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Human Development Challenges in Africa: A Rights-Based Approach

Dejo Olowu

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Human Development Challenges in Africa: A Rights-Based Approach

‘DEJO OLOWU*

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Since the human being is the centre of all development, the human condition is the only final measure of development. Improving that condition is essential for the poor and vulnerable human beings who comprise the majority of our peoples in Africa. Africa's men and women are the main factors and the ends for whom and by whom any program and implementation of development must be justified.

The Khartoum Declaration Towards a Human-Focused Approach to Socio-Economic Development in Africa (1988)¹

I. INTRODUCTION

The end of the Cold War ushered in an age of tremendous progress in every facet of human life, as evident in technological advancements, the volume of international trade and commerce, global travel and communications, and, of course, increased opportunities for vast populations in the world.²

While expectations were rife that the dawn of the 21st century would usher Africa into its age of growth, progress, and a new lease on life for its peoples along with the rest of the world, there was an unmistakable

1. *The Khartoum Declaration* was the outcome of the International Conference on the Human Dimension of Africa's Economic Recovery and Development held in Khartoum, Sudan, Mar. 5-8, 1988, under the auspices of the United Nations Programme of Action for African Economic Recovery and Development 1986-1990 (UN-PAAERD) and Africa's Priority Programme for Economic Recovery 1986-1990 (APPER). For more exposition on the Declaration, see Karl Wohlmuth, *Following-Up the Khartoum Conference and the Khartoum Declaration: An Introduction*, in AFRICAN DEVELOPMENT PERSPECTIVES YEARBOOK, 1989, Vol. 1 (Research Group on African Development Perspectives, Bremen et al. eds., 1990).

2. U.N. Development Programme, *Human Development Report*, 1, 1-2 (1999) [hereinafter UNDP]. For a more detailed discussion of UNDP Reports and other related documents, see *infra* note 19 and accompanying text.

consensus among scholars, inter-governmental organizations and international institutions that Africa had become a matter of emergency that demanded urgent global attention.³

One of the most elaborate international agendas for human development and the eradication of poverty in Africa was the Second Tokyo International Conference on African Development [hereinafter TICAD II], which established human development and poverty reduction as lofty goals that must be attained for Africa between 2005 and 2015.⁴ Although these goals were adopted by the international community for the African region, the government of each African nation was obliged to evolve strategies for their realization at various domestic levels within the TICAD II time frames.⁵

The vision of TICAD II targeted the rapid repositioning of Africa towards the ends of improving the lives of its peoples as well as promoting peace and stability. The core areas of the TICAD II strategy were education; health and nutrition; and water and sanitation. TICAD II adopted nine key quantitative development goals as well as a range of vital development objectives that would enhance the quality of human lives in Africa.⁶

On the home front, African leaders and bureaucratic experts have evolved diverse platforms of action to confront the gargantuan challenges of human development facing the continent.⁷ All these objectives have demanded, and continue to demand, a collaboration of diverse efforts and strategies for success.

Considering these broad developmental designs, and in the face of

3. See generally Julius O. Ihonvbere, *Underdevelopment and Human Rights Violations in Africa*, in EMERGING HUMAN RIGHTS: THE AFRICAN POLITICAL ECONOMY CONTEXT 55–65 (George W. Shepherd, Jr., & Mark O.C. Anikpo eds., 1990) [hereinafter EMERGING HUMAN RIGHTS]; see also *id.* at 57 (arguing that since the underdevelopment crisis in Africa had its roots in the “direct contact between . . . underdeveloped social formations and the forces of Western imperialism,” a moral duty arises for Western institutions to give attention to the consequences).

4. *TICAD II: Special Feature on Africa*, THE DAILY YOMIURI, Oct.16, 1998, available at <http://www.unu.edu/hq/ginfo/media/ticad-articles.html> (last visited Sept. 1, 2003).

5. For an historical perspective on the concerted collaborative efforts among experts that led to TICAD II, see Gabriel Carceles et al., *Can Sub-Saharan Africa Reach the International Targets for Human Development?*, African Region Human Development Working Paper Series, 5–6 (World Bank, Sept. 2001).

6. *Id.* at 7.

7. The various African regional initiatives are discussed later in this paper. See *infra* at * and accompanying notes *.

worsening living conditions, some critical questions that emerge are as follows: How well is Africa prepared to meet its responsibilities in terms of global and regional human development efforts? In quantitative and qualitative terms, how positive have the effects of those efforts been for Africa and Africans? To what extent have governments in African states evinced concrete commitment to the goals of human development? How well have state actors and non-state actors in Africa advanced this agenda on the platforms of multi-disciplinary, multi-dimensional strategies? What are the impediments that militate against the efficacy of human development efforts, and how have these been addressed and/or should be addressed? How well have intellectual efforts responded to these onerous challenges? What implications does the human rights discourse portend for the current state of human development in Africa, and *vice versa*? What should define the thematic province of a human rights focus in development?

This paper examines this plethora of questions and attempts to move the theory of human development in Africa beyond the traditional confines of its macroeconomic and political propositions. The paper assesses the concept of *human* development within the broader discourse on the role of human rights in global *development*, highlighting the overall African context of the subject.

Against the backdrop of remarkably increasing scholarly efforts aimed at establishing human development as a human rights question, this paper evaluates the capacity of existing and emerging human rights frameworks relevant to Africa, and identifies viable trajectories for result-oriented human development actions.

II. WHAT IS *HUMAN* IN *DEVELOPMENT*?

The word “development” has acquired a variety of meanings and connotations among different policy analysts, legal writers, international institutions, human rights advocates and other scholars in the field of humanities. To the term “development” has been added such various qualifiers as would serve the convenience of respective authors. While the expression “sustainable development” has been employed in defining environmental concerns,⁸ in other discussions, development has been contemplated as connoting a new form of right—the “right to

8. See, e.g., JAN OLAF-WILLUMS & ULRICH GOLUKE, INT’L. ENVTL. BUREAU, FROM IDEAS TO ACTION: BUSINESS AND SUSTAINABLE DEVELOPMENT 11 (1992). See also Elizabeth Dowdeswell, *Sustainable Development: The Contribution of International Law*, in SUSTAINABLE DEVELOPMENT AND INTERNATIONAL LAW 3, 3–4 (Winfried Lang ed., 1995).

development.”⁹

Increasing interest has compounded the scope of the concept, and thus, in the course of the last three decades, “development” has come to be associated with concerns about economic empowerment and human well-being.¹⁰

Since the Charter of the United Nations (UN) expresses the core commitment of all member-nations to “the *dignity* and worth of the *human person*,”¹¹ the term is employed for the purposes of this paper in the narrower sense of the development of *individual* members of the human society. It is used here in the description of goals and efforts aimed at eradicating ignorance, disease, poverty and all the conditions that fetter the freedom of the individual in society. Its usage here aids monitoring and sketching of the worrisome trends that threaten the attainment of global development ideals.¹²

Within the global system, particularly since the end of the Cold War, there has been increasing collaboration among the United Nations Development Program [hereinafter UNDP], the UN Commission on Human Rights, multilateral development institutions such as the International Monetary Fund [hereinafter IMF] and the World Bank, governments, civil society groups such as non-governmental organizations (NGOs), research institutions and trade unions, towards the ends of alleviating human suffering and creating a better world for all human beings.¹³ At the UN level, these concerns are gradually being translated

9. See, e.g., REBECCA WALLACE, *INTERNATIONAL HUMAN RIGHTS TEXT AND MATERIALS* 1 (2001); see also ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 29–33 (1989).

10. See generally Richard A. Easterlin, *The Globalization of Human Development*, 570 *ANNALS* 1–3 (2000) (measuring human development in terms of material well-being). See also Sigrun I. Skogly, *Structural Adjustment and Development: Human Rights—An Agenda for Change*, 15 *HUM. RTS. Q.* 751, 752–53 (1993) (defining a theoretical layout for a human rights dimension to structural adjustment programs). See also Henry J. Steiner, *Social Rights and Economic Development: Converging Discourses?* 4 *BUFF. HUM. RTS. L. REV.* 25, 38 (1998) (outlining the perimeters of human rights that could inform the interests of development economists).

11. U.N. CHARTER, pmbl. para. 2 [emphasis added].

12. This definition strikes a chord of symmetry with the emphasized Charter expression. See generally Okwudibia Nnoli, *Revolutionary Violence, Equality, and Justice in South Africa*, in *EMERGING HUMAN RIGHTS*, *supra* note 3, 109, 117 (describing how the inequality and injustice of the apartheid regime in South Africa curtailed the creative capacities of individuals).

13. See Allan Rosas, *The Right to Development*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS, A TEXTBOOK* 119–30 (Asbjorn Eide et al. eds., 2d ed. 2001) [hereinafter EIDE ET AL.].

into a structure of multi-dimensional approaches linking socio-economic development to human rights and freedoms.¹⁴

While there abounds ample literature on the subject of human development, the works of Amartya Sen¹⁵ provide the gravamen of the philosophical idea of human development as it has become known among scholars, inter-governmental agencies, policy makers and other stakeholders in contemporary times. In Sen's view, development must be seen as the expansion of human capabilities. In this sense, development "sees human life as a set of 'doings and beings' —we may call them 'functionings'."¹⁶ In analytical detail, he argues that development cannot be thought of as the fulfillment of basic needs alone, but as necessary for overcoming violations of elementary freedoms, a process that connotes "expanding substantive freedoms that people have."¹⁷ In this context, Sen emphasizes the interconnectivity between individual capabilities and social arrangements, the market and the democratic system, the media and the public distribution system, and more significantly, between political freedoms and the understanding and fulfillment of economic needs.

The "Sen Theory" thus distinguishes the two core issues of (a) functioning, and (b) the capacity to function, a distinction this paper emphasizes in identifying strategic implications.

III. AFRICA IN THE CONTEXT OF GLOBAL HUMAN DEVELOPMENT

While the growth rates in the overall conditions of world populations in recent years has led to the hasty suggestion that Africa has recorded "rapid improvement" in the indices of human development,¹⁸ a more thorough analysis of accepted indicators and realities would reveal sharp contradictions. Particularly since the demise of the Cold War, the

14. Theo van Boven, *Human Rights and Development: The UN Experience*, in HUMAN RIGHTS AND DEVELOPMENT: INTERNATIONAL VIEWS 121–35 (David P. Forsythe ed., 1989). See also KATARINA TOMASEVSKI, DEVELOPMENT AID AND HUMAN RIGHTS REVISITED 45–56 (1993) (describing how human rights has increasingly become a central theme in UN development activities since 1990).

15. Amartya K. Sen, *Capability and Well-Being*, in THE QUALITY OF LIFE 30 (Martha Nussbaum & Amartya K. Sen eds., 1993); Amartya Sen, *Development Thinking at the Beginning of the XXI Century*, in ECONOMIC AND SOCIAL DEVELOPMENT INTO THE XXI CENTURY 531, 540–42 (Louis Emmerij ed., 1997); AMARTYA KUMAR SEN, DEVELOPMENT AS FREEDOM (1999).

16. See SEN, DEVELOPMENT AS FREEDOM at 75 (1999).

17. *Id.* at 297.

18. See Easterlin, *supra* note 10 at 4, 8–10 (comparing world averages of human development between 1950 and 2000 and concluding that Africa has fared much better than most less developed areas on all indices). This paper shows that such a robust perception is but a mockery of the reality of African experience. See *infra* at * and accompanying notes.

gloomy picture of human development indices in Africa has consistently radiated through all the scientific standards of measuring human growth and progress around the world. A quick look at any of the *Human Development Reports* (the Reports) produced by the UNDP since 1990 shows that Africans have remained parlous in terms of the overall trends of poverty and human deprivations.¹⁹

Despite the tremendous gains made by other regions of the world in the post-Cold War period, African countries, constituting the larger quota of the world's most impoverished peoples, especially Sub-Saharan Africa, remain in free fall as against other regions in *per capita* incomes.²⁰ The human development challenges confronting Africa are indeed formidable. With some estimated 240 million people living on less than U.S. \$1 per day in several countries, the massive human misery in Africa cannot be more graphic.²¹

The 2002 edition of the UNDP Reports depicted Africa as not only failing to eliminate poverty, but as experiencing an increase in the

19. The UNDP *Human Development Reports* are based on certain key indicators, namely: human development index (which measures life expectancy at birth, adult literacy rate, combined primary, secondary and tertiary gross enrollment ratio, and GDP per capita); human development index trends; human and income poverty; demographic trends; commitment to health; technological diffusion and creation; economic performance; structure of trade; flows of foreign aid; flows of private capital and debt; priorities in public spending; unemployment; energy and the environment; refugees and armaments; gender-related development; gender empowerment measures; gender inequality in education; gender inequality in economic activity; and women's political participation. See U.N. Development Programme, *Human Development Report: Deepening Democracy in a Fragmented World*, (2002), available at <http://www.undp.org/reports/global/2002/en/complete.pdf>. Other instruments of global human development measurement include the *World Development Reports* and *World Development Indicators*, available at <http://www.worldbank.org> (both produced annually by the World Bank); United Nations Educational, Scientific and Cultural Organization (UNESCO) *Statistical Yearbook*; United Nations Children's Fund (UNICEF) *State of the World's Children 2003*, available at <http://www.unicef.org/sowc03>; and the World Health Organization (WHO) *World Health Report 2002*, available at <http://www.who.int/whr/2002/en/>, among others. See also U.N. Development Programme, *Human Development Report 2002: Progress Towards Millennium Development Goals*, available at http://www.undp.org/hdr2002/presskitHDR%20PR_Progress%20in%20Rank.pdf (last visited Sept. 1, 2003) (showing that not only has Africa failed to record advances in eliminating poverty since the 1990s, but that the number of people living in "extreme poverty" on the continent has grown significantly).

