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BEYOND THE RHETORIC: REINVIGORATING THE STRUGGLE FOR ECONOMIC AND SOCIAL RIGHTS IN AFRICA†

J. OLOKA-ONYANGO*

INTRODUCTION

The arena of human rights discourse and practice has been dominated by attention to the more commonly known civil and political rights—rights to free expression, political and civic association, and freedom from torture, cruel, inhuman and degrading treatment. By contrast, economic, social and cultural rights are much less well known, and only rarely do they form the subject of concerted political action, media campaigns or critical reportage. This is the case in the countries of both the “North” and “South.” This dearth of action is a more acute problem in the latter because of the widespread lack of basic human needs such as clean and potable water, sufficient food, adequate shelter and comprehensive health care. In sum, economic, social and cultural human rights are the poor relation of their civil and political counterparts. Yet, both in the Universal Declaration of Human Rights¹ and in subsequent international documents,² the two categories of

† This study represents the first phase of an attempt to come to grips with the operationalization of economic and social rights in Africa in an activist fashion. It examines broad questions relating to the international, regional and national aspects of the phenomenon. The second part grapples with the intricacies of the domestic arena. I am grateful to the Ford Foundation for its support of the project and in particular to Margo Picken for her commitment to the idea. Philip Alston, Yash Ghai, Tomas Hammarberg, Mahmood Mamdani and Danilo Türk gave of their time to provide a more concise focus to the project. Sylvia Tamale played Devil’s Advocate and Chief Critic, while the students in my Human Rights Seminar provided a stimulating context in which to debate many of these issues. Larry Cox, Rolf Knieper, George Okoth-Obbo, Sigrun Skogly, David Weissbrodt and Claude Welch made substantive comments on an earlier draft of the paper. I am deeply grateful to Cheri Attix of the *California Western International Law Journal* for her excellent editorial work and probing questions which forced me to reexamine many issues I have hitherto taken for granted.

* LL.B (Hons) (MUK); LL.M. S.J.D. (Harv.), Dip.L.P. (LDC). Senior Lecturer, Faculty of Law, Makerere University, Kampala, Uganda, and Visiting Professor, University of Minnesota Law School/Institute of International Studies (1994-1995).

1. Adopted Dec. 10, 1948, G.A. Res 217A (III), U.N. Doc. A/810, at 71 (1948), *reprinted in* 43 AM. J. INT’L. L. 127 (Supp. 1949) [hereinafter Universal Declaration].

rights are placed on an equal footing, with an emphasis on their indivisibility, interconnection and interrelationship.³ As we approach the next millennium, with social and economic conditions of existence exacerbating civil and political strife, it is time to devote more attention to those human rights which have been neglected and to devise appropriate methods to boost their recognition and enforcement. A first step in this direction is simply to examine the existing situation with respect to the observation of economic, social and cultural rights in individual countries and regions of the world. This essay offers a preliminary analysis of economic and social human rights in specific relation to the African continent.

A. *The African Status Quo*

Zairean president Mobutu Sese Sekou wa Zabanga is the dinosaur of African politics, having effectively reigned over his country even before the 1961 assassination of Patrice Lumumba.⁴ Following in the footsteps of the

2. *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976) [hereinafter ICESCR]; *Declaration on the Establishment of a New International Economic Order*, G.A. Res. S-3201 (S-VI), U.N. GAOR, 6th Special Sess., Supp. No. 1, at 3, U.N. Doc. A/9559 (1974); *The Charter of Economic Rights and Duties of States*, G.A. Res. 3281 (XXIX), U.N. GAOR, 29th Sess., Agenda Item 48, U.N. Doc. A/Res./3281 (1975), reprinted in *THE INTERNATIONAL LAW OF HUMAN RIGHTS IN AFRICA: BASIC DOCUMENTS AND ANNOTATED BIBLIOGRAPHY* 347-55 (M. Hamalengwa et al. eds., 1987); and *The Declaration on the Right to Development*, G.A. Res. 41/128, U.N. GAOR, 3d Comm., 41st Sess., Annex 1, Agenda Item 101, U.N. Doc. A/41/925 (1986).

3. Recent thought and action on human rights and development has brought the somewhat parallel movement between the two categories of rights closer together. The culmination could be said to be the Vienna Conference, the declaration of which stated, "All human rights are universal, indivisible and interdependent and interrelated. . . ." *Vienna Declaration and Program of Action*, U.N. World Conference on Human Rights, June 14-25, 1993, art. 5, U.N. Doc. A/CONF.157/24 (Part 1) (1993), reprinted in 32 I.L.M. 1661, 1665 (1993) (emphasis added). See also *HUMAN RIGHTS IN DEVELOPING COUNTRIES: YEARBOOK 1994*, 2 (Peter Baehr et al., eds. 1994).

4. Although Mobutu became President of what was then the Congo Republic following a military *coup d'état* in November 1965, his *de facto* leadership of the country commenced in September, 1960. See *LAWYERS COMMITTEE FOR HUMAN RIGHTS, ZAIRE: REPRESSION AS POLICY* 16-17 (1990). Patrice Lumumba was the first elected Prime Minister of the Belgian Congo, upon its attainment of independence from its former Belgian rulers in 1960. Lumumba's socialist and Pan-Africanist ideology immediately brought him into confrontation with the Western powers, prominent among which was the United States, which perceived him to be a communist. The CIA covertly organized his removal. Lumumba set the tone of his government on the day his country gained independence, with a fiery speech that not only embarrassed the departing colonial power, but also sent a signal of radicalism around the world:

Such was our lot for eighty years under colonial régime; our wounds are still too fresh and painful for us to be able to forget them at will, for we have experienced painful labour demanded of us in return for wages that were not enough to enable us to eat properly, nor to be decently dressed or sheltered, nor to bring up our children as we longed to. We have experienced contempt, insults and blows, morning, noon and night because we were 'blacks.' . . . We have seen our lands despoiled in the name of so-called legal documents which were no more than a recognition of superior force.

late Ferdinand Marcos of the Philippines, he is believed to have amassed a fortune far in excess of his country's national debt, bankrupting what must be one of the richest nations on the continent.⁵ Despite long-standing demands for his departure, Mobutu refuses to budge, contemptuously dismissing his opponents as power-hungry opportunists.⁶ Mobutu's continued domination of the Zairean political scene has effectively denied his people their civil and political human rights to free expression, association and participation.⁷ At the same time, his corruption and vice directly impinge upon the people of Zaire's economic and social human rights to adequate health care, sufficient food and appropriate shelter.⁸ Both categories of rights are guaranteed in the international human rights instruments. Yet for much of his career, Mobutu has posed as a spokesperson for economic and social development and harped upon the need to redress international imbalances in trade and in relations between North and South.⁹

Mobutu's Janus-like posturing stands at an extreme, but in both hypocrisy and duplicity he by no means stands alone. Indeed, an examination of the history of economic and social rights in Africa elicits several reasons to review and question the positions adopted by its international leaders with

Quoted in THOMAS KANZA, THE RISE AND FALL OF PATRICE LUMUMBA 161-62 (1977). See also SEAN KELLY, AMERICA'S TYRANT: THE CIA AND MOBUTU OF ZAIRE (1993).

5. See ZAIRE: THE POLITICAL ECONOMY OF UNDERDEVELOPMENT (Guy Gran ed., 1979). Zaire is naturally well endowed with a host of mineral riches, including extensive reserves of gold, diamond, copper, cobalt and zinc. *Id.* As Lawrence Ekpebu recounts, the southern province of Katanga has been particularly important to Zaire's economy, having once accounted for "eighty percent of the world's industrial diamonds, seventy-three percent of the world's cobalt, eight percent of its copper, and sixty percent of the uranium used by Western countries. In addition Katanga produces large quantities of bismuth, cadmium, columbium, germanium, gold, manganese, silver, tantalum, tin, tungsten and zinc." See LAWRENCE B. EKPEBU, ZAIRE AND THE AFRICAN REVOLUTION 21 (1989). See also CRAWFORD YOUNG & THOMAS TURNER, THE RISE AND DECLINE OF THE ZAIRIAN STATE 34-35 (1985), and WINSOME J. LESLIE, ZAIRE: CONTINUITY AND POLITICAL CHANGE IN AN OPPRESSIVE STATE 102 (1993).

6. Sam Kiley, *Zaire: Apocalypse Now*, THE TIMES (London), July 31, 1993, at M10a. Since the early 1990s, Mobutu has faced a range of opponents to his regime, the most prominent of whom is Etienne Tshiekedi wa Mulumba. Responding to popular pressure for political reform, Mobutu permitted the creation of a National Conference to discuss the constitutional future of Zaire, but has almost totally ignored their recommendations for change. Mobutu's unpopularity stems from the long period of time he has been in power, brooking no opposition, detaining his opponents, and strangling the basic elements of civil society including the Media, trade unions and political parties. For a more recent update of the Zairean debacle, see Howard W. French, *Mobutu, Zaire's Guide Leads Nation into Chaos*, N.Y. TIMES, June 10, 1995, at 1.

7. Mobutu has suppressed civil and political rights in his country through the banning of any political opposition; harassment of the media, and detention without trial and the political assassination of opponents. French, *supra* note 6, at 1. For an account of Mobutu's human rights record, see LESLIE, *supra* note 5, at 31-49.

8. LESLIE, *supra* note 5, at 80-85. For an account of Mobutu's personal wealth, see YOUNG & TURNER, *supra* note 5, at 78-183.

9. Such concern with development does not always translate into concern with economic and social rights as such. On Mobutu's posing as a statesman for the deprived peoples of Africa, see LESLIE, *supra* note 5, at 162-64; EKPEBU, *supra* note 5.

respect to the instruments and mechanisms established in international fora. Such a review must necessarily sever their words from their deeds.

There are several reasons for such an approach. First, despite the eventual focus on the individual as the subject of development, as well as of economic and social rights, considerable contention accompanied the process of arriving at such a position.¹⁰ Much of the initial debate about development focused on the place of the state. Some condemned and demanded atonement for the very real debilitations imposed by imperialism,¹¹ others contended that attention to the civil and political rights of individuals must be sacrificed in the interests of achieving the social and economic advancement of the State.¹² The latter demand—referred to by Rhoda Howard as the “full-belly thesis”¹³—was translated as the state’s right to receive more international aid, for a time considered the panacea to all Africa’s developmental problems.¹⁴

Further removing individuals from the focus, was the Cold War stalemate which caused both western and eastern mentors to turn a blind eye to the human rights violations of their client states in the pursuit of strategic military and economic interests.¹⁵ Needless to say, both categories of human rights—economic, social and cultural *and* civil and political—suffered as a consequence.¹⁶

10. *But see* ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* (1989). Shivji asserts that no human rights instrument has in fact raised individuals to the status where they, and not states, are the primary focus of attention. *Id.* at 82-83.

11. Imperialism first denied the African peoples their rights of self-determination; it destroyed cultures and civilizations that had been in existence for centuries and imposed alien legal, political and social structures of organization, the effects of which are still reverberating in continuing relations of domination and control. Particularly debilitating was the arbitrary and forcible amalgamation of different and autonomous communities into colonial structures which had no relation to the history, political economy or culture of the various African societies. For a contemporary treatment of the issue of imperialism and its impact, see FRANK FÜREDI, *THE NEW IDEOLOGY OF IMPERIALISM: RENEWING THE MORAL IMPERATIVE* (1994).

12. R.N. Kiwanuka, *Developing Rights: The UN Declaration on the Right to Development*, 35 NETH. INT’L L. REV. 257-72, 263 (1988).

13. *See* Rhoda Howard, *The Full belly Thesis: Should Economic Rights take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa*, 9 HUM. RTS. Q. 467 (1987).

14. GRAHAM HANCOCK, *LORDS OF POVERTY: THE POWER, PRESTIGE AND CORRUPTION OF THE INTERNATIONAL AID BUSINESS* 187-88 (1989); *see also* SHIVJI, *supra* note 10.

15. *See* FRED MARTE, *POLITICAL CYCLES IN INTERNATIONAL RELATIONS: THE COLD WAR AND AFRICA 1945-1990* (1994). The violations committed extended to rights such as to self-determination (as with American and British support for various *apartheid* regimes in South Africa); free association and assembly (in collusion with single-party regimes that proscribed opposition, and suppressed expression, e.g. Soviet support for Mengistu Haile Mariam in Ethiopia; French support for Eyadema in Togo, and initial British and Israeli support for Idi Amin in Uganda, as well as U.S. support for Samuel Doe in Liberia). The Cold War stalemate also contributed to the non-realization of a variety of economic, social and cultural rights (food, adequate living standards, health, etc.).

16. The most affected were those in which outright war (both civil and international) broke out. This was the case in Angola and Mozambique, and in a variety of the conflicts in the Horn. MARTE, *supra* note 15, at 197-386.

Contemporary African scholarship too, tended to be constricted by the respective ideological blinkers of east and west, and in some ways followed the rhetorical position of the leadership. Thus, African scholars made the claim that the protection of civil and political rights should await the implementation of economic and social rights, in one and the same breath as the assertion that African states were too poor to realize the latter.¹⁷ Paradoxically, however, while the literature on civil and political rights in Africa between the 1960s and the 1980s is fairly extensive and intellectually probing,¹⁸ that which examines economic and social rights is rather scanty.¹⁹ By contrast, the amount of literature on the topic emanating from other regions of the world is fair, albeit not substantial.²⁰ Finally, although the growth of indigenous African human rights groups whose main focus is

17. Minasse Haile, *Human Rights in Africa: Observations on the Implications of Economic Priority*, 19 VAND. J. TRANSNAT'L L. 299, 300-01 (1986). See also Osita C. Eze, *Right to Health as a Human Right in Africa*, in LE DROIT A LA SANTE EN TANT QUE DROIT DE L'HOMME [THE RIGHT TO HEALTH AS A HUMAN RIGHT] 76, 84-85 (René-Jean Dupuy, ed., 1979).

18. See Hamalengwa, *supra* note 2, at 390-403. See also Akinola Aguda & Oluwadare Aguda, *Judicial Protection of Some Fundamental Rights in Nigeria and in the Sudan Before and During Military Rule*, 16 J. AFR. L. 130 (1972); Yash Ghai, *Law, Development and African Scholarship*, 50(6) MOD. L. REV. 750 (1987); Steven B. Pfeiffer, *The Role of the Judiciary in the Constitutional Systems of East Africa*, 16 J. MOD. AFR. STUD. 33 (1978); Ebow Bondzie-Simpson, *A Critique of the African Charter on Human & Peoples Rights*, 31(4) HOW. L.J. 643 (1988).

19. While the literature on economic and social issues (such as poverty, development and structural adjustment, for example) is extensive, few scholars have adopted a rights-based focus to their analyses. In a 1986 bibliography on human rights in Africa, for example, less than twenty out of a total of 168 citations focused on the issue of economic and social rights at the domestic level. See J. Cobbah & M. Hamalengwa, *The Human Rights Literature on Africa: A Bibliography*, 8 HUM. RTS. Q. 115-125 (1986). For those which did focus on economic and social rights, only a handful were seriously concerned with the local context in any critical fashion. Cf. S.B.O. Gutto, *Violation of Human Rights in the Third World: Responsibility of States and Transnational Corporations*, in THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION 275-92 (Frederick E. Snyder & Surakiart Sathirathai, eds. 1987). See also Rhoda E. Howard, *Law and Development in Commonwealth Africa*, 15 CAL. W. INT'L L.J. 607 (1985).

20. See JACK TOBIN, GUIDE TO HUMAN RIGHTS RESEARCH 130-47 (1994). See also *id.* at 148-184 for related rights. On general studies, see Philip Alston, *The United Nations Specialized Agencies and Implementation of the International Covenant on Economic, Social and Cultural Rights*, 18 COLUM. J. TRANSNAT'L L. 79 (1979); Asbjørn Eide, *Realization of Social and Economic Rights and the Minimum Threshold Approach*, 10 HUM. RTS. L. J. 35 (1989); Shelly Wright, *Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions*, 12 AUSTL. Y.B. INT'L L. 241 (1992); and CLARENCE DIAS & DAVID GILLIES, HUMAN RIGHTS, DEMOCRACY AND DEVELOPMENT (1993). The more active regions on economic, social and cultural rights are Asia and Latin America. On Asia, see *inter alia*, ACCESS TO JUSTICE: THE STRUGGLE FOR HUMAN RIGHTS IN SOUTH EAST ASIA (Harry M. Scoble & Laurie S. Wiseberg, eds., 1985), HUMAN RIGHTS ACTIVISM IN ASIA: SOME PERSPECTIVES, PROBLEMS AND APPROACHES (Asian Coalition of Human Rights Organizations-ACHRO/Council on International and Public Affairs eds., 1984); and Mary Caballero-Anthony, *Human Rights, Economic Change and Political Development: A Southeast Asian Perspective*, in HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC 39-53 (James T.H. Tang, ed. 1995); and Yash Ghai, *Asian Perspectives on Human Rights*, in Tang, *id.* at 54-67. On Latin America, see THE RIGHT TO HEALTH IN THE AMERICAS (Hernán L. Fuenzalida-Puelma, & Susan Scholle Connor, eds., 1989).

civil and political rights has been phenomenal over the past several years,²¹ the relative dearth of those covering economic and social rights in an activist fashion is, to say the least, disturbing.²² Despite all the talk over the last thirty years about sacrificing votes for food, economic and social rights remain the poor relation of civil and political rights in Africa—a situation long in need of remedy.²³

The end of the cold war compels us to consider how to further the connection between development and human rights in general, and between development and economic and social rights in particular.²⁴ For Africa, it is especially critical to reconsider the issue in a holistic manner,²⁵ because current democracy struggles are strongly underpinned by what Julius Nyang'oro refers to as a demand for "the betterment of economic life."²⁶ This factor is all too often overlooked in the euphoria of political transition.²⁷

B. The Elements of a Holistic Approach

Clearly the situation now demands a more nuanced and critical reconsideration of both national policy and international practice that simultaneously transcends the rhetorical smokescreen erected by African leaders, and directly

21. Some of the organizations that have emerged in the last decade include: the Nigerian Civil Liberties Organization (CLO); the Kenya Human Rights Commission (KHRC); Women in Law and Development in Africa (WILDAF); Foundation for Human Rights Initiative (FHRI) in Uganda; Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO)—African Meeting for the Defense of Human Rights in Senegal, and the InterAfricaine des Droits de l'Homme (UIDH)—InterAfrican Union of Human Rights in Burkina Faso. That growth stands in marked contrast to the predictions of only a decade ago, which were doubtful that a vibrant indigenous human rights movement was possible in Africa. See Harry M. Scoble, *Human Rights Non-Governmental Organizations in Black Africa: Their Problems and Prospects in the Wake of the Banjul Charter*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 177, 188-89 (Claude E. Welch Jr. & Ronald I. Meltzer eds., 1984).

22. A recent survey of human rights organizations in Africa notes that with the exception of South Africa, which has a unique history, action on economic and social rights in the rest of the continent is rare. See INTERNATIONAL HUMAN RIGHTS INTERNSHIP PROGRAM/SWEDISH NGO FOUNDATION, THE STATUS OF HUMAN RIGHTS ORGANIZATIONS IN AFRICA 5-6 (1994) [hereinafter STATUS REPORT]. Although the report surveyed only 26 countries, they were representative of the different regional, linguistic and political variations that exist in Africa today.

23. Paul Hunt makes this point succinctly: "Although the norms, procedures and institutions relating to civil and political rights remain incomplete and flawed, they are more fully developed than those involving economic, social and cultural rights. One component of 'a unified approach' should be to redress this juridical imbalance between the two categories of rights." Paul Hunt, *Reclaiming Economic, Social and Cultural Rights*, 1 WAIKATO L. REV. 141, 146 (1993).

24. See, e.g., Philip Alston, *Revitalising United Nations Work on Human Rights and Development*, 18 MELB. L. REV. 216, 216-17 (1991).

25. Cf. Allan McChesney, *The Promotion of Economic and Political Rights: Two African Approaches*, 24 J. AFR. L. 163 (1980).

26. Julius E. Nyang'oro, *Reform Politics and the Democratization Process in Africa*, 37 AFR. STUD. REV. 133, 146 (1994).

27. See Kathryn Nwajaku, *The National Conferences in Benin and Togo Revisited*, 32 J. MOD. AFR. STUD. 429, 433-34 (1994).

challenges the traditional ambivalence of the international community.²⁸ Such an approach also means a confrontation with some of the traditional arguments against the enforceability and justiciability of this category of rights,²⁹ particularly in light of the globalization of the capitalist system.³⁰ Attending the process of globalization is the increasing omnipotence of international financial and development institutions (IFDIs).³¹ Coupled with this is the development of regional initiatives, covering, *inter alia*, the human

28. Such ambivalence is reflected in a variety of ways, not least of which is the failure to give due cognizance to economic and social rights as human rights. See Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365 (1990).

29. Despite the considerable progress on this front, particularly that made by the Committee of Experts charged with the implementation of the ICESCR, the question of justiciability of this category of rights is evidently still a live issue. This was most recently demonstrated in the vociferous objections to the inclusion of social and economic rights in the draft South African constitution. For an account, see Anton J. Steenkamp, *The South African Constitution of 1993 and the Bill of Rights: An Evaluation in Light of International Human Rights Norms*, in 17 HUM. RTS. Q. 101, 113-15 (1995).

30. See Arthur MacEwan, *Globalization and Stagnation*, 45 MONTHLY REV. 1 (1994). The growth and spread of global capitalism is a particular problem for the realization of economic and social rights because it places an emphasis on unrestricted market forces with scant attention to the need for protections and guarantees against deterioration in standards of living, health-care, labour (employment and conditions of employment, such as minimum wages, health and safety etc.) or social security. Globalization also smothers local initiative and enterprise, and creates economic conglomerations that snuff out any competition. Free trade regimes bolster those who are already powerful and advantaged in technological and capital foundations. For a concise and succinct treatment of globalization, see UPENDRA BAXI, *INHUMAN WRONGS AND HUMAN RIGHTS: UNCONVENTIONAL ESSAYS* 37-45 (1994).

31. I use the term IFDI in preference to the more usual International Financial Institutions (IFI), because both organizations state their concerns to be with development. For an examination of the rise to prominence and current operations of the IFDIs, see 1 THE IMF, THE WORLD BANK AND THE AFRICAN DEBT (Bade Onimode ed., 1989). The omnipotence of IFDIs is reflected in the "Paris Club" meetings at which developing country debts are rescheduled. This rescheduling takes place upon the performance of a host of conditions, such as currency devaluation, export-production, and trade liberalization. Sometimes, those conditions extend to political questions, including multiparty politics and the liberalization of control over the media. IMF/IBRD advisors in Central Banks wield enormous authority, particularly in countries which rely on multilateral funding to meet both their recurrent and development budgets. When countries resist reform, they are coerced or isolated into capitulation. This suggests, according to Swatuk,

the growing global hegemony of the language of neo-classical economics. Creditors may be willing to bargain, and Third World policy-makers may be able to exploit the fears of the banking community, but ultimately all parties are accepting of the rules, norms and procedures inherent in the global financial regime. Where they do not accept these rules, norms and procedures, pressure is brought to bear until they can no longer resist and must capitulate.

Larry A. Swatuk, *Review Essay: Dead-End to Development? Post-Cold War Africa in the New International Division of Labor*, 38 AFR. STUD. REV. 103, 112 (1995). On the composition, structure and operation of the Paris Club, see MICHAEL G. KUHN ET AL., *OFFICIAL FINANCING FOR DEVELOPING COUNTRIES* 22-34 (1994).

rights arena,³² the area of migration³³ and refugees, as well as a renewed focus on conflict resolution and peace building.³⁴ All these factors necessitate the consideration of economic and social rights as a critical component of the agenda for the next millennium.³⁵ Most importantly, the implications

32. Regional initiatives in the human rights arena include: The Inter-American Commission on Human Rights (IACHR); the African Commission on Human & Peoples' Rights; the European Union Mechanisms (Court and Commission), and the Conference on Security and Co-operation in Europe (CSCE).

The CSCE emerges from a series of conferences held between European countries of the former Eastern and Western blocs. The main elements of the process were enshrined in the Final Act of the Conference on Security and Cooperation in Europe, signed at Helsinki on August 1, 1975, reprinted in FROM HELSINKI TO VIENNA: BASIC DOCUMENTS OF THE HELSINKI PROCESS 43-100 (Arie Bloed ed., 1990). The human rights dimensions to the process assumed greater significance at a January 1989 meeting in Vienna where elaborate standards for the observance of human rights were established. See U.S. State Department, Bureau of Public Affairs, The CSCE Vienna Follow-Up Meeting: A Framework for Europe's Future, Selected Documents, No. 35 (Jan. 1989); Sandra L. Gubin, *Between Regimes and Realism—Transnational Agenda Setting: Soviet Compliance with CSCE Human Rights Norms*, 17 HUM. RTS. Q. 278, 281-84 (1995). Since the turbulent events of the 1990s, discussions have focused on the institutionalization of what was a largely non-formal process. For a recent discussion of the process, see THE CSCE AND THE TURBULENT NEW EUROPE: RECORD OF A CONFERENCE ORGANIZED BY THE INTERNATIONAL RULE OF LAW INSTITUTE OF THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C. (Louis B. Sohn ed., 1993). See also Merja Pentikainen & Martin Scheinin, *A Comparative Study of the Monitoring Mechanisms and the Important Instrumental Frameworks for Human Rights Protection Within the Council of Europe: Comparing International Procedures and Mechanisms* 93, 95-96 (Arie Bloed et al., eds. 1993).

On December 6, 1994, the CSCE became the Organization for Security and Cooperation in Europe (OSCE) following a Summit meeting in Budapest, Hungary, and a declaration "to give a new political impetus in meeting the challenges of the twenty-first century." *The Budapest Summit Declaration: Towards a Genuine Partnership in a New Era*, Dec. 6, 1994, 15 HUM. RTS. L.J. 449 (1994). The new name became effective on January 1, 1995. *Id.*

For a good analysis of the Inter-American system, see Cecilia Medina, *Toward a More Effective Guarantee of the Enjoyment of Human Rights by Women in the Inter-American System*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 257 (Rebecca J. Cook ed., 1994) [hereinafter HUMAN RIGHTS OF WOMEN]. Whereas the European system originally comprised a Commission and a Court, a single court is to replace both, by virtue of the recently-promulgated Protocol 11 to the European Convention on Human Rights. See Andrew Drezemczewski & Jens Meyer-Ladewign, *Principal Characteristics of the New European Convention on Human Rights Control Mechanism, as Established by Protocol No. 11, Signed on May 11, 1994*, in 15 HUM. RTS. L.J. 81-86 (1994). The new text of the EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND ITS PROTOCOLS is reproduced in 15 HUM. RTS. L.J. 102-08 (1994). The original Convention was adopted at Rome on November 4, 1950, and came into force on September 3, 1953. See *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, Europ. T.S. No. 5, 213 U.N.T.S. 221. The African Commission on Human and People's Rights is established under Article 45 of the Banjul Charter. See *infra* note 39.

33. The issue of migration concerns the evolution of restrictive policies, particularly among the industrialized countries of the North (particularly Europe and North America). See, e.g., Kerry E. McCarron, Note, *The Schengen Convention as a Violation of International Law and the Need for Centralized Adjudication on the Validity of National and Multilateral Asylum Policies for Members of the United Nations*, 18 B.C. INT'L & COMP. L. REV. 401 (1995).

