

**BEYOND THE MILLENNIUM DEVELOPMENT GOALS:  
A RIGHTS-BASED AGENDA FOR AFRICA**

by

**Khanyisa Ngqata**

LLB

Student Number: 25866109

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**Supervisor: Prof OJ Olowu**

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## DECLARATION

I, **Khanyisa Ngqata**, declare that the work presented in this dissertation is original. It has not been presented to any other university or institution. Where other people's work have been used, references have been provided, and in some cases quotations made. It is in this regard that I declare this work as originally mine. It is hereby presented in the fulfilment of the requirements for the award of the LLM Degree.

Signed.....

Date.....

## **DEDICATION**

This work is dedicated to all Africans living in squalor and in poverty.

## **ACKNOWLEDGEMENTS**

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## **ABSTRACT**

African states were active participants in the processes leading to the emergence of the Millennium Development Goals (MDGs) in 2015. This study attempts to assess specific proposals for the MDGs. These proposals should facilitate a primary but a systematic evaluation of the proposed goals and seek to establish whether there is a vigorous option for a post-2015 framework.

This study further describes how the framework is going to contribute towards the changes necessary to achieve the vision incorporated in the MDGs. The vision and the mission of the MDGs shall be looked at from the perspectives of development, rights-based approach for the implementation and realisation of a human-focused agenda, particularly as far as Africa is concerned.

As all indicators stand presently, most of the targets of the MDGs will not be reached by 2015, particularly in Sub-Saharan Africa. What implications does this realisation portend for African states? After 2015, what should be the strategic agenda for African states in order to deal with the complex realities of poverty, inequality, climate change, infrastructure, health, education and sustainable governance?

This study views the challenges of stunted development in much of Africa as the very bedrock of numerous conflicts, tensions and upheavals which constantly threaten the stability of African states. It is therefore a modest attempt at devising viable responses to some of the tangible developmental problems of the continent, relying on the broad array of international and regional normative standards and institutional mechanisms.

## **LIST OF ABBREVIATIONS**

<b>AFDB</b>	African Development Bank
<b>AEC</b>	African Economic Community
<b>AU</b>	African Union
<b>APRM</b>	African Peer Review Mechanisms
<b>CAT</b>	Convention against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment
<b>CCPR</b>	Convention on Civil and Political Rights
<b>CEDAW</b>	Convention on Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Convention on the Elimination on All Forms of Racial Discrimination
<b>CESCR</b>	Convention on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ECA</b>	Economic Commission of Africa
<b>ECOSOC</b>	Economic and Social Council
<b>ECOWAS</b>	Economic Community of West African States
<b>ESCR</b>	Economic, Social and Cultural Rights
<b>FAO</b>	Food and Agriculture Organisation
<b>GDI</b>	Gender Development Index
<b>HDR</b>	Human Development Report
<b>HIPCs</b>	Heavily Indebted Poor Countries
<b>IFIs</b>	International Financial Institutions
<b>ILO</b>	International Labour Organisation
<b>IMF</b>	International Monetary Fund
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NGO</b>	Non-Governmental Organisation

<b>OAU</b>	Organisation of African Unity
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PRSPs</b>	Poverty Reduction Strategy Papers
<b>PDI</b>	Poverty Development Index
<b>SAPs</b>	Structural Adjustments Programs
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNICEF</b>	United Nations Children's Fund
<b>UNESCO</b>	Nations Educational, Scientific and Cultural Organisation
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WFP</b>	World Food Programme
<b>WHO</b>	World Health Organisation

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## CHAPTER 1

### INTRODUCTION

#### 1.1 BACKGROUND TO THE STUDY

Some people will blame our colonial oppressors. Well in some cases part of it is true but a whole lot of the blame should be put squarely on our shoulders. Independence was thought to be the beginning of the golden era where political freedom and expression, freedom of association, free enterprise, economic prosperity, less ethnocentrism, responsibility and accountability of each and every one prevailed. These lofty ideas never happened because we replaced white imperialism with the black one- Ghana Drum.<sup>1</sup>

The decolonisation of Africa in the 1960s was a defining moment for Africa. A historical outlook is important in order to understand why African countries have failed to develop the African states after they have obtained independence. There have been two types of development initiatives in post-independence Africa; initiative by Africa and initiatives for Africa.<sup>2</sup> The initiatives by Africa were those initiatives that were designed and implemented by African countries after independence, and the initiatives for Africa refers to the initiatives that were designed for Africa and implemented through international institutions.<sup>3</sup>

In the 1960s, soon after the independence African countries did reasonably well and their economies grew quite significantly.<sup>4</sup> In those years, when political elites were relatively small and were still close to the masses who had supported them in their struggle against colonialism, they made a great deal of determination not only to grow their countries' economies but also to distribute the benefits of growth to their peoples through investment in social and physical infrastructure.<sup>5</sup>

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<sup>1</sup> Houngnikpo *Africa's Elusive Quest for Development* 15.

<sup>2</sup> Baah *Africa Labour Research Workshop, Johannesburg 22-23 May 2003* 1.

<sup>3</sup> Baah *Africa Labour Research Workshop, Johannesburg 22-23 May 2003* 1, 1.

<sup>4</sup> Mbeki *Architects of Poverty Why African Capitalism Needs Changing* 3.

<sup>5</sup> Mbeki *Architects of Poverty Why African Capitalism Needs Changing* 3, 4.

The first two decades after independence roughly, 1960s and 1970s may be called the age of developmentalism. The next decade that is the 1980s has been characterised as Africa's lost decade.

The economic situation changed dramatically in the late 1970s and 1980s, by the 1990s the African state had become the most demonised, demeaned for its weakness, the interference with smooth operating of markets, the authoritarian character, its ubiquity and its dependence on foreign powers.<sup>6</sup> The developmental state ambitions were pursued after the independence; however the developmental project was not supported by sustainable visions of development. During the first one and half decades of independence, African economies showed modest growth, modest in comparison to other continents, but impressive given the initial conditions at the time of independence.<sup>7</sup> Investments and savings ranged between 15 to twenty per cent of the Gross Domestic Product (GDP), primary and secondary school enrolment was expanded and tertiary education, which in many countries did not exist during the colonial rule, was introduced, medical and health statistics also showed improvement.<sup>8</sup> However, this growth and development was unsustainable as it predicated on the reinforcement of colonial rule.<sup>9</sup> The main weakness was imperious statist intervention in the economy, supported initially by primary sector export income, poorly performing state owned enterprises were kept on the books and subsidised by the treasury becoming a major exhaustion on scarce foreign exchange reserves.<sup>10</sup> Acknowledgment of tragic political incidents that possibly contributed to failure of development in Africa is important. By 1970, many African states had been seriously weakened, Africa descended into unimaginably plight of civil wars across from Algeria to Zambia.<sup>11</sup> Civil wars erupted in Nigeria, Algeria, Liberia, and Sierra Leone, Angola and Congo and genocide in Rwanda that occurred later in the 90's.<sup>12</sup>

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<sup>6</sup> Mkandawire 2001 *Cambridge Journal of Economics* 293.

<sup>7</sup> Shivji *Accumulation in an African Periphery: A Theoretical Framework* 8.

<sup>8</sup> Shivji *Accumulation in an African Periphery: A Theoretical Framework* 8.

<sup>9</sup> Shivji *Accumulation in an African Periphery: A Theoretical Framework* 8.

<sup>10</sup> Njuguna 2014 <http://edwardnjuguna.hubpages.com>.

<sup>11</sup> Njuguna 2014 <http://edwardnjuguna.hubpages.com>.

<sup>12</sup> Mbeki *Architects of poverty: Why African Capitalism Needs Changing* 5.

These internal conflicts caused indescribably suffering and immense devastation to already underdeveloped infrastructure.<sup>13</sup> The negative impact and long lasting effect of the cold war on Africa cannot be ignored; Africa became one of the battle grounds for the cold war immediately after independence.<sup>14</sup> This marked the beginning of economic decline and marginalisation of Africa.<sup>15</sup> The situation was worsened by the oil price shock of 1973 which left African countries crushing under huge foreign debt.<sup>16</sup> By this time when African countries were visibly weak, terms and conditions of loans were uttered by the international financial institutions (IFIs).<sup>17</sup> African development priorities were side-lined and replaced by what the IFIs deemed appropriate for Africa.<sup>18</sup> The aftermath was severe drop in overall investment in social services, this further led to equally deterioration in living standards and eventually incidents of poverty ensued.<sup>19</sup> These immense challenges facing Africa at the time needed intervention and urgent attention. The United Nations (UN) intervened and the Economic Social Council (ECOSOC) of the UN in 1958 established the Economic Commission for Africa (ECA).<sup>20</sup> Under the ECA, the African Institute for Economic Development and Planning (IDEP) was established in 1962 by the General Assembly of the UN.<sup>21</sup> The IDEP was founded to support newly independent African states in their quest to build human resource capacities as a necessary prerequisite for sustaining independence and promoting socio-economic development.<sup>22</sup> The then newly independent African states had to also find means to deal with the political and economic issues confronting the countries.

The Organization of African Unity (OAU) was established in 1963 in Addis Ababa, Ethiopia, with its aim to promote the unity and solidarity of African States and act as a collective voice for the African continent, to secure Africa's long-term economic and political future and most importantly to co-ordinate and intensify the co-operation of

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<sup>13</sup> Mbeki *Architects of poverty: Why African Capitalism Needs Changing* 5.

<sup>14</sup> *Baah Africa Labour Research Workshop, Johannesburg 22-23 May 2003* 2.

<sup>15</sup> As above 3.

<sup>16</sup> As above 3.

<sup>17</sup> As above 3.

<sup>18</sup> As above 3.

<sup>19</sup> As above 3.

<sup>20</sup> United Nations 2014 <http://www.uneca.org/pages/overview>.

<sup>21</sup> United Nations 2014 <http://www.uneca.org/pages/overview>.

<sup>22</sup> United Nations 2014 <http://www.uneca.org/pages/overview>.

African states in order to achieve a better life for the people of Africa.<sup>23</sup> Outwardly, the foundation of the OAU did not bring about any stability in the African continent politically and economically. One of the shortcomings of the OAU was that its foundation was designed to protect the fragile sovereignty recently achieved by African states.<sup>24</sup> During this period, the issue of economic development was not on the agenda of the OAU, the focus was mainly addressing the inter-state conflicts that ensued soon after independence.<sup>25</sup> It goes without saying that Africa had to go back to the drawing board to establish new mechanism in finding solutions for Africa's problem. In 1981, almost twenty years since the formation of the OAU, the African Charter on People's Rights (Banjul Charter) was adopted.<sup>26</sup>

The Banjul Charter, unlike the OAU Charter, covered broader scope of Africa's problems addressing central issues to Africa's underdevelopment and human rights mechanisms. The Banjul covers civil and political rights on one hand, and on the other social, economic and cultural rights.<sup>27</sup> Soon after the founding of the Banjul Charter, sub regional mechanisms were also established namely: Economic Organization of West African States (ECOWAS), a regional group founded in 1975 for promoting economic integration in all fields of economic activity.<sup>28</sup> The Southern Africa Development Community (SADC), established in April 1980 with the purpose of achieving development, peace and security and economic growth, to alleviate poverty and to enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged through regional integration built on democratic principles and equitable and sustainable development.<sup>29</sup> The East African Community (EAC) was established in 1999 with a vision to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and

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<sup>23</sup> Article II *Charter of the Organisation of African Unity Charter* 1963, 479 U.N.T.S. 39, entered into force 13 September 1963.

<sup>24</sup> Bjura 2002 <http://www.dpmf.org/meetings/From-OAU-AU.html>.

<sup>25</sup> Bjura 2002 <http://www.dpmf.org/meetings/From-OAU-AU.html>.

<sup>26</sup> Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 (*Banjul Charter* 1981).

<sup>27</sup> Preamble *Banjul Charter* 1981.

<sup>28</sup> ECOWAS 2013 <http://www.comm.ecowas.int/>.

<sup>29</sup> SADC 2012 <http://sadc.int/about-sadc/overview>.

investment.<sup>30</sup> The New Partnership for Africa's Development (NEPAD) established in 2001 was a new intervention designed by African leaders to address critical challenges facing the continent; poverty, development and Africa's marginalisation internationally.<sup>31</sup> The special problems facing Africa have consistently been acknowledged by developed nations.<sup>32</sup>

The international community has played a role in assisting and done as much as they could to assist Africa address issues of development however the question remains whether the assistance was enough. At the G-7 summit in 1996 they launched a New Global Partnership for Development, with special focus on Africa.<sup>33</sup> At the Okinawa summit, developed countries agreed to give Highly Indebted Poor Countries (HIPC) and other low income developing countries a stake in world trade and to improve access for these countries to international markets, and similar pledges were made at the end of the Uruguay Round of world trade talks in the Doha Development Agenda.<sup>34</sup> In May 1996, the Organisation for Economic Co-operation and Development (OECD) proposed an adoption of International targets.<sup>35</sup> The OECD recognised that the number of people living in poverty was increasing, there was consensus by world leaders that there had to be a method to finance multi-lateral development co-operation that are adequate, efficient, predictable and sustainable.<sup>36</sup>

The OECD proposed a global partnership effort through which development can be achieved, the following goals were adopted: Economic Well-being, Social Development and Environmental Sustainability and Regeneration.<sup>37</sup> At that point in time, it appeared that the world has done all it could to help Africa develop but there were few positive results to show for its efforts. In the year 2000, the world's political leaders adopted the Millennium Development Goals (MDGs), in accepting this declaration and set of goals,

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<sup>30</sup> EAC 2014 <http://www.eac.int/>.

<sup>31</sup> NEPAD 2014 <http://nepad.org/about>.

<sup>32</sup> Black and White Targeting Development Critical Perspectives on the MDGs 334.

<sup>33</sup> Black and White Targeting Development Critical perspectives on the MDGs 334.

<sup>34</sup> Black and White Targeting Development Critical Perspectives on the MDGs 334.

<sup>35</sup> OECD *Shaping the 21st Century; The Contribution of Development Co-operation* 1.

<sup>36</sup> OECD *Shaping the 21st Century; The Contribution of Development Co-operation* 1.

<sup>37</sup> OECD *Shaping the 21st Century; The Contribution of Development Co-operation* 1.

they made promises about how to respond to disproportion of income.<sup>38</sup> The formal endorsement of the MDGs was an audacious step aimed at reducing poverty and advancing human development by the year 2015.<sup>39</sup> The MDGs and other internationally agreed development goals pertaining to Africa hold the promise of saving millions of lives; empowering women; addressing the scourge of illiteracy; hunger and malnutrition; and that Africa's children have access to high quality education and good health to live productive lives.<sup>40</sup> The MDGs collectively denote a broad and long-term, pro-active prognosis and replacement of the *ad hoc* and volatile development responses of the past.<sup>41</sup> African states have engaged in the toil of finding solutions to their underdevelopment and economic stagnation since they took over the mantle of leadership and governance at the dawn of independence in the 1960s.<sup>42</sup> Although a number of countries undertook far reaching adjustment and reform programs with considerable success, Africa's aggregate economic performance remained disappointingly weak.<sup>43</sup> Without tangible action to accelerate progress, the MDGs will be seriously jeopardised, at stake are prospects not only for hundreds of millions of people to escape poverty, disease and illiteracy, but also for long term global security and peace, and these are objectives that are intimately linked to development.<sup>44</sup>

The failed and lengthened trials and errors, political navigations, and economic processes for poverty eradication to achieve sustainable development submit to the MDGs as the *de facto* tool that promises a lasting solution, instead they embody deprivations, discriminations and marginalisation of the economically disadvantaged.<sup>45</sup> The MDGs represent a comprehensive build-up of the contributing factors and their inter-linkages aggregated and synthesised into the eight measurable MDGs.<sup>46</sup> The eight goals take a systematic approach to problem solving to include the sequence of using symptoms to try some analysis and handlings with a view to obtaining positive and long

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<sup>38</sup> Gamble and Weil *Community practical skills, Local to Global Perspectives* 19.

<sup>39</sup> Gamble and Weil *Community practical skills, Local to Global Perspectives* 19.

<sup>40</sup> MDG Africa Steering Group *Achieving the MDGs in Africa* 1.

<sup>41</sup> Nwonwu *Achievements and Prospects of Meeting Targets in Africa* 3.

<sup>42</sup> Nwonwu *Achievements and Prospects of Meeting Targets in Africa* 3.

<sup>43</sup> Cleeve and Ndhlovu (eds) *Strategies for Meeting the MDGs in Africa* 12.

<sup>44</sup> World Bank *Global Monitoring Report MDGs: From Consensus to Momentum* 1.

<sup>45</sup> Nwonwu *Achievements and Prospects of meeting the MDGs in Africa* 3.

<sup>46</sup> United Nations 2000 <http://un.org/millenniumgoals/>.

lasting solutions. The MDGs compress every effect of poverty and hunger, including the causes, and impacts on people's lives and environment.<sup>47</sup> The MDGs also include modalities and approaches for improving and possibly exterminating the negative impacts and eradication of poverty.<sup>48</sup> There are eight goals and targets to be met by the year 2015.<sup>49</sup>

The eight goals are: eradication of extreme poverty, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve maternal health, combat HIV/AIDS, malaria and other diseases, ensure environmental sustainability and develop global partnership for development.<sup>50</sup> It has been expressed that the current economic crises should not be used as a justification to abandon the MDGs targets.<sup>51</sup> Rather, the devastating and menacing forces of global poverty require a comprehensive and reliable response.<sup>52</sup> The MDGs present each of us an opportunity to work within our own countries to promote international collaboration and policies that will bring us closer to reducing poverty among world populations.<sup>53</sup> Considerable progress has been made globally in achieving the MDGs and other international agreed development goals, but many countries remain off-track.<sup>54</sup> This is particularly true in large parts of Africa where some states are fragile or emerging from conflict.<sup>55</sup> The continent as a whole lags behind on each goal notwithstanding the very promising recent rise in the rate of economic growth, an overall improvement in the policy environment and strong macro-economic fundamentals.<sup>56</sup> The challenges of the 1970s to this period have proved to be difficult to overcome in Africa.

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<sup>47</sup> United Nations 2000 <http://un.org/millenniumgoals/>.

<sup>48</sup> Nwonwu *Achievements and Prospects of meeting targets in Africa* 3.

<sup>49</sup> Nwonwu *Achievements and Prospects of meeting targets in Africa* 3.

<sup>50</sup> United Nations 2000 <http://www.un.org/millenniumgoals/>.

<sup>51</sup> Gamble and Weil *Community practice skills Local to Global perspectives* 19.

<sup>52</sup> Gamble and Weil *Community practice skills Local to Global perspectives* 19.

<sup>53</sup> Gamble and Weil *Community practice skills Local to Global perspectives* 19.

<sup>54</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 1.

<sup>55</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 1.

<sup>56</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 1.

## 1.2 PROBLEM STATEMENT

Africa has felt the unfulfilled promises of global development strategies more sharply than the other continents of the world.<sup>57</sup> Rather than resulting in an improvement in the economic situation of the continent, successive strategies have made Africa's economy stagnant, and more susceptible than other regions to the economic and social crises suffered by the industrialised countries.<sup>58</sup> Africa's record on the economic and social development realms leaves much to be desired. An overhaul is in order if Africa is to have any chance to make up lost ground.<sup>59</sup>

The merging of human rights and human development that had evolved historically on analogous and non-intersecting tracks, in the final decades of the 20th century, has only recently been acknowledged and studied little in either field literature or in policy documents.<sup>60</sup> Most development programming is embedded in Western European and American notions that emerged in the early years of the twentieth century.<sup>61</sup> The growths of populations and of economies are major forces for the change in the modern world.<sup>62</sup> Both have their own elements, particularly in the advancement of human knowledge and technological expertise and in the amplification of cultural patterns and social institutions.<sup>63</sup> Both have consequences for the natural world, political order and for human well-being.<sup>64</sup>

Rapid population growth slows the pace of development and that may exacerbate the environmental damage inflicted along the way; in the end it limits what development can deliver.<sup>65</sup> Too much growth produces negative rather than positive consequences.<sup>66</sup> These are reflected in the impact of global warming, over-fished and increasingly polluted oceans, and a crisis in the supply of clean water, the impending crisis of peak-

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<sup>57</sup> Hounnikpo *Africa's Elusive Quest for Development* 126.

<sup>58</sup> Hounnikpo *Africa's Elusive Quest for Development* 125.

<sup>59</sup> Hounnikpo *Africa's Elusive Quest for Development* 125.

<sup>60</sup> Sengupta, Negi and Basu *Reflections on the right to development* 1.

<sup>61</sup> Offenheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 270.

<sup>62</sup> Demoney *Population and Growth* 1.

<sup>63</sup> Demoney *Population and Growth* 1.

<sup>64</sup> Demoney *Population and Growth* 1.

<sup>65</sup> Demoney *Population and growth* 1.

<sup>66</sup> Ife *Human Rights from Below: Achieving Rights Through Community Development* 19.

oil, the destruction of wilderness and the extinction of species.<sup>67</sup> For the world as the whole, the demographic future will impact the course of change, both in international relations and in major global ecosystems.<sup>68</sup> In addressing the issues of poverty, illiteracy, gender parity, HIV/AIDS and sustainable development the Millennium Declaration was unanimously adopted by the 189-member states of the UN in 2000.<sup>69</sup> The Millennium Declaration is deeply-rooted in all human rights; it embraces civil, political, economic, social and cultural rights. The Millennium Declaration of 2000 focuses on human rights, democracy and good governance. The Millennium Declaration states that states will respect fully the Universal Declaration of Human Rights (UDHR), 1948.<sup>70</sup> Apart from incorporating the rights entrenched in the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, the Millennium Declaration states that states will strive for the full protection and promotion in all countries of civil, political, economic, social and cultural rights.<sup>71</sup> It further integrates the rights regulated in the Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1979.

The Millennium Declaration commits to combating all forms of discrimination against women and to implement fully the provisions of CEDAW.<sup>72</sup> The Millennium Declaration was later translated into the eight goals mentioned above; and in translating the Millennium Declaration; there was a major dereliction of human rights norms as incorporated in the Millennium Declaration. The MDGs do not fully reflect the ambition of the Millennium Declaration.<sup>73</sup> The Millennium Declaration promised to protect and promote social, economic, cultural and political rights for all; however one of the key challenges in this regard is that state's obligations under international human rights law are not applicably reflected in the MDGs.<sup>74</sup> While the MDGs are covering clear obligations international human rights law such as food, education and health, they are

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<sup>67</sup> *Ife Human Rights from Below: Achieving Rights Through Community Development* 19.

<sup>68</sup> *Ife Human Rights from Below: Achieving Rights through Community Development* 19.

<sup>69</sup> UN *United Nations Millennium Declaration* 2000, adopted 8 September 2000, UN Doc A/55/2.

<sup>70</sup> Article V. *United Nations Millennium Declaration* 2000.

<sup>71</sup> Article V *United Nations Millennium Declaration* 2000.

<sup>72</sup> Article V *United Nations Millennium Declaration* 2000.

<sup>73</sup> Amnesty International 2010 *International Journal on Human Rights* 54.

<sup>74</sup> Amnesty International 2010 *International Journal on Human Rights* 54.

fundamentally imperceptible on human rights.<sup>75</sup> Notwithstanding the merits of time-bound targets, as frameworks for tackling poverty, these targets often leave out the requirements under international human rights law.<sup>76</sup>

To reflect this deficit in the MDGs, goal 2 which aims to ensure universal primary education, but disregards the obligation under ICESCR to ensure that primary education is free, compulsory and of sufficient quality.<sup>77</sup> The MDGs further contain no requirement that states incorporate human rights standards in MDG policy programmes, while the MDGs include a commitment for states to integrate the principles of sustainable development into country policies and programmes.<sup>78</sup> The Millennium Declaration commits to supporting the consolidation of democracy in Africa, and assist Africans in their struggle for lasting peace, poverty eradication and sustainable development, thereby bringing Africa into the mainstream of the world economy.<sup>79</sup> The acknowledgement of human qualities in producing and sustaining economic growth, significant as it is, tells us nothing about why economic growth is sought in the first place.<sup>80</sup> If, instead, the focus is eventually on the progression and advancement of human freedom to live the kind of lives that people have reason to value, then the role of economic growth in expanding those opportunities has to be incorporated into that more foundational understanding of the process of development as the expansion of human capability to lead more valuable and free lives.<sup>81</sup>

Development as freedom makes more sense in Africa where millions of people survive on the edge, often preoccupied by the realm of need.<sup>82</sup> Their progress of freedom and choice is largely blocked by the complex set of factors. People expect from their governments to lay the basic frameworks of their empowerment. They demand protection and security from destitution, unemployment and exclusion. States are regarded as legitimate only if they can ensure territorial integrity, personal security,

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<sup>75</sup> Amnesty International 2010 *International Journal on Human Rights* 54.

<sup>76</sup> Amnesty International 2010 *International Journal on Human Rights* 54.

<sup>77</sup> Amnesty International 2010 *International Journal on Human Rights* 54.

<sup>78</sup> Amnesty International 2010 *International journal on human rights* 54.

<sup>79</sup> Article VII *United Nations Millennium Declaration* 2000.

<sup>80</sup> Seyoum *Development State and Society: Theories and Practice in Contemporary Africa* 7.

<sup>81</sup> Seyoum *Development State and Society: Theories and Practice in Contemporary Africa* 7.

<sup>82</sup> Seyoum *Development State and Society: Theories and Practice in Contemporary Africa* 7.

health and education for their citizens.<sup>83</sup> Development that functions within a blatant human rights framework will make use of such human rights charters as are relevant in the local context.<sup>84</sup> While the contribution that human rights can make to development is both indispensable and imperative, the contribution that development can make to human rights is conceivably more significant, though it has been given less consideration in the literature.<sup>85</sup> Most efforts in development involve four processes namely; organising, sustainable development and progressive change.<sup>86</sup> These processes are embarked on to improve opportunities for all peoples as well to limit or eliminate factors that contribute to deprivation and fragmentation.<sup>87</sup> The rights-based approach envisions the poor as actors with the potential to shape their own destiny.<sup>88</sup> Instead of focusing on creating an inventory of public goods or services for distribution and then seeking to fill any shortfall via foreign aid, the rights based approach seeks to identify the systemic obstacles that keep people from accessing opportunity and improving their own lives.<sup>89</sup> Human rights and the MDGs are complementary; conceptually, politically and in practice.<sup>90</sup> The realisation of human rights is conceptualised as a prerequisite to development and the fight against poverty thus for achieving the MDGs.<sup>91</sup> The *Human Development Report* (HDR) of 2000 stresses the importance and contribution of the rights-based approach to development. In this report it is pointed out that human rights are critical at achieving development and they are not a reward for development.<sup>92</sup> Human rights and human development share a common vision to secure for every human being, freedom, well-being and dignity, human development in turn is a process of enhancing human capabilities to expand choices and opportunities so that each person can lead a life to respect and value.<sup>93</sup> When

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<sup>83</sup> Seyoum *Development State and Society: Theories and Practice in Contemporary Africa* 8.

<sup>84</sup> Ife *Human rights from below: Achieving Rights through Community Development* 125.

<sup>85</sup> Ife *Human rights from below: Achieving Rights through Community Development* 126.

<sup>86</sup> Gamble and Weil *Community Practice Skills Local to Global Perspectives* 10.

<sup>87</sup> Gamble and Weil *Community Practice Skills Local to Global Perspectives* 10.

<sup>88</sup> Offeinheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 271.

<sup>89</sup> Offeinheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 271.

<sup>90</sup> GIZ Date Unknown <http://www.giz.de>.

<sup>91</sup> GIZ Date Unknown <http://www.giz.de>.

<sup>92</sup> UNDP *Human Development Report* 2000. 1

<sup>93</sup> UNDP *Human Development Report* 2000.2

human rights and human development advance together, they reinforce one another, expanding people's capabilities and protecting their rights and fundamental freedoms.<sup>94</sup>

In the current planning phase of the post-2015 development agenda, there is a fortified assurance that human rights will occupy a more central role than they did in the MDGs.<sup>95</sup> The United Nations Development Programme (UNDP) recognised an emerging global endorsement of human rights-based approaches to development, based on the principles of participation, accountability, non-discrimination, empowerment and the rule of law, and that it must be the core of the post-2015 agenda<sup>96</sup>. The Millennium Declaration has made a commitment to address special needs of Africa; special efforts by the international community have been made for Africa. What would ensure that the plan adopted in the Millennium Declaration helps Africa and any other endeavours embarked on in the name of development are adhered to and achieved by African states? Previous attempts for tackling poverty in Africa have failed. A particularly problematic factor in evolving a rights based approach in African development discourse is the inimitable devaluation of economic, social and cultural rights as legal entitlements.<sup>97</sup> NEPAD is the latest attempt to create an effective development strategy for the Africa. NEPAD was founded by African Union (AU) in 2002 to address the development problems of Africa using a new paradigm developed by Africans and uses African resources.<sup>98</sup> Its main objectives are to eradicate poverty, put Africa on sustainable development path, halt Africa's marginalisation and empower African women.<sup>99</sup> NEPAD and the MDGs appear to have the same objectives for Africa.

In the year 2000, states endorsed the MDGs covering an array of targets with the aspiration of reaching these goals by 2015. One year after, NEPAD was launched, a vision and strategic framework for African countries to move from long severe poverty and to reach the MDGs.<sup>100</sup> Two years after the founding of NEPAD, the AU launched

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<sup>94</sup> UNDP *Human Development Report 2000.2; Sen Development as Freedom*

<sup>95</sup> Williams 2013 <http://www.hrjournal.org/2013/12/10>.

<sup>96</sup> Williams 2013 <http://www.hrjournal.org/2012/12/10>.

<sup>97</sup> Olowu *An Integrative Rights-Based Approach to Human Development in Africa 6*.

<sup>98</sup> NEPAD 2014 <http://www.nepad.org/about>.

<sup>99</sup> NEPAD 2014 <http://www.nepad.org/about>.

<sup>100</sup> NEPAD 2014 <http://www.nepad.org/about>.

the African Peer Review Mechanism (APRM).<sup>101</sup> This is a mechanism for African states to voluntarily accede to self-monitoring by African member states for Africa.<sup>102</sup> The purpose of monitoring is to principally foster the adoption of policies, standards and policies, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through experience sharing of successful of best practices, including deficiencies and assessment for capacity building.<sup>103</sup> The MDGs, NEPAD and the APRM all of them frequently focus on development but there is no reference to international human rights law implications should a member state fail to monitor, promote and protect human rights, of which these are essential to ensure sustainability and development at large. The element of accountability is completely ignored. These foundational fundamentals of the Millennium Declaration are abandoned.

The policies and programmes for the MDGs are not anchored in a rights-based approach to development. Rights have to be articulated as the overarching framework for development. Obligations of states under international human rights law are not centralised as the foundation for implementation of the policies. The issue of poverty eradication is assumed to be the absence of economic growth; if there is economic growth does this automatically guarantee poverty eradication? As mentioned above, HDR points it out that human rights are not a reward for development rather they are critical at achieving it.<sup>104</sup> The challenge is how Africa can own its development agenda, an agenda that will ensure that Africa meets its human rights and development responsibilities, an approach that will change the disastrous legacy of incapacity, non-transparency and lack of accountability.

### **1.3 AIMS AND OBJECTIVES OF THE STUDY**

This study explores the inhibitions that have militated against efficiency of development efforts in Africa and seeks to establish how such complexities should be addressed. The objective of this study is to deliberate on the link between human rights and

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<sup>101</sup> APRM 2014 <http://www.aprm.au.org/mission>.

<sup>102</sup> APRM 2014 <http://www.aprm.au.org/mission>.

<sup>103</sup> APRM 2014 <http://www.aprm.au.org/mission>.

<sup>104</sup> See note 92 Above

development, with the establishment of that link, this study seeks an approach that will translate the poor people's needs into entitlements. Considering the broad design of international human rights instruments, this study aims to establish a method that can be used into translating the promise of human rights mechanisms into realities. As the world is preparing for the post-2015 agenda, Africa is lagging behind. This study, therefore aims to establish whether there is a pragmatic approach that could be embarked on to strengthen Africa's development agenda, that is inclusive of human rights, and one that seeks to promotes and protect them in tandem with development goals, and *vice versa*. The consistency and planning of any development agenda is predicated on implementation and the desired outcomes. The objective of this study is to consider the rights-based approach to development and describe how this approach can contribute towards human development and the effective realisation and protection of human rights in Africa.

#### **1.4 SIGNIFICANCE OF STUDY**

It is often argued that global targets are easily set but seldom met, which poses the question as to whether the MDGs are achievable.<sup>105</sup> Development goals tend to focus on the material conditions that allow people to benefit from economic processes in ways that improve their condition; human rights goals tend to deal with normative constraints on power relations to ensure human dignity and the elimination of repressive and oppressive processes; and those of health concentrate on the physical, mental and social dimensions of human existence.<sup>106</sup> The MDGs are time-bound developmental targets which should be achieved by the end of year 2015 and these goals address many dimensions of poverty, gender parity, health and education.<sup>107</sup> Human rights have not yet played a significant role in supporting and influencing MDGs-based development planning.<sup>108</sup>

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<sup>105</sup> Black and White *Targeting Development Critical Perspectives on the MDGs* 124.

<sup>106</sup> Sengupta, Negi and Basu *Reflections on the Right to Development* 24.

<sup>107</sup> UN *Claiming the Millennium Development Goals: Human Rights Approach* 1.

<sup>108</sup> UN *Claiming the Millennium Development Goals: Human Rights Approach* 1.

The content of the MDGs somewhat resembles some ICESCR norms and the contents of both provide the tools to hold government accountable.<sup>109</sup> The MDGs have been relegated from the Millennium Declaration from which they are drawn and which encompassed significant references to human rights.<sup>110</sup> At the mid-point towards the 2015 deadline set for meeting the MDGs, progress in many African countries is not on track. The continent as a whole is lagging behind on each goal despite a very promising recent rise in the rate of economic growth.<sup>111</sup> Conscious change is required, and people must be unprejudiced to make change for themselves after realising what is holding them to poverty. Many of Africa's problems can be directly or indirectly linked to questions of governance; some are causes of poor governance, whereas some are a result of it.<sup>112</sup> In order to influence government reform, the World Bank and other IFIs have increasingly encouraged good governance.<sup>113</sup> The HDR of 2003 states that the MDGs provide a new framework for development that demands results and increases accountability; the goals are not a programmatic instrument.<sup>114</sup> The political will and good policy ideas underpinning any attempt to meet the goals can work only if they are translated into nationally owned and nationally driven development strategies guided by sound science, good economics and transparent accountable governance.<sup>115</sup> It fits to perhaps conclude that the debacle of governments to comprehend what is expected of them by the people and to provide it outlines any ideas and strategies of development as an elusive task. Global poverty has rapidly moved up the International human rights agenda in recent years.<sup>116</sup>

In the past poverty was a systematically downgraded and neglected as a human rights concern, the proposition that global poverty represents a violation and denial of human rights on a persistent, systematic and massive scale is having an increasing influence

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<sup>109</sup> UN *Claiming the Millennium Development Goals: Human Rights Approach 1*.

<sup>110</sup> UN *Claiming the Millennium Development Goals: Human Rights Approach 1*.

<sup>111</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals in Africa 2*.

<sup>112</sup> Adar *et al* (eds) *State of Africa 2010/11: Parameters and Legacies of Governance and Issue Areas* 69.

<sup>113</sup> Adar *et al* (eds) *State of Africa 2010/11: Parameters and Legacies of Governance and Issue Areas* 70.

<sup>114</sup> UNDP *Human Development Report 2003* iv.

<sup>115</sup> UNDP *Human Development Report 2003* iv.

<sup>116</sup> *Vizard Poverty and Human Rights: Sen's Capability Perspective Explored 2*.

on international debates, policies and programmes aimed at eradicating poverty.<sup>117</sup> A goal of eradicating extreme poverty is clearly more ambitious than MDG 1, however the \$1.25 a day poverty line cannot realistically be seen as fulfilling the right to an adequate standard of living, healthy and well-being as entrenched in the UDHR.<sup>118</sup> A rights-based approach in the post-2015 agenda must also include a higher poverty line which might be considered as representing an adequate standard of living.<sup>119</sup> The AU has emphasised that the post-2015 agenda provides a unique opportunity for Africa to reach consensus on common challenges, priorities and aspirations and to actively participate in the global debate on how to provide a fresh impetus to the MDGs; and to examine and devise strategies to address key emerging development issues on the continent in the coming years.<sup>120</sup> The AU reiterated that the post-2015 agenda process should galvanise political will and international commitment for a universal development agenda, focused on the eradication of poverty and exclusion as well as the pursuit of sustainable inclusive development.<sup>121</sup>

There is a broad array of human rights mechanisms put in place to ensure that people's rights are protected, however one cannot help but notice the flowery and interesting promises these mechanisms make on paper, yet, there is often too little implementation of these mechanisms. This study is significant because it advances the debate for development in Africa beyond the failure of African governments to implement policies and the responsibility of governments to take corrective measures to protect human rights. The study proceeds from the premise that empowering people through multi-dimensional opportunities is key to development. It argues that poverty is not merely an absence of food, but the lack of opportunities, particularly for the youths, perpetuates the cycle of poverty. Valuing human rights, that is health, food, dignity and equality, creating opportunities and allowing people to directly participate and design their platforms of economy would promote the ends of genuine, bottom-up development

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<sup>117</sup> Vizard *Poverty and Human Rights: Sen's Capability Perspective Explored 2.*

<sup>118</sup> UNCTAD 2013 *UNCTAD and the Post-2015 Agenda 1.*

<sup>119</sup> UNCTAD 2013 *UNCTAD and the Post-2015 Agenda 1.*

<sup>120</sup> AU- *African position in in the Post-2015 Development Agenda Preamble 1.*

<sup>121</sup> AU- *African position in in the Post-2015 Development Agenda 2.*

in Africa. The timeliness of this study accentuates the urgency of the 2015 timeline which marks the end year of the MDGs.

The challenge that world leaders acknowledged in 2000 remains in large parts of the world unfinished work, the short-comings of the incorporation of human rights as founded in the Millennium Declaration, calls for the exploration and reconceptualisation of alternative approaches such as the rights-based approach to development, whether the human rights-based approach would be the dynamic launching pad in guaranteeing that Africa meets her development targets regardless of the terminal date of the MDGs. The identification of a human rights-based approach is not enough and there has to be an accompanying establishment of an implementation benchmarking system. This is where this study makes its entry into the broader development discourse in Africa.