20. See U.N. Development Programme, *supra* note 2, at 2–3.

21. See Ruth Kagia, *Social Challenges in Sub-Saharan Africa*, The Daily Yomiuri (Okinawa), Oct. 16, 1998, at <http://www.unu.edu/hq/ginfo/media/Kagia.html> (last visited Nov. 22, 2003). For a study showing the consistent poverty trends in Africa since 1992, see THE WORLD BANK, *WORLD DEVELOPMENT REPORT 7*, 10, 23–25 (2001).

number of people living in extreme poverty.²² Based on empirical factors, the 2002 Report registers Africa as having the bottom 27 nations among the 173 countries listed on the human development index.²³ When compared to other regions of the world, Africa lags far behind in all measurements of growth.²⁴ This grim description of African performance on global human development charts is reinforced by a quick review of some major indicators of human deprivation. According to the 2002 UNDP Report, the average life expectancy in Sub-Saharan Africa is 48.7 years, the lowest for all world regions.²⁵ The situation with respect to health, food and nutrition is a grim tale. Percentages of the population having access to safe water and sanitation are 54 and 55, respectively.²⁶ In the sphere of education, while 61.5% of adults are literate, the combined primary, secondary and tertiary gross enrollment ratio is stated as 42%, suggesting a very low level of human capital formation. At U.S. \$1690, Africa's real GDP per capita is the lowest among all regions compared to an average of U.S. \$3783 for developing countries, and U.S. \$7446 for the whole world.²⁷ Over 50% of human beings in Sub-Saharan Africa live below the global poverty line.²⁸

As critical as the general situation is, it is worse and more pathetic for children and women.²⁹ Out of the estimated 54 million people living with HIV/AIDS in Sub-Saharan Africa, 15 million of these are women

22. See U.N. Development Programme 2002: *Human Development Balance Sheet 2002*, available at http://www.undp.org/hdr2002/presskit/HDR%20PR_balance.pdf (last visited Sept. 3, 2003). While the 2003 edition of the UNDP Human Development Reports is available, it deviates from the usual practice of giving sustained comparative statistics on the items in note *. The 2003 edition is exclusively focused on how far nations have gone in meeting the Millennium Development Goals set by the UN in 2000. Generally, the situation of human development in Sub-Saharan Africa remains dismal. See United Nations Development Programme, *Human Development Report 2003: Millennium Development Goals: A Compact Among Nations to End Human Poverty*, available at http://www.undp.org/hdr2003/pdf/hdr03_complete.pdf (last visited Dec. 26, 2003).

23. See U.N. Development Programme, *supra* note 19, at 149–52 (2002) (Table 1, Human Development Index). The Report shows only one African nation (Seychelles) on the list of nations with high human development index.

24. See *id.* at 152. The 2002 Report reveals that Africa has the world's highest maternal mortality ratio as well as highest infant mortality rate.

25. *Id.*

26. See *id.* at 166–69.

27. See *id.* at 152.

28. See *id.* at 157–59 (Table 3, Human and Income Poverty). The UNDP defines population below poverty line as those living on income of U.S. \$1 per day according to the Purchasing Power Parity rate. *Id.* at 265–66.

29. The UNDP *Human Development Balance Sheet 2002* notes that child immunization rates in Sub-Saharan Africa have fallen below 50%, and that 90% of the more than 40 million people living with HIV/AIDS in the world were in developing countries with 75% of them in Africa as at 2000. See U.N. Development Programme, *supra* note 22.

while another 2.6 million are children.³⁰ The mortality rates for infants (those under one year) and children (between ages 1 to 5 years) are 107 and 174 per thousand live births respectively, the highest for all regions of the world.³¹ Besides this, only 67% and 51% of infants in Sub-Saharan Africa are fully immunized against tuberculosis and measles, respectively, a dismal comparison to other world regions.³² The situation of women is much worse than that of men in Africa. Thus, while the life expectancy of women is slightly higher than that of men, all other indicators of human development are biased in favor of men.³³

Significant for a broader view of these critical human conditions are unmistakable imbalances in the allocation of resources. The 2002 Report shows that between 1990 and 2000, many African countries occupying the bottom ladder of the global human development index committed a considerable amount of public funds to military expenditure.³⁴ Conversely, for the nations listed as having the highest human development index, there was a drastic decline in military expenditure in favor of social services over the same period.³⁵

Notwithstanding these indicators, there have been some "bright rays" in the human development situation in Africa. Life expectancy has slightly increased from 45.3 years to 48.8 years and infant mortality declined from 135 to 107 per thousand births between 1970-1975 and 1995-2000.³⁶ In a similar vein, there was an increase in adult literacy from 44.4% in 1985 to 61.5% in 2000.³⁷

Even against the relative progress recorded for Africa in the twilight of

30. *Id.* at 170-73 (Table 7, Leading Global Health Crises and Challenges), 165 (Table 5, Demographic Trends).

31. *Id.* at 174-77 (Table 8, Survival: Progress and Setbacks).

32. *Id.* at 166-69 (Table 6, Commitment to Health: Access, Services and Resources).

33. *See id.* at 222-25 (Table 22, Gender-Related Development Index). These are in respect of the indices of literacy and earned income. *Id.* at 225.

34. While it is to be noted that some African nations slightly reduced their military expenditure between the 1990 and 2000 statistics, a considerable number of the most "impoverished African states" increased or sustained the level of their military spending over the same period. Angola, Burundi, Eritrea, Ethiopia, Mali, Mozambique, Nigeria, Rwanda and Sudan, at various times within the same time scale, spent more resources on the military than on education or health. *See id.* at 207-10 (Table 17, Priorities in Public Spending).

35. *See id.* at 207.

36. *Id.* at 177 (Table 8, Survival: Progress and Setbacks).

37. *Id.* at 182-85 (Table 10, Literacy and Enrollment). This improvement, however, still fell far short of the 73.7% for all developing countries.

the last century, there remain sharp and deep contradictions.³⁸ In the midst of these deplorable human conditions, can the ordinary African be said to be free in any way? What sort of freedom can be expressed amidst the suffocative living conditions described above? This query leads to the next segment of this discourse.

IV. HUMAN RIGHTS AND HUMAN DEVELOPMENT: CONVERGENCE AND LINKAGES

Although the nexus between political freedoms and economic development has received recognition in theory, it has remained largely neglected in practice domestically and internationally.³⁹

It is striking to note that whereas the Universal Declaration of Human Rights (UDHR), 1948, provided for both civil and political rights (CPRs) as well as economic, social and cultural rights (ESCRs) on the same footing,⁴⁰ the subsequent covenants that were drafted and later adopted in 1966 to amplify the content of the UDHR split human rights into two categories.⁴¹ The split of the provisions of the UDHR into two separate covenants led to an ineluctable conclusion among many writers that the rights represented different “generations.”⁴²

38. See Dr. Mamphela Ramphele, *Human Rights and Human Development: Fulfilling The Basic Needs of People*, Third Annual Hawke Lecture (University of South Australia, Nov. 8, 2000).

39. See Phillip Alston, *Economic and Social Rights*, in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 137, 147–51 (Louis Henkin & John L. Hargrove, eds., 1994) (showing that while many countries are States Parties to various U.N. human rights treaties on the subject, most of them have advocated and/or practiced a division of human rights).

40. The UDHR was adopted on Dec. 10, 1948. See G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948), reprinted in THE RAOUL WALLENBERG COMPILATION OF HUMAN RIGHTS INSTRUMENTS 27–32 (Goran Melander & Gudmundur Alfredsson, 1997) [hereinafter MELANDER ET AL.].

41. See, e.g., International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR], 999 U.N.T.S. 171 (entered into force on Mar. 23, 1976, reprinted in MELANDER ET AL., *id.* at 43–67; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) [hereinafter ICESCR], 993 U.N.T.S. 3 (entered into force on Jan. 03, 1976), reprinted in MELANDER ET AL., *id.* at 33–42.

42. The categorization of human rights into three generations was an idea that received profound expression in the works of Karel Vasak and has been parroted by many. See Karel Vasak, *A 30-Year Struggle: The Sustained Efforts to Give Force to the Universal Declaration on Human Rights*, UNESCO Courier 29–30 (UNESCO, Nov., 1977). See also Karel Vasak, *Human Rights: As a Legal Reality*, in THE INTERNATIONAL DIMENSION OF HUMAN RIGHTS, VOL. 1, 3 (Karel Vasak ed., 1982) (defining CPRs as belonging to the “first generation”, ESCRs as belonging to the “second generation” and the “new” rights—development, environment—as belonging to the “third generation”). Another notable proponent of this “generations” paradigm was E.W. Vierdag who argued that because ESCRs are not as “absolute” and “immediate” as CPRs, they are

Human rights scholars have attributed this unwholesome categorization of human rights to various factors.⁴³ While one group identified political and ideological conflicts, exacerbated by the rivalries of the Cold War era, as the central cause of division,⁴⁴ another group consistently cited disputes over the conception of certain rights and the role of government as the dilemma that compelled the drafting of two separate covenants.⁴⁵

It is gratifying to note that the demise of the Cold War has added new impetus to the discourse on the integrative approach to human rights. This is reflected in the text of the Vienna Declaration and Program of Action adopted at the World Conference on Human Rights held in Vienna, Austria, in 1993, which unequivocally proclaims that "All human rights are universal, *indivisible* and *interdependent* and *interrelated*".⁴⁶ It is this salubrious climate that has tremendously boosted the discourse on a rights-based approach to human development; if not in practically, at least theoretically.

Generally speaking, there has been a noticeable increase in attempts at deepening understanding of the human rights dimensions in the problem of human development. The relationship between human rights and development is evolving with an enriched conception of development, on one hand, and the interdependent and indivisible nature of human rights, on the other.⁴⁷

"programmatic" and are to be realized progressively. See Asbjorn Eide et al., *Economic, Social and Cultural Rights: A Universal Challenge*, in EIDE ET AL., *supra* note 13 at 4-5.

43. NWACHUKWUIKE S.S. IWE, *THE HISTORY AND CONTENTS OF HUMAN RIGHTS: A STUDY OF THE HISTORY AND INTERPRETATION OF HUMAN RIGHTS* 29 (1986).

44. See Asbjorn Eide, *Economic, Social and Cultural Rights As Human Rights*, in EIDE ET AL., *supra* note 13, at 10-11. See also Barbara Stark, *Urban Despair and Nietzsche's 'Eternal Return': From the Municipal Rhetoric of Economic Justice to the International Law of Economic Rights*, 28 VAND. J. TRANSN'L L. 185, 220 (1995) (discussing the origins of economic rights as to explain why their efficacy has been problematic).

45. See EIDE ET AL., *supra* note 13, at 14-17. See also KITTY ARAMBULO, *STRENGTHENING THE SUPERVISION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THEORETICAL AND PROCEDURAL ASPECTS* 17 (1999) (showing that while Western nations, represented by the United States of America, conjectured that equating ESCRs with CPRs would undermine individual freedoms, the communist and socialist nations felt that CPRs are meaningless without ESCRs), *id.* at 67-68, 103.

46. *The World Conference on Human Rights: Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23, Part 1, para. 5 (emphasis added).

47. See, e.g., SEN, *supra* note 16 at 35-36 (demonstrating that development is predicated on five instrumental freedoms, namely, "political freedoms," "economic facilities," "social opportunities," "transparency guarantees," and protective security).

The rights-based discourse encompasses CPRs and ESCRs as well as the rights found in other human rights instruments. The approach seeks to work in tandem with international development targets, focusing on the twin questions of poverty and human development. *All* human rights are to be perceived as components of human development as well as platforms for achieving it.⁴⁸

Instructively, for Africa, the pace of progress in this integrative rights-based discourse is becoming increasingly noticeable within the Asian region. Rather than dwelling on mere theoretical debates about the content and scope of ESCRs, Asian human rights and development scholars, activists, NGOs and other stakeholders are engaging in more productive discourses on how the protection of ESCRs could be translated into meeting major social challenges. Greater collaboration is being forged among governments and civil society groups and across borders.⁴⁹ Additionally, many governments and leaders in the Asian region continue to view human rights, particularly ESCRs, “as being consistent with their national development aspirations and experience.”⁵⁰ Statistics continue to demonstrate that not only has there been consistent economic growth in the Asian region but that this is being pursued and achieved “in a relatively egalitarian manner.”⁵¹

As far as Africa is concerned, scholarly efforts on the subject of human development have largely perceived it as belonging, and perhaps, restricted to the fields of econometrics and the social sciences.⁵² The

48. See Julia Hausermann, *A Human Rights Approach to Development*, available at <http://www.undp.org/hdro/events/oslo/Oslorep5.html#hauserman> (last visited Jan. 18, 2003). See also U.N. Development Programme, *Human Rights & Development—An Emerging Nexus*, at <http://www.undp.org/rbap/rights/Nexus.htm> (last visited Nov. 21, 2003) (asserting that the holistic approach to human development recognizes that without ESCRs, CPRs are negligible in the protection of citizens).

