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**"In Search of Dignity for All: The Right to Development at 30"
A Side-Event to mark the
30th Anniversary of the Declaration on the Right to Development**

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'Powering the Right to Development: Sustainable Energy in a Changing Climate'

Your Excellency, Distinguished Guests, Mr Chairman and Co-panellist, Ladies and Gentlemen

Congratulations to the UNOHCHR, particularly the right to development section, on the outstanding achievements in the quest to uphold the dignity of the human person through the right to development (RtD) Declaration¹ over the past 30 years.

Thank you very much Chairman Craig Mokhiber for your kind words in that introductory remark. I extend my appreciation to the organisers of this event for inviting me to share my perspectives on the topic: 'powering the RtD: sustainable energy in a changing climate' and personally wish to recognise Ms Shyami Puvimanasinghe for her assistance and support.

It is with mixed feelings that I join to celebrate the gains accounted for by the RtD Declaration in areas of poverty reduction, undernourished people, improved sanitation and drinking water, primary education, increased ODA, and debt reduction, while gains in energy remain elusive.² Energy is a creative force of life from biblical precepts from which human beings and the environment sustain for development.³

¹The UN Declaration on the Right to Development, UNGA Resolution 41/128, 1986 (RtD Declaration)

² <http://www.ohchr.org/EN/Issues/Development/Pages/SearchOfDignity.aspx>

³ "In the beginning God created the heaven and the earth. And the earth was without form, and void; and darkness was upon the face of the deep. And the Spirit of God moved upon the face of the waters. And God said, Let there be light: and there was light." Genesis 1:1-3 (KJV)

It is required to fuel hospitals, schools, transportation, and other productive activities that support development. Agenda 2030 Goal 7 (SDG7) recognises the importance of energy for development;⁴ in seeking to "ensure access to affordable, reliable, sustainable, and modern energy for all".⁵ Sustainable energy is a vital ingredient for the realisation of the RtD.

Reflecting on the 30 years successes of the RtD, I question why energy has not been at the fore of development mandate of the RTD Declaration. No doubt, distinctions, which maintain between international economic law and policy (IEL)⁶ and international human rights law and advocacy, may have given energy issues an appropriate space within the IEL institutions including the World Bank Group (WBG),⁷ even though in my view, its relevance for human (and industrial) development and as a human right makes a more forceful narrative. Prior to 1986 RtD Declaration, developing states challenged the uneven structure in IEL and relations in trade, finance and investment and technology ownership, and advocated for a new international economic order (NIEO) in the UN.⁸ The RtD Declaration "addresses the root causes, systemic issues, and structural challenges, in its quest for a new order for development at all levels".⁹

Yet in over 72 years, the WBG has championed development in poor countries, through energy investments and infrastructure finance, guarantees and privatisation programmes, and formulation of energy strategies. The scorecard earns it an unenviable 'prestige' in the face of the energy deficit in poor countries, particularly Africa. Today over 1.4 billion people still have no access to modern energy and about 3 billion people rely on "traditional biomass" and coal as their main fuel sources.¹⁰ In a larger political motive, WBG promotes its G8 members renewable energy investment strategy to overcome the recent financial crisis with a \$100 billion *economic stimulus* to support 'green' economic recovery by which, it assist LDCs to adapt to energy development strategies.¹¹ The challenge is that, climate-informed energy strategies (CES) have locked-in the right to sustainable energy with the climate mitigation measures, in a predominantly market-led and business agenda that risks marginalisation of the poorest and most vulnerable in a changing economic and environmental climate.¹²

⁴'Development' here refers specifically to energy development from the perspective of sustainable energy processes and activities that facilitate economic progress social and environmental well-being within a given state, in terms of employing economic and human resources; and working in tandem with cultural practices to ensure accessible and affordable energy and energy services to all its people. And how laws, and institutions and (domestic, international) assure economic progress and protect the poor and vulnerable, by maintaining order amongst operatives and interests within the states' energy systems".

