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 Rights\(^1\) and in subsequent international documents,\(^2\) the two categories of

\(\dagger\) 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, Mahmoud 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, Sigfrun 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.

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rights are placed on an equal footing, with an emphasis on their indivisibility, interconnection and interrelationship. 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. Following in the footsteps of the


4. Although Mobutu became President of what was then the Congo Republic following a military coup d’etat in November 1965, his de facto leadership of the country commenced in September, 1960. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, ZAIRE: REPRESSSION 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.

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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

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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. 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, 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. The latter demand—referred to by Rhoda Howard as the "full-belly thesis"—was translated as the state’s right to receive more international aid, for a time considered the panacea to all Africa’s developmental problems.

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. Needless to say, both categories of human rights—economic, social and cultural and civil and political—suffered as a consequence.

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 FUREDI, THE NEW IDEOLOGY OF IMPERIALISM: RENEWING THE MORAL IMPERATIVE (1994).


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.

See Fred 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. Paradoxically, however, while the literature on civil and political rights in Africa between the 1960s and the 1980s is fairly extensive and intellectually probing, that which examines economic and social rights is rather scanty. By contrast, the amount of literature on the topic emanating from other regions of the world is fair, albeit not substantial. Finally, although the growth of indigenous African human rights groups whose main focus is


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).

civil and political rights has been phenomenal over the past several years, the relative dearth of those covering economic and social rights in an activist fashion is, to say the least, disturbing. 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.

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. For Africa, it is especially critical to reconsider the issue in a holistic manner, because current democracy struggles are strongly underpinned by what Julius Nyang’oro refers to as a demand for "the betterment of economic life." This factor is all too often overlooked in the euphoria of political transition.

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 Interaficaine 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).


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


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.

rights arena,\textsuperscript{32} the area of migration\textsuperscript{33} and refugees, as well as a renewed focus on conflict resolution and peace building.\textsuperscript{34} All these factors necessitate the consideration of economic and social rights as a critical component of the agenda for the next millennium.\textsuperscript{35} Most importantly, the implications

\begin{itemize}
  \item \textsuperscript{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).
  
  
  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, \textit{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).
  
  
  
  
  
  
  \textit{See THE COMMISSION ON GLOBAL GOVERNANCE, OUR GLOBAL NEIGHBORHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE} 31-35 (1995); Muna Ndulo, \textit{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. 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.

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). It then

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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 EDENEK CERVENKA, THE ORGANISATION OF AFRICAN UNITY AND ITS CHARTER 22-45 (1968).
examines the African Charter on Human and People's Rights (Banjul Charter)\textsuperscript{39} and the Lagos Plan of Action for development and economic growth.\textsuperscript{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.\textsuperscript{41} The first steps toward this objective were taken with the promulgation of two Covenants—the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{42} and the International Covenant on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{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.\textsuperscript{44} That history has been treated in greater detail elsewhere.\textsuperscript{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.\textsuperscript{46}

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\begin{itemize}
\item \textsuperscript{40} ORGANIZATION OF AFRICAN UNITY, LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA: 1980-2000 (1981) [hereinafter LPA].
\item \textsuperscript{41} See Torkel Opsahl, Instruments of Implementation of Human Rights, 10 HUM. RTS. L.J. 13 (1989).
\item \textsuperscript{43} ICESCR, supra note 2.
\item \textsuperscript{44} Michael H. Posner, The Evolution of Human Rights Law, 31 COLUM. J. TRANSNAT'L L. 449 (1994).
\item \textsuperscript{45} See, e.g., THE INTERNATIONAL BILL OF RIGHTS 9-11 (Louis Henkin, ed. 1981).
\item \textsuperscript{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.
\end{itemize}
The implementation of the Covenants is overseen by special Committees, comprising experts selected on the basis of personal merit. The two instruments establish a variety of supervisory mechanisms including inter-state complaints, and individual or group petitions. Finally, there is the mechanism of reporting by states parties to the Covenants. 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, 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." 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." 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-Commission 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 Reieron & 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).
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

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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.\footnote{62} They have attempted to ensure that reporting is an exercise states take seriously.\footnote{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.\footnote{64}

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

\footnote{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. \textit{See} Alston \textit{supra} note 58, at 72-73.

