

Building National Consensus on the Post-2015 Development Agenda Goal 16 and Access to Justice in South Africa

26th March 2015, Cape Town



Executive Summary

This Dialogue was convened by the Southern African Liaison Office (SALO) as part of the Development Dialogue Series meant to enrich post-2015 Development Framework discussions. The dialogue brought together government, business, civil society and the diplomatic community to consider the relevance of goal 16 and related targets to the South African context and what access to justice means in South Africa (SA). The dialogue aimed to further look at the practical means of guaranteeing “access to justice” to potentially vulnerable groups such as migrants, LGBTI individuals, and people with disabilities. The dialogue was chaired by Mr Tawanda Sachikonye. Speakers included Mr Enver Daniels, Chief State Law Advisor for the SA Ministry of Justice, Ms Natalie Jaynes, Open Society Foundation’s Manager for Strengthening Justice and Equality, Ms Sanusha Naidu, Independent analyst and an associate with the Centre for Chinese Studies, Ms Litlhare Rabele, Programme Coordinator for the Peace, then Security and Gender Programme at the Human Rights Institute of South Africa (HURISA) and Ms Holly McGurk, Program Coordinator at the United Nations Association of South Africa (UNASA). The purpose of this report is to summarize the main points made during the discussion.

Summary of presentations

Opening remarks: Advocate Sha’ista Kazeem, SALO Board Member

Advocate Sha’ista Kazeem who is also a member of the SALO board started off by recalling the six essential elements identified by the UN Secretary General’s synthesis report for the post-2015 agenda namely: dignity, people, prosperity, the planet, justice and partnership. This she noted,

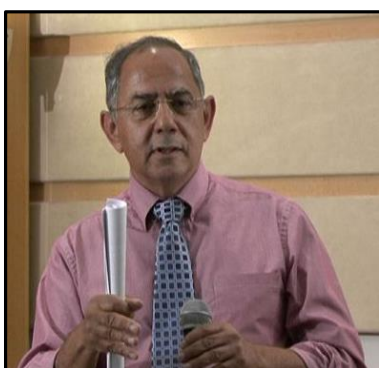
makes the agenda different from the Millennium Development Goals (MDGs) because it reflects a three-dimensional understanding of sustainable development: economic, social and environmental.



She indicated that Goal 16 was one of the more contentious and divisive issues amongst the Open Working Group members, with approximately fifty-eight countries wanting the phrase ‘Rule of Law’ to be contained in the text. The opponents understood ‘Rule of Law’ not as a topic on its own, but rather a means of implementing sustainable development and therefore said it should be included in Goal 10, which deals with reducing inequalities. Thus while it is clear that ‘rule of law’ will be included in the final Sustainable Development Goals, it is just not clear whether it will be included as a goal or as a target or as a general driver of development in the Preamble. Last year ‘Rule of Law’ was removed from the Goal 16 and replaced with the phrase ‘Access to Justice’.

Referring to the words of Irene Khan *‘that one cannot fight poverty and cannot promote sustainable development without the Rule of Law.’*, she expressed that the Rule of Law acts as a cornerstone and its inclusion in Goal 16 is of profound importance for sustainable development, inclusive economic growth, the eradication of poverty and the full realisation of human rights. She noted that where the Rule of Law is strong, day-to-day essentials such as health, safety, shelter, employment, education and family are often taken for granted and, but where the Rule of Law is weak, these essential are often absent and poverty, debilitating illness, human rights violations and government corruption are given a space to thrive.

Mr Enver Daniels: Chief State Law Advisor



Mr Daniels started his presentation by commenting on the “Rhodes Must Fall”¹ debate stating that the real issue in SA is inequality and the role mining capital has played in SA. He stated that in talking about sustainable development, it would be vital to deal with the inequalities which exist.

He shared his thoughts about the United Nations Conference on Sustainable Development’s document entitled ‘The Future We Want’, stating that it said the following: *‘We want to resolve to establish an inclusive and transparent inter-governmental process on Sustainable Development Goals that is open to all stakeholders with the view to developing global sustainable development goals to be agreed by the General Assembly.’* He then questioned; “...how do you promote sustainable development under circumstances of extreme inequality, extraordinarily high levels of violence against women and children, high levels of crime and lawlessness, corruption and unemployment?”