## 1.5 LITERATURE REVIEW

A number of studies have looked at the determinants for the feasibility or otherwise of achieving the MDGs. On the other hand a number of studies have absorbed predominantly Africa's underdevelopment and the circumstances that have led to Africa lagging behind in achieving the MDGs. These studies universally find a massive impact of dereliction of human rights-based to development. In their various works, African scholars as well as scholars interested in African development discourses have maintained that the MDGs have had a catalytic effect on the global development debate; they provide a critical evaluation of these targets and their progress so far in meeting them. Since the adoption of the MDGs, some developing countries have indeed improved significantly in addressing the scourge of poverty. The adoption of these goals was not in futile.<sup>122</sup>

Nwonwu also assessed the achievements and prospects of meeting the MDGs targets in Africa. According to him, illiteracy, social inequality, economic ineptitude and the political immaturity of Africa have contributed significantly to Africa's underdevelopment for decades.<sup>123</sup> As mentioned above, the major contributing factor in the ineffectiveness

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<sup>122</sup> Black and White *Targeting Development Critical Perspectives on the MDGs 5.*

<sup>123</sup> Nwonwu *The Millennium Development goals: Achievements and Prospects of Meeting Targets in Africa 3.*

of the MDGs is the omission of the human rights language in the Millennium Declaration. Some scholars have argued for an explicit human rights-based approach to development. They contend that there has to be a greater appreciation of human rights, it should not be regarded as just another branch of law. Olowu explored the human rights mechanisms, applicability and efficiency in promoting and protecting human rights particularly in Africa.<sup>124</sup> In his exploration of the broad designs of human rights mechanisms, Olowu contrasts the ample range of human rights instruments in Africa with the worsening living conditions of the people. Reflecting on the parlous state of the implementation of these human rights mechanisms across African states, he queries whether Africa is ready to meet its global and regional human development responsibilities.<sup>125</sup> On his own part, Ife makes a contention about the contribution human rights make to human development. In his estimation, it is emphasised that human rights play a crucial role in achieving development and they should not be treated as a specialised branch of the law.<sup>126</sup> Vizard explored Sen's capability approach, which challenges the exclusion of forms of basic deprivation and impoverishment such as hunger and starvation, premature mortality and excess morbidity and illiteracy from the characterisation of fundamental freedoms and human rights. These scholars ultimately characterise poverty as capability deprivation.<sup>127</sup>

Based on the UN Declaration on the Right to Development of 1986 and the recognition of the Right to Development in the Vienna Declaration and Programme of Action in 1993, Sengupta, Negi and Baso, narrowly focus on the come-back of the Right to Development in the international arena as a composite, integrating within its ambit, the distinct categories of human rights being civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

The aim is to signify a growing recognition of the linkage between rights and development.<sup>128</sup> Mbeki maintains that leadership is vital in resolving Africa's stagnant stature of development in Africa. Mbeki contends that Africa needs new rulers which are

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<sup>125</sup> Olowu *An integrative rights-based approach to human development in Africa* 19.  
<sup>126</sup> Ife *Human rights from below: Achieving Rights through Community Development* 19.  
<sup>127</sup> Vizard *Poverty and Human Rights: Sen's Capability Perspective Explored* 36  
<sup>128</sup> Sengupta, Negi and Baso *Reflections on the right to development* 25

the people themselves who understand that the path to a prosperous future lies in hard work, creativity, knowledge and equity.<sup>129</sup> Gamble and Weil maintains that participation, progressive change and organisation are vital to addressing underdevelopment. The human-rights based approach has also been embraced by the UNDP. As evidenced in the *Human Development Report* of 2013, the UNDP acknowledged a universal endorsement by the International community of human rights-based approach to development. In order to address the plight of poverty, illiteracy, health and environmental stability, the UNDP contends that human rights have to be at the forefront when planning development.<sup>130</sup> Amnesty International, 2010 recognises the role the MDGs have played in poverty reduction; however this organisation contends that the MDGs do not reflect the ambitions of the Millennium Declaration which are mainly the promotion and protection of all human rights. This organisation maintains that there is no incorporation of human rights in the MDGs framework and the rules of international law are also neglected.<sup>131</sup> Beyond 2015, it can be concluded that human can continuously be side-lined in addressing the issues of poverty, gender parity, health and environmental stability. The notion that rights are critical at achieving development should not simply remain a contention among scholars; it should be taken up by ordinary people as a prerequisite in implementing development policies. This is of particular implications for African states.

## 1.6 RESEARCH QUESTIONS

It is assumed that Africa lacks the capacity and strategy to implement policies designed to tackle its development challenges. As all indicators stand presently, most of the targets of the MDGs will not be reached by 2015, particularly in Sub-Saharan Africa. The central questions arising from this stark reality, therefore, are: What implications does this realisation portend for African states? After 2015, what should be the strategic agenda for African states in order to deal with the complex realities of poverty, inequality, climate change, infrastructure, health, education and sustainable governance? In other words, in what ways could an effective rights-based approach

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<sup>129</sup> Mbeki *Architects of Poverty: Why African Capitalism Needs Changing* 19.

<sup>130</sup> UNDP *Human Development Report 2013* iv.

<sup>131</sup> Amnesty International 2010 *International Human Rights Journal* 54.

enhance Africa's development agenda? This study explores the parameters of these questions and the possible strategic responses to them, applying the rights-based approach.

## **1.7 RESEARCH METHODOLOGY**

An interdisciplinary approach is essential in the study of human rights law and human development. The research method to be embarked on is essentially qualitative. This research method encompasses the context and an issue under the study; it aims to gather the painstaking of the study.<sup>132</sup> This study relies on the analysis of human rights mechanisms, the intent and interpretation and subsequently the intent and significance of the MDGs. For purposes of data, this study relies on secondary data. Secondary data is the data collected by someone else. The data will be analysed thematically. Thematic analysis put an emphasis on pointing out and examining and recording patterns.<sup>133</sup>

## **1.8 SCOPE AND OUTLINE OF THE STUDY**

This study undertakes to assess specific proposals for the MDGs. These proposals should facilitate a primary but a systematic evaluation of the proposed goals and seek to establish whether there is a vigorous option for a post-2015 development agenda. This study further describes how the alternative framework is going to contribute towards the changes necessary to achieve the vision incorporated in the MDGs. The vision and the mission of the MDGs shall be looked at from the perspectives of development, rights-based approach for the implementation and realisation of a human-focused agenda, particularly as far as Africa is concerned. This study views the challenges of stunted development in much of Africa as the very bedrock of numerous conflicts, tensions and upheavals which constantly threaten the stability of African states. It is therefore a modest attempt at devising viable responses to some of the tangible developmental problems of the continent, relying on the broad array of international and regional normative standards and institutional mechanisms. This study is presented in five chapters. Chapter one is an Introduction to the study. This chapter provides a background to the study, the significance and the objectives of the study,

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<sup>132</sup> Flick *Managing Quality in a Qualitative Research* 6.

<sup>133</sup> Greg *Applied Thematic Analysis* 11.

among others. Chapter two deals with Development as a Global and Legal policy Agenda from 1945-2015; this chapter retraces the trajectory of development since the founding of the UN in 1945 to the adoption of the MDGs in 2000 and attempts to assess the implementation of the MDGs up to their cut-off date. Chapter three concentrates on Africa. In this chapter, there is an assessment of Africa's challenges to development, deliberating on the MDGs, from adoption in the year 2000 to the target end-year of 2015. Chapter four deals with Africa and the post-2015 Development Agenda, reflecting on the frameworks and modalities of a rights-based approach. Chapter five is conclusions and recommendations.

## 1.9 SUGGESTIONS FOR FURTHER STUDY

This study is a modest contribution to the development discourse in Africa. To that end, it is not an exhaustive contribution on the theme and it lies on African scholars to continue to advance the debates and strategies into the future. We must acknowledge that values play a significant role in shaping communities and, ultimately, society. An understanding of African values that motivate and inform African communities should be recognised in order to facilitate a dialogue about sustainable development in Africa.<sup>134</sup> Africa's reliance on foreign aid is universally acknowledged. In the period immediately after independence, foreign aid was almost a bilateral arrangement that featured in annual budget development plans of African countries.<sup>135</sup> It remains to be established that an Africa-centred model of analysis would be more rewarding in assessing the role and impact of foreign aid in African developing countries and their developing economies. Africa is also characterised by the number of people migrating from rural to urban areas or from one country to another. If governments fail to develop empirically informed and proactive policy responses international migration will threaten sustainable economic growth. Discrimination against non-citizens threatens further fragmentation and social marginalisation.<sup>136</sup> These are some of the dynamics that should inform future research in the broader rights-based approach to development in Africa.

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<sup>134</sup> Muller, Megkwe and Mhloyi *Values and Development in Southern Africa* 15

<sup>135</sup> Orjiako *Killing Sub-Saharan Africa with Aid* 16

<sup>136</sup> Crush and Frayne *Surviving on the Move: Migration, Poverty and Development in Southern Africa* 20.

## CHAPTER 2

### DEVELOPMENT AS A GLOBAL LEGAL AND POLICY AGENDA (1945-2015)

#### 2.1 INTRODUCTION

The relationship between human rights and development has a long history, both in concept and in practice, it is therefore important to recall that the story goes way back to the end of World War II, the most atrocious and destructive conflict humanity had ever experienced.<sup>137</sup> This chapter focuses on the efforts made by the United Nations (UN) since the adoption of the UN Charter; the emphasis is on tracking the steps taken by the UN towards providing a unifying framework for development. The Chapter goes further into assessing the covenants and the institutions that were established to enhance development framework and the contribution they have made in building a blue print for development policies, strategies and the MDGs. The Chapter further looks into the regional development framework of Africa, assessing the strategies that were embarked on soon after the independence and how those strategies have contributed to the development framework of the African continent.

Human rights were not a common topic of international discourse until the 1940s.<sup>138</sup> The UN Charter is the foundational treaty of the international organisation; the UN Charter was signed at San Francisco on 26 June 1945 by fifty member states and entered into force on 24 October 1945.<sup>139</sup> It was only with the onset of the World War II and in response to the ideological challenge of fascism that human rights took shape as a distinct and coherent set of ideas and eventually found expression within the legal and institutional framework of the UN.<sup>140</sup> The unique atmosphere after the World War II appeared not just appropriate but reasonable to push for a global order based on universal human rights.<sup>141</sup> The atrocities committed during World War II further incited

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<sup>137</sup> Nagpal 2013 *OIDA International Journal of Sustainable Development* 31.

<sup>138</sup> Normand and Zaidi *Human Rights at the UN: The Political History of Universal Justice* 27.

<sup>139</sup> Malanczuk *Akehurst's Modern Introduction to International Law* 27.

<sup>140</sup> Normand and Zaidi *Human Rights at the UN: The Political and History of Universal Justice* 27.

<sup>141</sup> Normand and Zaidi *Human Rights at the UN: The Political and History of Universal Justice* 143.

vital humanitarian concerns and moved the world community to appeal for formal international measures aimed at ensuring the legal protection of human rights.<sup>142</sup>

The UN Charter declared its objectives as including saving the succeeding generations of human beings from the scourge of war which had twice brought untold distress to mankind, and reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of all nations regardless of size or population, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in a larger atmosphere of freedom.<sup>143</sup>

The Charter further provides that the purpose of the UN is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms without distinction as to race, sex, language or religion.<sup>144</sup> The Charter recognised the need for development action on a global scale to improve the standards of people universally and to promote full employment and conditions of economic and social progress.<sup>145</sup> The UN states that with a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UN shall promote higher standards of living, full employment, and conditions of economic and social progress and development, solutions of international economic, social, health and related problems, and international cultural and educational cooperation and universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>146</sup>

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<sup>142</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 6.

<sup>143</sup> Preamble *UN Charter*.

<sup>144</sup> Article 1(3) *UN Charter*.

<sup>145</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 6.

<sup>146</sup> Article 55 *UN Charter*.

The economic and social advances were also to be pursued with full respect for human rights and fundamental freedoms.<sup>147</sup> Although the Charter did not list the specific contents of the human rights and fundamental freedoms referred to, it indicated the emergence of an international human rights legal regime.<sup>148</sup> To take the international human rights agenda forward, the Charter provided for the establishment of an Economic and Social Council (ECOSOC), granting the Council the mandate to make recommendations for promoting respect for and observation of human rights and fundamental freedoms for all, and the power to set up commissions for the promotion of human rights, and such other commissions as may be required for the performance of its functions.<sup>149</sup>

The UN Charter is today widely considered as the basis of international constitutional order, which imposes obligations on member states to uphold international cooperation in promoting and encouraging respect for human rights.<sup>150</sup> Accordingly, the UN Charter provided a binding legal basis for the development of international human rights law in 1945, a foundation upon which the Universal Declaration on Human Rights (UDHR) was subsequently founded and built.<sup>151</sup> World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere.<sup>152</sup> The UN General Assembly thus adopted the UDHR on 10 December 1948.<sup>153</sup>

The UDHR, but not a treaty, was radical in helping to construct a new geopolitical framework to hold states more accountable for the manner in which they treated their own citizens, foreign nationals and members of other states.<sup>154</sup> The UDHR was adopted as a non-binding resolution by the General Assembly and when it was adopted, it was

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<sup>147</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 6.  
<sup>148</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 6.  
<sup>149</sup> United Nations June 2014 <http://www.un.org/en/ecosoc/about/index.shtml>.  
<sup>150</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 7.  
<sup>151</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 7.  
<sup>152</sup> United Nations 2013 <http://www.un.org/en/documents/udhr/history.shtml>.  
<sup>153</sup> United Nations 2013 <http://www.un.org/en/documents/udhr/history.shtml>.  
<sup>154</sup> Kao *Grounding Human Rights in a Pluralist World* 1.

envisioned that the UDHR would eventually be transformed from a non-binding resolution into a binding agreement.<sup>155</sup> The procedures of implementing the rights enshrined in the UDHR were considered to be divergent; it was believed that civil and political rights could be implemented with some immediacy; while economic, social and cultural rights could only, it was claimed by many, be implemented progressively and programmatically depending upon resources available to each state.<sup>156</sup> The result was the emergence of two instruments, each designed to protect the different categories of rights; human rights were divided into the International Covenant on Civil and Political Rights (ICCPR), 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and these two instruments together with the UDHR are referred to as the International Bill of Rights.<sup>157</sup>

The rights protected in the two covenants cover and enlarge the rights recognised in the UDHR and thereby protect nearly all the basic values cherished by all states and every human society; additionally, many other ancillary international treaties and declarations on the rights of women, children, refugees, stateless persons, diplomatic agents, minorities, persons with disabilities have been adopted under the UN system.<sup>158</sup> Since the adoption of the UDHR, there have been substantive developments in the theoretical, normative and legal perspectives of international human rights law, including debates on several conceptual issues regarding the scope and content of human rights generally.<sup>159</sup>

There has also been significant growth in jurisprudence of different bodies and tribunals responsible for the interpretation and implementation of human rights law and the human rights role of non-state entities such as non-governmental organisations

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<sup>155</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 2.

<sup>156</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 2.

<sup>157</sup> Chowdhury and Bhuyan *Introduction to International Human Rights Law* 53.

<sup>158</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 11.

<sup>159</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 4.

(NGOs).<sup>160</sup> New perspectives have also evolved regarding responsibilities and remedies for human rights violations among others. The tremendous evolution of international human rights law since the adoption of the UDHR has been subjected to in-depth reflective analyses by various scholars and need not becloud the thrust of this study.<sup>161</sup>

In the aftermath of the World War II and the breakup of European colonies, and with the formation of the UN, interests turned to the development prospects of what were then called underdeveloped countries. The issue to be addressed was whether it was possible to reduce disparities among nations and people and, if so, how?<sup>162</sup> In the post-war period, economic development became an important theme of economic thinking and analysis and the growing concern with development among economists resulted from three main challenges: the reconstruction of Europe after 1945; the development in the South; and the development of the socialist countries and the Cold War.<sup>163</sup>

Décolonisation created rapid growth in the UN membership, and by 1956, it stood at 118, twice as many as at the organisation's founding.<sup>164</sup> With the states from Africa and Asia joining the UN, development issues became increasingly important, resulting in the expansion of the technical co-operation programmes.<sup>165</sup> Towards the mid-1970s, the UN increasingly became the forum for global negotiations on issues involving development, whereas technical co-operation remained of highest importance for developing countries, development was to be achieved by addressing new issues such as trade, energy, a common fund for raw material, industrialisation, the transfer of technology and a code of conduct for transnational corporations.<sup>166</sup> The development theory had a very strong practical orientation; its aim was to provide grounds for immediate action and the desire to do something for the ex-colonies.<sup>167</sup> The UN's

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<sup>160</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 4.

<sup>161</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 4.

<sup>162</sup> Hedley *Running out of control: Dilemmas of Globalisation* 44.

<sup>163</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 49.

<sup>164</sup> Muller *Reforming the UN Volume 6: The Challenge of Working Together* 6.

<sup>165</sup> Muller *Reforming the UN Volume 6: The Challenge of Working Together* 6.

<sup>166</sup> Muller *Reforming the UN Volume 6: The Challenge of Working Together* 7.

<sup>167</sup> Leys *The Rise and Fall of Development Theory* 5.

development efforts have profoundly affected the lives and well-being of millions of people throughout the world.<sup>168</sup> The work of the UN regarding economic development in the 1940s and 1950s focused mainly on the ways to get development going.<sup>169</sup> The UN's view was clearly on the side of interventionist strategy, in which public intervention and strengthened government played a key role.<sup>170</sup> Development institutions were created to manage the efforts, and billions of dollars were poured into the struggle. Despite some real achievements, the gap between rich and poor countries is widening, the numbers of people in poverty are increasing in many parts of the world, and hundreds of millions are trapped in conditions that pose long terms dangers to the welfare of everyone.<sup>171</sup> The question is whether the UN strategies that were employed for development were efficient in ensuring sustainable human development and, the contribution they have had in empowering and ensuring adequate standard of living.

## 2.2 DEVELOPMENT FRAMEWORK UNDER THE UN

### 2.2.1 ICCPR and ICESCR: Normative content

The 1940s were a golden age for defining human rights, and economic and social rights were integral part of the dialogue.<sup>172</sup> The UN Charter in article 55 (a) undertakes to promote higher standards of living, full employment, and conditions of economic and social progress and development. According to Sen, development can be seen as the process of expanding the real freedoms that people enjoy.<sup>173</sup> Sen contends that development depends also on other determinants such as social and economic arrangements.<sup>174</sup> The adoption of the UDHR could be regarded as such an arrangement as it embodies a set of rights that accrue to individuals and guarantees those rights. The violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social and political sphere.<sup>175</sup> The ICCPR is the UN mechanism that regulates the promotion and protection of the civil and political liberties; it is the

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<sup>168</sup> United Nations *United Nations today* 149.

<sup>169</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 51.

<sup>170</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 51.

<sup>171</sup> Offeinheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 270.

<sup>172</sup> Offeinheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 270.

<sup>173</sup> Sen *Development as Freedom* 3.

<sup>174</sup> Sen *Development as Freedom* 3.

<sup>175</sup> Sen *Development as Freedom* 3.

codification of civil and political rights expressed in the UDHR into legally binding provisions.<sup>176</sup> A distinction is often made between civil and political rights, or first generation rights, and economic, social and cultural rights, or second generation rights.<sup>177</sup> While civil rights are those rights intended to protect individual's physical and mental integrity, to ensure that they are not victims of discrimination, and to preserve their right to a fair trial.<sup>178</sup> Political rights are those which ensure that individuals are able to participate fully in civil society; such rights include the right to vote and to participate in the public life of the state, freedom of expression and assembly, and freedom of thought, conscience or religion.<sup>179</sup>

The ICCPR comprises of a Preamble and five parts. The Preamble sets out the foundational principles of the covenant being the values of equality and dignity as enshrined in the UN Charter.<sup>180</sup> Part one encompasses the right to self-determination and disposal of wealth.<sup>181</sup> Part two consists of article 2 and it enunciates the nature of the state obligations in safeguarding the promises from its provisions; states parties obligation to promote and protect the rights recognised in the ICCPR, responsibility of state parties to enforce remedies where violations of the rights recognised in the ICCPR have occurred, promotion and protection of equal rights of men and women.<sup>182</sup> Part three comprises of an array of rights that accrue to individuals; right to life, protection against torture, slavery, forced labour, freedom of movement, freedom of religion and freedom of association, right to have family, children's rights to acquire nationality and the right to a fair trial of the accused persons.<sup>183</sup> Part four pronounces the establishment of the Human Rights Committee, monitoring of the ICCPR, reporting mechanisms by state parties, management and administration of the Human Rights Committee and

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<sup>176</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 33.

<sup>177</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 3.

<sup>178</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 3.

<sup>179</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 3.

<sup>180</sup> Preamble of *ICCPR* Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

<sup>181</sup> Article 1 *ICCPR*.

<sup>182</sup> Article 2 *ICCPR*.

<sup>183</sup> Articles 6-27 *ICCPR*.

functions of the Human rights Committee.<sup>184</sup> Part five addresses the interpretation of the ICCPR, signing and ratification of the ICCPR and proposition of amendments and considerations of amendment.<sup>185</sup>

Above it is illustrated that political rights refer to the right to vote and to most importantly the right to participate in public life and therefore participation is vital for development.<sup>186</sup> A healthy nation is an active, participatory nation where people can participate in multi-dimensional platforms.<sup>187</sup> The freedom to have a say in hiring and firing your government is a human right, which makes democracy not just a means to an end but also an end in itself.<sup>188</sup> Encouraging democracy in poor countries is not just a sound development policy; it is also the right thing to do.<sup>189</sup> Democracy is an ideal that is highly valued in most societies, the experience of democracy is very limited, for the most part democracy is equated to some form of representative democracy, where we elect our leaders every few years and then leave them to get on with the job unless we particularly object to something, in which case we may be roused to some form of protest.<sup>190</sup> Ideas of participatory democracy conceive of a much more active role for the citizens, where ordinary people play an active role in decision making and, as a consequence, have to carry more responsibility for their decisions.<sup>191</sup>

Genuine development process can only take place when there is a high level of participation by ordinary citizens.<sup>192</sup> The lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities and in other case, the unfreedom links closely to the lack of public facilities, or of organised arrangements for health care or educational facilities or of effective institutions for the

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<sup>184</sup> Articles 28-45 ICCPR.

<sup>185</sup> Articles 46-53 ICCPR.

<sup>186</sup> See note 178.

<sup>187</sup> *Ife Human Rights from Below: Achieving Rights through Community Development* 40.

<sup>188</sup> Berendsen *Development and Democracy* 23;24 see [http://www.nimd.org/wp-content/uploads/attachments/documents-D-democracy\\_development\\_2007.pdf](http://www.nimd.org/wp-content/uploads/attachments/documents-D-democracy_development_2007.pdf).

<sup>189</sup> Berendsen *Development and Democracy* 23; 24.

<sup>190</sup> *Ife Human Rights from Below: Achieving Rights Through Community Development* 40.

<sup>191</sup> *Ife Human Rights from Below: Achieving Rights Through Community Development* 40.

<sup>192</sup> *Ife Human Rights from Below: Achieving Rights Through Community Development* 40.

maintenance of local peace and order.<sup>193</sup> This therefore means for development to be freedom, the above issues of economic, social and cultural nature should be taken seriously and be regulated to guarantee that everyone will obtain freedom.

Looking into the normative content of the UN's framework on social, economic and cultural rights, the ICESCR is the foundational treaty for these rights; the preamble of the ICESCR thus acknowledges the UN Charter and its principles of equality and dignity.<sup>194</sup> Part one recognises the right to self-determination for all peoples and the right to freely dispose of their natural wealth and resources.<sup>195</sup> Part two defines the obligations of state parties to the ICESCR, obligation to take all necessary measures to achieve progressive realisation of the rights recognised in the ICESCR and the obligation to ensure equal rights of men and women and the recognition of permissible restrictions under the ICESCR.<sup>196</sup> Part three of the ICESCR encompasses; the right to work and conducive conditions of work, right to form and join a trade union, right to social security, special protection of mothers and children, adequate standard of living including adequate food, enjoyment and access to highest attainable standard of health, right to and access to education including free and compulsory primary education, and right to take part in cultural life and enjoyment of benefits of scientific progress and its applications.<sup>197</sup> Part four of the ICESCR articulates mechanisms for implementation and monitoring of the ICESCR and the mandate of the monitoring body ECOSOC.<sup>198</sup> Part five of the ICESCR utters provisions for signing and ratification of the treaty.<sup>199</sup> It might also be assumed that the term civil and political rights imply distinction between two different, but related sets of right.<sup>200</sup> Some civil and political rights, however, have a dual or hybrid nature such as for example the right to marry and have a family.<sup>201</sup> While family is regarded as the natural and fundamental unit of society, it is clear that the

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<sup>193</sup> *Sen Development as Freedom* 4.

<sup>194</sup> Preamble ICESCR.

<sup>195</sup> Article 1 ICESCR.

<sup>196</sup> Articles 2-5 ICESCR.

<sup>197</sup> Articles 6-15 ICESCR.

<sup>198</sup> Articles 16-25 ICESCR.

<sup>199</sup> Articles 26-31 ICESCR.

<sup>200</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 3.

<sup>201</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 4.

changing nature of family and its social role is not simply a civil right but also can be counted as the social right.<sup>202</sup> The right which prohibits discrimination has the capacity for application beyond civil and political rights alone.<sup>203</sup> The fundamental problem that many Western states had with economic, social and cultural rights in particular was that they were seen as intangible and difficult to enforce.<sup>204</sup> They were thus labelled as 'provision rights'; and for many, it was not the job of the state, but rather of the individual to provide and the job of the state to protect, however, to protect effectively, it would be necessary to have tangible rights that could be judicially enforced.<sup>205</sup>

The result of this ideological split was an overt emphasis on civil and political rights to the detriment of economic, social and cultural rights throughout the later part of the twentieth century.<sup>206</sup> There are easily identifiable similarities between the ICCPR and the ICESCR. Both covenants in their preambles acknowledge the UN Charter and its foundational principles of equality and dignity, another similarity is the number of parts that makes each covenant, both covenants are made up of five parts and article 1 in both covenants recognises the right to self-determination.

Rights make human beings better economic actors.<sup>207</sup> A state cannot legislate good health and jobs, it will need an economy strong enough to provide for them and, for that, it needs people to be economically engaged.<sup>208</sup> People will work because they enjoy the fruits of their labour, fair pay, education and health care for their families.<sup>209</sup> Economic, social and cultural rights are both the incentive for, and a reward of a strong economy.<sup>210</sup> It is therefore essential to broaden the vision of human rights and it must be entrenched to achieve sustainable human development.<sup>211</sup> The opportunity for

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<sup>202</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 4.

<sup>203</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 4.

<sup>204</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 32.

<sup>205</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 32.

<sup>206</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 32.

<sup>207</sup> UNDP *HDR 2000* iii.

<sup>208</sup> UNDP *HDR 2000* iii.

<sup>209</sup> UNDP *HDR 2000* iii.

<sup>210</sup> UNDP *HDR 2000* iii.

<sup>211</sup> UNDP *HDR 2000* iii.

change depends on understanding how the definition of human rights has been narrowed, and how it must be broadened.<sup>212</sup>

### **2.2.2 Nature of responsibilities of state parties under the ICCPR and the ICESCR**

As explained above, the rights recognised in the ICCPR were classified as first generation rights while social, economic and cultural rights were classified as second generation rights.<sup>213</sup> The nature of this classification calls for an analysis of the nature of obligations encapsulated in both covenants. Article 2 common to both ICCPR and ICESCR encapsulates the responsibilities of state parties to the covenants. Article 2(1) of the ICCPR provides that

each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the recognised in the present Covenant, without distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>214</sup>

According to Conte, the commitment to respect and guarantee covenant rights are owed to individuals within a state territory and it is a matter of its jurisdiction. This particular provision of the ICCPR is thus concerned with the individual person and not the collective of individuals despite the provisions of article 1 that guarantee the right to self-determination.<sup>215</sup> There are certain rights which appear to be collective in nature such as the right of individuals to belong to ethnic, linguistic or religious minorities but it is the right of the individual in question to belong to these pre-existing minorities which is of significance as the ICCPR does not make provision for collective rights.<sup>216</sup> Conte further raises concerns regarding the provision that individuals must be within the state's territory as well as jurisdiction.<sup>217</sup> This does not mean that all individuals are treated the same for the purposes of attribution of various rights, since there are inevitably certain limitations on the rights of aliens and those who are not lawfully

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<sup>212</sup> Offeinheiser and Holcombe 2003 *Non-Profit and Voluntary Sector Quarterly* 270.

<sup>213</sup> See note 176 above.

<sup>214</sup> Article 2(1) ICCPR.

<sup>215</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

<sup>216</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

<sup>217</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

present within its territory of the state.<sup>218</sup> People, including non-citizens are on equal footing as far as they are the subjects of the relevant civil and political rights guaranteed by the ICCPR.<sup>219</sup> All persons should by virtue of their essential humanity enjoy all human rights.<sup>220</sup> It is from diversity that we grow and develop, and it is diversity that enables us to be exposed to other ideas, other world, other cultures and other practices.<sup>221</sup> If development is to be the site for the renewal of humanity, it must not merely tolerate and accept diversity but must actively promote it and celebrate it.<sup>222</sup> This requires an approach that is based on inclusiveness, an approach that welcomes the stranger as someone who can enrich rather than exclusiveness.<sup>223</sup>

According to the wording of article 2(1) of the ICCPR, the primary obligation for ensuring the protection of rights is imposed upon the state, and in most circumstances, there will be a more or less clear relationship between the organs of the state and the violation of human rights which imposes responsibility upon it for that violation.<sup>224</sup> Article 2(2) of the ICCPR states that each state party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such laws or others measures as may be necessary to give effect to the rights recognised in the present covenant.<sup>225</sup>

Article 2(1) of the ICESCR provides

that each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures.<sup>226</sup>

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<sup>218</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

<sup>219</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

<sup>220</sup> United Nations *Rights of Non-Citizens* 5.

<sup>221</sup> Ife *Human Rights from Below: Achieving Rights through Community Development* 34; 35.

<sup>222</sup> Ife *Human Rights from Below: Achieving Rights through Community Development* 34; 35.

<sup>223</sup> Ife *Human Rights from Below: Achieving Rights through Community Development* 34; 35.

<sup>224</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 5; 6.

<sup>225</sup> Article 2(2) ICCPR.

<sup>226</sup> Article 2 (1) ICESCR.

The provisions of this section require states to begin immediately to take measures towards the full enjoyment of all rights in the covenant by everyone.<sup>227</sup> The adoption of legislation will be fundamental if economic, social and cultural rights are to be enforceable; however, laws alone are not a sufficient response to the covenant obligations.<sup>228</sup> Administrative, judicial, policy, economic, social and educational measures and all other necessary steps will be required of governments to ensure these rights to all.<sup>229</sup> With regards to the progressive realisation of the rights, this concept of progressive realisation constitutes recognition of the fact that full realisation of economic, social and cultural rights will generally not be able to be achieved in a short period of time.<sup>230</sup>

The fact that realisation over time, or as it is stated in the covenant progressively, is foreseen under the covenant is not to be misinterpreted, as depriving of all meaningful content. The ICESCR imposes an obligation to move as expeditiously and effectively as possible towards that goal, furthermore any deliberately retrogressive measures in that regard would require the most careful consideration of and would need to be fully justified by reference to the totality of the rights provided in the covenant and on the context of the full and maximum availability of resources.<sup>231</sup> Todaro states that development has traditionally meant achieving sustained rates of growth of income per capita to enable a nation to expand its output at a rate faster than the growth of its population; levels and rates of growth of real per capita gross national income (GNI) are then used to measure the overall economic well-being of a population, and how much of real goods and services are available to the average citizen for consumption and for investment.<sup>232</sup> Development was always seen as an economic phenomenon in which rapid gains in overall per capita GNI growth would either trickle down to the masses in the form of jobs and other economic opportunities or create the necessary conditions for

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<sup>227</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 9.

<sup>228</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 9.

<sup>229</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 9.

<sup>230</sup> CESCR *General Comment No. 3: The nature of States Parties Obligations Article 2(1), of the ICESCR*; adopted on the fifth session of the Committee on Economic, Social and Cultural Rights on 14 December 1990.

<sup>231</sup> CESCR *General Comment No.3* para 9.

<sup>232</sup> Todaro and Smith *Economic Development* 14.

the wider distribution of the economic and social benefits of growth.<sup>233</sup> Problems of poverty, discrimination, and unemployment and income distribution were of secondary importance to getting the growth job done; indeed the emphasis is often increased on output measured by gross domestic product (GDP).<sup>234</sup> The progressive realisation concept is often mistakenly taken to imply that economic, social and cultural rights can be realised only when a country reaches a certain level of economic development; yet, this is neither the intent nor the legal interpretation of this provision.<sup>235</sup> Although the full realisation of the rights recognised in the covenant, the application of some rights can be made justiciable immediately while some rights can be justifiable over time.<sup>236</sup> The states parties regardless of their level national wealth are required to move as quickly as possible towards the realisation of economic, social and cultural rights.

At the heart of the problem in realising social, economic and cultural rights is the question of resources.<sup>237</sup> Under article 2, states parties have undertaken to be legally bound to take steps, to the maximum of their available resources, to achieve progressively the full realisation of the rights in the ICESCR.<sup>238</sup> One critical misconception that has resulted from the language of that provision is that the actualisation of economic, social and cultural rights strictly necessitates states provisions.<sup>239</sup> One of the main challenges involved in the justiciability of economic, social and cultural rights is in measuring and determining whether or not a state party has satisfied its obligations with respect to the rights enumerated in the treaty.<sup>240</sup> The main reason for this measurement challenge is the concept of progressive realisation imbedded in the ICESCR.<sup>241</sup> States parties are not required to provide many obligations set forth in the ICESCR immediately after ratification of the treaty, instead, the concept

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<sup>233</sup> Todaro and Smith *Economic Development* 14.

<sup>234</sup> Todaro and Smith *Economic Development* 14.

<sup>235</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 9.

<sup>236</sup> UN *Limburg Principles UN Document E/CN .4 1987/17* The Limburg principles on the implementation of ICESCR para 8.

<sup>237</sup> Robertson 1994 *Human Rights Quarterly* 694.

<sup>238</sup> Article 2 ICESCR.

<sup>239</sup> Olowu *An Integrative Rights-based Approach to Human Development in Africa* 27.

<sup>240</sup> Kalantry, Getgen and Koh 2010 *Human Rights Quarterly* 256.

<sup>241</sup> Kalantry, Getgen and Koh 2010 *Human Rights Quarterly* 256.

of progressive realisation permits states parties to incrementally progress over time in realisation of the right, although the Covenant specifies not time frame.<sup>242</sup>

Steps represent specific actions and resources represent that upon which the satisfaction of the rights is dependent.<sup>243</sup> Robertson argued that there can never be a truly definitive list of types of resources which must be arranged by the state, and the on-going process of economic and social evolution is persistently creating different resource needs.<sup>244</sup> Although constructing a list of kinds of resources is impossible, there are several classifications of resources which are central for securing the necessities of life and one of the most necessary to urban dwellers is money.<sup>245</sup> Pecuniary means can be put in the hands of the people in need, or can be used by the state to procure items for the destitute, however dependence on monetary resources is somewhat flawed as it does little to promote self-sufficiency.<sup>246</sup> Robertson demonstrates the availability of resources stating that, to the rural dweller, access to natural resources is of equal or greater importance than access to money, giving a farmer land, water and seeds and animals so he can fulfil his right to food is desirable to explicit financial assistance as it is more likely to ease the problem of unending state dependency.<sup>247</sup> It is therefore reasonable to assume that, it must be that active economic, social and cultural rights will be costly to the state because there is a small percentage that is being spent currently on them by many states parties to the ICESCR, and in some cases there are many people to whom that right might have to be granted.<sup>248</sup>

The requirement to devote the maximum of available resources to the full realisation of economic, social and cultural rights affects governments decisions about budgets and expenditure of public money, states are required to give priority to meeting their treaty obligations before funding discretionary activities.<sup>249</sup> A resource which is potentially available for realising economic, social and cultural rights must be made available by

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<sup>242</sup> Kalanry, Getgen and Koh 2010 *Human Rights Quarterly* 256.

<sup>243</sup> Robertson 1994 *Human Rights Quarterly* 695.

<sup>244</sup> Robertson 1994 *Human Rights Quarterly* 695.

<sup>245</sup> Robertson 1994 *Human Rights Quarterly* 695.

<sup>246</sup> Robertson 1994 *Human Rights Quarterly* 695.

<sup>247</sup> Robertson 1994 *Human Rights Quarterly* 696.

<sup>248</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 57.

<sup>249</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 13.

the state as long as doing so would not adversely affect any other right.<sup>250</sup> Human rights take priority over all other competing concerns. It is therefore necessary to assess whether a state party is required to make resource available for promoting an economic, social and cultural right, and there has to be consideration for withdrawing it from the current use.<sup>251</sup> If there is an infringement of other human rights, then there is no obligation to make resources available. It is important to ensure that a state is not required to use all its resources without exception, however only the maximum which could be expended for a particular purpose without sacrificing essential services.<sup>252</sup>

In addition to the various specific articles under article 2(1) of the ICESCR, there are three general obligations within the legal framework of economic, social and cultural rights; the obligation to respect, protect and fulfil the rights enshrined in the ICESCR. The obligation to respect entails that state parties are required to refrain from taking actions that result in denial of economic, social and cultural rights, this means that state parties must not interfere with the livelihoods of its subjects or their capabilities as well as their means of subsistence including land.<sup>253</sup> States must refrain from interfering with individuals who by their own efforts are earning their living in a legal way, states are not only required to refrain from interfering, and they must also provide opportunities to individuals to be self-supporting by encouraging self-supporting strategies within their territories.<sup>254</sup> States must refrain from illegal confiscation of land; any expropriation of individual land must be subject to due process and be duly compensated.<sup>255</sup>

With regards to the obligation to protect, this obligation requires the states and its agents to prevent the violation of any individual's rights by any other individual or non-state actors.<sup>256</sup> Private actors can violate economic, social and cultural rights; private actors have duties to observe human rights and the state has the correlative duty to ensure the protection of individual's rights from violation by third parties not generally linked to the state, as human rights is no longer a public law matter but includes the

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<sup>250</sup> Anderson 2010 *DEV Working Paper* 8.

<sup>251</sup> Anderson 2010 *DEV Working Paper* 8.

<sup>252</sup> Anderson 2010 *DEV Working Paper* 9.

<sup>253</sup> Olowu *An Integrative Rights-based Approach to Human Development in Africa* 27.

<sup>254</sup> Sepulveda *The nature of obligations under the ICESCR* 212.

<sup>255</sup> Sepulveda *The nature of obligations under the ICESCR* 212.

<sup>256</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 17.

private domain.<sup>257</sup> The obligation to protect does not refer to state responsibility for non-state actors, rather to state responsibility for its failure to prevent and protect against human violations committed by non-state actors.<sup>258</sup> To prevent the human rights violations by non-state actors, the legislation must be of penal nature so that the state can penalise certain behaviours that may adversely affect the enjoyment of economic, social and cultural rights.<sup>259</sup>

With regards to the obligation to fulfil, the General Comment 12 expresses that this obligation includes the obligation to facilitate and provide.<sup>260</sup> The obligation requires states to adopt proper legislative, administrative, fiscal, juridical, educational and other practical measures to secure the protection and promotion of economic, social and cultural rights.<sup>261</sup> The obligation to fulfil includes allocating adequate proportion of public expenditure to the progressive realisation of economic, social and cultural rights, state provision of public services, developing targeted plans of action, strategies and establishing for monitoring the full realisation of economic, social and cultural rights.<sup>262</sup>

The differences between the protections envisaged in both covenants are that the ICCPR norms create respect for the rights usually under sanction by law; these rights are sometimes described as absolute or immediate.<sup>263</sup> The ICESCR was drafted with a language that to a greater or lesser extent is generally vague; the uncertainty in relation to some of the ICESCR's obligations has been excessively prolonged due to the weakness of its supervisory system,<sup>264</sup> prior to the emergence of its complaint mechanism.

