

## A Human Rights-based Approach to Development in Africa: Opportunities and Challenges

John C. Mubangizi

*College of Law and Management Studies, University of Kwazulu-Natal, Private Bag X54001,  
Durban 4000, South Africa*

**KEYWORDS** Millennium Development Goals. Poverty. Democracy. Governance. Accountability

**ABSTRACT** There is an undisputed and critical link between human rights and development, which is recognised by various international human rights instruments. After defining the concepts ‘human rights’ and ‘development’ – based on the views of a variety of bodies, institutions and human rights instruments – and discussing their interplay and relationship, this paper explores and acknowledges the level and extent of current practices of integrating human rights and development in Africa. It pays specific attention to the roles and dimensions of civil and political rights on the one hand, and socio-economic rights on the other, and how they impact on development in different, but important ways. Opportunities and prospects for promoting a human rights-based approach to development are discussed, with some mention of the role of the African Charter on Human and Peoples Rights, the African Commission on Human and Peoples’ Rights, and the African Court of Justice and Human Rights. However, particular and most attention is paid to the various strategies of the United Nations Millennium Development Goals (MDGs). Challenges such as poverty, poor governance, lack of democracy, conflict, health, and unpalatable cultural practices prevailing in Africa, are discussed. This considered, and given the backdrop of Africa’s varied and substantial political and socio-economic challenges, it is argued that adopting a human rights-based approach to development in Africa is imperative and critical.

### INTRODUCTION

The 1986 United Nations Declaration on the Right to Development signalled the recognition that human rights and development are closely interrelated. This recognition was strongly endorsed by the 1993 World Conference on Human Rights. The Vienna Declaration and Programme of Action that emanated from that conference clearly recognised the interdependence and mutually-reinforcing relationship between “democracy, development and respect for human rights and fundamental freedoms” (Paper 8). In 1998, a United Nations Development Programme (UNDP) Policy Document on Integrating Human Rights with Sustainable Development emphasised the link between human rights and development, and concluded that “human rights and sustainable development are inextricably linked, complementary and multidimen-

sional” (UNDP 1998). A recent study also showed that “human rights and development are considered ‘parallel streams’ which address similar problems and share similar views” (D’Hollander et al. 2013).

There are a number of reasons why the relationship between development and human rights is critical, and, therefore, why a human rights-based approach to development is essential – particularly in Africa. Such an approach, according to Kofi Annan, “empowers people to demand justice as a right, not as a charity, and gives communities a moral basis from which to claim international assistance where needed” (UN Annual Report 1998). It may well be argued that for African communities to claim or demand such international assistance, they ought to meet internationally-accepted norms of human rights and democratic values – that will ensure that such assistance is properly utilised to the benefit of the communities concerned. Furthermore, human rights form an important component of good governance and democratisation. Since good governance and democracy are integral prerequisites for sustainable development, human rights protection inevitably becomes part of the equation. The UNDP has captured this relationship in the following terms:

*“Development is unsustainable where the rule of law and equity do not exist; where eth-*

---

*Address for correspondence:*

Dr. John C. Mubangizi

*Deputy Vice-Chancellor and Head*

College of Law and Management Studies,

University of Kwazulu-Natal,

Private Bag X54001,

Durban 4000, South Africa

Telephone: (+27) 31 260 8053;

Fax: (+27) 31 260 1177;

E-mail: mubangizij@ukzn.ac.za

*nic, religious or sexual discrimination are rampant; where there are restrictions on free speech, free association and the media; or where large numbers of people live in abject and degrading poverty” (UNDP 1998).*

Indeed, poverty is one of the main challenges facing Africa today, although there are many more. Because of all these challenges, it is argued that adopting a human rights-based approach to development in Africa is imperative and critical. In so arguing, the paper explores and acknowledges the level and extent of current practices of integrating human rights and development in Africa – paying specific attention to the roles and dimensions of civil and political rights on one hand, and socio-economic rights on the other, and how they impact on development in different but important ways. Paying particular attention to the strategies of the Millennium Development Goals (MDGs) in the context of adopting a human rights-based approach to development, opportunities and prospects are explored – before highlighting the challenges and conditions prevailing in Africa that may, and do have, significant implications for the said approach.