\footnote{63} Alston, \textit{supra} note 47, at 492-493.

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


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.


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.\textsuperscript{72} Successive governments in both countries have de-emphasized the place of civil and political rights and focused on the need for "development."\textsuperscript{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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{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.\textsuperscript{77} This has correspondingly made UNICEF and the Committee established under the Convention potent forces in promoting those standards.\textsuperscript{78} By contrast, the ICESCR Committee and


\textsuperscript{73} Akinyemi et al., \textit{supra} note 72; PANFORD, \textit{supra} note 72.

\textsuperscript{74} See Steenkamp, \textit{supra} note 29, at 113, 116.


\textsuperscript{77} \textit{Id.} at 22-24.

\textsuperscript{78} Id. at 22-24.
the Covenant itself are routinely ignored in discourse and action on the question of development and socioeconomic issues, when both would have logically been promoted to play a similarly dynamic function. 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. 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.

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. 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. 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. Of these, twenty-one were party to the First Optional Protocol, which allows for the filing of individual petitions. Only Mozambique, Namibia and the Seychelles have ratified the Second Optional Protocol abolishing the death penalty. Strangely enough, Mozambique has not ratified either the ICESCR, or the First Optional Protocol. Chad and Uganda are the most recent countries to ratify the ICCPR, having done so on June 9 and 21, 1995 respectively. Of those states which have ratified the ICESCR, only Guinea-Bissau has not ratified the ICCPR. Liberia has signed both instruments but is yet to ratify them. South Africa is in a similar situation.

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
regions of the world. 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, 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. 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.


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 (1983). 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) INTERIGHTS 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. 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. Nevertheless, consideration of individual petitions at the Committee has assisted in publicizing the dismal conditions in the country. The reluctance to file individual petitions may also have to do with the requirement that an individual have “exhausted all available domestic remedies,” which in many African countries are both lengthy and intricate. 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. 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.
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. 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.

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. 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. 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. Finally, although

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110. For a concise history and analysis of the “aid” phenomenon, see KATRINA TOMASEVS KI, 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. 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'  

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. Likewise, the IMF has evolved to play a significant role in balance of payments support and stabilization, 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.


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).


structural adjustment and institutional reform that have been implemented throughout the continent since the early 1980s. These structural adjustment programs (SAPs), variously feature the liberalization of economic controls, privatization, de-indigenization, the introduction of market-driven economic policies and the promotion of primary exports. 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." A related consequence has been the phenomenal upsurge in the amount of African debt.

Initially both the Bank and the IMF were extremely reluctant to be drawn into the debate on human rights. 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. 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, the question of civil and political rights is an altogether different matter involving

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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).


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 (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.


an amendment to the Bank’s founding Charter—the Articles of Agreement. 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.” 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.” 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. 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 IFDIIs initially suspended aid on the ground that there were problems with Daniel arap Moi’s governance of the country, among which were the fact that his single-party state had remained in power for several years brooking no opposition. Aid was restored following approval of economic reform measures introduced by the Kenyan government. These reforms, howev-
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. 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. Museveni’s revulsion for and suppression of political party activity is no less intense than that of his Kenyan colleague. 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. 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.

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.


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 standby 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.\footnote{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 \textit{par excellence}. The Bank's operations have reached numerous diverse issues, including population, education, health and social security."\footnote{138}

Even if one allows certain concessions to the Bank, these are clearly undercut by the operations of its chief ally, the IMF.\footnote{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.\footnote{140} If the link between structural adjustment and the violation of civil and political rights is allegedly tenuous,\footnote{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.\footnote{142}

