

51st session of the Human Rights Council
Panel discussion on the negative impact of the legacies of colonialism
on the enjoyment of human rights

Intervention by Dr. Mihir Kanade, Chair of the Expert Mechanism on the Right to
Development

Your excellencies, ladies and gentlemen,

It is my honour to speak today, in my capacity as the Chair of the United Nations Expert Mechanism on the Right to Development, at this important panel discussion on the negative impacts of the legacies of colonialism. Although I am unfortunately unable to be personally present, my colleague and former Chair of the Expert Mechanism, Prof. Keon de Feyter, will participate with his closing remarks.

I will make three points in my intervention. First, the right to development emerged as, and indeed is, the normative response to the negative impacts of the legacies of colonialism on human rights. Second, the continual reluctance by many former colonial powers to operationalize the right to development today represents a continuing legacy of colonialism. And third, while the current institutions of global governance reflect a colonial legacy, there are practical tools to operationalize the right to development and address the negative impacts of this continuing legacy. I will address each sequentially.

The recognition of the right to development as a human right was the result of the concerted struggle by the peoples of the newly decolonized countries in the 1950s, 60s and the 70s to overcome the negative legacies of colonialism. These countries had taken birth into a global political and economic system that was established when most of them did not exist as independent countries and was counterproductive to their efforts to realize human rights at home. Many were born into debt and have been unable to escape. The right to development emerged in this context as an attempt by the global south to fill the gaping holes in the international human rights framework that focused mostly on the need for an enabling national environment but not also on an enabling international environment. So, when in 1986, the Declaration on the Right to Development was adopted at the General Assembly, the legacies of colonialism found a prominent place. The preamble as well as article 5 thereof obliges States to take resolute steps to eliminate the massive and flagrant violations of human rights resulting from colonialism and neo-colonialism.

My second point is that despite the reaffirmation of the right to development unanimously by States in over 25 international resolutions and declarations, as well as in the binding Paris Climate Agreement, its non-operationalization for over 35 years is also the direct result of the continuing legacies of colonialism. In particular, I suggest that the ideological and normative opposition to the very core principles of the right to development by many former colonial powers is a reflection of the continuing negative legacy of colonialism. The right to development is one of the most important human rights emerging from the global south that is firmly based on the lived experiences of those that continue to face obstacles to the realization of their self-determined development. Yet, there is a dominant vision and narrative

of human rights which dismisses or deprioritizes this right. It does this by contending that States have obligations to respect, protect and fulfil the right to development only internally, and that there are no extraterritorial or collective obligations on States, that human rights are only individual rights and there are no collective or solidarity rights, that the duty of international cooperation on States in the context of human rights is not paramount, and that there is no duty to respect human rights on non-State actors under international law. These are all rights and duties long recognized in the African and Inter-American systems of human rights, and yet, those are not considered normatively sound enough for being transposed onto the international plane. Even the argument that collective rights are third generation rights runs contrary to the historical emergence of human rights in many societies where communal rights emerged the first. This reluctance to accommodate rights perspectives from other societies results from the insistence that there is only one correct vision of human rights and duties. This by itself is a continuing legacy of colonialism that impedes the realization of human rights, especially the right to development, in countries of the global south.

Moving forward, it is clear that operationalizing the right to development is one important way to address the negative impacts of the legacies of colonialism. A legally binding instrument will go a long way in operationalizing this right. The United Nations system should ensure that this right is mainstreamed and promoted through the United Nations Country Teams and across all its entities, programmes and funds. As the Expert Mechanism noted in its first thematic study, this requires a system-wide recalibration of the human rights-based approach to development, which can be problematic in its deployment. For instance, in development cooperation for the realization of human rights, focus should not be only on the respect for human rights by the recipients but also by the providers of cooperation and the agencies involved. The specialized agencies, especially, the World Bank and the IMF, ought to institute systems for assessing the human rights impacts of their conditionalities, a call they have rejected thus far. Systems also need to be mainstreamed at the World Trade Organization for human rights impact assessments of trade laws and policies. Indeed, an institutional objective of the WTO, as stated in the preamble of the Marrakesh Agreement, is sustainable development. Mainstreaming the right to development through impact assessments will ensure that multilateral trade policies do not undermine this institutional objective but in fact promotes it.

To conclude, we may recall the words of the Senegalese diplomat Doudou Thiam in his landmark speech to the 21st session of the General Assembly in 1966 where he presented the right to development as the answer to the continuing negative legacies of colonialism and demanded that “not only must we affirm our right to development, but we must also take the steps which will enable this right to become a reality. We must build a new system, based not only on the theoretical affirmation [...] but on the actual enjoyment of these rights”. Unfortunately, in 2022, Thiam’s call for action is even more relevant in addressing the negative impacts of the legacies of colonialism.

I thank you.