49. See Jack Donnelly, *Human Rights and Asian Values: A Defense of “Western Universalism”* in *THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS* 74–75 (Joanne R. Bauer & Daniel A. Bell, eds., 1999).

50. Simon S.C. Tay & Goh Chien Yen, *Economic, Social and Cultural Rights in ASEAN: A Survey* 12. (Background Paper at the Friedrich Ebert Stiftung Conference on Human Rights, held in Manila, The Philippines, Jan. 24–25, 2000) (on file with author).

51. *Id.* at 15–16. See also YUJI IWASAWA, *INTERNATIONAL LAW, HUMAN RIGHTS AND JAPANESE LAW: THE IMPACT OF INTERNATIONAL LAW ON JAPANESE LAW* 213–21 (1998) (rendering an empirical account of how the provisions of the six key UN human rights treaties have been applied in the improvement of working conditions, elimination of discrimination and the establishment of an equal treatment regime for all persons in Japan).

52. For illustrations on this point, see, James S. Guseh, 1999 “The Public Sector, Privatization, and Development in Sub-Saharan Africa” *African Studies Quarterly* 5(1): 1. [online] URL: <http://web.africa.ufl.edu/asq/v5/v5i1a3.htm> (last visited Sept. 7, 2003), and also, Osei Hwedi, 2001 “The State and Development in Southern Africa: A Comparative Analysis of Botswana and Mauritius with Angola, Malawi and Zambia” *African Studies Quarterly* 5(1):1[online]. URL: <http://web.africa.ufl.edu/asq/v5/v5i1a2.htm> (last visited Sept. 7, 2003).

subject remains an unpopular area for most human rights scholars, activists and NGOs. This attitude might be explained by the erroneous perception, among both African and non-African human rights scholars working on Africa, that human development is strictly determined by the dynamics of global trade and entails the fine details of macroeconomics.⁵³

While scholars in the advanced nations of the world work extensively at linking the protection of human rights, particularly ESCRs, to human development, contribution of African scholars on the African context of the subject has been paltry. One may ascribe this phenomenon of inertia to the pre-occupation of African scholars, policy analysts, governments, jurists, NGO activists and other strata of the society alike with post-colonial governance conflicts and other transitional problems (e.g., democratization, transitional justice and reconciliation processes), coupled with the peculiarly deep and seemingly intractable political problems confronting various states at domestic levels.⁵⁴

In the advent of globalization and deepening economic crises across Africa, coupled with the growing acceptance of democracy as the legitimate form of governance (notwithstanding the notable skirmishes), never could there have been a more auspicious period for the propagation of a rights-based agenda for human development in Africa. It is indeed inevitable that the social, economic and political tensions raging across the African continent, albeit in varying mix of degrees, must be translated into the turning point for an overall restructuring in African nations, not only of enterprises and economies, but much more fundamentally, of state-society relationships.

The growing pace of democratization provides a unique opportunity to improve human conditions speedily and in a structured way by moving

53. See, e.g., *International Policies African Realities, Report from an Electronic Roundtable*, U.N. Economic Commission For Africa (ECA) & AFRICA ACTION, 1–25 (2000) [hereinafter ECA ET AL.] (conceptualizing economic development as a precursor to democracy and human rights in Africa). See also Jee-Peng Tan et al., *Enhancing Human Development in the HIPC/PRSP Context*, African Region Human Development Working Paper Series, 9–14 (The World Bank, Mar. 2001), available at http://www.worldbank.org/afr/hd/wps/hipc_prsp.pdf (interpreting human development as consequent upon the performance of economic policies and capacity building strategies) (last visited Nov. 17, 2003).

54. See J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT'L L.J. 1, 5–6 (1995) [hereinafter Oloka-Onyango, *Beyond the Rhetoric*]. See generally J. Oloka-Onyango, *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, Or Retreating Horizons?*, 6 BUFF. HUM. RTS. L. REV. 39 (2000) (reiterating this assertion in narrower terms).

the realization of the basic minimum of *all* human rights to the forefront of the African development process as well as making this agenda a crucial indicator of progress in Africa.

Happily enough, the notion is already gaining popular acceptance that the survival of any democracy would largely depend on the level of socio-economic conditions as deprivation and impoverishment readily feed social unrest and political instability, more so in the developing world.⁵⁵

The well-being of every African man, woman, and child must be translated into core elements of national development and must not be treated as esoteric or an Occidental benchmark for growth. To await the arrival of an age of perfect economic bliss before embarking on this critical agenda in Africa will amount to forlorn hope.

V. RIGHTS-BASED HUMAN DEVELOPMENT: IDENTIFYING THE LEGAL FRAMEWORK

The distinct mark of a rights-based approach, compared to other approaches to human development, is its contingency upon legal foundations. These foundations are to be located within the relevant international, regional and domestic arrangements. Asserting that these platforms are the basis for a rights-based approach is not as straightforward as it sounds. This is partially because the pace of ratification of human rights treaties varies from nation to nation, and even where nations have ratified those instruments, very few take cogent steps at domesticating them.⁵⁶ Similarly, where governments give formal recognition to human rights, it is often a case more of rhetoric than substance, homily without action.⁵⁷ The effect of this scenario is a noticeable limitation to the

55. See Bard-Anders Andreassen & Theresa Swinehart, *Promoting Human Rights in Poor Countries: The New Political Conditionality of Aid Policies*, in *Human Rights in Developing Countries 1991: A Yearbook On Human Rights in Countries Receiving Aid from the Nordic Countries, The Netherlands and Canada XI, XIII* (Bard-Anders Andreassen & Theresa Swinehart eds., 1992). See also ZEHRA F. ARAT, *DEMOCRACY AND HUMAN RIGHTS IN DEVELOPING COUNTRIES* 8-9 (1991), and Shedrack C. Agbakwa, *Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights*, 5 *YALE HUM. RTS. & DEV. L.J.* 177, 179 (2002).

56. An illustration of this is found in the African regional human rights system where, although all the 53 member nations of the defunct Organization of African Unity (OAU), now African Union (AU), have ratified the African Charter on Human and People's Rights (AfCHPR), 1981, only one (Nigeria) has domesticated it by direct statutory effort. See generally RICHARD AMOAKO BAAH, *HUMAN RIGHTS IN AFRICA: THE CONFLICT OF IMPLEMENTATION* 41(2000) (lamenting that, despite the overwhelming commitment of African governments to the AfCHPR in the processes leading to its adoption, the tendency grows among them to perceive the Charter as a standard for human rights achievement only when it is convenient).

57. See BAAH, *supra* note 56. See also J. SHAND WATSON, *THEORY & REALITY IN*

efficacy of the rights involved.

It must also be pointed out that finding a legal basis for the rights-based approach assumes a bifurcated consideration in this presentation: (i) the location of a juridical basis within subsisting corpus of international and municipal law, and (ii) a furtherance of the discourse on another trajectory not essentially founded on positive law—the “basic needs” theory. This discussion proceeds to examine the connotations of these issues in sequence, particularly as they relate to Africa.

A. *The Normative Structures*

At the level of the UN, the International Bill of Rights⁵⁸ provides the cornerstone of the rights-based approach to human development along with a battery of other instruments capable of adding depth and vigor.⁵⁹

Various International Labor Organization (ILO) Conventions that define core labor standards also avail a platform for the rights-based approach within the international system.⁶⁰

THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 1–15 (1999).

58. The International Bill of Rights consists of the UDHR, the ICCPR, the ICESCR, and the Protocols thereto. See Krzysztof Drzewicki, *Internationalization and Juridization of Human Rights*, in AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS: A TEXTBOOK 33–37 (Rajja Hanski & Markku Suski, eds., 2d rev. ed. 1999) [hereinafter HANSKI ET AL].

59. The most relevant among such instruments are: International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106, U.N. GAOR, 20th Sess., U. N. Doc. A/6014 (1965) [hereinafter CERD], 60 U.N.T.S 195, (entered into force Jan. 4, 1969), reprinted in MELANDER ET AL., *supra* note 40, at 255–66; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/80, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW], 1249 U.N.T.S 13, (entered into force Sept. 3, 1981), reprinted in MELANDER ET AL., *supra* note 40, at 237–48; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Annex, Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) [hereinafter CAT], 23 I.L.M. 1027 (1984) as modified 24 I.L.M. 535 (1985), (entered into force June 26, 1987), reprinted in MELANDER ET AL., *supra* note 40 at 549–61; Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) [hereinafter CRC] (entered into force Sept. 2, 1990), reprinted in MELANDER ET AL., *supra* note 40 at 279–97; and the more recent Convention on the Rights of All Migrant Workers and Members of Their Families (MWC), U.N. Doc. A/Res./45/158 (1990), reprinted in BASIC DOCUMENTS SUPPLEMENT TO INTERNATIONAL LAW CASES AND MATERIALS 221–31 (Louis Henkin et al. eds., 1993) (entered into force on Dec. 10, 2002).

60. The ILO was established in 1919 under the Treaty of Versailles to serve as an autonomous institution under the League of Nations system. The ILO is now a specialized agency of the UN. For deeper insight into the operations of the ILO as they relate to this subject, see, Virginia A. Leary, *Lessons from the Experience of the*

At the African regional level, the main human rights treaty is the African Charter on Human and People's Rights [hereinafter AfCHPR], 1981.⁶¹ The African regional human rights system is supported by the African Commission on Human and People's Rights (the African Commission), the body charged with monitoring of the implementation of the AfCHPR. There is also a slow but steady move towards the creation of a regional human rights court to complement the mandate of the African Commission.⁶²

Apart from the AfCHPR, there is an array of other instruments that have been adopted within the African regional arrangement over the last two and a half decades that directly relate to this discussion.⁶³ More striking in this context are three fundamental instruments that express the worldview of African leaders and experts on the centrality of the "human" dimension as being *sine qua non* for genuine development in Africa. These three instruments are the Khartoum Declaration,⁶⁴ the African Charter for Popular Participation in Development and Transformation, 1990, and the African Common Position on Human and Social Development, 1994. These documents jointly and severally proclaim the unequivocal recognition of the "human" dimension as the central focus of any development program in Africa. The formal recognition of the necessity for the incorporation of the "human" content in African development strategies has received scholarly consideration, elsewhere, in the light of these instruments.⁶⁵

International Labor Organization, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 580, 583–84 (Philip Alston ed., 1992). For a current text of the ILO Constitution, see IAN BROWNLIE, *BASIC DOCUMENTS IN INTERNATIONAL LAW* 50–76 (4th ed. 1995).

61. The AfCHPR was adopted on June 27, 1981. See OAU Doc. CAB/LEG/67/3 rev. 5 (1981), 21 I. L. M. 58 (1982) (entered into force on Oct. 21, 1986), reprinted in MELANDER ET AL., *supra* note 40 at 191–204.

62. For further discussion on the possible role of the proposed African Court on Human and People's Rights in the context of this discourse, see generally EVELYN A. ANKUMAH, *THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES* 198–200 (1996); Chidi Anselm Odinkalu, *Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social and Cultural Rights Under the African Charter on Human and People's Rights*, 23 HUM. RTS. Q. 327, 369 (2001).

63. Some of these are the Lagos Plan of Action (LPA), 1980; the African Economic Community (AEC) Treaty, 1991; and the New Partnership for Africa's Development (NEPAD), 2001. For an extensive discussion of the objectives outlined in these instruments, see Nsongurua J. Udombana, *A Harmony or a Cacophony? The Music of Integration in the African Union Treaty and the New Partnership for Africa's Development*, 13 IND. INT'L & COMP. L. REV. 185 (2002).

64. See Wohlmuth, *supra* note 1, and accompanying text.

65. See, e.g., Sadig Rasheed & Eshetu Chole, *Human Development: An African Perspective*, Occasional Paper 17, 3–4 (UNDP, 1994), at http://hdr.undp.org/docs/publications/ocational_papers/oc17.htm (reflecting on the regional initiatives aimed at addressing African socio-economic crises but without reference to the human rights perspective).

In terms of having a documentary framework for human development, Africa takes the lead as a world region. The tragic contradiction, however, is that the rhetoric of promise and hope is often abandoned due to ambivalence and passivity.⁶⁶

At domestic levels, a preponderance of African nations has ratified or acceded to the six key UN human rights treaties—ICCPR, ICESCR, CERD, CEDAW, CAT, and CRC.⁶⁷ All African states, excluding Morocco, are states parties to the AfCHPR.⁶⁸ The AfCHPR has been hailed as a unique regional human rights framework because it comprehensively provides for protection and promotion of all human rights, CPRs and ESCRs inclusive, on equal footing.⁶⁹

Apart from the UN and regional mechanisms, a considerable number of African states have elaborate provisions on ESCRs entrenched in their constitutions.⁷⁰ While there are indeed many African states that have constitutional provisions giving positive recognition and protection to these species of rights, there remain many states that only express them as “directive principles of state policy,” meaning they are essentially mere ideals and are neither subject to judicial enforcement nor scrutiny.⁷¹

66. *See id.*

67. As of Dec. 9, 2002, there were 45, 45, 48, 49, 37, and 52 African states that were parties to the ICCPR, ICESCR, CERD, CEDAW, CAT and CRC, respectively. African states also constituted eight of the 20 countries that were required to bring the MWC into force. *See* U.N. Status of Ratifications of the Principal International Human Rights Treaties, Office of the U.N. High Commissioner for Human Rights, as of 2 November 2003, at <http://www.unhcr.ch/pdf/report.pdf> (last visited Mar. 13, 2003).