⁵'Transforming our World: 2030 Agenda for Sustainable Development', UNGA Resolution A/RES/70/1 (Agenda 2030)

⁶ Guldberg, T 'International Concessions: A Problem of International Economic Law', (1944) 15 Nordisk Tidsskrift for International Ret 47; van Themaat, P. V., The Changing Structure of International Economic Law (The Hague: T.M.C. Asser Institute, 1981).320-322

⁷ WBG 'ENERGY' <<http://www.worldbank.org/en/topic/energy>>

⁸See Declaration on the Establishment of a NIEO UN/GA Res 3201 (and the Programme of Action (3202)) of (May 1974); the Charter of Economic Rights and Duties of States (CERDS) UN/GA Res 3281 (December 1974)

⁹See <http://www.ohchr.org/EN/Issues/Development/Pages/SearchOfDignity.aspx> accessed 4/4/2015

¹⁰UN Sustainable energy initiative <<http://www.un.org/en/events/sustainableenergyforall/>> accessed 4/4/2015; World Bank Global Infrastructure Facility <<http://www.worldbank.org/en/programs/global-infrastructure-facility>> accessed 20/03/2016

¹¹Panova V.V., "Energy Security: the IEA and The G8" in Kitton J., Larionova M., & Savona P., (eds.) Making Global economic Governance Work (Ashgate 2010) 155-173at 168-169

¹² Note: the threat of Climate change has engendered the alignment by states of climate-related environmental objectives with their energy polices and strategies. See UN Sustainable energy initiative <<http://www.un.org/en/events/sustainableenergyforall/>> accessed 4/4/2015

It is to the potential conflict between the climate business agenda and the RtD of the world's poor to sustainable energy that I offer my perspectives, in hope to impress upon you all, the importance of adopting a RtD approach to SDG7 in order to protect and ensuring the right of the poor and vulnerable to sustainable energy. The parameters of sustainable energy facilitate growth and development.¹³

In the first section, I shall argue for the RtD approach to promoting and implementing SDG7 of Agenda 2030. Then, to illustrate the key areas in which CES tend to promote sustainable energy within a dominant business agenda. Finally, to suggest legal, policy, and practical methods of empowering the RtD of the world is poor to have access to affordable sustainable energy by 2030 as inherent in their RtD.

The RtD approach and Sustainable Energy in Agenda 2030

Under the RtD, human beings possess (individually and collectively) an inalienable human right that entitles them "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".¹⁴ Sustainable energy development (SED) within this RtD approach represents as the inalienable right of all peoples to have access to reliable, affordable modern energy and energy services, but also to participate in, and enjoy the process of energy development activities. States must exercise the "duty" bestowed on them under the RtD Declaration to promote SED through the formulation of appropriate national energy policies and strategies that will facilitate the active and meaningful involvement of their population in development activities in order to improve their well-being and enjoyment of the benefits.¹⁵

From a legal standpoint, the RtD perspective of SED is validated by the affirmation in Agenda 2030 of the Rio Declaration principles,¹⁶ of which Principle 3 states, "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations".¹⁷ Also, Agenda 2030 adopts the approach in both the RtD and Rio Declarations, to focus on human beings as the centre of concern for SED, and seeks to "build dynamic, sustainable, innovative, and people-centred economies".¹⁸ The Agenda also adopts the Human rights perspective that is necessary for understanding the RtD Declaration¹⁹

SED under Agenda 2030 converges with the RtD, in that it seeks to enhance progressively a given development pathways (e.g. economic or social,) through domestic legal, regulatory, and institutional processes, and international cooperation on these, to ensure an improvement in peoples' well-being, and as a human right.²⁰ But it diverges from the RtD framework in its

¹³ Sustainable energy refers to the provision of access to electricity and energy services, through investment in infrastructure and technology, power plants and related sales, prices, generation, trade, and demand that is economically viable, environmentally safe, and socially acceptable. It also covers energy use in households (e.g. cooking, heating, and lighting), in commercial buildings, manufacturing processes, and transportation; and to use of renewable and alternative fuels and the regulation of energy consumption; (see Schwartz P., 'Sustainable Energy Infrastructure: Law, Policy and Practice', (2009) Vol. 2 (2) International Journal of Private Law, 137