Thus, for example, in a recent critique of the Bank's

\begin{itemize}
\item \footnote{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, \textit{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. \textit{See, e.g.}, Michael M. Cernea, \textit{The Building Blocks of Participation: Testing Bottom-up Planning}, \textit{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.
\item \footnote{138} \textit{Lawyers Committee}, \textit{supra} note 130, at 30.
\item \footnote{140} IBRD \textit{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." \textit{Id.}
\item \footnote{142} \textit{Development Aid and Human Rights Revisited}, \textit{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, \textit{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 Lennoch, \textit{Paying for Health: Poverty and Structural Adjustment in Zimbabwe} (1994) [hereinafter Oxfam Report].
\end{itemize}
positive self-appraisal of structural adjustment in Africa,\textsuperscript{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.\textsuperscript{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."\textsuperscript{145}

But how exactly do Bank/IMF policies affect the realization of economic and social rights?\textsuperscript{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.\textsuperscript{147} This takes place in a variety of ways, ranging from the humiliating fashion in which "Paris Club" debt-rescheduling meetings take place,\textsuperscript{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.\textsuperscript{149} In more specific ways, structural adjustment affects

\textsuperscript{143} WORLD BANK, ADJUSTMENT IN AFRICA: REFORMS, RESULTS AND THE ROAD AHEAD (1994).


\textsuperscript{145} Schatz, supra note 144, at 691.

\textsuperscript{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.

\textsuperscript{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)).

\textsuperscript{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.

\textsuperscript{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. 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. 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. 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. Even conservative observers agree that, at a minimum, the IFDI's have the politics wrong.

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


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.


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. 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. 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.

It is thus quite clear that, at a minimum, there are serious problems in the design and implementation of SAPs. Contrary to Shihata's assertion, SAPs in fact promote the failure to "progressively realise" economic and social rights, aside from their impact on the political context. 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. While the Bank has taken some steps to alleviate the adverse consequences of SAPs, 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).
158. Osinbajo and Ajayi, supra note 120, at 731 (citations omitted).
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

https://scholarlycommons.law.cwsl.edu/cwilj/vol26/iss1/3
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. 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.

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, and thus directly with the realization of economic and social rights. Of these, UNDP has made the most assertive attempts to link human rights and development, particularly via publication of its annual Human Development Report, and the Index of Human Freedoms (the


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


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 ADJUSTMENT WITH A HUMAN FACE: PROTECTING THE VULNERABLE AND PROMOTING GROWTH (Giovanni Andrea Cornia et al. eds., 1987).


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).
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. Most problematic was the selective use of human rights terminology, and the quantification of only political freedoms.

For the 1993 Vienna Conference on Human Rights the UNDP and the U.N. Human Rights Centre jointly prepared a document on democracy and development. 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. 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.


"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.

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).

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

See supra note 3.


Id.

Cf. Alston, supra note 47, at v.
The Copenhagen Summit marked the return of economic and social issues to center stage. Following Rio on the Environment, Vienna on Human Rights and Cairo on Population, the Copenhagen meeting was convened in March, 1995 to consider the interconnected questions of poverty, economic security and social progress. The Declaration that emerged from this conference marks the latest addition to the international documents in this genre.

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

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.”

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. This has resulted in recourse to an elaborate lexicography which essentially avoids use of the term. Thus, phrases ranging from “sustainable development” to the most recently-adopted “human security,” 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.


187. Id.

188. See, e.g., HUMAN DEVELOPMENT REPORT: 1994, supra note 178; and DEVELOPMENT AID AND HUMAN RIGHTS REVISTED, 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

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191. See James Paul, The United Nations and the Creation of an International Law of

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

196. See Angela Lloyd, The Southern Sudan: A Compelling Case for Secession, 32 COLUM.

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. 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. 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. 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.

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, among others, have variously adopted and applied human rights standards to their programs of development assistance. 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, 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 violations.


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.
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*. 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. 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? Relevance in the eyes of aid recipients requires, at minimum, a more democratic articulation of the notions of participation and accountability beyond the purely economistic (and at times overtly political) considerations that have dictated development assistance to date. 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. 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.

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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.


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, and have developed what can only be described as the "traditionalist" approach to human rights. 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. 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 dealers—who have come to impact upon, and influence the range and extent of observation or violation of human rights. Finally, the growing complexity of the field


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.