68. Morocco pulled out of the defunct OAU in 1984 following the OAU's recognition of the Western Sahara as an independent state. For further discussion of the Moroccan dispute, *see* El-Obaid Ahmed El-Obaid & Kwado Appiagyei-Atua, *Human Rights in Africa—A New Perspective on Linking the Past to the Present*, 41 MCGILL L. J. 819, 843 (1996).

69. *See* Cees Flinterman & Catherine Henderson, *The African Charter on Human and Peoples' Rights*, in AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 388 (Rajja Hanski & Markku Suksi eds., 2nd rev. ed. 1999).

70. *See* Danwood M. Chirwa, An Overview of The Impact of Economic, Social and Cultural Rights in Africa, 7–11 (Oct. 2001) (unpublished manuscript, on file with author).

71. For a more elaborate discussion of this “neo-Nigerian” constitutional mechanism, *see* Osita Eze, *Human Rights Issues and Violations: The African Experience*, in EMERGING HUMAN RIGHTS: THE AFRICAN POLITICAL ECONOMY CONTEXT 87, 94–95 (George W. Shepherd, Jr., & Mark O.C. Anikpo eds., 1990), *supra* note 3, at 94–95. *See also* Oladejo Justus Olowu, Socio-Economic Rights in Africa: A Critical Evaluation of Legal Protection Mechanisms and Implementation Strategies, 25–28 (2001) (Unpublished LL.M Thesis, University of Pretoria, South Africa) (on file with author) for a comparative discussion of the Nigerian and Indian models of “directive principles.”

The totality of the human rights provisions within which a rights-based approach to human development is conceived can be summarized under the following groupings: those that are necessary for survival,⁷² those that cover other rights and freedoms necessary for human dignity, creativity, intellectual and spiritual development,⁷³ and those that are necessary for liberty and physical security.⁷⁴ It is intriguing to observe the symphony and connectivity of these rights among the assemblage of various treaties despite all attempts at segregating them.⁷⁵

The next question that naturally follows is: Having located a juridical basis for the rights-based approach, what legal responsibilities follow?

B. Nature of Obligations Created

Arguments about the core rights that are critical to human development have revolved around questions of justiciability and resources. The first relates to the essence, content and scope of those rights while the second relates to the capacity of states to meet the obligations created under them. It has even been argued by African and non-African scholars alike that African nations are generally too weak and poor to meet the obligations created by those rights.⁷⁶

It must be quickly pointed out that these seemingly formidable issues

72. These are the rights to life and liberty; the right to a standard of living adequate for health and well-being of the individual and his/her family; the right to social protection in times of need; the right to the highest attainable standard of physical and mental health; the right to work and to just and favorable conditions of work; the rights to food and housing; and the rights to privacy and family life. See Hausermann, *supra* note 48. See also U.N. Development Programme, *supra* note 48, and accompanying text.

73. These are the rights to education and to access information; freedoms of religion, opinion, speech, and expression; freedom of association; the rights to participate in the political process; and the right to participate in cultural life. See Hausermann, *supra* note 48. See also U.N. Development Programme, *supra* note 48, and accompanying text.

74. These are freedom from slavery and servitude; the right to security of person; the right to be free from arbitrary arrest or imprisonment; and freedom from torture and from cruel, inhuman or degrading treatment or punishment. See Hausermann, *supra* note 48. See also U.N. Development Programme, *supra* note 48, and accompanying text.

75. For further discussion on the congenial nature of rights in the rights-based context, see Brigitte I. Hamm, *A Human Rights Approach to Development*, 23 HUM. RTS. Q. 1005, 1013–14 (2001).

76. See, e.g., Rhoda Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence From Sub-Saharan Africa*, 5 HUM. RTS. Q. 467, 470–77 (1983) (arguing that CPRs must precede economic development and wealth distribution which would in turn create a conducive environment for ESCRs in Africa), *id.* at 478–482; BAAH, *supra* note 56, at 92 (asserting that the choice of priorities for the allocation of scarce resources are tough for poor African nations). See also Minasse Haile, *Human Rights in Africa: Observations on the Implication of Economic Priority*, 19 VAND. J. TRANSNAT'L L. 299, 300–01 (1986) (contending that the level of state poverty in Africa impels lesser constitutional value for ESCRs).

are often over-flogged. In this regard, two points must be made clear. For one, what the rights-based approach to human development entails essentially is a holistic consideration of *all* human rights. Scholarly discussions often fail to note that all six UN human rights treaties emphatically oblige state parties to ensure the protection of the provisions of those treaties without any form of distinction or discrimination.⁷⁷ Often, it is in complying with the *equality* and *non-discrimination* principles that many African states default in their treaty obligations.⁷⁸

In another significant way, some crosscutting provisions in UN human rights treaties are also overlooked. For instance, the necessary subsistence rights of adequate clothing, housing and food; of families to assistance; to property; to work; to social security; to a high standard of health and health care; to education, among others, are protected without the limiting clause of “progressive realization,” meaning that they are as immediate as all other rights contained in those instruments. The CRC is a pertinent reference in this regard.⁷⁹ In fact, the only right proclaimed in CEDAW as being “inalienable” is the right to work.⁸⁰

For Africa, the “programmatic” argument of the Vierdag school of thought is even more remote and far-fetched. This view is reinforced by the all-inclusive, classification-neutral, and reservation-free framework of human rights within the African regional system.⁸¹ In addition, the multiple problems that daily confront the individual African (whether in Bangui or Cape Town, Mogadishu or Nouakchott) involve a concourse of human rights issues that do not delineate the stereotyped “territories” of rights.

While it is notable that the immediate realization, *in full*, of the positive contents of certain human rights might indeed have budgetary implications, it is submitted that there is no way any government could carry out *any* of its positive human rights obligations, under any instrument, without incurring the expenditure of funds. It is just as resource

77. See, e.g., art. 2(1) ICCPR; art. 2(1) ICESCR; arts. 1 and 4 CERD; art. 2 CEDAW; art. 2(1) and (2) CAT; and art. 2 CRC.

78. See generally Oloka-Onyango, *supra* note 54, at 57 (stressing that the realization of some human rights is often problematic for African states because of such questions as gender or status discrimination).

79. See art. 2(1) CRC that says “States Parties shall respect and ensure the rights set forth in the present Convention to each child. . . .”

80. See art. 11(1) CEDAW.

81. Olowu, *supra* note 71, at 21. Cf. Oloka-Onyango, *Beyond the Rhetoric*, *supra* note 54, at 49 & n.302 (highlighting the “claw-back clauses” that limit some of the provisions in the AfCHPR).

intensive to conduct elections and equip the military as it is to provide treated water for drinking and to fund a health care delivery system.

It has been shown that the crux of the reluctance, neglect, refusal or failure of many African leaders and governments to fulfill their basic life-enhancing human rights obligations lies not in drastic shortage of funds but in skewed prioritization of policies and a debilitating lack of public accountability.⁸²

Establishing a legal basis for the rights-based approach to human development is crucial for Africa as it will facilitate juridical recognition of its essential elements.

Even against the backdrop of the justiciability question, efforts can still be made towards the development of jurisprudence on these rights in African states. Through pragmatic legal activism and innovative reporting and monitoring strategies, violations of life-enhancing rights (the majority of which are ESCRs) and the worst forms of deprivation can be pronounced upon by UN human rights treaty monitoring bodies, African regional human rights protection mechanisms, and domestic courts, towards the end of improving the quality of life of the most vulnerable Africans.⁸³

The emphasis on jurisprudential development here is neither abstract nor hypothetical. In the light of dynamic trends in the ESCRs field, namely, the draft Optional Protocol to the ICESCR⁸⁴ which would allow individual complaints as well as the Protocol to the AfCHPR on the Establishment of an African Court on Human and Peoples' Rights,⁸⁵

82. Olowu, *supra* note 71, at 14. See also Agbakwa, *supra* note 55, at 188–89 (describing the maladministration and resource wastage that have continually plagued many African states).

83. The recent decision of the African Commission in *Social and Economic Rights Action Center/Center for Economic and Social Rights/Nigeria*, Communication No. 155/96 (2001) bears eloquent testimony to this contention. In that case, the African Commission held the Federal Government of Nigeria to have violated certain provisions of the AfCHPR (freedom from discrimination; right to life; right to property; right to health; right to housing (implied in the duty to protect the family under art. 18); right to food; right of peoples to freely dispose of their wealth and natural resources; and right to safe environment). All the violations were the consequences of environmental degradation arising from extensive oil exploitation in the Niger-Delta region of Nigeria. Although subject to the weaknesses of the African regional human rights system's mechanism *vis-à-vis* enforcement, the decision nonetheless portends a launching pad for the juridical scrutiny of human rights violations committed by African governments. See Dinah Shelton, *INTERNATIONAL DECISIONS: Decision Regarding Communication 155/96 (Social and Economic Rights Action Center v. Nigeria)*. Case No. ACHPR/COMM/A044/1, 96 AM. J. INT'L L. 937 (2002).

84. See *Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Note by the Secretary-General*, U.N. ECOSOC, 53rd Sess., Annex, Agenda Item 14, U.N. Doc. E/CN.4/1997/105 (1996).

85. See *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, Dept. of Foreign

which would expectedly introduce a new juridical machinery in the African regional human rights system,⁸⁶ it is probable that the emerging treaty-based bodies would have to seek guidance in reasoning of domestic courts on these rights particularly as regards the normative content and scope of certain rights.

In the same vein, the jurisprudential processes at the international and regional levels would also greatly influence the interpretation of these rights at domestic levels. Invariably, the development of ESCRs jurisprudence in national courts would evolve a basis for the emerging adjudicatory processes on these rights at the international and regional levels, and *vice-versa*. Ultimately, such a trend would crystallize a tangible rights-based approach to the problem of human development in Africa.

The rights-based approach envisages that the effective protection and promotion of human rights can become a vital instrumentality in ensuring the accountability of African governments, and a platform that will in turn support ongoing efforts aimed at promoting socio-economic justice, a bedrock for the establishment of truly participatory democratic societies.

In other words, a rights-based approach to human development has the capacity to widen the ambits of the social concerns of existing and emerging liberal democratic regimes in Africa. Thus, it would allow the interests of marginalized groups like peasants, workers, women, youths, the deprived, people with disabilities and people living with HIV/AIDS to become relevant issues in mainstream African political and socio-economic discourse.

Affairs, revised on June, 5 2001, at <http://www.dfa.gov.za/for-relations/multilateral/treaties/court.htm> (last visited Sept. 20, 2003). The Protocol has been ratified by six nations: Burkina Faso; Gabon; Mali; Senegal; South Africa; and Uganda. Under art. 34(3), the Protocol requires 15 ratifications to enter into force. See Protocol of the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights: Status of Ratification as of 9 October 2002, at <http://www.aht.ch/africa/ratification%20convention%20African%20Court.doc> (last visited Sept. 20, 2003). Although this required number is yet to be attained, the African Union has expressed strong hope that the Protocol will come into force by the end of January 2004. See, *Africa: Three Major Pan-African Institutions in 2004*, at <http://allafrica.com/stories/printable/200401070004.html> (last visited Jan. 18, 2004).

86. See generally Vincent O. Orlu Nmehielle, *Towards an African Court of Human Rights: Structuring of the Court*, 6 ANN. SURV. INT'L & COMP. L. 27, 49-52 (2000) (examining how, if properly harnessed, the proposed court could increase the capacity of the African regional human rights system).

C. The “Basic Needs” Paradigm

Even though there are conceptual difficulties among scholars on the precise yardstick for measuring human development and in ascertaining the place of human rights in the alleviation of poverty,⁸⁷ there is an increasing consensus on a paradigm of assessment through “unfulfilled [basic] needs or capability shortfalls.”⁸⁸

The “basic needs” approach to development arose in response to the failure of the economic growth recorded in many nations in the late 1970s to alleviate poverty.⁸⁹ It was aimed at evolving effective strategies that would ensure just and fair distribution of basic needs and services that will enable all members of the society to meet their basic requirements for satisfactory life, even at the minimum.⁹⁰ In light of the deprivation of millions of people whose basic needs were never fulfilled despite economic prosperity in the years following World War II, Stewart argued that when expressed in “the language of rights,” the basic needs approach will ensure the recognition of what the priorities of a state should be and increase the “moral weight” and “political commitment” required for the fulfillment of such priorities.⁹¹

In June 1976, The World Employment Conference defined “basic needs” and highlighted the principles to which all nations should be committed. These included (i) the minimal consumption requirements needed for a physically healthy population (e.g. food, shelter, clothing); (ii) access to essential services and amenities (e.g. safe drinking water, sanitation, health and education); (iii) access of all to adequately remunerated employment opportunities; and (iv) the satisfaction of needs of a more qualitative nature: a healthy, humane environment, and popular participation in making decisions that affect the lives and livelihood of the people and their individual freedoms.⁹²

87. See generally Babashola Chinsman, et al, *Conceptual Issues in Human Development and Human Rights*, in Human Development and Human Rights: Report on the Oslo Symposium, Oct. 2–3, 1998, at <http://www.undp.org/hdro/events/oslo/Oslorep4.html#chinsman> (last visited Jan. 18, 2004) (alluding to the “divergent views over the links between development and human rights . . . [borne largely out of] the restrictive interpretations and definitions that had been ascribed to development and human rights”).