When the normative principles of the international protection of all human rights including economic, social and cultural rights are included in the constitution of a

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<sup>257</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 17.

<sup>258</sup> Sepulveda *The nature of obligations under the ICESCR* 222.

<sup>259</sup> Sepulveda *The nature of obligations under the ICESCR* 222.

<sup>260</sup> CESCR *General Comment 12: The right to adequate food (Art 11)* Adopted in the 20<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights 12 May 1999 contained in Document E/C.12/1999/5.

<sup>261</sup> Olowu *An integrative Rights-Based Approach to Human Development in Africa* 30.

<sup>262</sup> UN *Economic, Social and Cultural Rights: A Handbook for National Human Rights Institutions* 19.

<sup>263</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 58.

<sup>264</sup> Sepulveda *The nature of obligations under the ICESCR* 7.

country, the proponents of the justiciability of economic, social and cultural rights consider that to be an effective mechanism for protection.<sup>265</sup> Chowdhury and Bhuiyan makes an example of the South African Constitution in which there is an equal protection of economic, social, cultural, civil and political rights.<sup>266</sup> The jurisprudence of the South African Constitution regarding economic, social and cultural rights has been set out in the case of *Soobramoney v Minister of Health*,<sup>267</sup> Mr Soobramoney was in dire need of renal dialysis as he was suffering from chronic renal failure; the hospital in which he sought medical attention from refused attending to him on the grounds that his general physical condition did not qualify him for treatment under the criteria used by the hospital to determine eligibility for such treatment.<sup>268</sup> As a result of limited funds being available for treatment, which the Constitutional Court found did not fall within the ambit of the right to emergency treatment, Mr Soobramoney was denied the right to that treatment.<sup>269</sup> The core issue that occupied the Constitutional Court in this case is whether the policy chosen by the organs of state can reasonably be expected to deliver the rights in question.<sup>270</sup> The wording of article 2(1) should be viewed as responsibility to create an objective international standard for measuring state's performance of its obligations while acknowledging disparities among states.<sup>271</sup>

### 2.2.3 Implementation and monitoring mechanisms

Freedom is central to the process of development for evaluative reasons; an assessment of progress has to be done primarily in terms of whether the freedoms that people have are enriched.<sup>272</sup>

As highlighted above the ICCPR established the Human Rights Committee.<sup>273</sup> The Human Rights Committee is comprised of body of independent experts that monitors the implementation of the ICCPR by the state parties to the covenant.<sup>274</sup> The

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<sup>265</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 61.  
<sup>266</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 61.  
<sup>267</sup> *Soobramoney v Minister of Health KwaZulu Natal* 1998 (1) SA 756 (CC)  
<sup>268</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 61.  
<sup>269</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 61.  
<sup>270</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 61.  
<sup>271</sup> Olowu *An integrative Rights-based Approach to Human Development in Africa* 34.  
<sup>272</sup> *Sen Development as freedom* 4.  
<sup>273</sup> Article 28 ICCPR.  
<sup>274</sup> UN June 2014 <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx>.

responsibility of the ICESCR to monitor implementation is vested in the ECOSOC.<sup>275</sup> The ECOSOC established the Committee on Economic, Social and Cultural Rights (CESCR) to carry out the monitoring of the implementation of the ICESCR.<sup>276</sup> All states are obliged to submit regular reports to the CESCR on how the rights are being implemented.<sup>277</sup> The CESCR examines each report and addresses its concerns and make recommendations to the state party in the form of concluding observations.<sup>278</sup> The ICESCR articulates the states parties undertaking to submit periodic reports to the CESCR within two years of entry into force if ICESCR for each state party and thereafter once every five years, setting out legislative, judicial, policy and other measures that the state party has taken to ensure the realisation and enjoyment of the rights guaranteed in the ICESCR.<sup>279</sup>

It is clear that the modalities of ICCPR and ICESCR implementation are different and their interrelationship is far more complex.<sup>280</sup> Contrasting the ICCPR and the ICESCR, the ICESCR does not establish an independent body for its monitoring and implementation, while the ICCPR makes provision for the establishment of the Human Rights Committee to monitor its implementation, the monitoring of the ICESCR was originally entrusted to the ECOSOC.<sup>281</sup> The normative language of the ICESCR norms is wide and presents challenges when there is an attempt to implement them as legal principles.<sup>282</sup> A significant feature of the ICCPR is that the Optional Protocol permitting individual complaints from state parties was opened for signature simultaneously with the adoption and entry into force of the covenant, whereas the Optional Protocol for ICESCR was adopted 33 years later under the resolution of the Human Rights Council of 2008.<sup>283</sup> The failure to provide an individual complaint mechanism for the ICESCR had contributed to the underdevelopment of the normative content of the covenant;

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<sup>275</sup> Article 18 *ICESCR*.

<sup>276</sup> ECOSOC *Resolution* 1985/17.

<sup>277</sup> UN June 2014 <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>.

<sup>278</sup> UN June 2014 <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>.

<sup>279</sup> Articles 16-17 *ICESCR*.

<sup>280</sup> Conte *Defining Civil and Political Rights: The Jurisprudence of the UN Human Rights Committee* 3.

<sup>281</sup> Sepulveda *The nature of obligations under the ICESCR* 7.

<sup>282</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 52.

<sup>283</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 58.

eventually this had obstructed the task of providing a precise meaning and scope to many of the covenant's provisions,<sup>284</sup> until very recently. Proponents of complaints mechanism had argued that the absence of strong enforcement mechanisms in the ICESCR have marginalised economic, social and cultural rights.<sup>285</sup>

The omission to establish an independent treaty monitoring body for the ICESCR was addressed by the creation of the CESCR in 1985.<sup>286</sup> In 2013, the Optional Protocol on the ICESCR came into force and mandates the CESCR to assume the competence to receive and consider communications from individuals claiming that their rights under the ICESCR have been violated.<sup>287</sup> Furthermore, the CESCR may also under certain circumstances undertake enquiries on grave or systematic violations of any economic, social or cultural rights set forth in the covenant, and consider inter-state complaints.<sup>288</sup> The CESCR publishes its provisions of the ICESCR through the General Comments and the comments are not legally binding. However, they carry substantial weight in the interpretation of the rights they address.<sup>289</sup>

It has been argued above that the broad frameworks of human rights should be integrated for the end of development. If this principle is adhered to in practice, the two concepts of human rights and human development would generate a virtuous cycle.<sup>290</sup> By the year 2000; most countries have ratified the core covenants on political, economic, social and cultural rights, and these countries are struggling to implement them.<sup>291</sup> However, life remained a blight for children in the developing country, for refugees caught up in a conflict, for women in a society that still denied them equality and freedom with everyday witnessing physical and psychological threats, and still too many of the 1.2 billion people living on less than a dollar a day, lacking even the most basic provisions for survival.<sup>292</sup> While the progress on human rights allowed by the end

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<sup>284</sup> Sepulveda *The nature of obligations under the ICESCR* 7.

<sup>285</sup> Denis and Stewart 2004 *The American Journal of International Law* 463.

<sup>286</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 51.

<sup>287</sup> Article 2 *Optional Protocol CESCR*.

<sup>288</sup> Article 10 *Optional Protocol CESCR*.

<sup>289</sup> Olowu *An Integrative Rights-based Approach to Human Development in Africa* 38.

<sup>290</sup> UNDP *HDR* 2000 iii.

<sup>291</sup> UNDP *HDR* 2000 iii.

<sup>292</sup> UNDP *HDR* 2000 iii.

of the Cold War marks break through, for these people it was still just the shrill edge of the segment, it had not yet affected their lives.<sup>293</sup> People will not enjoy development without security, security without development and either without respect for human rights.<sup>294</sup> The HDR 2014 indicates that despite recent progress in poverty reduction, more than 2.2 billion people are either near or living in multi-dimensional poverty, which means that more than 15 per cent of the world's population remains vulnerable to multi-dimensional poverty.<sup>295</sup> This indication shows that the development methods utilised over the years have not attain the desired results, and therefore a new development approach is needed.

## **2.3 INSTITUTIONS OF GLOBAL DEVELOPMENT SINCE 1945**

### **2.3.1 UN Programmes and agencies**

Institutions are defined by rules, their enforcement mechanisms and organisations.<sup>296</sup> Distinct from policies, which are the goals and desired outcomes, institutions are the rules including behavioural norms, by which agents interact and the organisations that implement rules and codes of conduct to achieve the desired outcomes.<sup>297</sup> Institutions further confirm how market supporting institutions affect people's lives by influencing growth, determining people's access to markets, enabling poor and rich people to make the best use of their assets.<sup>298</sup>

The work of the UN regarding economic development in the 1940s and 1950s focused mainly on the ways to get development going and its view was clearly on the side of interventionist strategy, in which public intervention and strengthened government played a vital role.<sup>299</sup> During this period, the General Assembly and ECOSOC repeatedly recommended to the underdeveloped countries that they should adopt integrated programmes of development that were based on the harmonious

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<sup>293</sup> UNDP *HDR 2000* iv.

<sup>294</sup> Nagpal 2013 *OIDA International Journal of Sustainable Development* 31.

<sup>295</sup> UNDP *HDR 2014* 3.

<sup>296</sup> World Bank *World Development Report 2002; Building Institutions for Markets* 6.

<sup>297</sup> World Bank *World Development Report 2002; Building Institutions for Markets* 6.

<sup>298</sup> World Bank *World Development Report 2002; Building Institutions for Markets* 7.

<sup>299</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 51.

development of their natural and human resources mobilisation of available domestic capital in order to raise the living standards of the population as a whole.<sup>300</sup>

Promoting economic development may prove to be the decisive test of functional cooperation.<sup>301</sup> To meet this global challenge, the UN, regional, international organisations and individual governments have launched programmes aimed at helping developing countries prepare for the future.<sup>302</sup> Approaches combine technical assistance, capital loans and grants, within a broad range of educational, health, welfare, and internal improvements programmes.<sup>303</sup> The overall purpose is to build a base from which each society may hope to achieve sustainable economic development and improve human conditions.<sup>304</sup> The following regional mechanisms were established under the UN framework, the Economic Commission for Africa (ECA) 1958,<sup>305</sup> the Economic Commission for Latin America (ECLA) 1949 and the Economic and Social Commission for West Asia (ESCWA) in 1974<sup>306</sup> In addition, there was an array of agencies that were also established, including the Food and Agriculture Organisation (FAO), United Nations Children's Fund (UNICEF).<sup>307</sup> UNICEF's work is guided by the Convention on the Right of 1990 CRC and its aims are supported by the UN family of agencies; from United Nations Educational, Scientific and Cultural Organisation (UNESCO) focusing on education, to the International Labour Organisation (ILO) and its efforts to abolish child labour; the relief provided by the World Food Programme (WFP) and to disease eradication by World Health Organisation (WHO), to regulating and discussing trade relations, United Nations Conference on Trade and Development UNCTAD.<sup>308</sup>

The United Nations Development Programme (UNDP) was established in 1965 to secure a unified approach to development and the UNDP has become a trusted

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<sup>300</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 51.

<sup>301</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 470.

<sup>302</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 470.

<sup>303</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 470.

<sup>304</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 470.

<sup>305</sup> See note 20 above.

<sup>306</sup> Browne and Weiss 2008 *Future UN Development System* 1.

<sup>307</sup> UN June 2014 <http://www.un.org/en/globalissues/africa/index.shtml>.

<sup>308</sup> UN June 2014 <http://www.un.org/en/globalissues/africa/index.shtml>.

development partner as it operates according to the principles and values of the UN.<sup>309</sup> The UNDP is engaged in a range of projects from politics to security, public, crime and the environment.<sup>310</sup> The UNDP currently spearheads work on the Millennium Development Goals (MDGs), drawing on a number of organisations and funds in furtherance of advancing the eradication of extreme poverty, combating HIV/AIDS, democratisation and sustainable development.<sup>311</sup> Since 1990, the UNDP has published its annual Human Development Reports (HDR) which focuses on the global debates and issues on development.<sup>312</sup> The HDR represent the subtle of analysis of the relationship between human development and human rights, drawing directly from the work of Amartya Sen.<sup>313</sup> Since both human rights and development seek to guarantee the basic freedoms that people have reason to value, the ideas of human development and those of human rights are linked in a compatible and complementary way.<sup>314</sup>

A crucial determinant factor in the development theory was the birth of the Bretton Woods financial and trading system.<sup>315</sup> The creation of the Bretton Woods came at the end of World War II and these institutions were set up at a meeting of 43 countries in Bretton Woods in Hampshire, in 1944, for the UN Monetary and Financial Conference.<sup>316</sup> The resultant International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBDR) known today as the 'World Bank' were founded.<sup>317</sup> The IMF was founded in the interest of finding the best means for cooperation in dealing with international monetary and financial problems; and the IBDR was founded for speeding up post-war reconstruction and this was to be fulfilled through the establishment of programs for reconstruction and development.<sup>318</sup> Since its establishment the World Bank has expanded from a single institution to a closely associated group of five development institutions and the mission of the World Bank has

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<sup>309</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 498.  
<sup>310</sup> Ziring, Riggs and Plano *The United Nations: International Organisation and World politics* 498.  
<sup>311</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 232.  
<sup>312</sup> UNDP July 2014 [http://www.undp.org/content/undp/en/home/operations/about\\_us.html](http://www.undp.org/content/undp/en/home/operations/about_us.html).  
<sup>313</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 176.  
<sup>314</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 176.  
<sup>315</sup> Leys *The Rise and Fall of Development Theory* 5.  
<sup>316</sup> United Nations *Proceedings and Documents of UN Monetary and Financial Conference* VI.  
<sup>317</sup> United Nations *Proceedings and Documents of UN Monetary and Financial Conference* VI.  
<sup>318</sup> United Nations *Proceedings and Documents of UN Monetary and Financial Conference* VI.

evolved from the IBDR as facilitator of post-war reconstruction and development to the present day mandate of worldwide poverty alleviation in close collaboration with other institutions and other members of the World Bank Group.<sup>319</sup> The IMF currently fosters global growth and economic stability, it provides policy advice and financing to members in economic difficulties and also works with developing nations to help them achieve macroeconomic stability and reduce poverty.<sup>320</sup> Looking into the framework of development executed through the IMF and the World Bank, the questions that one must ask include why some countries remain much poorer than others and why some countries achieve tremendous economic growth and stability. The role of these institutions in development will be explored in chapter 3 with regards to the stunted development in Africa.

### 2.3.2 Treaty-based mechanisms

The UN Human rights system was established to create a comprehensive system for protection of human rights and restore the dignity of human life.<sup>321</sup> Development of human rights regimes was primarily motivated because of demands for respect, power, wealth, enlightenment, well-being, affection and moral rectitude.<sup>322</sup> Treaties were devised to address issues such as non-discrimination, political and civil liberties, wider political participation, education, access to health, welfare, and protection from ill-treatment, abuse, and protection of religious beliefs, gender parity and or moral beliefs that are contrary to the interest of the ruling class.<sup>323</sup> Three historical factors that influenced the development of international human rights were the horrors and devastation visited on large group of people because of the World War II, the establishment on the UN and the decolonisation process that increased demands for self-determination and nationhood.<sup>324</sup> The UN treaty system has become the primary vehicle for through which human rights norms are promulgated and disseminated.<sup>325</sup>

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<sup>319</sup> World Bank July 2014 <http://www.worldbank.org/en/about/what-we-do>.

<sup>320</sup> IMF July 2014 <http://www.imf.org/external/about/overview.htm>.

<sup>321</sup> Sitaraman *State Participation in International Treaty Regimes* 97.

<sup>322</sup> Sitaraman *State Participation in International Treaty Regimes* 97.

<sup>323</sup> Sitaraman *State Participation in International Treaty Regimes* 97.

<sup>324</sup> Sitaraman *State Participation in International Treaty Regimes* 97.

<sup>325</sup> Sitaraman *State Participation in International Treaty Regimes* 97.

Based on the principles articulated in the UDHR of non-discrimination, equality, dignity,<sup>326</sup> a number of treaties were adopted to guarantee specific rights, including the International Convention on Elimination of All forms of Racial Discrimination (ICERD),<sup>327</sup> the Convention on Elimination of all Forms of Discrimination against Women (CEDAW),<sup>328</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted in 1984;<sup>329</sup> the Convention on the Rights of the Child was adopted in 1990;<sup>330</sup> the International Convention on the Protection of the Rights of all Migrant Workers and members of their families (ICRMW) was adopted in 1990;<sup>331</sup> the Convention on the Rights of Persons with Disabilities (CPD) was adopted in 2006;<sup>332</sup> and the Convention for the Protection of all Persons from Enforced Disappearance (CED) was adopted in 2007.<sup>333</sup>

There is a range of treaty bodies which consider the extent to which states have complied with their human rights obligations under the UN human rights system, and each of these bodies has the primary responsibility for monitoring specified rights and freedoms and assessing state's compliance therewith.<sup>334</sup> The Committee on Elimination of all forms of discrimination, this committee monitors the implementation of CERD, Committee on Elimination of all forms of Discrimination against Women, monitors the implementation of the CEDAW, Committee on Torture, monitors implementation of the CAT, Committee on the Rights of the Child, monitors the implementation of the CRC, Committee on the Rights of Migrant Workers, monitors the implementation of the CMW, Committee on the Rights of Persons with Disabilities, monitors the implementation of the CRPD, and the Committee on Enforced Disappearance monitors the implementation of the CED.

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<sup>326</sup> Article 2 UDHR.

<sup>327</sup> ICERD adopted in 1965 entered into force in 1969.

<sup>328</sup> CEDAW adopted in 1979 and entered into force in 1981.

<sup>329</sup> CAT adopted in 1984 and entered into force in 1987.

<sup>330</sup> CRC adopted in 1989 and entered into force into in 1990.

<sup>331</sup> ICRMW adopted in 1990 and entered into force in 2003.

<sup>332</sup> CPD adopted in 2006 and entered into force in 2008.

<sup>333</sup> CED adopted in 2007 entered into force in 2010.

<sup>334</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 226.

The focus of treaty bodies is on promoting and monitoring compliance with the provisions of a particular human rights treaty. The treaty bodies should complement the work of the Human Rights Council, its special mechanisms and other international bodies.<sup>335</sup> By becoming states parties to these treaties through ratification, governments undertake to put in place domestic measures and legislation compatible with their treaty obligations.<sup>336</sup> The rule of law at the country level is vital for development. A country's commitment to the rule of law significantly impacts on its economic development prospects.<sup>337</sup> As society is made of individuals, the state is the primary agent of control in society, the state exercises control over individuals through law bodies of rules that are addressed universally to all individuals similarly situated; the rules are designed to achieve social purposes or effectuate basic social principles.<sup>338</sup> The purposes are those of the society as a whole, not of limited groups within it, when the rules are enforced equally for all citizens, and in a fashion that achieves the purpose for which they were consciously designed, the legal order applies, interprets and changes universalistic rules.<sup>339</sup>

### 2.2.3 Evolution of the UN development framework

The design of the UN is built on three main pillars: peace and security, development and human rights.<sup>340</sup> Conceptually, these pillars were linked, interrelated and interdependent, so much that there could be no peace and security without development, and no development without human rights.<sup>341</sup> Todaro defines development as the process of improving the quality of all human lives and capabilities by raising people's levels of living, self-esteem, and freedom.<sup>342</sup> There are three core values of human development: sustenance, self-esteem and freedom.<sup>343</sup> With regards to sustenance, this is the ability to meet basic needs, as all peoples have certain basic

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<sup>335</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 226i.

<sup>336</sup> UN July 2014 <http://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>.

<sup>337</sup> Trebilcock and Prado *What makes poor countries poor?* 44.

<sup>338</sup> Trebilcock and Prado *What makes poor countries poor?* 44.

<sup>339</sup> Trebilcock and Prado *What makes poor countries poor?* 44.

<sup>340</sup> Nagpal 2013 *OIDA International Journal of Sustainable Development* 31.

<sup>341</sup> Nagpal 2013 *OIDA International Journal of Sustainable Development* 31

<sup>342</sup> Todaro and Smith *Economic Development* 5.

<sup>343</sup> Todaro and Smith *Economic Development* 21.

needs without which life would be impossible and these life sustaining basic human needs include food, shelter, health and protection, and when of these is absent or in critically short supply, a condition of underdevelopment exist.<sup>344</sup> With regard self-esteem, this component refers to a sense of worth and self-respect, development is legitimised as a goal because it is an important, perhaps even an indispensable way of gaining esteem.<sup>345</sup> With regards to freedom, this connotes the sense of emancipation from alienating material conditions of life and from social servitude to nature, other people, misery, oppressive institutions, and dogmatic beliefs especially that poverty is predestination.<sup>346</sup>

During the 1950s and the 1960s, the general view among international bodies was that economic growth was the road to economic salvation and the general improvement of welfare.<sup>347</sup> It was felt that as the economy grew, and the country became westernised, the poor would benefit and by the late 1960s, however, there was enough contrary evidence that this was noticeably absent.<sup>348</sup> During the 1970s, economic development came to be redefined in terms of reduction or elimination of poverty, inequality, and unemployment within the context of a growing economy.<sup>349</sup>

Economic development in the past has also been typically seen in terms of the planned alteration of the structure of production and employment so that agriculture's share of both declines and that of the manufacturing and service industries increases.<sup>350</sup> The assumption was that as economic growth took place, the benefits of such development would trickle down to benefit all sectors of society, this assumption did not recognise social structures that created and exacerbated inequalities and meant that the free flowing trickle down was blocked.<sup>351</sup> Development frequently ignored gender differences in populations under consideration, as women societies and economies moved from

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<sup>344</sup> Todaro and Smith *Economic Development* 21.

<sup>345</sup> As above.

<sup>346</sup> As above.

<sup>347</sup> George and Wilding *Globalisation and Human Welfare* 91.

<sup>348</sup> George and Wilding *Globalisation and Human Welfare* 91.

<sup>349</sup> Todaro and Smith *Economic Development* 15.

<sup>350</sup> Todaro and Smith *Economic Development* 14.

<sup>351</sup> Willis *Theories and Practices of Development* 142.

rural subsistence base to an industrial urban core, women were increasingly excluded leaving them on the margins of capitalist development and its perceived benefits.<sup>352</sup>

The experience of the 1950s and the 1960s, when many developing nations did reach their economic targets but the levels of poverty of living of the masses of people remained for the most part unchanged, signalled that something was very wrong with this narrow definition of development.<sup>353</sup> Much development planning has failed to reduce inequalities and alleviate poverty.<sup>354</sup> Development reached an impasse in the 1980s because of a crisis at two levels; a crisis in the Third World in terms of increasing levels of poverty, exclusion and inequality; and a crisis in development thinking, with the dominant theories and paradigms that had dominated understandings and explanations of the world being challenged and subsequently losing their hegemony.<sup>355</sup> In the 1980s, development pessimism had already set in because it was realised that the gap between rich and poor countries continues to widen.<sup>356</sup>

Some efforts were made to rein in the extremes of policy prescriptions of the 1980s and strike balance with the concerns and approaches that dominated development policy in the preceding decades.<sup>357</sup> Although the subsequent approaches based on employment and meeting basic human needs specified objectives in terms of what could have been lifted from the UDHR, the ICCPR and the ICESCR few analysts made the connection between them, and therefore, the discussions on development objectives and policies were conducted almost totally separate from human rights.<sup>358</sup> The first suggestion of change came about with the adoption of the Declaration on the Right to Development. The UN General Assembly adopted the Right to Development in 1986.<sup>359</sup> In the Declaration to the Right to Development, it is recognised that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on

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<sup>352</sup> Willis *Theories and Practices of Development* 142.

<sup>353</sup> Todaro and Smith *Economic Development* 15.

<sup>354</sup> Kothari and Minogue *Development Theory and Practice* 3.

<sup>355</sup> Kothari and Minogue *Development Theory and Practice* 3.

<sup>356</sup> Kothari and Minogue *Development Theory and Practice* 3.

<sup>357</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 169.

<sup>358</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 174.

<sup>359</sup> Declaration on the Right to Development; Adopted by the General Assembly Resolution 41/128 December 1986.

the basis active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.<sup>360</sup>

The Declaration to Development stresses the holistic approach.<sup>361</sup> All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.<sup>362</sup> A considerably body of commentary has appeared in support of the declaration, mainly in legal and human rights publications, however critical and sceptical views have also emerged in legal and political writings.<sup>363</sup> In its consensus resolution on the 1996-97 programme budgets, the UN General Assembly added a requirement that the High Commissioner establish a new branch with the primary responsibility of promoting and protecting the right to development.<sup>364</sup> The notion of a right to development provided legal and ethical authority to the Third World's request for the international redistribution.<sup>365</sup> In addition it acted as a counter-argument against rich countries' exclusive insistence on political and civil rights.<sup>366</sup>

The development challenges confronted by developing countries came about as a result of a history of exploitation and therefore, needs to be rectified by declaring equitable economic development throughout the world.<sup>367</sup> Many developing countries considered that the proclamation of the Declaration on the Right to Development created an opportunity to resuscitate the New International Economic Order (NIEO) of the 1970s and to affirm an obligation on donor countries to reduce resource constraints on their development.<sup>368</sup>

The Vienna Declaration and the Programme of Action, adopted by the World Conference on Human Rights in 1993, sought to solidify the standing of economic,

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<sup>360</sup> Declaration on the Right to Development; Adopted by the General Assembly Resolution 41/128 December 1986 *Preamble*.

<sup>361</sup> Negi and Sengupta *Reflections on the Right to Development* 25i.

<sup>362</sup> Article 6 *Declaration to the Right to Development*.

<sup>363</sup> Negi, Sengupta and Baso *Reflections on the Right to Development* 35.

<sup>364</sup> Negi, Sengupta and Baso *Reflections on the Right to Development* 35.

<sup>365</sup> Uvin 2007 *Development in Practice* 598.

<sup>366</sup> Uvin 2007 *Development in Practice* 598.

<sup>367</sup> Gawanas: *The AU: Concepts and Implementation Mechanisms Relating to Human Rights* 145.

<sup>368</sup> Negi, Sengupta and Baso *Reflections on the Right to Development* 35.

social and cultural rights. The Vienna Declaration expressed that to strengthen enjoyment of economic, social and cultural rights, additional approaches should be examined, such as the system of indicators to measure progress in the realisation of the rights set forth in the ICESCR and further there must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.<sup>369</sup> The Vienna Declaration recognised the right to development as universal and inalienable rights and an integral part of fundamental human rights.<sup>370</sup>

In practice, the interrelationship between peace and security, development and human rights has not always been evident over the years.<sup>371</sup> The end of the Cold War marked the commencement of a serious discussion on the interdependence of different types of human rights between advocates of human rights and advocates of development and additionally the world conferences of the 1990s have attempted within their declarations and programs of actions to bring together two strands of thinking.<sup>372</sup> In 1995, at Copenhagen the heads of states adopted the Declaration and Programme of Action to Social Development; in this declaration there was an acknowledgement that people of the world have shown in different ways an urgent need to address profound social problems, especially poverty, unemployment and social exclusion that affect every country, the heads of states tasked themselves to address the structural and underlying causes as well as the distressing consequences.<sup>373</sup> The Copenhagen Declaration included a commitment to promote social integration by fostering societies that are stable, safe and just and based on the promotion and protection of human rights.<sup>374</sup>

Acknowledging the commitments and visions of human development articulated in the Copenhagen summit; in May 1996, the Organisation for Economic Co-operation and Development (OECD) recognised the need for international community to sustain and increase the volume of official development assistance in order to reverse the growing

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<sup>369</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993 Part II, para 98.

<sup>370</sup> Vienna Declaration and Programme of Action 1993 Part I para 10.

<sup>371</sup> Nagpal 2013 *OIDA International Journal of Sustainable Development* 31

<sup>372</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 174.

<sup>373</sup> Declaration and Programme of Action of the World Summit for Social Development, Copenhagen March 1995 para 2.

<sup>374</sup> Declaration and Programme of Action para 28 Commitment 4.

marginalisation of the poor and achieve progress toward realistic goals of human development.<sup>375</sup> The OECD proposed a global partnership and adopted international development targets which were economic well-being, social development and environmental sustainability.<sup>376</sup> The OECD expressed the responsibilities of developing countries in order for them to achieve sustainable development; adherence to appropriate macro-economic policies, commitment to basic objectives of social development and increased participation including gender equality, foster accountable government and the rule of law, strengthen human and institutional capacity, and creation of a climate favourable to enterprise and mobilisation of local savings and investment, and the maintenance of stable and co-operative relations with neighbours.<sup>377</sup>

The impact of non-implementation of economic, social and cultural rights is more discernible and the UN has responded through the Millennium Development Goals (MDGs).<sup>378</sup> The objective of the MDGs is commendable; however the feasibility of the MDGs yielding the desired outcomes remains a challenge. The MDGs represent ends or ultimate outcomes; they do not dwell on the means to achieve them.<sup>379</sup> Human rights and development share a common vision and a common purpose, to secure the freedom, well-being and dignity of all people everywhere.<sup>380</sup> When human development and human rights advance together, they reinforce one another, expanding people's capabilities and protecting their rights and fundamental freedoms.<sup>381</sup> As mentioned above, there can be no peace without development.<sup>382</sup> The HDR of 1994 warned that future conflicts within nations may ensue with the origins buried deep in growing socio-economic deprivations and disparities, as the search for security and peace lies in development and not in arms.<sup>383</sup> The HDR suggested that in order to address the challenge of human security, a new development paradigm is needed, that paradigm

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<sup>375</sup> OECD *Shaping the 21<sup>st</sup> Century; The Contribution of Development Co-operation* 1.  
<sup>376</sup> OECD *Shaping the 21<sup>st</sup> Century; The Contribution of Development Co-operation* 1.  
<sup>377</sup> OECD *Shaping the 21<sup>st</sup> Century; The Contribution of Development Co-operation* 13.  
<sup>378</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 68.  
<sup>379</sup> Vandermoortele *UN Task Team* 4.  
<sup>380</sup> UNDP *HDR 2000* 2.  
<sup>381</sup> See note 92 above.  
<sup>382</sup> See note 340 above.  
<sup>383</sup> UNDP *HDR 1994* 1.

should put people at the centre of development and regard economic growth as means not the end, such paradigm of development enables all individuals to enlarge their human capabilities to the fullest, and to put those capabilities to their best use in all fields economic, social, cultural and political rights.<sup>384</sup>

The 1995 HDR highlighted the significance and importance of women empowerment in the development paradigm, stating that the empowerment of women must be an integral part of the sustainable human development paradigm.<sup>385</sup> The 1996 HDR raised a concern about how human development has been failing in over a hundred countries fifteen years prior to 1996. According to the HDR 1996, the link between growth and human development was failing for people in the many countries with lopsided development with either good growth but little human development.<sup>386</sup> The HDR of 1996 concluded that more economic growth will be needed for the twenty first century, however more attention must go to the structure and quality of that growth, to ensure that it is directed to supporting human development, reducing poverty, protecting the environment and ensuring sustainability.<sup>387</sup>

While the UN can boast of an impressive body of work to promote human rights on global basis, much less discussion has taken place on the relationship between of human rights to its work on social and economic development.<sup>388</sup> The early work of the UN on development focused largely on how to raise savings and investment and improve technology and productivity; while the general objectives of development were always mentioned, as also was the importance of an enabling environment, little attempt was made to link them to the UN instruments on human rights.<sup>389</sup> New approaches to development will need to find and articulate a clearer link between social capital and development.<sup>390</sup> Development may have mostly failed because of misguided policies and flawed institutions, however even in the rare instances when policies and institutions were right, ignoring the social issues led to a development path that

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<sup>384</sup> United Nations *Human Development Report* 1994 4.

<sup>385</sup> United Nations *Human Development Report* 1995 iii.

<sup>386</sup> United Nations *Human Development Report* 1996 1.

<sup>387</sup> United Nations *Human Development Report* 1996 1.

<sup>388</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 173.

<sup>389</sup> Jolly, Emmerij and Ghai *UN Contribution to Development Thinking and Practice* 173.

<sup>390</sup> Fukuda-Parr, Lopez and Malik *Capacity for development* 37.

produced incomplete transformation, with social construct not tallying with institutional and policy innovation and when all three exist synergistically, the process is distorted and none of the sectors perform optimally.<sup>391</sup>

The categorisation of rights has led to a range of problems with implementation of the ICESCR. Willis demonstrates the detriment of categorising rights within the context of civil and political given preference over social, economic and cultural rights. She queries whether freedom of expression is really that important when people do not have enough food to live.<sup>392</sup> Any work on the implementation of the major human rights conventions immediately leads to a consideration of legal instruments, institutions, and policies to promote these rights whether they relate to children, women, minorities, migrants, or the general public, and consequently, any artificial distinctions between different types of rights, legal action and development policies disappear in the context of the concrete reality of life.<sup>393</sup>

## **2.4 FRAMEWORK FOR DEVELOPMENT IN AFRICA**

### **2.4.1 The African regional human rights system**

The normative and institutional evolution of international human rights law at the global level played a prominent role in encouraging the creation of regional human rights system in Europe, the Americas, Africa and more recently the emerging systems in Asia and the Arab states.<sup>394</sup> Regional human rights systems have served to fill the gaps in the global human rights mechanisms and they have fruitfully complemented the global human rights system by impacting and influencing domestic human rights practice in member states.<sup>395</sup> Regional organisations have devised mechanisms in order to adequately address cultural and regional concerns and particularities. Owing to its turbulent history, the African continent has faced tremendous challenges in the human rights sphere.<sup>396</sup> In 1981, when the African Charter on Human and Peoples Rights (African Charter) was adopted, the foundation for the African regional human rights

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<sup>391</sup> Fukuda-Parr, Lopez and Malik *Capacity for development* 37.

<sup>392</sup> Willis *Theories and Practice of Development* 152.

<sup>393</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 68.

<sup>394</sup> Mugwanya 2000 *Ind. Int'l & Comp. L. Rev* 40.

<sup>395</sup> Mugwanya 2000 *Ind. Int'l & Comp. L. Rev* 40.

<sup>396</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 235.

system was effectively laid.<sup>397</sup> With the African Charter as its centre piece, the African human rights system experienced tremendous growth in standard setting and in the creation of supervisory mechanisms; for a long time the growth of the system remained within the framework of the OAU and its successor organisation, the African Union (AU).<sup>398</sup> The purpose of the AU is designed to serve and include the securing of the continent's democracy, human rights and sustainable economy.<sup>399</sup> The Constitutive Act of the AU incorporated all the objectives and principles of OAU, however it went further than OAU in covering by providing for the promotion of democratic principles and institutions, popular participation and good governance and most importantly the promotion and protection of human rights and the AU thus seems to take a more rigorous and robust approach for the protection and promotion of human rights.<sup>400</sup>

#### 2.4.2 The African Charter

The preamble of the African Charter differs from the preambles of other regional conventions for the protection of human rights.<sup>401</sup> The Preamble indicates that the African Charter drew its inspiration from the OAU Charter which stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African Peoples.<sup>402</sup> The preamble of the African Charter reaffirms the pledge made in article 2 of the OAU Charter; to eradicate all forms of colonialism from Africa, to coordinate and intensify cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the UN Charter and the UDHR.<sup>403</sup>

The Charter recognises the virtues of the historical traditions and the values of African civilizations which should inspire and characterise their reflection on the concept of human and peoples' rights.<sup>404</sup> Another unusual feature of the African Charter is its

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<sup>397</sup> Ebobrah and Tanoh (eds) *Compendium of African Sub-Regional Human Rights Documents* 6.

<sup>398</sup> Ebobrah and Tanoh (eds) *Compendium of African Sub-Regional Human Rights Documents* 6.

<sup>399</sup> Ebobrah and Tanoh (eds) *Compendium of African Sub-Regional Human Rights Documents* 6.

<sup>400</sup> Constitutive Act adopted in 2000 at the Lome Summit and entered into force in 2001.

<sup>401</sup> Gittleman 1982 *J. Int'l L.* 674.

<sup>402</sup> Gittleman 1982 *J. Int'l L.* 674.

<sup>403</sup> African Charter on Human and People's Rights adopted in Nairobi 27 June 1981 and entered into force 21 October 1986 *Preamble*.

<sup>404</sup> African Charter *Preamble*.

coverage of economic, social and cultural rights alongside civil and political rights.<sup>405</sup> The Charter differs from the European and American Conventions because of its reliance on principles primarily African in nature.<sup>406</sup> Apart from the preamble, the African Charter consists of Part I which is comprised of two chapters covering the rights and duties; duties of states towards the recognition of the rights articulated in the charter and the rights and duties of individuals.<sup>407</sup> Part two of the Charter consists of four chapters; chapter one pronounces an establishment and organisation of the African Commission on Human and people's rights uttering the selection process of the member of the Commission as well as the appointment of the members of the Commission.<sup>408</sup> Chapter two of part 1 deals with the mandate of the Commission.<sup>409</sup> Chapter three articulates the procedure of the Commission and other communication.<sup>410</sup> Chapter four states applicable principles regarding respect and recognition of international human rights law in interpreting and implementation of the provisions of the Charter and further deals with signing and ratification of the Charter.<sup>411</sup> Part III of the Charter establishes general provisions concerning the commencement of the African Commission on Human and People's Rights.<sup>412</sup>

### 2.4.3 Normative Content of the African Charter

The African Charter enunciates an array of rights that individual persons are entitled to. The Charter embodies the right to non-discrimination<sup>413</sup>; equality before the law<sup>414</sup>; right to life<sup>415</sup>; dignity, prohibition of exploitation and slavery<sup>416</sup>; right to liberty<sup>417</sup>; right to a fair trial<sup>418</sup>; freedom of conscience and religion<sup>419</sup>; right to information<sup>420</sup>; freedom of

<sup>405</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 236.

<sup>406</sup> Gittleman 1982 Va. J. Int'l L. 674.

<sup>407</sup> Articles 1-29 *African Charter*.

<sup>408</sup> Article 30-44 *African Charter*.

<sup>409</sup> Articles 45 *African Charter*.

<sup>410</sup> Articles 46-59 *African Charter*.

<sup>411</sup> Articles 60-63 *African Charter*.

<sup>412</sup> Articles 64 -68 *African Charter*.

<sup>413</sup> Article 2 *African Charter*.

<sup>414</sup> Article 3 *African Charter*.

<sup>415</sup> Article 4 *African Charter*.

<sup>416</sup> Article 5 *African Charter*.

<sup>417</sup> Article 6 *African Charter*.

<sup>418</sup> Article 7 *African Charter*.

<sup>419</sup> Article 8 *African Charter*.

association<sup>421</sup>; the right of assembly<sup>422</sup>; freedom of movement and asylum<sup>423</sup>; right to participate in the political process and access to public affairs<sup>424</sup>; right to property<sup>425</sup>; right to a conducive work environment<sup>426</sup>; right to health<sup>427</sup>; the right to education<sup>428</sup> and article 18 embodies the right to protection of family especially women and children; the elderly and the disabled.<sup>429</sup> The Charter further embodies collective rights and recognises the following rights; equality of all human beings<sup>430</sup>; right to self-determination<sup>431</sup>; right to freely dispose of wealth and natural resources<sup>432</sup>; right to economic, social and cultural development<sup>433</sup>; right to national and international peace and security<sup>434</sup> and the right to development<sup>435</sup>. The Charter also deals with obligations of states and individuals and it provides under this category the following: the states parties' responsibility to promote freedoms, rights and corresponding obligations<sup>436</sup>; respect of the independence of the judiciary and promotion of the rights through establishment of national institutions<sup>437</sup> and individual's duty towards society and family<sup>438</sup>.