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. 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. 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. It illustrates that such issues can be taken on and accommodated even within a "traditional" human rights framework. 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.


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).


221. LAWYERS COMMITTEE, supra note 130.
attention was civil and political rights, and in particular the evolving phenomenon of "governance."\textsuperscript{222}

The focus on the Bank was also justified in terms of U.S. foreign policy.\textsuperscript{223} Thus, although reference is made to the Declaration on the Right to Development and the ICESCR,\textsuperscript{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.\textsuperscript{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.\textsuperscript{226} Such a view simultaneously exposes the haunting influence of the dominant traditionalist human rights perspective.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{222} Id. at 43-60. The Lawyers Committee adopts a definition of governance as defined by Joan Nelson:

  \begin{quote}
  [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.
  \end{quote}


  \item \textsuperscript{223} On U.S. foreign policy, see LAWYERS COMMITTEE, supra note 130, at 3, 30-31.

  \item \textsuperscript{224} Id. at 33-35.

  \item \textsuperscript{225} Id. at 34-37.

  \item \textsuperscript{226} See id. at 34.

  \item \textsuperscript{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.

  \item \textsuperscript{228} See IBRD, supra note 124, art. VI § 10.

  \item \textsuperscript{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.
\end{itemize}
Policies (Development GAP), the International Centre for Law in Development (ICLD) and the more recently established Centre for Economic and Social Rights (CESR). 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. This has resulted primarily from an appraisal of the devastating consequences of SAPs. 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. 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.

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. As yet, there has not been a lucid and comprehensive approach to the question. 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.
236. WEISS, ET AL., supra note 67, at 139.
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.


242. See LESLIE, supra note 5.


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

245. See FUREDI, 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 UIAMAA]: 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. Allam ed., 1982).
This was the veneer assumed by most African polities following the honeymoon of independence, and widely shared irrespective of ideological outlook. 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.

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. 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. 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.

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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. Lefeber, *Africa: Lost Between Self-determination and Uti Possidetis*, in *PEOPLES AND MINORITIES IN INTERNATIONAL LAW* 37 (Catherine Brölmann et al. eds., 1993).

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. Following Kwame Nkrumah's famous dictum, "seek ye first the political kingdom," a two-pronged thrust was developed. 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. The main concern of the time was the eradication of imperial domination and the complete liberation of the continent. 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. 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. The primary focus of the OAU Charter is solidarity and cooperation. While reference is made to the Universal Declaration, 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. Thus upon creation, the OAU established five specialized Commissions, of which two, the Economic and Social Commission and the Educational and Cultural Commission had the brief for economic and social issues.

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

253. For the background to the establishment of the OAU, see FELIX CHUKS OKOYE, INTERNATIONAL LAW AND THE NEW AFRICAN STATES 121-25 (1972).
255. ČERVENKA, supra note 38, at 22-45.
256. See OAU CHARTER, supra note 250, pmbl. (note especially paras. 3 & 10).
257. Id. art. III.
259. Id. Cf. OAU CHARTER, supra note 250, pmbl. & 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.\textsuperscript{263} The principal right to which the OAU initially directed its attention was the right to self-determination of colonial States.\textsuperscript{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.\textsuperscript{265} Individuals and communities did not feature in this paradigm of self-determination,\textsuperscript{266} which explains the OAU’s underlying hostility to movements such as those in Biafra\textsuperscript{267} and Eritrea\textsuperscript{268} that sought to challenge the notion of the inviolability of inherited borders.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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.


\textsuperscript{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.


\textsuperscript{267} Blay, supra note 264, at 151.


\textsuperscript{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, \textit{International Law and Intervention in Africa}, 8 INT’L REL. (London) 341 (1985).

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 Convention\(^{277}\)—it is especially renowned for its definition of the term “refugee”\(^{278}\) which is significantly more expansive than the

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\(^{271}\) 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 Thl. 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).


\(^{276}\) *See* AMATE, *supra* note 254, at 460-65.