88. Julian May, *An Elusive Consensus: Definitions, Measurement and Analysis of Poverty*, in CHOICES FOR THE POOR: LESSONS FROM NATIONAL POVERTY STRATEGIES 23, 32, 36 (Alejandro Grinspun, ed., 2001).

89. Frances Stewart, *Basic Needs Strategies, Human Rights, and the Right to Development*, 11(3) HUM. RTS. Q. 347, 347 (1989).

90. *Id.* at 351–56.

91. *Id.* at 350.

92. *Employment, Growth and Basic Needs: A One-World Problem*, Report of the Director-General of the International Labour Office 7 (1976). See also DIANA HUNT, *ECONOMIC THEORIES OF DEVELOPMENT: AN ANALYSIS OF COMPETING PARADIGMS* 76

The basic needs theory is thus founded on the philosophical assumption that the sanctity of human dignity finds entrenchment and expression in the material and non-material conditions of life required for human survival and happiness.⁹³ The idea behind the “basic needs” theory is that having a right vested in one person constitutes the basis for legitimate claims against another person, group, or organization (with regard to this discourse, states and institutions of state).⁹⁴

To analytical jurists, rights are widely characterized as legitimate claims that give rise to correlative duties or obligations. In this sort of jural relations, the state, as duty-bearer, fulfills its obligation by ensuring or assisting the right-bearer to secure the right involved.⁹⁵

Hohfeld describes this right-duty formula as follows: “X has a right against Y in relation to Z”, where X is the right-bearer, Y is the duty-bearer, and Z is the object or end of that right.⁹⁶ The underpinning concourse of jural opposites and jural correlatives presented by the Hohfeldian theory has engaged ample scholarship in clarifying the nature of liberties and

(1989) (showing that not only were these principles unanimously endorsed by all the delegates from all ILO member states, but it was equally agreed unanimously that all governments should aim at achieving these goals by 2000).

93. Stewart, *supra* note 89, at 350–51. See also Ved P. Nanda, *Development and Human Rights: The Role of International Law and Organizations*, in HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT 287, 297 (George W. Shepherd, Jr. & Ved P. Nanda eds., 1985) (analyzing the essentials of the basic needs concept as being country-specific, and more importantly, as connoting the framework for “the dignity of individuals and peoples and their freedom to chart their destiny without hindrance”) [emphasis added].

94. See Marilyn McMorrow, *Global Poverty, Subsistence Rights, and Consequent Obligations of Rich and Poor States*, in AFRICA, HUMAN RIGHTS, AND THE GLOBAL SYSTEM: THE POLITICAL ECONOMY OF HUMAN RIGHTS IN A CHANGING WORLD 37, 54–55 (Eileen McCarthy-Arnolds et al. eds., 1994) (contending that based on human rights norms, it is the core obligation of states to end poverty). See also Amartya Sen, *The Ends and Means of Sustainability*, Keynote Address at the International Conference on Transition to Sustainability (May 2000), at http://www.iisd.org/pdf/sen_paper.pdf (last visited Mar. 12, 2003) (incorporating the concepts of entitlements, capabilities, opportunities, freedoms and individual rights into social choice theory. This is a magnificent contribution in discarding the idea of human rights categorization). Cf. Howard, *supra* note 76, at 477–78 (agreeing with the “basic needs” approach to African development but decrying the possibility of its being used as a cloak for the denial of CPRs).

95. See generally Ronald Dworkin, *Taking Rights Seriously*, in LLOYD’S INTRODUCTION TO JURISPRUDENCE 1429, 1429–34 (7th ed. 2001) (describing the symmetry of institutional autonomy, political morality and the “background rights of the poor”).

96. This is otherwise referred to as the “Hohfeldian Analysis of Rights.” See HOHFELD’S ANALYSIS OF RIGHTS (1919), reprinted in LLOYD’S INTRODUCTION TO JURISPRUDENCE 355–58 (Freeman, 2001).

rights. The theoretical details need not detain us here.⁹⁷

Extrapolating from the growing consensus on the interconnectedness of all human rights, especially in the post-Cold War era, scholars are becoming more involved in theorizing a development model that is premised on the question of human basic needs.⁹⁸

The day-to-day realities of increasing numbers of people all over the world who are chronically malnourished, unhealthy, homeless and illiterate constitute a huge cutback in whatever progress the world has recorded since the 1990s. The world cannot celebrate its advancement in fundamental freedoms as long as there are overwhelming populations who lack basic essentials for “minimal human well-being.”⁹⁹

In the case of rights that would enhance human development in Africa, these do not have to be interpreted strictly in terms of direct claims on specific items in state fiscal budgets. The obligations contemplated and created are much more about appropriate *policies* than about monetary entitlements. All that will be required to meet the duties imposed in this respect, in the first instance, is for a state to put equitable and effective regulatory frameworks in place. This has generally been lacking or tenuous in Africa. An analogous question illustrates the point: To what extent has the Nigerian government taken “appropriate steps” to fulfill its obligations under article 11 of the ICESCR (right to housing), taking cognizance of the fact that the entire land constituting the territory of each state of the Federal Republic of Nigeria is vested in the governor of such a state on the pretext that he/she holds it “in trust” for the citizens of the state?¹⁰⁰ Alternatively,

97. For the legal and conceptual rationalizations that have ensued from Hohfeld's analysis of rights, see the following expository works: Joseph William Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 1982 WIS. L. REV. 975, 989–90; J.M. Balkin, *The Hohfeldian Approach to Law and Semiotics*, 44 U. MIAMI L. REV. 1119, 1123 (1990).

98. See, e.g., McMorrow, *supra* note 94, at 41–44.

99. See *id.* at 37–38.

100. See §1 Land Use Decree No. 6 of 1978 (now Land Use Act, Chap. 202), Laws of the Federation of Nigeria (LFN), 1990, which provides that “[A]ll land comprised in the territory of each state in the federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians. . . .” This statute essentially divested customary landowners of tenure and created technical mechanisms that make land acquisition more arduous for less privileged Nigerians. The Act runs contrary to ICESCR provisions. The U.N. Committee that monitors the implementation of the ICESCR has elaborated on the “minimum core obligation” in the right to adequate housing, stressing that state policies should increase access to land and not diminish it. See Report of the Committee on Economic, Social and Cultural Rights, General Comment No. 4, 6th Sess., U.N. Doc. E/1992/23 (1991), reprinted in EIDE ET AL., *supra* note 13, at 621–26. See also Scott Leckie, *The Human Rights to Adequate Housing*, in EIDE ET AL., *supra* note 13, at 149, 153–58 (discussing the basic considerations in assessing a state's performance of its obligations). It is worthwhile to note that Tanzania adopted the Nigerian legal approach

put more broadly, how well do the urban population policies in Cameroon, Egypt, Ethiopia, Ivory Coast, Kenya, Nigeria, Tanzania and Zambia (to mention but a few) evince the commitment of the governments involved to guarantee *equal* access to the means of decent housing facilities as contemplated by the CRC, ICESCR and AfCHPR to which they are all parties?¹⁰¹

Essentially, the rights that will make life worth living for Africans do not necessarily entail fiscal commitment. Where they do, it is often in the manifestation of the friction between misdirected prioritization and profligacy, on the one hand, and prudent, accountable public spending, on the other.¹⁰²

It is of critical importance to the foregoing proposition that there exist some structure of power that would confer legitimacy on the right-duty relations engendered by the 'basic needs' component of this approach. This is where the rights-based approach attains its point of entry amidst the broad range of international, regional and domestic frameworks. The implications are for a strengthened and widened scope of strategies within African socio-political systems, a pursuit that must begin with a deepening of intellectual discourse.

Now, additional questions come to the fore: What is the relationship between human rights and human development? Alternatively, what makes the rights-based approach a *sine qua non* for human development in the African context?

For many reasons, the rights-based approach is crucial in defining the benefits of the rights-holder(s) and in identifying the obligations of the duty-bearer(s). With regard to Africa, the more significant *raison d'être* for a rights-based approach to human development can be classified as follows:

to land ownership in 1999. See § (4)1 Land Act, 1999 (Tanzania). For a discussion of the human rights implications of this Act, see Robin Palmer, *The Tanzanian Land Acts, 1999: An Analysis of the Analyses*, at <http://www.oxfam.org.uk/landrights/Tananaly.rdf> (last visited Mar. 21, 2003).

101. See generally April A. Gordon, *Population Growth and Urbanization*, in UNDERSTANDING CONTEMPORARY AFRICA 123, 138 (April A. Gordon & Donald L. Gordon eds., 3d ed. 2001) (describing how in the attempt to discourage rural-urban migration, some African governments resorted to destroying squatter camps in the major cities, without providing alternatives, thereby compounding urban congestion and public health hazards) [hereinafter UNDERSTANDING CONTEMPORARY AFRICA].

102. See Oloka-Onyango, *supra* note 54, at 57–58. See also Agbakwa, *supra* note 55, at 195–96.

1. It represents a comprehensive platform for evaluating the policies and actions of African governments in relation to their human rights obligations contained in various instruments;
2. It will provide a substantive operational agenda for policymakers in meeting the objective of empowerment;¹⁰³
3. If those who constitute the most vulnerable and most deprived in Africa are to be able to make any effective claims, there must be a platform for them or their representatives to access information, to press collectively for individual and/or group rights, and to access a forum for the fair assessment of competing claims;¹⁰⁴
4. It will define the role of the African state as purveyor of those rights that enhance the conditions of human life. In this regard, it does not require the state to be a *Santa Claus* but to become “responsible” for promoting *policies* that will secure those ends;¹⁰⁵
5. It will provide a viable framework for scrutinizing the budgetary commitments of governments and invariably render them accountable to popular demands and priorities; and
6. It will help donor agencies as well as international development organizations to be able to promote human development and poverty reduction initiatives beyond bureaucratic set-ups. Thus far, the long-term dividends of their partnerships with African governments have been problematic.¹⁰⁶

Emphasis on the basic needs approach is proper and strategic in the African social milieu as the primary concern of an overwhelming number of Africans is the realization of the daily requirements of meaningful livelihood.¹⁰⁷

It follows that the rights-based approach can indeed become a veritable vehicle for human development in Africa. However, a conducive environment must be nurtured and sustained for it to function. It is therefore pertinent, at this juncture, to examine the human rights climate

103. A substantive operational agenda is a central theme in the operations of development agencies concerning Africa. See Carceles et al., *supra* note 5, at 7.

104. For example, the African regional human rights mechanism afforded the Ogonis a forum for venting their collective and individual grievances against Nigeria. See Shelton, *supra* note 83, at 937 and accompanying text.

105. This is a plausible compromise in the debate about “resources” and “prioritization.”

106. See Mamphela Ramphele, *supra* note 38.

107. See generally Oloka-Onyango, *supra* note 54, at 53 (stressing the point that human rights issues resonate in the lives of human beings every day). See also BAAH, *supra* note 56, at 75 (quoting Seneca, “a hungry people listens not to reason, nor cares for justice, nor is bent by any prayers,” asserting that the daily struggles of vast populations in the world are about their minimum survival needs).

in Africa with a view to evaluating the dynamics that should inform the exertion of this approach.

VI. HUMAN RIGHTS IN AFRICA: THE DOMINANT DISCOURSE

If Shivji's assertion holds true that "Human rights discourse has become one of the main 'growth points' of the academic industry,"¹⁰⁸ then it would be appropriate to add that scholarship on human rights in Africa has become an uncensored gold mine for anyone, African or non-African, who feels keen enough to write.

Why not? With endless tales of egregious human rights violations exemplified by intermittent coups; civil wars; low-, mid-, and high-level ethno-religious tensions; the seemingly intractable consequences of kleptomaniac leadership and maladministration; the massive woes that have resulted from dictated economic policies; sagging foreign debts (most of which were acquired fraudulently); appalling levels of illiteracy and ignorance; untold hardship and mass suffering; dilapidated infrastructures; the enormous refugee crises; and the fiery menace of HIV/AIDS, Africa cannot but indeed be a launching-pad for any adventurous scholar. There have been many volumes of scholarly works on the subject of human rights in Africa ranging from the philosophical, the moral and the historical, to the legal, structural, and the normative.¹⁰⁹

It has been an engaging endeavor for writers to contend about universalism and the alien origins of human rights in Africa;¹¹⁰ the weaknesses, ambivalence or utopian goals of the African regional human rights system;¹¹¹ the impracticability of certain categories of human

108. ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 9 (1989).