#### **UNDERSTANDING THE CONCEPTS AND THEIR RELATIONSHIP**

In order to understand the opportunities and challenges of adopting a human rights-based approach to development in Africa, it is necessary to first unpack the important concepts and how they relate to each other. The starting point is a general understanding of “a human rights-based approach” – before seeing it in the context of development. In that regard, the Scottish Human Rights Commission (SHRC) has described a human right-based approach as one that “empowers people to know and claim their rights and [increases] the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling human rights” (SHRC 2013). Accordingly, such an approach should give people “greater opportunities to participate in shaping the decisions that impact on their human rights [and should increase] the ability of those with responsibility for fulfilling rights to recognize and know how to respect those rights...” (SHRC 2013). More importantly, the SHRC believes that a human rights-based approach “is about ensuring

that both the standards and principles of human rights are integrated into policy making as well as the day to day running of organizations” (SHRC). What this means, is that human rights should provide the guiding framework for policy-making, development planning, and organisational behaviour. It also means that “development policies and programs must contribute explicitly to human rights...and...must be organized in a way that will strengthen the capacities of individuals (rights holders) to exercise and demand respect for their rights, and of states (duty bearers) to fulfil their human rights obligations” (CIFEDHOP 2012).

The most succinct definition of “a human rights-based approach” is provided by the United Nations, which sees such an approach as “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights” (OHCHR 2006). This definition is indeed consistent with the principles outlined by the European Union as being key to a human rights based-approach. These include a linkage between development challenges and rights, empowerment of right holders to claim their rights, their participation in all processes that affect them, non-discrimination and inclusion of vulnerable groups, and accountability of duty-bearers to rights holders (Ussor 2011).

Defining “development” is a bit more, as its definitions are diverse and sometimes contentious. This is because development is often seen and defined in relation to various contexts – resulting in terminology such as “human development”, “economic development” and “sustainable development.” Sometimes a combination of these terms is used, resulting in terminology such as “sustainable human development.” Indeed, today, development is increasingly seen as such. In that regard, human development has been described as “the process of enlarging the range of peoples’ choices from a sound physical environment to economic and political freedoms” (UNDP 1992). It is in this same context that Amartya Sen has seen development as freedom, and argues that it is a process of expanding the real freedoms that people enjoy (Sen 1999:3). He contrasts development as a human freedom with what he calls “narrower views of development, such as identifying development with the growth of gross national product, or

with the rise in personal incomes, or with industrialisation, or with technological advance, or with social modernization” (Sen 1999: 3).

Whereas the definitions of development may be diverse, the basic consensus on the concept is achieved through the definition provided by the 1986 United Nations Declaration on the Right to Development – which defines development as:

*“a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.”*

It is in the context of the holistic understanding of the concept of development that this discussion is premised. That said, the relationship between development and human rights becomes tautological, and the interdependence and inextricability between the two becomes clearer. It is in that context that a human rights-based approach to development should be seen and defined. Accordingly, the Department for International Development of the United Kingdom has defined the approach as one that “puts people first and promotes human-centred development, recognizes the inherent dignity of every human being without distinction, recognizes and promotes equality between women and men, promotes equal opportunity and choices for all...” (Häusermann 1998). Similarly, the Office of the High Commissioner for Human Rights sees the rights-based approach to development, as “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights ... an approach [that] integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development” (OHRHC 2010). Furthermore, according to Kofi Annan, the rights-based approach to development “describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society’s obligation to respond to the inalienable rights of individuals” (UN Annual Report 1998). For its part, UNDP defines it as a new approach, which:

*“...emphasizes both development outcomes and the process by which rights are realized. It*

*focuses on the relationships of obligations and rights, and on improving the capacity of those with responsibilities to respect, protect and fulfil rights (duty bearers) to meet their obligations, and on improving the capacity of those that have rights (rights holders) to claim them ...”* (UNDP 2013).

A lot has been said and written about the relationship between human rights and development. A golden thread in the literature, however, is the interdependence and mutually-reinforcing nature of the two concepts. In short, you can’t achieve one without a reasonable level of achievement of the other. In fact, it could be argued that the attainment of human rights should be seen as one of the standards by which to measure development. It has been argued that this human-rights standard is different from other standards “in that it stresses the justice of development [and] should protect the rights of all on the basis of equality...” (Xiaoling 2009).

As mentioned earlier, the relationship between human rights and development was formally recognised by the United Nations in 1986, with the adoption of the Declaration of the Right to Development, paper 1 of which states that:

*“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”*

Since the adoption of the UN Declaration of the Right to Development, there have been many developments and shifts in thinking and in practice. In the particular context of Africa, it is important to note that the African Charter on Human and People’s Rights is the only regional/continental human rights instrument that incorporates the right to development. Paper 22 of the Charter states that:

- 1) *All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*
- 2) *States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*

What this implies is that, not only is development a human right – but the full attainment of human rights requires the support of eco-

nomic, social and cultural development. It also implies that such development is the basis for the realization of all human rights. It is against that background that the current approaches of integrating human rights in development in Africa are now highlighted.