He stated that Goal 16 speaks about promoting peaceful and inclusive societies for sustainable development, providing Access to Justice for all, and building effective, accountable and inclusive institutions at all levels. He indicated that SA must seize this opportunity and take advantage of the following in order to reduce the levels of violence:

- End abuse, exploitation, trafficking and all forms of violence against, and of torture of children.

¹ This refers to a protest movement that emanated from a campaign by students at the University of Cape Town for the removal of the statue of Cecil John Rhodes from the university campus. This has triggered nationwide debate in South Africa about the lack of socio-economic transformation in South Africa.

- Promote the Rule of Law at national and international levels and ensure equal Access to Justice for all by 2030.
- Significantly reduce the illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime.
- Substantially reduce corruption and bribery in all its forms.
- Develop effective and accountable and transparent institutions at all levels.
- Broaden and strengthen the participation of developing countries in the institutions of global governance.
- Provide legal identity for all, including birth registration.

Mr Daniels indicated that Section 2 of the SA Constitution says: *‘The Constitution is the Supreme Law of the Republic; law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled.’* Stating that Section 3.2 says: *‘All citizens are equally entitled to rights, privileges and benefits of citizenship and are equally subjected to the duties and responsibilities of citizenship.’* Which means all South Africans enjoy the benefits of our Constitution but have to behave in accordance with the Bill of Rights.

Furthermore, Section 7 says, *‘the Bill of Rights is the cornerstone of democracy and it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.’* He indicated that there is no contradiction between promoting these democratic values of human dignity, equality and freedom, and sustainable development. In the context of Goal 16, it is the state in partnership with society, civil society, people and everybody that must promote peaceful and inclusive societies for sustainable development and the rights would be meaningless unless we have systems and institutions in place which can ensure that everyone can take steps to protect and defend rights.

In SA there are a number of measures in place to ensure that rights can be defended and protected, by indicating that Section 9 of the Constitution says: *‘Everyone is equal before the law and has the right to equal protection and benefit of the law Equality includes the full and equal enjoyment of all rights and freedoms to promote the achievement of equality, legislative and other measures, designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination, may be taken’.*

In conclusion, Mr Daniels posed a question “what is Access to Justice?”. He then stated that the traditional definition, which is understood in terms of legal rights, processes and procedures, fails to take into account the impact of the social and economic conditions such as poverty, literacy, geography, location on the ability of claimants to use the adjudication system and that a broader approach to the Access of justice goes beyond the institutions that resolve disputes and legal services. Additionally, the socio-economic condition of claimants, especially poverty, has an inevitable impact on the poor and the marginalised to utilise this system, and therefore the concept of Access to Justice is defined in a manner that also considers the number of barriers to the ability of people to utilise the legal processes to receive just and fair treatment.

Ms Natalie Jaynes: Open Society Foundation’s Manager for Strengthening Justice and Equality

Ms Jaynes explained that the Open Society Foundation’s interest in Goal 16 relates to the Access to Justice. She indicated that the SDG process is seen as a way to try to remedy what is identified as some of the problems with the Millennium Development Goal (MDG) process. One of the main criticisms on the MDG process was that it was a northern hemisphere dominated process, without enough consultation and was driven by narrow agenda.



Moreover, the SDGs process is about development and poverty cannot be addressed without addressing insecurity and inequality. Research has shown that there is a relationship between improved Access to Justice and better health and education outcomes. She stated that there is an ethical imperative to link Access to Justice and basic development rights and it is therefore important to focus on what Access to Justice is in a development perspective.

In conclusion she stated that the five components of rights namely; legal identity, legal services, land rights, access to information and legal participation, are crucial in defining helpful and realistic ways to understand justice and development.