109. See generally *id.* at 10–30 (analyzing how human rights scholarship in Africa had continued to revolve around such questions as universalization, theorization, and prioritization of human rights).

110. See, e.g., Josiah A. M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309 (1987); Rhoda E. Howard, *HUMAN RIGHTS IN COMMONWEALTH AFRICA* 23 (1986); Nana Kusi Appea Busia, Jr., *The Status of Human Rights in Pre-Colonial Africa: Implications for Contemporary Practices*, in *AFRICA, HUMAN RIGHTS, AND THE GLOBAL SYSTEM: THE POLITICAL ECONOMY OF HUMAN RIGHTS IN A CHANGING WORLD* 225 (Eileen McCarthy-Arnolds et al. eds., 1994).

111. See, e.g., BAAH, *supra* note 56, at 39–41; Ebow Bondzie-Simpson, *A Critique of the African Charter on Human and People's Rights*, 31 HOW. L.J. 643 (1988); Rachel Murray, *The African Charter on Human and Peoples' Rights 1987–2000: An Overview of Its Progress and Problems* 1 AFR. HUM. RTS. L. 1 (2001); Shadrack B.O. Gutto, *The Reform and Renewal of the African Regional Human Rights and Peoples' Rights System*, 2 AFR. HUM. RTS. L.J. 175, 181–85 (2001).

rights in and for Africa;¹¹² and the battalion of impediments to human rights protection in African states.¹¹³ Others have concentrated on documenting the history and pace of state sponsored violations of CPRs particularly as they relate to democratization, electioneering and the political process.¹¹⁴

The conceptualization of human rights within the narrow confines of CPRs by African scholars is even manifested in the perceived role of civil society in Africa. Prescriptions for governance and nation building are usually defined in limited terms of increased involvement in constitutionalism and the electoral process in ways that would engender more political democratization.¹¹⁵

With journalistic fervor, most literature on the subject has provided an overflowing well of “expository” insights. These constitute what can be described as *the dominant discourse*.¹¹⁶

The “dominant discourse” is used here to represent the thrust of intellectualism that seeks merely to elucidate on theoretical issues that are in most cases well-settled or cognate issues that are merely normative, or some other ideas that do not define *how* to make human rights meet the enormous social and economic challenges confronting Africa. There remains a whole bundle of development-related issues yet unexplored.¹¹⁷

While it is welcome and commendable for historical developments and theoretical issues to be preserved in narratives, the regret about this scholarly tradition is its lack of promise to proffer an insight into how human rights law, *as it is*, can be translated into vehicles and tools of alleviating human misery and suffering in Africa in plausible ways. The point here is not to castigate scholars who have endeared to such

112. See, e.g., Busia, Jr., *supra* note 110; Osita Eze, Human Rights in Africa: Some Selected Problems 5–6 (1984); Jack Donnelly, *The “Right to Development”: How Not to Link Human Rights and Development*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 261–73 (Claude E. Welch, Jr. & Ronald I. Meltzer eds., 1984). See also El-Obaid & Appiagyei-Atua, *supra* note 68, at 846–47.

113. See, e.g., Osita Eze, *Human Rights Issues and Violations: The African Experience*, in EMERGING HUMAN RIGHTS: THE AFRICAN POLITICAL ECONOMY CONTEXT 95–103 (George W. Shepherd, Jr., & Mark O.C. Anikpo eds., 1990).

114. See generally SHADRACK B.O. GUTTO, HUMAN AND PEOPLES’ RIGHTS FOR THE OPPRESSED: CRITICAL ESSAYS ON THEORY AND PRACTICE FROM SOCIOLOGY OF LAW PERSPECTIVES 47–49 (1993) (ascribing the “backwardness” in the African human rights discourse to “historical” and “sociological” factors).

115. See Peter Mukidi Walubiri, *Liberating African Civil Society: Towards a New Context of Citizen Participation and Progressive Constitutionalism*, in CONSTITUTIONALISM IN AFRICA: CREATING OPPORTUNITIES, FACING CHALLENGES 83, 86–88 (J. Oloka-Onyango ed., 2001).

116. An African scholar, Issa Shivji, had earlier used the expression although in a narrower sense. See SHIVJI, *supra* note 108, at ch. 2.

117. See generally GUTTO, *supra* note 114 (identifying the dearth of “material and intellectual resources” and the existence of repressive regimes as contributive factors to the limitation of productive human rights scholarship in Africa).

an intellectualism, but to sensitize all and sundry to the need to expand the coverage of human rights scholarship on Africa.

If any meaningful social change is to take place in Africa, intellectual thoughts and incisive dialogues must commence now. In this age of increasing globalization of ideas, intellectual efforts on Africa must be intensified in investigating the whole range of new and not-so-new issues such as the responsibility of non-state actors (the multinational enterprises, the transnational corporations and the international financial institutions) for human rights violations; the human rights implications of negotiations under the World Trade Organization (WTO) and the Cotonou Agreements; the horizontal human rights responsibilities of private actors and individuals; the budgetary components of governance; and the possible impact of international criminal law (particularly the Rome Statute) on human development questions in Africa.

The scholarship that will make human rights a living reality for the mass of Africans must assume cutting-edge proportions, identifying and defining alternative methods and strategies for making *all* human rights relevant in Africa. This is a core demand for the rights-based approach canvassed in this paper.

VII. STRATEGIES FOR A RIGHTS-BASED APPROACH TO DEVELOPMENT IN AFRICA

The emergence and sustainability of a rights-based approach to human development in Africa will be contingent on the interplay of several key factors, namely, the free flow of information and accelerated popular participation in decision-making processes; transparent policies genuinely aimed at promoting equity, public accountability, tolerance, the rule of law and human dignity; and a redirected effort towards strengthening social capital by encouraging creativity among, as well as collaboration with, previously divided and marginalized social groups. These are all components of the governance paradigm that will usher in the new type of modernism essential for human development as herein envisaged for Africa.

Certainly, this mind-set requires a syndication of multidimensional, multidisciplinary, ideology-neutral strategies. Some of these trajectories are considered below.

A. *The Political Must Take on a Human Face*

It has been proven, repeatedly, that the bane of the governance system in much of post-colonial Africa is that holders of public offices operate the machinery of the state in such a way that gives little or no consideration to the welfare of the people. This has often been cited as the primary reason for socio-economic crises and political instability in Africa.¹¹⁸

Quite considerable amounts of literature exist depicting the trends that produced the parlous human development scenario in Africa. There has been a contention that immediately after the attainment of independence by many African nations in the 1960s, with the preconceived notion that there can be no genuine political independence without economic empowerment, African leaders and nationalists embarked on rapid moves aimed at establishing firm control over their national economies as well as over foreign capital activities.¹¹⁹

These moves were pursued with vigor and the maximum state capacities wielded by African political leaders in their respective domains. The resultant effect was the breeding of neocolonialism as exemplified in the personalization of governance (“patrimonialism”); heightened intolerance for opposition; culture of patronage; skewed economic policies leading to collapse in thitherto-vibrant economies; increasing dependence on foreign aid and various degrees of social tensions and conflicts that threatened the very existence of the nascent democracies in Africa.¹²⁰

The noticeable trend since the end of the Cold War shows a steady attempt to move towards democratization in many nations of Africa.¹²¹ However, this euphoria of democratization has yet to produce positive

118. *See id.* at 56–70. This is an antithesis to “the full-belly thesis” propounded by Rhoda Howard. *See* Howard, *supra* note 76, and accompanying text.

119. S. S. Kozitsky, *Foreign Private Capital in Africa: Modification of Methods, in* NEOCOLONIALISM AND AFRICA IN THE 1970s 149–50 (E.A. Tarabrin ed., 1978).

120. *See generally* Donald L. Gordon, *African Politics*, in UNDERSTANDING CONTEMPORARY AFRICA 72 (April A. Gordon & Donald L. Gordon eds., 3d ed. 2001) (analyzing the chain of transfer of power at independence, to the centralization of power, to the growth of the patrimonial state through military intervention, to sharp economic decline, to state and social crises, and to the inevitable tragicomedy of structural adjustment).

121. Between 1990 and the end of 2001, elected regimes have emerged in the following African countries which were before 1990 under one-party, apartheid or military regimes: Benin; Ethiopia; Ghana; Kenya; Malawi; Mozambique; Namibia; Nigeria; South Africa; and Zambia, to mention a few. For a detailed discussion of multi-party democratization in Africa in the 1990s, *see* Lise Rakner & Lars Svasand, MULTIPARTY ELECTIONS IN AFRICA’S NEW DEMOCRACIES, Report 7 (2002). *See also* MICHAEL COWEN & LIISA LAAKSO, MULTI-PARTY ELECTIONS IN AFRICA (2002) (containing an evaluation of national elections, local and bye-elections in fourteen African nations throughout the 1990s).

indices of well-being and happiness for the vast majority of Africans.

On a continent where democratization is more fixated on personalized coalitions of power brokers than on democratic performance, and where political leadership is often recognized as ascendancy to wealth, fame and power, the challenge today is to overhaul the democratic processes ranging from electoral structures to party systems. Every effort must be made to make the democratic process respond to *freely* articulated popular opinions.¹²²

Besides the lamentations on scarcity and non-availability of funds for social services, African governments must begin to understand that human development is as much about the mobilization of resources, but much more, about the judicious appropriation of scarce resources. It has been argued that African states have generally failed, neglected or refused to respond appropriately to human development needs because they lack the political will to give concrete expression to policies that would create a conducive atmosphere for the common good.¹²³

Governments in Africa must come to understand what the priorities of their peoples are, and allocate government spending to accord with such priorities. Government leaders and the political class in African nations must rediscover the primary essence of governance, namely, to assure the happiness of the governed. Fulfillment of the basic minimum of proclaimed rights that would alleviate the deprivation of the people and widen their choices is contingent on correct prioritization and sound policy objectives.

122. See generally Dunstan N. Wai, *Human Rights in Sub-Saharan Africa*, in HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES 115 (Adamantia Pollis et al, eds., 1979) (describing how ethnic pluralism and patronage has led to personalization of state power, and making it a difficult task for state institutions to check their own excesses); James C.N. Paul, *Participatory Approaches to Human Rights in Sub-Saharan Africa*, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 213, 257 (Abdullahi Ahmed An-Na'im et al, eds., 1990) [hereinafter CROSS-CULTURAL PERSPECTIVES] (pointing out how historical constitutional structures have become tools for entrenched manipulation of state control and resources, and a weapon for the exclusion of criticism); James S. Wunsch et al, *The Failure of the Centralized African State*, in THE FAILURE OF THE CENTRALIZED STATE: INSTITUTIONS AND SELF-GOVERNANCE IN AFRICA 1-22. (James S. Wunsch et al, eds., 1990) [hereinafter THE FAILURE OF THE CENTRALIZED STATE]; Shadrack B.O. Gutto, *supra* note 114, at 55-72 (1993) (analyzing how "domestic authoritarian state machinery," "economic straightjackets," and "*de facto* impunity policies" have combined to impact any meaningful democratization in negative ways in Africa).

123. See Agbakwa, *supra* note 55, at 195.

Although there have been neo-liberal arguments on “destatization” (weakening of state control of the apparatuses of governance) as an antidote to socio-economic malformations in Africa,¹²⁴ this paper contends that rolling back state capacity is not the answer. Rather, it is the operation of machinery of governance that must be overhauled by every legitimate means.

The central concern here is placing of human rights squarely on the African development agenda in such a way that would guarantee that all Africans acquire the opportunity to attain their maximum potentials.

While it is recognized that the typical African government will not accede to change, civil society must evolve and prosecute the modalities for this approach.¹²⁵

It is submitted here that the much vaunted “democratic” gains may not for long endure if the living conditions of human beings in Africa continue to slip into further decadence.

B. International Collaborative Efforts

With the albatross of economic misfortunes, governance crises and development mirage that have remained in the repository of Africa against the tide of New Age progress, Africa is one continent that desperately demands global attention.

The consequences of the current African quagmire cannot be abandoned to Africa to bear alone. One of the formidable pillars for the rights-based approach is the formation of a collaborative agenda within the international community. More significant in this area are the multilateral development organizations.

Considered below is the need for a repositioning of the efforts of some of these key institutions in the context of this discourse.

1. International Institutions and Development Agencies

There has been a series of debates as to whether global institutions, particularly international financial institutions [hereinafter IFIs] such as the IMF and the World Bank Group,¹²⁶ do have (or should have) any role

124. A.B. Zack-Williams, *No Democracy, No Development: Reflections on Democracy & Development in Africa*, 28 REV. AFR. POL. ECON. 213 (2001).

125. The role of the civil society in this discourse is given more elaborate consideration under a separate heading in this paper. *See infra* at *.

126. “The World Bank Group” consists of the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Center of Investment Disputes (ICSID). *See generally* The World Bank Group, *Development & Human Rights: The Role of the Bank*, available

to play in human rights concerns.¹²⁷ Against the background of mounting criticism in relation to human rights violations and the adverse social consequences of the operations of the World Bank, the Bank has continued to pursue a series of development assistance strategies aimed at reducing poverty and human misery.¹²⁸ This is of significance for Africa.