¹⁴ RtD Declaration Article 1(1)

¹⁵ RtD Declaration Article 2(3)

¹⁶ Agenda 2030 Section 12

¹⁷ Principle 3 Rio Declaration on Environment and Development, 1992 A/CONF.151/26 (Vol. I) (Rio Declaration); also affirms the World Summit on Sustainable Development (WSSD); United Nations Conference on Sustainable Development ("Rio+ 20")

¹⁸ RtD Declaration Article 2(1); Rio Declaration Principle 1; Agenda 2030 Section 27

¹⁹ Agenda 2030 section 19; RtD Declaration Article 1(2) & 6(1)

²⁰ RtD Declaration Article 4(2) & 10; Agenda 2030 Section

emphasis on the integration of environmental issues in development policies and the balancing that needs take place between the three dimensions of sustainable development.²¹ The omission of the environmental dimension of development in the RtD Declaration may constrain it to champion SDG 12-15, seeking *inter alia* to ensure sustainable patterns of production and consumption, and actions to combat climate change, which hold implications for human beings, and human rights in SED processes and related CES. It may yet be feasible to address this deficit through the RtD social and cultural rights pathway from an anthropocentric view of environmental impacts.

The key challenge in canvassing the RtD approach to promote SDG7 is how to balance the RtD protected under the Declaration specifically for *human beings*, with the business rights of legal entities, firms and institutions that entail under CES, and the implementation mechanisms SDG17.²² Energy business or commercial rights entailing through SDG17 mechanisms are neatly secured in contracts, world trade rules, investment treaties, finance agreements, and intellectual property rights at the international and domestic level. It may seem legally difficult to appropriate substantive human rights bias for *human beings* and *peoples* to the specified implementation activities where corporations, firms or other business forms are operatives. Some legal and conceptual clarification is desired of the RtD in this regard to assure it wider role in the implementation of energy rights of the poor in the vital areas of economic activities, identified in Agenda 2030.

One could however argue that implementation could validly derive through the broad construction of the "economic" pathway of the RtD objective, and through the call for action and effective international cooperation to provide developing countries with "means" to facilitate comprehensive development.²³

That being said, the RtD approach, advocated herein meets the criteria for realising the RtD, set out by HE Navi Pillay,²⁴ namely:

- the objective to provide access to affordable and sustainable energy for all holds a development value in realising RtD, codified in the RtD Declaration;
- the RtD is advocated for the poor and vulnerable as the right's holders entitled to participate in, contribute to and enjoy development through SED;
- and the analysis recognises governments as the "duty" bearers committed under Agenda 2030, including those entities whom they identify to move the Agenda in a revitalised global partnership.

Within this framework, the RtD perspective can operationalise the RtD Declaration to create an environment conducive for the realization of the 2030 Agenda, by empowering the poor where CES conflict with or undermine the right to SED.

Climate-informed energy Strategies and the Conflicts in SED

It is estimated that by 2030, climate change impact will become a snare to the RtD if development is not inclusive climate informed and the World Bank Group is at the fore of

²¹Agenda 2030 Section 2

²² SDG17 calls for effective use of domestic resources, private business activity, investment, innovation, job creation, international trade, monetary and finance, and technology facilitation mechanisms - Agenda 2030 Section 60-63 and 67-70

²³ RtD Declaration Article 4:2

²⁴ See Forward by Navi Pillay, (High Commissioner for human Rights) Realizing the Right to Development (UN New York & Geneva 2013)

promoting CES.²⁵ Their key areas of CES strategies are the economic and environmental (*environomic*) sustainability in energy supply side, and the social sustainability in energy demand side, both having evolved through market led approaches to respond to the changing economic and environmental climate. They employ measures that aim to decarbonise economies, increase energy efficiency, and improve energy security.