### INTEGRATING HUMAN RIGHTS IN DEVELOPMENT

In order to understand the current approaches of integrating human rights in development, it is important to distinguish between civil and political rights on one hand, and social, economic and cultural rights on the other. This is because of the theoretical gaps that exist between the two generations of rights. As one commentator has opined: "... a rights-based approach to development bridges theoretical gaps between political, civil, social and economic rights by understanding how they are interconnected in practice" (Offenheiser and Holcombe 2003: 268).

#### Civil and Political Rights

Although there are a number of specific rights that fall under this category, the mainstay of civil and political rights is equality and non-discrimination. Many aspects that are relevant to development fall directly or indirectly under this broad genre. These include gender equality (the rights of women); the rights of minority groups; the rights of poor and marginalised communities; advancement of historically-disadvantaged groups; equal benefit and protection of the law; equal access to resources and opportunities; and mutual respect and dignity among all people.

The other genre of civil and political rights consists of those rights that form the basis of a democratic society. These broadly include freedom of expression, freedom of association, the right to make political choices, fair labour practices, and religious freedom – to mention but a few. It may well be argued that strengthening these rights is a basis for good governance, which, in turn, is a basis for development. Moreover, these rights have become increasingly significant in decisions relating to development aid and donor funding. Non-compliance with civil and political rights has increasingly become a reason for withholding development aid. Accord-

ing to one commentator, for example, although the World Bank "does not endorse democratic development in the traditional sense, on occasion the Bank's loan practices take into account civil and political rights" (Forsythe 1997: 346).

It should also be pointed out that underlying the realisation of civil and political rights are notions of transparency and accountability. In many African states, public transparency and holding government officials accountable have been a rallying call for civil-society organisations. Indeed, it has been argued that "accountability is the key to improved effectiveness and transparency of action" (Filmer-Wilson 2005: 218). In that regard it has stated that:

*"The defining attribute of human rights in development is the idea of accountability ... All partners in the development process; local, national, regional and international, must accept higher levels of accountability" (Robinson 2001).*

It is in that context that the approaches of African countries towards integrating human rights in development have to be understood. The African Charter on Human and Peoples' Rights incorporates all internationally-recognised civil and political rights. All African states that have constitutions have done the same. It is the level of protection, implementation and realisation of those rights, that is in issue. No wonder then, that in states where these rights are not respected – the level of development is concomitantly low.

#### Social and Economic Rights

There is no doubt that social and economic rights are central to the issue of development. However, the extent to which such rights should and can be enforced and protected, has always been a source of controversy and debate (Mubangizi 2013: 130). Indeed, some countries, particularly in Africa, regard these rights as secondary priorities. This is because they have important social and economic dimensions – as most of them reflect specific areas of basic needs, or delivery of particular goods and services (Mubangizi 2013: 130). Socio-economic rights include rights to education, health care, food, water, social security, and housing. Clearly, claims in such areas require a level of availability of resources – an excuse that several African states have used to contest and even under-

mine the legitimacy of these rights. Many African countries pretend to promote social and economic rights, while systematically undermining them. As a result, the rhetoric of these rights is not necessarily reflected in policies, programmes and budgetary allocations.

Although the OAU/AU (Organisation of African Unity/African Union) has stressed the importance of social and economic rights in achieving development, only a handful of African countries have included them in their constitutions. Even those that have attempted to do so have done it in such a way that makes them non-justifiable, and therefore unenforceable. The only exceptions are South Africa, and more recently, Kenya. Indeed, South Africa is a leader in this respect as it has comprehensively included socio-economic rights in its Constitution. The Kenyan Constitution now also contains a Bill of Rights, which incorporates a section on economic and social rights. It remains to be seen whether the Kenyan courts will rise to the occasion in terms of interpreting and enforcing these rights in the same way that the South African judiciary has done.

As mentioned above, most African countries do not include social and economic rights in the bills of rights of their constitutions. Some constitutions do not even contain bills of rights at all. What some countries have done, however, is to acknowledge such rights (or some of them) as goals and objectives of government, or principles of state policy (for example, the Constitutions of Namibia, Ghana and Uganda). As such, they cannot be categorised as constitutional rights – but rather as policy or societal goals that have no force of law (Mubangizi 2007:100).