\(^{278}\) 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. Many commentators have asserted that this is due to traditional “African hospitality.” The situation on the ground however, does not always quite conform to such a description. 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.

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. The Convention was more sensitive to the maintenance of harmonious relationships between African states, than it was to the


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. 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 fragrantly violating the 1951 UN Convention”).

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

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. 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). 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. 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).


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. Oloko-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).


290. LPA, supra note 40.

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

295. 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.
296. Id. art. 22.
297. Id. art. 23.
298. Id. art. 24.

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.

economic, social and cultural rights in conception as well as universality. 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, 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."\(^{290}\)

Examined in light of the extensive claw-back clauses attending the recognition of civil and political rights in the document, 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."\(^{293}\) 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.\(^{294}\)

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. 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.\(^{295}\) Such ambivalence can be

\(^{299}\). See Banjul Charter, supra note 39, pmbl. (emphasis added).

\(^{300}\). See D'Sa, supra note 293, at 78-79.

\(^{301}\). Banjul Charter, supra note 39, pmbl., para. 8 (emphasis added).

\(^{302}\). See Evelyn Ankomah, Towards an Effective Implementation of the African Charter, 8 INTERIGHTS 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 clawback 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).


\(^{304}\). 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 INTERIGHTS, 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{309} Article 10 stipulates that the right is exercisable provided that the individual “abides by the law”\textsuperscript{,310} this when numerous domestic legal regimes around the continent outlaw or severely proscribe trade union formation and activity.\textsuperscript{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.\textsuperscript{312}

The Charter also produced a number of surprises, the first being the guarantee of the right to property,\textsuperscript{313} a right which does not appear in the international Covenants,\textsuperscript{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.\textsuperscript{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


\textsuperscript{308} The right to strike is likewise ignored in the Charter. Scoble, supra note 21, at 194.

\textsuperscript{309} See supra note 302.

\textsuperscript{310} Banjul Charter, supra note 39, art. 10.

\textsuperscript{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.

\textsuperscript{312} Banjul Charter, supra note 39, art. 29.

\textsuperscript{313} See id. art. 14.

\textsuperscript{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.

\textsuperscript{315} See generally FÜREDI, supra note 11, at 57-119.
Africa and directly related to a series of other rights. 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.

However, the Banjul Charter gives no indication that this is the direction in which it intended to move with respect to this right. 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.

Article 15 stipulates that every individual has the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. 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. 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.

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. Finally, Article 17 covers the right to education. 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.

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).


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. Of these, the absence of the last—the right to food—is perhaps the most striking. 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. Both are a product of and facilitated by the inordinate concentration on export-crop production, which characterizes the majority of African economies. Compounding the problem is the failure to devise amicable means for the resolution of conflicts, frequently resulting in war and famine.

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.
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.\footnote{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 . . .").} 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.\footnote{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).} 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.\footnote{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].} 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.\footnote{334. O. Umozorike 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).} 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.\footnote{335. Id.} Such an attitude may partially explain why, of the more than 140 communications received to date under the complaints mechanism of the Charter,\footnote{336. See Banjul Charter, supra note 39, arts. 47-59.} none have related to Articles 14 to 17—the provisions in the Charter relating to economic and social rights.\footnote{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.} The evolution of the African Commission has been steady, but unremarkable,\footnote{338. See The Participation of Nongovernmental Organizations in the Work of the African Commission of Human & Peoples Rights (ACPFR): A Compilation of Basic Documents (Oct. 1991 - Apr. 1994) (Int'l Comm'n of Jurists, Geneva, 1994 [hereinafter ICI Compilation].} with significant resolutions being recently adopted on
issues such as the right to a fair trial and freedom of association.\textsuperscript{339} However, in performing the functions stipulated under Article 45(1)(b) of the Charter,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{346} The guidelines devote considerably more attention to economic and social rights than they


\textsuperscript{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.

\textsuperscript{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.


\textsuperscript{344} See ICJ Compilation, supra note 338, especially Part II.