The *environomic* aspect concerns the allocation of financial resources, adoption of innovative financing approaches to finance energy infrastructure, invest into exploration and adoption of renewable energy technology (RET) and advanced energy technologies that will eliminate GHG emissions, or advanced fossil fuel and nuclear technologies.²⁶ It also concerns alternative energy strategies for the rational segmentation of energy markets into non-commercial commercial models, the latter being market driven, tariff oriented and aims at profits or cost recovery.²⁷ The price and cost dynamics underpins decision-making relating to the supply side of SED. The approach is supported in the Addis Ababa Action Agenda (AAAA) financing framework for implementing SDG 7.²⁸ Generally, it affirms the role of public finance and the private sector in the provision of electricity and energy services, capacity building, and the transfer of technologies to the developing and emerging economies. It creates a platform for multilateral development banks (MDBs), to consolidate their action on energy infrastructure.²⁹

The WBG Global Infrastructure facility (GIF); International Finance Corporation (IFC); The Global Environmental Facility (GEF) and Africa50 Investment Bank for Infrastructure in Africa are operational with a focus on financing and investment, in energy infrastructure projects, technology, and profit maximisation. Therefore, where infrastructure projects are successful, under the design for investments, finance and technology, access and reliable energy may be technically available 'for all' but none commercial entities, low-income earners and the poor and disadvantaged groups will be caught by the 'affordability' objective of SDG 7.

Generally, most energy policies do not focus on the social dimension beyond the environmental impact of burning fossil fuel, and they have historically ignored the domestic problems of gaps between the 'energy rich' and 'energy poor'.³⁰ The CES in SED, focusing mainly on policies and project implications for consumers and consumption in terms of low energy tariffs and awareness and attitudinal changes in demand management for energy efficiency. It translates in broader strategies to decarbonise economies - *Green* development, *green* growth, *green recovery*, (smart) grid, et, and apply public interest norms, energy

²⁵World Bank, Shock Waves: Managing the Impacts of Climate Change on Poverty, Climate Change and Development Series, (Washington DC 2016) 189 (World Bank Shockwaves (2016))

See World Bank.. *Toward a sustainable energy future for all : directions for the World Bank Groups energy sector.* (Washington DC; World Bank 2013).

<<http://documents.worldbank.org/curated/en/2013/07/18016002/toward-sustainable-energy-future-all-directions-world-bank-groups-energy-sector>>; World Bank Clean Energy for Development Investment Framework: A Progress Report, (Washington DC 2006)

²⁶ Johansson T, B, "The imperatives for energy and sustainable development" in Bradbrook, et.al (eds) *The Law of Energy for Sustainable Development* (IUCN Academy of Environmental Law Research Studies (2012) 49-50

²⁷ Schwartz P, (2009) (n. 13) 139

²⁸ Section 2 Addis Ababa Action Agenda of the Third International Conference on Financing for Development". 13-16 July 2015. Endorsed by the UNGA Resolution 69/313 of 27 July 2015. (AAAA 2015)

²⁹ AAAA (2015) Section 14; The IFC finances private entities like manufacturers and distributors of RET like solar-powered devices; the GEF projects aim to reduce cost on RET and encourage commercial competitiveness on energy efficient technology and Africa50 - Investment Bank for Infrastructure in Africa

³⁰Alhaji F, "What Is Energy Security? Economic, Environmental, Social, Foreign Policy, Technical and Security Dimensions" OGEL Vol. 3 (6) (2008) 3

efficient technology, RET, market-led legal frameworks. Public interest issues involve security of supply of fuel, protection from impacts of energy activities and the effective management of energy product life cycle impacts, and disposal.³¹ EIA laws and international standards³² for public participation and norms of corporate social responsibility (CSR) address public interest issues.³³ Neither mechanism impose strict legal obligation on firms or business that the poor particularly could directly claim.