While declining to be engaged in human rights work in “the language of human rights advocates,” the World Bank has adopted as its central concern a structured program of poverty reduction in Africa.¹²⁹ The main thrust of the World Bank’s approach in this regard emphasizes the improvement in social services as a core element of its poverty reduction efforts.¹³⁰

However, progress is slow and retarded because the approach does not reflect the totality of the social problems within varying African contexts.

Most of the World Bank/IMF initiatives heavily emphasize the “intellectual resources” and “analytical work” entirely produced by academics.¹³¹ The World Bank itself confesses, “Part of the problem is that the information (they produce) is typically fragmented or hard to access, and sometimes dated, but the broader problem relates to issues of funding and incentives to get the work done.”¹³² While the IFIs’ approach seeks to make giant strides in creating opportunities for socially relevant initiatives in collaboration with NGOs in different countries, these activities are limited to input of groups

at <http://www.worldbank.org/html/extdr/rights/hrintro.htm> (last visited Sept. 1, 2003), (defining the composition of “the World Bank Group”) [hereinafter The World Bank Group].

127. See, e.g., Mamphela Ramphela, *Human Rights and Human Development*, *supra* note 38. There has been a running argument that since the World Bank’s legal framework, as enshrined in its 1944 Articles of Agreement, prohibits the consideration of political issues, the World Bank is therefore prevented from human rights concerns. See, e.g., WORLD BANK (2002) *Human Rights and Sustainable Development: What Role for the Bank?* 3–4, 8 (Summary of World Bank Workshop Proceedings, May 2, 2002) (on file with author); The World Bank Group, *supra* note 126.; and, Oloka-Onyango, *Beyond the Rhetoric*, *supra* note 54, at 19–28.

128. See The World Bank Group, *supra* note 126.

129. *Id.*

130. This latest drive in the World Bank’s efforts to enhance human development in Africa is the outcome of the 1996 initiative by the World Bank and the IMF aimed at mobilizing African governments towards poverty reduction through certain defined structural and social policy reforms. The efforts were initially targeted at the Highly Indebted Poor Countries (HIPC). This process is officially known as the HIPC Initiative. For a more detailed discussion, see Tan *et al.*, *supra* note 53, at 1–7.

131. See *id.* at 16.

132. *Id.*

based within governmental circles and in the urban centers of Africa.¹³³

Following a critical examination of the development-related activities of IFIs *vis-à-vis* the current trends in the economic reforms introduced at the insistence of IFIs, a scholar has asserted that such activities have actually engendered a gradual shifting from a liberal pluralist model of society to one of deepened social division and exclusion in Africa.¹³⁴

It is suggested here that IFIs and development agencies working on Africa should redirect their investigative and research efforts in a way that would reflect the impact of their policies on individuals with verifiable exactitude. It is only when these bodies are accurately informed about social burdens that they can positively design or support projects for concrete action.

Reinforcing this argument are the various studies and empirical surveys that show that almost every international effort towards improving state capacity in Africa has failed simply because such initiatives are not people-based and are never “owned” by the people.¹³⁵

Therefore, these international institutions need to consult with citizens of respective African countries in such a way that the tentacles of developmental assessment move beyond the confines of formalism, bureaucracies and elitism.

The collaboration and cooperation between these institutions and NGOs must advance beyond white-collared activists and experts to harness the potentials of such initiatives through direct contact with the traditional structures of civil society in Africa. Any development agenda that flows in top-down fashion, excluding local consultations, is most likely to remain mere abstraction.

IFIs and development agencies dealing with Africa must evolve credible mechanisms that will ensure that the *people* are allowed to speak up for themselves, to organize themselves, and to make an impact

133. *Id.* This is with reference to the World Bank conducting its cooperative efforts with civil society groups in form of “collaboration between governments and NGOs, including the *involvement of NGOs in specific activities under subcontracting arrangements . . .* by sharing technical resources (such as the PRSP Sourcebook, which is now widely *available via the internet. . .*” (emphasis added). In view of the pallid state of infrastructures in Africa, the remoteness of these sorts of therapies in meeting the gross socio-economic ailments in grassroots Africa can be conjectured.

134. Bonnie Campbell, *Governance, Institutional Reform & the State: International Financial Institutions & Political Transition in Africa*, 28 REV. AFR. POL. ECON. 155 (2001).

135. Karl Wohlmuth, *Good Governance and Economic Development: New Foundations for Growth in Africa* (INSTITUTE FOR WORLD ECONOMICS AND INTERNATIONAL MANAGEMENT, Bremen, Dec. 1998).

on policy-making, and thus, make their choices real life experience. Not only will this “bottom-up” strategy strengthen their goal-achievement and relevance, it will provide them with appropriate forums for verifying assumptions, projections and outcomes.

2. *Regional Initiatives and Implementation*

It has been stressed that the themes of good governance and development within the African regional arrangement preceded the global discussion in many respects.¹³⁶ The wide range of initiatives that were to govern the discourse in Africa has been highlighted earlier in this paper.¹³⁷

Since the early years of the OAU, there has been an emphasis on the goal of development for Africa. However, despite various lofty African regional initiatives that proclaim and emphasize clear commitments to democracy, popular participation, good governance, accountable leadership and human development, these efforts have often been unproductive as a result of the lack of political will.¹³⁸

While there have been recent increased efforts at advancing good governance, human rights and development through increased regional integration as seen in NEPAD and the African Union (AU), concerns still persist about the genuine intentions of African governments and leaders to make these goals a reality for their peoples.¹³⁹

Rather than churning out more rhetoric, the platforms already designed for action must be made to produce results, and to work with tangible dividends at the levels of the people. Visionary faith must be accompanied by positive works, otherwise it is dead.¹⁴⁰

In another vein, the African regional system must de-emphasize its

136. *Id.* at 18.

137. *See supra* notes 62–64 and accompanying text. *See also* Udombana, *supra* note 63, at 196–99, 209–18 (discussing the backgrounds and objectives of the LPA, the AEC, the AU and NEPAD).

138. *See* Rasheed & Chole, *supra* note 65, at 3. *See also* Oloka-Onyango, *Beyond the Rhetoric*, *supra* note 54, at 42–44 (decrying the continued marginalization of Africa within global economy despite many initiatives).

139. *See* Udombana, *supra* note 63, at 202–06. For a discussion of the overlapping normative structures of both the NEPAD and the AU that could hamper the effectiveness of the African development agenda, *see* Evarist Baimu, *Human Rights Mechanisms and Structures under NEPAD and the African Union: Emerging Trends towards Proliferation and Duplication*, Occasional Paper No. 15, 1–15 (Centre for Human Rights, Pretoria, Aug. 2002).

140. This is an allusion to the Epistelian expression “faith by itself, if it does not have works, is dead” in *James 2:17* (New King James).

exclusively state-centered approach to governance and development initiatives. It is plausible to posit that regional efforts gain more recognition and legitimacy when they are people-owned and people-controlled, invariably increasing the chances of success and productivity.¹⁴¹

African regional development initiatives must also incorporate a human rights focus into all such initiatives. If African states are to abide by the enunciated principles to which they have formally committed themselves, they must accept the formulation of credible platforms for accountability. The rights-based approach avails such.

Again, beyond the projectionism of Africa's woes solely on IFIs and other multilateral agencies, African leaders must place squarely on the regional development agenda not only the attainment of (nominal) democracy but more essentially, of social and economic democracy.

While the sometimes-ambivalent involvement of foreign powers in African development is acknowledged and well documented,¹⁴² the words of George W. Shepherd are more apposite in describing the African situation in this regard: "The oppressor has not always been the foreigner, and today the most tyrannical systems of human rights violation are often the regimes of the new states themselves."¹⁴³

The moral is, concerning development, Africa can no longer afford to play the ostrich or to resort to buck-passing in its present circumstances. Its leaders and peoples must conscientiously brace up to the challenges thereby presented, in a result-oriented fashion.

141. See generally JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* 85–180 (1998) (contending strongly that human development initiative have failed in many parts of the world because the design and implementation failed to consider local peculiarities).

142. See Peter J. Schraeder, *African International Relations*, in *UNDERSTANDING CONTEMPORARY AFRICA* 143–87 (April A. Gordon & Donald L. Gordon eds., 3d ed. 2001).

143. George W. Shepherd, Jr., *The Power System and Basic Human Rights: From Tribute to Self-Reliance*, in *HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT* 13 (George W. Shepherd, Jr. & Ved P. Nanda eds., 1985).

*C. Challenges for the Civil Society*¹⁴⁴

The role of the organized civil society in the approach being canvassed here cannot be overemphasized. Across the world, both within regional arrangements as well as institutions of global governance, the paradigm is consistently shifting towards effective partnership between governments and civil society groups to the ends of creating a conducive atmosphere for good and responsible governance through strong and active civil society participation.¹⁴⁵

At the UN level, this trend is the culmination of almost twenty years of diplomatic negotiations into the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms [hereinafter the Declaration].¹⁴⁶ The Declaration not only stresses the crucial role of individuals, groups and associations in the promotion and protection of all human rights and freedoms,¹⁴⁷ but goes further to define the limitations on the

144. This paper recognizes that the term “civil society” has acquired checkered interpretations by various writers. Within different paradigms, it has been used to denote NGOs, community based organizations [hereinafter CBOs], peoples’ organizations [hereinafter POs], governmental non-governmental organizations [hereinafter GONGOS], international non-governmental organizations (INGOs), etc. *See generally Human Development: An African Perspective*, at http://hdr.undp.org/docs/publications/ocational_papers/oc17c.htm (last visited Jan. 18, 2004) (identifying the potential roles of POs, CBOs, NGOs and other people-based organizations in pursuing a coherent human development agenda in Africa). In the context of this analysis, the terminology encompasses independent groups of activists, private individuals, scholars, African writers, research institutes, media, artisans, religious organizations, local leaders, traditional societies and networks existing within the African region, or outside Africa but with focus on Africa, without subservience or duty of allegiance to any ruling administration or government in Africa.

145. *See* Mary Kaldor, *Civil Society and Accountability: Occasional Paper for Human Development Report 2002*, Occasional Paper 2002/6 (U.N. Development Programme, 2002), available at http://hdr.undp.org/docs/publications/background_papers/2002/Kaldor_2002.pdf.

146. *Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. Res. 53, U.N. GAOR Supp., 85th mtg., U.N. Doc. A/RES/53/144 (1999). The Declaration is more popularly known as the UN Declaration on Human Rights Defenders.

147. *See* G.A. Res. 53, *supra* note 6, at arts. 1, 5, 6, 7, 8, 9, 11, 12 and 13. Article 16 expresses this role more succinctly as follows: “Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas. . . .”

rights proclaimed therein as only those in consonance with international law.¹⁴⁸ To demonstrate its commitment to the theme of the Declaration, the UN Commission on Human Rights appointed a Special Representative as a thematic mechanism to monitor restrictions placed by states on independent groups and private individuals who are engaged in human rights promotion and protection.¹⁴⁹

Within the African regional system, there is no dearth of legal frameworks for civil society partnership in governance.¹⁵⁰ However, there is yet to be positive evidence that those subsisting instruments have attained any remarkable level of use or relevance.

In a continent laden with staggering levels of illiteracy and ignorance, the organized civil society groups and activists must shoulder the responsibility of popular awareness, mass mobilization, grassroots education and participation founded on the existing platforms. It has been demonstrated elsewhere in the world that the success of any endeavor that seeks to address the deprivations and needs of human beings will invariably depend on its level of patronage from, and cooperation with the affected people.¹⁵¹ This paper now considers some of the salient issues in these regards.

1. The Imperative of an Integrative Approach

As already noted, while in other regions of the world there has been an increasing trend in establishing a nexus between human rights and human development, and invariably, a growing articulation of the interdependence and indivisibility of all human rights, the same does not hold true for Africa.¹⁵²

The bifurcated debate about resources and justiciability has largely been responsible for the notion that economic development must precede

148. *Id.* at arts. 4, 17.

149. *See generally Commission on Human Rights Resolution 2000/61*, U.N. Commission on Human Rights, 56th Sess., 65th mtg. at 1–2, U.N. Doc. E/CN.4/RES/2000/1 (2000). Pursuant to this instrument, Ms. Hina Jilani from Pakistan was appointed and she assumed office on August 18, 2000. *See Lawyers Committee for Human Rights, Special Representative on Human Rights Defenders* (2000), available at http://www.lchr.org/defenders/hrd_special/hrd_special_rep.htm (last visited Sept. 1, 2003).

150. *See supra* notes 62–64 and accompanying text.

151. *See* Robert L. Woodson, *The Importance of Neighborhood Organizations in Meeting Human Needs*, in *MEETING HUMAN NEEDS: TOWARDS A NEW PUBLIC PHILOSOPHY* 132, 133–35 (Jack A. Meyer, ed., 1982) (showing that the “New Deal” response in the United States to the Great Depression of the 1930s owed its meaning and relevance to effective partnership with the civil society).

152. *See* Agbakwa, *supra* note 55, at 206.

human rights protection in Africa.¹⁵³ It is difficult to subscribe to that perception.