\textsuperscript{345} See Benedek, supra note 339, at 36.

do to civil and political rights. Only three pages are devoted to the latter, while those on the former extend to eighteen. Furthermore, while the Charter is silent on a number of rights, the guidelines require reporting on, *inter alia*, equal opportunity for promotion, rest, leisure and holiday with pay, the free operation of trade unions and the right to strike. 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.

The Commission can begin to approach this issue by borrowing approaches to the issue developed by both its regional counterparts—the Inter American Commission and Court on Human Rights and the European Union system—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 Charter in 1961 as the counterpart to the ICESCR, never led to any significant action primarily because of a lack of political will. 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. Moreover, the

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.
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.
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


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.


363. Id. art. 19.6.


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.


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, and boosted attention to economic and social rights globally. 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. The establishment of the NGO Forum to meet at the same time as the bi-annual Commission sessions was an extremely innovative idea, and can be credited with many of the reforms introduced by the Commission. 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.

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. From these deliberations emerged the Lagos Plan of Action (LPA), aimed at the self-reliance of African countries, self-

368. See, e.g., Wright, supra note 20, at 255-58.
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.\textsuperscript{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.\textsuperscript{375} There was thus a need to reverse this situation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{378} One notable exception was the focus on women—presaging the attention that followed the Nairobi Conference\textsuperscript{380} and the Women in Development schema of the donor agencies.\textsuperscript{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.\textsuperscript{382} Parpart compared the Plan to another simultaneously issued by the World Bank,\textsuperscript{383} and found that the latter was woefully inferior in considering the interests of women.\textsuperscript{384} According to her, the LPA also spurred "heartening improvements" for women in Africa.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{374} LPA, \textit{supra} note 40.
  \item \textsuperscript{375} \textit{Id.} pmbl. para. 6.
  \item \textsuperscript{376} \textit{Id.} pmbl. para 11.
  \item \textsuperscript{377} \textit{Id.} pmbl.
  \item \textsuperscript{378} For a broad critique of the LPA, see Frederick W. Jjuuko, \textit{The State, Democracy and Constitutionalism in Africa}, 2 E. AFR. J. OF PEACE \& HUM. RTS. 1, 3-4 (1995).
  \item \textsuperscript{379} LPA, \textit{supra} note 40, ch. XII.
  \item \textsuperscript{381} \textit{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).
  \item \textsuperscript{382} LPA, \textit{supra} note 40, ch. xii.
  \item \textsuperscript{383} \textit{WORLD BANK, ACCELERATED DEVELOPMENT IN SUB-SAHARAN AFRICA: AN AGENDA FOR ACTION} (1981).
  \item \textsuperscript{384} \textit{See} Jane L. Parpart, \textit{Women's Rights and the Lagos Plan of Action}, 8 HUM. RTS. Q. 180, 190-91 (1986).
  \item \textsuperscript{385} \textit{Id.} at 192. These improvements include recognition of women as important actors in the development paradigm.
\end{itemize}
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.\(^3^8\) The apex of this movement was the AAF-SAP in 1989,\(^3^8\) which was a direct critique of the debilitating IMF policies that had operated in Africa since the early 1980s.\(^3^8\) 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.\(^3^8\) Even though they had began to respond to such failure and frustration, the response was slow and evasive.\(^3^9\) 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."\(^3^9\) It then proceeded to give a point-by-point appraisal and recommendation of what should be done.\(^3^9\) To date, the main recommendations of the AAF-SAP remain largely valid,\(^3^9\) but the movement by IFDIs on the issue has been slow.\(^3^9\) The preference remains for the SAPs applied in the 1980s, ameliorated through poverty-alleviation programs which target the most “vul-

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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. Even these have had questionable results, however. 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. 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. 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. Moreover, even though the AEC Treaty establishes an African Court of Justice, Chris Peter points out that the deficiencies in the Court’s enabling statute do not make for an optimistic reading of the institution.