A human rights-based approach requires that social and economic rights be taken seriously as human rights. This is mainly because of the principles of universality, indivisibility, interdependence and interrelatedness of human rights – the consequence of which is that one or a few rights cannot be fully achieved in isolation of other rights. Attempting to realise civil and political rights while ignoring social and economic rights can only be futile. Moreover, the diverse human rights (civil and political on one hand, and social and economic on the other) can be mutually reinforcing and complementary, and due to these complementarities “the struggle to achieve economic and social rights should not be separated from the struggle to

achieve civil and political rights ... the two need to be pursued simultaneously” (UNDP 2000).

## OPPORTUNITIES

There are many opportunities through which a human-rights based approach to development can be enhanced in Africa. To begin with, the OAU/AU has – for some time now – seen development and human rights as inseparable (Murray 2004:237). This view has its genesis in the 1981 African Charter on Human and Peoples Rights, on which the African system for the promotion and protection of human rights is primarily based. It is important to note that the Charter provides for not only the traditional civil and political rights, but also the traditional social, economic and cultural rights. In the specific context of development, a number of provisions in the Charter are of particular significance. Paper 22 provides the right to economic, social and cultural development, and Paper 23 provides for the right to “a general satisfactory environment favourable to ... development.” Also provided for, is the right to self-determination (Paper 20). It has been argued that “the right to development flows from the right to self-determination and has the same nature ... [and it] must be an ‘inherent’ and ‘built in’ right forming an inseparable part of the right to self-determination” (Udombana 2000). This is particularly pertinent to Africa, where there are still several communities struggling for self-determination.

Together with the African Charter on Human and Peoples’ Rights, there are two human rights implementation organs – namely the African Commission on Human and Peoples’ Rights and the African Court of Justice and Human Rights. The African Commission on Human and Peoples’ Rights has had an opportunity to pronounce on the right to development. In *Centre for Minority Rights Development (CEMIRIDE) (on behalf of the Endorois) v Kenya* (Communication 276/2003), decided in 2009, the Commission held that by virtue of Paper 22 of the African Charter on Human and Peoples’ Rights, the right to development is a legal right which should be fulfilled by state parties. In *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan* (Communication 279/03-296/05), also decided in 2009, the Commission held that targeting the civilian population instead of the combatants, while

fighting the armed conflict, the state had violated the Sudanese people's right to development under Paper 22 of the African Charter.

Unfortunately the Commission has no legal enforcement procedure. There are no provisions requiring enforcement of the Commission's recommendations, and therefore compliance primarily depends on the will of the member states. This lack of legal-enforcement mechanisms is largely responsible for the popular view that the Commission has served as a limited means of control over human-rights abuses (Mubangizi and O'Shea 1999: 257). The African Court of Justice and Human Rights is not yet operational. It was only established in 2008 as a merger between the African Court on Human and Peoples' Rights (that had been established in 1998), and the Court of Justice of the African Union (that had been established in 2003). It has been opined that the newly-created court has the potential to develop into an important instrument for human rights protection on the continent (Ugiabe 2010). However, before that happens, the court will first have to be formally constituted, after the protocol establishing it comes into force. This is expected to take some time. That notwithstanding, it may be argued that the African human-rights system which revolves around the Charter and the two implementation organs, presents a significant opportunity through which a human rights-based approach to development can be adopted and realised.

Another important mechanism, through which a human rights-based approach to development in Africa can be achieved, is the New Partnership for Africa's Development (NEPAD). NEPAD was conceived and adopted as an initiative for a more integrated approach to sustainable development. In that regard, NEPAD "has, as one of its foundations, the expansion of democratic frontiers and the deepening of the culture of human rights" (Para 181). It acknowledges that its objectives will only be achieved if African leaders take joint responsibility for, among other things, "promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels" (Para 49). NEPAD also acknowledges that "peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable de-

velopment," (Para 71) and that "development is impossible in the absence of true democracy, respect for human rights, peace and good governance" (Para 79). In addition to the above statements, reference is also made – *inter alia* – to good governance, the rule of law, education, health, and food. However, the researcher considers that NEPAD was a missed opportunity for adopting a human rights-based approach to development in Africa. It could have made a more explicit contribution in this regard, by not only acknowledging the importance of human rights, but also by making it an integral part of the NEPAD framework. Mere references to human rights are, in my view, insufficient. It is no wonder then that NEPAD has lost momentum, and that the strength and drive with which it was adopted and initiated seems to be fizzling away.