Efficient technology and renewable energy CES promote social sustainability, supports economic activity, and enhance livelihoods for *low-income* as oppose to *no income* groups. The strategy markets efficient lighting products and lighting equipped social housing projects (e.g. low-cost solar-powered devices).³⁴ Financing grants apply to buy-down capital costs and increase affordability of solar home systems. Cooking energy strategies market variety of 'improved' cooking stoves and carbonize fuel wood projects.³⁵ Biofuels, biomass and bagasse and other agriculture resources are used in power generation or cogeneration projects that focus on the adaptation of technology locally.³⁶ Educational programmes carry a bias towards business interest, consumers, providers, and government officials to inform them mainly about energy efficiency laws. Legal frameworks (laws, policies, standards and regulations) promote market preferences CES through standards and labelling requirements, subsidies and incentives, pollution taxes, and environmental disclosures obligations and certification and awards for innovation and best practice.³⁷

Distinguished personalities, guests and colleagues, I implore you to consider that clearly, the focus of CES is on enhancing market effectiveness and the competitive sustainability of climate friendly energy products, and are less about accessibility or affordability issues for the *no-income* poor and the vulnerable. Issues relating to costly or inadequate energy supply, conflicts between 'incompatible interests' and technologies attracting higher prices that squeeze poor people's consumption all remain a challenge,³⁸ for which the RtD must assume leadership to protect the rights of the poor. An effectively monitoring of the WBG and MDBs energy financed projects and strategies would make a good start.

³¹Such as by testing new materials and processes, expanding recycling technologies, and designing products for easy recycling". See Larsen K, 'End-of-life PV: then what? - Recycling solar PV panels Renewable Energy focus (2009); also A,F, Alhaji (2008) (n.30) 3

³²See also World Bank (IBRD/IDA) Safeguard policies (OP 4.01) on Environmental Assessment (2012) <<http://go.worldbank.org/3GLI3EECP0>>; and IFC Performance Standards for Private Sector Activities (2012) <<http://go.worldbank.org/GCH411QCR0>>

³³UNHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011) UN Doc HR/PUB/11/04; also the ISO 26000 'Guidance on social responsibility' <http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_discovering_iso26000.htm>

³⁴ECOWAS Regional Strategy on Energy Efficient Lighting (ECREE) Draft, (Praia, Cape Verde 2014) 1-2 ECREE strategy facilitates "rapid uptake" and increased demand for efficient lighting products on/off grid.

³⁵Miller A, S., "Financing Clean Energy for Development" in Bradbrook, *et al.*, (eds) *The Law of Energy for Sustainable Development* (IUCN 2012) 482; Oxfam, Improved Cook stoves <<http://cleancookstoves.org/about/news/06-17-2015-oxfam-improved-cookstoves-and-a-holistic-approach-to-food-security-for-displaced.html>>(accessed 24/04/2016);

³⁶Miller A, (2012) (n.35) 481; e.g. GEF/UNDP Biomass Power Generation in Brazil; WBG Rural Electrification and Renewable Energy Development project in Bangladesh etc

³⁷Ottinger R, L (2012) "Legal Frameworks for Energy and Sustainable Development" Bradbrook, *et al.* (eds), *The Law of Energy for Sustainable Development* (IUCN 2012) 105-107

³⁸Kumar & Kumar, 'Ensuring Sustainable Energy Security: Challenges and Opportunities for India', OGEL, (2014) 7-12; Arevalo, J Halder P. Kortelainen J. and Mola-Yudego B. 'Bioenergy: From Local Conflicts to Global Governance' OGEL Vol. 12 (4) (2014) 4; World Bank Shockwaves (n.25) 195

Powering the RtD and Sustainable Energy for the Poor

In this section I will highlight viable tools that can enhance the RtD alongside CES to achieve SDG7 objectives for the poor including through law and regulation, education, renewable energy options, financing, and energy technology.

Legal tools are required to create rights and entitlements including through ethical principles under the rule of law rubric in domestic systems to balance service supply interests with energy accessibility, affordability, demand management strategies, and participatory processes. For instance, EIA processes should broaden to include access and affordability supply side considerations for the poor. National energy policies should include clear guidance on CSR role and scope of responsibility and legally enforceable obligation for technology life cycle impacts. Educational programmes must go beyond end-user behaviour and efficiency concerns to include energy-poverty issues and means-tested needs.