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. The most prominent of these was the unanimous adoption of the *African Charter for Popular Participation in Development and Transformation* (Charter for Popular Participation),

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395. See *supra* text accompanying notes 114-65.
396. *Id.*
398. *Id.* art. 4.
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.*
which stemmed from a frustration with the failure of traditional development paradigms to appreciate the role of "popular participation." 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. 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. 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. As internal friction and conflict has caused the OAU to turn its attention all the more to issues concerning security, displacement and conflict resolution, economic and social rights have been relegated even further down the scale. 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. 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.
406. On overall socioeconomic conditions in Africa, see HUMAN DEVELOPMENT REPORT: 1994, supra note 178.
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 Sach’s eloquent phrase, the “right to be naive.” 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


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 naive” 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.

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 Naïve'

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 Nationales (CNs);420 there as a Constitutional Reform Commission (CRC),421 else-

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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.


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).

where, in the activities of non-governmental actors.\footnote{421} If the promise of post-independence constitutionalism was lost on the rocks of demagoguery and “imperial presidentialism,”\footnote{422} 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.\footnote{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.\footnote{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,
but still brutally, it excludes those segments of society for whom autonomy means little without the necessities of life.\textsuperscript{426}

The process of extrapolating economic and social rights and constitutionalizing 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{429} In this respect, the need to cultivate a receptive and dynamic Judiciary becomes paramount.\textsuperscript{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.\textsuperscript{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.\textsuperscript{432}

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

\textsuperscript{426} Id. at 28-29.
\textsuperscript{428} Article 28, as Butegwa, \textit{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. \textit{Id.} at 501-03.
\textsuperscript{429} \textit{See} \textit{The Right to Health}, \textit{supra} note 66, at 43.
\textsuperscript{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 \textit{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! \textit{See} Issa Shivji, \textit{Contradictory Developments in the Teaching and Practice of Human Rights Law in Tanzania}, 35 J. AFRI. L. 116, 121-22 n.25 (1991).
\textsuperscript{431} For an examination of the various issues relating to the creation of an independent Judiciary in an anglophone African context, see Oloka-Onyango, \textit{supra} note 328.
\textsuperscript{432} One such method is through the development of courts practicing popular justice. \textit{See} \textit{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. \textit{See} Francis Regan, \textit{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. \textit{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. 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. 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. 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. 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. 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. 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.


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. Despite operating within a context of severe social and economic strife and turmoil, the vast majority of local groups are involved in traditional human rights work. At the other end of the spectrum, there is an equally great number of groups involved in development and humanitarian work. 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. 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. Similarly, at the regional level, women’s groups operate more closely than do groups working in the broader human rights field. Such ‘networking’ has greatly boosted the strategic and conceptual development of the movement on the continent.

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.


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).


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 Commissions\textsuperscript{447} to Ombudspersons,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{451}


\textsuperscript{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, \textit{The Dynamics of Corruption Control and Human Rights Enforcement in Uganda: The Case of the Inspector General of Government (IGG)}, 1 \textit{E. Afr. J. Peace & Hum. RTS.} 23 (1993).

\textsuperscript{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, \textit{A Global Gauge of Greased Palms}, \textit{N.Y. Times}, Aug. 20, 1995, at A3.

\textsuperscript{450} See SACHS, \textit{supra} note 316.

\textsuperscript{451} See Bård-Anders Andreassen et al., \textit{Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations}, in Eide & Hagtvet, \textit{supra} note 416, at 260-61.
To say that such action is necessary for human rights groups is to state the obvious.\textsuperscript{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,\textsuperscript{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.\textsuperscript{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.\textsuperscript{455}

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

\textsuperscript{452} The \textit{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. \textit{Status Report, supra} note 22, at 80.

\textsuperscript{453} See \textit{SACHS, supra} note 316.

\textsuperscript{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." \textit{See OXFAM REPORT, supra} note 142, at 35.

\textsuperscript{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. \textit{See Status Report, supra} note 22, at 3.

\textsuperscript{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. \textit{See Suk Tae Lee, South Korea: Implementation and Application of Human Rights Covenants,} 14 MICH. J. INT'L L. 705, 720-23 (1993).

\textsuperscript{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. \textit{See} in particular, Ma. Soccorro 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:

[Work 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.]