34. See E.K. Quashigah, *Protection of Human Rights in the Changing International Scene: Prospects in Sub-Saharan Africa*, 6 AFR. J. INT'L & COMP. L. 93 (1994).

35. See THE COMMISSION ON GLOBAL GOVERNANCE, OUR GLOBAL NEIGHBORHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE 31-35 (1995); Muna Ndulo, *Harmonization of Trade Laws in the African Economic Community*, 42 INT'L & COMP. L.Q. 101, 103-06 (1993). The transition in political conditions in the present era is related to the termination of the Cold War, and the evolution of new tensions and problems such as internal democratic

for the most marginalized and oppressed members of society—women, children and minorities—must be carefully examined, and integrated into projected solutions.³⁶ As the “second winds of change” gust across the continent from the Cape to the Horn, it is appropriate to initiate a serious inquiry that remedies the lip-service attention given to economic and social rights: *How do we get beyond the rhetoric?*

Presented in this essay is a preliminary framework in which some debate on the preceding issues can be joined. Part I of this Article surveys the international arena and considers the African response to the institutional mechanisms established to promote the realization of both economic and social, and civil and political rights. Within this same frame of analysis, it examines the operation of a variety of significant economic and political actors, such as the World Bank and the International Monetary Fund (IMF), the specialized agencies of the United Nations (UN), and international NGOs.³⁷

Part II of the Article examines the African context. It commences with an historical overview of the general human rights situation in Africa with an emphasis on the role of the Organization of African Unity (OAU).³⁸ It then

governance; local popular community participation and grassroots initiatives, as well as the increasing prominence of women and other marginalized groups. In social terms, the transition is directly linked to the shrinkage of the state and of its involvement both in providing social services (health, education, water, etc.) and in being the dominant employer. Liberalization has meant that foreign capital has also gained significantly greater power with fewer restrictions to its operations. The need for a collective response is dictated by the growing enormity and complexity of the issues involved, the movement towards regional blocs (as in Europe), and the near impossibility of autarky.

36. It should be noted that separate institutional mechanisms have been established to consider the issue of economic and social rights for this category of persons, especially the *Convention for the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the Committee on the Rights of the Child, with the latter having a proposed African counterpart. African Charter on the Rights and Welfare of the Child, art. 32, *reprinted in* 1 AFR. Y.B. INT’L L. 295 (1993) [hereinafter African Children’s Charter]. For a description of the manner of selection, composition and term of office of the Committee, see African Children’s Charter, part II. For more extensive examinations of the situation of women, see Claude E. Welch, Jr., *Human Rights and African Women: A Comparison of Two Major Treaties*, 15 HUM. RTS. Q. 549 (1993). On children’s rights in general, see Thomas Hammarberg, *The Rights of the Child in Developing Countries: International Norms and Procedures for Real Change?*, in HUMAN RIGHTS IN DEVELOPING COUNTRIES: YEARBOOK 1994, *supra* note 3, at 9-25; for Africa, see Bankole Thompson, *Africa’s Charter on Children’s Rights: A Normative Break with Cultural Traditionalism*, 41 INT’L & COMP. L.Q. 432 (1992).

37. The following UN bodies and specialized agencies *inter alia*, can be regarded as having some relevance to the area of economic and social rights: The United Nations Children’s Fund (UNICEF); United Nations High Commissioner for Refugees (UNHCR); United Nations Environmental Program (UNEP); International Labour Organization (ILO); World Health Organization (WHO); Food and Agriculture Organization (FAO); United Nations Educational, Scientific and Cultural Organization (UNESCO), and the United Nations Development Program (UNDP).

38. The OAU is the premier political organization in Africa. It was established in 1963 as an instrument to pursue the total liberation and unification of the continent. See ZDENEK CERVENKA, *THE ORGANISATION OF AFRICAN UNITY AND ITS CHARTER* 22-45 (1968).

examines the African Charter on Human and People's Rights (Banjul Charter)³⁹ and the Lagos Plan of Action for development and economic growth.⁴⁰ Part III broadly considers the domestic context in which economic and social rights are intended to find ultimate meaning and expression. It then offers some tentative suggestions for concrete action to revitalize economic and social human rights activism in Africa.

I. AFRICAN STATES AND THE INTERNATIONAL HUMAN RIGHTS SCENE

A. *The International Covenants and the Mechanisms of Enforcement*

Since the elevation of human rights to the arena of international concern in the period following the second world war, a major objective of the United Nations has been the design of mechanisms to ensure that the ideals of the Universal Declaration of Human Rights could be enforced.⁴¹ The first steps toward this objective were taken with the promulgation of two Covenants—the International Covenant on Civil and Political Rights (ICCPR)⁴² and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴³ Interestingly, these instruments came into existence nearly twenty years after the Universal Declaration was adopted, and did not enter into force until 10 years later, in 1976.⁴⁴ That history has been treated in greater detail elsewhere.⁴⁵ Suffice it to mention that while the Covenants have had a noticeable impact on the evolution of international human rights law, a number of loopholes still remain in their implementation.⁴⁶

39. OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 ILM 59 (1982) [hereinafter Banjul Charter].

40. ORGANIZATION OF AFRICAN UNITY, LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA: 1980-2000 (1981) [hereinafter LPA].

41. See Torkel Opsahl, *Instruments of Implementation of Human Rights*, 10 HUM. RTS. L.J. 13 (1989).

42. Adopted December 16, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976).

43. ICESCR, *supra* note 2.

44. Michael H. Posner, *The Evolution of Human Rights Law*, 31 COLUM. J. TRANSNAT'L L. 449 (1994).

45. See, e.g., THE INTERNATIONAL BILL OF RIGHTS 9-11 (Louis Henkin, ed. 1981).

46. Cindy A. Cohn, *The Early Harvest: Domestic Legal Changes Related to the Human Rights Committee and the Covenant on Civil and Political Rights*, 13 HUM. RTS. Q. 295 (1991). The loopholes in the implementation of the Covenants include: the length of time for a remedy to be realized, in part because of the requirement, in Article 5 of the Optional Protocol to the ICCPR, that all available local remedies be exhausted, the nature of the sanction, which is little more than mild censorship of the offending party, with no enforceable obligations; the problem of ensuring that a remedy is actually realized, and the absence of an individual petitions mechanism with respect to the ICESCR. See ICESCR, *supra* note 2, arts. 16, 17 & 18; ICCPR, *supra* note 42, art. 40.

The implementation of the Covenants is overseen by special Committees, comprising experts selected on the basis of personal merit.⁴⁷ The two instruments establish a variety of supervisory mechanisms including inter-state complaints,⁴⁸ and individual or group petitions.⁴⁹ Finally, there is the mechanism of reporting by states parties to the Covenants.⁵⁰ Complaints and petitions have been of varying utility in terms of enhancing respect for the observation and realization of human rights. State reporting has been of particular importance in the evolution, development and acceptability of the supervisory mechanisms established in the Covenants. Indeed, as Philip Alston notes, reporting is the only implementation mechanism that is specifically provided for in the ICESCR,⁵¹ although it is also “only one part of a continuing process, the domestic rather than the international ramifications of which should be far more significant.”⁵²

Under the ICCPR, states parties are required to submit reports “on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights.”⁵³ The obligation accrues within one year of the entry into force of the Covenant for the particular State Party concerned, and thereafter, whenever the Human Rights Committee (HRC) established under Article 28 so requests. The HRC studies and comments on the reports at bi-annual sessions. Its comments are noted

47. See Part IV of both Covenants, but with respect to the ICESCR, see also, Philip Alston, *The Committee on Economic, Social and Cultural Rights*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 473, 474-76 (Philip Alston, ed., 1992).

48. ICCPR, *supra* note 42, art. 41.

49. First Optional Protocol to ICCPR, *see infra* note 86.

50. ICESCR, *supra* note 2, arts. 16 & 17; ICCPR, *supra* note 42, art. 40. There are other mechanisms established under the United Nations system which are also of relevance to the realization of economic and social rights. Thus, the Economic and Social Council, the Human Rights Commission and the sub-Commissions established under the UN Charter have also devoted some attention to economic and social rights, including the passage of resolutions on the effects of structural adjustment policies arising from foreign debt on the enjoyment of human rights. There have also been resolutions on extreme poverty, the ownership of property, the question of the realization of economic, social and cultural rights, and the right to development. The most important aspect of the Commission work with respect to the development of the area has been through the commissioning of studies. The most outstanding of these has been the series of progressive reports commissioned on the realization of economic, social and cultural rights, written by Danillo Türk, the last of which was submitted at the 44th session of the Commission. See *The Realization of Economic, Social and Cultural Rights: Final Report by Special Rapporteur Danillo Türk*, U.N. ESCOR HUM. RTS. COMM’N, 44th Sess., Prov. Agenda Item 8, U.N. Doc. E/CN.4/Sub.2/1922/16 (1992) [hereinafter Special Rapporteur’s Report]; *Commission on Human Rights, Report of the Fiftieth Session* [Jan. 31-Mar. 11, 1994], U.N. ESCOR, 50th Sess., Supp. No. 4, U.N. Doc. E/CN.4/1994/132 (1994); and Karen Reiersson & David Weissbrodt, *The Forty-third Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 14 HUM. RTS. Q. 232, 263 (1992).

51. Philip Alston, *Implementing Economic, Social and Cultural Rights: the Functions of Reporting Obligations*, BULLETIN OF HUMAN RIGHTS 89/1: IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS (U.N. CTR. FOR HUM. RTS., GENEVA) 1991, AT 8.

52. Alston, *supra* note 47, at 491.

53. See ICCPR, *supra* note 42, art. 40.

on the reports, which are then submitted to the states parties and the Economic and Social Council of the United Nations. The HRC sessions permit NGO representation, although NGOs do not participate in the deliberations of the meeting. Reporting serves several functions, including: monitoring performance and commitment, assisting in policy formulation, exposing states to public scrutiny, evaluating and acknowledging problems and exchanging information.⁵⁴

Reporting under the ICESCR has evolved in a slightly different fashion from that originally envisaged by the Covenant, in part because of the nature of the rights involved, and also because of the inadequacies of the first system. The original system, introduced in 1976, shortly after the ICESCR came into force, involved a three-phase reporting cycle. Each phase lasted three years, during which reporting centered on a specified cluster of rights. The first phase covered Articles 6 to 9;⁵⁵ the second, Articles 10 to 12;⁵⁶ and the third, Articles 13 to 15.⁵⁷ This system meant that a reporting cycle took nine years to complete. For subsequent periodic reports, the cycle was reduced to 6 years, but thereafter a state party was required to submit a report every two years—a program that came to be considered unduly burdensome and reflective of “an excessively compartmentalized approach to the rights recognized in the Covenant.”⁵⁸

New guidelines for state-party reporting were consequently adopted by the ICESCR Committee in 1988.⁵⁹ These two-part guidelines do not distinguish between initial and periodic reports, and they cover all provisions in the Covenant. The first part covers the overall country profile, and general socioeconomic and political conditions, while the second part specifically elicits information on the rights in the Covenant.⁶⁰

The process of reporting allows states parties, as well as the Committees established under the respective Covenants, to engage in a useful dialogue over the implementation of the rights contained in the Covenants.⁶¹ Given

54. See Philip Alston, *The Purposes of Reporting*, in U.N. CTR. FOR HUM. RTS., *MANUAL ON HUMAN RIGHTS REPORTING*, at 14-16, U.N. Doc. HR/PUB/91/1, U.N. Sales No. E.91.XIV.1 (1991) [hereinafter *MANUAL ON HUMAN RIGHTS REPORTING*].

55. Work; favorable conditions of work; the formation of trade unions; and social security, respectively.

56. Assistance to the family; an adequate standard of living—including adequate food, clothing and housing; and the highest attainable standard of physical and mental health.

57. The right to education; free, compulsory primary education; and partaking in cultural life.

58. See Philip Alston, *the International Covenant on Economic, Social and Cultural Rights*, in *MANUAL ON HUMAN RIGHTS REPORTING*, *supra* note 54, at 39.

59. *Id.* at 40.

60. *Id.* at 40-72.

61. The relevant rights in the ICESCR relating to reporting are Part III, Article 6 (work); Article 7 (just & favourable conditions of work); Article 8 (right to form and join trade unions); Article 9 (right to social security); Article 10 (protection of the family); Article 11 (adequate standard of living); Article 12 (highest attainable standard of health); Article 13 (right to education); Article 15 (cultural life and scientific progress). The relevant rights in the ICCPR

the fact that the reporting and other mechanisms under the covenants are established within a regime dominated by states, and that human rights have generally been viewed as sensitive matters, the mechanism of reporting can be described as the best possible rather than the most desirable. At the same time, both Committees have attempted to project the exercise beyond the *pro forma* exercise or diplomatic *tête-à-tête* that states would prefer that it be.⁶² They have attempted to ensure that reporting is an exercise states take seriously.⁶³ It is thus especially important to consider the nature of the response of African countries to the reporting mechanisms established under each Covenant.

1. The ICESCR

The ICESCR is primarily intended to enhance local and global social justice. It was specifically designed to ensure the protection of the rights to work; to fair and adequate employment; to education; to social security; to adequate mental and physical health; to appropriate shelter; and to reasonable standards of living for all. It also seeks to protect the family, and to protect minority languages and cultures. The Covenant is designed to promote social progress, freedom from want, and better standards of life as called for by the Universal Declaration. As of July 15, 1995, 131 states—including thirty-eight African nations—have ratified or acceded to the Covenant.⁶⁴

The main organ for the implementation of the standards contained in the ICESCR is the Committee of individual experts established pursuant to a

are Part III, Article 6 (life); Article 7 (torture, cruel, inhuman, degrading treatment or punishment); Article 8 (slavery); Article 9 (right to liberty & security of person); Article 10 (humane treatment in detention); Article 11 (imprisonment for contractual obligations); Article 12 (freedom of movement and choice of residence); Article 13 (no-expulsion of aliens); Article 14 (equality before the courts); Article 15 (innocence until proof of guilt); Article 16 (recognition before the law); Article 17 (unlawful interference with privacy); Article 18 (freedom of thought and conscience); Article 19 (right to hold opinions); Article 20 (war prohibition on war propaganda); Article 21 (peaceful assembly); Article 22 (freedom of association); Article 23 (protection of the family); Article 24 (rights of children); Article 25 (partaking in public affairs); Article 26 (equality before the law); Article 27 (rights of minorities).

62. The two Committees have also sought to make the reporting exercise meaningful through the establishment of Guidelines which provide for serious examination and interrogation of government officials on the contents of reports, and which allow NGOs to participate in the deliberations and present counter-reports. See Alston *supra* note 58, at 72-73.

63. Alston, *supra* note 47, at 492-493.

64. The latest United Nations Report on the status of international instruments is dated December 31, 1994. UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL 117-18 (1994) (status as of Dec. 31, 1994) [hereinafter MULTILATERAL TREATIES]. Reports are issued annually, although periodic updates can be obtained from the Treaty Section of the United Nations in New York. See International Instruments: Chart of Ratifications as at 30 June 1994, Hum. Rts. Comm'n, U.N. Doc. ST/HR/4/Rev.10 (1994); Fax from United Nations Treaty Section, New York, to J. Oloka-Onyango (July 17, 1995) (On file with the *California Western International Law Journal*) [hereinafter Treaty Section fax].

resolution of the UN Economic and Social Council.⁶⁵ Although not originally envisaged under the Covenant (and despite the occasionally self-deprecating remarks by its Chair, Philip Alston⁶⁶), the Committee has earned praise for its efforts to enhance respect for this category of rights.⁶⁷ Since 1987, the Committee has devoted itself to the creation of mechanisms which devote serious attention to the effective realization of economic, social and cultural rights, both through reporting by states parties, and through continuing dialogue with them.⁶⁸ In addition to the introduction of its revised reporting system in 1990, the Committee now takes the occasion of its biannual meetings to make pronouncements, known as “general comments.”⁶⁹ These comments have had the effect of advancing intellectual knowledge and practical action in the field.⁷⁰

Table I (*infra* page 72) reveals a number of interesting facts. Nearly twenty years after the coming into force of the Covenant, over 30% of African states still have not ratified the instrument. The number of ratifying states in each decade since the entry into force of the instrument has been roughly equal,⁷¹ with countries like the Gambia, Guinea, Libya and Kenya leading the way in the 1970s. Of the category of states that ratified the instrument in the 1970s, four (Mauritius, Mali, Guinea and the Gambia) had reports which were overdue. Among the latest countries to ratify the instrument are Malawi, Nigeria and Benin. Malawi’s first report is due on June 30, 1996, that of Nigeria was scheduled to be submitted and considered at the twelfth Session in June 1995, and Benin’s initial report is now overdue. Among the prominent non-ratifiers are countries such as Ghana, Botswana, Burkina Faso, and Sierra Leone.

The late ratification of a country like Nigeria, and the non-ratification to date by Ghana is somewhat intriguing given that both are prominent and

65. *Composition, Organization, and Administrative Arrangement of the Sessional Working Group of Governmental Experts: Report of the Secretary-General*, U.N. ESCOR, 1st Reg. Sess., Prov. Agenda Item 3, U.N. Doc E/1985/17 (1985).

66. See Philip Alston’s comments to an interdisciplinary discussion on the right to health. *Institutionalizing Economic and Social Rights*, in *ECONOMIC AND SOCIAL RIGHTS AND THE RIGHT TO HEALTH*, 35-38 (Harvard Human Rights Program/Francois-Xavier Bagnoud Centre for Health and Human Rights, eds., 1995) [hereinafter *THE RIGHT TO HEALTH*].

67. THOMAS G. WEISS, ET AL., *THE UNITED NATIONS AND CHANGING WORLD POLITICS* 139-40 (1994).

68. The “dialogue” is established via the reporting mechanism, and is generalized through the committee’s guidelines, which are transmitted to the Economic and Social Council and eventually to the General Assembly. See Alston, *supra* note 54, at 40-70.

69. See Thomas Jabine & Denis F. Johnston, *Socio-Economic Indicators and Human Rights*, at 6 (Paper presented at the 1992 Annual Meeting of the American Statistical Association, Boston, MA, Aug. 12, 1992) (on file with the author).

70. See, e.g., *International Technical Assistance Measures (article 22 of the Covenant)*, in *Committee on Economic, Social and Cultural Rights, Report of the Fourth Session* [Jan. 15-Feb. 2, 1990] U.N. ESCOR, 4th Sess., Annex III, Supp. No. 3, at 86, U.N. Doc. E/C.12/1990/3/Corr.1 (1990). See also *MANUAL ON HUMAN RIGHTS REPORTING*, *supra* note 54, at 35-36.

71. Thirteen African States ratified the Covenant in the 1970s; another twelve in the 1980s; and thirteen, thus far, in the 1990s.

vocal proponents of the need to address socioeconomic inequities on the international stage.⁷² Successive governments in both countries have de-emphasized the place of civil and political rights and focused on the need for “development.”⁷³ Newly independent South Africa signed both Covenants on October 3, 1994, and can be expected to join the ratifiers of the instruments, despite serious contestation over the inclusion of economic and social rights in the national Constitution.⁷⁴ Of those countries which have ratified the instrument, over half (52%) have overdue reports, while of the remainder, reporting is either due at some future point in time, or their reports are pending consideration. Only Rwanda and Zaire—two countries which do not have stellar records in the field of human rights—had reached their second reports.

From the above, it is fairly clear that ratification of the instrument by African states remains an outstanding question. Many may not regard this fact as being of much relevance. Consider however, the statement of the United Nations International Children’s Emergency Fund (UNICEF) in relation to a much more widely ratified instrument—the Convention on the Rights of the Child (Child Convention).⁷⁵

[A] universally-accepted code for the treatment of children is a major step forward. It provides an unchallengeable platform for advocacy and action on behalf of children in all countries and in all circumstances, and it prepares the way for the next and obviously more difficult stage—the stage of moving from universal acceptance to universal observance.⁷⁶

No action on children can take place without reference in the first instance to the Child Convention, which has become a powerful tool of advocacy and mobilization, as well as a bench-mark from which standards in the area can be critically and universally assessed.⁷⁷ This has correspondingly made UNICEF and the Committee established under the Convention potent forces in promoting those standards.⁷⁸ By contrast, the ICESCR Committee and

72. For the official position on Nigerian foreign policy and prominence in debates about global social justice, see Ibrahim Gambari, *Nigerian Foreign Policy at the Crossroads: Concepts, Critical Issues and Management of External Relations under the Buhari Administration, in NIGERIA SINCE INDEPENDENCE: THE FIRST TWENTY-FIVE YEARS 273-87* (A.B. Akinyemi et al. eds., 1989). For a critique of the official position, see Okwudiba Nnoli, *Nigeria: Foreign Policy and the Struggle for Economic Independence*, in *id.* at 251-72. On Ghana, see KWAMINA PANFORD, *AFRICAN LABOUR RELATIONS AND WORKER’S RIGHTS: ASSESSING THE ROLE OF THE INTERNATIONAL LABOUR ORGANIZATION 91-99* (1994).

73. Akinyemi et al., *supra* note 72; PANFORD, *supra* note 72.

74. See Steenkamp, *supra* note 29, at 113, 116.

75. U.N. GAOR 3d Comm., 44th Sess., pt. III, Agenda Item 108, at 3, U.N. Doc. A/44/736 (1989) (adopted without vote Nov. 20, 1989 by G.A. Res. 44/25), *reprinted in* 28 ILM 1448 (1989).

76. UNICEF, *STATE OF THE WORLD’S CHILDREN* 33 (1995).

77. See Hammarberg, *supra* note 36, at 17-18, and 22-24.

78. *Id.* at 22-24.

the Covenant itself are routinely ignored in discourse and action on the question of development and socioeconomic issues,⁷⁹ when both would have logically been promoted to play a similarly dynamic function.⁸⁰ Unfortunately, the United Nations Development Program (UNDP), which should logically promote economic and social rights, has so far manifested a number of handicaps in adopting a rights-sensitive approach to its international mandate.⁸¹ Consequently, the most important issue with respect to the ICESCR from the African perspective, is the issue of ratification. Ratification is the necessary first step for all African states which claim to uphold the ideals contained in the instrument.⁸²

After ratification, the next critical issue is a timely and serious response to the reporting obligation. While the lateness of a report may not necessarily reflect a poor human rights situation, reporting is nevertheless an obligation that the states parties to the instrument have undertaken.⁸³ Reports should not only be on time, they must also address—in a substantive fashion—the key issue for which the mechanism was established: the “progressive realization” of the rights in the instrument.⁸⁴ Only in this way can a nation’s respect for and belief in the instrument actually be gauged in a fair and objective manner.

2. The ICCPR and the Optional Protocols

The ICCPR codifies human rights in the civil and political arena. These include, among others: the right to life; freedom of association, expression and movement; and the right to organize. In addition, the ICCPR prohibits

79. Articles 18, 20 and 22 all envisage some link between the work of the Committee and the specialized agencies and other U.N. organs.

80. This was clear, for example in the run-up to the Copenhagen Summit. During that time, the ICESCR Committee was completely ignored. It is also clear from a reading of the draft declaration and program of action that insufficient attention was paid to the provisions of the ICESCR. In a statement issued to the preparatory committee for the summit, the Committee expressed its disappointment in the following manner, “The first session of the Preparatory Committee for the Summit discussed various approaches to, and the possible content of, a draft Declaration and a draft Programme of Action. In the list of ‘elements mentioned for a draft Declaration,’ which is annexed to the report of the first session, reference is made to virtually every objective recognized in the International Covenant on Economic, Social and Cultural Rights. However, the Covenant itself is never referred to and most of the relevant objectives are characterized not as ‘human rights’ but as mere goals or principles.” See Statement by the U.N. Committee on Economic, Social and Cultural Rights to the Social Summit Preparatory Committee, para. 4 (May 1994) (on file with the author) [hereinafter Statement by ECOSOC].

81. See *infra* pages 29-34, and Eide, *supra* note 20, at 49.

82. In discussing the need for the U.S. to ratify the ICESCR, Henry Steiner makes the following point, “The mere fight for ratification would expand the rhetoric of social action in this country; after ratification, the Covenant could be invoked as a legal and moral imperative for legislative action. Whether internal law or not, it remains a formal international obligation. As the nation wrestles with the issue, the abstract right would take on concrete expression and become susceptible to programmatic development.” RIGHT TO HEALTH, *supra* note 66, 41-42.

83. See ICESCR, *supra* note 2, art. 16.

84. See *id.* art. 2.

torture, and cruel, inhumane and degrading treatment. Although the ICCPR came into force after the ICESCR, it has been given considerably greater attention, in part because of the emphasis placed on it by Western governments, but also because of the relative lack of conceptual clarity with respect to economic, social and cultural rights.

By July 15, 1995, forty-two African countries had ratified or acceded to the ICCPR.⁸⁵ Of these, twenty-one were party to the First Optional Protocol,⁸⁶ which allows for the filing of individual petitions.⁸⁷ Only Mozambique, Namibia and the Seychelles⁸⁸ have ratified the Second Optional Protocol⁸⁹ abolishing the death penalty.⁹⁰ Strangely enough, Mozambique has not ratified either the ICESCR,⁹¹ or the First Optional Protocol.⁹² Chad and Uganda are the most recent countries to ratify the ICCPR, having done so on June 9 and 21, 1995 respectively.⁹³ Of those states which have ratified the ICESCR, only Guinea-Bissau has not ratified the ICCPR.⁹⁴ Liberia has signed both instruments but is yet to ratify them.⁹⁵ South Africa is in a similar situation.⁹⁶

There were a total of four reservations to the ICCPR, which, as Rosalyn Higgins has pointed out, are "rather few," in comparison to those from other

85. MULTILATERAL TREATIES, *supra* note 64, at 117-18; Treaty Section fax, *supra* note 64. See Table II, *infra*, page 72. See also John Hatchard, *Ratification of International and Regional Human Rights Instruments by African States (as at 1 November 1992)*, 36 J. AFR. L. 186 (1992).

86. Adopted and opened for signature and accession Dec. 16, 1966. G.A. Res 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976) [hereinafter OP]. The First Optional Protocol (OP) is designed to create a mechanism for the Human Rights Committee (set up under Part IV of the ICCPR) to receive and consider, "communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant." *Id.* pmb1. The OP provides for an individual who claims that any of the rights in the Covenant have been violated and "who have exhausted all available domestic remedies" to submit a written communication to the Committee for consideration. *Id.* art. 2. All such communications must not be anonymous, or an abuse of the right of submission of such communications, or be incompatible with the provisions of the Covenant *Id.* art. 3.

87. *Id.* arts. 1 and 2. An individual petition allows for a grievance by a non-state party to the Covenant to be heard. The Human Rights Committee must bring all communications submitted to it to the attention of the State Party which is alleged to have violated the provisions of the Covenant. *Id.* art. 4.1, and within six months of receiving the same, the state shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State *Id.* art. 4.2.

88. MULTILATERAL TREATIES, *supra* note 64, at 156.

89. Adopted Dec. 15, 1989, G.A. Res. 44/128, U.N. GAOR, 44th Sess., Supp. No. 49, at 206, U.N. Doc. A/44/824 (1989).

90. *Id.* art. 1.