Looking at the normative content of the African it is evident that the UDHR had an impact in the construction of the Charter. The Comparison between the UDHR and the Charter reveals great similarities, to highlight some of the similarities; article 2 and 19 of the Charter as well as article 2 of the UDHR both pronounces the right to non-discrimination and article 4 of the Charter guarantees the right to life in similar terms

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420 Article 9 *African Charter*.  
 421 Article 10 *African Charter*.  
 422 Article 11 *African Charter*.  
 423 Article 12 *African Charter*.  
 424 Article 13 *African Charter*.  
 425 Article 14 *African Charter*.  
 426 Article 15 *African Charter*.  
 427 Article 16 *African Charter*.  
 428 Article 17 *African Charter*.  
 429 Article 18 *African Charter*.  
 430 Article 19 *African Charter*.  
 431 Article 20 *African Charter*.  
 432 Article 21 *African Charter*.  
 433 Article 22 *African Charter*.  
 434 Article 23 *African Charter*.  
 435 Article 24 *African Charter*.  
 436 Article 25 *African Charter*.  
 437 Article 26 *African Charter*.  
 438 Articles 27-29 *African Charter*.

with the article 3 of the UDHR.<sup>439</sup> The construction of the African Charter has been perfected as it does not have bifurcation between social, economic, cultural rights and civil and political rights; the right to dignity is cross-cutting right which makes all rights interconnected and seamless.<sup>440</sup> Olowu recognises the absence throughout the Charter of any explicit derogation clause as it is customary in the human rights treaties and the clear significance of the tacit prohibition on African governments to abridge the rights even during emergencies.<sup>441</sup> It appears that the non-inclusion of the derogation clause in the African Charter provides a more secure framework for rights protection by not allowing for derogation from the rights protected.<sup>442</sup>

#### **2.4.4 Nature of obligations of states parties to the Charter**

An important aspect of human rights document is its legal effect.<sup>443</sup> Member states of the AU who are parties to the African Charter have an obligation to recognise the rights, duties and freedoms enshrined in the Charter, and they shall undertake to adopt legislative or other measures to give effect to them.<sup>444</sup>

To ensure that states adhere to the obligation of adopting legislative measures, the Charter provides that each state party shall undertake to submit every two years, from the date the Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter.<sup>445</sup> The state is further vested with a duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.<sup>446</sup> Publicity for the work of the monitoring bodies is essential, publicity is needed so that those who want to comply voluntarily know what is expected of them, but it is also necessary to ensure that shame or peer pressure can

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<sup>439</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 237.

<sup>440</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 60.

<sup>441</sup> Olowu *An Integrative Rights-Based Approach to Human Development in Africa* 55.

<sup>442</sup> Baderin and Manisuli *International Human Rights Law: Six Decades after the UDHR and Beyond* 240. We must however note that the African Charter contains a number of "draw back clauses"

<sup>443</sup> Gittleman 1982 J. Int'l L. 688.

<sup>444</sup> Article 1 *African Charter*.

<sup>445</sup> Article 62 *African Charter*.

<sup>446</sup> Article 25 *African Charter*.

be mobilised against recalcitrant states.<sup>447</sup> The Charter further provides that states shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter.<sup>448</sup> The all-important selection of process of Commissioners and Judges must be taken seriously by the regional body.<sup>449</sup> The importance of separation of powers has been acknowledged, regarding non-justiciability of economic, social and cultural rights; one argument of the non-justiciability of economic, social and cultural rights is based on the doctrine of separation of powers in a democratic state where courts are not empowered to encroach into the legislative arena which make policy for the state, to leave economic, social and cultural rights disputes to democratic self-correction is to relegate the plight of the disadvantaged, marginalised and vulnerable as being trivial and not as relevant.<sup>450</sup> The political representative and the judge each have different competencies but both are civil servants although one is more independent than the other.<sup>451</sup> Unlike the ICESCR, the Charter avoids the incremental language of progressive realisation in guaranteeing economic, social and cultural rights, except in article 16(1) of the Charter, which guarantees the best attainable state of physical and mental health.<sup>452</sup> Unlike the traditional civil and political rights that the Charter mostly circumscribes with claw backs, the economic, social and cultural rights guaranteed by the Charter are free from both claw backs and limitations.<sup>453</sup>

#### **2.4.5 Implementation mechanisms**

The African Charter under article 30 establishes an African Commission on Human and People's Rights, and it is the main contrivance that ensures and monitors the compliance of state parties with their treaty obligations. The African Commission was established as a quasi-judicial supervisory body.<sup>454</sup> The African Court on Human and People's rights is another mechanism that enforce and monitors human rights treaties;

<sup>447</sup> Shelton *Regional Protection of Human Rights* 108.

<sup>448</sup> Article 26 *African Charter*.

<sup>449</sup> Shelton *Regional Protection of Human Rights* 108.

<sup>450</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 55.

<sup>451</sup> Chowdhury and Bhuiyan *Introduction to International Human Rights Law* 56.

<sup>452</sup> Odinkalu 2001 *Human Rights Quarterly* 349.

<sup>453</sup> Odinkalu 2001 *Human Rights Quarterly* 348.

<sup>454</sup> Viljoen and Louw 2007 *The American Journal of international Law* 2.

The African Court is the continental Court established by member states of the AU to ensure the protection of human and people's rights in Africa.<sup>455</sup> The African Court was established by virtue of article 1 of the Protocol to the African Charter on Human and People's Rights.<sup>456</sup> The African Commission is mandated under the Charter to promote human and people's rights, this mandate entails encouraging national and local institutions concerned with human and people's rights, further it entails the formulation of principles and rules aimed at solving legal problems relating to human and people's rights, and to cooperate with African and international institutions concerned with the promotion and protection of human and people's rights<sup>457</sup>; to ensure the protection of human and people's rights under the conditions laid down by the Charter<sup>458</sup> and to interpret all the provisions of the present Charter at the request of any state party.<sup>459</sup> On the other hand, the African Court has a mandate to complement and reinforce the functions of the African Commission.<sup>460</sup>

The Charter expands the interpretation provisions for the Commission as it provides that the Commission shall draw inspiration from international law on human and people's rights particularly from the provisions of the UN Charter, UDHR and the OAU Charter.<sup>461</sup> The submission of State Reports and Individual Complaints are the main mechanisms engaged by the Commission to accomplish its mission of overseeing compliance with Charter norms by state parties. States parties to the African Charter are required to submit reports on their progress every two years in complying with the Charter every two years.<sup>462</sup> State reporting in international human rights procedure aims to achieve a multiple objectives including initial review by the implementing or oversight institution by which it is apprised by domestic laws, context, practice and problems; monitoring with a view to addressing systematically associated problems of implementation and

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<sup>455</sup> Protocol to the African Charter on Human and People's rights on the establishment of the an African Court on Human and People's Rights, Resolution AHGeRes 230(XXX) adopted by the Assembly of Heads of State and Government in June 1994 in Tunis, Tunisia.

<sup>456</sup> Article 1 *Protocol to the African Charter on the establishment of the African Court.*

<sup>457</sup> Article 45 (1) *African Charter.*

<sup>458</sup> Article 45 (2) *African Charter.*

<sup>459</sup> Article 45(3) *African Charter.*

<sup>460</sup> AU July 2014 <http://www.african-court.org/en/index.php/about-the-court/court-establishment>.

<sup>461</sup> Article 60 *African Charter.*

<sup>462</sup> Article 62 *African Charter.*

compliance.<sup>463</sup> State reporting mechanism further ensures public scrutiny and accountability to both national and international constituencies; benchmarking and evaluation overtime of any changes, information exchange and standard clarification setting.<sup>464</sup>

To facilitate a reporting system, the African Commission adopted General Guidelines Relating to the form and Contents of the Periodic Reports required under article 62.<sup>465</sup> These Guidelines expresses that state reporting under the Charter aims to include monitoring of state compliance and thus extends to the practices of the courts and administrative organs of the state party and other relevant facts.<sup>466</sup> Olowu raises concerns regarding the states reporting mechanism in that states fail to submit reports to the Commission; this hinders the effectiveness of the state reporting procedure. Another area of concern is that of competence of the representatives who presents these reports and the Commissions lack of follow up mechanism.<sup>467</sup> With regards to the individual complaints mechanism; the Commission's practice is that complaints from individuals as well as NGOs are accepted.<sup>468</sup> NGOs are allowed to submit shadow or alternative reports, but the impact of this avenue is diminished by the NGOs' lack of timely access to the states reports to which they are supposed to respond.<sup>469</sup> The individual complaints procedure has been kept remarkably active in responding to a wide range of human rights abuses in African states.<sup>470</sup> The individual complaints procedure uses much more frequently than the interstate mechanisms provided for is article 58 of the Charter, however, Heyns contends that this procedure is not frequently used as one might have expected on a continent with the kind of human rights problems as Africa's.<sup>471</sup>

The Commission has employed a number of other mechanisms through its promotional mandate regulated under article 45 (1) and it has established the following; Special

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<sup>463</sup> Odinkalu 2001 *Human Rights Quarterly* 355.

<sup>464</sup> Odinkalu 2001 *Human Rights Quarterly* 355.

<sup>465</sup> Odinkalu 2001 *Human Rights Quarterly* 355.

<sup>466</sup> Odinkalu 2001 *Human Rights Quarterly* 355.

<sup>467</sup> Olowu *An Integrative Rights-Based Approach to Human Development in Africa* 60.

<sup>468</sup> Heyns 2004 *Penn St. L. Rev* 694.

<sup>469</sup> Heyns 2004 *Penn St. L. Rev* 694.

<sup>470</sup> Olowu *An Integrative Rights-Based Approach to Human Development in Africa* 61.

<sup>471</sup> Heyns 2004 *Penn St. L. Rev* 694.

Rapporteurs, provisional measures, *in-situ* visits and resolutions.<sup>472</sup> The Special Rapporteurs proactively engage in dialogue with national human rights institutions and group structures, and develop and recommend strategies to advance the topic of their respective mandate.<sup>473</sup>

The African Human Rights Court not only supplements the Commission's individual complaints procedure because it has jurisdiction over all cases and disputes submitted to it concerning interpretation and application of the African Charter, or any other relevant international, regional or sub-regional human rights instruments ratified by states concerned, subject to the declaration envisaged in article 5 of its Protocol, and the Court further has advisory jurisdiction as well as adjudicatory jurisdiction.<sup>474</sup>

Under the African Charter, the verdicts of the Commission are not legally binding as such, as the Commission issues recommendations to parties rather than orders.<sup>475</sup> The legal status of the African Commission raises challenges regarding the implementation of the recommendations made by the Commission.<sup>476</sup> The difference of viewpoint with regards to the legal status of the recommendation made by the Commission was illustrated in the case of *Good v Botswana*<sup>477</sup>; in this case Professor Good was expelled from Botswana after he had written a criticism of that country's presidential system.<sup>478</sup> The African Commission found a various violations concerning articles 1, 2, 7(1) (a), 12 (4), 18(1) and 18(2) and the Commission recommended that the government pay the victim the compensation and guarantee that its immigration conformed to international human rights obligations.<sup>479</sup> In response the government stated that they are not going to follow on the recommendation made by the Commission, as the Commission does not give orders and the Commission is not a court.<sup>480</sup> The attitude of state parties towards the Commission, since its inception 20 years ago, has been generally to ignore the Commission's recommendations, with no attendant consequences and victims of

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<sup>472</sup> Heyns 2004 *Penn St. L. Rev* 694.

<sup>473</sup> AU July 2014 <http://www.african-court.org/en/index.php/about-the-court/court-establishment>.

<sup>474</sup> AU July 2014 <http://www.african-court.org/en/index.php/about-the-court/court-establishment>.

<sup>475</sup> Viljoen and Louw 2007 *The American Journal of international Law* 2.

<sup>476</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>477</sup> 313/05 *Kenneth Good Republic of Botswana* May 2010.

<sup>478</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>479</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>480</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

human rights violations often find themselves without any remedy, even after resorting to the African Commission, which erodes and undermines the Commission's credibility and authority as an effective protector of the rights enshrined in the Charter.<sup>481</sup> The African Commission has established the Working Group mandating it with informing the Commission on the status of implementation of its decisions on communications.<sup>482</sup> The Commission expanded the Working Group's mandate in 2012 entrusting it with the mandate to coordinate follow-up on decisions of the Commission on Communication by concerned Rapporteurs, to collect information on the status of implementation of the Commission's findings and to present a consolidated report on the status of implementation on the Commission's decision at each ordinary session in line with Rule 112 (7) of the Rules of Procedure.<sup>483</sup>

The existing body of research indicates that the binding nature of the findings of the African Commission is secondary to other factors in influencing whether states implement the findings, among these factors; is the perception that the decisions, the decision process, and the follow up process are purely adversarial.<sup>484</sup> The establishment of a system at the national level, over which the state has ownership, to implement treaty body findings could contribute to the dialogue-led, more holistic approach.<sup>485</sup> The HDR 2014 mentions that responsive and accountable institutions of governance are critical to overcoming the sense of injustice, vulnerability and exclusion that can fuel social discontent.<sup>486</sup> The lack of African states to take seriously recommendations by the African Commission poses a threat to development. Adoption of laws is crucial for ensuring transformation of the development framework, it is therefore important that the institutions entrusted with the interpretation and transformation of the law are able to ensure proper and efficient implementation of their recommendations and verdicts.

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<sup>481</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>482</sup> Resolution 194 establishing a Working Group on Communications and Appointment of Members 5 October 2011.

<sup>483</sup> Resolution 255 on the expansion of the mandate of the Working Group on Communications and modifying its composition, Yamoussoukro, Cote D'Ivoire October 2012.

<sup>484</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>485</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 353.

<sup>486</sup> UNDP HDR 2014 7.

#### 2.4.6 Other Regional Mechanisms

Apart from the African Charter, there are other human rights instruments adopted for the protection and promotion of human rights. The African Charter on the Rights and Welfare of the Child, adopted in 1990, seeks to ensure human rights of persons below the age of 18 and it covers the entire spectrum of civil, political, economic, social and cultural rights.<sup>487</sup> Other human rights mechanisms are the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), 2003, African Union Convention on Preventing and Combatting Corruption, 2003, African Youth Charter 2006 and the African Charter on Democracy, Elections and Governance, 2007.

With regards to development, NEPAD is the main institutions overseeing and facilitating development agenda for Africa. As the world adopted the MDGs in the year 2000, the AU simultaneously adopted NEPAD which was the result of three initiatives being; the Millennium Recovery Plan (MAP), the Omega Plan and the New African Initiative which was the merging of both the MAP and the Omega Plan.<sup>488</sup> NEPAD's objectives are to reduce poverty, put Africa on a sustainable development path, halt the marginalisation of Africa and empower women.<sup>489</sup>

The African Peer Review Mechanism (APRM) monitors the implementation of NEPAD with a primary objective of fostering the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through experience sharing and reinforcement of successful and best practices.<sup>490</sup> The APRM is largely political and as such could potentially be expected to protect the human rights of the weak in an independent fashion, and on the other hand the African Commission, as a quasi- judicial body, occupies a position somewhere in between, and could potentially

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<sup>487</sup> African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49(1990), entered into force in 29 November 1999.

<sup>488</sup> NEPAD July 2014 <http://www.nepad.org/history>.

<sup>489</sup> NEPAD July 2014 <http://www.nepad.org/history>.

<sup>490</sup> APRM July 2014 <http://aprm-au.org/about-aprm>.

share either the positive or the negative aspects of the other two bodies depending on how it is managed.<sup>491</sup>

Development can be seen as a process of expanding the real freedoms that people enjoy.<sup>492</sup> Development requires the removal of major sources of unfreedom; poverty, poor economic opportunities as well as systematic social deprivation.<sup>493</sup> If freedom is what development advances, then there is major argument concentrating on that overarching objective, rather than some particular means, or some chosen special list of instruments.<sup>494</sup> Ife emphasises the importance of process in development, contending that one of the most important principles of development is valuing the process; many programs are now defined in terms of their outcomes and not the process.<sup>495</sup>

The distinction between means and ends is dangerous because it can lead to the choice of means being only rational objective choice using criteria of efficiency and cost benefit, and with values confined to the choice of ends.<sup>496</sup> The ends are determined through a political process in which values and ideology play an important role, but the choice of means is taken out of the political debate and left to the technical experts. The fallacy of such an approach is seen in economics where important decisions that affect people's lives are deliberately removed from the arena of public debate and left to experts, economists and the captains of independent banks.<sup>497</sup>

While 46 African countries are state parties to the ICESCR, on the other hand, 51 are state parties to the ICCPR.<sup>498</sup> Regionally, All African countries are state parties to the African Charter. In operationalising the economic, social and cultural rights in the African Charter, it is important for the Commission to take due notice that the ICESCR has been ratified by 46 of the 51 states parties to the Charter, however this does not help the Commission in defining how it implements economic, social and cultural rights

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<sup>491</sup> Heyns 2004 *Penn St. L. Rev* 685.

<sup>492</sup> Sen *Development as Freedom* 3.

<sup>493</sup> Sen *Development as Freedom* 3.

<sup>494</sup> Sen *Development as Freedom* 3.

<sup>495</sup> Ife *Human Rights from Below: Achieving Rights Through Community Development* 36.

<sup>496</sup> Ife *Human Rights from Below: Achieving Rights Through Community Development* 36.

<sup>497</sup> Ife *Human Rights from Below: Achieving Rights Through Community Development* 37.

<sup>498</sup> UN July 2014 <http://www.treaties.un.org/Pages/ViewDetails.aspx>.

in the Charter.<sup>499</sup> While the ratification of the ICESCR by the African states does not necessarily improve the understanding of their obligations with respect to economic, social and cultural rights, it is evident that states regard the rights entrenched in the ICESCR as a legitimate subject for supra-national human rights oversight.<sup>500</sup> The number of African states ratifying the Covenant could be interpreted as suggesting that most of the African Charter state parties prefer progressive realisation standard to the more immediate and peremptory obligation in the African Charter, and a better reading of this development would be to regard it as providing the Commission with complementary cumulative tools of implementation, integrating both the violations and the progressive realisation tools approaches.<sup>501</sup>

Development change and the imperatives of new production systems in turn demand new social systems and capacities, understanding that development is fundamentally about transformation, the real challenge then is properly managing the transformation from traditional to modern society.<sup>502</sup>

## 2.5 CONCLUSION

There is no uncertainty that economic, social and cultural rights are essential for development and it is clear that enforceability and justification of these rights remains a challenge. There are a number of conventions, declarations, summits, protocols and institutions that have been adopted and established in the name of protecting, promoting human rights and ultimately ensuring that people live desirable and healthy lives. With all these mechanisms put in place, the question is does what exist provide what is needed? From the above, the major issue is not the shortage of institutions, rather, the implementation mechanisms are deficient in safeguarding the provision of what is needed and ensuring that it reaches the people in need.

It has now been widely acknowledged in the development sphere that the post-war development strategies have failed to bring the intended benefits much of the world's

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<sup>499</sup> Odinkalu 2001 *Human Rights Quarterly* Vol.23 No.2 353.

<sup>500</sup> Odinkalu 2001 *Human Rights Quarterly* Vol.23 No.2 354.

<sup>501</sup> Odinkalu 2001 *Human Rights Quarterly* Vol.23 No.2 354.

<sup>502</sup> Fukuda-Parr, Lopez and Malik Capacity for development 30.

population, and hence there is a need to devise new meanings, agendas, processes and targets for development.<sup>503</sup>

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<sup>503</sup> Kothari and Minogue *Development Theory and Practice* 6.

## CHAPTER 3

### AFRICA AND CHALLENGES OF DEVELOPMENT

#### 3.1 INTRODUCTION

This chapter deals with underdevelopment and stunted growth in Africa. It attempts to examine the causes of underdevelopment, considering historical and contemporary factors. Furthermore, in this chapter, there is an analysis of the performance of Africa in the MDGs, focusing on the promise of the MDGs and most importantly, the outcomes of the MDGs and what those outcomes portend for Africa.

Africa's performance since independence has been poor and one account for this poor performance is Africa's inimitable history, characterised by two events: slave trade and the colonial rule.<sup>504</sup> The year 1960 fundamentally ended an epoch that began with the scramble for Africa in the last part of the 19<sup>th</sup> century as that year saw most African states become independent.<sup>505</sup>

More than five decades of independence seem to have brought more antagonistic than fruitful returns to the continent, and although it is more opportune to blame Africa's ills on colonialism, the sad reality remains that Africans, especially their post-independence leaders, are the main source of discontent in Africa.<sup>506</sup> After all, Africa is not the only continent that has experienced imperialism and colonialism, even if African colonialism was particularly unkind because of slavery and its bearings.<sup>507</sup>

The post-colonial state in Africa embodies conflicting characteristics that inevitably affect both economic and political development and ultimately development.<sup>508</sup> The state is the chief public domain for the framework of the rules, the selection of officials, and the organisation of the competition between the various interests in the polity.<sup>509</sup> Stateness, a concept that has crept into the lexicon of political scientists and public

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<sup>504</sup> Nunn 2007 *Journal of Development Economics* 157.

<sup>505</sup> Hounnikpo *Africa's Elusive Quest for Development* 25.

<sup>506</sup> Hounnikpo *Africa's Elusive Quest for Development* 26.

<sup>507</sup> Hounnikpo *Africa's Elusive Quest for Development* 26.

<sup>508</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>509</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

policy analysts over the past decade,<sup>510</sup> denotes the magnitude to which states realises legitimate hopes held in the international community, and the idea of stateness leads to the study and grouping of states as strong, weak, failed and collapsed.<sup>511</sup> Weak or failed states are amongst the poorest countries, and these states are characterised by societies that are discernible with unfathomable social, cultural and internal regional divisions, and these divisions ominously prejudice the functioning of governments and markets.<sup>512</sup> A state has collapsed when it is no longer able to deliver the services for which it exists.<sup>513</sup> Africa today is characterised by inadequate stateness, hence the growing number of failed states in the continent, which paradoxically streamlines the number of the least developed countries of the world being in Africa.<sup>514</sup> The state is also a contender for the same resources because it has assumed the role of the manager rather than of the provider of resources.<sup>515</sup> The incapacity, and in some cases ineffectiveness, of the state in the duties it has assumed to itself have come to question the state's competence.<sup>516</sup> The obvious challenge in Africa has been the state re-formation because state consolidation as an instrument of nation building had turned into state worsening.<sup>517</sup>

To trace the trend of Africa's deteriorating state, the HDR from 1990 traced the steps of development from 1960. The HDR 1990 indicated that in general, the least developed countries, many in Africa, suffer the most human deprivation. Among all the developing regions, Africa had the lowest life expectancy, the highest infant mortality rates and the lowest literacy rates.<sup>518</sup> The HDR 1990 indicated that the trend towards the concentration of poverty in Africa was growing, and a number of Africans living below the poverty line rose by two-thirds in the first half of the 1980s, and during this period

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<sup>510</sup> Møllera and Skaaning 2011 18(1) *Democratization* 1-24.

<sup>511</sup> Kraxberger 2012 *Progress in Development Studies* 100.

<sup>512</sup> Kraxberger 2012 *Progress in Development Studies* 100.

<sup>513</sup> Eriksen 2011 *Review of International Studies* 230.

<sup>514</sup> Forje *African Political, Economic, and Security Issues: State Building and Democracy in Africa* 4.

<sup>515</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>516</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>517</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>518</sup> UNDP HDR 1990:18.

there were rising rates of child malnutrition and child mortality particularly in Sub-Saharan Africa.<sup>519</sup>

In education, Sub-Saharan Africa had witnessed especially fast progress; however it was only 48% compared to 60% of other developing regions.<sup>520</sup> The growth per capita income was 2.9% a year average for all developing regions between 1965 and 1980, and in Sub-Saharan Africa per capita income grew by 1, 6% a year between 1965 and 1980, but it has since been declining by 2.4% per year.<sup>521</sup> Access to health care according to every available measure was worst in Africa; Africa showed least progress in the accessibility of safe water, the access to safe water was declining, and in eight African countries less than a fifth of the people had access to safe water.<sup>522</sup> The HDR 2000 revealed negative results for human development in Africa. This report indicated that most African countries experienced a reversal in human development between the years 1985 and 1998 due to a drop in life expectancy largely influenced by HIV/AIDS.<sup>523</sup> On the other hand, this report showed a worrying growth of human poverty and deprivation.<sup>524</sup> Another warning was that of human deprivation, indicating that human poverty index exceeds 50% in most African countries.<sup>525</sup> The HDR of 2014 indicates that the lowest regional human development index values are for Sub-Saharan Africa.<sup>526</sup>

The post-independence and post-World War II context of development was shaped on the other hand by the creation of Bretton Woods institutions; the IMF and the World Bank, and on the other hand, the hegemony of modernisation theory.<sup>527</sup> During the 1950s and 1960s, modernisation theory became the dominant development discourse in much of the global south including Africa, where post-independence leaders and ruling parties were regarded as agents of the great leap forward from traditional and

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<sup>519</sup> UNDP *HDR* 1990 18.

<sup>520</sup> UNDP *HDR* 1990 18.

<sup>521</sup> UNDP *HDR* 1990 18.

<sup>522</sup> UNDP *HDR* 1990 18.

<sup>523</sup> UNDP *HDR* 2000 150.

<sup>524</sup> UNDP *HDR* 2000 150.

<sup>525</sup> UNDP *HDR* 2000 151.

<sup>526</sup> UNDP *HDR* 2014 33.

<sup>527</sup> Andrews, Khalema and Temitope *Africa Yesterday, Today and Tomorrow: Exploring the Multi-dimensional Discourses on Development* 42.

tribal to modern societies.<sup>528</sup> By the late 1960s, however, a continuation of the arrays of underdevelopment and the inability of growth-oriented methods in dealing with the dissatisfactions of modernity in much of the global south led to the questioning of economic growth and modernisation models.<sup>529</sup>

Validated by the World Bank, the 'basic needs approach' called for the realisation of the poorest sectors as a precondition to industrialisation and growth.<sup>530</sup> The IMF and the World Bank have recurrently enacted structural adjustment programmes (SAPs) intended to open poor economies to global markets through export-led strategies.<sup>531</sup> These programmes were naturally complemented by deregulation, an end to price controls and subsidies, currency devaluation, privatisation of state enterprises, and sharp cuts in government spending including cuts in the size of civil servants.<sup>532</sup> The new approach recommended redistribution with growth, giving attention to both economic growth and poverty alleviation.<sup>533</sup> Loans from the IFIs appeared to be designed to promote economic growth, generate income, pay off the countries' accumulated debts and reduce their overall economic disproportions.<sup>534</sup> SAPs have imposed internal changes in the African political economies such as privatisation and deregulation as well as external ones, in particular the reduction of trade barriers.<sup>535</sup> It has been argued that the SAPs have hurt the poor, deepened poverty and increased inequalities between the rich and the poor, particularly in developing countries, furthermore it has been contended that the IMF and the World Bank have institutionalised economic stagnation, in the underdeveloped countries, needless to say

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<sup>528</sup> Andrews, Khalema and Temitope *Africa Yesterday, Today and Tomorrow: Exploring the Multi-dimensional Discourses on Development* 42.

<sup>529</sup> Andrews, Khalema and Temitope *Africa Yesterday, Today and Tomorrow: Exploring the Multi-dimensional Discourses on Development* 42.

<sup>530</sup> Andrews, Khalema and Temitope *Africa Yesterday, Today and Tomorrow: Exploring the Multi-dimensional Discourses on Development* 42.

<sup>531</sup> Mubangizi 2010 *14 Law, Democracy and Development* 197.

<sup>532</sup> Mubangizi 2010 *14 Law, Democracy and Development* 197.

<sup>533</sup> Andrews, Khalema and Tennitope *Africa Yesterday, Today and Tomorrow: Exploring the Multi-dimensional Discourses on Development* 42.

<sup>534</sup> Petithomme 2012 *Afr.J.Pol.Sci.Int. Relat* 108.

<sup>535</sup> Petithomme 2012 *Afr.J.Pol.Sci.Int. Relat* 108.

that nowhere has the effect of the IMF and the World Bank policies been felt more deeply than on the African continent.<sup>536</sup>

In 1996, the IMF and the World Bank propelled the HIPC's initiative, which is an inclusive approach to debt reduction designed to ensure that no poor country faces a debt burden it cannot manage. To date debt decrease packages providing US \$72 billion under the HIPC's initiative have been approved for 36 countries, 32 of them in Africa.<sup>537</sup> Excessive debt can exhausts a country's resources and can constrain its economic development.<sup>538</sup> External debts still represent a major burden, leading to redistribute substantial part of Africa's economic resources to international investors rather than to domestic development.<sup>539</sup>

One of the main challenges underlying the relationship between development, democracy and globalisation is the form of never ending regional and internal conflicts. Today, there are several on-going conflicts in various African countries, including, naming a few, Somalia, Ivory Coast, the Democratic Republic of Congo and Sudan.<sup>540</sup>

Apart from historical aspects, there are other current dynamics that contribute majorly to Africa's underdevelopment. The failure of the continent to decode the positivity that attended the post-independence period into concrete socio-economic development has been commonly bewailed.<sup>541</sup> Some scholars argue that it is too easy to put the blame for Africa's failure on outsiders when Africans have supposedly been in control of their own affairs since the end of the colonial era some fifty years ago. Africa is arguably the continent where the problem of accountable government is most blatant, the decolonisation process of the 1960s assured an era of self-rule and independence in which new governments would be both approachable and reactive to the needs of the people and accountable to them, and yet the governments that decolonisation gave rise to did not meet that promise.<sup>542</sup> Governments not only recoiled from the reasonably

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<sup>536</sup> Mubangizi 2010 14 *Law, Democracy and Development* 197.

<sup>537</sup> Ali 2011 *McNair Scholars Research Journal* 1.

<sup>538</sup> Ali 2011 *McNair Scholars Research Journal* 1.

<sup>539</sup> Petithomne 2012 *Afr.J.Pol.Sci.Int. Relat* 108.

<sup>540</sup> Mubangizi 2010 14 *Law, Democracy and Development* 197.

<sup>541</sup> Hanson, Karach and Shaw *Rethinking Development Challenges for Public Policy* 18.

<sup>542</sup> Chirwa *Accountable Government: Perspective from Public Law and Political Studies* 2.

modest accountable structures that were established by the constitutions adopted at the independence but also undermined the few accountability structures they had decided to retain.<sup>543</sup> Certainly Africa should take responsibility for its own failings; corrupt, dictatorial and undemocratic practices have been hallmark of life in almost all of Africa's post-colonial state.<sup>544</sup> What has gone wrong has been the massive mismanagement by Africa's ruling elites, with the help of Western powers, of the economic surplus generated in Africa.<sup>545</sup> To this point, the state has been unable to carry out its responsibilities, and the contractions of institutional incapacity and political instability resulting from dysfunctional internal structure plague it.<sup>546</sup>

Despite its prodigious wealth in natural resources, Africa remains mangled by mass poverty and dispossession because of the African leadership approach to the main challenges confronting the continent.<sup>547</sup> No doubt, independence is a prerequisite for economic and civic development,<sup>548</sup> but the questions then are whether there are any unique environmental, cultural, political and economic issues that undergird and determine the direction of African development, and what are the core causes of ineffectiveness by African countries to perform tasks or functions incidental to sovereign statehood.<sup>549</sup> Although countless studies are keen to lay blame for Africa's deepening crisis at the feet of multilateral lending by IFIs, the focus should be on the roots of the crisis, as that is reason why these economies requested the lending in the first place.<sup>550</sup>

Development, as previously discussed, means freedom – the advancement of people's lives - to live a meaningful life wherein people have access to food, healthcare, education and opportunities.<sup>551</sup> The MDGs embodied such a promise as they committed to eradicating extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, improve maternal health, combat

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<sup>543</sup> Chirwa *Accountable Government: Perspective from Public Law and Political Studies* 2.

<sup>544</sup> Keita *Philosophy and African Development: Theory and Practice* 154.

<sup>545</sup> Mbeki *Architects of Poverty: Why African Capitalism needs Changing* 8.

<sup>546</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>547</sup> Hounnikpo *Africa's Elusive Quest for Development* 29.

<sup>548</sup> Labini *Underdevelopment: A Strategy for Reform* 7.

<sup>549</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 3.

<sup>550</sup> Iheduru *Contending Issues in African Development: Advances, Challenges and the Future* 6.

<sup>551</sup> See note 493 above.

HIV/AIDS, malaria and other diseases, ensure environmental sustainability and develop a global partnership for development and all this was set for the year 2015. However, as mentioned in the previous chapters, Africa is lagging behind in meeting the targets set for 2015. The question is what does this realisation portend for Africa? As enumerated above, there are external and internal issues, ranging from historical to current issues that affect Africa's snail pace in development. What can be done to ensure that Africa adopts a development agenda that improves and uplifts the quality of lives of people as the notion of development implies that, transform them so that the people live longer and sustainable lives.

### 3.2 STUNTED GROWTH AND UNDERDEVELOPMENT IN AFRICA

The notion of development is embedded in primordial beliefs about the nature of social change.<sup>552</sup> While modern theories of development differ in their formation of the dynamics and foundations of social change and the best ways of upholding such change, they share similarities, all are entrenched in enlightenment principles and are part of the project of modernity.<sup>553</sup> Many are characterised by the belief that progressive social change can be nurtured through systematic intervention; many are inspired by ideal belief in the possibility of progress and social perfectibility.<sup>554</sup>

People defining development as modernity, look at development largely in economic terms, and this conception of development underpins much of the work of international organisations such as the World Bank and IMF, which uses GNI to divide the countries of the world into development categories.<sup>555</sup> In the previous chapter it is explained how this measurement and model of development has failed, as it only focuses on one aspect of development, which is the economy and neglects human development.<sup>556</sup>

The GNI or GNP is still widely used but this has been in conjunction with other broader indicators of development which have highlighted non-economic dimensions of the

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<sup>552</sup> Weil *The Handbook of Community Practice* 154.

<sup>553</sup> Weil *The Handbook of Community Practice* 155.

<sup>554</sup> Weil *The Handbook of Community Practice* 155.

<sup>555</sup> Willis *Theories and Practices of Development* 3.

<sup>556</sup> See note 352 above.

concept.<sup>557</sup> The most frequently used of these is the Human Development Index (HDI).<sup>558</sup> The human rights indicators are indissoluble interconnected with the solicitation of human rights standards in context, proposing a practical or evidence-based measurement to the normative content of human rights legal obligations.<sup>559</sup> They are critically concerned with the determining human rights realisation, both qualitatively and quantitatively, and evaluating the rationality and legitimacy from a human rights perspective: in this way, they relate to the core of methodological challenge that human rights present.<sup>560</sup> At another level, human rights indicators relate to human rights accountability.<sup>561</sup> Human rights indicators are essential part of monitoring the realisation of human rights about substantiating the legal commitments of states under human rights treaties. In chapter two, it has been demonstrated how the rule of law and the significance of the monitoring and implementation of human rights norms are critical for achieving development.<sup>562</sup>

Measuring a country's level of development in terms of GDP per capita is a first step, but it tells us nothing about how incomes are distributed across country.<sup>563</sup> Within this universe, economic growth is a key denominator of development, encompassed in the range of wealth; it must be addressed with a higher inclusiveness and accuracy and on the appropriate methodological basis.<sup>564</sup> Human rights values must also be included in a complete concept of development, considerable weight should be given to how economic growth is interrelated to other political and social variables and this means that development requires that growth or the value of wealth goes in corresponding with the recognition of other scope values and at least, broader goals of protecting the physical integrity, the moral integrity and the civic integrity of each individual human being.<sup>565</sup>

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<sup>557</sup> Willis *Theories and Practices of Development* 5.

<sup>558</sup> Willis *Theories and Practices of Development* 5.

<sup>559</sup> Lankford and Sano *Human Rights Indicators in Development: An Introduction* 1.

<sup>560</sup> Lankford and Sano *Human Rights Indicators in Development: An Introduction* 1.

<sup>561</sup> Lankford and Sano *Human Rights Indicators in Development: An Introduction* 1.

<sup>562</sup> See note 337 above.

<sup>563</sup> Chari and Cobridge (eds) *The Development Reader* 3.

<sup>564</sup> Qerimi *Studies in Intercultural Human Rights, Vol. 3: Development in International law* 1.

<sup>565</sup> Qerimi *Studies in Intercultural Human Rights, Vol. 3: Development in International law* 1.

Commentators regularly associate the African continent with poverty, underdevelopment, scientific and technology backwardness and political instability.<sup>566</sup> The patterns of development explored through development agencies support the world's view of Africa, in that in all spheres of development be it economic or otherwise, so far indicators reflect a deteriorating development pattern. There a number of questions that have been raised regarding Africa's stunted growth and underdevelopment. Some of these questions are leaning towards the theory of immature leadership of the African continent. Akude queries what went wrong with African development to the effect that the hopes raised by modernisation paradigm could not be grasped; does the bad governance perspective ultimately explain these portents? Or is there an alternative theoretical explanation for the relationship between bad governance and state weakness or collapse? What factors resist the promotion of rapid development and what chances does the international promotion of democracy have in view of resistance?<sup>567</sup>

A proper understanding of the context in which African states deal with the myriad of issues facing them requires an appreciation of the nature of politics and governance on the continent.<sup>568</sup> Many of Africa's problems can be directly or indirectly linked to questions of governance: some are causes of poor governance whereas others are a direct result of it.<sup>569</sup> Improved state capacity and governance standards offer the beginnings of solution for many areas identified as problems for Africa.<sup>570</sup> The idea of governance began to impact policy debates during the period of liberalising market reforms and it was acknowledged then that such reforms would end problems of economic inefficiency, corruption and arbitrary rule in developing countries, and in that context governance was advanced as an alternative notion of authority expressed

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<sup>566</sup> Forje *African Political, Economic, and Security Issues: State Building and Democracy in Africa* 4  
<sup>567</sup> Akude *Governance and Crisis in the State in Africa: The Context and Dynamics of the Conflicts in West Africa* 10.

<sup>568</sup> Adar, Juma and Miti *State of Africa 2010/201 Parameters and Legacies of Governance and Issue Areas* 69.

<sup>569</sup> Adar, Juma and Miti *State of Africa 2010/2011 Parameters and Legacies of Governance and Issue Areas* 69.