Ms Sanusha Naidu: Independent analyst and an associate with the Centre for Chinese Studies



Ms Naidu indicated that Goal 16 is an all-encompassing Goal. Stating that it is an interesting shift on the development discourse that is the rights-based approach to development and therefore rights and how rights are fundamental in terms of access to development cannot be ignored. Access to political justice, access to socio-economic justice, economic justice or cultural justice is fundamental when it comes to rights-based Access to Justice and to development.

She expressed the she would steer the focus of the discussion towards a more macro view and look at four fundamental issues:

- Fundamental to South African foreign policy; there cannot have development without stability and we cannot have stability without peace.
 - What is peace, security and stability for any society? What does it entail? What does it mean? And I think for me the interest in Goal 16 is about how does it encompass that?
- How to transform the development agenda of the state, which then looks at socio-economic access to resources.
 - The real issue is the paradigm that has been almost exclusive, that has marginalised communities, and creates inequalities and create winners and losers through markets.
- Access to Justice is fundamental to any form of sustainable development, but when pockets of the community are not getting the Access to Justice they become apathetic.
- What are we taking as lessons to be learnt that have not been well-articulated in the MDGs? And what are we going to be doing differently in the Post-2015 Development Goals.

Ms Naidu concluded by stating that if the post-2015 Development Agenda is to be achieved there has to be policy implementation at the national level and it is therefore important to articulate the National development Plan (NDP) in alignment to the SDGs.

Ms Litlhare Rabele: Programme Coordinator for the Peace, Security and Gender Programme of the Human Rights Institute of South Africa [HURISA]

Ms Rabele started her presentation by posing a question on how peace can be promoted when the population that is the majority in Africa and in our countries is excluded; stating that there won't be any peace unless we include all the sectors. Women are not a minority in terms of statistics, but when it comes to decision-making they are excluded. The situation is worse for women who are living with disabilities. The African Union (AU) has declared



2015 as the Year of Empowerment of Women towards Agenda 2063. She asked what our states are doing in promoting empowerment and development of women in the areas of peace, inclusiveness, Access to Justice and the UN Security Council Resolution (UNSCR) 1325 on women in peace building. She expressed that SA does not even have a national action plan on implementing this important UNSCR 1325 yet SA plays a very important role in peace keeping and peace missions on the continent.

Regarding financing for the SDGs, Ms Rabele argued that it would be vital for SA to bring the private sector on board. She concluded by highlighting the need to see how there could be synergies between SDGs and the NDP and that the government departments also need to collaborate more and coordinate better in order to achieve the desired results. She reiterated the need for SA to develop a National Action Plan on the UNSCR 1325 so that the Government can be accountable for implementing this very important instrument for women involvement in peace building, empowerment and development.

Ms Holly McGurk: Program Coordinator at the United Nations Association of South Africa (UNASA)

Ms MacGurk expressed that Goal 16 on peaceful societies, Access to Justice and effective and accountable institutions must be broadly owned, at local and country levels with the support of the international community to be effective. She stated that with seventeen proposed goals and a hundred and sixty-nine targets proposed by the Open Working Group, there is a risk that countries will choose to prioritise certain goals and side-line others.



In the South African context, policy has long recognised that there can be no development without the presence of peace, justice and good governance and that poverty can be a precursor and a breeding ground for instability. The NDP attaches significant importance to the topic of safety with a dedicated chapter entitled ‘Building Safer Communities’, and highlights high levels of crime and violence as a key impediment to growth development and transformation. Ms MacGurk stated that the proposed actions to achieve the vision of safer communities include strengthening the criminal justice system, reform to the police service, strengthening governance, the Rule of Law and the role of the judiciary and places strong emphasis on tackling the underlying root causes of violence.

According to her, factors that contribute to high levels of violence include poverty, unemployment, inequality, a lack of social cohesion, inadequate care of children, apartheid’s special legacy in cities and towns, alcohol and drug abuse, and the widespread availability of weapons. She emphasised that inequality stands out as a critical cause of insecurity in SA and it is closely tied to poverty and unemployment; together with the legacy of race discrimination and anti-immigrant sentiments and divisive dynamics undermine social cohesion and create the conditions for social and political insecurity.