91. MULTILATERAL TREATIES, *supra* note 64, at 107.

92. *Id.* at 153.

93. Treaty Section fax, *supra* note 64.

94. MULTILATERAL TREATIES, *supra* note 64, at 117.

95. *Id.* at 107, 117 (Liberia signed both on April 18, 1967).

96. *Id.* (South Africa signed both on October 3, 1994).

regions of the world.⁹⁷ While there has been a marked increase in the scrutiny of African states under the First Optional Protocol, since the hearing of the first petition in 1978,⁹⁸ there have only been a few more ratifications to the instrument by African countries, and the number of individual petitions remains insignificant. Table II summarizes the position of African states with respect to the First Optional Protocol.

While this record may appear rather dismal, some observers have viewed the African response to the Optional Protocol in a fairly positive manner.⁹⁹ Thus Odinkalu *et al*, state:

It is noteworthy that over half of the countries in Africa have ratified the ICCPR and a majority of these ratifying countries are also party to the First Optional Protocol. This holds out considerable potential for better exploitation by African human rights advocates of the procedures of the HRC. The case law emerging from Africa appears to have made a significant contribution to the jurisprudence of the HRC.¹⁰⁰

97. Rosalyn Higgins, *Africa and the Covenant on Civil and Political Rights during the first five years of the Journal: Some facts and some thoughts*, 5 AFR. J. INT'L & COMP. L. 55 (1993). The reservations to the ICCPR have been lodged by Congo (to Article 11 concerning imprisonment for debt); Gambia (to Article 14 concerning legal assistance for accused persons; and Guinea (to Article 48 on signature of the instrument). Algeria presented interpretative declarations on common Article 1 to both Covenants (self-determination and dependent territories), Article 8 (on the right to organize), Article 13 (on the right to education) and Article 24 (on the rights of spouses in marriage). Egypt made a declaration to the effect that Sharia law should be taken into consideration, and Libya stipulated that accession to both Covenants did not signify recognition of Israel. The situation regarding reservations lodged by other regions is as follows: Latin America (4), Europe (22), Middle East (2), Asia (6), North America (1), and the Caribbean (3). The United States, for example, made reservations to Article 20 (on free speech), Article 3 (on the right to life), Article 15 (on retroactive punishment), and Article 10 (on the separation of juveniles from adults). Switzerland made reservations with respect to Article 12 (freedom of movement), Article 14 (on judicial proceedings), and Article 26 (on equality before the law).

98. See *Aumeeruddy-Cziffra v. Mauritius*, Communication No. 35/1978, Selected Decisions of the Human Rights Committee under the Optional Protocol, U.N. GAOR Hum. Rts. Comm., 2d to 16th Sess., U.N. Doc. CCPR/C/OP/1, at 67 (1985). Examples of the kinds of scrutiny include: Violations of freedom of movement; rights of association; right to life; women's human rights; rights to citizenship; and freedom of expression. The reason for such scrutiny is to ensure that state parties remain faithful to the obligations they have undertaken. The scrutiny of African countries has covered a number of the rights guaranteed in the ICCPR. For example, in *Mbenge v. Zaire*, Communication No. 16/1977, Selected Decisions of the Human Rights Committee Under the Optional Protocol, U.N. GAOR Hum. Rts. Comm., 17th to 32d Sess., U.N. Doc. CCPR/C/OP/2, at 76 (1990) [hereinafter Selected Decisions, vol. 2] the issues covered arbitrary arrest, the right to a counsel of one's choice, fair trial, and trial in absentia, the death sentence and political rights. In *Marais v. Madagascar*, Communication No. 49/1977, *id.* at 82, the matters under consideration included incommunicado detention, ill-treatment in custody, prison conditions, the health of the victim, arrest and harassment of counsel, denial of defence facilities, and interference with the prisoner's correspondence. In *Hammel v. Madagascar*, Communication No. 155/1983, *id.* at 179, the issues examined included incommunicado detention, habeas corpus, expulsion, and the denial of the right to challenge the expulsion, national security and a general comment on the situation of aliens under the ICCPR.

99. See Higgins, *supra* note 97, at 57-59.

100. Chidi A. Odinkalu *et al.*, *The Work of the United Nations Human Rights Committee on Individual Communications from Africa: An Overview*, in 8(3) INTERRIGHTS BULL. 67 (1994). What Odinkalu and his co-authors do not address is the impact the decisions of the Committee have had within African domestic regimes, illustrating the need for a more comprehensive

Implicit in this statement is a call to African human rights activists to increase their use of the mechanisms. Failure to ratify both the ICCPR and the Optional Protocols thus remains a serious problem, as does recourse to the First Optional Protocol by individuals of those countries which are a party to it. The reasons for the somewhat muted response of individuals within these countries are varied—from a lack of knowledge of its existence and the intricacies of filing a petition, to the fear of doing so.¹⁰¹ In the case of Zaire, which has had both the highest number of complaints under the First Optional Protocol, and was one of the first African countries to ratify it, respect for the rule of law has greatly diminished, and the opinions of the Committee on individual petitions are routinely ignored.¹⁰² Nevertheless, consideration of individual petitions at the Committee has assisted in publicizing the dismal conditions in the country.¹⁰³ The reluctance to file individual petitions may also have to do with the requirement that an individual have “exhausted all available domestic remedies,”¹⁰⁴ which in many African countries are both lengthy and intricate.¹⁰⁵ Consequently, the overall framework for the administration of justice is hostile and unaccommodative.

More active involvement with the Human Rights Committee via the First Optional Protocol would have numerous beneficial side effects for the observation and eventual realization of economic and social rights. The first would come from a growing familiarity with the usage of international mechanisms, permitting the development of a dialogue and reducing governmental antagonism to the enforcement of human rights.¹⁰⁶ Second, such a mechanism could also be used for developing more effective and cooperative endeavors between governments and NGOs, especially in light of the considerable involvement of NGOs in the representation of individuals

examination of the various dimensions of the issue. See Higgins, *supra* note 97, at 62-63.

101. Scoble, *supra* note 21, at 178.

102. The routine ignoring of Human Rights Committee requests to the government of Zaire have been manifest over the years, for example, in the case of *Luyeye Magana v. Zaire*, Communication No. 90/1981, Selected Decisions, vol. 2, *supra* note 98, at 124.

103. In *Ngatula Mpandanjila et al. v. Zaire*, Communication No. 138/1983, reported in Selected Decisions, vol. 2, *supra* note 98, at 164-68, the petitioners complained of banishment and internal exile; arbitrary arrest and detention; ill-treatment; persecution for opinions held, and the denial of the right to take part in public affairs.

104. OP, *supra* note 86, art. 5.2(b).

105. See, e.g., Benjamin J. Odoki, *Reducing Delay in the Administration of Justice: The Case of Uganda*, 5 CRIM. L. FOR. 57 (1994). Odoki cites the fact that of a total of 11,525 remand prisoners awaiting trial in the main prison in Kampala in January 1990, 2,127 of them had been awaiting trial for more than 480 days; 1,655 for over two years; 525 for over 3 years; 88 for over 4 years, and 6 for over 5. *Id.* at 76. This meant that the trials of over 4,000, or nearly one-half of the number, had been inordinately delayed.

106. The methodology employed under the established mechanisms emphasizes diplomacy and dialogue as opposed to confrontation and embarrassment—methods that states would find more acceptable than the “mobilization-of-shame” tactics traditionally employed by human rights organizations.

at the Committee.¹⁰⁷ Finally, African states would be able to inject into the discourse a discussion of their socioeconomic conditions, and ways and means of comprehensively addressing them in order to enhance the observation and protection of human rights as a whole.¹⁰⁸ Ratification and subsequent interaction by African states with the ICCPR would thus directly enhance the role of the ICESCR, in the progressive realization of the rights stipulated in the ICESCR.

B. Human Rights in Multi- and Bilateral Relationships

*The Development Set is bright and noble,
 Our thoughts are deep and our vision global;
 Although we move with the better classes,
 Our thoughts are always with the masses.*¹⁰⁹

International financial and development institutions (IFDIs), along with intergovernmental organizations (IGOs) and bilateral donor agencies (BDAs) have long played a prominent role in the field of socioeconomic development in Africa and the Third World in general. While there are certain salient distinctions in the manner in which all three operate, there are sufficiently significant similarities to warrant an analysis which brings them together.¹¹⁰ In the first instance, all are dominated by the countries of the North, and indeed the donor agencies are an exclusive creation of those countries wealthy enough to channel their resources into development assistance.¹¹¹ Second, despite assertions that the administration of development assistance is an apolitical exercise, it is quite clearly linked to specific national interests, and a variety of other considerations such as the creation of markets and the perpetuation of structures of dependency and control.¹¹² Finally, although

107. See *The Limburg Principles on the International Covenant on Economic, Social and Cultural Rights* U.N. ESCOR Hum. Rts. Comm'n, 43d Sess., Prov. Agenda Items 8 & 18, at 1, UN Doc. E/CN.4 1987/17 (1987), reprinted in Symposium, *The Implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 121 (1987). [hereinafter *Limburg Principles*]. International NGOs involved with the Human Rights Committee include: the International Commission of Jurists—ICJ (Geneva); Amnesty International (London); Lawyers Committee for Human Rights (New York) and Interights (London).

108. See KATRINA TOMAŠEVSKI, *DEVELOPMENT AID AND HUMAN RIGHTS REVISITED* 137-138 (1993) [hereinafter *DEVELOPMENT AID AND HUMAN RIGHTS REVISITED*].

109. Ross Coggins, *Development Set*, in HANCOCK, *supra* note 14, at viii.

110. For a concise history and analysis of the "aid" phenomenon, see KATRINA TOMAŠEVSKI, *DEVELOPMENT AID AND HUMAN RIGHTS* 1-12 (1989).

111. *Id.* at 9-12.

112. See HANCOCK, *supra* note 14. Examples of linkage include: stipulations that all raw materials, spare parts, equipment etc., be purchased from the donor country irrespective of cost, or the possibility of cheaper procurement elsewhere; and that technical assistance be expatriate (and normally from the donor country) regardless of local availability of personnel. *Id.* The design of projects also often takes place with little or no indigenous participation. *Id.* As Lappé et al. point out in their study of aid:

a number of studies have been undertaken on the linkage between the operations of these organizations and the observation of human rights, such studies are by no means exhaustive, nor do they cover all facets of the issue.¹¹³ This section of the Article considers how these organizations relate to the African context and what place human rights play in their operations.

1. IFDIs: Structural Adjustment and the debate over 'conditionality'¹¹⁴

The World Bank (the Bank) was instrumental in the design of the development plans and the large infrastructural projects of the 1960s, and has continued to play a prominent function in the African development matrix.¹¹⁵ Likewise, the IMF has evolved to play a significant role in balance of payments support and stabilization,¹¹⁶ as well as in the programs of

But the heart of their pitch [aid agencies seeking increased disbursements from the U.S. Congress] is in trumpeting the value of foreign aid to U.S. corporations and the American economy. About three out of every four dollars in the AID budget are used to purchase products and consultative services in the United States. . . . As for the World Bank and the regional development banks, for every dollar the U.S. government pays in, about two are spent in the U.S. economy.

FRANCIS MOORE LAPPÉ ET AL., AID AS OBSTACLE: TWENTY QUESTIONS ABOUT OUR FOREIGN AID AND THE HUNGRY 90 (1981) (emphasis in original, citations omitted).

113. The most recent study undertaken on the issue, and one which resonates beyond the specific region with which it was concerned, focused on Australian development assistance. See *The Rights Way to Development: A Human Rights Approach to Development*, REPORT (Hum. Rts. Council of Austl., Marrickville NSW, Austl.) Jan. 1995. For an earlier study, see HUMAN RIGHTS AND DEVELOPMENT: INTERNATIONAL VIEWS (David Forsythe ed., 1989).

114. Conditionality is the phenomenon which has evolved over time in which development funding, structural adjustment assistance and budgetary-corrections to borrowing countries is "conditioned" upon certain economic-performance objectives expected to occur over time. These include *inter alia*, the liberalization of foreign exchange markets, deregulation of import controls, the reform (and retrenchment) of the Civil Service, and increased exports. Failure to meet these "conditions," may result in a suspension of assistance, or a refusal to renegotiate debt repayment. Political conditionality (a more recent phenomenon) relates to the conditioning of development assistance on the implementation of certain civil and political conditions, including (but not necessarily limited to): the introduction of a multi-party system of government, the holding of "free and fair" elections, and the removal of restrictions on the operation of the print and broadcast media. See, *inter alia*, IMF, *Guidelines on Conditionality*, Decision No. 6056-&79/38), Sections 1-12 (March 2, 1979), in SELECTED DECISIONS OF THE INTERNATIONAL MONETARY FUND AND SELECTED DOCUMENTS 20 (1983). For a broad discussion of conditionality, see Anthony Galano III, Comment, *International Monetary Fund Response to the Brazilian Debt Crisis: Whether the Effects of Conditionality Have Undermined Brazil's National Sovereignty?*, 6 PACE INT'L L. REV. 323 (1994); AUTHORITARIANISM, DEMOCRACY AND ADJUSTMENT: THE POLITICS OF ECONOMIC REFORM (Peter Gibbon et al. eds., 1992).

115. For a background examination of the evolution and operations of the bank, see TERESA HAYTER & CATHERINE WATSON, AID: RHETORIC AND REALITY (1985); CHERYL PAYER, THE WORLD BANK: A CRITICAL ANALYSIS (1982) and Daniel D. Bradlow, *International Organizations and Private Complaints: The Case of the World Bank Inspection Panel*, 34 VA. J. INT'L L. 553 (1994).

116. See F.C. OSUNSADE, & PAUL GLEASON, IMF ASSISTANCE TO SUB-SAHARAN AFRICA (1992).

structural adjustment and institutional reform that have been implemented throughout the continent since the early 1980s.¹¹⁷ These structural adjustment programs (SAPs), variously feature the liberalization of economic controls, privatization, de-indigenization,¹¹⁸ the introduction of market-driven economic policies and the promotion of primary exports.¹¹⁹ According to one source, these policies “appear to have both worsened the economic circumstances of LIDCs [Low Income Developing Countries] and increased the desperation of those states to attract foreign capital.”¹²⁰ A related consequence has been the phenomenal upsurge in the amount of African debt.¹²¹

Initially both the Bank and the IMF were extremely reluctant to be drawn into the debate on human rights.¹²² However, through a combination of external pressure, as well as internal reform and orientation, human rights issues have come to feature in a number of different ways on the agenda of the two, albeit more so in the case of the Bank than the IMF.¹²³ On the issue of human rights, the most the Bank has been prepared to say is that while it has a clear mandate to promote economic and social rights,¹²⁴ the question of civil and political rights is an altogether different matter involving

117. See THE IMPACT OF STRUCTURAL ADJUSTMENT ON THE POPULATION OF AFRICA (Aderanti Adepoju, ed., 1993).

118. “Deindigenization” is the converse of “indigenization” which was the term coined for programs established in the early years of African independence (1960s and 1970s), that sought to involve indigenous entrepreneurs more intimately in business. It was a type of post-colonial affirmative action instituted to counteract the domination of business, trade, industry, and government either by the colonial master, or by non-indigenous communities (e.g South Asians in East Africa, and Lebanese in the West). Deindigenization thus reverses the programs of conferring such privileges on the local populace. For a good examination of the phenomenon of indigenization, see INDIGENIZATION OF AFRICAN ECONOMIES (Adebayo Adedeji, ed., 1981).

119. Sigrun Skogly, *Structural Adjustment and Development: Human Rights—An Agenda for Change*, 15 HUM. RTS. Q. 751 (1993).

120. Yemi Osinbajo & Olukonyisola Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT’L LAW. 727 (1994).

121. In the case of Uganda—one of the Bank’s “stellar” examples of success—debt rose exponentially after the commencement of the SAPs. As Mahmood Mamdani has stated, “Uganda’s debt service ratio, 18.9% in the year before the first IMF programme began (1980), leapt to 55% in the year after it ended (1985)! Current figures set the debt service ratio for 1987 at 59.6%. While the overall debt in absolute terms has remained at a little over a billion dollars for the past few years, the financial gap . . . for Uganda is continuing to grow.” Mahmood Mamdani, *Uganda: Contradictions of the IMF Program and Perspective*, 21 DEVELOPMENT & CHANGE 427, 450 (1991). Uganda’s current bilateral and commercial debt to multilateral institutions is U.S. \$2,993 million plus U.S. \$1.502 million from IBRD/IDA. *Uganda: The Challenge of Growth and Poverty Reduction*, REPORT NO. 14313-UG (World Bank, Wash. D.C.), June 30, 1995, at 4; see also WORLD BANK, 1 WORLD DEBT TABLES 1994-95: EXTERNAL FINANCE FOR DEVELOPING COUNTRIES (ANALYSIS AND SUMMARY TABLES) 498-99 (1994).

122. For good overviews of the position of both institutions on these issues, see PAYER, *supra* note 115, and HAYTER & WATSON, *supra* note 115.

123. See Katrina Tomaševski, *The World Bank and Human Rights*, in HUMAN RIGHTS IN DEVELOPING COUNTRIES: YEARBOOK 1989 75, 79-82 (Nowak & Theresa Swinehart eds., 1990). For an account of the IMF’s response on the issue, see DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 87, 59-61.

124. See Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, art. 1 (purposes), 60 Stat. 1440, 2 U.N.T.S. 134 [hereinafter IBRD].

an amendment to the Bank's founding Charter—the Articles of Agreement.¹²⁵ Instead, to the extent that the Bank will become involved in civil and political human rights, it is from the perspective of the issue of “governance,” described by the Bank's General Legal Counsel, Ibrahim Shihata, as “appropriate management of a country's resources, based upon rules, implemented by institutions, to ensure accountability.”¹²⁶ He states further that “[p]roper governance also implies predictability, and legal due process which, in turn, assumes a government of laws and not a government of men.”¹²⁷ It does not require a reading between the lines to discern that the message being articulated is that the Bank's concern with human rights extends only so far as they are relevant to the administration of loan disbursements and the implementation of its programs. In short, it takes an economistic approach to governance.¹²⁸ Thus, some extremely contradictory actions have taken place in the name of the promotion of “good” governance.

Most recently, such confusion was manifest in the case of Kenya. There, the IFDIs initially suspended aid on the ground that there were problems with Daniel arap Moi's governance of the country,¹²⁹ among which were the fact that his single-party state had remained in power for several years brooking no opposition.¹³⁰ Aid was restored following approval of economic reform measures introduced by the Kenyan government.¹³¹ These reforms, howev-

125. *Id.* Article IV, Section 10, stipulates that the Bank shall not “interfere in the political affairs of any member” and “Only economic considerations shall be relevant to their decisions. . . .” *Id.*

126. Ibrahim F.I. Shihata, *Human Rights, Development, and International Financial Institutions*, 8 AM. U. J. INT'L L. & POL'Y 27, 33 (1992).

127. *Id.*

128. A much more innovative approach to the issue is provided by Serageldin and Landell-Mills, however the study was not a reflection of the Bank's official position, even though the two both worked with the Africa Technical Department of the Bank. Despite its strong points, the paper nevertheless remains mired in an economistic view of the phenomenon of governance. See Ismaïl Serageldin & Pierre Landell-Mills, *Governance and the External Factor*, (unpublished paper presented at the *Annual Conference on Development Economics*, April 25-26, 1991) (on file with the author).

129. For an account of Moi's method of governance, see AFRICA WATCH, *KENYA: TAKING LIBERTIES* (1991).

130. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, *THE WORLD BANK: GOVERNANCE AND HUMAN RIGHTS* 56-58 (1993) [hereinafter LAWYERS COMMITTEE]. Moi discouraged opposition by harassing and banning newspapers critical of his regime, detaining their editors and reporters, and confiscating “offensive” publications. Several opposition figures were tried and detained on a variety of trumped up charges, ranging from treason to embezzlement. Control of the state-owned media prevented the airing of any alternative voice to the established “party line.” For a discussion of the human rights context in Kenya, see Makau wa Mutua, *Human Rights and State Despotism in Kenya: Institutional Problems*, 41(4) AFR. TODAY 50 (1994).

131. The measures taken by the Kenyan government included liberalization of the foreign exchange market, de-regulation of import-controls and the marketing of export crops such as coffee and tea, and the enforcement of financial sector discipline. See generally Frank Holmquist & Michael Ford, *Kenya: State and Civil Society the First Year After the Election*, 41(4) AFR. TODAY, 5, 15-18 (1994).

er, did nothing to improve civil and political human rights in Kenya. Significant human rights violations, including the stirring of ethnic tension, crackdowns on the Press and dissidents, and socioeconomic strife, continue to date.¹³² Next door in Uganda, Yoweri Museveni has maintained a heavy hand over political opposition under the framework of his so-called “no party” system of government since 1986.¹³³ Museveni’s revulsion for and suppression of political party activity is no less intense than that of his Kenyan colleague.¹³⁴ And yet, political liberalization has never been made a condition of aid, principally because Uganda swallowed the bitter IMF “pill” early on, and now enjoys a favoured position with the Bank and other Western lenders.¹³⁵ Such examples make it clear that the Bank still has a considerable distance to cover in the incorporation of a genuine civil and political human rights element in its development assistance activities.¹³⁶

While the Bank is much more willing to admit involvement in the area of economic and social rights, proclaiming them its *raison d’etre*, closer examination demonstrates that such involvement essentially translates as the

132. On this point Holmquist and Ford state, “Given Kenya’s economic and political situation and the history of Kenya’s donor relations, the 23 November 1993 decision of the Paris Consultative Group (CG) of donors to renew fast-disbursing aid appears surprising.” *Id.* See also *Renewed Repression in Kenya*, N.Y. TIMES, Apr. 8, 1995, at 16.

133. See J. Oloka-Onyango, *Constitutional Transition in Museveni’s Uganda: New Horizons or Another False Start?*, (forthcoming in 39 J. AFR. L. 1995) [hereinafter *Museveni’s Uganda*].

134. Museveni has consistently maintained that the introduction of a multiparty system in Uganda would be inappropriate, because it would simply disintegrate into ethnic strife. An unofficial ban on opposition parties has been in existence since the National Resistance Movement (NRM) regime came to power in 1986, and attempts at convening political rallies that do not have state sanction have been brutally thwarted by the security forces. See Catherine Watson, *Uganda: No to Multiparty*, AFRICA REPORT, May/June, at 24-26 (1994); E.A. Brett, *Neutralizing the Use of Force in Uganda: The Role of the Military in Politics*, 33 J. MOD. AFR. STUD. 129, 144-52 (1995); Amii Omara-Otunnu, *The Struggle for Democracy in Uganda*, 30 J. MOD. AFR. STUD. 443 (1992); and *The No-Party Price of Peace*, THE ECONOMIST, Dec. 10, 1994, at 43-44.

135. Measures taken by Uganda include deregulation of foreign exchange controls, the removal of import-restrictions, and the privatization of state-owned enterprise. See Donatella Lorch, *Ugandan Strongman a Favorite of Western Lenders*, N.Y. TIMES, Jan. 29, 1995, at 3.

136. The most recent example of this confusion has occurred with the case of Russia. In December 1994, an IMF official was reported as stating that “the IMF was not in the business of financing war loans . . .” in response to a query about whether or not credits would be extended to Boris Yeltsin. See Anatol Lieven, *Economic Black Day for Moscow*, THE TIMES (London), Apr. 13, 1995, at 9. In April this year the IMF Board approved a \$6.8 billion stand-by loan (the largest ever to Russia and the second largest in IMF history), without a whisper about the Chechnyan crisis which has disintegrated into a serious human rights problem. Even though attempts have been made to broker some kind of peace, Chechnya remains a serious human rights problem. It is quite clear that Russia is not prepared to allow for the autonomy that Chechnya seeks. Moreover, in adopting military measures to suppress the rebellion, Russia quite blatantly used overkill. Instead, the loan was justified because of IMF President Michel Camdessus’ belief in the “bold and ambitious” reforms that Russia has made. See *With Strings Attached: Russia needs IMF advice as much as IMF money*, THE TIMES (London), Apr. 13, 1995, at 15.

disbursement of ever-increasing amounts of development assistance.¹³⁷ Thus, in extolling the institution as a facilitator of the progressive realization of economic and social rights, Shihata asserts that “the World Bank is generally viewed by its members as an agency for economic development *par excellence*. The Bank’s operations have reached numerous diverse issues, including population, education, health and social security.”¹³⁸

Even if one allows certain concessions to the Bank, these are clearly undercut by the operations of its chief ally, the IMF.¹³⁹ The Bank’s relationship with the IMF plays itself out in a variety of ways, although in legal terms this is only specified in respect to cessation of membership in the IMF.¹⁴⁰ If the link between structural adjustment and the violation of civil and political rights is allegedly tenuous,¹⁴¹ the same cannot be said about its connection to the progressive deterioration in the prospects for African countries to realize the economic and social rights that the Bank is so certain it promotes.¹⁴² Thus, for example, in a recent critique of the Bank’s

137. The Bank spent U.S. \$1 billion on basic education in fiscal year 1990, and \$340 million on health care, nutrition and population between 1970 and 1979. Between 1980 and 1990 this amount increased to over \$3 billion. Shihata, *supra* note 126, at 30 n.15. The Bank has moved to incorporate human rights considerations into both the programming and operations of its projects. See, e.g., Michael M. Cernea, *The Building Blocks of Participation: Testing Bottom-up Planning*, DISCUSSION PAPER NO. 166 (World Bank, Wash. D.C. 1992). The Bank has also attempted to become less secretive with its information by establishing a Public Information Centre.

138. LAWYERS COMMITTEE, *supra* note 130, at 30.

139. For a good examination of the manner in which the IMF has insulated itself from human rights issues, see Balakrishnan Rajagopal, *Crossing the Rubicon: Synthesizing the Soft International Law of the IMF and Human Rights*, 11 B.U. INT’L. L.J. 81 (1993). For a treatment of the African context, see FREDOLINE O. ANUNOBI, *THE IMPLICATIONS OF CONDITIONALITY: THE INTERNATIONAL MONETARY FUND AND AFRICA* (1992).

140. IBRD *supra* note 124, art. VI § 3. Article VI, section 3 “Cessation of membership in the International Monetary Fund,” stipulates that, “Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.” *Id.*

141. See Morris Miller, *The Folly of Demonology: How Critics View the World Bank and Other Major International Agencies and How the Critic’s Missions Should be Viewed*, WORKING PAPER NO. 2, SERIES 12 (MacArthur Interdisciplinary Prog. on Peace and Int’l Cooperation, U. of Minn.) Jan. 1995, at 14-21. See also Joseph Gold, *The Rule of Law in the International Monetary Fund* (IMF, Wash. D.C.), 1980, at 59. Candelaria summarizes the official position by quoting IMF President, Michel Camdessus, who stated, “Nothing in our articles tells us that we have to look at the moral quality of the policies of the country. Nor do we have to consider whether the country is perfectly democratic or not.” See Sedfrey M. Candelaria, *International Responsibility of the IMF: Human Rights Standards and Stand-by Arrangements*, 1 ATENEO HUM. RTS. L. J. 113, 116 (1992) (discussing the IMF’s past financing of the South African government).

142. DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 108, at 95. Noted deteriorations have taken place in Sierra Leone, Nigeria, and Zimbabwe, particularly relating to the standard of living; freedom from hunger and access to health care. For an analysis of each situation, see JOHN WEEKS, *DEVELOPMENT STRATEGY AND THE ECONOMY OF SIERRA LEONE* (1992); DEADEND TO NIGERIAN DEVELOPMENT: AN ANALYSIS OF THE POLITICAL ECONOMY OF NIGERIA 1979-1989 (Okwudiba Nnoli, ed. 1993); and JEAN LENNOCK, *PAYING FOR HEALTH: POVERTY AND STRUCTURAL ADJUSTMENT IN ZIMBABWE* (1994) [hereinafter OXFAM REPORT].

positive self-appraisal of structural adjustment in Africa,¹⁴³ Sayre Schatz illustrates why such an assessment is fatally flawed, and characterized by either a contrariety of results, mixed findings, or a lack of a significant relationship between reform, performance and outcome.¹⁴⁴ He concludes that there are strong grounds to warrant the assertion that the evidence provided in the Bank's report fails to support the claim that its macro-economic reforms have promoted African economic growth, and may instead support the "hypothesis that their implementation has actually impeded growth in Africa."¹⁴⁵

But how exactly do Bank/IMF policies affect the realization of economic and social rights?¹⁴⁶ Commencing with a very broad purview, one can see that, in Africa, the operations of the two institutions work to undermine the right to self-determination.¹⁴⁷ This takes place in a variety of ways, ranging from the humiliating fashion in which "Paris Club" debt-rescheduling meetings take place,¹⁴⁸ to the issue of conditionality. It extends to the manner in which Bank policy has become so deeply insinuated in national policy without the concomitant accountability that usually accompanies political power.¹⁴⁹ In more specific ways, structural adjustment affects

143. WORLD BANK, *ADJUSTMENT IN AFRICA: REFORMS, RESULTS AND THE ROAD AHEAD* (1994).

144. Sayre Schatz, *Structural Adjustment in Africa: A Failing Grade So Far*, 32 J. MOD. AFR. STUD. 679 (1994). See also Douglas Rimmer, *Adjustment Blues: Review Article*, 94 AFR. AFF. 109 (1995).

145. Schatz, *supra* note 144, at 691.

146. The most conceptually clear and empirically based assessment of the impact of SAPs on economic and social rights is Danillo Türk's report to the Sub-Commission. See Special Rapporteur's Report, *supra* note 50, at 11-18.

147. *Id.* at 42. In this context, self-determination is used as the right of countries to freely pursue their economic, social and cultural development. The right to self-determination appears in article 1 of the ICCPR and the ICESCR. This fact cuts to the essence of the interdependence between both categories of human rights and this is especially relevant in respect of the issue of accountability. See Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159 (1993). For a critical examination of the contemporary context of self-determination, see J. Oloka-Onyango, *Self-Determination, Withering States and the New Millennium: Prospects and Problems for a Democratic Future* (forthcoming in 35 COLUM. J. TRANSNAT'L L. (1996)).

148. See *supra* note 31. Paris Club meetings are arranged under the auspices of the IBRD and the IMF and take place every year. The meetings involve the Minister of the country under review being called into a room of all the major creditors, and asked to justify why the debt of his or her country should be rescheduled. Such justification includes a demonstration of the measures taken to address the donor's concerns and conditions raised at the last meeting of the group, and to ensure that the donee country has complied. Failure to do so means that the debt will in all probability not be rescheduled.

149. The voting mechanisms employed in the Bank give an inordinate degree of power to those who contribute the largest amounts to the institution (the countries of the G-7); the design of the main policies implemented by the institution, is largely executed without developing country participation, and no liability attaches to the institution in the event that a policy fails. IBRD Article V (on the organization and management of the Bank) states as follows, "Section 3. Voting: (a) Each member shall have two hundred fifty votes plus one additional vote for each share of stock held. (b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast." IBRD, *supra* note 124, art. V § 3(a) & (b). See also BARTRAM S. BROWN, *THE UNITED STATES AND THE POLITICIZATION OF THE WORLD*

working conditions and the right to work through retrenchment as a result of deindigenization, privatization and the liberalization of trade controls.¹⁵⁰ The extent of available health care and its cost is severely affected by the introduction (as in Zimbabwe) of user fees, which is an additional burden on people who are already impoverished and exist largely in a subsistence economy.¹⁵¹ The nature of educational services and their accessibility is affected by the increase in fees for tuition, which affects the ICESCR provision calling for free primary education for all.¹⁵² Finally, the ability to provide food and combat overall poverty is affected by the overall concentration on export crops and the removal of subsidies for market staples.¹⁵³ Even conservative observers agree that, at a minimum, the IFDIs have the politics wrong.¹⁵⁴

All the above rights are mentioned in the ICESCR,¹⁵⁵ but SAPs work in a fashion which undermines the prospects of governments being able to

BANK: ISSUES OF INTERNATIONAL LAW AND POLICY 5-7 (1992).

150. See discussion, *supra* note 118.

151. See OXFAM REPORT, *supra* note 142, at 6-7.

152. ICESCR, *supra* note 2, art. 13.2(a).

153. For a broad discussion see Christine Chinkin & Shelley Wright, *The Hunger Trap: Women, Food and Self-Determination*, 14 MICH J. INT'L L. 262 (1993). Tomaševski points out that the Bank's policy-performance criteria determine the extent to which the recipient government can meet its human rights obligations:

The very notion [of] human rights obligations is challenged by these policy-performance criteria. They demand reductions in the expenditure aimed at the creation of conditions for the realization of rights. According to human rights treaties, human rights have a priority in public expenditure. The implementation of that obligation is rendered impossible if the Bank's performance criteria require the reduction of public expenditure aimed at the realization of human rights. These demand the reduction of the expenditure in the social sector and introduction of changes in the cost-bearing, whereby previously public services require payment by users. This, of course, excludes those unable to pay from access to essential health services or educational institutions.

DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 108, at 66-67.

154. Conservative critics accept the logic of SAPs as basically sound. See, e.g., Peter Beinart, *Out of Africa*, THE NEW REPUBLIC, Dec. 26, 1994, at 16. Such endorsement of SAPs is distinct from the majority of liberal and critical theorists who argue that the conceptualization of the programs is fundamentally flawed. Beinart states, "For years, African governments overvalued their currencies, subsidizing imports and crippling their farmer's abilities to compete internationally. As a result, between 1970 and 1990 the continent's share of agricultural exports fell from 17 percent to 8 percent. Ghana, which has stuck to the SAP reforms, has registered significantly higher growth rates than its neighbors. For twenty years population growth outstripped food production; now that trend has been reversed in SAP countries." *Id.* at 18. Such an analysis of SAPs omits a number of factors, such as the contribution of the historical and external dimension to the African economic crisis, and the fact that IGOs do not acknowledge any responsibility for the failures of the time. Lastly, rates of growth neither reflect the differentiations in benefits, nor the nature of the growth which SAPs promote. These opinions mark the distinction between conservative and liberal analyses of SAPs. Beinart nevertheless agrees that *politically*, SAPs are the wrong mechanism for achieving these objectives. *Id.*

155. ICESCR, *supra* note 2, arts. 6, 7, 11, 12, 13.

realize them.¹⁵⁶ Thus, one commentator points to the austerity measures which have prompted widespread impoverishment and pauperization, spurring riots and protests, “a vicious cycle of political authoritarianism,” and the anti-democratic inclination in the programs which leads to the installation of IMF and Bank officials in vital ministries and central banks of developing nations.¹⁵⁷ Another observer has spoken of the “deleterious consequences” of SAPs including,

a severe deterioration in the abilities of these countries to uphold the economic and social rights of their peoples. The fundamental objectives of providing education, health care, housing, and domestic control of their economies have been abandoned, since SAPs by definition result in cut backs in funding for such programs. Privatization and de-indigenization, especially when carried out in conjunction with debt-equity swaps, have created the potential for loss of indigenous control of critical areas of the economy.¹⁵⁸

It is thus quite clear that, at a minimum, there are serious problems in the design and implementation of SAPs.¹⁵⁹ Contrary to Shihata’s assertion, SAPs in fact promote the failure to “progressively realise” economic and social rights,¹⁶⁰ aside from their impact on the political context.¹⁶¹ Furthermore—whether or not this is an intended consequence—these policies, at a minimum, directly influence the failure to observe civil and political rights in Africa.¹⁶² While the Bank has taken some steps to alleviate the adverse consequences of SAPs,¹⁶³ it is clear that a rights-based and rights-sensitive

156. See ALTERNATIVE DEVELOPMENT STRATEGIES IN SUB-SAHARAN AFRICA (Frances Stewart et al. eds., 1992).

157. Alfred Zack-Williams, *Sapped Resources*, WEST AFR., Jan. 23-29, 1995, at 95.

158. Osinbajo and Ajayi, *supra* note 120, at 731 (citations omitted).

159. Cf. Margaret Conklin & Daphne Davidson, *The I.M.F. and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985*, 8 HUM. RTS. Q. 227 (1986).

160. It is interesting to note that the same results were noted in the Argentine context nearly a decade ago, illustrating that the IMF has learned little from its SAPs. *Id.* at 260-64.

161. This was clearly manifested, for example, in the protests by Nigerian academics and students over the World Bank loan to the country in the late 1980s, in which activists were detained and variously harassed. See Sabo Bako, *Education and Adjustment in Nigeria: Conditionality and Resistance*, in ACADEMIC FREEDOM IN AFRICA, 150, 171-72 (Mamadou Diouf & Mahmood Mamdani eds., 1994).

162. Danny Bradlow has argued that the broad-ranging policy dialogue forced on the Bank as a result of its expansion means that it has been turned into, “an actor in the formulation and implementation of policy in its borrower countries.” See Bradlow, *supra* note 115, at 559. Political rights are affected insofar as the policies of the Bank and Fund have evolved to determine the extent to which the right of association (trade unions), the right of assembly (workers and students) and even the political system itself (multi-party) are realized in a particular country. See generally Osinbajo & Ajayi, *supra* note 120.

163. Positive steps have been taken in relation to accountability, confidentiality, resettlement, anti-poverty, and indigenous populations. These measures include the institution of a World Bank Inspection Panel to receive complaints, resettlement schemes which are carried out in consultation with indigenous populations, and the greater facilitation of public access to Bank documentation and general activities. See generally Reginald Herbold Green, *The IMF and the World Bank in Africa: How Much Learning?*, in HEMMED IN: RESPONSES TO AFRICA’S

approach continues to elude it. Indeed, even following the wave of democratization that led to the collapse of a variety of long-standing dictatorships—from Malawi to Benin to Zambia—the Bank has still failed to change its approach to structural adjustment.¹⁶⁴ The Bank's insensitivity to the changed circumstances is evident in its failure to effectively confront the African debt problem which hangs like an albatross over any reform efforts.¹⁶⁵

2. Economic and social rights in intergovernmental and bilateral relations

a. The operations of intergovernmental organizations (IGOs): The case of UNDP

While the Bank and the IMF are the most prominent international agencies involved in the African development scene, they are by no means the only ones. A variety of other organizations, such as UNICEF, the World Health Organization (WHO) and the International Labor Organization (ILO), are directly concerned with the implementation of development in these countries,¹⁶⁶ and thus directly with the realization of economic and social rights.¹⁶⁷ Of these, UNDP¹⁶⁸ has made the most assertive attempts to link human rights and development, particularly via publication of its annual Human Development Report,¹⁶⁹ and the Index of Human Freedoms (the

ECONOMIC DECLINE 54, 71-72 (Thomas M. Callaghy & John Ravenhill eds., 1993); and Daniel Bradlow, *supra* note 115. *But cf.* Daniel Hammarschlag, *Morgan v. International Bank for Reconstruction and Development*, 16 MA. J. INT'L L. & TR. 279 (1992), for the view that the Bank still remains largely beyond sanction.

164. See Nnoli, *supra* note 142, at 219-21.

165. See David F. Gordon, *Debt, Conditionality and Reform: The International Relations of Economic Restructuring in Sub-Saharan Africa*, in Callaghy & Ravenhill, *supra* note 163, at 90, 106-11.

166. UNICEF, for example, has been the main implementing agency of the Convention on the Rights of The Child, and has issued a number of critical reports on SAPs. See, e.g., UNICEF, WITHIN HUMAN REACH: A FUTURE FOR AFRICA'S CHILDREN (1985); and I ADJUSTMENT WITH A HUMAN FACE: PROTECTING THE VULNERABLE AND PROMOTING GROWTH (Giovanni Andrea Cornia et al. eds., 1987).

167. The UN lists 22 agencies and organizations that have something to do with economic and social rights. See *The Realization of Economic, Social and Cultural Rights, Report of the Secretary General*, U.N. ESCOR, 45th Sess., Annex, Prov. Agenda Item 8, at 6, U.N. Doc. E/CN.4/Sub.2/1993/18/Add.1 (1993).

168. UNDP was established in 1966 following the merger of the UN Special Fund and the UN Technical Assistance Board. See Brian Urquhart & Erskine Childers, *Compilation of Statistical Data on UN Leadership Posts*, STATISTICAL ANNEX (Ford Found., New York/Dag Hammarskjöld Found., Uppsala, Sweden), 1990, at 7.

169. The HDR is published annually by the UNDP, and covers the overall state of human development for the past year, employing both empirical data, and theoretical frameworks to elucidate the totality of human socioeconomic existence. See, e.g., UNDP, HUMAN DEVELOPMENT REPORT: 1995 (1995).

Index),¹⁷⁰ and through articulation of the concept of “sustainable human development.”¹⁷¹ The Index represents the boldest attempt by an IGO to both quantify and rank human rights observance. Unsurprisingly, it has run into considerable criticism from both governments and academics, principally because of the sources used, and the method of assessment employed.¹⁷² Most problematic was the selective use of human rights terminology, and the quantification of only political freedoms.¹⁷³

For the 1993 Vienna Conference on Human Rights¹⁷⁴ the UNDP and the U.N. Human Rights Centre jointly prepared a document on democracy and development.¹⁷⁵ The document comprised a synopsis of UNDP work in the area—extending from a variety of peace-building measures, to electoral assistance, national capacity building, regional support, discrimination and women—illustrating an eclectic shopping basket, with little internal logic or (with the possible exception of the last two) connection.¹⁷⁶ The development of the Index and the end of the Cold War boosted hopes that the UNDP would assume a more active role in the linkage of human rights and development.¹⁷⁷ Preparations for the World Summit on Social Develop-

170. The Index of Human Freedoms was first included in the UNDP's 1991 Annual Report, and every year thereafter. See UNDP, HUMAN DEVELOPMENT REPORT: 1991 (1991).

171. “Sustainable human development” has been defined as, an approach that “focuses on people, investing in them, involving their participation and promoting equality for all; and it demands sustainability in terms of the environment, economy, society, culture and institutions, as well as inter-generational equity.” See *Foreword to the UNDP Series on SUSTAINABLE HUMAN DEVELOPMENT: COUNTRY STRATEGIES FOR SOCIAL DEVELOPMENT* (emphasis in original). The African countries so far covered in the series include Botswana, Egypt, Malawi and Sudan.

172. See Katarina Tomaševski, *A Critique of the UNDP Political Freedom Index 1991*, in HUMAN RIGHTS IN DEVELOPING COUNTRIES: YEARBOOK 1991, 3-24 (Bård-Anders Andreassen & Theresa Swinehart, eds., 1992) [hereinafter *Critique of the UNDP Political Freedom Index*]. The human freedom index was criticized in conceptual terms (i.e. that the linkage between human rights and development should not be made, since the two address different issues), and for the questionable model used, which was derived from an index that employed differential methods of weighting human rights. The source used was primarily an index developed by Charles Humana. Critics of the methodology employed, argued that Humana's index was based on information of questionable content on individual rights in specific groups of countries. Furthermore, the weighting scheme he used was arbitrary; the measurement of the magnitude of change in respect of human rights over time was overly influenced by impressionistic evaluations (such as the collapse of the Socialist regimes in Eastern Europe), and all of his “human rights” were civil and political rights. For a critique of the methodology, see Dipak Gupta et al., *Creating a Composite Index for Assessing Country Performance in the Field of Human Rights*, 16 HUM. RTS. Q. 131, 138-62 (1994); and Paul Streeten, *Human Development: The Debate About the Index*, 143 INT'L SOC. SCI. J. 25 (1995).

173. *Critique of the UNDP Political Freedom Index*, supra note 172, at 21.

174. See supra note 3.

175. *Human Rights, Democracy and Development: Lessons from the Field*, U.N. Development Programme and U.N. Center for Human Rights, U.N. GAOR, World Conference on Human Rights, June 14-25, 1993, Prov. Agenda Item 10, U.N. Doc. A/CONF.157/PC-161/Add.13 (1993).

176. *Id.*

177. Cf. Alston, supra note 47, at v.

ment further fueled this aspiration.¹⁷⁸ The Copenhagen Summit marked the return of economic and social issues to center stage.¹⁷⁹ Following Rio on the Environment,¹⁸⁰ Vienna on Human Rights¹⁸¹ and Cairo on Population,¹⁸² the Copenhagen meeting was convened in March, 1995 to consider the interconnected questions of poverty, economic security and social progress.¹⁸³ The Declaration that emerged from this conference marks the latest addition to the international documents in this genre.¹⁸⁴

Unfortunately, many observers were disappointed that human rights issues were not given more prominence and that UNDP acquiesced in this

178. UNDP was extremely optimistic about the Copenhagen Summit which it described as "a unique opportunity to redefine humanity's development agenda . . . a time to reiterate very clearly that without the promotion of people-centred development none of our key objectives can be met—not peace, not human rights, not environmental protection, not reduced population growth, not social integration." UNDP, HUMAN DEVELOPMENT REPORT: 1994, iii (1994).

179. U.S. President Bill Clinton was long reported as unwilling to attend the Summit as was British Prime Minister, John Major, reflecting the long-standing ambivalence of Western governments (irrespective of political leaning) towards issues of global justice and economic and social rights. In the event, neither leader attended. See David Osborne, *Gales of Waffle Threaten UN's Poverty Summit*, THE INDEPENDENT (London), Jan. 30, 1995, at 10. Osborne also noted that "the ambition of the summit's agenda may turn out to be in inverse proportion to its relevance," despite the attendance of over 100 heads of state at the event. *Id.*

180. See *Agenda 21: Programme of Action for Sustainable Development: The final text of agreements negotiated by governments at the United Nations Convention on Environment and Development (UNCED)*, Rio de Janeiro, Brazil (June 3-14, 1992) in AGENDA 21 AND THE UNCED PROCEEDINGS I (Nicholas A. Robinson ed. 1993).

181. *Supra* note 3.

182. See *Report of the International Conference on Population and Development*, Sept. 5-13, 1994, U.N. GAOR, U.N. Doc. A/CONF.171/13 (1994).

183. The UNDP proposed the promulgation of a World Social Charter and the creation of an Economic Security Council, none of which actually came to pass. See HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, at 5-11.

184. See *Draft Declaration and Draft Programme of Action*, U.N. GAOR, World Summit for Social Development, Mar. 6-12, 1995, Prov. Agenda Item 10, at 6, 7 and 13, U.N. Doc. A/CONF.166/L.1 (1995) [hereinafter *Draft Declaration*]. The so-called "Poverty Summit" faced considerable problems, and was at one point in danger of turning back some of the gains made with respect to women's rights, human rights in general and the participation of nongovernmental organizations in the formulation of development policies. In the final analysis, reactions to the event have been mixed, although many were glad that despite the setbacks, at least the issues of poverty and social welfare were given an airing. According to Nicholas Timmins, of the *Independent* of London, the Summit was not all talk:

There was recognition that structural adjustment programmes must protect social spending on primary education and health. . . . The 20/20 proposal by which 20 percent of aid and of national budgets would go on basic social programmes, received such an airing that it is hard to believe more countries will not try it. . . . There was the first UN call for debt cancellation, and a UK delegation official counted the summit's best achievement as the way it had 'knocked on the head' the argument that "you have to have economic development before human rights".

Nicholas Timmins, *Just Hot Air in a Cold Climate?*, THE INDEPENDENT (London), Mar. 13, 1995, at 15. The implementation of the agreed issues is of course an entirely different matter.

action.¹⁸⁵ Consequently in the “Alternative Declaration” issued by NGOs at the meeting, this problem was highlighted:

We believe that the Summit documents fail to recognize adequately the primacy of human rights as a prerequisite for a participatory and meaningful social development for all sectors of society, especially for children and such marginalized groups as people with disabilities [sic], indigenous peoples, people in occupied territories, refugees and the displaced. It also fails to note how the undemocratic nature of structural adjustment programmes undermine the rights of citizens and often leads to their repression.¹⁸⁶

The Declaration went on to decry the efforts being made at the Summit to reverse the achievements of the Vienna and Cairo summits, particularly in relation to women’s rights and in undermining “the possibilities for the kind of fundamental changes required for the creation of just societies.”¹⁸⁷

UNDP shares in the blame for the prevarication over the human rights underpinnings to development. In the first instance, the term “human rights,” continues to be selectively employed in the organization, and is yet to be programmatically incorporated into its work.¹⁸⁸ This has resulted in recourse to an elaborate lexicography which essentially avoids use of the term. Thus, phrases ranging from “sustainable development”¹⁸⁹ to the most recently-adopted “human security,”¹⁹⁰ do not fundamentally differ

185. See Statement by ECOSOC, *supra* note 80. The lack of prominence given to human rights issues is clear from their spotty appearance in the draft declaration. See *Draft Declaration*, *supra* note 184.

186. Copenhagen Alternative Document (Mar. 10, 1995) (unpublished copy circulated at Social Summit, on file with the author) [hereinafter *Alternative Declaration*].

187. *Id.*

188. See, e.g., HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178; and DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 108, at 52-56.

189. The foreword to the 1994 Human Development Report states,

Sustainable Human Development is development that not only generates economic growth but distributes its benefits equitably; that regenerates the environment rather than destroying it; that empowers people rather than marginalizing them. It is development that gives priority to the poor, enlarging their choices and opportunities and providing for their participation in decisions that affect their lives. It is development that is pro-people, pro-nature, pro-jobs and pro-women.

HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, at iii.

190. Human Security has been defined as including,

all types of security which involve human individuals and/or groups, protected or protecting against all kinds of threats found in their human environments. It refers further to all organizing principles of ‘security’ based on human nature. It finally refers to all disasters, man-made or natural, which threatens [sic] human survival. Human security is ‘human’ in terms of its reference to human actors, human nature and human environments.

Kinhide Mushakoji, *Human Security: An Attempt to Define a New Concept*, presentation summary at 20, Academic Council on the United Nations System (ACUNS) and International

from or advance the human rights approach that has been in existence for decades, except to undermine and circumvent it.¹⁹¹ Second, like the World Bank, UNDP continues to equate its work in development with the promotion of human rights, which, as already pointed out, is not necessarily the case.

The problem of conceptualization and approach is manifest in the UNDP's more recently-developed *Country Strategies for Sustainable Human Development*, which to date have covered four African countries—Botswana, Sudan, Malawi and Egypt.¹⁹² The reports are supposed to present the range and diversity of approaches by differently-situated countries to the issue of sustainable human development.¹⁹³ However, in the Sudanese report for example, there is no mention of the thirteen-year civil war, nor of the serious human rights violations that are taking place in the country.¹⁹⁴ The forced relocation of communities in Southern Sudan is a human rights issue which covers both categories of rights.¹⁹⁵ To crown it all, the report praises the government's efforts at decentralization, when it is fairly clear that this is merely a ruse to escape a democratic handling of the problem of self-determination for the peoples of Southern Sudan.¹⁹⁶ If there is a prime example of an *unsustainable* human rights scenario, it is the Sudan.¹⁹⁷

Hopefully, the UNDP will further its attempts to construct a serious and sustainable human rights approach to development, particularly in the formulation of minimum applicable standards.¹⁹⁸ This objective is partly being realized through the development of individual country human

Cooperation Research Association (ICRA) Workshop on "Human Security: Learning from Change in the United Nations," (held at the Ralph Bunche Institute on the United Nations, City University of New York, May 12-13, 1994).

191. See James Paul, *The United Nations and the Creation of an International Law of Development*, 36 HARV. INT'L L.J. 307 (1995).

192. These documents were prepared for the Social Summit and represent the diverse ways in which countries have approached the issue of "sustainable human development." The other countries covered are the Pacific Island countries, Bolivia, China, El Salvador, Guinea, Pakistan, Philippines, Turkey and the Ukraine.

193. *Id.*

194. UNDP (COUNTRY STRATEGIES FOR SOCIAL DEVELOPMENT), THE EXPERIENCE OF SUDAN: PROMOTING COMMUNITY-LED DEVELOPMENT (1994).

195. See AMNESTY INTERNATIONAL, SUDAN: 'THE TEARS OF ORPHANS': NO FUTURE WITHOUT HUMAN RIGHTS (1995). The government responded with the claim that Amnesty's report was simply an assault on Islam. See Republic of Sudan, *The Crocodile Tears: The Call by Amnesty International for the Abolition of Islamic Laws is a Flagrant Violation of the Right to Freedom of Religion*, Feb. 16, 1995.

196. See Angela Lloyd, *The Southern Sudan: A Compelling Case for Secession*, 32 COLUM. J. TRANSNAT'L L. 419 (1994).

197. See AMNESTY INTERNATIONAL, *supra* note 195.

198. The now-famous "20/20" proposition came out of the Human Development Report, but the problem may be less in the amount of allocation than in its equitable distribution and the creation of mechanisms by which such claims can be enforced. See HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, at 77 & Box 4.8.

development reports.¹⁹⁹ Furthermore, at the time of writing, a study team comprising leading specialists in the field is examining the impact of the UNDP's development activities on the enjoyment of all human rights.²⁰⁰ This is considered a necessary first step in the process of establishing an institutional framework in which the issue of human rights will be brought to bear upon the operations of the organization.²⁰¹ The UNDP must be congratulated for having introduced debate on the issue of human rights and development into intergovernmental circles. In order to be of continuing relevance to the human rights struggle, however, the linkage between human rights and development needs to be made more forthrightly a component of ongoing UNDP activity. It must also deal with the omnipotence of the World Bank/IMF approach to development, which is the factor most responsible for undermining the progressive realization of economic and social rights in Africa.²⁰²

b. Bilateral Donor Agencies (BDAs)

BDAs, such as the British Overseas Development Agency (ODA), the U.S. Agency for International Development (USAID), the Canadian International Development Agency (CIDA), and the several agencies of the Nordic countries,²⁰³ among others, have variously adopted and applied human rights standards to their programs of development assistance.²⁰⁴ A number of points can be made of the place of human rights within these organizations. First, there does not appear to be any carefully thought-out policy which is consistently applied to the management of development assistance. With only a few exceptions,²⁰⁵ policy in these institutions has in general not evolved far beyond negative conditionality—namely the policy of withdrawal of development assistance ostensibly to punish notorious human rights

199. See, e.g., *Egypt: Human Development Report 1994* (Institute of National Planning, Cairo ed., 1994); *PLANNING FOR PEOPLE: A STRATEGY FOR ACCELERATED HUMAN DEVELOPMENT IN BOTSWANA* (UNDP et al. eds., 1993).