<sup>570</sup> Adar, Juma and Miti *State of Africa 2010/2011 Parameters and Legacies of Governance and Issue Areas* 69.

through institutions that would insulate markets from rent-seeking distributional associations.<sup>571</sup>

According to Fukuyama, governance denotes the ability of government to make and enforce rules and to deliver services regardless of whether that government is democratic or not.<sup>572</sup> Good governance entails the combination of transparent and accountable institutions, strong skills and competence, and a fundamentally willingness to do the right thing.<sup>573</sup> The existing accepted view in the development community is that democracy and good governance are reciprocally supportive of development.<sup>574</sup>

Long term development that takes into account the adverse side-effects of modernisation and fundamentally redefines its own dynamics and workings, not only does this imply a new paradigm on economic and technology development, it also includes a redefinition of how to govern society.<sup>575</sup> Policy making itself has become highly complex in the context of these persistent problems and the related uncertainties, as different actors and perspectives need to be dealt with, and clear solutions or mechanisms to assess progress and success are lacking.<sup>576</sup> The governance or network processes actors co-evolve with these broader society dynamics. Societal actors that include government, NGOs, businesses, create formal and informal networks because they have partially overlapping interests, and they find benefits in temporarily sharing certain resources and working together towards shared objectives, something that they cannot do well without each other and that they can better achieve jointly than individually.<sup>577</sup>

Good governance incorporates people's participation and empowerment with respect to public policies, choices, and offices; the rule of law and an independent judiciary to

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<sup>571</sup> Sundaram and Chowdhury (eds) *Is Good Governance Good for Development?* 1.

<sup>572</sup> Fukuyama 2013 *An International Journal of Policy, Administration and Institutions* 350.

<sup>573</sup> Baland, Moene and Robinson *Governance and Development* 3.

<sup>574</sup> Fukuyama 2013 *An International Journal of Policy, Administration and Institutions* 350.

<sup>575</sup> Loorbach 2010 *Governance: An international Journal of Policy, Administration, and Institutions* 162.

<sup>576</sup> Loorbach 2010 *Governance: An international Journal of Policy, Administration, and Institutions* 164.

<sup>577</sup> Loorbach 2010 *Governance: An international Journal of Policy, Administration, and Institutions* 165.

which the executive and legislative branches of government are subject, as are citizens and other actors and entities; and standards of probity and incorruptibility, transparency, accountability and responsibility.<sup>578</sup> It also includes the institutions in which these principles and values find on-going expression, good governance thus can be considered a normative concept concerned with standards that most would agree are laudable.<sup>579</sup> Looking into transparency and development, it is important to note that decision making around government revenues and expenditures has historically been shrouded in secrecy, the purview of heads of state, finance ministers and central bankers along with a few local select officials in executive agencies.<sup>580</sup> Other ministers, government bodies, the business community, civil society organisations and the broader citizenry have had little or no access to information on public financial management.<sup>581</sup> In recent years, however, interest and action with respect to transparency, participation, and accountability in fiscal decision-making have surged around the world, indeed over the years; several broad trends have brought fiscal transparency, transparency, participation and accountability into sharp focus.<sup>582</sup>

Enhanced transparency and understanding of public spending have complemented the global trend toward democratisation, which has also moulded space for traditionally voiceless groups, poor people, excluded ethnic and religious groups, women and others to become more involved in development.<sup>583</sup> Civil society organisations have sprung up nearly everywhere to watch government and press for change.<sup>584</sup> Public expenditure in most low and middle income countries falls far short of being as effective or as even-handedly distributed as it needs to be.<sup>585</sup> The World Bank revealed that the correlation between increased spending on public services and improved outcomes is often weak.

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<sup>578</sup> Weiss and Thakur *Global Governance and the UN: An unfinished Journey* 6.

<sup>579</sup> Weiss and Thakur *Global Governance and the UN: An unfinished Journey* 6.

<sup>580</sup> Khagram, De Renzio and Fung *Open Budgets: The Political Economy of Transparency, Participation and Accountability* 1.

<sup>581</sup> Khagram, De Renzio and Fung *Open Budgets: The Political Economy of Transparency, Participation and Accountability* 1.

<sup>582</sup> Khagram, De Renzio and Fung *Open Budgets: The Political Economy of Transparency, Participation and Accountability* 1.

<sup>583</sup> Griffin et al *Lives in the Balance: Improving Accountability for Public Spending in Developing Nations* 2.

<sup>584</sup> Griffin et al *Lives in the Balance: Improving Accountability for Public Spending in Developing Nations* 2.

<sup>585</sup> As above

Increased spending on education has not always resulted in higher primary school completion rates, and increased spending on health is only weakly associated with lower mortality rates in children under five.<sup>586</sup> This recommends that increased expenditure must be accompanied by more devotion to the effective and efficient use of funds to achieve significant development impact.<sup>587</sup>

Transparency epitomises a means to larger ends, some degree of transparency is an indispensable condition for accountability, since those seeking to hold government accountable must be able to determine what government is actually doing, and transparency is also itself a contributor of good governance and an inhibition to corruption.<sup>588</sup> Accountability designates the essence of the relationship between government and those who are governed; the greater the accountability, the more the governmental response to the needs and expectations of the public it serves. Efforts to increase accountability rely on transparency, as well as other inputs such as citizen's voice, social capital and democratic process.<sup>589</sup> The fortitude to increase accountability targets corruption as well as related inadequacies in government performance including inefficiency and lack of equity.<sup>590</sup> Effective initiatives for accountability improve governance.<sup>591</sup> The rule of law engenders contestations when it has to be squared with democracy, the social or welfare state, fundamental rights and even when it is appealed outside the national state.<sup>592</sup> At the same time, however, it is very often considered as a necessary premise for these objectives to be achieved.<sup>593</sup>

The African Charter provides that every citizen shall have the right to participate freely in the government of his country, either directly, through freely chosen representative in accordance with the law.<sup>594</sup> This connotes that it is poor development practice and

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<sup>586</sup> As above

<sup>587</sup> Griffin et al *Lives in the Balance: Improving Accountability for Public Spending in Developing Nations* 3.

<sup>588</sup> Ferranti et al *How to Improve Governance: A New Framework for Analysis and Action* 6.

<sup>589</sup> Ferranti et al *How to Improve Governance: A New Framework for Analysis and Action* 6.

<sup>590</sup> Ferranti et al *How to Improve Governance: A New Framework for Analysis and Action* 6.

<sup>591</sup> Ferranti et al *How to Improve Governance: A New Framework for Analysis and Action* 6.

<sup>592</sup> Morlino and Palombelli (eds) *Rule of Law and Democracy: Enquiries into Internal and External Issues* 9.

<sup>593</sup> Morlino and Palombelli (eds) *Rule of Law and Democracy: Enquiries into Internal and External Issues* 9.

<sup>594</sup> Article 13(1) *African Charter*.

virtuously problematic to design and implement new programmes or development efforts without the involvement and active participation of community members to be served or engaged in change.<sup>595</sup> This therefore shows that, people should have multi-dimensional platforms of participating in shaping development as they are the ones who can best define what is it they lack and that should be provided by the government, apart from just voting in representatives.

The Charter further expresses that the people shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.<sup>596</sup> Some scholars have demonstrated accountability as a mechanism that contains three phases. In the first phase, the actor renders an account for his conduct and performance to the accountability forum, and this is coined as the information phase.<sup>597</sup> In the second phase, the actor and the forum engage in a debate about the account, wherein the forum may ask for additional information, and the actor will answer questions and if necessary justify or defend his course of action, and this is coined as the debating phase.<sup>598</sup> Then the forum may pass judgement on the conduct of the actor; by approving an annual account, denouncing a policy, or publicly condemning the behaviour of an official or agency, and by imposing sanctions on the actor, this may be coined the consequences phase.<sup>599</sup> Sanctions may vary from formal disapproval, to tightened regulations, fines, discharge of management or even termination of the organisation.<sup>600</sup> These phases of accountability are essential for the enforcement of article 20 of the African Charter, in ensuring that people have the right to question policies and if they are satisfied with such policies, and the government putting the policies in place should account for such policies.

The African Charter provides it is the duty of the state, individually or collectively to ensure the exercise of the right to development.<sup>601</sup> Furthermore, the African Charter provides that all peoples shall have the right to a general satisfactory environment

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<sup>595</sup> Gamble and Weil *Community Practice Skills: Local to Global Perspectives* 246.

<sup>596</sup> Article 20(1) *African Charter*.

<sup>597</sup> Dubnick and Frederickson (eds) *Accountable Governance: Problems and Promise* 5.

<sup>598</sup> Dubnick and Frederickson (eds) *Accountable Governance: Problems and Promise* 5.

<sup>599</sup> Dubnick and Frederickson (eds) *Accountable Governance: Problems and Promise* 5.

<sup>600</sup> Dubnick and Frederickson (eds) *Accountable Governance: Problems and Promise* 5.

<sup>601</sup> Article 22(2) *African Charter*.

favourable to their development.<sup>602</sup> In article 21 of the Charter, it is provided that all people's shall freely dispose of their wealth and natural resources, and this right shall be exercised in the exclusive interest of the people, and in no case shall the people be deprived of it.<sup>603</sup> A satisfactory environment for development as demonstrated above is an environment that encompasses transparency, accountability, participation and good governance. Furthermore, as mentioned above, Africa is universally recognised for its endowment with wealth of natural resources.<sup>604</sup> Is this wealth equally distributed, is the process of disposing of this wealth transparent? If so why is Africa under the siege and plight of poverty? Chirwa queries what is it that explains the effectiveness of African judiciaries in facilitating the accountability of governments? What is the role of the judiciary in setting and enforcing norms of accountability? As explored in chapter 2, the African Commission which is the cornerstone that nurtures, protects and ensures implementation of the rights enshrined in the African Charter, does not have the power to order states to implement its recommendations. The decisions of the African Commission are not viewed as legally binding, they are perceived as unacceptable interferences with state sovereignty.<sup>605</sup> The African Charter is not being incorporated into national law, that implementation is difficult, and that the process of implementation is adversarial in nature.<sup>606</sup> Implementation of any decision of the African Commission binding or otherwise depends on the will of the state in question. There is no mechanism that can induce states to abide by the recommendations made by the Commission.<sup>607</sup> The challenge for rule of law relating to governance reforms is that economic liberalisation programmes accompanying such policies often failed to address social inequalities and orders.<sup>608</sup> The challenge is to ensure that opportunities for and benefits of prosperity are rightfully and impartially enjoyed and that the least advantaged are able to share and benefit from them.<sup>609</sup> The empirical reveals that corruption is one

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<sup>602</sup> Article 24 *African Charter*.

<sup>603</sup> Article 21(1) *African Charter*.

<sup>604</sup> See note 546 above.

<sup>605</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 351.

<sup>606</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 351.

<sup>607</sup> Murray and Mottershaw 2014 *Human Rights Quarterly* 352.

<sup>608</sup> Cissé, Muller and Chantal *World Bank Legal Review: Legal Innovation and Empowerment for Development* 3.

<sup>609</sup> Cissé, Muller and Chantal *World Bank Legal Review: Legal Innovation and Empowerment for Development* 3.

of the major contributing factors to Africa's underdevelopment. The Corruption Perception Index (CPI) provided by Transparency International reveals adverse results for Africa, in measuring countries' levels of corruption this index has revealed that 90% of the Countries in Africa have scored below the average of 50%, and Africa is at the bottom of this index, compared to the rest of the world.<sup>610</sup> With regards to government effectiveness, voice and accountability, political stability and the rule law, the World Bank project of World Wide Governance Indicators (WGI) has also revealed disquieting results for Africa. Estimates range from -2.5% meaning the state is the weakest and 2.5% meaning the state is the strongest.<sup>611</sup> In all these spheres African countries have percentages ranging from -2.23% to 0.50<sup>612</sup>

Law plays a significant role in promoting development, and the nature of that significance in the nature of development has been rooted in law's connection to strong institutions and good governance<sup>613</sup>. A functional rule of law system that provides both procedural effectiveness and substantive justice is obviously important to human welfare and the satisfaction of justice claims.<sup>614</sup> What is less clear is exactly how much the rule of law matters, and how effective rule of law interventions have been improving development outcomes for the poor.<sup>615</sup>

How can the African continent go about confronting the issues of transparency, accountability, governance and anti-corruption within the larger set of development objectives and problems that countries struggle with? Accountability is the cornerstone of good governance, unless public officials can be held accountable, critical benefits associated with good governance such as social justice, poverty reduction and development will remain elusive.<sup>616</sup> The impacts of non-responsiveness and unaccountable governance are perhaps most severely felt by people in Africa, where corruption and governance failures are largely acknowledged as a major hurdle to

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<sup>610</sup> Transparency International *Corruption Perception Index* 2013.

<sup>611</sup> World Bank *Worldwide Governance Indicators* 2013.

<sup>612</sup> World Bank *Worldwide Governance Indicators* 2013.

<sup>613</sup> Cissé, Muller and Chantal *World Bank Legal Review: Legal Innovation and Empowerment for Development* 3.

<sup>614</sup> Cissé, Muller and Chantal *World Bank Legal Review: Legal Innovation and Empowerment for Development* 3.

<sup>615</sup> Cissé al *World Bank Legal Review: Legal Innovation and Empowerment for Development* 32.

<sup>616</sup> McNeil and Malena (eds) *Demanding Good Governance* 1.

achieving critical poverty reduction and human development goals.<sup>617</sup> Lack of public accountability not only results in corruption and the waste of precious development resources but also seriously compromises the quality and effectiveness of policy making, planning and the provision of services to meet basic needs.<sup>618</sup> Lack of accountability denies citizens their inherent right to influence decisions that directly affect their lives and to hold state officials accountable for the public resources they are entrusted.<sup>619</sup>

### 3.3 Overview and the promise of the MDGs in Africa

The Millennium Declaration committed to supporting the consolidation of democracy in Africa and assist Africans in their struggle for lasting peace, poverty eradication and sustainable development, thereby bringing Africa into the mainstream of the world economy;<sup>620</sup> to give full support to the political institutional structures of emerging democracies in Africa;<sup>621</sup> to encourage and sustain regional and sub-regional mechanisms for preventing conflict and promoting political stability, and to ensure a reliable flow of resources for peacekeeping operations on the continent;<sup>622</sup> to take special measures to address the challenges of poverty eradication and sustainable development in Africa;<sup>623</sup> and to help Africa build its capacity to tackle the spread of HIV and AIDS pandemic and other infectious diseases.<sup>624</sup>

The Millennium Declaration was later translated into the MDGs where in the international community expressed commitment to universal development and poverty eradication, and this commitment were made in the year 2000. The Millennium Declaration distinguishes the MDGs from earlier international endeavours that lacked specific time frame and quantitative objective indicators; moreover the MDGs have received an unparalleled level of promise and endorsement from the international

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<sup>617</sup> McNeil and Malena (eds) *Demanding Good Governance* 1.

<sup>618</sup> McNeil and Malena (eds) *Demanding Good Governance* 1.

<sup>619</sup> McNeil and Malena (eds) *Demanding Good Governance* 1.

<sup>620</sup> Part VII, para 27 *Millennium Declaration*.

<sup>621</sup> Part VII, para 28 *Millennium Declaration*.

<sup>622</sup> Part VII, para 28 *Millennium Declaration*.

<sup>623</sup> Part VII, para 28 *Millennium Declaration*.

<sup>624</sup> Part VII, para 28 *Millennium Declaration*.

community.<sup>625</sup> The MDGs in Africa holds the promise of saving millions of lives, empowering women, addressing the scourge of illiteracy, hunger and malnutrition, and ensuring that Africa's children have access to high quality education and good health to lead productive lives.<sup>626</sup>

MDG1 aims to eradicate extreme poverty and hunger by halving the proportion of undernourished people from 1990 to 2015; this is a global as well as regional and national level aim. The conceptual understanding of poverty could be perceived in three categories: absolute poverty, relative poverty and capabilities poverty.<sup>627</sup> Absolute poverty means that the person lives on subsistence or below what is minimally required to live an integrated life.<sup>628</sup> Relative poverty makes comparison between the lowest income group and higher income group's living conditions; it thus captures the relative inequalities in a given study and can include some normative analysis of acceptable levels of inequality.<sup>629</sup> Capabilities poverty denotes an understanding that people need to have ability to meet basic needs in a manner and to a degree that empowers them to participate socially and economically.<sup>630</sup> Poverty reduction is the overarching challenge of development policies in Sub-Saharan Africa in the 21<sup>st</sup> century. The majority of the African population continue to live in poverty as they did for decades in the previous century.<sup>631</sup>

The Multidimensional Poverty Index (MPI) identifies deprivations and considers overlapping deprivations suffered by the people at the same time.<sup>632</sup> According to the MPI the percentage of the population at risk of suffering multi-dimensional poverty is those with a deprivation score of 20-30%; population in severe poverty, the percentage of the population in severe multi-dimensional poverty that is those with the deprivation score of 50% or more.<sup>633</sup> According to the data collected in the years 2010 and 2011, the MPI reveals perturbing results for the African countries. With regards to the intensity

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<sup>625</sup> Kwon and Kim 2014 *Development and Change* 353.

<sup>626</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 1

<sup>627</sup> Brynard 2011 *African Journal on Public Affairs* 149.

<sup>628</sup> Brynard 2011 *African Journal on Public Affairs* 149.

<sup>629</sup> Brynard 2011 *African Journal on Public Affairs* 149.

<sup>630</sup> Brynard 2011 *African Journal on Public Affairs* 149.

<sup>631</sup> Fosu, Mwabu and Thorbecke (eds) *Poverty in Africa: Analytical and Policy Perspectives* 1.

<sup>632</sup> <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>.

<sup>633</sup> UNDP *HDR* 2014 183.

of deprivations a number of African countries were scored 61% and many in the range of 55%: Burkina Faso 61.3%, Ethiopia 60.9%, Guinea-Bissau 61.6%, Liberia 56.1%, and Nigeria 55.2%.<sup>634</sup> The MPI assists the effective allocation of resources by making possible the targeting of those with the greatest intensity of poverty, it further helps addressing MDGs strategically and monitoring of impacts of policy interventions.<sup>635</sup>

Goal two of the MDGs aims at ensuring that, by 2015, children everywhere in the world, boys and girls alike will be able to complete a full course of primary schooling. A basic education of good quality is an essential human right and as such should be a priority for governments and donors.<sup>636</sup> This goal is vital in that progress towards the MDGs will be slowed if the universalization of primary education, and expansion of other areas of basic education are not enhanced, and that a sturdier focus on equity in education can engender a virtuous cycle to equalize inequalities in other MDGs.<sup>637</sup> Fast-tracking the movement towards the education, MDGs will lead directly to an acceleration of many other MDGs, especially those focusing on poverty reduction and overall advances in health.<sup>638</sup>

Education is a fundamental precondition for informed democratic societies and enterprising individuals, but it is also an essential means of enhancing the spread of knowledge and the use new technologies, and of laying the foundations for the efficient application and distribution of natural resources, information and goods.<sup>639</sup> Primary education is the platform on which the building blocks for personal and collective progress, the capacity to learn basics, literacy and numeracy, the ability to acquire information and process it, critically, and the acquisition of life skills are shaped and laid.<sup>640</sup>

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<sup>634</sup> UNDP *HDR 2014* 184.

<sup>635</sup> UNDP 2014 <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>.

<sup>636</sup> UNESCO *The Central role of Education in the Millennium Development Goals* 5.

<sup>637</sup> UNESCO *The Central role of Education in the Millennium Development Goals* 5.

<sup>638</sup> UNESCO *The Central role of Education in the Millennium Development Goals* 6.

<sup>639</sup> Nwonwu *The Millennium Development Goals: Achievements and Prospects of Meeting the Targets in Africa* 37.

<sup>640</sup> Nwonwu *The Millennium Development Goals: Achievements and Prospects of Meeting the Targets in Africa* 9.

The third goal of the MDGs aims at promoting gender equality and empowering women, it further aims at eliminating gender disparities in primary and secondary school and in all levels of education no later than 2015. This goal is an intrinsic goal rather than instrumental goal, explicitly valued as an end itself rather than as an instrument for achieving other the goals.<sup>641</sup> The 1995 HDR recognised that the rising pace of development was accompanied by disparities between and within nations, and the most persistent was gender disparity, despite relentless struggle to equalise opportunities between men and women.<sup>642</sup> If development is meant to widen opportunities for all people, then the continuing exclusion of women from many opportunities of life warps the process of development.<sup>643</sup> Women are essential for political and economic change.<sup>644</sup>

The fourth goal aims at reducing child mortality; reduce by two thirds between 1990 and 2015, the under-five mortality rate. The MDGs set priorities for children, though the goals are for all human kind, they are primarily for children.<sup>645</sup> Children are most vulnerable when people lack essentials like food, water, sanitation and health care, they are the first to die when those basic needs are not met.<sup>646</sup>

The fifth goal aims at improving maternal health; to reduce by three quarters, between 1990 and 2015 the maternal mortality ratio. Maternal health refers to the health of women during pregnancy, child birth and postpartum period. While motherhood is often a positive and fulfilling experience, for too many women it is associated with suffering, ill health and even death.<sup>647</sup> The major direct causes of maternal morbidity and mortality include haemorrhage, infection, high blood pressure, unsafe abortion and obstructed

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<sup>641</sup> Kabeer 2005 *Gender and Development* 13.

<sup>642</sup> UNDP *HDR* 1995 iii.

<sup>643</sup> UNDP *HDR* 1995 iii.

<sup>644</sup> UNDP *HDR* 1995 iii.

<sup>645</sup> UNICEF August 2014 [http://www.unicef.org/mdg/index\\_aboutthegoals.htm](http://www.unicef.org/mdg/index_aboutthegoals.htm).

<sup>646</sup> UNICEF August 2014 [http://www.unicef.org/mdg/index\\_aboutthegoals.htm](http://www.unicef.org/mdg/index_aboutthegoals.htm).

<sup>647</sup> UNDP *HDR* 1995 iii.

labour.<sup>648</sup> Most women die because they have no access to skilled routine and emergency care.<sup>649</sup>

The sixth goal of the MDGs aims at combating HIV and AIDS, malaria and other diseases; halt and begin to reverse, by 2015 the spread of HIV/AIDS, achieve by 2010 universal access to treatment for HIV/AIDS for all those who need it, and halt and begin to reverse by, 2015 the incidence of malaria and other diseases. A large number of people continue to die due to HIV/AIDS, malaria and other diseases. In 2012, 35.3 million people were living with HIV/AIDS, within that year, 2.3 million people became newly infected, and 1.7 million people died of AIDS including 230 thousand children.<sup>650</sup> More than two-thirds of HIV new infections are in Sub-Saharan Africa.<sup>651</sup> On the other hand 3.3 billion people are at risk of contracting malaria, in the year 2012 estimated 207 million people cases occurred, and malaria killed approximately 672000 people, most of them children under five in Africa.<sup>652</sup>

The seventh goal focuses on ensuring environmental sustainability; integration of principles of sustainable development into country policies and programmes, and reverse the loss of environmental resources, reducing of biodiversity loss, achieving by 2010, a significant reduction in the loss, halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation, and by 2020 a significant improvement in the lives of at least 100 million slum dwellers. The earth system has entered a new phase in which human actions are threatening the planet's life support systems and drawing down the planet's natural capital in an unsustainable manner.<sup>653</sup> Understanding the links between environmental sustainability and equity is critical if we are to expand human freedoms for current and future generations.<sup>654</sup> Many disadvantaged people carry a double burden of deprivation; they are more vulnerable to the wider effects of environmental degradation because of more severe stresses and

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<sup>648</sup> WHO August 2014 [http://www.who.int/topics/maternal\\_health/en/](http://www.who.int/topics/maternal_health/en/).

<sup>649</sup> WHO August 2014 [http://www.who.int/topics/maternal\\_health/en/](http://www.who.int/topics/maternal_health/en/).

<sup>650</sup> As above

<sup>651</sup> As above.

<sup>652</sup> As above.

<sup>653</sup> UN 2014 *Post-2015 UNU-IAS Policy Brief #11*.

<sup>654</sup> UNDP *HDR 2011 IV*.

fewer tools.<sup>655</sup> They must also deal with threats to their immediate environment from their indoor air pollution, dirty water and unimproved sanitation.<sup>656</sup>

The eighth and the final goal focuses on developing a global partnership for development; to develop a non-discriminatory trade and financial system, addressing of special needs of the least developed countries, addressing of landlocked developing countries and small island developing countries, to deal with debt problems of developing countries through national and international measures, in cooperation with pharmaceutical companies provide access to affordable essential drugs in developing countries, to cooperate with the private sector and make available the benefits of new technologies, especially information and communications technology.<sup>657</sup> Rich country policies continue to deny poor countries and poor people a fair share in global prosperity.<sup>658</sup> More than aid, trade has the potential to increase the share of the world's poorest countries and people in global prosperity.<sup>659</sup> Limiting that potential through unfair trade policies is inconsistent with the MDGs, and more than that it is unjust. Under the right conditions, trade can be a powerful catalyst for development.<sup>660</sup>

Poor people care about what happens to their income levels, people care about whether their children are in school, poor people care about whether their daughters are discriminated against in terms of access to education.<sup>661</sup> Poor people care enormously about pandemics and about infectious disease such as HIV/AIDS, which are devastating communities in Africa, and they care about the environment they live in, and whether they have access to clean water and sanitation.<sup>662</sup> If the fundamental vision of the goals as a means of better managing globalisation on behalf of poor people is to be met, the goals need to be seen as an indivisible package.<sup>663</sup> It is a package that holds unprecedented promise for development around the world and a promise that

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<sup>655</sup> UNDP *HDR* 2011 IV.  
<sup>656</sup> UNDP *HDR* 2011 IV.  
<sup>657</sup> UNDP *HDR* 2011 2.  
<sup>658</sup> UNDP *HDR* 2005 3.  
<sup>659</sup> UNDP *HDR* 2011 2.  
<sup>660</sup> UNDP *HDR* 2011 2.  
<sup>661</sup> UNDP *HDR* 2003 VI.  
<sup>662</sup> UNDP *HDR* 2003 VI.  
<sup>663</sup> UNDP *HDR* 2003 VI.

every country has pledged to keep.<sup>664</sup> The challenge is to hold countries to their promise and help them reach the goals.

### 3.4 Africa and the outcome of the MDGs

Although the MDGs are not fulfilled as some countries are still lagging behind, like Sub-Saharan Africa, one can highlight that they have incontestable strength.<sup>665</sup> As the world is preparing for the post-MDGs era, reflecting on what has been achieved in the development discourse is critical. Although Africa has been part of the MDGs agenda, the continent has not achieved most of the MDGs, it still lags behind in many areas, and these include among others poverty reduction and hunger.<sup>666</sup> Africa's progress on the MDGs remains uneven. Remarkable advances have been made in some areas, such as net primary school enrolment, gender parity in primary education, the presentation of women in decision making, some reduction in poverty, immunisation coverage, and stemming the spread of HIV/AIDS.<sup>667</sup> Some areas have been neglected when they should put upfront, for example malaria, the number one killer of children in Sub-Saharan Africa and many other places in the world.<sup>668</sup> Furthermore, the goal for school enrolment did not take into account the need for quality education.<sup>669</sup>

According to the 2014 MDG report regarding goal one, Africa is lagging behind in eradicating extreme poverty. The overwhelming majority of people living on less than \$1.25 a day belong to two regions: Southern Asia and Sub-Saharan Africa.<sup>670</sup> Regarding the target to achieve full and productive employment and decent work for all, including women and young people, the report reveals that vulnerable employment rates continued to be higher for women than men.<sup>671</sup> In developing regions, 60% of women were vulnerable in employment compared to 54% of men. The largest gender gaps were found in Northern and Sub-Saharan Africa.<sup>672</sup> With regards to the target of halving between 1990 and 2015, the proportion of people who suffer from hunger, Sub-

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<sup>664</sup> UNDP *HDR* 2003 VI

<sup>665</sup> Prammer and Martinuzzi 2013 *European Sustainable Development Network* 4.

<sup>666</sup> Simelane and Chiroro 2013 *Africa Institute of South Africa* 1.

<sup>667</sup> UNDP *HDR* 2014 11.

<sup>668</sup> UNDP *HDR* 2014 11.

<sup>669</sup> UNDP *HDR* 2014 11.

<sup>670</sup> UN *MDG Report* 2014 9.

<sup>671</sup> UN *MDG Report* 2014 9.

<sup>672</sup> UN *MDG Report* 2014 11.

Saharan Africa has shown limited progress in recent years, remaining the region with the highest prevalence of undernourishment.<sup>673</sup> Most regions are expected to achieve MDG one, except for Sub-Saharan Africa which had the worst starting position.<sup>674</sup>

The goal of achieving universal primary education; Primary school enrolment has risen significantly across the world more particularly so in Africa, excluding North Africa, where enrolments rates rose more than two thirds, 43 million more African children enrolled in primary school in 2010 than in 1999.<sup>675</sup> As a result, the continent as a whole is expected to achieve goal two.<sup>676</sup> However completion rates have not matched these rising enrolments rates. Low competition and high grade rates repetition remain a challenge.<sup>677</sup> Another challenge is the dropping out of school of pupils enrolled and reasons for the dropout include late entry, poverty and poor quality of education and the lack of awareness of the importance of education.<sup>678</sup> An estimated 50% of out of school children of primary school age live in conflict stricken areas even though these areas are home to only 22% of the world's primary school age population.<sup>679</sup> Sub-Saharan Africa counts for 44% of these children.<sup>680</sup> While several African countries are on track to achieve the net primary enrolment target, low quality education has led to low completion rates and high repetition rates and low levels of functional literacy.<sup>681</sup>

With regards to gender parity women experience many kinds of disadvantage and discrimination in health, education and employment.<sup>682</sup> Sub-Saharan Africa and Northern Africa still confronted with tenacious disadvantages for girls although these regions have made substantial progress over the past two decades.<sup>683</sup> The most

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<sup>673</sup> UN MDG Report 2014 11.

<sup>674</sup> Global Monitoring Report 2013 5.

<sup>675</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 23.

<sup>676</sup> AFDB September 2014 <http://www.afdb.org/en/topics-and-sectors/topics/millennium-development-goals-mdgs/goal-2-achieve-universal-primary-education/>.

<sup>677</sup> AFDB September 2014 <http://www.afdb.org/en/topics-and-sectors/topics/millennium-development-goals-mdgs/goal-2-achieve-universal-primary-education/>.

<sup>678</sup> AFDB September 2014 <http://www.afdb.org/en/topics-and-sectors/topics/millennium-development-goals-mdgs/goal-2-achieve-universal-primary-education/>.

<sup>679</sup> AFDB September 2014 <http://www.afdb.org/en/topics-and-sectors/topics/millennium-development-goals-mdgs/goal-2-achieve-universal-primary-education/>.

<sup>680</sup> UN MDG Report 2014 17.

<sup>681</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 29.

<sup>682</sup> UNDP HDR 2014 39.

<sup>683</sup> UN MDG Report 2014 23.

significant progress in this goal was observed in Northern Africa where the Gender Parity Index (GPI) increased from 0.82 to 0.96, and Sub-Saharan Africa had the lowest GPI of 0.92 in 2012 despite noticeable progress since 1990.<sup>684</sup> Globally, women are disadvantaged in national political representation; on average they occupy 21% of national seats in parliaments.<sup>685</sup> According to the African Development Bank (AFDB), Africa is making steadier progress on increasing the proportion of seats held by women in national parliament than other regions. Data on the proportion of women in national parliaments are available for 53 countries and progress looks promising.<sup>686</sup> Eight countries have reached the target of at least 30% women in the national parliament: Rwanda, Seychelles, South Africa, Mozambique, Angola, Tanzania, Uganda and Burundi, and Tunisia and Ethiopia, are very close.<sup>687</sup> Nearly half the countries in Africa have achieved gender parity in primary school, and while parity at the secondary and tertiary levels has improved, limited data makes measuring progress difficult. While Africa is making great progresses towards combating gender parity, early marriage, household power dynamics and low economic opportunities for women are slowing progress.<sup>688</sup>

With regards to goal four and five: reducing of child mortality and maternal health; according to the World Bank, mortality rates have been falling everywhere.<sup>689</sup> In developing countries rate fell from an average of 98 per 1000 in 1990 to 63 in 2010, however rates remain higher especially in Sub-Saharan Africa; in this region one child in eight children dies before their fifth birthday.<sup>690</sup> Among African regions, North Africa has progressed the most in reducing the under-five mortality rate; from 89 deaths per 1000 live births to in 1990 to 41 in 2011, reflecting a 54% decrease. Following North Africa in reducing under-five child mortality is Southern Africa with 46%, East and West Africa

<sup>684</sup> UN MDG Report 2014 22.

<sup>685</sup> UNDP HDR 2014 40.

<sup>686</sup> AFDB Assessing Progress in Africa Towards the Millennium Development Goals 2013 42 ..

<sup>687</sup> AFDB Assessing Progress in Africa Towards the Millennium Development Goals 2013 42.

<sup>688</sup> AFDB Assessing Progress in Africa Towards the Millennium Development Goals 2013 36.

<sup>689</sup> World Bank September 2014  
<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:23394253~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html>.

<sup>690</sup> World Bank September 2014  
<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:23394253~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html>.

with 42% each.<sup>691</sup> Central Africa is the only region progressing the slowest, and it has the highest mortality rate at 139 deaths per 1000 live births in 2011.<sup>692</sup> The current progress is not enough and achieving these goals is unlikely in Africa. Africa's slow progress in reducing neonatal mortality has hampered progress in reducing child mortality.<sup>693</sup> According to the MDG report of 2014, Sub-Saharan Africa had the highest maternal mortality ratio of developing regions, with 510 deaths per 100 000 live births.<sup>694</sup> Africa has reduced its maternal mortality ratio from 745 deaths per 100 000 live births in 2010, a 42% reduction; however the trends vary across the continent.<sup>695</sup> In recent years, both Africa's mortality rate and maternal health have declined significantly, between 1990 and 2011 Africa reduced the under-five mortality rate by 47%, however an inexcusable amount of children and women still die every year from preventable causes.<sup>696</sup>

With regards to goal six Sub-Saharan Africa remains most severely affected, with nearly one in twenty adults living with HIV and accounting for 71% of the people living with HIV worldwide.<sup>697</sup> In Africa, incomparable gains have been realised in reducing the number of both adults and children newly infected with HIV, in lowering the numbers of people dying from AIDS related causes and in implementing enabling policy frameworks that accelerate progress. Ten countries with generalised epidemics including three from Africa; Botswana, Namibia and Rwanda have attained universal access to antiretroviral therapy, covering at least 80% of the people in need.<sup>698</sup> In Sub-Saharan Africa, the region most affected by the HIV epidemic, only 39% of young men and 28% of young women aged between 15 and 24 had comprehensive knowledge of HIV.<sup>699</sup> In the same Sub-Saharan Africa, condom use among young men and young women who had higher risk sex reached 57% and 37% respectively. These rates are far way below the 95%

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<sup>691</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 49.

<sup>692</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 49.

<sup>693</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 55.

<sup>694</sup> UN *MDG Report 2014* 29.

<sup>695</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 57.

<sup>696</sup> AFDB September 2014 <http://www.afdb.org/en/topics-and-sectors/topics/millennium-development-goals-mdgs/goal-2-achieve-universal-primary-education/>.

<sup>697</sup> WHO September 2014 <http://www.who.int/gho/hiv/en/>.

<sup>698</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 71.

<sup>699</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 71.

target agreed at the UN General Assembly Special Session on HIV/AIDS in 2001.<sup>700</sup> According to UNAIDS in Sub-Saharan Africa, just three countries; Nigeria, South Africa, and Uganda account for 48% of all new HIV infections.<sup>701</sup> Africa has seen a substantial progress in reducing prevalence, incidence and death associated with malaria and to a lesser degree, TB.<sup>702</sup> Available facility level data show that the world wide percentage of reported suspected cases receiving a parasitological test grew from 67% in 2005 to 73% in 2009, with the largest increase in Africa.<sup>703</sup> The improvement in Africa's HIV status is commendable, but increasing access to antiretroviral therapy and adhering to long term medication remains vital. Malaria and TB have also shown signs narrowing, but more determination is needed to diagnose both diseases to ensure effective treatment.<sup>704</sup>

With regards to goal seven; the natural resources base and ecosystems must be managed sustainably to meet people's food requirements and other environmental, social and economic needs. Climate change has increased water scarcity, and conflicts of access to resources all pose challenges to environmental sustainability and food security.<sup>705</sup> Deforestation is rising at an alarming rate in Africa. Africa has been struggling with many difficult challenges, such as African communities encroaching on forest areas in search of wood, livelihoods and agricultural expansion.<sup>706</sup> In recent years encroachment has extended and in some countries forest land has been given away for investment purposes.<sup>707</sup>

Ensuring environmental sustainable environment; according to the World Bank, the large urban-rural disparity, especially in Sub-Saharan Africa is the principal reason the

<sup>700</sup> UN MDG Report 2014 35.

<sup>701</sup> UNAIDS September 2014  
<http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/july/20140716prgareport/>.

<sup>702</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 74.

<sup>703</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 74.

<sup>704</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 74.

<sup>705</sup> FAO September 2014 <http://www.fao.org/post-2015-mdg/mdg/goal-7/en/>.

<sup>706</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 79.

<sup>707</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 74.

sanitation target of the MDGs will not be achieved.<sup>708</sup> In Sub-Saharan Africa, where the initial coverage had been low, the proportion of the population with access to an improved drinking water source increased by 16% between 1990 and 2012 despite significant population growth.<sup>709</sup> Water is not accessible to many households, especially in Sub-Saharan.<sup>710</sup> Many people usually women or young girls often need to join long queues or walk long distances to get an improved water source.<sup>711</sup> The continent accounts for more than 40% of people without access to safe drinking water.<sup>712</sup> Factors hindering in access to drinking include political instability, the increasing numbers of refugees and growing populations putting pressure on the available resources, and African countries generally lack the technologies needed to improve water and sanitation.<sup>713</sup> Forest cover is contracting, unless water and sanitation interventions are intensified in the coming years, the continent may not meet the targets.<sup>714</sup>

With regards to goal eight; the AFDB asserts that, establishing a global partnership for development is critical for realising the MDGs. With the growing use of mobile phone and internet and swelling telecommunications investments in Africa, the Africa's information and communications technology landscape have improved in recent times.<sup>715</sup> Africa's progress on information, communications and technology is thus promising. Trade between Africa and other emerging economies has grown boosting Africa's exports in value terms by 28.3% over 2009 and 2010 and exports by 14.5% and imports by 19.5% in 2011.<sup>716</sup> Providing official assistance to developing countries is an important source of finance. According to the UN MDG report 2014, net bilateral aid to Africa fell by 5.6% in 2013. The Development Assistance Committee (DAC) survey suggests the likelihood of a continued decline by 5% in country programmable aid to

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<sup>708</sup> World Bank September 2014  
<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:23394253~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html>.

<sup>709</sup> UN MDG Report 2014 44.

<sup>710</sup> UN MDG Report 2014 44.

<sup>711</sup> UN MDG Report 2014 44.

<sup>712</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 83.

<sup>713</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 83.

<sup>714</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 83.

<sup>715</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 83.

<sup>716</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 87.