In conclusion, Ms MacGurk stated that the implementation of the post-2015 Agenda will require input from all stakeholders among the governmental and non-governmental communities; academia, business and civil society, and the formation of partnerships for action. A people-centred and inclusive approach will be needed to achieve tangible results on the ground.

Contributions from the Floor included the following:

- When one talks about equal human rights, the challenge that we are facing to equate development goals with legal rights becomes even greater.
- There is a concern about the legal fraternity being a small minority of society, and yet mediating the voice of everyone else.
- How can education play the role of being an equaliser when the quality of education is not equal and government focuses on high schools that are in the towns and are progressive, and other students are being left behind?
- When we look at the violence against women in South Africa, it is important to consider the history of the country under the violent apartheid government.
- South Africa is failing in terms of human rights, dignity, equality, freedom and improved awareness of justice for the vulnerable, including the refugees.
- Government needs to do more to protect LGBTI individuals who are marginalised at schools.
- How will the inclusivity with regard to wealth of the country be implemented?
- How is the Department of Justice ensuring equal access to justice when some citizens are afraid of police because they violate people's rights, yet they are supposed to be protecting them?

Responses from the Panel:



Ms Litlhare Rabele:

- We probably need more sessions, goal by goal; issues that have to do with human rights, rights of migrants, refugees and asylum seekers, we'll need a platform with the Department of Home Affairs *and* Justice.
- SA has failed on the goal on Education, because we look at the quantity; just getting schools and getting kids into the schools, but the issues of the quality such as the student-teacher ratio, the motivation of the teachers are neglected.
- The challenges is that in 1994 issues of violence were pushed under the carpet; the focus was on superficial peace-building; societal issues and psychological issues were forgotten.
- Peace cannot be built at the level of heads of states and exclude people on the ground, it is important to identify and address the root causes; whether being the fight over resources, or inequality, or access to education, or economic issues.
- The members of the UN Security Council are the ones who decide on these goals and who benefits from these goals; Peace and security – whose peace? Who determines peace for Africans when they are not there in the UN Security Council?

Ms Holly McGurk:

- CSOs are pushing for perception measurements, hoping it will give the real picture of what is actually happening in reality, because statistics reported do not give a very accurate assessment.
- Refugee issues, which are trans-national and need collaboration and a multi-national approach are not directly brought up in the SDGs and that has been a frustration to CSOs.

- On the topic of education and the SDGs, it is important to measure the quality of education and interrogate if the education is relevant to the context of the students and who is dictating the agendas on these things?
- It is frustrating that while we're talking about security, the top four producers of arms are on the UN Security Council; the issues of illicit and irresponsible trade of arms are not seeing the kind of attention that they should and that shows how those power dynamics are influencing the whole process.

Ms Sanusha Naidu:

- How do you create durable peace? By creating a sufficiently sustainable transition, because that is a key driver towards any aspects towards peace.
- There is a difference between reforming institutions and transforming institutions; You have to reform the actual scripture and transform it in terms of the global distribution of power.

Mr Enver Daniels:

- The SA Constitution reminds us to learn from our past and look at what is necessary to redress the imbalances.
- If there is to be peace and stability and if there is going to be sustainable development, SA needs to achieve full equality and the achievement of human dignity.

Conclusion by the chair, Mr Tawanda Sachikonye

Mr Sachikonye summarised the discussion and highlighted identity as an important tool in terms of Access to Justice, practically and conceptually;

- Practically; without state identity documents immigrants are not able to open a bank account, obtain a mobile phone or secure goods and services, all necessary to work and save for their families and the future.
- Conceptually; people who identify themselves as LGBTI; what does Access to Justice mean for them when identity compromises their ability to be at school or to get work, or they face discrimination that undermines their general right to be able to progress?



He concluded by asserting that in SA; poverty, unemployment and inequality remain obstacles to democracy and Access to Justice, which is crucial for development.

The analysis and recommendations included in this Policy Dialogue Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

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The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

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