The traditional focus of human rights NGOs in Africa has largely been confined to those that directly relate to democracy and the democratic process; notably, elections, trials, press freedom and other elements of CPRs. That culture is understandable in view of the long history of repression and monolithic governance in much of Africa. However, after putting elected regimes in office, what next? Now is the time when civil society groups in Africa must begin to articulate, as a central theme, the indivisibility of all human rights within their respective domestic legal systems as well as the regional human rights system.

The quest for relevance beyond the electoral process is becoming particularly problematic for the human rights movement in many African countries. There should have been no dilemma for the civil society if all the broad dynamics of governance are dialectically incorporated into the wider context of democratic struggles.¹⁵⁴

An integrative approach to human rights has the advantage of keeping the civil society movements relevant and critical to development in Africa.

A stronger platform for governmental accountability and people-oriented governance can be established in Africa through the integrative human rights approach. Although content to be a subject of relegation in the African human rights discourse,¹⁵⁵ ESCRs embody the essential elements required for human life, dignity and freedom. This bundle of rights establishes and assures a platform for social justice and the well-being of all.

Beyond phobia of the fiscal implications of ESCRs, South African courts have consistently interpreted the scope and content of positive ESCRs provisions and the state has not collapsed.¹⁵⁶

153. Howard, *supra* note 76, at 469 (suggesting that it is the attainment of economic development that will usher in the "stable social order" required for the survival of Africa).

154. See generally GUTTO, *supra* note 114, at 120–38 (analyzing the conservatism of African human rights movement and how it has aided a weak culture of popular democracy and highlighting the "separatist" approach that stunts the growth of developmental rights).

155. See Agbakwa, *supra* note 55, at 208.

156. The following are the most outstanding judicial decisions on the subject of ESCRs in South Africa: Soobramoney v. Minister of Health (KwaZulu-Natal), 1998 (1) SA 765 (CC) (Constitutional Ct. of S. Afr.), and Government of the Republic of South Africa & Others v Grootboom & Others 2000 (11) BCLR 1169 (CC). For a discussion on the South African jurisprudence on ESCRs, see Steiner, *supra* note 10, at 30–31; and Olowu, *supra* note 71, at 27–29.

There is an increasing recognition among governments, the UN system, regional arrangements, civil society groups and even international development institutions of the critical importance of the integrative human rights approach to development. Beyond this, there have been plausible pointers to the capability of this approach to serve as a tool of governmental reform.¹⁵⁷ This is a significant insight for the civil society in Africa.

It is the responsibility of scholars and activists on African issues to begin to delve into various aspects of the integrative human rights approach. It must become a pedestal for social and economic democratization in African nations.

While a case is not being made for African human rights scholars and NGOs to abandon their traditional focus on CPRs, an attempt is being made here to sensitize them to the challenge of exploring the means of translating these rights into tools for the advancement of popular struggles against poverty, inequality and misery in Africa.

2. *Budgetary Process and Popular Participation*

The approach being conceptualized in this discourse considers the accountability of state institutions and those who operate them as pivotal machinery in matching state resources against the delivery of human needs. As many African nations continue to wallow under the weight of foreign debt, it cannot be more pertinent that the people who bear the brunt must have a say in the destiny of their nations. This is what makes it crucial to evaluate the level of popular participation in the budgetary processes in African nations.

Alarming, in many African states, governmental budgets are largely designed in furtive and hazy fashion with little or no room for public debate because the budgetary process is traditionally perceived as an exclusive governmental business.¹⁵⁸

Although most African nations have statutory regulations for their fiscal arrangements, the legislative capacity for thorough scrutiny is usually weak and haphazard as most parliamentarians lack the technical skills for the volumes of numerical details presented to them.¹⁵⁹ In an extensive survey of some African democracies, over the space of the last five years, a general pattern was established of the absence of civil

157. EDGAR OWENS, *THE FUTURE OF FREEDOM IN THE DEVELOPING WORLD* 33–39 (1987).

158. Alta Folscher, *Transparency and Participation in the Budgetary Process*, in *Budget Transparency and Participation, Five African Case Studies* 29–35 (Alta Folscher ed., 2002).

159. *See id.* at 16, 20–24.

society involvement in budgetary work.¹⁶⁰

The connectivity between human rights, development and fiscal budgets in Africa cannot be overemphasized. While it is acknowledged that not all positive human rights can be *fully* achieved overnight, every government in Africa must be pressured into fulfilling those human rights obligations as would enhance living conditions, to the limits of their *maximum* resource capacity.

The challenge of the civil society in Africa is to become deeply involved in the budgetary processes in every country, building the framework of their involvement on the windows of opportunity. Civil society groups will achieve an impact by compiling empirical data with which to confront the governments of respective African states.

This effort must also be complemented by public pressure as well as litigation and other legitimate non-litigation methods. Study has shown the successful impact of analytical budgetary work, lobbying and judicial recourse in some countries where civil society groups have chosen to act.¹⁶¹

The stupendous level of official corruption in Africa is a matter relatively well researched and publicized.¹⁶² Taming the menace of corruption and graft in African states has been accorded some level of official response at both national and regional levels. Many African nations have put in place anti-corruption mechanisms aimed at apprehending and punishing corrupt public officials and their accomplices.¹⁶³ There is also an approved Draft African Union Convention on Preventing and Combating Corruption awaiting formal adoption by African Heads of State and Government.¹⁶⁴

While not undermining the capacity of these broad mechanisms to

160. See generally *id.* at 46–47 (showing that apart from South Africa, civil society involvement in budgetary work has been curtailed by a combination of factors). The comprehensive study covered Ghana; Kenya, Nigeria, Zambia and South Africa, which are all “new” democracies.

161. *Id.* at 46–47.

162. See, e.g., Alhaji B.M. Marong, *TOWARD A NORMATIVE CONCENSUS AGAINST CORRUPTION: Legal Effects of the Principles to Combat Corruption in Africa*, 30 *DENV. J. INT'L L. & POL'Y* 99, 99–129 (2002); Oloka-Onyango, *Beyond the Rhetoric*, *supra* note 54, at 3–4; Agbakwa, *supra* note 55, at 189; and Donald Gordon, *African Politics*, in *UNDERSTANDING CONTEMPORARY AFRICA* 80–82 (April A. Gordon & Donald L. Gordon eds., 3d ed. 2001).

163. See Marong, *supra* note 162, at 118–21.

164. See *Draft African Union Convention on Preventing and Combating Corruption*, Min/Draft/AU/Conv/Comb/Corruption (II) Rev. 5 (2002), at <http://www.alliancesforafrica.org/news.asp> (last visited Sept. 12, 2003).

serve as viable platforms of action, it is still very important that the people themselves combat governmental corruption through concerted efforts. Budgetary participation by the civil society will go a long way in advancing the anti-corruption crusade in Africa.

No meaningful human development will occur in Africa without subjecting governmental spending to public scrutiny.

3. *Monitoring, Research and Documentation*

Many attempts made by governments, the international community and development NGOs alike towards enhancing human development in Africa are predicated on information founded upon formal indices, data and statistics. The fall-out has been an unmistakable disconnection between recommendations and results.¹⁶⁵

It therefore becomes discernible *why* and *how* many proposed solutions to Africa's myriad problems have often failed the test of implementation and relevance: there is a gulf in the line of communication between experts, policy makers and development agencies on the one hand, and the people at the grassroots who should be the first in line of policy formulation, on the other despite the robust and persuasive scholarly appreciation of the notion that the success of any endeavor that seeks to address the deprivations and needs of human beings will invariably depend on its level of patronage from and cooperation with the affected people.¹⁶⁶

Without doubt, for a rights-based approach to development to be meaningful in Africa, it must be research driven. However, research

165. See generally Kitula King'ei, *Language in Development Research in 21st Century Africa*, available at <http://web.africa.ufl.edu/asq/v3/v3i3a3.htm> (last visited Sept. 4, 2003) (contending that most projects carried out at the grassroots are abstractions to those people who should benefit from such projects).

166. See generally, Siddiq R. Osmani, *Participatory Governance and Poverty Reduction*, in CHOICES FOR THE POOR: LESSONS FROM NATIONAL POVERTY STRATEGIES 121, 125-37 (Alejandro Grinspun, ed., 2001) [hereinafter CHOICES FOR THE POOR] (demonstrating how the weak level of public participation in national resource management and poverty alleviation programs have affected their overall productivity in Nepal, India, Uganda, Kenya, Tanzania, and Mongolia); Julian May, *Lesotho, Uganda, Zambia and Maldives*, in CHOICES FOR THE POOR, at 231, 241-44 (showing the critical role of public engagement and participation in the formulation and success of anti-poverty policies); Elinor Ostrom & Roy Gardiner, *Coping with Asymmetries in the Commons: Self-Governing Irrigation Systems Can Work*, 7(4) J. ECON. PERSP. 93-112 (1993). For purposes of mere analogy, see Robert L. Woodson, *The Importance of Neighborhood Organizations in Meeting Human Needs*, in MEETING HUMAN NEEDS: TOWARDS A NEW PUBLIC PHILOSOPHY 132, 133-35 (Jack A. Meyer ed., 1982) (analyzing the impact of the "New Deal" policy in the United States to the Great Depression of the 1930s, particularly its relevance to the affected class of the society). See also JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* (1999).

in this context can only produce effective results when it focuses on thorough socio-cultural and economic investigations that can provide vital data, inclusive of grassroots realities. This sort of research approach is necessary to arrive at sound, well-informed, credible policies that will serve as launching pads for good governance and development.

Given the uneven polarities in urban-rural structures and the depth of illiteracy in most of Africa, the need arises to evolve strategies that would take into account local situations, frustrations and priorities. To this end, effective media strategies should be developed to meet the needs of awareness and mobilization at the grassroots. The electronic and print media should be adapted to local languages and local values for maximum effect.

The monitoring and documentation of human rights violations and levels of human deprivations must move beyond city centers. There must be recognition of the strong implications that socio-economic conditions at grassroots levels portend for the well-being of urban dwellers and governments alike. This sort of approach has been lacking.¹⁶⁷

The experience of civil society initiatives and activities in Africa, more often than not, has been concentrated in the metropolitan cities.¹⁶⁸ The other side of the coin is the almost total neglect of traditional civil society structures in development discourse in Africa.

Correlative to the foregoing is the question of the capacity of the civil society in Africa to function effectively. Traditional civil society structures must be engaged and energized in strengthening the rights-based approach.

In recognition of the scarcity of funds for civil society activities in Africa, civil society groups must develop collaborative networks. This will go a long way in empowering them for their human development tasks.

Scholarly human rights and human development research must work in tandem with the traditional structures of the African civil society. Rather than feeding abstract data reports and recommendations into development policies, efforts must begin to be made to incorporate the input of the unlearned, unskilled populace at the grassroots. It is illogical to concentrate on a stereotype of formalized monitoring and documentation

167. *Id.* at 3-5.

168. *See* Kaldor, *supra* note 145, at 10.

that excludes wisdom of the ultimate beneficiaries.

The cornerstone of the concerns raised here is observation. It is practically impossible to interpret social currents in any African country solely through formalized generalizations or abstract indices.¹⁶⁹ There must be added a “people” component.

We must all recognize that only by embedding discussions of human rights in the locally meaningful struggles that confront impoverished Africans, and by promoting broader and direct participation, and invariably self-determination, can any African agenda for human development acquire success and sustenance.

VIII. CONCLUSIONS: A NEW DEAL FOR AFRICA

Confronting the human development crisis in Africa is indeed a formidable challenge, not only for Africa and Africans but also for all humanity in this age. The struggle to give concrete expression to the “dignity and worth” of all human beings in Africa is a matter that must occupy the center of today’s global agenda. The promotion of a rights-based approach to human development in Africa is not to be interpreted merely as a legal question but also as a moral obligation for all humanity. How then do we tackle the broad gamut of issues highlighted herein?

This paper has canvassed a holistic framework that will promote investment in the *people* of Africa in respect of their health, nutrition, shelter, education and overall well-being. It contemplates an agenda that will strengthen the capacity, responsibility, sensitivity and the willingness of African governments to pursue the welfare aspirations of their peoples.

The approach contemplates an era of increased civil society input in the governance process ensuring public accountability that would in turn encourage and foster the socio-economic environment required for human growth within broader schemes of national prosperity.

This paper recognizes that if governments in Africa will promote, protect, respect, and fulfill all those rights that will enhance the value and dignity of every African, it will have to be the result of pragmatic activism by the civil society. Towards that end, this study has attempted to establish a causal relationship between human development and economic growth and has identified such a relationship as a basis for synergy between development economists and human rights advocates.

An attempt has been made to demonstrate that the strategies and efforts aimed at improving the lot of Africans must be taken beyond the

169. PENINA M. MLAMA, *CULTURE AND DEVELOPMENT* 8 (1991).

lofty heights of legalism to the social and moral planes. Beyond being a matter confined to macroeconomics and political propositions, the human development question in Africa is a pursuit that must be nurtured in the minds of the people.

Far from being an *ex cathedra* pronouncement on all the dynamics that would inform a rights-based approach to human development in Africa, this effort will serve its purpose if it arouses interest in further investigation.