LDCs and low-income countries, particularly in Africa.<sup>717</sup> Europe's sovereign debt crisis has official development assistance (ODA), if the crisis persists, ODA will likely to continue to decline. It therefore remains to be seen whether the target for ODA will be met.<sup>718</sup>

### 3.5 CONCLUSION

Development emanates from a number of social changes, which as a catalyst pushes the entire production system in a dynamic sustainable development and growth.<sup>719</sup> A number of social changes through historical and current factors have shape Africa's development paradigm. The impact of slave trade and colonialism on Africa's slow pace of development cannot be depreciated. Also, the impact of SAPs in the African countries should not be derided. Notwithstanding the impact of slave trade, colonialism and structural adjustment; the current factors such as corruption, lack of good governance and transparency are major development threats. Political independence was the first opportunity African countries, independence ensures ownership of resources and how the wealth should be distributed and utilised to deliver services to the people, services that will meet the basic needs of the people and safeguard sustainable and healthy living. Independence did not live up to the expectations of the peoples of Africa; instead it has brought conflict, poverty, political instability, lack of accountability and corruption. The lack of governance, transparency and corruption are major obstacles for development endeavours in Africa. Lack of governance results in the lack of justice and undermines development because it promotes bad management practices and corruption while discouraging investments.<sup>720</sup> The Promise set out in the Millennium Declaration for Africa, for peace, poverty eradication, equality and sustainability appears to be impossible to fulfil within the target year, 2015. Reports from all stake-holders and development agencies on the MDGs indicate that Africa will not achieve the targets set out in the MDGs. A number of factors have contributed to the Africa's inability to meet the targets. The failure of Africa to meet the targets and achieve the MDGs is highly attributed to lack of capacity. Monitoring and tracking

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<sup>717</sup> UN MDG Report 2014 49.

<sup>718</sup> AFDB *Assessing Progress in Africa Towards the Millennium Development Goals* 2013 88.

<sup>719</sup> Louis 2014 *International Research Journal of Social Sciences* 58.

<sup>720</sup> Louis 2014 *International Research Journal of Social Sciences* 58.

development progress is a daunting task for African countries as they are not equipped with technical statistical mechanisms that will track and monitor progress.

Apart from monitoring and tracking progress, Africa's reliance on donor funding appears to present a huge obstacle for development. The nature of these goals embodies social, cultural, economic, civil and political rights. Aid is not a good enough method to address policy strategies, ethics and implementations in ensuring that poverty is eradicated, HIV/AIDS is combated and women are empowered. While the achievements have been attained in certain goals under the MDGs, loopholes still exist regarding the implementation of the MDGs. The nature of the MDGs embodies social, economic, and cultural rights. A number of questions would arise as to the reasonableness of targets setting. Were the targets set out in the MDGs feasible for all developing regions considering the social determinants that have shaped the different paradigms within countries? Considering the human rights embedded in the nature of social, economic and cultural rights was the human rights approach to development employed to monitor, foster and track progress in the MDGs? Poverty remains a major challenge in Africa, gender inequities remain rampant, children are dropping out of school, the quality of education remains mediocre, mothers continue to die while giving birth, and people continue to die of HIV/AIDS and malaria. It remains a challenge for Africa to move within affirmations of governance, the importance of participation and transparency is proving to be also formidable.

## CHAPTER 4

### AFRICA AND THE POST-2015 DEVELOPMENT AGENDA: IMPLICATIONS OF THE RIGHTS-BASED APPROACH

#### 4.1 INTRODUCTION

As the development strategies of international assistance agencies and poor countries became more complex over the past decades, the methods of planning and managing development projects became less effective.<sup>721</sup> Neither the rationalistic techniques of planning and management adopted during the 1960s and 1970s to control development activities, nor the structural adjustments models used during the 80s and 1990s to reform economic policies encouraged flexibility, experimentation and social learning that is crucial to successfully implementing complex and uncertain development activities.<sup>722</sup> Despite these synergies, however, the international community did not acknowledge the policy imperative of integrating one into the other until the mid-1980s, when the UN General Assembly adopted the Declaration on the Right to Development.<sup>723</sup> Since the reaffirmation of those principles in the Vienna Declaration in 1993, the past two decades have brought forth an increasingly integrated framework within which human rights and development have been striving towards one common working language to institutionalise a human rights-based approach to development.<sup>724</sup>

At the end of the 1990s, it appeared that social theory had done much to illuminate the nature of extreme poverty, and the conditions under which it could be commendably reduced.<sup>725</sup> Sen had influenced many that poverty should be understood as a multi-dimensional condition designed by constraints on individual's freedoms and capabilities, propagated by discriminatory institutions and failed political systems.<sup>726</sup> The Millennium Declaration and the MDG framework have enthused development efforts, helped set global and national priorities and focused ensuing actions.<sup>727</sup> Hitherto it is difficult to

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<sup>721</sup> Rondinelli *Development Projects as Policy Experiments* vii.

<sup>722</sup> Rondinelli *Development Projects as Policy Experiments* vii.

<sup>723</sup> D'Hollander, Pollet and Beke 2013 *Research Institute for Work and Society Leuven Centre for Global Governance Studies* 6.

<sup>724</sup> D'Hollander, Pollet and Beke 2013 *Research Institute for Work and Society Leuven Centre for Global Governance Studies* 6.

<sup>725</sup> Nelson 2007 *World Development* 2041.

<sup>726</sup> Nelson 2007 *World Development* 2041.

<sup>727</sup> UN 2012 *UN Task Team on the Post-2015 UN Development Agenda* 3.

measure the influence and the impact of the MDG framework and subsequent actions on poverty reduction and progress in education, health and environmental sustainability.<sup>728</sup>

Elimination of world poverty has been at the top of the global agenda since the turn of the millennium when the world leaders from 189 states committed in the UN Millennium Declaration to work in partnership for peace, poverty eradication and human rights in order to create a better world for all.<sup>729</sup> The intended policy objective of the MDGs was to draw attention to important but neglected social priorities, but they have taken on the broader role of defining a development strategy.<sup>730</sup> Much of the criticism towards the MDGs emanates from the MDG monitoring process which is perceived as top-down exercise, where the selection of indicators was the result of consultations limited to the international agencies.<sup>731</sup> The MDGs have not carried out their promise because they have not incorporated human rights approach to development, which safeguards that the most marginalised are assimilated into any measure of success and that governments are held accountable for their failure to make progress.<sup>732</sup> Without the political and legal power of human rights standards and values, development goals on paper and conforming standards cannot produce the deep and enduring changes the MDGs anticipated.<sup>733</sup>

One of the key disquiets is that the MDGs targets are not appropriately focused on the poorest of the poor or on inequality within a country.<sup>734</sup> The claim that Africa's performance is worse than that of other countries is incorrect, the main difference is that Sub-Saharan Africa started from a lower level of human development and will, therefore, not meet the global targets that have been set by the world for 2015.<sup>735</sup> Human rights instruments require a minimum core level of each, economic, social and

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<sup>728</sup> UN 2012 *UN Task Team on the Post-2015 UN Development Agenda* 3.

<sup>729</sup> MacNaughton and Frey 2010 *Hastings Race and Poverty Law Journal* 303.

<sup>730</sup> Fukuda-Parr, Yamin and Greenstein 2014 *Journal of Human Development and Capabilities* 106.

<sup>731</sup> UN 2012 *UN Task Team on the Post-2015 UN Development Agenda* 11.

<sup>732</sup> Dorsey et al 2010 *Netherlands Quarterly of Human Rights* 516.

<sup>733</sup> Dorsey et al 2010 *Netherlands Quarterly of Human Rights* 516.

<sup>734</sup> OHCHR *Claiming the MDGs* 4.

<sup>735</sup> Vandermoortele 2011 *Development and Change* 12.

cultural right to be immediately realised for all.<sup>736</sup> They also require discrimination in the exercise of these rights to be eliminated.<sup>737</sup>

The MDGs are not equally relevant to the situation of countries and regions at different stages of development and, as consequence, do not reflect the obligations of states to progressively realise economic, social and cultural rights in accordance with their level of development.<sup>738</sup> A target-setting can also inadvertently garble priorities by displacing attention from other objectives, disrupting on-going initiatives and alliances, creating perverse incentives, and undermining alternative policy analysis.<sup>739</sup>

The international accountability mechanisms for the MDGs are particularly weak.<sup>740</sup> No single organisation or individual is responsible for achieving the MDGs.<sup>741</sup> The MDGs contains no obligation that states integrate human rights standards into MDG policies and programmes,<sup>742</sup> while the MDGs include a commitment for states to integrate the principles of sustainable development into country policies and programmes.<sup>743</sup> Conceivably these concerns should have been addressed at an earlier stage, during the setting of the MDGs, but the process for their development was not participatory.<sup>744</sup>

Even if similarities and complementarities exist between the MDGs and human rights, it is clear that the MDGs address a very limited portion of the overall body of economic, social and cultural rights and that the content of some targets does not reflect the corresponding human rights standards.<sup>745</sup> Gender for instance narrowly focuses on education disparities. The MDGs have been criticised as being too narrow and insensitive to female specific risks and vulnerabilities, reproductive and domestic gender roles and responsibilities as well as power relations.<sup>746</sup> Besides these fundamental criticism of the MDGs, a number of general objections can be made to results based

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<sup>736</sup> OHCHR *Claiming the MDGs* 4.

<sup>737</sup> OHCHR *Claiming the MDGs* 4.

<sup>738</sup> Cecchini and Notti 2011 *Journal of Human Development and Capabilities* 122.

<sup>739</sup> Fukuda-Parr, Yamin and Greenstein 2014 *Journal of Human Development and Capabilities* 106.

<sup>740</sup> OHCHR *Claiming the MDGs* 4.

<sup>741</sup> McArthur 2013 *Foreign Affairs* 153.

<sup>742</sup> Amnesty International 2010 *International Journal on Human Rights* 55.

<sup>743</sup> Amnesty International 2010 *International Journal on Human Rights* 55.

<sup>744</sup> OHCHR *Claiming the MDGs* 5.

<sup>745</sup> Cecchini and Notti 2011 *Journal of Human Development and Capabilities* 122.

<sup>746</sup> Olowu 2012 *Gender Equality under the MDGs: Agenda 91/26.1* 105.

management; goals that focus on quantity do not measure the quality and can undermine it.<sup>747</sup>

At the same time, narrowly defined indicators can for example, encourage governments to send children to school without making sure there are good teachers or teaching materials, purely to achieve the goal concerned.<sup>748</sup> This is an unintended but nevertheless possible outcome of results-based management, leaving it open to abuse, and the indicators do not take into account the inequality which is increasing worldwide within and between countries.<sup>749</sup> It is possible to achieve goal one of the MDGs by ignoring the poorest and helping people who live just below the poverty line.<sup>750</sup>

The MDGs have been criticised for the lack of alignment with the Millennium Declaration and other frameworks that underpin the Millennium Declaration.<sup>751</sup> One important critique has been that the MDGs fall short of human rights standards.<sup>752</sup> The MDGs fail to underscore universal values such as freedom, tolerance and equality.<sup>753</sup> The MDGs have been misinterpreted as one size fits all targets and distorted to underpin donor centric view of development.<sup>754</sup> Most importantly they have been distorted to propagate an economistic outlook of development.<sup>755</sup> Consequently they have failed in their endeavour to shift the focus of the development discourse from income poverty to the multi-dimensional poverty nature of human poverty; from a narrow growth hypothesis to a broader human-centred perspective of sustainable and equitable human well-being.<sup>756</sup>

The MDGs have not fully addressed the large concept of development included in the Millennium Declaration, which comprises human rights, equity, democracy and governance.<sup>757</sup> Despite the positive achievements attained, the MDGs remain an

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<sup>747</sup> Van Norren 2012 *Third World Quarterly* 826.

<sup>748</sup> Van Norren 2012 *Third World Quarterly* 826.

<sup>749</sup> Van Norren 2012 *Third World Quarterly* 826.

<sup>750</sup> Van Norren 2012 *Third World Quarterly* 826.

<sup>751</sup> UN 2012 *UN Task Team on the Post-2015 UN Development Agenda* 3.

<sup>752</sup> UN 2012 *UN Task Team on the Post-2015 UN Development Agenda* 3.

<sup>753</sup> Vandermoortele 2011 *Development and Change* 9.

<sup>754</sup> Vandermoortele 2011 *Development and Change* 1.

<sup>755</sup> Vandermoortele 2011 *Development and Change* 1.

<sup>756</sup> Vandermoortele 2011 *Development and Change* 1.

<sup>757</sup> Lomazzi, Borisch and Laaser 2014 *Global Health Action* 6.

unfinished business.<sup>758</sup> Despite their imperfections and weaknesses the MDGs have led to an unprecedented focus on human well-being, human development and human poverty.<sup>759</sup> The priorities set out in the MDGs remain critical for achieving the social foundation for all, but additional concerns and challenges in recent years are extending the agenda. The Millennium Declaration is still valid and the work should be finalised.<sup>760</sup>

After 2015, efforts to achieve a world of prosperity, equity, freedom, dignity and peace will continue unabated.<sup>761</sup> According to the UN, the post-2015 agenda reflects new development challenges and is linked to the outcomes of the Rio+20 UN Conference on Sustainable Development that took place in June 2012 at Rio de Janeiro Brazil.<sup>762</sup> The heads of the state acknowledge the need to further mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognise their interlink-ages, so as to achieve sustainable development in all its dimensions.<sup>763</sup>

This outcome document of the Rio+20 conference reaffirms the need to achieve sustainable development by promoting sustained, inclusive and equitable economic growth; creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting the integrated and sustainable management of natural resources and ecosystems that supports inter alia economic, social and human development, while facilitating ecosystems conservation, regeneration and restoration and the resilience in the face of new and emerging challenges.<sup>764</sup> The importance of democracy, good governance and the rule of law at the national and international levels, together with enabling environment, is expressed in the Rio+20 as essential for sustainable development, which includes sustained and inclusive economic growth, social development,

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<sup>758</sup> Lomazzi, Borisch and Laaser 2014 *Global Health Action* 6

<sup>759</sup> Vandemoortele 2011 *Third World Quarterly* 10.

<sup>760</sup> Lomazzi, Borisch and Laaser 2014 *Global Health Action* 6

<sup>761</sup> UN September 2014 <http://www.un.org/millenniumgoals/beyond2015.shtml>.

<sup>762</sup> UN September 2014 <http://www.un.org/millenniumgoals/beyond2015.shtml>.

<sup>763</sup> UN *Rio+20 Conference on Sustainable Development Para 3* Resolution adopted by the General Assembly on 27 July 2012, Rio de Janeiro, Brazil 66/288 The future we want.

<sup>764</sup> UN *Rio+20 Conference on Sustainable Development Para 4*.

environmental protection and the eradication of poverty and hunger.<sup>765</sup> It is further endorsed in the Rio+20 outcome document, that to achieve sustainable goals, there is a need for institutions at all levels that are effective, transparent, accountable and democratic.<sup>766</sup>

There is no other continent on the planet that has more at stake in the post -2015 development agenda than Africa, as Africa is largely seen as having made the least progress towards the MDGs.<sup>767</sup> Much of the current discussion is focused on finding more meaningful, crosscutting, practical, fair goals and targets, and ways to measure progress that are relevant and actionable to Africa as they are to other developing regions.<sup>768</sup> The world's constitutive process has a very clear, simple and noble goal, and that goal is the preservation and empowerment of the human person and the protection of the human person's dignity.<sup>769</sup>

In the previous chapters and above, it has been established that this mission is proving to be impossible, particularly for the African continent. If the mission to protect the human person's dignity, and to empower the human person, to be able to live a sustainable, longer and fulfilling life has failed in Africa; how can Africa go about rearranging the human person's functions and perspectives, together with the government's strategies and processes that would best serve to approximate an order of development and the dignity of the human person?. In this chapter, there will be an exploration of the perspectives of development in Africa beyond 2015, and further, in this chapter the rights-based approach will be explored and mapped out in the post-2015 development agenda.

#### **4.2 PERSPECTIVES ON DEVELOPMENT IN AFRICA BEYOND 2015**

The 50th Anniversary of the OAU's formation provided member states of the AU with the most opportune moment to undertake a critical reflection of the continental body's

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<sup>765</sup> UN *Rio+20 Conference on Sustainable Development Para 10.*

<sup>766</sup> UN *Rio+20 Conference on Sustainable Development Para 10.*

<sup>767</sup> Hanstad African Executive Magazine September 2014

<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>.

<sup>768</sup> Hanstad African Executive Magazine September 2014

<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>

<sup>769</sup> Qerimi *Studies in Intercultural Human Rights, Vol. 3: Development in International law 5.*

achievements, its shortcomings and the major challenges that remain as the continent attempts to reassert itself on the world stage.<sup>770</sup> In the context of development and of the 50th anniversary of the OAU it is appropriate to pose the question, where will the continent be in another 50 years, in 2063?<sup>771</sup> Africa not only need to map out scenarios about where it wants to be in the medium-long term; it needs to do this proceeding from the premise that it is Africa's own actions or omissions that will define its next 50-year engagements.<sup>772</sup> The AU's 50th Anniversary Solemn Declaration<sup>773</sup> reveals important insights into the continental body's current posture as well as its envisioned future agenda.<sup>774</sup> In the 50th Anniversary Declaration, the AU on the issues of development declared a commitment to Africa's political, social and economic integration agenda, and in that regard to speed up the processes of attaining the objectives of the African Economic Community (AEC), and take steps towards the construction of the united integrated Africa, and doing this by implementing continental trade and accelerating action on the ultimate establishment of a united integrated Africa.<sup>775</sup>

With regards to the agenda for social and economic development, a commitment is affirmed by the AU to place the African people, particularly women, children and the youth, as well as persons with disabilities, at the centre of endeavours and eradicate poverty.<sup>776</sup> Within the agenda for social development the AU undertook to: develop human capital, to eradicate diseases; HIV/AIDS, Malaria and TB and to address maternal health as well as child mortality, to accelerate Africa's infrastructure development, creation of enabling environment for the development of African private sector, to take ownership and use of natural endowments and resources, to preserve and protect oceanic spaces and resources, to preserve arable land and develop rural communities, to expand and develop urban infrastructure, and most importantly to ensure that the development agenda is responsive to the needs of the people.<sup>777</sup>

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<sup>770</sup> Swart 2013 *Journal of African Union Studies* 7.

<sup>771</sup> Netshitenzhe 2013 *Politics: The Thinker* 22.

<sup>772</sup> Netshitenzhe 2013 *Politics: The Thinker* 22.

<sup>773</sup> AU 50<sup>th</sup> Anniversary Solemn Declaration May 2063 Addis Ababa Ethiopia.

<sup>774</sup> Swart 2013 *Journal of African Union Studies* 7.

<sup>775</sup> AU 50<sup>th</sup> Anniversary Solemn Declaration para C 3.

<sup>776</sup> AU 50<sup>th</sup> Anniversary Solemn Declaration para D 3.

<sup>777</sup> AU 50<sup>th</sup> Anniversary Solemn Declaration para D 4.

In September 2013 the UN started an extensive public consultation on the future of development goals.<sup>778</sup> Over 200 000 people were consulted on their opinions on the new development agenda over a six month period, and this resulted in a rising importance of stakeholders beyond national governments.<sup>779</sup> Cognizant of the limited role played by African stakeholders in shaping the MDGs; the ECA, AU, African Union Commission (AUC), AFDB and the United Nations Development Programme's Regional Bureau for Africa (UNDP/RBA) initiated a series of processes, including national, regional and continental consultations, aimed at articulating an African common position on the post-2015 development agenda.<sup>780</sup>

The above mentioned participants recognised the relatively slow progress made by African countries towards the MDGs, and recognised the capacity deficits and disabling initial conditions prevailing of countries.<sup>781</sup> According to the outcome document on regional consultation on the post-2015 development agenda; the participants unanimously agreed that the post-2015 agenda should: emphasise inclusive economic growth and structural transformation;<sup>782</sup> re-orient the development paradigm away from externally driven initiatives toward domestically inspired and funded initiatives that are grounded in national ownership;<sup>783</sup> prioritise equity and social inclusion and measure progress in terms of both the availability and quality of service delivery;<sup>784</sup> pay greater attention to vulnerable groups such as women, children youth, the elderly people, people with disabilities and displaced persons;<sup>785</sup> take into account the initial conditions

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<sup>778</sup> Cole 2014 *ADEA COMED News Journal* 3.

<sup>779</sup> Cole 2014 *ADEA COMED News Journal* 3.

<sup>780</sup> United Nations Economic Commission for Africa *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* 2. This Outcome Document summarises views from stakeholders from a total of 53 African countries, represented by governments. There have been four regional and sub-regional consultations: Accra, Ghana in November 2012; Mombasa, Kenya in October 2012; Dakar, Senegal in December 2012 and Hammamet, Tunisia March 2013.

<sup>781</sup> United Nations Economic Commission for Africa *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* 3.

<sup>782</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 1 3.

<sup>783</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 2 3.

<sup>784</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 3 3.

<sup>785</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 4 3.

of nation states and recognise the efforts countries that have been made towards achieving the goals as opposed to exclusively measuring how far they fall short of global targets;<sup>786</sup> incorporate the Rio+20 outcomes and the outcomes of the Africa wide initiatives, national and regional consultations as well as the UN forums such as the ICPD+20; focus on development enablers as well as development outcomes.<sup>787</sup>

Out of all these development aspirations for the post-2015 development agenda, four broad development outcomes were identified as priorities for the post-2015 development agenda: structural economic transformation and inclusive growth, innovation and technology transfer, human development and financing and partnership.<sup>788</sup> Eradication of extreme poverty in all its forms and empowerment of vulnerable groups is the primary focus in the post-2015 development agenda.<sup>789</sup>

Following up to the Rio+20 outcomes, the UNECA in collaboration with the AUC, AFDB and the United Nations Department of Economic and Social Affairs, organised the Africa Regional Implementation Meeting, held in Addis Ababa in November 2012, to deliberate on the outcomes of the Rio+20 and their implications for Africa.<sup>790</sup> The participants agreed that Africa's key sustainable priorities are; economic development, social development, environment and natural resources, institutions and governance, means of implementation, and promoting an integrated approach to development.<sup>791</sup> The participants further recommended that sustainable development goals should be based on the continent's priorities and the framework for action and follow up, as contained in the Rio+20 outcome document "The future we want", taking into account the priorities identified in the Africa Regional Consultations on the goals, and further that achievement of sustainable development goals should be set for a period of fifteen

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<sup>786</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 5 3.

<sup>787</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* para 6 3.

<sup>788</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* 3.

<sup>789</sup> *Outcome Document of the Regional Consultations on the Post-2015 Development Agenda* 3.

<sup>790</sup> UNECA, AUC and AFDB *Africa Regional Consultative Meeting on the Sustainable Development Goals: Outcome Document* 1. Adopted on the 13 November 2013 Addis Ababa, Ethiopia.

<sup>791</sup> UNECA, AUC and AFDB *Africa Regional Consultative Meeting on the Sustainable Development Goals: Outcome Document* 1.

years starting from 2016.<sup>792</sup> The recommended sustainable goals were: Goal 1 eradicate extreme poverty in all its forms; Goal 2 promote sustainable agriculture, and achieve food security and adequate nutrition for all; Goal 3 ensure quality, adequate, affordable, accessible and comprehensive health services for all; Goal 4 achieve universal access to affordable and quality education at all levels; Goal 5 achieve gender equality, protect and empower women, the youth and persons in vulnerable situations; Goal 6 ensure social inclusion and protection, including guaranteed minimum income, social security and decent employment for all, particularly the youth; Goal 7 structurally transform economies and attain inclusive sustained economic growth, accelerate infrastructure development, industrialisation and access to affordable energy and build resilient cities and sustainable human settlements; Goal 8 enhance the quality, resilience and protection of the environment and promote sustainable exploitation, use and management of natural resources; Goal 9 combat desertification and land degradation, mitigate drought and promote sustainable management of land and oceanic spaces; Goal 10 promote culture research, science, innovation and technology development; Goal 11 scale up global partnership for development; Goal 12 promote good governance at national and international levels.<sup>793</sup>

The Outcome Document on sustainable development goals entails that sustainable development goals are strongly interlinked therefore should be implemented in an integrated manner; using interlinkages approach in order to achieve the desired sustainable development results.<sup>794</sup>

Parallel to the post-2015 process, the AU launched its Agenda 2063 in 2013 as a call for action to all segments of African Society to work together to build a prosperous and united Africa.<sup>795</sup> Agenda 2063 is rooted in a different development philosophy than that of the MDGs, finding its inspirations in the Lagos Plan of Action, The Abuja Treaty and

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<sup>792</sup> UNECA, AUC and AFDB *Africa Regional Consultative Meeting on the Sustainable Development Goals: Outcome Document 9*.

<sup>793</sup> UNECA, AUC and AFDB *Africa Regional Consultative Meeting on the Sustainable Development Goals: Outcome Document 8*.

<sup>794</sup> UNECA, AUC and AFDB *Africa Regional Consultative Meeting on the Sustainable Development Goals: Outcome Document 8*.

<sup>795</sup> Institute for Security Studies 2014 *African Futures Paper 10 1*.

NEPAD.<sup>796</sup> Agenda 2063 is a collective vision and the roadmap for the next fifty years.<sup>797</sup> The AU has firmly dedicated itself towards agenda 2063 and acknowledged that a fundamental paradigm shift is required to seize upon the momentum to en route towards 2063.<sup>798</sup> Africa must do things differently to take advantage of the current momentum towards 2063.<sup>799</sup> In order to achieve the AU's vision of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing dynamic force in the global arena, significantly more action is still required on a number of fronts.<sup>800</sup> Agenda 2063 is an approach to how the continent should effectively learn from lessons of the past, build on the progress now underway and strategically exploit all possible opportunities available in the immediate and medium term, so as to ensure positive socio-economic transformation for the next fifty years.<sup>801</sup>

In the adoption of agenda 2063, regarding development, the AU committed to eradicating poverty in a generation by 2025, through concentrating all efforts towards improving incomes, creating jobs and providing basic necessities of life.<sup>802</sup> The AU has further committed to speed up actions in skills revolution and science, technology and innovation; expand universal access to quality early childhood, basic and higher education, consolidate gender parity in education, strengthen vocational education and universities, science, technology, research and innovation.<sup>803</sup>

Furthermore the AU has committed to speed-up economic transformation and industrialisation through beneficiation of natural resources through; agriculture and food security, commodities strategy, industrialisation, manufacturing, beneficiation and service, blue and green economy.<sup>804</sup> Agenda 2063 includes a plan for Africa that is connected through world class infrastructure; through a concerted push to finance and implement the major infrastructure projects in transport; connecting all African capitals and commercial centres through the Africa integrated high speed train initiative, the

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<sup>796</sup> Institute for Security Studies 2014 *African Futures Paper 10 1*.

<sup>797</sup> DTRD *Agenda 2063: Our Journey Towards 2063 has started, The Africa We Want 33*.

<sup>798</sup> Swart 2014 *Journal for African Union Studies 5*.

<sup>799</sup> AU September 2014 [http://agenda2063.au.int/en/vision\\_](http://agenda2063.au.int/en/vision_)

<sup>800</sup> AU September 2014 <http://agenda2063.au.int/en/vision>.

<sup>801</sup> AU September 2014 <http://agenda2063.au.int/en/vision>.

<sup>802</sup> DTRD *Agenda 2063: Our Journey Towards 2063 has started, The Africa We Want 33*.

<sup>803</sup> As above 33.

<sup>804</sup> As above 33.

Programme for Infrastructure Development in Africa (PIDA) transport corridors; improved efficiency and connections of the African aviation sector and implement Yamoussoukro Declaration and strengthening the African port and shipping sector as a regional and continental assets.<sup>805</sup>

Moreover Energy is also incorporated in the adoption of agenda 2063; harnessing all African energy resources to ensure modern, efficient, reliable, cost effective and environmentally friendly energy to all African households, businesses, industries and institutions, through building the national and regional energy pools and grids and PIDA energy projects.<sup>806</sup> Information and Communications Technology (ICT) putting Africa on an equal footing with the rest of the world as an information society, an integrated e-economy where every government, business and citizens have access to reliable and affordable ICT services by increasing broadband connectivity by twenty percentage points and providing access to ICT to children in schools and venture capital to young ICT entrepreneurs and innovators.<sup>807</sup>

Regarding trade, agenda 2063 commits to the establishment of a Continental Free trade Area by 2017, a programme to double intra-Africa trade 2022, strengthen Africa's common voice and policy space in global trade negotiations and establish the financial institutions within agreed timeframes: African Investment Bank, Pan African stock exchange (2016), the African Monetary Fund (2018), and the African Central Bank 2028/34.<sup>808</sup>

The AU further committed to ensuring that young people will be the drivers of Africa's renaissance, through investment in their health, education and access to technology, opportunities and capital, and concerted strategies to combat youth unemployment and underemployment.<sup>809</sup> The AU has committed to Silence the guns by 2020; to make peace a reality for all our people and by ending all wars, civil conflicts, human rights violations, humanitarian disasters and violent conflicts and to prevent genocide, and it

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<sup>805</sup> As above 33.

<sup>806</sup> As above 34.

<sup>807</sup> As above 34.

<sup>808</sup> As above 34.

<sup>809</sup> As above 35.

has pledged not to bequeath the burden of conflicts to the next generation of Africans by ending all wars in 2020.<sup>810</sup>

The AU has committed to achieve gender parity by 2020 in public and private institutions, and the removal of all forms of gender discrimination in the social, cultural, economic and political spheres.<sup>811</sup> In agenda 2063 there is a commitment to urgently and rapidly strengthen Africa's voice in global negotiations, through collective sovereignty, integration and the development of African positions.<sup>812</sup> The AU also adopted enablers for agenda 2063 which include participation, determination and solidarity of Africa's peoples and leadership, and African self-reliance and these are considered as critical enablers and preconditions for success.<sup>813</sup> Under AU's agenda 2063 there is a commitment to mobilise African resources to finance and accelerate transformation, peace, security, democratic governance and strengthen continental institutions and integration.<sup>814</sup> To strengthen accountable leadership and developmental governance and institutions, through robust and transparent implementation, monitoring and evaluation mechanisms at all levels.<sup>815</sup>

The AFDB has suggested that the countries that have achieved the MDGs targets, such MDG may no longer be relevant in their current form.<sup>816</sup> The AFDB has proposed that what may be relevant for MDG achievers is an agenda that prioritises the consolidation and sustainability of progress on the goals.<sup>817</sup> For sub-regions in Africa with mixed progress on the MDGs, the priorities are twofold: achieving the unmet targets, while sustaining progress on those targets that have been achieved.<sup>818</sup> For such sub-regions and countries, the post-MDG agenda should prioritise strengthening implementation modalities and forging partnerships to ensure that all the MDGs are indeed achieved.<sup>819</sup>

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<sup>810</sup> As above 35.

<sup>811</sup> As above 35.

<sup>812</sup> As above 35.

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<sup>815</sup> As above 35.

<sup>816</sup> AFDB *Assessing Progress Africa towards the MDGs* 125.

<sup>817</sup> AFDB *Assessing Progress Africa towards the MDGs* 125.

<sup>818</sup> As above 125.

<sup>819</sup> As above 125.

Parallel to sustaining progress on the achieved targets and prevent slippages, measures could include improving quality education, minimising inequalities in access to social services and strengthening capacity disaster risk reduction.<sup>820</sup> The post- 2015 agenda needs to recognise that achieving the goals is not a one off event but a dynamic process, subject to shocks and reversals resulting from exogenous and endogenous factors.<sup>821</sup> The key priorities for post-2015 development agenda are the transformative shifts that must underpin the new agenda; drive the illustrative goals and related national targets; cover themes of inclusive and sustainable growth, job creation strategic development finance and cooperation; and strengthen good governance.<sup>822</sup>

Within the continent, the pursuit of inclusive economic growth agenda could involve contrasting set of interventions, ranging, for example, from a more optimal industrial policy agenda to productivity, enhancing measures in agriculture or even the pursuit of a modern service sector.<sup>823</sup> Africa needs to capitalise on its dividend, policies for creating jobs, and inclusive and sustainable growth must be a part of the economic agenda in Africa, and if Africa can mobilise its young workforce, it can also enjoy the benefits of its new mass consumer.<sup>824</sup>

As the post-2015 development agenda takes shape, the issue of funding for the future agenda has also come under the spot light, the importance of ensuring adequate financing for development has been identified as a major issue.<sup>825</sup> A broader agenda needs to be adopted which examines the effects of different finance flows and the importance of complementary policies and institutions mobilising and using finance effectively for sustainable development transformation.<sup>826</sup> Reducing extreme poverty and poverty at large requires a great deal of money as well as driving economic growth in an inclusive manner and planet friendly way will require a great deal of money.<sup>827</sup>

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<sup>820</sup> As above 125.

<sup>821</sup> As above 125.

<sup>822</sup> Bhorat 2014 *The Brookings Institution: Africa Growth Initiative* 16.

<sup>823</sup> Bhorat 2014 *The Brookings Institution: Africa Growth Initiative* 18.

<sup>824</sup> Bhorat 2014 *The Brookings Institution: Africa Growth Initiative* 18.

<sup>825</sup> ECDPM 2014 *GREAT Insights* 8.

<sup>826</sup> ECDPM 2014 *GREAT Insights* 19.

<sup>827</sup> ECDPM 2014 *GREAT Insights* 15.

The primary failure of institutions in relation to sustainable development is one of misallocation of capital.<sup>828</sup> The world is changing and so must development cooperation; ODA has been a tremendous success, however more is needed to finance sustainable development goals.<sup>829</sup> To maximise the beyond aid approach, African governments and institutions should build sustained progress in regional integration, policy coherence, good governance and institutional reforms, with underlined emphasis in capacity development leverage, and this will help bolster the renewed drive for industrialisation in Africa.<sup>830</sup>

In some quarters, institutional powers are struggling to interact meaningfully with what is referred to as the new people power paradigm.<sup>831</sup> Media users are calling for freedom of expression, and the correlative of press freedom.<sup>832</sup> UNESCO has argued that, a free pluralistic and independent media must become part and parcel of the new post-2015 development agenda.<sup>833</sup> In February 2014, almost 200 civil society organisations joined hands to urge the UN Open Working Group on the post 2015 development agenda to put government accountability and independent media at the centre of a new framework for global development.<sup>834</sup> When various stakeholders are enabled to play their respective constructive challenger roles on the important issues; open communication will oblige all stakeholders and participants to innovate continually in finding new opportunities to meet the needs of the voiceless.<sup>835</sup> A clear focus on the right to information will promote participatory development.<sup>836</sup>

East African states; Kenya, Uganda, Tanzania and Rwanda, together with NGOs, academia and other various organisations have applauded the AU's agenda 2063, however concerns have been raised.<sup>837</sup> The concern is that of the failure of the agenda

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<sup>828</sup> ECDPM 2014 *GREAT Insights* 22.

<sup>829</sup> ECDPM 2014 *GREAT Insights* 15.

<sup>830</sup> ECDPM 2014 *GREAT Insights* 13.

<sup>831</sup> Cole 2014 *ADEA COMED News Journal* 2.

<sup>832</sup> Cole 2014 *ADEA COMED News Journal* 2.

<sup>833</sup> Cole 2014 *ADEA COMED News Journal* 2.

<sup>834</sup> Cole 2014 *ADEA COMED News Journal* 3.

<sup>835</sup> Cole 2014 *ADEA COMED News Journal* 3.

<sup>836</sup> Cole 2014 *ADEA COMED News Journal* 3.

<sup>837</sup> African Executive Magazine September 2014

<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>.

to focus on the trauma that spans several centuries and has arrested Africans to the past; its likelihood to render Africans irrelevant in the global space, due to its failure to assess Africa's position in the international division of labour; and its apparent assumption that the world is a static place.<sup>838</sup>

Africa expects to play an important role in the post-2015 development agenda, so as to ensure that there will be no one-size fits all approach to the development agenda that will replace the MDGs.<sup>839</sup> In the post-2015 development agenda Africa expects to play a critical role in areas such as agriculture, which has the potential to reduce poverty and hunger.<sup>840</sup> Furthermore, after 2015 Africa expects a more inclusive framework that will emphasise economic, technological, social and environmental support in order to deal successfully with the complex realities of poverty inequality, climate change and sustainable consumption of resources.<sup>841</sup> A holistic approach that merges the MDGs with Sustainable Development Goals (SDGs) will be more effective for Africa.<sup>842</sup>

### 4.3 RIGHTS-BASED APPROACH: VALUES AND PROMISE

Development and human rights share consistent goals but pursue them differently, and their agendas overlap extensively in mutual reinforcing ways.<sup>843</sup> Article 22 of the UDHR launched a universal rights-based standard to secure the economic and social opportunity as well as protection essential to human dignity and to freedom to develop as person.<sup>844</sup> Article 22 provides that everyone as the member of society, has the right to social security, and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development personality.<sup>845</sup> At its origin, the opening reference to everyone's "right to

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<sup>838</sup> African Executive Magazine September 2014  
<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>

<sup>839</sup> Simelane and Chiroro 2013 *Africa Institute of Africa* 2.

<sup>840</sup> Simelane and Chiroro 2013 *Africa Institute of Africa* 2.

<sup>841</sup> Simelane and Chiroro 2013 *Africa Institute of Africa* 1.

<sup>842</sup> Simelane and Chiroro 2013 *Africa Institute of Africa* 1.

<sup>843</sup> Cisse, Hassane and Muller *World Bank Legal Review: Legal Innovation and Empowerment for Development* 125.

<sup>844</sup> Diller *UDHR Volume 3: Securing Dignity and Freedom through Human Rights: Article 22 of the UDHR* 1.

<sup>845</sup> Article 22 *UDHR*.

social security” was interpreted broadly, in a formative meaning that generously denotes the social and economic freedoms and protections essential to human dignity and the development of one’s personality.<sup>846</sup>

To guarantee such a level of social and economic security, the “right to social security” was boldly linked to an entitlement to the realisation of indispensable economic, social and cultural rights of an inherently normative character, to be achieved as an interrelated whole.<sup>847</sup> These principles offer a remarkable concrete response to the increasing demand today for economic and social security as basis for social justice.<sup>848</sup> The means of satisfying the entitlement, expressed as national effort and international cooperation and in accordance with organisation and resources of each state, served to specify the realisation of economic, social and cultural rights as part of expected commitments of states obligations under the UN Charter.<sup>849</sup> There is a growing interest in the implications of human rights; economic, social and cultural rights for development practice, and a movement towards a rights-based approach to development cooperation.<sup>850</sup>

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to protecting and promoting human rights.<sup>851</sup> A rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development.<sup>852</sup> A rights-based approach to development includes express linkage to rights, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups.<sup>853</sup>

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<sup>846</sup> Diller *UDHR Volume 3: Securing Dignity and Freedom through Human Rights: Article 22 of the UDHR 2*.

<sup>847</sup> Diller *UDHR Volume 3: Securing Dignity and Freedom through Human Rights: Article 22 of the UDHR 2*.

<sup>848</sup> Diller *UDHR Volume 3: Securing Dignity and Freedom through Human Rights: Article 22 of the UDHR 2*.

<sup>849</sup> Diller *UDHR Volume 3: Securing Dignity and Freedom through Human Rights: Article 22 of the UDHR 2*.

<sup>850</sup> Nelson 2007 *World Development* 2041.

<sup>851</sup> Sengupta, Basu and Negi *Reflections on the Right to Development* 28.

<sup>852</sup> Rezaeenezhad and Kordnaeji 2012 *OIDA International Journal of Sustainable Development* 47.

<sup>853</sup> Sengupta, Basu and Negi *Reflections on the Right to Development* 28.