200. According to sources at UNDP, two specialists in the area of human rights and development are working to produce a report that will be completed later in the year, and then will undergo an internal process of review and consideration. Telephone Interview with UNDP representative (Aug. 1995).

201. *Id.*

202. See *supra* text accompanying notes 114-65.

203. The Nordic country agencies are: Swedish International Development Agency (SIDA); Danish International Development Agency (DANIDA); Norwegian Agency for Development (NORAD), and Finnish International Development Agency (FINNIDA).

204. For a fair treatment of a variety of donor agencies' position on the human rights issue, see Forsythe, *supra* note 113, at 119-234.

205. The Nordic agencies, *supra* note 203, and the Australian International Development Assistance Bureau (AIDAB), would be the exceptions.

violators.²⁰⁶ Moreover, unlike the IFDIs in which there is direct (if only nominal) developing country participation in the formulation of policy, in the case of the BDAs, there is virtually none, with “consultation” appearing to be the preferred *modus operandi*.²⁰⁷ BDAs nevertheless face considerable pressure from their domestic constituencies, part of which comprise the membership of international NGOs working on the environment and human rights.²⁰⁸ Pressure from these constituencies has influenced the direction of policy within the BDAs.

A twofold problem nevertheless remains: How can the BDAs make themselves relevant to the recipients of their aid while at the same time meeting the onslaught of conservatism, retrenchment and reform that is currently apace in almost all Western countries without exception?²⁰⁹ Relevance in the eyes of aid recipients requires, at minimum, a more democratic articulation of the notions of participation and accountability beyond the purely economic (and at times overtly political) considerations that have dictated development assistance to date.²¹⁰ The dangers of conservatism, on the other hand, may lead to a re-articulation of development assistance that is even more hostile to relevant human rights issues.²¹¹ Nevertheless, the opportunities exist for a candid and comprehensive re-evaluation of the arena and of the dynamically altering contexts as we approach the 21st century. In such a paradigm, the work of international human rights groups becomes critical.²¹²

206. *The Rights Way to Development*, *supra* note 113, at 28. The Council describes current aid approaches among BDAs as characterized by negative (punitive) conditionality, conceptual abstraction and autocratic management styles. See also DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 108, at 61-86.

207. “Consultation” varies from the contracting of local experts to make a specific input to a program, to expatriate employees of the agency interviewing specified local and international experts in the field. See LAWYERS COMMITTEE, *supra* note 130.

208. Douglas Hellinger, Managing Director of the Development Group for Alternative Policies (Development GAP), *The World Bank and US AID in Africa: The Tragedy of Structural Adjustment, the Promise of Broad-based Participation*, Testimony Before the Senate Committee on Foreign Relations, Subcommittee on African Affairs (Mar. 24, 1994) (text available from Development GAP, Wash. D.C.).

209. For an examination of the issue within the United States context, see, e.g., Steven Greenhouse, *Foreign Aid Under Siege in the Budget Wars*, N.Y. TIMES, April 30, 1995, at E4; John M. Goshko, *Foreign Aid May be Early Test of New Hill Order*, WASH. POST, Nov. 21, 1994, at A14.

210. *Supra* text accompanying notes 114-65.

211. The phenomenon of aid-expenditure was used (and continues to be used) by the Republican Congress to justify several cuts to the aid-budget and to the restructuring of USAID. As Tomaševski points out in the later edition of her book on development aid, the human rights “hook” is often deployed as a scapegoat to decrease aid, in the arena of domestic politics. DEVELOPMENT AID AND HUMAN RIGHTS REVISITED, *supra* note 108, at xiii-xiv.

212. The International Centre for Law in Development (ICLD) has drawn up a Charter that seeks to hold IFDIs and BDAs more accountable. The preamble to the draft states as follows: “Development agencies which engage in development activities which impact upon social and physical environments must promote and protect the rights of those affected by these interventions. They must enact and adhere to legal measures necessary to secure this objective,

3. The place of international NGOs (INGOs)

Most international human rights NGOs were created with very specific mandates, primarily in the area of civil and political rights,²¹³ and have developed what can only be described as the “traditionalist” approach to human rights.²¹⁴ This has both its benefits and its downsides. It is beneficial in so far as it can produce significant effects with respect to the single issue under scrutiny, such as detention-without-trial, or freedom of expression. Thus an organization such as Amnesty International—arguably the most powerful human rights INGO in the world—has become a household name, and more often than not, will receive the requisite attention from governments when it wants it, and with positive results.²¹⁵ Such single-minded pursuit of an issue can be problematic, however, insofar as the wider contextual framework is concerned. Likewise, the focus on states as the primary rights-guarantors obviates a critical consideration of the wide variety of extra-state actors—ranging from guerilla groupings to multinational corporations, and from development agencies to arms dealers²¹⁶—who have come to impact upon, and influence the range and extent of observation or violation of human rights.²¹⁷ Finally, the growing complexity of the field

and be held accountable for the discharge of that duty.” *Charter to Secure Human Rights in Development Processes and to set out the Human Rights Obligations of Development Agencies*, pmb. and premise, para. 1(b), reprinted in James Paul, *Incorporating Human Rights into the Work of the World Summit for Social Development*, ISSUE PAPERS ON WORLD CONFERENCES, NO. 3 (Am. Soc. Int’l L., Wash. D.C.), Feb 1995, app.

213. For example, the Human Rights Watch group is concerned with a broad range of human rights violations, ranging from incarceration without trial to the condition of refugees; Amnesty International struggles for the abolition of the death penalty and the release of persons imprisoned for their political beliefs (“prisoners-of-conscience”); groups such as the Anti-Slavery Society work for the abolition of all forms of bondage, which extend from child labour to prostitution; and Article 19 is devoted to the eradication of restrictions on freedom of expression and the fluid operation of the media.

214. The “traditionalist approach” refers to selecting a particular issue (e.g. detention-without-trial), or concentrating on the violation of a particular civil or political mandate (e.g. freedom of movement; right to free speech) in isolation from the economic, social and cultural conditions that give rise to such violations. (e.g. adequate standard of living, right to food, right to shelter). It also means the exclusive focus on civil and political rights, without any attention to economic, social and cultural rights.

215. See Peter R. Baehr, *Amnesty International and its Self-imposed Limited Mandate*, 12 NETH. Q. HUM RTS. 5 (1994). Amnesty International can claim responsibility for the release of thousands of “prisoners-of-conscience,” and was instrumental in convincing a number of countries (Namibia and South Africa among them) to outlaw the death penalty in their Constitutions.

216. In this way, the Arms Project of Human Rights Watch breaks important ground. See *Arming Rwanda: The Arms Trade and Human Rights Abuses in the Rwandan War* (Hum. Rts. Arms Project, Wash. D.C.), Jan. 1994.

217. See Shadrack B.O. Gutto, *Non-governmental Organizations, People’s Participation and the African Commission on Human and Peoples’ Rights: Emerging Challenges to Regional Protection of Human Rights*, in HUMAN RIGHTS IN DEVELOPING COUNTRIES: YEARBOOK 1991, *supra* note 172, at 33. Sahn and Sarris are among those who caution against a dismissal of the state, and urge a reconsideration of its functions:

While there is strong evidence that the absence of the state improves matters as regards many economic activities, there nevertheless remain appropriate areas for state

illustrates the links between structures and practices in the civil and political arena, and economic, social, and cultural factors and conditions.²¹⁸ In sum, the broader structural questions that facilitate the violation of civil and political rights as yet remain beyond critical scrutiny and action. Clearly, there is more to be done in articulating an integrated, long-term approach to the issue.

A few organizations which are better known for work in civil and political rights have made sporadic forays into the economic and social arena, or at least attempted to forge a link between the two.²¹⁹ In this respect, the excellent report on the World Bank by the Lawyers Committee for Human Rights marked an important and essential break-through for an organization that has been involved in traditional human rights work.²²⁰ It illustrates that such issues can be taken on and accommodated even within a "traditional" human rights framework.²²¹ However, even as the Report made efforts to move away from the traditional focus of the Committee, its primary area of

involvement that have heretofore either been neglected or not well understood. For example, government ministries and departments have legitimate rôles in agricultural research, in the collection and dissemination of market information, in extension services, in targeted transfers to the poor, in infrastructure development and maintenance and so forth. The challenge, therefore, is to make sure that such essential tasks are performed and/or promoted by the state as efficiently and with as little corruption as possible.

David E. Sahn & Alexander Sarris, *The Evolution of States, Markets and Civil Institutions in Rural Africa*, 32 J. MOD. AFR. STUD. 279, 299-300 (1994).

218. Women's human rights is the most illustrative of this connection, although it is also manifest in the arena of humanitarian assistance and relief work. See Adetoun Ilumoka, *African Women's Economic, Social and Cultural Rights: Toward a Relevant Theory and Practice*, in HUMAN RIGHTS OF WOMEN, *supra* note 32, at 307. On the latter, see *The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies*, STATEMENT (Task Force on Ethical and Legal Issues in Humanitarian Assistance, Prog. on Humanitarian Assistance, World Conf. on Religion and Peace, New York, N.Y.), Feb. 1994.

219. Needless to say, these have not been abundant. See, e.g., HUMAN RIGHTS WATCH, *INDIVISIBLE HUMAN RIGHTS: THE RELATIONSHIP OF POLITICAL AND CIVIL RIGHTS TO SURVIVAL, SUBSISTENCE AND POVERTY* (1992). One major human rights organization that has done a significant amount of general human rights work is the International Committee of Jurists (ICJ). Created specifically to uphold the rule of law and the legal protection of human rights, the ICJ has been fairly prominent in the area of economic, social and cultural rights. See HOWARD B. TOLLEY, JR., *THE INTERNATIONAL COMMISSION OF JURISTS: GLOBAL ADVOCATES FOR HUMAN RIGHTS* 137-242 (1994).

220. Reports by the Lawyers Committee include: *BROKEN LAWS, BROKEN BODIES: TORTURE AND THE RIGHT TO REDRESS IN INDONESIA* (1993); JAMES ROSS, *CAMBODIA, THE JUSTICE SYSTEM AND VIOLATIONS OF HUMAN RIGHTS*; *CRISIS IN CROSSROADS: A REPORT ON HUMAN RIGHTS IN SOUTH AFRICA* (1988); the annual *CRITIQUE OF DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES*, and *HAITI: A HUMAN RIGHTS NIGHTMARE* (1992).

221. LAWYERS COMMITTEE, *supra* note 130.

attention was civil and political rights, and in particular the evolving phenomenon of "governance."²²²

The focus on the Bank was also justified in terms of U.S. foreign policy.²²³ Thus, although reference is made to the Declaration on the Right to Development and the ICESCR,²²⁴ the Report stops short of developing a conceptual framework for a concise examination of the issue of governance in relation to the phenomenon of economic and social rights.²²⁵ The report assumes (and thereby implicitly endorses the Bank's position), that there are no problems with respect to the impact of the operations of the Bank on economic and social rights.²²⁶ Such a view simultaneously exposes the haunting influence of the dominant traditionalist human rights perspective.²²⁷ Governance as conceptualized by the Bank not only pursues a narrow interpretation of civil and political rights, it also obviates any serious consideration of the question of economic and social rights.²²⁸ The Lawyers Committee has since developed its program of monitoring the Bank and other international financial institutions, and recently released a comprehensive study of the Bank's operations in Indonesia.²²⁹

At the present time, there are only a handful of INGOs that consider the issue of economic and social rights in any sustained and critical fashion. Among them are groups such as the Development Group for Alternative

222. *Id.* at 43-60. The Lawyers Committee adopts a definition of governance as defined by Joan Nelson:

[It] requires efficient and honest institutions staffed with well-trained people, enforcing the rule of law impartially and effectively. In order to have honest agencies that serve the public interest, transparency is crucial (including collection and dissemination of much fuller information, and a free press). So is accountability (including ways to throw the rascals out). The channels for transparency and accountability require a broad array of vigorous nongovernment associations. A well-developed civil society, in turn, requires not only strong associations but good communications and channels for conflict resolution and growing trust among the varied groups.

Joan M. Nelson *Comment on 'Governance and Development,' by Boeninger, in PROCEEDINGS OF THE WORLD BANK ANNUAL CONFERENCE ON DEVELOPMENT ECONOMICS 1991*, 289, 292-93 (1992).

223. On U.S. foreign policy, see LAWYERS COMMITTEE, *supra* note 130, at 3, 30-31.

224. *Id.* at 33-35.

225. *Id.* at 34-37.

226. *See id.* at 34.

227. *Id.* at 34, the Report states, "In several respects, the World Bank has given greater recognition to the ICESCR. . . . The very objectives of economic and social rights are to a great extent also the subject of economic development." *Id.* *See supra* text accompanying notes 114-65.

228. *See IBRD, supra* note 124, art. VI § 10.

229. *In the Name of Development: Human Rights and the World Bank in Indonesia*, JOINT REPORT (Lawyers Comm. for Hum. Rts./Inst. for Pol'y Research and Advocacy, New York, N.Y.), July 1995.

Policies (Development GAP),²³⁰ the International Centre for Law in Development (ICLD)²³¹ and the more recently established Centre for Economic and Social Rights (CESR).²³² A number of groups that have been involved in traditional humanitarian and relief work, such as Oxfam, have also found themselves turning increasing attention to economic and social issues from a rights perspective.²³³ This has resulted primarily from an appraisal of the devastating consequences of SAPs.²³⁴ In the process they are discovering that governments are no less sensitive to criticism in this sphere than they are to the condemnation of their records in the arena of civil and political rights.²³⁵ However, as Weiss et al. have pointed out,

Most NGOs working for adequate food, clothing, shelter, and health care, conducted humanitarian rather than human rights programs. This meant that NGOs such as Oxfam were oriented more toward practical results in a country based on humanitarian concerns and oriented less toward lobbying for socioeconomic rights through the Committee of Individual Experts.²³⁶

The growing complexities of the humanitarian scene, particularly since the crises in a variety of collapsing African states (Liberia, Somalia and Rwanda among them), has led to entirely novel issues which relate to the interface between human rights, humanitarian assistance, refugee protection and development.²³⁷ As yet, there has not been a lucid and comprehensive approach to the question.²³⁸ It goes without saying that this is among the most vexing issues of the present time, requiring not only comprehensive

230. See the group's flagship report, *AID FOR JUST DEVELOPMENT* (Stephen Hellinger, et al. eds., 1988).

231. The ICLD considers itself more of a "think-tank" than a human rights organization proper, insofar as it concentrates much more on advancing intellectual inquiry and discourse than it does on advocacy. Interview with Clarence Dias, New York, Apr. 5, 1995. Nevertheless, ICLD work has considerable influence in the field of development and human rights.

232. CESR was established in 1993 and its most recent publication is on health and environmental damage in Ecuador. See *Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development*, REPORT (Center for Economic and Social Rights, Wash. D.C.), Mar. 1994.

233. See, e.g., OXFAM REPORT, *supra* note 142. The process is slow, however. In this otherwise excellent report, the phrase "human rights" is never mentioned.

234. Cf. text accompanying *supra* notes 114-65 critiquing the Bank's position on these rights.

235. See Michael Holman, *Zimbabwe May Tell Oxfam to Leave*, FINANCIAL TIMES (London), Oct. 28, 1994, at 4.

236. WEISS, ET AL., *supra* note 67, at 139.

237. Cf. Constantinos Berhe-Tesfu, *Humanitarian Action, Preventive Diplomacy and Advocacy: The Emerging Role of CBOs and NGOs*, paper presented at the UNHCR/OAU Symposium on Refugees and Forced Population Displacements in Africa (Sept. 8-10, 1994) (on file with the author).

238. This point is made, albeit in somewhat anarchistic fashion, by African Rights. See *Humanitarianism Unbound?: Current Dilemmas Facing Multi-Mandate Relief Operations in Political Emergencies*, DISCUSSION PAPER (African Rights, London) Nov. 1994, at 28-39.

study, but holistic approaches as well—approaches that must bravely and in practical terms, confront the needs of the African context.²³⁹

II. ECONOMIC AND SOCIAL RIGHTS IN AFRICA: A REPRISE

There is little need to restate the fact that economic and social rights suffered as badly in the colonial epoch as did rights of a civil and political nature.²⁴⁰ To the extent that any attention was paid to issues such as health and sanitation, shelter, working conditions, and the protection of indigenous cultures, these were largely deemed to flow from the largesse of the colonial master, rather than from the rights of the colonial subject.²⁴¹ As an extractive system, colonialism was primarily concerned with how much it could remove and transport to metropolitan industry in terms of material (and initially) human resources.²⁴² Figures relating to expenditure on defence and other coercive aspects of the state far outstripped those on any social service.²⁴³ Discriminatory and apartheid-like policies in virtually every colonial enclave ensured that the indigenous populace benefitted only partially from any of the developments of the time.²⁴⁴ As it was based on a system of extra-economic coercion, colonialism obviously had little time for the recognition of rights that would threaten or undermine this objective.²⁴⁵

Against such a background, the policies of independent African countries have in general been rather puzzling, even for those countries that were ostensibly more committed to the realization of economic and social rights, and were not simply paying lip-service to the notion.²⁴⁶ The puzzlement is lessened if one considers the fact that economic development was largely viewed as a right of the State, abstracted from the individuals who constituted

239. See, e.g., James Paul's suggestions on how to begin making international development actors more accountable to the people. James C.N. Paul, *Law and Development into the 1990s: The Need to Use International Law to Impose Accountability to People on International Development Actors*, 1992 THIRD WORLD LEGAL STUD. 1.

240. For a critical examination of this aspect of colonialism, see Jan Breman, *The Civilization of Racism: Colonial and Post-colonial Development Policies*, in IMPERIAL MONKEY BUSINESS: RACIAL SUPREMACY IN SOCIAL DARWINIST THEORY AND COLONIAL PRACTICE 123 (Jan Breman et al. eds., 1990).

241. See FÜREDI, *supra* note 11; WALTER RODNEY, HOW EUROPE UNDERDEVELOPED AFRICA (1972); BASIL DAVIDSON, THE BLACK MAN'S BURDEN: AFRICA AND THE CURSE OF THE NATION-STATE (1992).

242. See LESLIE, *supra* note 5.

243. See, e.g., RAMKRISHNA MUKHERJEE, THE PROBLEM OF UGANDA: A STUDY IN ACCULTURATION 161-66 (1956).

244. See, e.g., *id.* at 130-33.

245. See FÜREDI, *supra* note 11.

246. Countries that originally manifested a serious commitment to the idea of economic and social rights were Tanzania, Angola, and Libya. See JULIUS K. NYERERE, FREEDOM AND SOCIALISM [UHURU NA UJAMAA]: A SELECTION FROM WRITINGS AND SPEECHES 1965-1967 (1968) (On Tanzania); KEITH SOMERVILLE, ANGOLA: POLITICS, ECONOMICS AND SOCIETY (1986), and LIBYA SINCE INDEPENDENCE: ECONOMIC AND POLITICAL DEVELOPMENT (J.A. Allan ed., 1982).

it.²⁴⁷ This was the veneer assumed by most African polities following the honeymoon of independence, and widely shared irrespective of ideological outlook.²⁴⁸ Thus according to Harry Scoble,

Whether the development scheme is formally state capitalism or socialism, the socialized investment function is controlled by the single party (or the “apolitical” military). Top-down planning is the rule. The individual has a right only to be “developed” at a pace and in a manner determined by the political elite; the individual has no right to participate in or to influence this development process—only a distant future right to contingent benefits.²⁴⁹

In this sense, the State was the ‘people.’ Both individuals and communities within the post-colonial State were subsumed in this artificial and unyielding geopolitical construct, a point sanctified in the OAU’s rigid position on the question of national boundaries.²⁵⁰ In this perverse way, independence constituted the second and more deadly ‘partition’ of Africa as what had hitherto been relatively autonomous communities were forcefully amalgamated and frozen within the sovereign nation-State.²⁵¹ A look at the operation of the premier institution for African liberation and solidarity will illustrate this and several other points relevant to the present inquiry.

247. Sakah Mahmud asserts: “Although claimed in the name of African ideals, collective rights serve state interests as well as the few who control state resources. Indeed, most violations of human rights are often against those who speak out against the corrupt use of state resources. Those in power resist democratization for similar reasons.” Sakah S. Mahmud, *The State and Human Rights in Africa in the 1990s: Perspectives and Prospects*, 15 HUM. RTS. Q. 485, 493 (1993).

248. The most striking illustration of this can be found in the contrasting examples of Kenya and Tanzania. While both professed adherence to the notion of “African socialism,” the latter pursued avowedly socialist programs, while the former was for long an exemplar of the capitalist system on the African continent. See Kibuta Ong’wamuhana, *Party Supremacy and the State Constitution in Africa’s One-Party States: The Kenya-Tanzania Experience*, 1988 THIRD WORLD LEGAL STUD. 77.

249. Scoble, *supra* note 21, at 199.

250. Charter of the Organization of African Unity, art. III, reprinted in 58 AM. J. INT’L L. 873, 874 (1964) [hereinafter OAU CHARTER]. The OAU has maintained the position that the borders inherited at colonialism (albeit inadequate and arbitrarily drawn) must be maintained in order to avoid bloodshed, fragmentation and economic disorder. For a good treatment of the issue of *uti possidetis*, see J. Klabbers & R. Lefebvre, *Africa: Lost Between Self-determination and Uti Possidetis*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 37 (Catherine Brölmann et al. eds., 1993).

251. See Mahmood Mamdani, *The Social Basis of Constitutionalism in Africa*, 28 J. MOD. AFR. STUD. 359, 367 (1990).

A. The OAU and Human Rights

1. A Background Note

Despite the socioeconomic and cultural legacy of colonialism, the OAU focused primarily at the political conditions of the newly-independent states of the continent.²⁵² Following Kwame Nkrumah's famous dictum, "seek ye first the political kingdom," a two-pronged thrust was developed.²⁵³ This was concerned, on the one hand, with the fragility of the new States and on the other, with the emancipation of the continent's unliberated colonies.²⁵⁴ The main concern of the time was the eradication of imperial domination and the complete liberation of the continent.²⁵⁵ As a consequence, the *Charter of the Organization of African Unity* makes only scant reference to the "welfare and well-being" of the African peoples.²⁵⁶ There is no detailed elaboration of any rights save for those of member States. The Charter places a particular emphasis on sovereign integrity and non-interference in the domestic affairs of member States.²⁵⁷ The primary focus of the OAU Charter is solidarity and cooperation.²⁵⁸ While reference is made to the *Universal Declaration*,²⁵⁹ there is scant attention to human rights principles as such, although general OAU policies were to be directed toward a variety of activities that could be said to have human rights implications.²⁶⁰ Thus upon creation, the OAU established five specialized Commissions,²⁶¹ of which two, the Economic and Social Commission and the Educational and Cultural Commission had the brief for economic and social issues.²⁶²

The emphasis of the OAU over the first twenty years of its existence was political liberation, inter-State conflict resolution and State-oriented economic

252. GINO NALDI, *THE ORGANIZATION OF AFRICAN UNITY: AN ANALYSIS OF ITS ROLE* 3-14 (1989).

253. For the background to the establishment of the OAU, see FELIX CHUKS OKOYE, *INTERNATIONAL LAW AND THE NEW AFRICAN STATES* 121-25 (1972).

254. See C.O.C AMATE, *INSIDE THE OAU: PAN-AFRICANISM IN PRACTICE* (1986).

255. ČERVENKA, *supra* note 38, at 22-45.

256. See OAU CHARTER, *supra* note 250, pmb. (note especially paras. 3 & 10).

257. *Id.* art. III.

258. Edward Kannyo, *The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background*, in Welch & Meltzer, *supra* note 21, at 128, 130-36.

259. *Id.* Cf. OAU CHARTER, *supra* note 250, pmb. & art. III.

260. *Id.* art. II § 2. These activities included cooperation in the areas of education and culture (section 2(c)), and health, sanitation and nutritional cooperation (section 2(d)). Cf. *id.* art. III, § 2.

261. See *id.* arts. XX, XXI and XXII.

262. For a general discussion of the OAU's Specialized Commissions, see TASLIM OLAWALE ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* 144-46 (1988).

cooperation and development.²⁶³ The principal right to which the OAU initially directed its attention was the right to self-determination of colonial States.²⁶⁴ In the third decade of its existence, from the early 1980s to the 1990s, this focus narrowed to the twin phenomena of Namibian independence and the liberation of *apartheid* South Africa.²⁶⁵ Individuals and communities did not feature in this paradigm of self-determination,²⁶⁶ which explains the OAU's underlying hostility to movements such as those in Biafra²⁶⁷ and Eritrea²⁶⁸ that sought to challenge the notion of the inviolability of inherited borders.²⁶⁹ In this context, it is not surprising that military dictatorships and single-party governments abounded, allowing for only a limited degree of recognition and respect for human rights on the domestic front.²⁷⁰ This produced the paradoxical situation in which the 1960s through the 1980s were simultaneously the period of Africa's greatest liberation, and its most brutal suppression. Thus the lament of the organization's newest member—Eritrea's Isias Afeworki—at the 30th anniversary summit meeting in June, 1993, is quite understandable,

Although the OAU has often championed the lofty ideals of unity, cooperation, economic developments, human rights and other worthy objectives, it has failed seriously to work towards their realisation. . . . Thirty years after the foundation of this organisation our continent remains affected by growing poverty and backwardness. . . . The African continent is today a marginalized actor in global politics and the world economic

263. An exception could be said to be the OAU's response to the refugee question, the normative expression of which is found in the 1969, OAU Convention Governing the Specific Aspects of the Refugee Problem, Sept. 10, 1969, 1001 U.N.T.S. 45 (entered into force June 20, 1974) [hereinafter OAU Refugee Convention]. However, despite the extremely broad and liberal definition of the term "refugee" in this document, it clearly favored the principles of non-interference and the maintenance of the fragile security of the new states.

264. S. Kwaw Nyameke Blay, *Changing African Perspectives on the Right of Self-determination in the Wake of the Banjul Charter on Human and Peoples Rights*, 29 J. AFR. L. 147, 149-53 (1985).

265. The contribution of the OAU and the Frontline states to the eventual liberation of the continent cannot be denied. However, as the organization itself admitted, such attention to liberation over shadowed other questions such as the observation of human rights.

266. See R. McCorquodale, *Self-determination beyond the colonial context and its potential impact on Africa*, 4 AFR. J. INT'L & COMP. L. 592 (1992).

267. Blay, *supra* note 264, at 151.

268. Minasse Haile, *Legality of Secession: The Case of Eritrea*, 8 EMORY INT'L L. REV. 479, 504-05 (1994).

269. OAU hostility to these movements is enshrined in Art. II 1(c) of the OAU Charter, which commits the organization "to defend their [African states] sovereignty, their territorial integrity and independence." Article III (3) stipulates that OAU members "solemnly affirm and declare their adherence [to the principle of] respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence." See also Malcolm Shaw, *International Law and Intervention in Africa*, 8 INT'L REL. (London) 341 (1985).