Renewable energy (RE) is a viable option by which the world's poor could exercise an inclusive energy-led economic growth as RtD. To facilitate this will require a redefinition of natural resources from the current traditional, restrictive trade-oriented approach,³⁹ to include RE sources like sun, wind, tidal waves, and dams. This rethinking should enable governments to use trade and fiscal instruments like taxes, duties, and charges on energy technology, products, and services that utilise these energy resources, to raise sustainable revenue into 'energy development fund'. The fund could be used to finance the energy needs of the poorest and disadvantaged in society, including investment in productive capabilities.

The excuses that maintain in favour of open-ended incentives on energy technology - to encourage 'innovation' and 'investment' or market transition to efficient equipment's - should not defeat this pro-poor RtD approach. Rather, such market-instruments resolve costs, price and competition dynamics. Further policy studies will be required however to ascertain the valuation methods that may be applicable to particular technologies or equipment's or services deriving from respective RE resource.

Greater consideration must be given to human waste - "Biogas" and "Dried and charred faecal sludge"⁴⁰ - as the most rights empowering socially inclusive energy tool. Promoting the energy value of human waste using the RtD approach is totally essential for realising SDG 7: It is socially inclusive in nature and entails equitable production methods that will place 'human beings' and 'peoples' at the centre of energy development in their countries. The poor become participants in, contribute to, and benefit from the energy development process. People could be incentivised to collect and contribute faeces (individually and collectively) to a government-led industry, a private sector venture, or a public private partnership initiative, by attaching a *monetary value* to both the faeces and the collection activity. The attachment of monetary claim to human-waste, the employment potential in the collection activity on the back of educational and awareness programmes should gradually diffuse the cultural 'ick' perception we hold toward human wastes; and make biogas and dried sludge the most powerful energy tool for human development.

³⁹Natural resources is defined restrictively as "stocks of materials that exist in the natural environment that are both scarce and economically useful in production or consumption, either in their raw state or after a minimal amount of processing" and must be scarce in the economic sense to qualify as natural resources See, World Trade Organization (WTO), *World Trade Report Trade in Natural Resources*, (WTO, Geneva 2010) 46

⁴⁰Schuster-Wallace C.J et al (2015) Schuster-Wallace C.J., Wild C., and Metcalfe C. Valuing Human Waste as an Energy Resource A Research Brief Assessing the Global Wealth in Waste. UN University Institute for Water, Environment, and Health (2015)

The AAAA financing framework and the implementation design under SDG17 are adequate and already operational in CES discussed above. A RtD approach however should call for MDB public- financed energy agreements and project agreements (or contracts) to specify *accessibility* and *affordability* conditions for the poor as a risk instrument (power supply risk) that must be insured before the commencement of the project. Also, the Africa 50-investment fund should work with partners to create a special *Human Waste Energy Facility* to encourage investment, in technology, innovation, and education, around it.

In the area of energy technology RtD, the low carbon technology evolution and CES business agenda means that we need a new browser on energy technology transfer and development challenges beyond *technology* and *finance*.⁴¹ A 'socially just low carbon development pathway' that prioritises the needs of the poor and marginalised, and delivers wider public goods is posited.⁴² Policies on low-carbon technology should build indigenous capabilities should be based on the service needs, convenience, productivity, and sustainability within specific contexts.

Your excellency, distinguished guests, colleagues, ladies and gentlemen. The RtD approach to sustainable energy can empower the world's poor and vulnerable to achieve the objectives of SDG 7 under Agenda 2030. Various textual linkages exist between the RtD Declaration and the 2030 agenda objectives that provide legal validity for the RtD to play a vital role in the implementation of SDG 7 under goal 17 mechanisms. The RtD must establish its leadership in sustainable energy to protect the rights of the poor.

In order to RtD to play a wider role in SED under the 2030 Agenda, the UNHCR and the RtD must present a legal and conceptual clarification on the application of the RtD to entities other than human beings in relation to its implementation role in the vital areas of economic activities under SDG17.

Thank you very much for your attention.

⁴¹Byrne, R., Smith, A., Watson, J. and Ockwell ,D. Energy Pathways in Low-Carbon Development: From Technology Transfer to Socio-Technical Transformation, STEPS Working Paper 46, Brighton: STEPS Centre (2011) 2

⁴² Byrne, R., et al (2011) (n.41 above) 2-4