The relationship between human rights and development establishes a link wherein development is realised when human rights can be realised, with development being the process within which human rights can be realised.<sup>854</sup> Ultimately, development is the human right and the human person is a central subject of development and should be the active participant and the beneficiary of the right.<sup>855</sup>

The rights-based approach includes the principles of universality and indivisibility.<sup>856</sup> These are ideals that are entrenched in the UN framework. While the UN is an entity of defined and enduring values; it is not necessarily one of clear and proven methods for achieving its ideals.<sup>857</sup> Much of which the UN applies in terms of methodology focuses on meeting criteria of political expediency and bureaucratic convenience, and thereafter accomplishing effectiveness.<sup>858</sup> The Millennium Declaration was the renewal of the standard set by this provision in the UDHR. The MDGs were the promise set to deliver on this standard. The UN is facing increasingly intense challenges in the fulfilment of its mission, also harbours the potential of enhanced effectiveness, relevance and legitimacy in the forms of human rights-based approach.<sup>859</sup> The rights-based approach is one model of translating the organisation's values into a more adaptive, inclusive, dynamic and responsive system of processes and outcomes.<sup>860</sup>

The key principles of the human rights-based approach effectively distil the main elements of the nature of human rights. It also outlines their implications for processes and outcomes of service delivery.<sup>861</sup> The rights-based approach rests not on the workings of the markets and the generosity of the donors, but internationally recognised human rights standards and principles, to which governments and donors are obliged to adhere.<sup>862</sup> The notions of accountability and obligation are central to the human rights-based approach.<sup>863</sup> In addition to increased accountability as a result of explicitly

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<sup>854</sup> Rezaeenezhad and Kordnaeji 2012 *OIDA International Journal of Sustainable Development* 47.

<sup>855</sup> Rezaeenezhad and Kordnaeji 2012 *OIDA International Journal of Sustainable Development* 47.

<sup>856</sup> Rezaeenezhad and Kordnaeji 2012 *OIDA International Journal of Sustainable Development* 47.

<sup>857</sup> Clarke 2012 *Human Rights Rev* 227.

<sup>858</sup> Clarke 2012 *Human Rights Rev* 227.

<sup>859</sup> Clarke 2012 *Human Rights Rev* 227.

<sup>860</sup> Clarke 2012 *Human Rights Rev* 227.

<sup>861</sup> Clarke 2012 *Human Rights Rev* 231.

<sup>862</sup> Nelson 2007 *World Development* 2041.

<sup>863</sup> Vizard, Fukuda-Parr and Elson 2011 *Journal of Human Development and Capabilities* 1.

defined claim or duty relationship, the rights-based approach offers better protection of people who are poor by ruling out trade-offs that are harmful to them and consequently makes good programming practice obligatory on the part of development actors.<sup>864</sup>

The rights-based approach gives more attentions to exclusion, discrimination, disparities and injustice and by doing so emphasises legal and institutional reform including the promotion of the rule of law and access to justice.<sup>865</sup> Most importantly the rights-based approach protect people better from power exertion and can be used to challenge power and consequently facilitates development as a matter of obligations; national and international, and not simply based on motives of charity and solidarity.<sup>866</sup> The human rights-based approach holds a promise that states and member states which recognise human rights would have the obligation to cooperate among themselves and take whatever steps necessary to realise the rights in all countries belonging to that community.<sup>867</sup>

When human rights are considered, distribution of wealth is predominant focus related to development outcomes.<sup>868</sup> When interventions involved in the application of international instruments to reduce poverty are opposed by the rich, the adoption of extreme poverty as denial or violation of human rights would help to overcome their resistance by; increasing the cost to the rich of opposing those interventions, thereby implying a change in their opportunity sets; by convincing the rich of the desirability of reduction in the incidence of poverty, implying a change in the preference of the rich; and by limiting sacrifices of wealth and privileges to a small set of people without very much affecting the position of others.<sup>869</sup>

Countries may adopt policies to resolve internal conflicts and to reduce extreme poverty as would be required by the international convention even without becoming parties to it.<sup>870</sup> If extreme poverty can be identified in itself as a violation of human rights, it

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<sup>864</sup> Banik 2010 *The International Journal of Human Rights* 35.

<sup>865</sup> Banik 2010 *The International Journal of Human Rights* 35.

<sup>866</sup> Banik 2010 *The International Journal of Human Rights* 35.

<sup>867</sup> Sengupta 2010 *Economic and Political Weekly* 88.

<sup>868</sup> Ferguson 2011 *Centre for Development and Human Rights* 2.

<sup>869</sup> Sengupta 2010 *Economic and Political Weekly* 88.

<sup>870</sup> Sengupta 2010 *Economic and Political Weekly* 88.

becomes an obligation for both concerned states and the international community to make the best efforts directly to combat it.<sup>871</sup> The discussion would then effectively centre on what policies could have the maximum impact for poverty reduction and, if such policies are not adopted which agencies are responsible and accountable, and what steps can be taken to compensate for less than best efforts made by the perspective duty bearers.<sup>872</sup> If extreme poverty is associated with conditions created by non-fulfilment of the various human rights, the obligations would turn on the realisation of those rights.<sup>873</sup> It is now almost universally accepted that a country's success or an individual's well-being cannot be evaluated by money alone.<sup>874</sup> Income is of course crucial; without resources, any progress is difficult.<sup>875</sup> Yet we must also gauge whether people can live long and healthy lives, whether they have the opportunity to be educated and whether they are free use their knowledge and talents to shape their own destinies.<sup>876</sup>

A human rights-based approach to participation improves national ownership of development initiatives; and from this perspective, participation means more than consultation, it entails actively involving all actors in the design and implementation of development strategies as well as the monitoring processes.<sup>877</sup> Development approaches tend to focus on changing the immediate negative circumstances of poverty, so as to produce positive benefits.<sup>878</sup> The rights-based approach is based on the belief that sustainable development would not be possible unless the conditions of international instruments are fulfilled.<sup>879</sup>

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<sup>871</sup> Sengupta 2010 *Economic and Political Weekly* 88.

<sup>872</sup> Sengupta 2010 *Economic and Political Weekly* 88.

<sup>873</sup> Sengupta 2010 *Economic and Political Weekly* 88.

<sup>874</sup> UNDP *HDR* 2010 IV.

<sup>875</sup> UNDP *HDR* 2010 IV.

<sup>876</sup> UNDP *HDR* 2010 IV.

<sup>877</sup> Cecchini and Notti 2014 *Journal of Human Development* 123.

<sup>878</sup> The UK Interagency Group on Human Rights Based Approaches 2007 *The Impact of the Rights-Based Approaches to Development* 48.

<sup>879</sup> The UK Interagency Group on Human Rights Based Approaches 2007 *The Impact of the Rights-Based Approaches to Development* 48.

The rights-based approach works to achieve human rights, and they necessarily address the underlying causes of poverty.<sup>880</sup> This therefore means that, the rights-based approach challenges the causes of disadvantage, injustice and inequity. Most importantly, the rights-based approach links citizens and state in systems of mutual accountability.<sup>881</sup> The rights-based approach is built up through the development of systems that institutionalise participation, inclusion and fulfilment of obligations.<sup>882</sup>

#### 4.4 MAPPING OUT THE RIGHTS-BASED APPROACH IN THE POST-2015 DEVELOPMENT AGENDA IN AFRICA

There is a need to defend economic, social and cultural rights against distortions, not only denials and violations; in the contemporary era, such distortions take the form of recasting socio-economic rights into market friendly consumerist norms, and among other things, the reduction of entrenched socio-economic rights to formal, procedural guarantees, rather than substantive entitlements.<sup>883</sup> With regards to the material subversion of socio-economic rights, the era of neo-liberal globalisation, with its emphasis on commodification, commercialisation and privatisation fundamentally undermines the enjoyment of basic socio-economic rights for millions of people around the world, needless to say in Africa.<sup>884</sup>

Human rights and development are considered to be communicating vessels with a common emphasis on issue of poverty, discrimination and injustice, both aimed at spurring new worlds that are more prosperous, more humanly fulfilling and just.<sup>885</sup> Human rights provide the essential social foundation for all people to lead lives of dignity and opportunity.<sup>886</sup> Over the next decade African countries must lay the

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<sup>880</sup> The UK Interagency Group on Human Rights Based Approaches 2007 *The Impact of the Rights-Based Approaches to Development* 48.

<sup>881</sup> The UK Interagency Group on Human Rights Based Approaches 2007 *The Impact of the Rights-Based Approaches to Development* 48.

<sup>882</sup> The UK Interagency Group on Human Rights Based Approaches 2007 *The Impact of the Rights-Based Approaches to Development* 48.

<sup>883</sup> O'Connell 2011 *Modern Law Review* 533.

<sup>884</sup> O'Connell 2011 *Modern Law Review* 534.

<sup>885</sup> D'Hollander, Pollet and Beke 2013 *Research Institute for Work and Society Leuven Centre for Global Governance Studies* 6.

<sup>886</sup> Raworth 2012 *Oxfam Discussion Papers* 9.

foundations to unleash the full human potential of their people to enable them to lead healthy and productive lives.<sup>887</sup>

#### 4.4.1 Poverty

The AU commits to eradicate poverty by 2025 in Africa, through improving incomes and job creation.<sup>888</sup> Policies can address poverty, but policies are not a guarantee to eradicate poverty.<sup>889</sup> Many factors figure into poverty policy scene; government understanding of poverty, the particular type of poverty and the environment will naturally determine the nature of policies.<sup>890</sup> Poverty remains the biggest challenge in Africa and therefore eradication of poverty is a long term-project.<sup>891</sup>

To suffer from poverty constitutes a serious blow to a person's dignity as it signifies a lifestyle below that judged appropriate for human beings in society.<sup>892</sup> Poverty refers to a condition where a lack of economic capacities causes the human victims of poverty to live lives where they cannot fully participate in the range of activities expressive of their nature as human beings; this includes poor people being unable to maintain their physical health.<sup>893</sup> Authoritative international recognition of global poverty as a human rights issue dates back to the adoption of the UDHR in 1948, where in article 3 of the UDHR recognises the human right to life, together with article 25 and 26 recognising the human right to a standard of living adequate for health and well-being; including adequate food.<sup>894</sup>

The ICESCR provides for the recognition by state parties of the fundamental right to adequate food,<sup>895</sup> and the right of everyone to be free from hunger, and it further provides for state parties to seek means of production and food distribution through international cooperation using agrarian systems.<sup>896</sup> As a minimum core obligation

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<sup>887</sup> Fredriksen and Kagia 2014 *Emerging Markets Forum* 1.

<sup>888</sup> DTRD *Our Journey Towards 2063 has Started: The Africa We Want* 33.

<sup>889</sup> Brynard 2011 *African Journal of Public Affairs* 148.

<sup>890</sup> Brynard 2011 *African Journal of Public Affairs* 148.

<sup>891</sup> Brynard 2011 *African Journal of Public Affairs* 148.

<sup>892</sup> Lotter *Poverty, Ethics and Justice* 59.

<sup>893</sup> Lotter *Poverty, Ethics and Justice* 59.

<sup>894</sup> Vizard *Poverty and Human Rights: Sen's Capability Perspective Explored* 7.

<sup>895</sup> Article 11 (1) ICESCR.

<sup>896</sup> Article 11 (2) (a) ICESCR.

under the ICESCR, states parties must act immediately to mitigate and alleviate hunger, and this includes times of natural or other disasters.<sup>897</sup> The CESCR has concluded that the core content of the right to adequate food implies: ensuring the availability of food in quantity and quality and sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture.<sup>898</sup> The accessibility of such food must be in ways that are sustainable and that do not interfere with the enjoyment of other human rights.<sup>899</sup> While the ICESCR allows for progressive realisation of the rights contained in therein, there are two obligations that apply fully and immediately to all economic, social and cultural rights irrespective of the availability of the resources: the obligation to ensure non-discrimination and the obligation to take steps toward the realisation of these right.<sup>900</sup>

Poverty is closely connected to work. Employment is the basic route for escape from poverty.<sup>901</sup> There is no doubt that work has instrumental value as a means of gaining income to meet needs for food.<sup>902</sup> The right to work is entrenched in the ICESCR, and it entails the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.<sup>903</sup> Under the entrenchment of this right state parties are obligated to takes steps towards the realisation of this right which include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development, full and productive employment.<sup>904</sup> Evidence of the serious effects of unemployment clearly shows that work is not simply about money. The psychological harm, loss of self-confidence, increased poor health, disruption of family and social life, increased racial tensions and deepening of social exclusion may all result from, or exacerbated by unemployment.<sup>905</sup> In this sense work is

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<sup>897</sup> Narula 2010 *Yale Human Rights and Development* LJ 404.

<sup>898</sup> Narula 2010 *Yale Human Rights and Development* LJ 404.

<sup>899</sup> Narula 2010 *Yale Human Rights and Development* LJ 405.

<sup>900</sup> Narula 2010 *Yale Human Rights and Development* LJ 405

<sup>901</sup> MacNoughton and Frey *Hastings Race and Poverty Law Journal* 310.

<sup>902</sup> MacNoughton and Frey *Hastings Race and Poverty Law Journal* 310.

<sup>903</sup> Article 6 (1) *ICESCR*.

<sup>904</sup> Article 6 (2) *ICESCR*.

<sup>905</sup> MacNoughton and Frey *Hastings Race and Poverty Law Journal* 309.

linked intimately with not only to the income dimension but to all dimensions of poverty.<sup>906</sup>

People who do not work, due to disability, old age or lack of employment opportunities are more at risk of living in poverty particularly in countries without adequate social security.<sup>907</sup> As a policy framework addressing poverty and vulnerability in developing countries, social protection is the key component of development policy.<sup>908</sup> The broader developmental role of social protection in developing countries involves: helping to protect basic levels of consumption among those in poverty or in danger of falling into poverty; facilitating investment in human and other productive assets, which alone can provide escape routes from persistent intergenerational poverty; and to strengthen the agency of those in poverty so that they can overcome their predicament.<sup>909</sup>

Social protection can offer cover against risk and adversity throughout people's lives and especially during critical phases and transitions.<sup>910</sup> By providing an additional and predictable layer of support, it can help households avoid coping strategies that take children out of school and postpone necessary medical care, and all these are detrimental to long-term well-being.<sup>911</sup> Social protection is not only an attainable proposition at early stages of development, but it also brings about other benefits such as stimulating aggregate demand when needed and ultimately reduces poverty.<sup>912</sup> The right of everyone to social security and social insurance is entrenched in the ICESCR.<sup>913</sup>

Global poverty has in the past been and often continues to be downgraded and neglected as a human rights issue.<sup>914</sup> The emphasis should be on the ways in which the embryonic but expanding and deepening framework of ethical, political and legal commitments in the field of human rights can provide as a basis of strengthening international accountability and securing the individual and collective actions necessary

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<sup>906</sup> MacNoughton and Frey *Hastings Race and Poverty Law Journal* 309.

<sup>907</sup> MacNoughton and Frey *Hastings Race and Poverty Law Journal* 309.

<sup>908</sup> Barrientos 2011 *International Journal of Social Welfare* 241.

<sup>909</sup> Barrientos 2011 *International Journal of Social Welfare* 241.

<sup>910</sup> UNDP *HDR* 2014 97.

<sup>911</sup> UNDP *HDR* 2014 97.

<sup>912</sup> UNDP *HDR* 2014 97.

<sup>913</sup> Article 9 *ICESCR*.

<sup>914</sup> Vizard *Poverty and Human Rights: Sen's Capability Perspective Explored* 7.

for a sustained programme of global poverty reduction and elimination.<sup>915</sup> Regionally, the African Charter does not make provision for the right to food as well as the right to social security. The African Charter makes provision for the right of citizens to equal access of public services of his or her country.<sup>916</sup> The state parties to the African Charter are obligated to individually or collectively ensure the exercise of the right to development.<sup>917</sup> However, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)<sup>918</sup> Provides explicitly for the right to food security.<sup>919</sup> Under the Maputo Protocol, states parties are obligated to ensure that women have the right to nutritious and adequate food.<sup>920</sup> States have the duty to provide women with the means of producing nutritious food.<sup>921</sup> States are also obligated to establish adequate systems of supply and storage to ensure food security.<sup>922</sup>

The African Charter on the Rights of a Child<sup>923</sup> provides that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.<sup>924</sup> To ensure the realisation of this right; states parties undertake to pursue the full implementation on this right.<sup>925</sup> Amongst the requirements for the implementation of this right, the state parties are required to take measures to ensure adequate nutrition.<sup>926</sup> The African Youth Charter<sup>927</sup> provides in its article 14 for the eradication of poverty and socio-economic integration of youth.<sup>928</sup> Under the African Youth Charter, states parties shall recognise the right of young people to be free from hunger.<sup>929</sup> National

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<sup>915</sup> Vizard *Poverty and Human Rights: Sen's Capability Perspective Explored* 7.

<sup>916</sup> Article 13 *African Charter*.

<sup>917</sup> Article 22(2) *African Charter*.

<sup>918</sup> The African Charter on Human and People's Rights on the Rights of Women in Africa adopted in by the African Union on 11 July 2003 at Maputo, Mozambique, the Protocol entered into force 25 November 2005.

<sup>919</sup> Article 15 *Maputo Protocol*.

<sup>920</sup> Article 15 *Maputo Protocol*.

<sup>921</sup> Article 15 (a) *Maputo Protocol*.

<sup>922</sup> Article 15 (b) *Maputo Protocol*.

<sup>923</sup> African Charter on the Rights of a Child, OAU Doc CAB/LEG/24.9/49 (1990), entered into force in 1999.

<sup>924</sup> Article 14 (1) *African Charter on the Rights of a Child*.

<sup>925</sup> Article 14 (2) *African Charter on the Rights of a Child*.

<sup>926</sup> Article 14 (2) (c) *African Charter on the Rights of a Child*.

<sup>927</sup> African Youth Charter adopted in 2006, Banjul, Gambia.

<sup>928</sup> Article 14 *African Youth Charter*.

<sup>929</sup> Article 14 *African Youth Charter*.

governments have a leading role in the extension of social protection and assistance.<sup>930</sup> Poverty eradication is an indispensable requirement for sustainable development.<sup>931</sup> This is a matter of basic justice and human rights.<sup>932</sup> Responses to the current crisis of poverty and food insecurity have emphasised the responsibility of states to realise the right to adequate food and have called for greater coordination and cooperation between states, civil society groups, international institutions and private sector actors.<sup>933</sup> States facing human rights problems like hunger have a greater responsibility to comply with international obligation, and to cooperate with the human rights mechanisms in order to enhance its total resource base.<sup>934</sup>

All states and private actors are requested to within their respective mandates, to take fully into account the need to promote the effective realisation of the right to food for all.<sup>935</sup> According to General Comment 12 of the UN Economic and Social Council<sup>936</sup>, the human right to adequate food is crucial for the enjoyment of all rights.<sup>937</sup> The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the international bill of rights.<sup>938</sup> The right to food is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the international and national levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.<sup>939</sup>

#### 4.4.2 Education

The AU in its agenda 2063 has committed to skills revolution, science and technology through universal access to education. The central rationale in investing in education lies in the contribution that education quality can make to economic growth.<sup>940</sup> In this

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<sup>930</sup> Barrientos 2011 *International Journal of Social Welfare* 246.

<sup>931</sup> UN General Assembly *Document A/68/202 para 11*. Distr: General 26 July 2013 Follow-up to the Outcome of the Millennium Summit: 68<sup>th</sup> Session.

<sup>932</sup> UN General Assembly *Document A/68/202 para 11 3*.

<sup>933</sup> Narula 2010 *Yale Human Rights and Development* LJ 403.

<sup>934</sup> Haugen 2012 *Journal of Human Rights* 411.

<sup>935</sup> Haugen 2012 *Journal of Human Rights* 417.

<sup>936</sup> UN Economic and Social Council General Comment 12, E/C.12/1999/5 Geneva.

<sup>937</sup> UN General Comment 12, E/C.12/1999/5 para 1 1.

<sup>938</sup> UN General Comment 12, E/C.12/1999/5 para 4 2.

<sup>939</sup> UN General Comment 12, E/C.12/1999/5 para 4 2.

regard, the GDP is understood as the most significant indicator of development.<sup>941</sup> However the role of education in relation to economic growth has shifted over the years.<sup>942</sup> Human capital theory has begun to complement a continued interest in rates of return with an interest in education's role in poverty alleviation and promoting social welfare, including women's welfare, as basis for promoting growth and human security.<sup>943</sup> There has been a special shift from special education to inclusive education around the globe.<sup>944</sup> Inclusion is a philosophy based on values aiming to maximise the participation of all in society and education by minimising exclusionary and discriminatory practices.<sup>945</sup> Inclusive education is not limited to the inclusion of those children or young people with disabilities.<sup>946</sup> Inclusion is inclusion of all regardless of race, gender, ethnicity, disability, language, sexual orientation, socio-economic status, religion and any other aspect that of an individual's identity that might be perceived as different.<sup>947</sup>

All too often education is to be synonymous with schooling, and even then without an acknowledgement of the complexities of school experience.<sup>948</sup> There are two reasons for not equating education and schooling. Many schools around the world fail to provide an experience that can meaningfully be called education.<sup>949</sup> Pupils spend the vast majority of their time listening without comprehension, copying without comprehension and simply waiting.<sup>950</sup> Yet in addition to being largely ineffective, school can be positively harmful.<sup>951</sup> The right to education is firmly established in international instruments<sup>952</sup>, as well as African regional instruments. The UDHR in its article 26 provides that everyone has the right to education, and education shall be free in the elementary and fundamental stages, furthermore elementary education shall be free

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<sup>941</sup> Tikly and Barrett 2009 *EdQual Working Paper No. 18 7*.

<sup>942</sup> Tikly and Barrett 2009 *EdQual Working Paper No. 18 7*.

<sup>943</sup> Tikly and Barrett 2009 *EdQual Working Paper No. 18 7*.

<sup>944</sup> Polat 2011 *International Journal of Educational Development* 50.

<sup>945</sup> Polat 2011 *International Journal of Educational Development* 51.

<sup>946</sup> Polat 2011 *International Journal of Educational Development* 50.

<sup>947</sup> Polat 2011 *International Journal of Educational Development* 51.

<sup>948</sup> McCowan 2010 *Comparative Education* 510.

<sup>949</sup> McCowan 2010 *Comparative Education* 513.

<sup>950</sup> McCowan 2010 *Comparative Education* 513.

<sup>951</sup> McCowan 2010 *Comparative Education* 513.

<sup>952</sup> McCowan 2010 *Comparative Education* 511.

and compulsory.<sup>953</sup> The UDHR makes provision for accessibility of higher education; technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.<sup>954</sup> The right to education is also entrenched in the ICESCR, and it is articulated in the covenant that everyone has the right to education; primary education shall be free as well as compulsory.<sup>955</sup> The states parties recognise that the full realisation of the right to education entails that there should be a development of a system of schools at all levels that shall be pursued, and it shall be an adequate system that provides for materials conditions of teaching and those conditions shall be continuously improved.<sup>956</sup>

CRC also articulates the right to education and it expresses that for the realisation of the right to education, primary education shall also be free as well as compulsory and it shall be accessible to all.<sup>957</sup> Under the CRC states parties shall take appropriate measures to encourage regular attendance at schools and the reduction of drop-out rates.<sup>958</sup> The CRC obligates states parties to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity.<sup>959</sup> The African Charter provides that everyone has the right to education.<sup>960</sup> The African Charter on the Rights of a Child, not only makes provision for the right to education, it articulates that primary education shall be free and compulsory<sup>961</sup>, while secondary and higher education shall be accessible; encouraging the development of secondary education in its different forms and to progressively make it free and accessible to all.<sup>962</sup> On the other hand higher education shall be made accessible to all on the basis of capacity and ability by appropriate means.<sup>963</sup>

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953 Article 26 (1) *UDHR*.

954 Article 26 (1) *UDHR*.

955 Article 13 (2) (a) *ICESCR*.

956 Article 13 (2) (e) *ICESCR*.

957 Article 28 (1) (a) *CRC*.

958 Article 28 (1) (e) *CRC*.

959 Article 28 (2) *CRC*.

960 Article 17 *African Charter*.

961 Article 11 (3) (a) *African Charter on the Rights of a Child*.

962 Article 11 (3) (b) *African Charter on the Rights of a Child*.

963 Article 11 (3) (c) *African Charter on the Rights of a Child*.

The African Youth Charter provides that every young person shall have the right to education of good quality.<sup>964</sup> The education of young people shall be directed to the promotion and holistic development of the young person's cognitive, creative and emotional abilities to the realisation of their full potential.<sup>965</sup> It is essential to promote the right to education both as entitlement in terms of universal access to basic education, and as empowerment in terms of acquisition of knowledge, skills and competencies and their quality.<sup>966</sup> A rights-based approach to education highlights the need for a holistic perspective requiring a framework that takes into consideration not just the right of access to education throughout all stages of childhood and beyond, but also the right of quality education and the right to respect in the learning environment.<sup>967</sup> This therefore means that this approach addresses children's rights to education, as well as rights within education.<sup>968</sup>

#### 4.4.3 Health

The ICESCR regulates the international legal framework to the right to health. The right of everyone to the enjoyment of the highest attainable standards of physical and mental health is recognised under the ICESCR.<sup>969</sup> In order to achieve the full realisation of this right; there has to be provision for the reduction of the stillbirth-rate and infant mortality and for the health development of a child.<sup>970</sup> States have to create conditions which would assure access to all medical services and medical attention in the event of sickness.<sup>971</sup> The African Charter provides that everyone shall have the right to enjoy the best attainable state of physical and mental health.<sup>972</sup> States parties have a duty to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>973</sup> The Maputo Protocol explicitly regulates the gender aspect of health. States shall ensure that the right to health of women is

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<sup>964</sup> Article 13 (1) *African Youth Charter*.

<sup>965</sup> Article 13 (3) (a) *African Youth Charter*.

<sup>966</sup> UN General Assembly *Report of Special Rapporteur on the Right to Education, Kishore Singh A/HRC/20/21, May 2012 Para 3 1*.

<sup>967</sup> Rioux and Pinto 2010 *British Journal of Sociology of Education* 622.

<sup>968</sup> Rioux and Pinto 2010 *British Journal of Sociology of Education* 622.

<sup>969</sup> Article 12 *ICESCR*

<sup>970</sup> Article 12 (2) (a) *ICESCR*.

<sup>971</sup> Article 12 (2) (d) *ICESCR*.

<sup>972</sup> Article 16 (1) *African Charter*.

<sup>973</sup> Article 16 (2) *African Charter*.

protected, including sexual and reproductive health is respected and promoted and that includes; the right to control fertility,<sup>974</sup> the right to decide whether to have children, the number of children and the spacing of children,<sup>975</sup> the right to choose any method of contraception,<sup>976</sup> the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS,<sup>977</sup> the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections,<sup>978</sup> and the right to have family planning education.<sup>979</sup>

The Maputo Protocol obligates states to take all appropriate measures to provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.<sup>980</sup> Health inequities are clear evidence of violations of the right to health.<sup>981</sup> In 2009 the UN Human Rights Council resolution on preventable maternal mortality and morbidity and human rights recognised the unacceptably high global rate of preventable maternal mortality and morbidity as a health, development and human rights challenge, and thereby called on states to renew their political commitment to eliminating preventable maternal mortality and morbidity at the local, national, regional and international levels.<sup>982</sup>

The states were further called to redouble their efforts to ensure the full and effective implementation of their human rights obligations.<sup>983</sup> The high degree of stigma and discrimination associated with HIV/AIDS has made human rights protection not only a priority to ensure the rights of people living with and at risk for HIV/AIDS, but to address public health goals as well.<sup>984</sup> Advancements in understanding the impact of antiretroviral treatment on HIV prevention provide exciting opportunities and even a

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<sup>974</sup> Article 14 (1) (a) *Maputo Protocol*.

<sup>975</sup> Article 14 (1) (b) *Maputo Protocol*.

<sup>976</sup> Article 14 (1) (c) *Maputo Protocol*.

<sup>977</sup> Article 14 (1) (d) *Maputo Protocol*.

<sup>978</sup> Article 14 (1) (e) *Maputo Protocol*.

<sup>979</sup> Article 14 (1) (g) *Maputo Protocol*.

<sup>980</sup> Article 14 (2) (a) *Maputo Protocol*.

<sup>981</sup> Rasanathan, Norenhag and Valentine 2010 *Health and Human Rights* 49.

<sup>982</sup> Fried et al 2012 *Health and Human Rights* 21.

<sup>983</sup> Fried et al 2012 *Health and Human Rights* 21.

<sup>984</sup> Barr, Amon and Clayton 2011 *Current HIV Research* 396.

paradigm shift in terms of AIDS prevention.<sup>985</sup> However this potential cannot be, unless the advancement of human rights is a primary component of treatment and prevention programme as well as policy development.<sup>986</sup> The use of antiretroviral treatment as prevention reinforces the value of basic principles related to the dignity and agency of people living with HIV, to participate in the design and implementation of programmes, to be informed and to make informed decisions about their health and lives, to be protected from harm, and to have an opportunity to seek redress and accountability for abuses.<sup>987</sup>

A rights-based approach works to establish the health related human rights standards to which all women are entitled, as well as outline the indivisible and intersecting human rights principles which inform and guide efforts to prevent, protect from, respond to, and provide remedy for human rights violations.<sup>988</sup> The right to health does not confer any right to a particular level of health for any particular population; rather, the focus is on the opportunities and processes that construct the health.<sup>989</sup> It might be argued that the rights-based approach that employs a situation analysis broaden this approach. Such analysis assesses context and who is affected particularly in terms of human rights; undertakes casual analysis of rights violations; identifies duty bearers and their obligations; and evaluates the capacity development required to best enable the claiming of rights and fulfilment of duties.<sup>990</sup>

In recent years, growing attention has been paid to human rights-based approaches to health and development issues, such as HIV/AIDS, water and sanitation, and child health, not only from NGOs point of view, but also from the UN bodies.<sup>991</sup> Although diverse, the rights-based approach is not only concerned with just improving specific outcomes, but with transforming the underlying conditions that drive distributions of infections and deprivations of rights.<sup>992</sup> The right to health has played an especially

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<sup>985</sup> Barr, Amon and Clayton 2011 *Current HIV Research* 396.

<sup>986</sup> Barr, Amon and Clayton 2011 *Current HIV Research* 396.

<sup>987</sup> Barr, Amon and Clayton 2011 *Current HIV Research* 396.

<sup>988</sup> Fried et al 2012 *Health and Human Rights* 21.

<sup>989</sup> Rasanathan, Norenhag and Valentine 2010 *Health and Human Rights* 52.

<sup>990</sup> Rasanathan, Norenhag and Valentininen 2010 *Health and Human Rights* 52.

<sup>991</sup> Yamin 2013 *PLOS Medicine* 1.

<sup>992</sup> Yamin 2013 *PLOS Medicine* 1.

prominent role in the articulation of socio-economic rights.<sup>993</sup> It has been argued that the right to health, by being explicitly about bodily well-being, is akin to a right to life, and should therefore be thought of as a fundamental right.<sup>994</sup> Adopting a human rights-based framework is supposed to take attention away from individual behaviour analysis instead focus policy interventions on community level transformations.<sup>995</sup> The rights-based approach requires adoption of an approach that is explicitly shaped by human rights principles, and countries bear responsibility for national health plans consistent with international human rights obligations, ensuring non-discrimination and the participation of the affected communities.<sup>996</sup>

#### 4.4.4 Gender equality

The revolution and women's liberation go together. We do not talk of women's emancipation as an act of charity or because of a surge of human compassion. It is a basic necessity for the triumph of the revolution. Women hold up the other half of the sky.<sup>997</sup>

Any development strategy which neglects the need for enhancing the role of women cannot lead to comprehensive socio-economic development.<sup>998</sup> The world needs fundamental changes so that stable global development as well as peace and security may be ensured.<sup>999</sup> Globally women tend to be poorer than men.<sup>1000</sup> They are also more deprived in health and education and in freedoms in all its forms.<sup>1001</sup> Women have the primary responsibility for child rearing, and the resources that they are able to bring to this task will determine whether the cycle of transmission of poverty from one generation to generation will be broken.<sup>1002</sup> The need of the hour is to eliminate all sorts of discrimination, force, domination, exploitation and inequality.<sup>1003</sup> The role of women in development is most closely related to the goal of comprehensive socio-economic

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<sup>993</sup> Yamin 2013 *PLOS Medicine* 1.

<sup>994</sup> Mahajan 2012 *Social Research* 820.

<sup>995</sup> Mahajan 2012 *Social Research* 833.

<sup>996</sup> Gruskin, Bogecho and Ferguson 2010 *Journal for Public Health* 130.

<sup>997</sup> Wikipedia September 2014 [http://en.wikipedia.org/wiki/Thomas\\_Sankara](http://en.wikipedia.org/wiki/Thomas_Sankara)

<sup>998</sup> Rathod *Women and Development* 2.

<sup>999</sup> Rathod *Women and Development* 2.

<sup>1000</sup> Todaro and Smith *Economic Development* 22.

<sup>1001</sup> Todaro and Smith *Economic Development* 22.

<sup>1002</sup> Todaro and Smith *Economic Development* 22.

<sup>1003</sup> Rathod *Women and Development* 2.

development.<sup>1004</sup> Gender equality is a core development objective on its own right.<sup>1005</sup> Greater gender equality can enhance productivity, improve development outcomes for the next generation and make institutions more representative.<sup>1006</sup> International norms of non-discrimination on the basis of gender have been developed through international human rights instruments such as CEDAW, which prohibits all practices that perpetuate women's inequality.<sup>1007</sup> CEDAW provides that states parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity; furthermore, they shall give women equal rights to conclude contracts and to administer property, and shall treat them equally in all stages of procedure in courts and tribunals.<sup>1008</sup>

The Maputo Protocol is the regional instrument that safeguards gender parity. Article 2 of the Maputo Protocol forbids all forms of discrimination against women, and state parties are obligated to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving elimination of harmful cultural and traditional practices, which are based in the idea of inferiority or superiority of either sexes, or on stereotyped roles of women and men.<sup>1009</sup>

It is frequently noted that compliance with treaties such as CEDAW and the Maputo Protocol is challenging because of entrenched traditional attitudes regarding women.<sup>1010</sup> Much population in Sub-Saharan Africa does not engage with formal legal systems, or even has much knowledge of the legal protections it affords.<sup>1011</sup> Particularly in areas that are emerging from conflict or remain fragile, have lower incomes and education, rural and retain strong customary traditions, and people do not see the legal system as relevant for securing economic rights.<sup>1012</sup>

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<sup>1004</sup> Rathod *Women and Development* 2.

<sup>1005</sup> World Bank *Gender Equality and Development* xx.

<sup>1006</sup> World Bank *Gender Equality and Development* xx.

<sup>1007</sup> Critelli 2010 *Journal of Sociology and Social Welfare* 137.

<sup>1008</sup> Article 15 (2) CEDAW.

<sup>1009</sup> Article 2 (2) *Maputo Protocol*.

<sup>1010</sup> Banks 2009 *Fordham International Law Journal* 782.

<sup>1011</sup> Driemeier and Tazeen *Africa Development Forum: Empowering Women* 23.

<sup>1012</sup> Driemeier and Tazeen *Africa Development Forum: Empowering Women* 23.

The effectiveness of laws in affording women equal opportunities with men depends largely on society's willingness and ability to enforce such laws.<sup>1013</sup> Human rights-based approaches to equality demand that content and consequences of laws be scrutinised, acknowledging that the formal recognition for rights is not enough.<sup>1014</sup> Another burning issue that hinders women's empowerment is gender based violence. It has been argued that violence against women represents a key barrier to gender equality and women's empowerment in Sub-Saharan Africa.<sup>1015</sup> Gender based violence constitutes a major public health risk and it has been determined to be a serious violation of basic human rights throughout the world.<sup>1016</sup>

For the majority of people in developing countries, their rights to land and other resources largely determines their access to economic opportunity, standard of living, resilience to shocks, food and nutrition, security, social status and political power as well as decision making.<sup>1017</sup> Women's secure rights to land are particularly impactful.<sup>1018</sup> In most African countries women lack property and inheritance rights, which in turn restricts their housing security as well as economic options, despite the fact that these rights are entrenched in a number of international and regional mechanisms.<sup>1019</sup>

A human rights-based approach is premised upon empowering women and men to claim their rights.<sup>1020</sup> Empowerment has been understood to mean transformation of unequal relations, and thus includes the process by which people who have been unable to exercise agency or autonomy gain such abilities.<sup>1021</sup> Such transformation requires access to resources; such as land, access to technology and markets, supportive political institutions and cultural norms, and internal capacities such as knowledge and self-confidence.<sup>1022</sup> Resources and capacities shape people's ability to

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<sup>1013</sup> Olowu 2012 *Gender Equality under the MDGs: Agenda 91/26.1* 107.

<sup>1014</sup> *Human Rights Indicators* 22.

<sup>1015</sup> Olowu 2012 *Gender Equality under the MDGs: Agenda 91/26.1* 106.

<sup>1016</sup> Critelli 2010 *Journal of Sociology and Social Welfare* 135.

<sup>1017</sup> Land Post-2015 October 2014 <http://landpost2015.landesas.org/>.

<sup>1018</sup> Land Post-2014 October 2014 <http://landpost2015.landesas.org/>

<sup>1019</sup> Olowu 2012 *Gender Equality under the MDGs: Agenda 91/26.1* 106.

<sup>1020</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 16.

<sup>1021</sup> Sen and Murkhejee 2014 *Journal of Human Development and Capabilities* 190.

<sup>1022</sup> Sen and Murkhejee 2014 *Journal of Human Development and Capabilities* 190

act upon plans and lead the lives they desire.<sup>1023</sup> Land is key to a life with dignity and a basis for entitlements which can ensure an adequate standard of living and economic independence, and therefore personal empowerment.<sup>1024</sup> Compliance with international and regional human rights mechanisms cannot be measured solely by examining legal rules operating within a state, ultimately the treaty monitoring bodies should adopt a broader conceptualisation of compliance, one that recognises states efforts aimed at changing the social meanings attached to particular practices and groups.<sup>1025</sup>

Secure property rights offer a way forward for the majority of the developing world's small holders, mostly women, to achieve independence and ultimately to escape poverty.<sup>1026</sup> Customary law focuses property on men or kinship groups dominated by men, and thus the ability of women to claim or inherit land is extremely limited.<sup>1027</sup> While statutory law may be gender neutral, customary law prevails, and it is based on patriarchal system. Countries across Africa have implemented laws that formally assert equal rights for women to ownership of land and property, which is an important step in strengthening women's land rights, however are these laws and implemented on the ground?<sup>1028</sup> In 1985, Ghana passed the Intestate Succession Law and the Head of Household Accountability Law in order to ensure that widows were not thrown off family land, and that women had a voice in decisions about family resources.<sup>1029</sup> In 2008, a study conducted by FAO in Ghana's Volta regions found that most women were not informed or aware about the laws and very few enjoyed the ensuing protections.<sup>1030</sup> While measuring legal frameworks may be the easiest route to assessing secure land's rights for women, it is also the most fraught with the potential for false positives.<sup>1031</sup> The

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<sup>1023</sup> Sen and Murkhejee 2014 *Journal of Human Development and Capabilities* 190  
<sup>1024</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 3.  
<sup>1025</sup> Banks 2009 *Fordharm International Law Journal* 787.  
<sup>1026</sup> Gaverlink 2014 September *Centre for Strategic and International Studies* <http://csis.org>.  
<sup>1027</sup> Gaverlink 2014 September *Centre for Strategic and International Studies* <http://csis.org>.  
<sup>1028</sup> Hanstad June 2014  
<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>  
<sup>1029</sup> Hanstad June 2014  
<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>.  
<sup>1030</sup> Hanstad June 2014  
<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>  
<sup>1031</sup> Hanstad June 2014  
<http://www.africanexecutive.com/modules/magazine/articles.php?article=8086&magazine=517>

existence of laws and regulations protecting women's rights does not guarantee that women can actually exercise those rights.