270. See Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339 (1995).

order. Africa is not a place where its citizens can walk with raised heads, but a continent scorned by all its partners.²⁷¹

To the extent that there were any achievements on the front of economic development, these have been largely sporadic and limited to individual countries.²⁷² Nowhere, however, not even in the most affluent of states, has there been a concerted effort to establish a regimen that sought to view such issues as rights.²⁷³

2. The Question of Refugees

In the sphere of refugees, the OAU fared somewhat better, recognizing early on that the plight of this vulnerable category of people was in need of urgent protection.²⁷⁴ Hence, in 1969 the organization promulgated the *Convention on the Specific Aspects of Refugees in Africa*,²⁷⁵ albeit over some initial resistance and prevarication.²⁷⁶ While the intention of the 1969 Convention was to complement its international counterpart—the earlier 1951 United Nations Convention²⁷⁷—it is especially renowned for its definition of the term “refugee”²⁷⁸ which is significantly more expansive than the

271. From speech by Isias Afeworki at the OAU Annual Summit of Heads of State and Government, *quoted in* Bernard Levin, *The Hearts of Darkness*, THE TIMES (London), Aug. 24, 1993, at 14. Afeworki was elected President of Eritrea in 1993. Afeworki was not the first (and probably not the last) African leader to criticize the organization. He was preceded by two Ugandan leaders—Godfrey Binaisa and Yoweri Museveni. The former came to power following the ouster of Idi Amin in 1979, the latter ascended to power in 1986 on the back of a guerilla uprising which witnessed significant bloodshed and turmoil.

272. A few countries, like Mauritius and Botswana were largely able to sustain an impressive rate of economic growth and development. In the 1994 Human Development Index, Mauritius ranked first among all African countries (60 overall) and Botswana fourth (with a ranking of 87 overall). See HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, Hum. Dev. Index Tbl. 1, 129-131.

273. See Mahmud, *supra* note 247, at 494. At the turn of the decade, however, several African countries underwent political reform, debunking the single-party dictatorships that had been in power for decades. While there are some successful transitions to cite (such as Malawi and Zambia), there have also been several disappointments. See Jan Kees van Donghe, *Kamuzu's Legacy: the Democratization of Malawi*, 94 AFRICAN AFFAIRS 227 (1995); *Zambia: Life After Debt*, THE ECONOMIST, July 1, 1995, at 34.

274. See SAM. A. AIBONI, PROTECTION OF REFUGEES IN AFRICA 1-5 (1978).

275. OAU Refugee Convention, *supra* note 263. For an analysis of the background to the promulgation of the Convention, see Joe Oloka-Onyango, *Plugging the Gaps: Refugees, OAU Policy, and the Practices of Member States in Africa*, ISSUE PAPER (U.S. Comm. for Refugees, Wash. D.C.), Oct. 1986.

276. See AMATE, *supra* note 254, at 460-65.

277. UN Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (entered into force on Apr. 22, 1954); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223 (incorporating the text of the Convention Relating to the Status of Refugees) [hereinafter Geneva Convention on Refugees].

278. The OAU Convention defines a refugee as; “every person who, owing to external aggression, occupation, foreign domination or events seriously disrupting public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” OAU Refugee Convention, *supra* note 263, art. 1. See also J. Oloka-Onyango,

definition adopted in the earlier instrument.²⁷⁹ Many commentators have asserted that this is due to traditional “African hospitality.”²⁸⁰ The situation on the ground however, does not always quite conform to such a description.²⁸¹ Some observers describe this attitude towards the African refugee situation as ethnocentric and playing directly into Western desires and current designs in the field of immigration policy.²⁸²

With respect to human rights, the 1969 Convention was equivocal. While Article IV prohibits discrimination against all refugees on the grounds of race, religion, nationality, membership of a particular social group or political opinion, it did not go as far as providing a catalogue of specific rights for refugees.²⁸³ The Convention was more sensitive to the maintenance of harmonious relationships *between* African states, than it was to the

Human Rights, the OAU Convention and the Refugee Crisis in Africa: Forty Years After Geneva, 3 INT’L J. OF REF. L. 453 (1991).

279. A refugee is any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or, owing to such fear, is unwilling to return to it.” Geneva Convention on Refugees, art. 1 para. 2. *supra* note 278. See Eduardo Arboleda, *Refugee Definition in Africa and Latin America: The Lesson of Pragmatism*, 3 INT’L J. OF REF. L. 185, 194-95 (1991).

280. See Art Hansen, *African Refugees: Defining and Defending their Human Rights*, in HUMAN RIGHTS AND GOVERNANCE IN AFRICA 139, 153 (Ronald Cohen et al. eds., 1994). African “traditional hospitality” is described as the belief in African brotherhood and the notion “I am because we are, and because we are, therefore I am.” See Shashi Tharoor, *The Universality of Human Rights and the Relevance to Developing Countries*, 60 NORDIC J. INT’L L. 139, 142 (1991).

281. See GAIM KIBREAB, *AFRICAN REFUGEES: REFLECTIONS ON THE AFRICAN REFUGEE PROBLEM* (1985) (especially chapter 4). The reasons for such growing inhospitality are several, ranging from a rise in xenophobia, to the environmental, social, and economic impact of hosting refugees. In addition, the growth of “donor fatigue” with the seemingly interminable crises in Africa, has led to a marked reduction of assistance to both governments and refugees. The situation is often complicated where there is a civil conflict and the host government is supporting one faction against another. See, e.g., Howard French, *At Border: Hospitality Comes to Grief*, N.Y. TIMES, July 24, 1995, at A5.

282. Chris Bakwesegha, *Forced Migration and the OAU Convention*, in *AFRICAN REFUGEES: DEVELOPMENT AID AND REPATRIATION*, 3, 13 (Howard Adelman & John Sorenson, eds., 1994). Western governments are tightening their borders, particularly to so-called “economic migrants,” who emanate mainly from the countries of the South. These policies have a direct impact on those seeking asylum. However, Western governments use the “traditional hospitality” argument to assert that the regional mechanism for refugee applicants in Africa is adequate and sufficient to cater to the needs of a person fleeing persecution in the region. Therefore, why should they flee such a “hospitable” environment? See *id.* (pointing out that the arguments of aid reduction etc., using the “traditional hospitality” argument as an excuse, are being advanced when “some European countries are not only tightening their immigration laws but also flagrantly violating the 1951 UN Convention”).

283. Cf. Geneva Convention on Refugees, *supra* note 277, chs. II, III, and IV.

rights of refugees as such.²⁸⁴ Hence, it could be asserted that the OAU Convention was protective of refugees *qua* refugees by default, rather than by design.²⁸⁵ It remains a fact that discrimination against refugees has been one of the most enduring problems of the African refugee scene.²⁸⁶ Furthermore, one of the most contentious issues with regard to the African refugee question has been the recognition that they too have rights,²⁸⁷ a fact that is vividly demonstrated in the refugee crises afflicting Africa today, and the nature of the OAU response to them.²⁸⁸

It was not until 1981 and the promulgation of the *Banjul Charter* that the OAU gave normative recognition to the individual and to 'peoples' as the subjects of rights.²⁸⁹ Nineteen eighty-one also coincided with the publication of the OAU's most elaborate program on social and economic development—the *Lagos Plan of Action (LPA)*.²⁹⁰ The LPA was designed to propel the continent into the 21st century with the establishment of an African Economic Community (AEC) by the year 2000.²⁹¹ In 1989, the Economic Commission for Africa (ECA) released the *African Alternative*

284. The UNHCR makes the same point in a rather more subtle and diplomatic fashion, pointing out that beyond filling the gaps left by the 1951 Convention, the OAU was more concerned about several other matters, including the issue of "subversion." The prohibition against "subversive activities" is part of the duties contained in Article III of the OAU Refugee Convention. See UNHCR, *Issues and Challenges in International Protection in Africa*, INT'L J. REFUGEE L. (Special Issue) 55, 58 (July 1995). Although not defined, the meaning of "subversive activities" is largely taken to mean the use of arms against the home government of the refugee, with a particular emphasis on the issue of armed attacks. For an examination of the broader dimensions of the issue of "subversion," see LAWYERS COMMITTEE FOR HUMAN RIGHTS, *AFRICAN EXODUS: REFUGEE CRISIS, HUMAN RIGHTS AND THE 1969 OAU CONVENTION*, 10-11, 31, 91-92 (1995).

285. Several individual states enacted legislation that affirmed the equality of refugees and proceeded to confer on them a variety of rights which go beyond the Convention. Cf. Peter Nobel, *National Law and Model Legislation on the Rights and Protection of Refugees in Africa*, in *AFRICAN REFUGEES AND THE LAW* 58, 73 (Goran Melander & Peter Nobel, eds., 1978).

286. AIBONI, *supra* note 274, at 76-81, 83-107, and Roger Winter, *Ending Exile: Promoting Successful Reintegration of African Refugees and Displaced People*, in Adelman & Sorenson, *supra* note 282, at 159-71. Examples of discrimination against refugees include restrictions on their freedom of movement, rights of association, and their liberty to express themselves through the media.

287. This is especially the case with respect to economic and social rights. See Gaim Kibreab, *Refugees in the Sudan: Unsolved Issues*, in Adelman & Sorenson, *supra* note 282, at 62-63.

288. This is most acutely reflected in the woeful status of the Bureau for Refugees at the OAU Secretariat, which is supposed to be the principle agency for refugee issues on the continent. In particular, it is manifest in the greatly diminished attention devoted to protection issues. See also J. Oloka-Onyango, *The Place and Role of the OAU Bureau for Refugees in the African Refugee Crisis*, 6 INT'L J. REF. L. 34, 47-49 (1994).

289. For a detailed discussion of the various meanings of the term 'peoples' as used in the African Charter, see Richard N. Kiwanuka, *The Meaning of "People" in the African Charter on Human and Peoples' Rights*, 82 AM. J. INT'L L. 80 (1988).

290. LPA, *supra* note 40.

291. See generally *AFRICAN ECONOMIC COMMUNITY: ISSUES, PROBLEMS AND PROSPECTS* (M.A. Ajomo & Omobola Adewale, eds., 1993).

*Framework to Structural Adjustment Programmes (AAF-SAP)*²⁹²—intended as the African reply to the stringent austerity measures imposed by the IMF, which commenced in the early 1980s. Together, the three documents provide a basis from which to arrive at a more complete picture of the approach to economic and social rights from the continental perspective. We begin with an examination of the first, the Banjul Charter.

B. Economic and Social Rights in the Banjul Charter

1. The Normative Framework

The Banjul Charter, which has often been extolled as a unique conceptualization of the notion of human rights,²⁹³ contains several provisions on economic and social rights.²⁹⁴ It also has a number of newly-codified rights, such as the right to development,²⁹⁵ the right to peace,²⁹⁶ and the right to a healthy environment,²⁹⁷ marking itself out as the first international instrument to enshrine such rights.²⁹⁸ The preamble to the Charter clearly demonstrates where the emphasis of the document lies, stipulating that it was *henceforth essential* to pay particular attention to the right to development, and that civil and political rights *cannot be dissociated* from

292. African Alternative Framework to Structural Adjustment Programmes for Socio-Economic Recovery and Transformation, U.N. Economic Commission for Africa, U.N. Doc. E/ECA/CM.15/6/Rev.3 (1989) [hereinafter AAF-SAP].

293. Rose M. D'Sa, *Human and Peoples' Rights: Distinctive Features of the African Charter*, 29 J. AFR. L. 72 (1985).

294. Banjul Charter, *supra* note 39, arts. 14, 15, 16 & 17. Article 18 concerns the family and contains the only affirmative provision in an international instrument compelling the state to ensure the elimination of all discrimination against women, thereby collapsing the artificial dichotomy between the private and public spheres. *Id.* art. 18.

295. *Id.* art. 22.

296. *Id.* art. 23.

297. *Id.* art. 24.

298. Julia Swanson, *The Emergence of New Rights in the African Charter*, 12 N.Y.L. SCH. J. INT'L & COMP. L. 307, 315-24 (1991). *But see* Mutua:

The addition of peoples' rights, the right to development, and social and economic rights, to civil and political rights is seen as a major breakthrough. It is not realized, though, that the pious inclusion of these rights is negated by the power arrogated to the state to deny civil and political rights in the name of national unity, morality, security, development and solidarity. How can these rights be realized without free political mobilization and participation by the masses of the people? How, under repressive conditions, can a people exercise both internal and external self-determination? Seen in this light, these "aspirational" rights amount to mere slogans.

Makau wa Mutua, *The African Human Rights System in a Comparative Perspective*, in REGIONAL SYSTEMS OF HUMAN RIGHTS PROTECTION IN AFRICA, AMERICA AND EUROPE: PROCEEDINGS OF THE THIRD AFRO-AMERICO-EUROPEAN CONFERENCE, Strasbourg, June 15-19, 1992, at 12, 13, 56 (Wolfgang Benedek, ed., 1992).

economic, social and cultural rights in conception as well as universality.²⁹⁹ While some observers have argued that this statement is merely an assertion of the necessity to consider development as a right and of the interconnectedness of the two categories of rights,³⁰⁰ it is interesting to note that the preamble goes on to state that “the satisfaction of economic, social and cultural rights *is a guarantee* for the enjoyment of civil and political rights.”³⁰¹

Examined in light of the extensive claw-back clauses attending the recognition of civil and political rights in the document,³⁰² such an emphasis was clearly not accidental. Indeed, the bias in the Charter led some early commentators to believe that in the process of implementation of the Charter, the African Commission would, “undoubtedly grant a State great(er) latitude if economic and social rights are promoted at the expense of civil and political rights.”³⁰³ The record of the Commission to date, manifests no such bias, raising questions once again, about the extent of the commitment manifested in the Preamble to the Charter.³⁰⁴

Given that emphasis, and in light of the post-colonial history of the continent, one would expect that the substantive aspects of the instrument would amplify the focus on economic and social rights.³⁰⁵ However, a critical examination of the specific rights in the Charter raises questions about the manner in which they were couched, and about the extent of the commitment of the OAU to their realization.³⁰⁶ Such ambivalence can be

299. See Banjul Charter, *supra* note 39, pmb. (emphasis added).

300. See D'Sa, *supra* note 293, at 78-79.

301. Banjul Charter, *supra* note 39, pmb., para. 8 (emphasis added).

302. See Evelyn Ankamah, *Towards an Effective Implementation of the African Charter*, 8 INTERRIGHTS BULLETIN 60 (1994). See, e.g., Article 9, section 1 of which clearly states that every individual shall have the right to “receive information.” Section 2 of the same article, however, states that every individual “shall have the right to express and disseminate his opinions *within the law*.” An immediate problem emerges in the area of press freedoms and the expression of opinions that are politically unacceptable to the ruling powers. Thus, several laws, such as those on sedition, criminal libel, and even treason, are invoked in order to delimit the extent to which an individual is able to “express and disseminate” their opinions. Other clauses containing claw-back phrases include: Article 6 (liberty); Article 8 (on freedom of conscience); Article 10 (free association); Article 11 (right to free assembly), and Article 12 (freedom of movement and residence).

303. Richard Gittelman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667, 687 (1982).

304. This is clear, for example, from the reports of the Commission, and, as we shall later see from commentary by Commission members. For an example of the former, see International Commission of Jurists, *Report on the 10th Ordinary Session of the African Commission*, 47 FOR THE RULE OF LAW: THE REVIEW 51 (1991).

305. The history of post-colonial Africa has been plagued by economic turmoil. See LESLIE, *supra* note 5.

306. Despite having created a Commission to enforce the realization of the rights in the Banjul Charter, the manner of reporting (Pt. II, Ch. III) and especially the principles of confidentiality, manifest a lukewarm commitment to the full realization of human rights in Africa. See INTERRIGHTS, *THE THEORY AND PRACTICE OF CONFIDENTIALITY IN HUMAN RIGHTS PROCEDURES: A COMPARATIVE SURVEY WITH REFERENCE TO THE AFRICAN CHARTER ON HUMAN & PEOPLES' RIGHTS* (October 1993).

retraced to the preparatory discussions over the Charter, and found in the rapporteur's account of the debate over the issue.³⁰⁷ In addition, a systematic consideration of the articles will reveal something else, namely a lukewarm commitment to the application of critical and genuinely progressive standards in the area. For example, the Charter is silent on the right to create trade unions—a fundamental aspect of the right to work, and the freedom of association and organization of labour.³⁰⁸ The absence of such a right must be considered in view of the claw-back clause enshrined in Article 10, which provides for freedom of association.³⁰⁹ Article 10 stipulates that the right is exercisable provided that the individual “abides by the law”,³¹⁰ this when numerous domestic legal regimes around the continent outlaw or severely proscribe trade union formation and activity.³¹¹ The problem is compounded by Article 29, concerning the duty to preserve and strengthen “national solidarity,” which could be (and has been) interpreted to mean any oppositional activity, whether in the political or economic sphere.³¹²

The Charter also produced a number of surprises, the first being the guarantee of the right to property,³¹³ a right which does not appear in the international covenants,³¹⁴ and is clearly of questionable facility in the African context for a number of reasons. First, is its association with individual privilege, and vested (largely colonial and neo-colonial) interests in a context which has been plagued by exploitative relations deriving from property ownership and unequal exchange.³¹⁵ Second, it raises questions about the issue of tenurial rights, land reform and equality in access to land—serious questions for both the rural and urban poor in independent

307. *Report on the Final Drafting of the African Charter on the Human and Peoples' Rights*, Nairobi Ministerial Mtg., 1981, Annex I, at 4, OAU Doc. CM/1149 (XXXVII). See Scoble, *supra* note 21, at 194.

308. The right to strike is likewise ignored in the Charter. Scoble, *supra* note 21, at 194.

309. See *supra* note 302.

310. Banjul Charter, *supra* note 39, art. 10.

311. Such justification of “national solidarity” has not only led to the proscription of opposition political activity, but also to the compulsion of people to become members of the sole ruling party. See Mwesiga Baregu, *The Rise and Fall of the One-Party State in Tanzania*, in *ECONOMIC CHANGE AND POLITICAL LIBERALIZATION IN SUB-SAHARAN AFRICA* 158, 160-165 (Jennifer Widner, ed., 1994). The exercise of trade union rights in African countries, is still a problem irrespective of the so-called wave of democratization that has been blowing since the late 1980s, and illustrated by the response of the Nigerian military government to strike action by petroleum workers, and the refusal of the Kenyan government to recognize the formation of an association for University personnel. See, e.g., Doyin Iyiola, *Nigeria: Abacha's Bloody Crisis*, *AFRICAN TOPICS* (London), Oct./Nov., 1994, at 14-15.

312. Banjul Charter, *supra* note 39, art. 29.

313. See *id.* art. 14.

314. Article 17 of the Universal Declaration refers to the right to own property, but neither of the Covenants do so. See Universal Declaration, *supra* note 1, art. 17; ICESCR, *supra* note 2; ICCPR, *supra* note 42.

315. See generally FÜREDI, *supra* note 11, at 57-119.

Africa and directly related to a series of other rights.³¹⁶ Given both these issues, one would imagine that such a provision should have attempted to render a dynamic and qualitatively different conceptualization of the right. Furthermore, it has also been pointed out that feminist analysis could take note of and progressively utilize the right to the acquisition and inheritance of property in Article 14 in such a way as to defeat customary practices that inordinately deprive women of their property rights.³¹⁷ However, the Banjul Charter gives no indication that this is the direction in which it intended to move with respect to this right.³¹⁸ In the final analysis, the Charter made no creative attempt to re-interpret the right as a mechanism of empowerment of Africa's dispossessed masses and to foster conditions of equality in its exercise.³¹⁹

Article 15 stipulates that every individual has the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.³²⁰ Economic conditions and the fact that the majority of the population are self-employed subsistence farmers place limitations on the extent to which this right can be realized.³²¹ There are nonetheless several dimensions from which the article could be approached in order to achieve its positive recognition and progressive realisation, with particular regard to working conditions and the principle of equality.³²²

Article 16 covers the best attainable state of mental and physical health, and the obligation to take the necessary measures to protect the health of the people and to give medical attention to the sick.³²³ Finally, Article 17 covers the right to education.³²⁴ Unlike the ICESCR equivalent, the article does not mention free primary education, despite the guarantee of such facility being a staple—usually by the year 2000!—of African politics.³²⁵

316. On the various dimensions and interconnectedness of the issue of land rights to other human rights, see ALBIE SACHS, *PROTECTING HUMAN RIGHTS IN A NEW SOUTH AFRICA* 104-38 (1990).

317. Cf. Rebecca Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125, 139-40 (1994).

318. For an excellent treatment of this issue, see Florence Butegwa, *Using the African Charter on Human and Peoples' Rights to Secure Women's Access to Land in Africa*, in HUMAN RIGHTS OF WOMEN, *supra* note 32, at 495.

319. See SHIVJI, *supra* note 10, at 102-03.

320. Banjul Charter, *supra* note 39, art. 15.

321. The 1994 Human Development Report has the following figures: For Sub-Saharan Africa, the average life expectancy is 51.1; adult literacy is 51 percent, per capita GNP stands at U.S. \$540, in comparison to a world average of U.S. \$4,160, and U.S. \$14,920 for industrialized countries. See HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, at 213-18, tbl. 52.

322. These dimensions include rural and/or plantation work; health and safety; and the exploitation of child labour.

323. See Banjul Charter, *supra* note 39, art. 16.

324. See *id.* art. 17.

325. The guarantee of universal education is of course a significant vote-catcher, given the high premium placed on education in the African context; why it is never realized relates to the fact that it is *only* a campaign issue. Once in government, resources are diverted elsewhere.

Missing from the Charter are the rights to social security, the right to an adequate standard of living, and freedom from hunger, all of which are contained in the ICESCR.³²⁶ Of these, the absence of the last—the right to food—is perhaps the most striking.³²⁷ The omission can nevertheless be retraced to the fact that while ecology and environment provide some explanation for the food crises that have afflicted the continent, the dominant problems are political and socioeconomic, namely, the lack of adequate food security policies, and the extra-economic coercion of the peasantry.³²⁸ Both are a product of and facilitated by the inordinate concentration on export-crop production, which characterizes the majority of African economies.³²⁹ Compounding the problem is the failure to devise amicable means for the resolution of conflicts, frequently resulting in war and famine.³³⁰

What, in the final analysis can be said of the Banjul Charter's position on economic and social rights? First, the content of the articles is a significant letdown from the promise of the Preamble, and belies what could have been an altogether novel and radical approach to the interconnectedness of the two categories of rights. Second, the focus of these rights is primarily the external dynamic—the elements of historical exploitation and contemporary maldevelopment—without a parallel approach to the inequities of the domestic arena. Apart from what the Charter contains, what it fails to mention speaks even louder of the actual position of African leaders on these rights. Finally, the extensive restrictions in the recognition of civil and political rights, redound negatively on the possibilities for the progressive realization of the few economic and social rights contained in the document.

326. See ICESCR, *supra* note 2, arts. 9, 11.

327. See Clarence Dias, *Food Security and the Right to Food: Legal Resources and Grassroots Action*, WORKING PAPER NO.3 (SERIES 8), (MacArthur Interdisciplinary Prog. on Peace & Int'l Cooperation, Univ. of Minn.) Mar. 1993.

328. Mahmood Mamdani, *Disaster Prevention: Defining the Problem*, 37 MONTHLY REV. 35, 36-37 (1985). Extra-economic coercion extends from the imposition of taxes by the local chief and government administration, to the extraction of "gifts" (bribery) from administrative personnel. On the origins of the coercive role of administrative personnel, see J. Oloka-Onyango, *Judicial Power and Constitutionalism in Uganda*, WORKING PAPER NO. 30 (Centre for Basic Research, Kampala, Uganda), 1993, at 9-15.

329. See George W. Shepherd, Jr., *The Denial of the Right to Food: Development and Intervention in Africa*, 15 CAL. W. INT'L L.J. 528, 531 (1985). The 1994 Human Development Report gives an overall average Export-import ratio for Sub-Saharan Africa of 120%. See HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178, at 169, tbl. 20.

330. Several ongoing conflicts in Africa have failed to be resolved in an amicable fashion. These include the 13-year civil war in the Sudan and the factional fighting in Liberia, Sierra Leone, and Angola.

2. The Question of Implementation

Having been ratified by the requisite number of African states, the Banjul Charter came into force only five years after promulgation.³³¹ While the fairly speedy ratification of the instrument was welcome, the fact remains that the mechanisms providing for the enforcement of the rights in the Charter are weak.³³² Furthermore, both the publicity about the Charter and the creation of the Commission have thus far done little to encourage petitions relating to economic and social rights.³³³ Indeed, the past Commission Chairman (in a rather pointed reversal of the explicit philosophy of the Charter), stated that the Commission would concentrate on civil and political matters.³³⁴ This was necessary, he argued, because any attempt to deal with economic and social rights would "result in too many cases and in too many countries" to cope with.³³⁵ Such an attitude may partially explain why, of the more than 140 communications received to date under the complaints mechanism of the Charter,³³⁶ none have related to Articles 14 to 17—the provisions in the Charter relating to economic and social rights.³³⁷

The evolution of the African Commission has been steady, but unremarkable,³³⁸ with significant resolutions being recently adopted on

331. The Charter came into force on October 21, 1986 after ratification by a simple majority of African states in accordance with Art.63(3). The Charter's swift entry into force was not anticipated by all. See Olusola Ojo & Amadu Sesay, *The O.A.U. and Human Rights: Prospects for the 1980s and Beyond*, 8 HUM. RTS. Q. 89, 101 (1986) ("[I]t is doubtful whether the Charter will ever come into force in the 1980s . . .").

332. The mechanisms contained in Chapter III of the Banjul Charter are weak because of political control and oversight, and bureaucratic overbearance. There are also insufficient funds to effectively implement some of the procedures mandated, such as on-site investigations. See Emmanuel Bello, *The Mandate of the African Commission on Human and Peoples Rights*, 1 AFR. J. INT'L L. 31 (1988).

333. Such a fact can be discerned from the absence of any communication on the issue until March, 1995. See International Commission of Jurists, *Lomé Workshop Debates Economic, Social and Cultural Rights, Impunity and Prisons* (Undated news release, on file with the author) [hereinafter *Lomé Workshop Debates*].

334. O. Umzorike *The protection of human rights under the Banjul (African) Charter on Human and People's Rights*, 1 AFR. J. INT'L. L. 65, 81 (1988).

335. *Id.*

336. See Banjul Charter, *supra* note 39, arts. 47-59.

337. See Nana Busia & Bibiane G. Mbaye, *Towards a Framework for Filing Communications about Economic, Social and Cultural Rights under the African Charter*, 3 E. AFR. J. PEACE & HUM. RTS. (forthcoming 1996). Article 45 mandates the Commission established under the Charter to "[e]nsure the protection of the human and peoples' rights under conditions laid down by the present Charter," and Article 55 allows communications from entities or persons other than states parties. Banjul Charter, *supra* note 39, arts. 45 & 55.

