plan ways of utilising litigation to promote and protect the right to development.

Methodology

The roundtable dialogue will be conducted in a hybrid format, physically held at the Senate Hall, University of Pretoria Hatfield Campus with participants and some speakers joining in Online. The dialogue will bring together partners in the field, lawyers with expertise in public interest and strategic litigation, human rights advocates, academicians and select CSO actors working at grass roots level.



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