To fully realise, protect and promote women's rights, laws, policies and programmes should: provide for the full participation of women, based on their informed, active, meaningful and effective engagement in the formulation of laws, policies and programmes.<sup>1032</sup> Ensure that women and women's rights groups are effectively represented on equal terms with men in all decision-making structures relevant to land and agriculture, including mechanisms that have a voting function.<sup>1033</sup> Ensure that that women have full accurate information about decision making process regarding land and agriculture, and able to benefit from capacity-building in order to ensure that their participation in decision making is informed, active and meaningful.<sup>1034</sup> To include temporary special measures where needed to ensure the meaningful participation of women in decision making process to land and agriculture.<sup>1035</sup>

The rights-based approach promotes that focus should be on challenging discrimination, social, cultural and institutional norms related to the exclusion.<sup>1036</sup> Human rights-based approach emphasis universalist concepts of rights, and freedom and contrasts with other approaches to gain rights for women.<sup>1037</sup> A human rights-based approach advocates for women under the belief that regardless of culture or gender all humans are entitled to certain basic rights, such as freedom from violence and political, economic and social freedoms.<sup>1038</sup>

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<sup>1032</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 17.

<sup>1033</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 17.

<sup>1034</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 17.

<sup>1035</sup> UN Human Rights Office of the High 2013 Commissioners *Realising Women's Rights to Land and other Productive Resources* 17.

<sup>1036</sup> CARE Denmark 2009 *Rights-based Approaches Guidelines* 3.

<sup>1037</sup> Critelli 2010 *Journal of Sociology and Social Welfare* 138.

<sup>1038</sup> Critelli 2010 *Journal of Sociology and Social Welfare* 137.

#### 4.4.5 Environment and climate change

Climate change driven by human activities is one of the preeminent challenges of our age, and mounting evidence suggests the need for urgent and far reaching attention.<sup>1039</sup>

Climate change is a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.<sup>1040</sup> Society has come to recognise that the anthropogenic destruction of our planet's sustainable biodiversity negatively impacts human kind, placing human life at great risk.<sup>1041</sup> The magnitude and severity of the problem is are overwhelming and the impact on human rights is alarming.<sup>1042</sup>

Due to the worsening of the environmental crisis, the relationship between human rights and the environment becomes clearer.<sup>1043</sup> A degraded environment certainly does not foster the full exercise of human rights, including social and economic rights.<sup>1044</sup> The links of environment between environmental degradation and human living conditions are of even a greater relevance when one considers that the victims of environmental degradation tend to belong to the most vulnerable sectors of society, who regularly share a disproportionate burden of environmental contaminations.<sup>1045</sup> Climate change impact has obvious repercussions on environmental sustainability, including access to safe drinking water and basic sanitation, agricultural production, food security as well as biodiversity loss.<sup>1046</sup>

Many human rights such as the right to life and the right to food are frustrated by an unhealthy environment, and this is underscored by the fact that the right to health extends to the underlying determinants of health which include a healthy environment.<sup>1047</sup> Climate change also affects the right to education given the potential of

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<sup>1039</sup> Nicholson and Chong 2010 *Jumping on the Human Rights Bandwagon* 121.

<sup>1040</sup> UN *UN Framework Convention on Climate Change* 1992, Article 1 (2).

<sup>1041</sup> Piccoloti and Tallant (eds) *Linking Human Rights and the Environment* Xiii

<sup>1042</sup> Piccoloti and Tallant (eds) *Linking Human Rights and the Environment* Xiii.

<sup>1043</sup> Postiglione 2010 *International Journal of Human Rights* 524.

<sup>1044</sup> Postiglione 2010 *International Journal of Human Rights* 524.

<sup>1045</sup> Piccoloti and Tallant (eds) *Linking Human Rights and the Environment* Xiv.

<sup>1046</sup> Amnesty International 2010 *International Journal of Human Rights* 146.

<sup>1047</sup> World Health Organisation 2008 *Human Rights-Based Approaches to Health and the Environment* 12.

destruction of schools and other infrastructure, and it also put pressures on family livelihoods that may keep children from school.<sup>1048</sup>

Gender equality is highly affected by climate change due to increased degradation of natural resources upon which women depend for their livelihoods.<sup>1049</sup> Health, maternal health and child mortality, combating HIV/AIDS, malaria and other diseases are affected by increased vulnerability to poor health due to reduced food and water security, in addition to the spread of water-borne, vector borne and air borne diseases.<sup>1050</sup> The ICESCR states that in order to fully realise the right to health, state parties shall include the improvement of all aspects of environmental and industrial hygiene.<sup>1051</sup> The African Charter provides that all peoples shall have the right to a general satisfactory environment favourable to their development.<sup>1052</sup>

Climate change can be seen as both consequence and a cause of non-fulfilment of human rights, both of these aspects are evident, for instance in the observation that exploitation of the planet itself often depends on direct exploitation of the people.<sup>1053</sup> One clear way to appreciate this is by recognising that around the world, extractive activities or other proximate drivers of environmental degradation are facilitated by trampling the rights of the poor.<sup>1054</sup> The economically poor and otherwise disenfranchised people tend to feel the worst and most direct effects of environmental degradation, such that the non-fulfilment of basic human rights both contributes to and are a function of how people experience climate change.<sup>1055</sup> Any change in the condition or management of tropical forests is relevant to human rights, posing both risks of increased human rights violations and opportunities of improvement.<sup>1056</sup> Many of the world's poorest and most politically marginalised people are dependent on forests

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<sup>1048</sup> World Health Organisation 2008 *Human Rights-Based Approaches to Health and the Environment* 12.

<sup>1049</sup> Amnesty International 2010 *International Journal of Human Rights* 146.

<sup>1050</sup> Amnesty International 2010 *International Journal of Human Rights* 146

<sup>1051</sup> Article 12 (2) (b) ICESCR.

<sup>1052</sup> Article 24 *African Charter*.

<sup>1053</sup> Nicholson and Chong 2010 *Jumping on the Human Rights Bandwagon* 127.

<sup>1054</sup> Nicholson and Chong 2010 *Jumping on the Human Rights Bandwagon* 127.

<sup>1055</sup> Nicholson and Chong 2010 *Jumping on the Human Rights Bandwagon* 127.

<sup>1056</sup> Humphreys *Human Rights and Climate Change* 208.

for their livelihoods.<sup>1057</sup> Compared with other economic and social sectors affected by climate change, forested areas and forest related institutions tend to be especially characterised by unclear property rights, remoteness from public scrutiny and a history of repressive state actions.<sup>1058</sup> As such forest governance has profound implications for the rights and welfare of indigenous, traditional and other forest dependant people.<sup>1059</sup>

The human rights framework offers not just important new ways to analyse the climate change situation, but also tools for acting on that analysis, and for bringing a more just distribution of climate risks into being.<sup>1060</sup> The ultimate goal of sustainable development is securing a better quality of life for all, both now and for future generations by pursuing responsible economic growth, equitable social progress and effective environmental protection.<sup>1061</sup> International tribunals and quasi-judicial tribunals have held that environmental harm may implicate a wide range of human rights, which in principle give rise to different types of duties.<sup>1062</sup> States must safeguard, and that includes prior assessment of environmental impacts, full and informed participation by those affected, and there has to be judicial recourse for state's failure to comply with their obligations.<sup>1063</sup> The common theme throughout the jurisprudence is that states may undertake or allow environmental degradation that interferes with the enjoyment of human rights, as long as they follow procedural requirements and protect against environmental harm that goes too far.<sup>1064</sup>

#### 4.4.6 Infrastructure

The lack of transport, power, communication and networks, water, sanitation and other infrastructure services poses severe constraints on economic growth, trade and poverty reduction across Africa.<sup>1065</sup> Some of the challenges faced by Africa regarding infrastructure development include the following: Power is by far Africa's largest infrastructure challenge within 30 countries facing regular power shortages and many

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<sup>1057</sup> Humphreys *Human Rights and Climate Change* 208.

<sup>1058</sup> Humphreys *Human Rights and Climate Change* 208.

<sup>1059</sup> Humphreys *Human Rights and Climate Change* 208.

<sup>1060</sup> Nicholson and Chong 2010 *Jumping on the Human Rights Bandwagon* 128.

<sup>1061</sup> Cavagnaro and George *Three Levels of Sustainability* 1.

<sup>1062</sup> Lankford, Mac and Lavanya *World Bank Studies: Human Rights and Climate Change* 32.

<sup>1063</sup> Lankford, Mac and Lavanya *World Bank Studies: Human Rights and Climate Change* 32.

<sup>1064</sup> Lankford, Mac and Lavanya *World Bank Studies: Human Rights and Climate Change* 32.

<sup>1065</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals in Africa* 16.

paying high premiums for emergency power.<sup>1066</sup> Africa's infrastructure networks increasingly lag behind those of other developing countries and are characterised by missing regional links and stagnant house hold access.<sup>1067</sup> The infrastructure varies greatly by country type; fragile states face an impossible burden and resource rich countries lag behind despite their wealth.<sup>1068</sup>

Despite the widely recognised importance of infrastructure in Africa, financing remains pitifully low.<sup>1069</sup> Energy is one of the essential inputs for socio-economic development.<sup>1070</sup> The provision of energy is a necessary but not sufficient condition for Sub-Saharan Africa to pull itself out of poverty.<sup>1071</sup> Energy services should be seen as one of the means of development rather than the end.<sup>1072</sup> The question is then how can Africa go about meeting the energy needs of all its peoples and whether or not the government and the people will be able to mobilise the resources needed to make this happen?<sup>1073</sup> The state parties under the ICESCR undertake to take steps individually and through international assistance and cooperation, particularly economic and technical, to the maximum of its available resources, with a view to accomplishing progressively the full realisation of the rights entrenched in the covenant.<sup>1074</sup> Development assistance has financed numerous projects to extend and improve energy, transportation and communications infrastructure as well as strengthen capacity for the management of these systems.<sup>1075</sup> Physical investment and institutional capacity have been important to bring more people and more nations into modern economy.<sup>1076</sup> Effective international support can make a real difference in achieving development; however development cannot be achieved by aid alone.<sup>1077</sup> The most important

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<sup>1066</sup> Forster and Garmendia (eds) *Africa's Infrastructure: A Time for Transformation* 1.  
<sup>1067</sup> Forster and Garmendia (eds) *Africa's Infrastructure: A Time for Transformation* 1.  
<sup>1068</sup> Forster and Garmendia (eds) *Africa's Infrastructure: A Time for Transformation* 1.  
<sup>1069</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals in Africa* 16.  
<sup>1070</sup> Drew-Hammond 2010 *Energy Policy* 2291.  
<sup>1071</sup> Drew-Hammond 2010 *Energy Policy* 2291.  
<sup>1072</sup> Drew-Hammond 2010 *Energy Policy* 2291.  
<sup>1073</sup> Drew-Hammond 2010 *Energy Policy* 2291.  
<sup>1074</sup> Article 2 (1) ICESCR.  
<sup>1075</sup> OECD *Shaping the 21<sup>st</sup> Century* 8.  
<sup>1076</sup> OECD *Shaping the 21<sup>st</sup> Century* 8.  
<sup>1077</sup> OECD *Shaping the 21<sup>st</sup> Century* 8.

contributions for development, as in the past will be made by the people and the governments of the developing countries themselves.<sup>1078</sup>

With a very large number of small economies, 15 landlocked countries and 63 shared river basins, Africa's infrastructure needs have to be addressed in a regional manner if countries are to reap the benefits of economies of scale, develop intra-African trade and enhance competitiveness in the global economy.<sup>1079</sup> Therefore increased financing is required for regional power pools, transport networks, backbone communication infrastructure and trans-boundary water management.<sup>1080</sup> Meeting ambitious energy access targets in the next ten to fifteen years timeframe calls for strategies which seek to engage different stakeholders in the rural and urban incomes continuum.<sup>1081</sup> There has to be a process of engaging consumers from a high as well as low income brackets to participate actively in decisions on who should provide their energy services, and which services require the most urgent attention.<sup>1082</sup>

#### **4.4.7 Accountability, transparency and governance.**

Good governance principles based on human rights leverage the performance of government, and good governance principles focus on how to run organised systems transparently and effectively in order to give them greater legitimacy.<sup>1083</sup> Good governance is participatory decision making process that combines various characteristics of which three are basic: transparency, accountability and participation.<sup>1084</sup> In the context of development greater accountability ensures that the leaky pipes of corruption and inefficiency will be channelled more efficiently, and development initiatives will produce more visible results.<sup>1085</sup> Development, democracy and empowerment are obstructed due to accountability failures.<sup>1086</sup> Access to information via transparency is seen as a right, an end in itself.<sup>1087</sup> Increased

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<sup>1078</sup> OECD *Shaping the 21<sup>st</sup> Century 2*.

<sup>1079</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 16.

<sup>1080</sup> MDG Africa Steering Group *Achieving the Millennium Development Goals* 16.

<sup>1081</sup> Hammond 2010 *Energy Policy* 2298.

<sup>1082</sup> Hammond 2010 *Energy Policy* 2298.

<sup>1083</sup> Mihr and Gibney *The SAGE Handbook of Human Rights* 57.

<sup>1084</sup> Mihr and Gibney *The SAGE Handbook of Human Rights* 64.

<sup>1085</sup> Gaventa and McGee 2013 *Development Policy Review* S4.

<sup>1086</sup> Gaventa and McGee 2013 *Development Policy Review* S4.

<sup>1087</sup> Gaventa and McGee 2013 *Development Policy Review* S11.

transparency in state decision making can facilitate greater accountability to citizens.<sup>1088</sup> Through many routes, accountability is being credited for actors to accept responsibility for the impact of their actions and inactions on human rights, to cooperate by providing information and entering into a dialogue and to respond adequately.<sup>1089</sup> There is recognition that the means of implementation of the post-2015 framework, whether through trade, technology transfer, financing and debt sustainability or capacity building, must be based on shared accountability.<sup>1090</sup>

Effective accountability built into the post-2015 framework will not only allow individual and communities to hold states to account for their progress, but also allow the latter to monitor their record against an objective set of rights-based indicators.<sup>1091</sup> In this respect, human rights should not be viewed as problematic but as key tool in enhancing developmental progress based on clear, consistent set of measurable indicators grounded in existing legal obligations.<sup>1092</sup>

#### 4.5 CONCLUSION

The criticism of the MDGs emanates from their dereliction from human rights whereas they were extracted from the Millennium Declaration which is deeply embedded in human rights and international law. It can be argued that the MDGs addressed the symptoms and not the causes of underdevelopment and the causes of the cause. The MDGs are criticised for being crowded by the basic idea that development is about economic transformation, implying that disparity reduction rather than poverty reduction would be part of true economic transformation. It can be concluded that target setting simply reinforces structural inequalities as well as social exclusion, targets may bring statistical victory but a moral failure since the patterns of exclusion are perpetuate. The commitment to made under the MDGs is laudable, however, a number of underlying issues were not addressed; for example education, even though children have a right to education it is important to ensure that they receive qualitative education. Same applies for gender parity; traditional societies cannot be approached with the same method as

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<sup>1088</sup> Gaventa and McGee 2013 *Development Policy Review* S11.

<sup>1089</sup> UNDP *HDR* 2000 89.

<sup>1090</sup> Amnesty International 2014 *Policy Briefing* 11.

<sup>1091</sup> Amnesty International 2014 *Policy Briefing* 22.

<sup>1092</sup> Amnesty International 2014 *Policy Briefing* 22.

modern societies. The Gender target under the MDGs was narrow and did not address issues of gender based violence, access to information, land rights for women and participation. The problem of the MDGs has been that, by framing the concept of development as a set of basic needs outcomes, they missed focusing on the needed process of transformative changes in economic, social and cultural rights.

The attention is now shifting to the post-2015 development agenda, stakeholders, internationally and regionally have endorsed the notion of sustainability set out in the RIO+20 “future we want” outcome document. Commentators have called for human rights to be an integral part of the post-2015 development. The human rights-based will introduce corrections and those corrections must address the causes of the cause, and that inclusion promises to change the development framework. It proposes a new notion that looks beyond the narrow domain of economic growth that has dominated development agendas. The human rights-based approach puts more emphasis on the areas neglected by the MDGs, such as social services, the rule of law, transparency, equality and good governance.

Agenda 2063 sets a roadmap for Africa’s development for the next fifty years. Participation and inclusion of all stakeholders in the conception, design, implementation and monitoring of agenda 2063 are the building blocks of agenda 2063, and “the Africa we want”. Given the current international constraints; economic crisis, food price, trade regulations and lack of development assistance, and challenges, are the AU’s ambitious goals reflected on agenda 2063 achievable?<sup>1093</sup> Will the Africa be forced to ultimately travel the golden mean by adopting a prudent, cautious and calculated approach in giving credence to its stated policy intentions?<sup>1094</sup> Will agenda 2063 be a “paper tiger”?<sup>1095</sup> The question is whether good words can be followed by appropriate action.

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<sup>1093</sup> Swart 2013 *Journal of African Union Studies* 6.

<sup>1094</sup> Swart 2013 *Journal of African Union Studies* 6.

<sup>1095</sup> Swart 2013 *Journal of African Union Studies* 6.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 CONCLUSIONS

The historical foundations of human rights are located within the value placed on the life and liberties of the individual human being. This premium value remains valid even in the present age. Freedom, as a right-duty concept, finds a limit in the freedom of others, around a set of common values.<sup>1096</sup> Over the years, demands have been made for more positive human rights regarding social justice and development. Due to these demands, development agencies have pursued a broad anti-poverty agenda. It is here that the rights agenda has become mainstream because it places obligations on the state to ensure a minimum level of well-being for all.

There is no doubt that decolonisation is probably one of the greatest achievements of the nationalist era. Beyond that however, there other noble goals of the nationalist movement, such as national unity, inclusive development, democracy and regional integration have failed to materialise. History needs not repeat itself. The MDGs have fragmentations; collaborations could not be realised because different MDGs were disarticulated from each other, some other important issues had no MDG or target, for example accountability and land rights for women.

The post-2015 development agenda must place more emphasis on procedural questions on how to achieve difficult top-down global coordination in order to address the bottom-up concerns of increasingly disaffected and economically and politically marginalised but socially connected people with growing disruptive potential.<sup>1097</sup> Bottom-up development is based on the premise that local knowledge, wisdom, skills and understanding are necessary for the experience of the people, and need to be valued above top-down wisdom and experience.<sup>1098</sup>

There is a need, particularly in Africa, to begin with a commitment to participatory process and attention to contributions that international and national human rights

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<sup>1096</sup> Postiglione 2010 *The International Journal of Human Rights* 526.

<sup>1097</sup> Unnterhalter and Dorward 2013 *Development Concepts: Soc Indic Res* 612.

<sup>1098</sup> *Ife Human Rights from Below: Achieving Rights through Community Development* 30.

jurisprudence and practice can bring to the table; whether in the selection and framing of targets, the setting of state obligations or the creation of accountability frameworks that can ensure development is not only achieved but sustained.<sup>1099</sup> Africans should reassess the manner in which their democratic institutions are utilised within countries to ensure that acceleration of socio-economic development is undertaken with both relevance to the African conditions and speed to address the challenges of poverty, inequality and unemployment in societies.

To get a country on the road to development and contrary to many economic theories, very often does require a leap, and a substantial one, away from past structures.<sup>1100</sup> Marginal modifications of the economy and society simply may be insufficient to propel development and society forward in the needed new direction and on to a higher path of progress for the future.<sup>1101</sup> The future cannot be an extension of the past. In the post-2015 era, the MDGs cannot be simply extended and supplemented, the post-2015 development agenda is not about reformulating, dropping or adding goals, but about global systemic reform to remove the major constraints to development as we have them now. Development is much more than the sum total of the MDGs or any collection of specific targets. It is only when it is necessary, should progressive realisation of human rights aimed at post-2015 structural changes be supplemented by specific goals and targets.

Many African countries have taken important steps regarding constitutionalism, however many have failed to promote economic, social and cultural rights, and more importantly, have a range of means to suspend the constitution.<sup>1102</sup> Some of these are legal, such as during emergencies or through “claw back clauses”, while others are less obvious and range from the independence of the judiciary and the selection of the judges to outright intimidation.<sup>1103</sup> Another problem is the recognition of customary law, particularly concerning gender related matters. Land rights and domestic violence against women and children are significant for development, yet they hold an

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<sup>1099</sup> Langford 2010 *IDS Bulletin* 83.

<sup>1100</sup> Cypher and Dietz *The process of Economic Development* 17.

<sup>1101</sup> Cypher and Dietz *The process of Economic Development* 17.

<sup>1102</sup> Mohan and Holland 2007 *Human Rights and Development in Africa* 187.

<sup>1103</sup> Mohan and Holland 2007 *Human Rights and Development in Africa* 187.

ambiguous place in national human rights systems. Gender parity matters have been hampered and prejudiced by the perception that Western feminists have high jacked gender-sensitive development; furthermore, national legal processes have largely suppressed gender equality interventions as they are often regarded as un-African.<sup>1104</sup>

The rights-based approach is necessary to lay the groundwork for the adoption of and implementation of strategies, policies and plans. It is trite, and rightly so, that the question of development is on top of the agenda for Africa today. It is reasonably evident that law, as both a powerful normative system and an effective tool of social-order, has an important role to play in the quest of socio-economic development, even though that fact has not been consciously and diligently pursued as it should in Africa.

The contemporary emphasis on economic, social and cultural rights should be welcomed, as it raises the possibility of strengthening the right to development and generally a right to a decent standard of living. Through entrenching accountability, rule of law, compliance with the international human rights instruments and regional mechanisms, participation and transparency, in the locally meaningful struggles that antagonise deprived Africans, and by promoting a broader inclusion and promotion of socio-economic development which supports sustainability can a rights-based agenda thoroughly promote African development.

## **5.2 RECOMMENDATIONS**

Against the background of the analysis, narratives and arguments canvassed in this dissertation, an effort is made at this juncture to make the following modest recommendations which are by no means exhaustive. These recommendations are made in the hope that they would influence policy drive as well as other strategic responses.

### **5.2.1 AFRICA MUST OWN ITS DEVELOPMENT AGENDA**

We must face the matter squarely that where there is something wrong in how we govern ourselves, it must be said that the fault is not in our stars but in ourselves. We know that we have it in ourselves, as Africans, to change all this. We must assert our will to do so; we must

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<sup>1104</sup> Mohan and Holland 2007 *Human Rights and Development in Africa* 190.

say that there is no obstacle big enough to stop us from bringing about an African renaissance-Nelson Mandela.<sup>1105</sup>

Despite indices of wealth in national growths, poverty, inequality, social exclusion, and the denial of basic political and social rights have become widespread and entrenched phenomena across Africa. A particularly alarming feature of the present political crisis, compared to the economic crisis of the 1980s and the 1990s, has been the dramatic attrition of political space for democratic expression at a time when many African countries are enjoying the highest level of economic growth in many decades, partly as a result of higher commodity prices and increased investment from Asia.<sup>1106</sup> The fundamental question for the majority of African people remains: what is to be done to end the vicious cycle of repression, marginalisation and dashed hopes that have been a permanent feature of African life of the poor masses?

Africa's pursuit of development will remain a mirage as long as the crisis continues to be understood as simply economic. The time has come for paradigm shift in Africa, in her development thinking, policy making and institutionalisation, if Africa is to advance the prosperity and development of her own people.<sup>1107</sup> This is the moment for the continent to escape the natural resource trap of jobless growth, to industrialise and provide job for the unemployed youths.<sup>1108</sup> The role of the state in development ought to be predicated upon democratic governance; therefore development cannot be left to the free market forces as liberal economists would have it.<sup>1109</sup> As the debate moves beyond the MDGs to the post-2015 development agenda, Africa must set its own priorities and benchmarks for development. Thus, Africa needs a developmental and capable state for socio-economic progress and sustainable development.<sup>1110</sup> If Africa is to be a serious player, the post-MDGs agenda must ensure genuine ownership of the process

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<sup>1105</sup> Jonas 2012 *The Journal of Pan-African Studies* 83.

<sup>1106</sup> Cheru 2012 *Third World Quarterly* 277.

<sup>1107</sup> Alle 2013 *African Business Journal* 39.

<sup>1108</sup> Alle 2013 *African Business Journal* 39.

<sup>1109</sup> Idowu 2012 *The Western Journal of Black Studies* 149.

<sup>1110</sup> Idowu 2012 *The Western Journal of Black Studies* 149.

by the people, more accountability, a radical reduction in inequality and patronage, real gender equality, and governance as a basic right, not a privilege.<sup>1111</sup>

Development in Africa must make a difference, firstly, in the lives of the masses. The difference must mean that in areas of the social life of the masses, perceptible and incremental growth of possibilities and opportunities, in both material and non-material senses, would need to be registered.<sup>1112</sup> Development must optimise the capacity of the mass of society to intelligently and creatively engage the environment in pursuit of its mode of livelihood. The inclusive process envisaged in formulating Africa's post-2015 development agenda should therefore enhance member states' ownership of development, generate the required political will to address the unfinished business of the MDGs, and respond to the emerging issues and gaps and implementation, particularly with regard to monitoring and implementation.<sup>1113</sup>

In Africa, the importance of accountable governance to achieving economic and social development, lasting peace and political stability as well as democracy is widely assumed to be virtually axiomatic.<sup>1114</sup> Accountability makes the abuse of political power less likely, while at the same time helping empower governments to serve the ends that democratically elected governments are legitimately asked to pursue.<sup>1115</sup> Accountability should be given a clear meaning in practice. The need to understand good governance as a concept and not just as a principle is imperative.<sup>1116</sup> The significance of such an understanding is that African countries would harmonise their understanding and therefore their *modus operandi* in dealing with the practical implementation of good governance principles which are derived from its conceptual meaning.<sup>1117</sup>

The way in which the constitutions of states, governments and institutions are originally made, and the reasons for such choices must have an important bearing on the on the

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<sup>1111</sup> Ochleno 2013 *New African* 49.

<sup>1112</sup> Lansana *Philosophy and African Development: Theory and Practice* 157.

<sup>1113</sup> African Union 2014 *CAP on the Post-2015 Development Agenda* 4.

<sup>1114</sup> Burnell 2008 *Journal of Politics and Law* 10.

<sup>1115</sup> Burnell 2008 *Journal of Politics and Law* 10.

<sup>1116</sup> Phago 2013 *Africa Insight* 107.

<sup>1117</sup> Phago 2013 *Africa Insight* 107.

state of accountability later.<sup>1118</sup> The constitutional choices and institutional mechanisms must be such that they are more likely to secure accountable government.<sup>1119</sup> Accountability must guarantee answerability and enforceability. Officials and agents must not just answer; the consequences of their actions must be enforced. The post-2015 development agenda should be member state driven, and in this regard, Africa will stand together in solidarity in negotiating outcome, an outcome that will result in our collective ownership of the new agenda.<sup>1120</sup>

## 5.2.2 ORGANISATION, PLANNING AND CHANGE

A sustainable society cannot be achieved without organisation and individuals who are convinced of the need to be part of the sustainability project.<sup>1121</sup> Organising is the process of helping people understand the shared problems they face while encouraging them to join together to fight back.<sup>1122</sup> Organising builds on the social linkages and networks that bring people together to create firm bonds for collective action; it creates a durable capacity to bring about change, and the process of building that capacity is called development.<sup>1123</sup> The building of an economically advanced nation depends upon the proper development of her people and overall organisation of human activity in its entirety.<sup>1124</sup> Natural resources, capital, foreign aid, technical know-how, intra-national as well as international trade and communication, do occupy important place in the economic growth of a nation.<sup>1125</sup> However all these become operationally useful only with aid of qualitatively and quantitatively adequate manpower.<sup>1126</sup> Truly then manpower should become the focal point, the mainstay and even the starting point of a strategy for development and planning.<sup>1127</sup>

Organisation is intimately linked to change. The most comprehensive organisation development usually involves major reorganising and structural change to the overall

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<sup>1118</sup> Burnell 2008 *Journal of Politics and Law* 10.

<sup>1119</sup> Burnell 2008 *Journal of Politics and Law* 10.

<sup>1120</sup> African Union 2014 *CAP on the Post-2015 Development Agenda* 4.

<sup>1121</sup> Cavgnaro and George *Three levels of sustainability* 1.

<sup>1122</sup> Weil *The Handbook of Community Practice* 189.

<sup>1123</sup> Weil *The Handbook of Community Practice* 190.

<sup>1124</sup> Vijai *Manpower Planning and Development* 21.

<sup>1125</sup> Vijai *Manpower Planning and Development* 21.

<sup>1126</sup> Vijai *Manpower Planning and Development* 21.

<sup>1127</sup> Vijai *Manpower Planning and Development* 21.

system.<sup>1128</sup> This entails a complete realignment of reporting relationships and authority.<sup>1129</sup> Such changes impact decision making, communications, information systems and performance evolution systems.<sup>1130</sup> Change seeks to produce better social, economic and environmental outcomes for the most disadvantaged people.<sup>1131</sup>

Change gives particular attention to improving the lives of those who have been consistently excluded from development plans and decision making on the basis of race, ethnicity, gender, religion and sexual orientations.<sup>1132</sup> When considering change it is necessary for people to be afforded a platform to define what kind of change would be necessary for them. Law can be an instrument to be used by developmental states to foster change. There is a need for change in economic, social and cultural relations, and that change can be induced through the rule of law, wherein the law can serve as a positive instrument of change, offering incentives for people and institutions that are modern and promote growth and disincentives for those who resist change and cling to traditional values. For developing countries, development compels them to undertake substantial qualitative structural change.<sup>1133</sup>

Planning is recognised as having a fundamental impact in development, in building a working relationship between government and institutions and people. Planning involves identifying a shared vision for change and outlining the steps required to achieve the desired changes.<sup>1134</sup> The planning process seeks to engage citizens in identifying a condition for change, specifying the intended outcomes, and defining activities that will produce the desired outcome.<sup>1135</sup> One way of coping with uncertainty, complexities and ignorance is to recognise that development projects are policy experiments, and to plan them incrementally and adaptively by disaggregating problems and formulating responses through process of decision making that join learning with action.<sup>1136</sup> This

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<sup>1128</sup> Murthy *Change Management* 153.

<sup>1129</sup> Murthy *Change Management* 153.

<sup>1130</sup> Murthy *Change Management* 153.

<sup>1131</sup> Gamble and Weil *Community Practice Skills: Local to Global Perspectives* 16.

<sup>1132</sup> As above 16.

<sup>1133</sup> Cypher and Dietz *The Process of Economic Development* 17.

<sup>1134</sup> As above 12.

<sup>1135</sup> As above 12.

<sup>1136</sup> Rondinelli *Development Projects as Policy Experiments: An Adaptive Approach to Development Administration* 118.

approach sees planning and implementation as the art of creating problems that can be solved through informed experimentation.<sup>1137</sup> This therefore means that courses of action are shaped from the lessons of the past experiences as well as more realistic understanding of current and emerging conditions.<sup>1138</sup> Human communities make progress when they can improve social well-being, economic well-being and environmental well-being.<sup>1139</sup> Social well-being is defined as the ability of all people to have access to the supports and opportunities provided by social institutions and relationships.<sup>1140</sup>

### 5.2.3 OPPORTUNITIES OF A RIGHTS-BASED APPROACH

There are opportunities through which a human rights-based approach to development can be enhanced in Africa.<sup>1141</sup> First and foremost, the AU conceives development and human rights as inseparable, and the basis for this view is in the African Charter, in which the promotion and protection of human rights is primarily based.<sup>1142</sup> The formal rights framework in Africa centres on the African Charter, alongside the establishment of the African Commission, which itself is a product of the AU. All other African regional treaties and soft law instruments reflect on the UDHR even though they take into account African experiences, which brought about the emphasis on social, economic and cultural rights, which essentially pertain to the direct material well-being or development.<sup>1143</sup>

The African Charter in its article 22 provides that all people's shall have the right to their economic, social and cultural development with due regard to their freedom and identity, and in the equal enjoyment of the common heritage of mankind.<sup>1144</sup> The African Charter further obligates states to ensure the implement the right to development.<sup>1145</sup>

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<sup>1137</sup> Rondinelli *Development Projects as Policy Experiments: An Adaptive Approach to Development Administration* 118.

<sup>1138</sup> Rondinelli *Development Projects as Policy Experiments: An Adaptive Approach to Development Administration* 118.

<sup>1139</sup> Gamble and Weil *Community Practice Skills: Local to Global Perspectives* 209.

<sup>1140</sup> Gamble and Weil *Community Practice Skills: Local to Global Perspectives* 209

<sup>1141</sup> Mubangizi 2014 *Journal of Social Sciences* 71.

<sup>1142</sup> Mubangizi 2014 *Journal of Social Sciences* 71.

<sup>1143</sup> Mohan and Holland 2007 *Human Rights and Development in Africa* 185.

<sup>1144</sup> Article 22 (1) *African Charter*.

<sup>1145</sup> Article 22 (2) *African Charter*.

Development should not be considered only in purely economic terms; the right to development thus requires careful balancing of the interests of the community and of individuals.<sup>1146</sup> A healthy regard for the rights of the individuals is indispensable for a state's success in pursuing its right to development.<sup>1147</sup> The African Commission affords an opportunity to integrate the human rights approach to development. The mandate of the African Commission is to ensure protection of human and people's rights through its communicative procedures, settlements disputes, state reporting, urgent appeals and various activities of the special rapporteurs.<sup>1148</sup> The African Commission is further mandated to interpret the provisions of the African Charter.<sup>1149</sup> The African Court also avails another institutional opportunity for incorporating a rights-based approach, as it enhances the protective mandate of the African Commission by strengthening the human rights protection system in Africa, ensuring respect and compliance with the African Charter, and international human rights instruments.<sup>1150</sup> The Economic, Social and Cultural Rights Council of the African Union encourages participation as it promotes dialogue between all segments of African People on issues concerning the continent and its future.<sup>1151</sup> Most importantly, the ECOSOCC promotes and defends a culture of good governance, democratic principles and institutions, popular participation, human rights and social justice.<sup>1152</sup>

Another important mechanism through which a rights-based approach to development in Africa can be achieved is NEPAD and the APRM. In NEPAD's Declaration on Democracy, Political, Economic and Corporate Governance,<sup>1153</sup> it is acknowledged that Africa faces grave challenges and the most urgent of these are; the eradication of poverty and the fostering of socio-economic development, particular, through democracy and good governance.<sup>1154</sup> It is further emphasised that, it is to the

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<sup>1146</sup> Shelton and Carroza *Regional Protection of Human Rights* 9.

<sup>1147</sup> Shelton and Carroza *Regional Protection of Human Rights* 9.

<sup>1148</sup> African Commission October 2014 <http://www.achpr.org/about/mandate/>.

<sup>1149</sup> African Commission October 2014 <http://www.achpr.org/about/mandate/>.

<sup>1150</sup> African Court October 2014 <http://www.african-court.org/en/index.php/about-the-court/mandate>.

<sup>1151</sup> AU October 2014 <http://www.au.int/en/organs/ecosocc>.

<sup>1152</sup> AU October 2014 <http://www.au.int/en/organs/ecosocc>.

<sup>1153</sup> Declaration on Democracy, Political, Economic and Corporate Governance AHG/235(XXXVIII) Durban, July 2002.

<sup>1154</sup> NEPAD *Declaration on Democracy* 2002 Para 5 3.

achievement of these twin objectives that NEPAD is principally directed.<sup>1155</sup> Accordingly, the participating states of the AU have agreed to work together in policy and action in pursuit of democracy and good political governance, economic and corporate governance, socio-economic development and the APRM.<sup>1156</sup> Furthermore, this reflective document states that states are determined to increase efforts in restoring stability, peace and security in the African continent, as these are essential conditions for sustainable development, alongside democracy, good governance, human rights, social development, protection of the environment and sound economic management.<sup>1157</sup> In addition it is expressed that; in light of recent history, respect for human rights has to be accorded an importance and urgency all of its own.<sup>1158</sup> It is therefore a reasonable prospect to integrate the norms of the rights-based approach through this institutional mechanism as it commits to development and respect for human rights norms through the Declaration on Democracy.

The APRM's objectives are primarily to foster the adoption of policies, standards and practices that lead to political stability, high economic growth and sustainable development, as well as accelerated sub-regional and continental economic integration.<sup>1159</sup> The thematic focus of the APRM is placed on governance; including political, corporate and economic governance as well as socio-economic development. With regards to democratic and political governance; the APRM ensures that the respective national constitutions reflect the democratic ethos and provide for demonstrably accountable government.<sup>1160</sup> The objective of this thematic area is the promotion and protection of economic, social, cultural, civil and political rights as entrenched in the African Charter and other international instruments.<sup>1161</sup> The role of the APRM to illustrate best practices from other countries could also potentially be beneficial.<sup>1162</sup> To achieve progress in human rights protection in Africa, many different

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<sup>1155</sup> As above para 5 3.

<sup>1156</sup> As above para 6 3.

<sup>1157</sup> As above para 9 4.

<sup>1158</sup> As above para 10 4.

<sup>1159</sup> APRM October 2014 <http://aprm-au.org/about-aprm>.

<sup>1160</sup> APRM October 2014 <http://aprm-au.org/thematic-area/democracy-good-political-governance>.

<sup>1161</sup> APRM October 2014 <http://aprm-au.org/thematic-area/democracy-good-political-governance>.

<sup>1162</sup> Killander 2008 *Human Rights Quarterly* 73.

strands must come together to form a strong rope.<sup>1163</sup> Properly implemented, the APRM can be one strand in the thick rope needed to drag the continent out of poverty and human rights violations.<sup>1164</sup> To a much larger degree, the APRM should build on existing monitoring, both national and international, and should reinforce it instead of diffusing these efforts.<sup>1165</sup> There is an understanding that the AU through NEPAD activities and processes is committed to the improvement of democracy and good governance.<sup>1166</sup> That is, effectively, the participation of the Africans in their governance, as well as adherence to the legislative provisions which are expected to have resulted from a participatory process, should be inherent in the activities of national governments.<sup>1167</sup> NEPAD and APRM can fulfil a complementary role in Africa regarding the promotion and protection of human rights in Africa. The major problem in the protection and promotion of human rights is lack of implementation mechanisms. These institutions can to some extent play a critical role in ensuring implementation of recommendation as issued by the African Commission and Special Rapporteurs. The rights-based approach affords an opportunity for NEPAD and APRM to permeate countries to ensure the implementation and realisation of the AU goals and more importantly the feasibility to achieve the desired outcomes of agenda 2063.

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<sup>1163</sup> Killander 2008 *Human Rights Quarterly* 73.

<sup>1164</sup> Killander 2008 *Human Rights Quarterly* 73.

<sup>1165</sup> Killander 2008 *Human Rights Quarterly* 73.

<sup>1166</sup> Phago 2013 *African Insight* 107.

<sup>1167</sup> Phago 2013 *African Insight* 107.

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