338. See *The Participation of Nongovernmental Organizations in the Work of the African Commission of Human & Peoples Rights (ACPHR): A Compilation of Basic Documents (Oct. 1991 - Apr. 1994)* (Int'l Comm'n of Jurists, Geneva) 1994 [hereinafter ICJ Compilation].

issues such as the right to a fair trial and freedom of association.³³⁹ However, in performing the functions stipulated under Article 45(1)(b) of the Charter,³⁴⁰ there has been no attempt to marry the focus on civil and political rights to the progressive achievement and realization of economic and social rights.³⁴¹ For example, the resolution on fair trial could conceivably have been extended to cover the status and rights of indigent defendants, public-aided legal assistance, or the critical issue of “popular” justice.³⁴²

With respect to the issue of associational rights, the Commission could have taken the opportunity to make observations on trade union rights, as well as on rights linked to such activity, in much the same way as the Committee on Economic and Social Rights does on a regular basis.³⁴³ The Commission has also failed in its general commentary, to make any mention of issues such as poverty, development or SAPs—all of them matters that are central to the broad struggle for human rights in Africa today.³⁴⁴ With the recent application of political conditionality to the extension of development finance, the Commission could have played a role in seeking a more comprehensive and relevant interpretation of the notion than the negative conditionality that has hitherto been applied.³⁴⁵

While the substantive content of the Banjul Charter came up far short of the pledge it makes in the Preamble, the guidelines for the submission of states parties’ periodic reports drafted in 1988 provide a wider framework for the implementation of those unfulfilled aspirations.³⁴⁶ The guidelines devote considerably more attention to economic and social rights than they

339. See ICJ Compilation *supra* note 338. Wolfgang Benedek, *The African Charter and Commission on Human and Peoples’ Rights: How to make it more effective*, 11 NETH. Q. HUM. RTS. 25, 26 (1993).

340. This provision stipulates that the Commission will formulate and lay down rules aimed at solving legal problems relating to human and peoples rights, as a basis for the construction of domestic legislation by governments.

341. Dissatisfaction with the performance of the Commission with respect to economic and social rights, led the most recent Workshop of African Human Rights NGOs meeting in March 1995, to call upon the Commission to take up the issue in a serious fashion. See *Lomé Workshop Debates*, *supra* note 333.

342. See J. Oloka-Onyango, ‘*Popular Justice*’, *Resistance Committee Courts and the Judicial Process in Uganda, 1988-92*, 3 BEYOND LAW: MAS ALLA DEL DERECHO, July 1993, at 39.

343. See, e.g., *Human Rights Questions: International Covenants on Human Rights, Report of the Committee on Economic, Social and Cultural Rights on its Third Session*, U.N. ESCOR, 1st Reg. Sess., Prov. Agenda Item 9(a), paras. 170-87, U.N. Doc. E/1989/L.9 (1989).

344. See ICJ Compilation, *supra* note 338, especially Part II.

345. See Benedek, *supra* note 339, at 36.

346. See *Promotion, Protection and Restoration of Human and Peoples’ Rights, Guidelines for National Periodic Reports*, African Commission Human and Peoples’ Rights, 4th Sess., ACHPR Doc. AFR/COM/HRP.5 (IV) (1988) [hereinafter *African Commission Guidelines*]. See also Claude E. Welch, Jr., *The African Commission on Human and Peoples’ Rights: A Five-year Report and Assessment*, 14 HUM. RTS. Q. 43, 53 (1993).

do to civil and political rights.³⁴⁷ Only three pages are devoted to the latter, while those on the former extend to eighteen.³⁴⁸ Furthermore, while the Charter is silent on a number of rights, the guidelines require reporting on, *inter alia*, equal opportunity for promotion,³⁴⁹ rest, leisure and holiday with pay,³⁵⁰ the free operation of trade unions³⁵¹ and the right to strike.³⁵² A basis thus exists for much more vigorous action on economic and social rights by the Commission than is laid out in the Charter. Some tentative steps would have to be taken to remedy the general inertia in this area, however. The African Commission could begin by initiating a process of imaginative translation of the bare rights in the Charter into appropriate frameworks for implementation.³⁵³

The Commission can begin to approach this issue by borrowing approaches to the issue developed by both its regional counterparts—the Inter American Commission³⁵⁴ and Court³⁵⁵ on Human Rights and the European Union system³⁵⁶—and translating those approaches in the context of existent conditions on the continent. While neither of the two have devoted as extensive attention to economic and social rights as they have to civil and political rights, a look at what they have done in the area would be instructive. In Europe, the adoption of the European Social Charter³⁵⁷ in 1961 as the counterpart to the ICESCR, never led to any significant action primarily because of a lack of political will.³⁵⁸ Nonetheless, recent efforts at the resuscitation of the Charter and the establishment of an enforcement mechanism have led to the formation of an expert group to seriously examine the issue, and should provide some guidelines for the Commission in formulating an appropriate approach to the issue.³⁵⁹ Moreover, the

347. African Commission Guidelines, *supra* note 346.

348. *Id.*

349. *Id.* at 10.

350. *Id.*

351. *Id.* at 11.

352. *Id.* at 12. A comparison between the African Commission Guidelines and those of the ICESCR Committee would be useful, particularly given the extensive experience of the latter. Of course, this is not to say that the Committee's guidelines are free from problems. See Jabine & Johnston, *supra* note 69, at 17-18.

353. See Busia & Mbaye, *supra* note 337.

354. Established under The American Convention on Human Rights, Nov. 22, 1969, arts. 34-51, 79, 80, OAS T.S. No. 36, 9 I.L.M. 673 (1970) (entered into force, July 18, 1978) [hereinafter American Convention].

355. Established under *id.* ch. VIII, arts. 52-73, 81-82.

356. On the European Union System, see *supra* note 32. The European Commission on Human Rights was established under the European Convention, *supra* note 32, art. 19.1 and governed by arts. 20-37. The European Court of Human Rights was established under art. 19.2, and governed (until the adoption of Protocol 11) by arts. 38-56 of the same Convention.

357. European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89, Europ. T.S. No. 35 (entered into force, Feb. 26, 1965).

358. D.J. Harris, *A Fresh Impetus for the European Social Charter*, 41 INT'L & COMP. L.Q. 659 (1992).

359. *Id.*

European Commission has come closest to considering the issue of whether “inhuman and degrading treatment” can be applied to socioeconomic conditions.³⁶⁰

A number of interesting developments have taken place within the Inter-American system too.³⁶¹ First, an Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) was promulgated in 1988.³⁶² In contrast to the ICESCR it contains a petition mechanism on the right to education and on trade union rights.³⁶³ Although the Protocol of San Salvador is yet to come into force, the IACHR has recommended the adoption of local legislation based on it.³⁶⁴ In addition, the Inter-American Court has considered the effect that the provisions requiring the equivalent of “exhaustion of local remedies” would have on an indigent person, and whether such requirement could be waived.³⁶⁵ Advisory Opinion OC-11/90 of the Court ruled that indigent persons do not have to exhaust legal domestic remedies if they can demonstrate that their economic condition prevents them from obtaining legal counsel.³⁶⁶ While the other regions of the world are still in the process of developing a more concise application of economic and social rights, there is still much to be gleaned from the

360. See Antonio Cassese, *Can the Notion of Inhuman and Degrading Treatment be Applied to Socio-Economic Conditions?*, 2(2) EUROPEAN J. INT’L L. 141 (1991).

361. In 1980, for example, the IACHR stated:

The general and well-founded belief is that in some countries, the extreme poverty of the masses—the result in part of less-equitable distribution of the resources of production—has been the fundamental cause of the terror that afflicted and continues to afflict those countries. . . . The essence of the legal obligation incurred by any government in this area is to attain the economic and social aspirations of its people, by following an order that assigns priority to the basic needs of health, nutrition and education.

Annual Report of the Inter-American Commission on Human Rights 1979-80, O.A.S. Doc. OEA/Ser.L/VII.50, at 151-52, *quoted in* Eide, *supra* note 20, at 42.

362. Nov. 17, 1988, O.A.S.T.S. No. 69, *reprinted in* 28 ILM 161 (1989).

363. *Id.* art. 19.6.

364. See Annual Report of the Inter-American Commission on Human Rights 1993, O.A.S. Doc. OEA/Ser.L/VII.85/Doc.9/Rev., at 519-39 (1994).

365. Inter-American Court of Human Rights, Advisory Opinion OC-11/90 of August 10, 1990, para. 22 stated,

If a person who seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigency) prevents him from so doing because he cannot afford either the necessary legal counsel or the costs of the proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law.

Reprinted in 12 HUM. RTS. L.J. 20 (1991).

366. *Id.* paras. 30-31.

formulations in the establishing instruments, as well as the modes of implementation that have been adopted.

The failure of the African Commission to articulate economic and social rights in a more aggressive fashion is clearly an expression of a political problem, which only gains magnitude in light of the acute nature of the economic and social crisis faced by African states today. The inclusion of new rights in the Banjul Charter was instrumental in the struggle to elevate them to the international arena,³⁶⁷ and boosted attention to economic and social rights globally.³⁶⁸ Unfortunately, the performance of African states and of the Commission in the progressive development and realization of these rights has not been exemplary. At the same time, African human rights organizations have only recently woken to the necessity to deploy the mechanisms of the Banjul Charter to productive domestic use.³⁶⁹ The establishment of the NGO Forum to meet at the same time as the bi-annual Commission sessions,³⁷⁰ was an extremely innovative idea, and can be credited with many of the reforms introduced by the Commission.³⁷¹ At the same time, the pressure on the Commission tapers off immediately after the sessions have ended. Imaginative strategies for the activation of the Commission demonstrate that the success of the mechanism depends as much on popular forces and activists as it does on the members of the body.³⁷²

C. *The Lagos Plan and the AAF-SAP*

At the beginning of the 1980s, African heads of state and government came together to consider the approach of the OAU to the issue of social and economic development.³⁷³ From these deliberations emerged the Lagos Plan of Action (LPA), aimed at the self-reliance of African countries, self-

367. See, e.g., Lynn Berat, *Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law*, 11 B.U. INT'L L. J. 327, 346 (1993).

368. See, e.g., Wright, *supra* note 20, at 255-58.

369. See J. Oloka-Onyango, *Human Rights Activism in Africa: A Frog's Eye View*, COD. BULL. (1995).

370. A forum convening human rights NGOs from all over Africa was established to meet before each session of the bi-annual Commission meetings. The International Commission of Jurists (ICJ) is instrumental in bringing the groups together. The Forum is often attended by Commissioners, who are queried about particular issues relating to the operations of the Commission, and other related matters. The recommendations of the Forum are then transmitted to the Commission for deliberation and debate. See ICJ Compilation, *supra* note 338.

371. The NGO Forum was instrumental not only in achieving the appointment of the first woman commissioner to the body, but also in relaxing the application of the rules on confidentiality and paving the way for the African Commission's public denouncement of specific practices that could violate human rights (such as military *coups d'etat*), and regimes that assumed power through extra-constitutional means (e.g. Nigeria, Rwanda and Gambia).

372. In this respect, the strategies employed by the Nigerian Constitutional Rights Project (CRP) are extremely instructive in attempting to get the African Charter to function positively in the domestic context. See Case Comment, *Does Municipal Law Prevail over International Human Rights Law in Africa?*, 2 E. AFR. J. PEACE & HUM. RTS. 102 (1995).

373. *Foreword* by Adebayo Adedeji, Executive Secretary, Economic Commission for Africa, to AAF-SAP, *supra* note 292.

sustaining development and economic growth.³⁷⁴ The LPA noted that of the thirty-one countries designated by the United Nations as least developed (LDCs), twenty of them came from Africa.³⁷⁵ There was thus a need to reverse this situation.³⁷⁶ The Plan was intended to promote the development of the nations and peoples of Africa and their progressive integration over greater regional areas and to set up an African Economic Community by the end of the century.³⁷⁷ The Plan comprised five action areas: (1) environment, (2) the LDCs, (3) energy, (4) women and (5) planning, statistics and population.

The LPA was heavily biased towards macro-economic factors, and reflected a continuing passion for the large infrastructural projects that had been the typical emphasis of development planning in the early years of independence.³⁷⁸ One notable exception was the focus on women³⁷⁹ —presaging the attention that followed the Nairobi Conference³⁸⁰ and the Women in Development schema of the donor agencies.³⁸¹ The LPA recognized the fact that traditional discriminatory practices were inhibiting the involvement of a significant section of the population, as well as being counterproductive to the development process.³⁸² Parpart compared the Plan to another simultaneously issued by the World Bank,³⁸³ and found that the latter was woefully inferior in considering the interests of women.³⁸⁴ According to her, the LPA also spurred “heartening improvements” for women in Africa.³⁸⁵

By including women as a specific point of focus, the LPA represented the first tentative forays away from state-centered to people-based foci in the field of African policy formulation. The bridge was eventually crossed with

374. LPA, *supra* note 40.

375. *Id.* pmbl. para. 6.

376. *Id.* pmbl. para 11.

377. *Id.* pmbl.

378. For a broad critique of the LPA, see Frederick W. Jjuuko, *The State, Democracy and Constitutionalism in Africa*, 2 E. AFR. J. OF PEACE & HUM. RTS. 1, 3-4 (1995).

379. LPA, *supra* note 40, ch. XII.

380. See *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, July 15-26, 1985, The Nairobi Forward-Looking Strategies for the Advancement of Women*, U.N. Doc. A/CONF.116/28/Rev.1 (1985).

381. See, e.g., J. Oloka-Onyango & Sylvia Tamale, “*The Personal is Political*,” or *Why Women’s Rights are Indeed Human Rights: An African Perspective on International Feminism*, 17 HUM. RTS. Q. 691 (1995).

382. LPA, *supra* note 40, ch. xii.

383. WORLD BANK, *ACCELERATED DEVELOPMENT IN SUB-SAHARAN AFRICA: AN AGENDA FOR ACTION* (1981).

384. See Jane L. Parpart, *Women’s Rights and the Lagos Plan of Action*, 8 HUM. RTS. Q. 180, 190-91 (1986).

385. *Id.* at 192. These improvements include recognition of women as important actors in the development paradigm.

the Khartoum Conference on the *Human Dimension of Africa's Economic Recovery and Development*, in 1988 which witnessed a concerted effort to shift the focus from the state to the people.³⁸⁶ The apex of this movement was the AAF-SAP in 1989,³⁸⁷ which was a direct critique of the debilitating IMF policies that had operated in Africa since the early 1980s.³⁸⁸ The critique argued that these programs had frustrated both the African peoples upon whom they had been imposed, as well as the institutions that had designed them.³⁸⁹ Even though they had begun to respond to such failure and frustration, the response was slow and evasive.³⁹⁰ The critique went on to state, "Most proposals seem to stick to the core of the old types of SAPs and to merely add some aspects of a human face."³⁹¹ It then proceeded to give a point-by-point appraisal and recommendation of what should be done.³⁹² To date, the main recommendations of the AAF-SAP remain largely valid,³⁹³ but the movement by IFDIs on the issue has been slow.³⁹⁴ The preference remains for the SAPs applied in the 1980s, ameliorated through poverty-alleviation programs which target the most "vul-

386. THE HUMAN DIMENSION OF AFRICA'S PERSISTENT ECONOMIC CRISIS (Adebayo Adedeji et al. eds., 1990).

387. See *supra* note 292.

388. *Id.*

389. *Id.* at 24.

390. *Id.*

391. *Id.* at 24-25.

392. *Id.*

393. The AAF-SAP recommendations in terms of major policy directions included the following:

- a) enhanced production and efficient resource use;
- b) greater and more efficient domestic resource mobilization;
- c) improving human resources capacity;
- d) strengthening scientific and technological base, and
- e) vertical and horizontal diversification.

See AAF-SAP, *supra* note 292, at 33-34. With regard to factor income allocation, the following were the recommendations:

- a) establish a pragmatic balance between the public and private sectors;
- b) create an enabling environment for sustainable development;
- c) shift resources from non-productive and military expenditure, and
- d) improve the pattern of income-distribution among different categories of household.

Id. at 35. Satisfying required needs would thus entail:

- a) food self-sufficiency;
- b) lessened import-dependence;
- c) re-alignment of consumption patterns with production patterns, and
- d) managing debt and debt-servicing.

Id. at 36.

394. See Nnoli, *supra* note 142.

nerable" members of society.³⁹⁵ Even these have had questionable results, however.³⁹⁶ Seeing that SAPs are the most debilitating economic reform policies currently in place in Africa, IFDIs would do well to accord more attention to the critique.

At the annual Summit meeting of OAU Heads of state and government in Abuja in 1991, the OAU adopted the treaty establishing the African Economic Community (AEC) thus achieving the pinnacle of the Lagos Plan.³⁹⁷ The key elements in the treaty are spelled out in Article 4, and include, *inter alia*, the promotion of economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and indigenous and self-sustaining development.³⁹⁸ However, as Muna Ndulo has observed, it is clear that African heads of state remain addicted to the notion of state sovereignty, and are also unlikely to actively foster some of the key elements in the treaty, such as those concerning the free movement of peoples.³⁹⁹ Moreover, even though the AEC Treaty establishes an African Court of Justice,⁴⁰⁰ Chris Peter points out that the deficiencies in the Court's enabling statute do not make for an optimistic reading of the institution.⁴⁰¹

Meanwhile, at the other end of the spectrum—the people's corner—significant developments have been taking place in the bid by individuals and communities to seize the initiative and transform the debate over economic and social questions on the continent.⁴⁰² The most prominent of these was the unanimous adoption of the *African Charter for Popular Participation in Development and Transformation* (Charter for Popular Participation),⁴⁰³

395. See *supra* text accompanying notes 114-65.

396. *Id.*

397. OAU, Treaty Establishing the African Economic Community, adopted at Abuja, Nigeria, on June 3, 1991, 30 I.L.M. 1241 (1991) [hereinafter AEC Treaty].

398. *Id.* art. 4.

399. See Ndulo, *supra* note 35, at 106.

400. See AEC Treaty, *supra* note 397, arts. 7(1)(e) & 18.

401. Chris Maina Peter, *The Proposed African Court of Justice: Jurisprudential, Procedural, Enforcement Problems and Beyond*, 1 E. AFR. J. OF PEACE & HUM. RTS. 117, 119-21 (1993). Among the deficiencies in the African Court are the manner of appointment of the judges, the extent of political control over and the location of the Court. *Id.* at 131-34. The appointment of the Court vests in the Assembly of Heads of State and Government. *Id.* at 131. Therefore, the independence of the judges can be undermined by political interference. *Id.* The seat of the court could present a problem in relation to the political conditions that may arise in the designated country, as happened with the OAU headquarters, which was forced to evacuate Addis Ababa on account of the civil war in Ethiopia in the early 1990s. *Id.*

402. See Celia R. Taylor, *The Right of Participation in Development Projects*, 13 DICKINSON J. INT'L L. 69, 70 (1994).

403. The African Charter for Popular Participation in Development and Transformation, E.C.A. Res 691 (XXV), UN. Econ. Comm'n for Africa, 25th Sess., 267th mtg. (1990), reproduced in, *Note Verbal to the Secretary General*, U.N. GAOR, 45th Sess., Prov. Agenda Items 12 & 18, app. I, at 3, U.N. Doc. A/45/427 (1990) [hereinafter Charter for Popular Participation].

which stemmed from a frustration with the failure of traditional development paradigms to appreciate the role of "popular participation."⁴⁰⁴ Consequently, the Charter for Popular Participation called for the encouragement of increased participation by governments, community groups, individuals and the international sector in the design and evaluation of development projects.⁴⁰⁵ The extent to which the Charter for Popular Participation will actually affect the operations of these groups remains to be examined.

Finally, however, the continental movement on the issue of socioeconomic development has been sporadic, and uninspiring.⁴⁰⁶ The high-sounding promises of the LPA and AAF-SAP and more popular participation have been drowned in the battle-cries of warlords in countries like Somalia and Liberia.⁴⁰⁷ As internal friction and conflict has caused the OAU to turn its attention all the more to issues concerning security, displacement and conflict resolution,⁴⁰⁸ economic and social rights have been relegated even further down the scale.⁴⁰⁹ Paradoxically, all this is occurring against the backdrop of a terrifying social and economic crisis that has placed most African countries on the brink of bankruptcy and holds them in continuing and ever more extensive ransom to the dictates of the IMF and the World Bank.⁴¹⁰ In such a situation, it becomes imperative to consider how proactive measures can be pursued in order to reduce, and eventually eliminate these problems. Such preventive action must include not only a greater emphasis on internal democratic structures, but on the economic and social frameworks on which these are constructed. For a consideration of some of the ways to approach these issues, we turn, by way of conclusion, to the domestic context.

III. BACK TO BASICS: THE IMPERATIVES OF DOMESTIC ACTION

Despite the fairly progressive developments in the realization and protection of human rights at the international level and the existence of an evolving framework on the regional front, the essential point of such activity must be to influence and transform the domestic context. In the words of Theo van Boven, international procedures,

404. Taylor, *supra* note 402, at 98.

405. Charter for Popular Participation, *supra* note 403, pt. III, para. 23.

406. On overall socioeconomic conditions in Africa, see HUMAN DEVELOPMENT REPORT: 1994, *supra* note 178.

407. See generally Jeffrey Herbst, *Challenges to Africa's Boundaries in the New World Order*, 46 J. INT'L AFF. 17 (1992).

408. Recognizing this trend, in 1993 the OAU established a new mechanism for conflict resolution, See *Resolving Conflicts in Africa: Implementation Options*, INFORMATION SERVICES PUBLICATION—SERIES (II) (OAU, Addis Ababa, Ethiopia) 1993.

409. See *supra* text accompanying notes 166-212 (on aid), and 114-65 (on SAPs).

410. See *supra* text accompanying notes 114-65.

can never be considered as substitutes for national mechanisms and national measures with the aim to give effect to human rights standards. Human rights have to be implemented first and foremost at national and local levels. The primary responsibility of States to realize human rights is *vis-à-vis* the people who live under the jurisdiction of these States.⁴¹¹

How is this to be done? The vast disparity and number of African countries and the sheer complexity of a host of domestic variables preclude a microscopic scrutiny and analysis of country situations in a study of this size. Such an exercise must nevertheless be carried out, not only to bring the international and regional dimensions to bear within the domestic context, but also for a more complete appreciation of the possibilities and of the limitations presented by the individual struggles to reinvigorate attention to economic and social rights.⁴¹² This part of the paper confines itself to an overview of the most critical issues involved in that struggle.

Top on the list are the process of democratization and the intricacies of constitutional reform, or to employ Albie Sachs's eloquent phrase, the "right to be naïve."⁴¹³ Following in close succession are the related questions of popular participation and extra-governmental activism within the context of a "structurally-adjusting" framework. Such an examination must consider the need for the rearticulation of standards and mechanisms for the progressive enforcement of economic and social rights in the African context.⁴¹⁴ This must be done by looking at the dynamic link between international political economy and domestic structures which exclude and dominate people.⁴¹⁵ It must also extend the parameters of participation beyond local and regional boundaries. In the process, it must confront

411. Theo van Boven, *The International System of Human Rights: An Overview*, in MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 54 at 10.

412. Alston points out that it is essential to remember the genuine differences between the two categories of rights, and consequently the "different benchmarks" that would be established for individual countries. See Alston, in THE RIGHT TO HEALTH, *supra* note 66, at 37. While this is a valid point, at the same time, it is essential not to lose sight of the structural and other conditions that enhance those differences, and thus force the adoption of lower benchmarks. In sum, the element of global redistribution and obligation must be kept in sight.

413. By the "right to be naïve" Sachs means an idealistic view of justice and righteousness, as opposed to a "pragmatic" one which is primarily concerned with the actual possibilities of enforcing a human right. Sachs states: "it is one of our major tasks to hold that essential faith in justice and rightness, to believe that even these poor international documents [the Covenants] might help us transform our world." Sachs employs the phrase in the Harvard debate on the Right to Health by way of buttressing his argument for the need to approach economic and social issues within a rights framework. See Albie Sachs in THE RIGHT TO HEALTH, *supra* note 66, at 42.

414. The basic tenets are contained in the Covenants, and the various elaborations in other international instruments. Hence the starting point should be the issues of self-determination, non-discrimination and equality. Additionally, there is the need to review and consider the applicability of the *Limburg Principles*, *supra* note 107.

415. See Susan George, *The Structure of Dominance in the International Geo-Economic System and the Prospects for Human Rights Realization*, in HUMAN RIGHTS IN PERSPECTIVE: A GLOBAL ASSESSMENT 268 (Asbjørn Eide & Bernt Hagtvet, eds., 1988).

traditional orthodoxies about sovereignty, self-determination, the accountability of international actors, and the obligations of truly popular and participatory government.

*A. Reconsidering the Structural and Normative Framework:
or the 'Right to be Naive'*

As Africa approaches the end of the twentieth century, a number of factors relevant to a consideration of the domestic context in which human rights are to be realized are immediately manifest. These can be examined at two levels—the macro- and microscopic—although the demarcation between the two is by no means so succinct. At the macro level, the most apparent factor is the process of democratic reform, ignited in many countries by the tremors of the late-1980s and continuing to find expression on a variety of different fronts, from contexts like Nigeria and Algeria, to less volatile situations such as Benin and Malawi.⁴¹⁶ A lesson common to all is that without a strategy that combines both the aspirations for political liberation with the imperatives of economic sustenance and empowerment, any gains will quickly disintegrate.⁴¹⁷ Put another way, the exercise of the right to vote is no guarantee of freedom from want or hunger.⁴¹⁸

Central to this process must be the reconceptualization of state power, even as the eruptions in Somalia and Liberia test the very notion of the post-colonial African state.⁴¹⁹ The fact is that whether by omission or commission, the state still has a significant role to play in African politics and society. Consequently, the first objective of the struggle must be to positively influence the processes of constitutional reform already underway in a variety of different countries; here finding expression as the *Conférences National* (CNs);⁴²⁰ there as a Constitutional Reform Commission (CRC),⁴²¹ else-

416. On the current situation in Nigeria, Algeria, Malawi and Benin, see Iyiola, *supra* note 311, at 14-15 (on Nigeria); HUMAN RIGHTS WATCH WORLD REPORT 1995, 256-61 (1994) (on Algeria); van Donghe, *supra* note 273, at 254 (on Malawi); Nwajiaku, *supra* note 27 (on Benin).

417. It is clear, for example, that for impoverished people, the act of voting is only a temporary balm for hunger, as is the right to free expression and participation, if the cost of a newspaper is beyond affordability.

418. Zehra Arat points out that,

Elected governments do not hesitate to employ government sanctions in the face of persistent social unrest, and such actions not only reduce the level of democraticness [sic] in the country but also pave the way for further coercion and military intervention. In fact such sanctions can justify and legitimize subsequent military takeovers. For example, in many countries that experience high levels of social unrest, we see martial law put into effect by civilian governments.

See ZEHRA F. ARAT, DEMOCRACY AND HUMAN RIGHTS IN DEVELOPING COUNTRIES 104 (1991).

419. For a consideration of the present state of the state in Africa, see Julius Ihonvbere, *The 'irrelevant' State, Ethnicity and the Quest for Nationhood in Africa*, 17 ETHNIC & RACIAL STUD. 42 (1994).