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

According to


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


462. Id.
him the process of the grassroots defence of human rights must be executed through promotional and empowering social action. 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. 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. 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.

It should be remembered that economic and social rights are to be "progressively realized," 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

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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 Farrokh 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)

<table>
<thead>
<tr>
<th>State Party</th>
<th>Date of Entry into Force</th>
<th>Status of Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>12/12/1989</td>
<td>Initial Report Pending Consideration</td>
</tr>
<tr>
<td>Angola</td>
<td>04/10/1992</td>
<td>Overdue</td>
</tr>
<tr>
<td>Benin</td>
<td>06/12/1992</td>
<td>Overdue</td>
</tr>
<tr>
<td>Burundi</td>
<td>08/09/1990</td>
<td>Overdue</td>
</tr>
<tr>
<td>Cameroon</td>
<td>09/27/1984</td>
<td>Arts. 6-9 and 13-15 overdue</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>11/06/1993</td>
<td>Initial Report due on 06/30/95</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>08/08/1981</td>
<td>Overdue</td>
</tr>
<tr>
<td>Congo</td>
<td>01/05/1984</td>
<td>Overdue</td>
</tr>
<tr>
<td>Cote d'Ivoire</td>
<td>06/26/1992</td>
<td>Overdue</td>
</tr>
<tr>
<td>Egypt</td>
<td>04/14/1982</td>
<td>Overdue</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>12/25/1987</td>
<td>Overdue</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>09/11/1993</td>
<td>Initial Report due on 06/30/95</td>
</tr>
<tr>
<td>Gabon</td>
<td>04/21/1983</td>
<td>Overdue</td>
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<td>Gambia</td>
<td>03/29/1979</td>
<td>Overdue</td>
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<td>Guinea</td>
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<td>Overdue</td>
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<td>Libyan Arab Jamahiriya</td>
<td>01/03/1976</td>
<td>Arts. 6-12, overdue</td>
</tr>
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<td>Madagascar</td>
<td>01/03/1976</td>
<td>Initial report due on 06/30/96</td>
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<td>Overdue</td>
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<td>Mali</td>
<td>01/03/1976</td>
<td>Pending consideration</td>
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<td>Mauritius</td>
<td>01/03/1976</td>
<td>Initial Report considered at 1994 session</td>
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<td>Morocco</td>
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<td>Niger</td>
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<td>Initial report due on 06/30/95</td>
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<td>Rwanda</td>
<td>01/03/1976</td>
<td>2nd periodic report, arts. 10-15 overdue</td>
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<td>Sudan</td>
<td>06/18/1986</td>
<td>Overdue</td>
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<td>Togo</td>
<td>08/24/1984</td>
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<td>Tunisia</td>
<td>01/03/1976</td>
<td>Arts. 13-15 of initial report overdue</td>
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<td>Uganda</td>
<td>04/21/1987</td>
<td>Overdue</td>
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<tr>
<td>United Republic of Tanzania</td>
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<td>Arts. 6-9 and 13-15 overdue</td>
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<td>Zaire</td>
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<td>2nd Periodic report overdue</td>
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<tr>
<td>Zimbabwe</td>
<td>08/13/1991</td>
<td>Overdue</td>
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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 PROTOCOL

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<th>Country</th>
<th>Signature</th>
<th>Ratification/Accession</th>
<th>Inadmissible</th>
<th>Discontinued</th>
<th>HRC Gave its Views</th>
<th>Total</th>
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<tr>
<td>1. Algeria</td>
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<td>2. Angola</td>
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<td>3. Benin</td>
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<td>4. Cameroon</td>
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<td>6. Chad</td>
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<td>7. Congo</td>
<td>10/08/1983</td>
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<td>8. Equatorial Guinea</td>
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<td>9. Gambia</td>
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<td>10. Guinea</td>
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<td>11. Libyan Arab Jamahiriya</td>
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<td>13. Mauritius</td>
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<td>22. Zambia</td>
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<td>2</td>
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</tbody>
</table>


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" signifies 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.