420. Cf. Nwajiaku, *supra* note 27.

where, in the activities of non-governmental actors.⁴²² If the promise of post-independence constitutionalism was lost on the rocks of demagoguery and “imperial presidentialism,”⁴²³ then the second wave should not be similarly undermined by the failure to incorporate economic and social rights into constitutional frameworks in a comprehensive and dynamic fashion.⁴²⁴

While a democratic and progressive Constitution is not the linchpin to greater human rights observation, the absence of one clearly does not enhance it.⁴²⁵ Scott and Macklen provide the most articulate reasoning for the need to begin with the Constitution,

Whereas the constitutionalization of social rights would be a recognition of the fact that adequate nutrition, housing, health, and education are critical components of social existence, the exclusion of social rights from a South African constitution necessarily would result in the suppression of certain societal voices. Perhaps the strongest reason for including a certain number of economic and social rights is that by constitutionalizing half of the human rights equation, South Africans would be constitutionalizing only part of what it is to be a full person. A constitution containing only civil and political rights projects an image of truncated humanity. Symbolically,

421. On CRCs, Uganda provides the best example. See *Museveni's Uganda*, *supra* note 133.

422. The most interesting example of nongovernmental action with respect to the constitutional debate comes from Kenya, where a number of groups have come together to draft a “model” constitution and place it in the public domain for debate. See *The Kenya We Want: Proposals for a Model Constitution*, SUMMARY AND HIGHLIGHTS (Law Society of Kenya, Kenya Human Rights Commission, and the International Commission of Jurists (Kenya Section)) 1994. Needless to say, the Moi government has not been amused by such antics.

423. On the causes of the collapse of post-independence constitutionalism, see STATE AND CONSTITUTIONALISM: AN AFRICAN DEBATE ON DEMOCRACY (Issa G. Shivji, ed., 1991).

424. A look at two instruments in this struggle will illustrate the point. The draft Uganda Constitution (1993) contains provisions on women, the disabled and children, but summarizes economic rights in one article, which states: “Article 67(1) Every person has right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without discrimination; (2) Every worker shall be accorded rest, and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays.” See *Draft Constitution of the Republic of Uganda*, (Uganda Constitutional Commission, Kampala, Uganda). The interim South African Constitution according to Steenkamp is “heavily biased towards traditional, liberal, civil and political rights,” which was “probably the result of objections to the inclusion of second generation rights from the government negotiators.” Steenkamp, *supra* note 29, at 106. See Constitution of the Republic of South Africa (1994), reprinted in [1995 Binder XVIII] *Constitutions of the Countries of the World*, (Oceana Pub. Inc.) (Gisbert H. Flanz ed., 1995) [hereinafter *South African Const.*] See also CACHALIA ET AL., *FUNDAMENTAL RIGHTS IN THE NEW CONSTITUTION* 19-126 (1994). Of the 28 articles in the Constitution, only 6 refer to economic, social and cultural rights, while the rest are concerned with the traditional civil and political rights. These six are Articles 26 on economic activity; 27, on labour relations; 28 on property; 29 on environment; 31 on language and culture, and 32 on education. *South African Const.*, *supra*.

425. See Craig Scott & Patrick Macklen, *Constitutional Ropes of Sand or Justiciable Guarantees?: Social Rights in a New South African Constitution*, 141 U. PA. L. REV. 1, 28-29 (1992) (citations omitted).

but still brutally, it excludes those segments of society for whom autonomy means little without the necessities of life.⁴²⁶

The process of extrapolating economic and social rights and constitution-izing them is nevertheless a struggle of political negotiation, tempered by the realities of individual country situations, rather than of the wholesale adoption of rigid international principles. The scale, number and content of economic and social rights can be the subject of contestation; the fact of their inclusion should not.⁴²⁷ The stronger elements of the Banjul Charter, such as those contained in Articles 25 and 28, can form the basis for articulating a firm state duty to eliminate discrimination and to protect disadvantaged social and political minorities.⁴²⁸ In addition, however, there is a need to develop new instrumentalities for the control of governmental excess, and to protect the essential parameters of a decent human existence.⁴²⁹ In this respect, the need to cultivate a receptive and dynamic Judiciary becomes paramount.⁴³⁰ Elaborating on matters of tenure, autonomy and protection within the Constitution would contribute to the achievement of this objective by establishing a precise framework of rights and obligations, and a foundation upon which a basis for the equal treatment with respect to property rights can be formulated.⁴³¹ Simultaneously, more attention should be paid to the potential for the development of alternative methods of economic and social empowerment, methods that lessen the burden of the state, while assuring that human rights standards are not undermined.⁴³²

At the microscopic level, the constitutional framework can also begin to address the question of priorities. This would provide a constitutional basis

426. *Id.* at 28-29.

427. *Cf.* Herman Schwartz, *Economic and Social Rights*, 8 AM. U. INT'L L. & POL'Y 551 (1993).

428. Article 28, as Butegwa, *supra* note 319 points out, is a basis for action, although there are a number of contradictions among the articles of the Charter. These contradictions include reference in the otherwise progressive Article 18 to "tradition" and the "family" both of which can serve to undermine the realization of women's human rights. *Id.* at 501-03.

429. *See* THE RIGHT TO HEALTH, *supra* note 66, at 43.

430. An enduring problem, particularly in Anglophone Africa is the conservatism of judges. This has not, however, stopped a few from issuing maverick and enlightened judgments with respect to human rights. Thus in the unreported Tanzanian case of *Masatu v. Mwanza Textiles* (Civil Case No. 3 of 1986, High Court at Mwanza), the judge upheld a "right to work," even before the Tanzanian Bill of Rights had become justiciable! *See* Issa Shivji, *Contradictory Developments in the Teaching and Practice of Human Rights Law in Tanzania*, 35 J. AFR. L. 116, 121-22 n.25 (1991).

431. For an examination of the various issues relating to the creation of an independent Judiciary in an anglophone African context, see Oloka-Onyango, *supra* note 328.

432. One such method is through the development of courts practicing popular justice. *See* JOHN-JEAN BARYA & J. OLOKA-ONYANGO, POPULAR JUSTICE AND RESISTANCE COMMITTEE COURTS IN UGANDA (1994). Francis Regan considers this issue in relation to the Ugandan context and contests the need to focus on traditional legal aid when there are a variety of different methods that should be attempted, both for the greater involvement of the people as well as for the economies involved. *See* Francis Regan, *Legal Resources in Uganda*, 22 INT'L J. SOC. L. 203 (1994). He argues that such a view of legal resources would greatly enhance the way in which we consider human development in the terms defined by the UNDP. *Id.* at 204-206.

from which to monitor the debt. It would also allow the doctrine of “noxious” or “odious” debts to be applied more vigorously when state resources are expended on the purchase of arms or other non-essential goods.⁴³³ Patricia Adams has spoken of the need for a constitutional balanced budget provision which would bring the issue of prioritization within the context of a constitutionally adjudicatory process.⁴³⁴ Critical to such an endeavor would be the localization of SAPs, which are currently carried out beyond the pale of domestic action, participation or control.⁴³⁵ Consequently the practice of writing budgets at World Bank headquarters (and imposing unreasonable conditions and unjustifiable social sacrifices) can be challenged from a constitutional foundation.⁴³⁶ In the context of large populations of illiterate and marginalized people however, and the continuing influence of Elysée and Westminster systems of government, such a provision would need to be buttressed with local grassroots frameworks.⁴³⁷ To do so entails not simply the decentralization of state power, but the corresponding destruction of local autocracy—often epitomized in the successor to the colonial chief.⁴³⁸ In this way, the debate on economic policy becomes as much an issue of national concern, as it is a question of local involvement and action.

The few examples given above illustrate the macro- and microscopic levels at which action in the area of economic and social rights is necessary.

433. See Juliette Majot, *The Doctrine of Odious Debts, in FIFTY YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 35 (Kevin Danaher ed., 1994). Patricia Adams defines “noxious” or “odious” debts as, “Any debt that has been incurred by a government without the informed consent of its people, and one that is not used in the legitimate interest of the State.” *Id.* (interview of Patricia Adams). See also Günther Frankenburg & Rolf Knieper, *Legal Problems of the Overindebtedness of Developing Countries: The Current Relevance of the Doctrine of Odious Debts*, 12 INT’L J. SOC. L. 415 (1984).

434. Patricia Adams, *The World Bank and the IMF in Sub-saharan Africa: Undermining Development and Environmental Sustainability*, 46 J. INT’L AFFS. 97, 117 (1992).

435. *Supra* text accompanying notes 114-65.

436. *Id.*

437. The following figures illustrate the extent of illiteracy and marginalization in Africa:

1. In Sub-Saharan Africa (SSA) net enrollment in primary schools is 55% for boys and 46% for girls. In the Industrialized Countries (ICs) net primary enrollment is 96% for boys and 97% for girls.
2. In SSA, net secondary enrollment (above grade 5 of primary school) is 22% for boys and 14% for girls, while in the ICs it is 91% and 92% respectively.
3. For every 1,000 people in SSA, there are 143 radios. In the ICs, there are 1,144 per 1,000.
4. For every 1,000 people in SSA, there are only 23 televisions. In the ICs, there are 551 per 1,000.

UNICEF, *supra* note 76, at 84, tbl. 10.

438. Such decentralization would be achieved, by, to cite a few examples, creating village committees to adjudicate simple disputes, removing the power to arbitrarily impose fines and other punishments, and making the post of chief elective rather than by administrative or political appointment. See also Oloka-Onyango, *supra* note 328.

But it is at the local level—the level of extra-governmental activity—that the struggle to effect a progressive policy for the realization of these rights should primarily focus.

B. The Local is Global: Linking Participation, Cooperation and Activism

If among international NGOs the notion of economic and social rights has only recently been adopted as a focus of action (and even then in sporadic fashion), the African context is even less encouraging.⁴³⁹ Despite operating within a context of severe social and economic strife and turmoil,⁴⁴⁰ the vast majority of local groups are involved in traditional human rights work.⁴⁴¹ At the other end of the spectrum, there is an equally great number of groups involved in development and humanitarian work.⁴⁴² Unfortunately, the twain rarely meet. Only recently, to cite one example from Uganda, have groups working in support of people with AIDS begun to liaise with groups working on legal and human rights.⁴⁴³ At a continental level, only the women's human rights movement has developed a cogent and holistic approach to the concatenation of the two categories of rights by, for example, linking the struggle for land rights to the political framework, and the structure of the family to the related socioeconomic issues that pervade such questions.⁴⁴⁴ Similarly, at the regional level, women's groups operate more closely than do groups working in the broader human rights field.⁴⁴⁵ Such 'networking' has greatly boosted the strategic and conceptual development of the movement on the continent.⁴⁴⁶

It is also essential to consider a vast array of different mechanisms that can be established (and supported at minimal cost) to both decentralize and popularize the exercise of political power. Institutions ranging from

439. Only the groups in South Africa, among them Black Sash, the Community Law Centre (CLC), Lawyers for Human Rights (LHR), and the Legal Resources Centre (LRC) devote attention to economic and social rights.

440. *Status Report*, *supra* note 22, at 5.

441. Among the most prominent human rights groups are the Legal Resources Centre (LRC) in Zimbabwe, the Constitutional Rights Project (CRP) in Nigeria, and the Sudan Human Rights Organization.

442. Development and humanitarian groups include the external actors like Oxfam and Save the Children's Fund (SCF), and ActionAid, while indigenous organizations include a variety of groups spread throughout the continent.

443. See J. Oloka-Onyango, *The HIV/AIDS Crisis, Human Rights and Legal Aid in Uganda*, LAP NEWS (Nov. 1993). The Legal Aid Project (LAP), in Uganda, for example, recently commenced a collaborative program of counseling and legal advice with the Aids Support Organization (TASO).

444. See Adetoun Ilumoka, *African Women's Economic, Social, and Cultural Rights—Toward a Relevant Theory and Practice*, in HUMAN RIGHTS OF WOMEN, *supra* note 32, at 307-325.

445. See *Status Report*, *supra* note 22, at 5. Women's groups that work in close tandem include, Women In Law and Development in Africa, FIDA (Federation of Women Lawyers), and Women and the Law in Southern Africa (WLSA).

446. See STATUS REPORT, *supra* note 22.

Socioeconomic Commissions⁴⁴⁷ to Ombudspersons,⁴⁴⁸ would help in the realization of such an objective. Such institutions would be critical, for example, in adjudicating grievances about health care and medical services. They could oversee the situation in relation to access to education, and be deployed to overcome general administrative vice. The same is true for the issue of corruption which left in the hands of government, is akin to charging the monkey with responsibility for burning down the forest.⁴⁴⁹ However to the extent possible, there should be a shift away from government. Rather than relying solely on a government agency to track the issue of equality in education, this function could also be executed by an NGO involved in issues of non-discrimination. The compilation of socioeconomic indices and statistical data for each area of activity in which an NGO is involved (from prisons to children to refugees etc.) should become standard practice for all NGOs.

Human rights groups should join with groups working in development to track real incomes and measure the effectiveness of World Bank/IMF social "safety nets" and poverty-adjustment schemes. This would form part of the process of monitoring the impact of SAPs on economic and social rights, particularly access to health, education and social services. Given the premium placed on privatization and de-indigenization, NGOs need to evaluate what impact this process is having on access to shelter, property rights and rights of non-discrimination. Much more should be done to encourage the erection of individual Economic and Social Rights Chapters, as Albie Sachs suggests, in trade unions, schools and other public and private institutions simply to monitor the impact of SAPs on the people's daily lives.⁴⁵⁰ More specialized groups devoted to the compilation of timely, multi-disciplinary and relevant data, need to address themselves to the implications of their work on social and economic rights.⁴⁵¹

447. See Mario Gomez, *Socioeconomic Rights and Human Rights Commissions*, 17 HUM. RTS. Q. 155, 162-68 (1995).

448. In this respect, the operations of Uganda's equivalent to an Ombudsperson provides an interesting study in the tackling of economic and social rights. See J. Oloka-Onyango, *The Dynamics of Corruption Control and Human Rights Enforcement in Uganda: The Case of the Inspector General of Government (IGG)*, 1 E. AFR. J. PEACE & HUM. RTS. 23 (1993).

449. Recent global nongovernmental efforts to combat corruption have led to the establishment of Transparency International (TI), which is devoted to the compilation of an annual international corruption index, and assisting in the establishment of local TI Chapters. See Barbara Crossette, *A Global Gauge of Greased Palms*, N.Y. TIMES, Aug. 20, 1995, at A3.

450. See SACHS, *supra* note 316.

451. See Bård-Anders Andreassen et al., *Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations*, in Eide & Hagtvet, *supra* note 416, at 260-61.

To say that such action is necessary for human rights groups is to state the obvious.⁴⁵² What is really critical however, is to begin the process of both encouraging a transformation in focus and a linkage to the broader context of their operations. Such activity could be commenced through the establishment of Country Committees on economic and social rights,⁴⁵³ and a regional or sub-regional Coordinating Committee which would operate as a clearinghouse for both information and strategies employed in different parts of the region. A study on the impact of SAPs in a country like Tanzania, which has had such a program for several years, would provide significant support to activists working in a country just about to embark on one. This would be of particular utility with respect to World Bank/IMF programs on poverty-reduction and social welfare “nets,” to cite just one example.⁴⁵⁴ This is especially important in the face of growing regional initiatives in which governments are coordinating not only economic policy, but also exchanging ideas on the control of opposition movements and the destabilization of dissent.⁴⁵⁵

But SAPs are not only confined to Africa, they are truly global in ambit and application.⁴⁵⁶ African human rights groups need to develop strategies of coordination and support with groups working in the Latin American and Asian contexts,⁴⁵⁷ as well as to begin a more active liaison with those in

452. The *Status Report* points to the significant expertise available among South African human rights organizations, stressing that they

have enormous and perhaps incomparable expertise in pursuing issues of social and economic deprivation from a rights perspective. The historical reason for this, clearly, is the institutionalized racism which denied access to social and economic rights on the basis of skin colour. It continues to be reflected in the large amount of time which human rights organizations spend advising on issues such as pensions, labour rights and housing.

Status Report, *supra* note 22, at 80.

453. See SACHS, *supra* note 316.

454. In this respect, the study on health in Zimbabwe for example, questioned the “seriousness with which the World Bank has attempted to integrate poverty-reduction mechanisms into structural adjustment. It also illustrates the grave dangers associated with the imposition of ideologically motivated prescriptions for financing health systems.” See OXFAM REPORT, *supra* note 142, at 35.

455. Consequently, it is important to understand the regional underpinnings of practices like “ethnic cleansing” and the support given to different oppressive regimes by their neighbors. Although governments are loath to admit it, consultations at this level, or at a minimum, the grafting and exchange of such strategies among African governments is widely practiced. See *Status Report*, *supra* note 22, at 3.

456. The Bank and the IMF are fond of quoting the “phenomenal performance” of the so-called Asian “tigers,” ascribing to that success many of the policies now being applied in the African context. It should not be forgotten however, that there are human rights problems (even economic and social) in these countries too. See Suk Tae Lee, *South Korea: Implementation and Application of Human Rights Covenants*, 14 MICH. J. INT’L L. 705, 720-23 (1993).

457. Groups such as the Free Legal Assistance Group (FLAG) in the Philippines, and the Law & Society Trust in Sri Lanka, are especially active in this field. See in particular, Ma Socorro I. Diokno, *Flag’s Economic, Social and Cultural Rights Program* (FLAG, Quezon City, Philippines), 1993.

Western capitals concerned with the ramification of development assistance and its impact on human rights. Many of the methods employed in litigation, advocacy and promotion can be borrowed from and usefully translated into the African contexts, even from a country like the United States, despite official apathy for this category of rights.⁴⁵⁸ Strategies such as suing arms dealers for injury done by assault rifles, should at the very least be considered for application in the international context.⁴⁵⁹ As conservatism gains sway and lays waste to the welfare state, many more in the developed countries will come round to the realization of the need to consider human rights work in an integrated fashion. The experience of Social Action Litigation (SAL) in India dramatically radicalized human rights activism in that country, and, prompted by a sympathetic Judiciary, provided an exemplar of the use of law in the service of broadly-defined human freedoms.⁴⁶⁰ Even in the absence of an enabling constitutional framework which permits such action, African activists can borrow the methods deployed by their Indian compatriots in order to achieve a similarly revolutionary reconceptualization of the notion of human rights.

The issue of the local operation of movements is, of course, critical to the success of any strategy for the reinvigoration of economic and social rights in Africa. Akwasi Aidoo brings together the most essential tenets of a grassroots strategy for human rights groups that is simultaneously linked in its focus and sustainable in its ambit:

[W]ork at the level of basic needs must itself be done with an eye to human rights issues. In the end, development activities must be entry points for enhancing human rights; specifically, human rights work must incorporate development action. For example, working to protect and defend the civil and political rights of refugees ought also to include activities that would enhance their food security. Working with rural dwellers to enhance their food security also ought to include addressing issues such as land rights, security of tenure and their capacity to defend their rights through existing legal means. Similarly, a project to improve maternal health among the poor would also need to address questions of reproductive health.⁴⁶¹

There is obviously a need to go beyond what Aidoo refers to as the "commando" campaign approach to human rights work.⁴⁶² According to

458. See Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an 'Entirely New Strategy'*, 44 HAST. L.J. 79 (1992); and Louis Henkin, *Economic Rights under the United States Constitution*, 32 COLUM. J. TRANSNAT'L L. 97 (1994).

459. See Barry Meier, *Guns Don't Kill, Gun Makers Do?*, N.Y. TIMES, Apr. 16, 1995, at E3. See also *Addison v. Williams*, 546 S.2d 220 (1989) (plea against gun manufacturer failed in products liability).

460. For an interesting treatment of SAL, see BAXI, *supra* note 30, at 140-57.

461. See Akwasi Aidoo, *Africa: Democracy without Human Rights?*, 15 HUM. RTS. Q. 703, 712 (1993).

462. *Id.*

him the process of the grassroots defence of human rights must be executed through promotional and empowering social action.⁴⁶³ While this is true, what is more important is to develop approaches that cover all fronts. We should not therefore shift to “promotion and empowerment” without ensuring that there are groups involved in advocacy, in litigation and with the other tenets of “traditional” human rights work.⁴⁶⁴ Work on economic and social rights must be truly interdisciplinary, covering those involved with development, humanitarian work and discrete political and social minorities.

In conclusion, the possibilities of undertaking collaborative work with governments, in for example tackling the deleterious IMF/World Bank policy-formulation, should not be ruled out *ab initio*. This is especially relevant in contexts where governments lack the material resources to gather information, or to take positive action.⁴⁶⁵ Where such action assists in meeting reporting and other obligations under the international framework, or in making governments more responsive to them. Governments can utilize the informational resources of human rights groups, for example, in order to make the case for the cancellation of debt accrued over the years, and for a less-rigid application of SAPs. Governments could utilize these same resources for a more rigorous and concerted articulation of the “noxious debts” defense, in a bid to make a case against the disproportionate sharing of the burden.⁴⁶⁶ It should be remembered that economic and social rights are to be “progressively realized,”⁴⁶⁷ and the evolution of strategies for their achievement may not necessarily map those of civil and political rights. In sum, the approach to economic and social rights in Africa requires a wholly *novel* approach, which must commence by building on what is already in place, and designing appropriate structures and strategies to face what lies ahead.

IV. A WORD IN CONCLUSION

This study can only be considered as the first tentative step in a long journey yet to be made. It has principally sought to clarify the situation with respect to the conceptual and practical issues involved in the struggle to promote economic and social rights activism in Africa. Such an approach was necessitated both by the rhetorical posture of the leadership on the issue, as well as by the lack of critical intellectual treatment of the area. The

463. *Id.*

464. Connie de la Vega illustrates the various ways in which these rights can be promoted, from bringing them to bear on judicial proceedings to employing them in administrative and legislative advocacy. See Connie de la Vega, *Protecting Economic, Social and Cultural Rights*, 15 WHITTIER L. REV. 471, 474-87 (1994).

465. This point is made by Jhabvala, in discussing the socioeconomic context of human rights violations. See Farokh Jhabvala, *On Human Rights and Socio-economic Context*, in Synder & Sathirathai, *supra* note 19, at 293-319.

466. See *supra* note 433.

467. ICESCR, *supra* note 2, art. 2.

Article aimed solely to bring together previously unexplored dimensions of the international, regional and national contexts in which economic and social rights in Africa must necessarily be explored. The next stage must be an articulation of appropriate strategies within specific domestic contexts, while at the same time drawing upon international linkages of solidarity and cooperation in order to place economic and social rights activism firmly on the agenda of future human rights work.

TABLE I
STATUS OF AFRICAN REPORTAGE UNDER THE ICESCR
(as of December 9, 1994)⁴⁶⁸

STATE PARTY	DATE OF ENTRY INTO FORCE	STATUS OF REPORTS
1. Algeria	12/12/1989	Initial Report Pending Consideration
2. Angola	04/10/1992	Overdue
3. Benin	06/12/1992	Overdue
4. Burundi	08/09/1990	Overdue
5. Cameroon	09/27/1984	Arts. 6-9 and 13-15 overdue
6. Cape Verde	11/06/1993	Initial Report due on 06/30/95
7. Central African Republic	08/08/1981	Overdue
8. Congo	01/05/1984	Overdue
9. Cote d'Ivoire	06/26/1992	Overdue
10. Egypt	04/14/1982	Overdue
11. Equatorial Guinea	12/25/1987	Overdue
12. Ethiopia	09/11/1993	Initial Report due on 06/30/95
13. Gabon	04/21/1983	Overdue
14. Gambia	03/29/1979	Overdue
15. Guinea	04/24/1978	Overdue
16. Guinea-Bissau	10/02/1992	Overdue
17. Kenya	01/03/1976	Pending consideration
18. Lesotho	12/09/1992	Overdue
19. Libyan Arab Jamahiriya	01/03/1976	Arts. 6-12, overdue
20. Madagascar	01/03/1976	Overdue
21. Malawi	03/22/1994	Initial report due on 06/30/96
22. Mali	01/03/1976	overdue
23. Mauritius	01/03/1976	Pending consideration
24. Morocco	08/03/1979	Initial Report considered at 1994 session
25. Niger	06/07/1986	Overdue
26. Nigeria	10/29/1993	Initial report due on 06/30/95
27. Rwanda	01/03/1976	2nd periodic report, arts. 10-15 overdue
28. Senegal	05/13/1978	Initial reports considered
29. Seychelles	08/05/1992	Overdue
30. Somalia	04/24/1990	Overdue
31. Sudan	06/18/1986	Overdue
32. Togo	08/24/1984	Overdue
33. Tunisia	01/03/1976	Arts. 13-15 of initial report overdue
34. Uganda	04/21/1987	Overdue
35. United Republic of Tanzania	09/11/1976	Arts. 6-9 and 13-15 overdue
36. Zaire	02/01/1977	2nd Periodic report overdue
37. Zambia	07/10/1984	Arts. 6-9 and 13-15 overdue
38. Zimbabwe	08/13/1991	Overdue

Source: Committee on Economic, Social and Cultural Rights, Report on the Tenth and Eleventh Sessions, (2-20 May, 1994; 21 November - 9 December, 1994); E/1995/22; E/C.12/1994/20.

468. The reports of the Committee are issued annually, although the meetings of the Committee are held twice a year. This means that the details of the last meeting of the Committee in June, 1995, are not available at the time of publication of this Article. The status of a number of the country-reports could have altered in the interim. South Africa signed the Covenant in October, 1994, and will probably ratify the same fairly soon.

TABLE II
STATUS OF CONCLUDED CASES AGAINST AFRICAN STATES PARTIES TO THE FIRST OPTIONAL PROTOCOL⁴⁶⁹

Country	Signature	Ratification/Accession ⁴⁷⁰	Inadmissible	Discontinued	HRC Gave its Views	Total
1. Algeria			-	-	-	-
2. Angola			-	-	-	-
3. Benin			-	-	-	-
4. Cameroon		06/27/1984	-	-	1	1
5. Central African Republic		05/08/1981	-	-	1	1
6. Chad		09/06/1995	-	-	-	-
7. Congo		10/08/1983	-	-	-	-
8. Equatorial Guinea			-	-	2	2
9. Gambia			-	-	-	-
10. Guinea	03/19/1975		-	-	-	-
11. Libyan Arab Jamahiriya			-	-	-	-
12. Madagascar	09/17/1969	06/21/1971	1	-	1	2
13. Mauritius		12/12/1973 ^a	-	2	4	6
14. Niger		03/07/1986	2	-	1	3
15. Senegal	07/06/1970	02/13/1978	-	-	-	-
16. Seychelles			-	-	-	-
17. Somalia			-	-	-	-
18. Sudan			-	-	-	-
19. Togo			-	-	-	-
20. Uganda		06/21/1995	-	-	-	-
21. Zaire		11/01/1976 ^a	4	2	9	15
22. Zambia		04/10/1984 ^a	-	1	2	3

Sources: United Nations, HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS 90-91 (1987) and *Chart of Ratifications* (as at June 30, 1994, ST/HR/4/Rev.10); Rosalyn Higgins, *Africa and the Covenant on Civil and Political Rights During the First Five Years of the Journal: Some Facts and Some Thoughts*, 5 AFN. J. OF INTL. & COMP. L. 55-56 (1992); United Nations, Multilateral Treaties Deposited with the Secretary General (status as of December 31, 1994), and information from the U.N. Human Rights Centre, Geneva (FAX to the author dated August 4, 1995).

⁴⁶⁹ The number of complaints still "living" (i.e. under consideration by the HRC at the time of the fax) was seven, with one in the pre-admissibility stage (against Cameroon) and six (four against Togo; and one each against Zaire and Zambia), already admitted.

⁴⁷⁰ "a" connotes that the State-Party made a declaration recognizing the competence of the Human Rights Committee to "receive and consider communications to the effect that a State party claims that another State Party is not fulfilling its obligations under the present Covenant" under Article 41 of the ICCPR.