All African countries have an opportunity to adopt a human rights-based approach to development through constitutional and judicial means. Constitutionally, this should and can be done by including bills of rights in their constitutions, and by incorporating all categories of human rights, including socio-economic rights. As mentioned earlier, South Africa has been particularly successful in doing this. Indeed, South Africa is said to have one of the most progressive constitutions in the world. Not only does it incorporate all categories of human rights, but it also provides for the controversial socio-economic rights in a way that makes them justifiable. Moreover, the South African Constitution also establishes human rights institutions such as the South African Human Rights Commission and the Public Protector. It also provides for an independent judiciary, which, through innovation and creativity, has been able to give meaning and dignity to the constitution and the rule of law. This is particularly so with respect to the Constitutional Court. Other African countries can learn a great deal from South Africa.

An important opportunity for adopting a human rights-based approach to development in Africa, is through the framework of the Millennium Development Goals (MDGs). This is because the MDGs and human rights share a number of common characteristics. As a result, the United Nations has called for a human rights-based approach to the Millennium Development Goals (United Nations 2008). It should be remembered that the MDGs had their genesis in

the United Nations Millennium Declaration of September 2000 (UN Resolution A/RES/55/2), which set out an ambitious agenda to address certain global issues – including peace and security, development and poverty eradication, human rights and the environment. Among the commitments made under the Declaration, was the promotion of democracy, human rights and good governance. A commitment was also made to meet the special needs of Africa. The targets that emanated from those commitments were re-configured into eight MDGs, namely:

- ♦ Eradicate extreme poverty and hunger;
- ♦ Achieve universal primary education;
- ♦ Promote gender equality and empower women;
- ♦ Reduce child mortality;
- ♦ Improve maternal health;
- ♦ Combat HIV/AIDS, malaria and other diseases;
- ♦ Ensure environmental stability; and
- ♦ Develop a global partnership for development.

The eight MDGs were accompanied by 18 targets – to be mainly achieved by 2015. In 2008, the Office of the UN High Commissioner for Human Rights came up with a human rights-based approach to the MDGs, outlining “a clear framework of analysis for the development sector ... identifying entry points at the policy level as well as for country-level programming and advocacy” (United Nations 2008:viii). The key elements of the analytical framework were (United Nations 2008):

- ♦ Aligning the Goals with human rights by harmonising MDG targets and indicators with human-rights standards;
- ♦ Being transformative, not technocratic – by adopting a human rights-based approach to empowerment and participation;
- ♦ Prioritising human rights by making policy choices and resource-allocation decisions within a human-rights framework; and
- ♦ Claiming the Goals by ensuring enforceable rights, accountability mechanisms, and sustainable strategies.

A detailed discussion of the above elements is beyond the scope and depth of this paper. Suffice to say, that in terms of the human rights-based approach, the MDGs and human rights share several characteristics, and each Goal can be linked to specific rights (United Nations 2008: 3). For example, Goal 1 (eradicate extreme poverty

and hunger) links to the right to work and the right to food. Goal 2 (achieve universal primary education) links to the right to education. Goal 3 (promote gender equality and empower women) links to women’s rights. Goal 4 (reduce child mortality) can be linked to the right to life. Goals 5 (improve maternal health) and 6 (combat HIV/AIDS, malaria and other diseases) both link to the right to health. Finally, both Goals 7 (ensure environmental sustainability) and 8 (develop a global partnership for development) link to social, economic and cultural rights.

It is in the context of those shared characteristics and linkages between MDGs and human rights, that a human rights-based approach to development should be seen. This is because – as has been suggested – it “*adds value* by providing support to developing practices [and] it *changes value* by modifying development goals and practices to ensure they respect and realize human rights” (United Nations 2008:7). It is also in that context that it is argued that the framework of the MDGs has provided and continues to provide an ideal opportunity for adopting a human rights-based approach to development in Africa. That said, it has to be acknowledged that there are several challenges in this regard, and these are now discussed.

## CHALLENGES

For purposes of clarity, and in the context of this discussion, “challenges” should be understood to mean the limitations and constraints that impede the effectiveness and ability to adopt a human rights-based approach to development in Africa. In essence, these are the very same challenges that impact on the full realisation and enjoyment of fundamental human rights – albeit in the specific context of development. In highlighting these challenges, cognisance has to be taken of the relationship between human rights and development, discussed previously.

There can be no doubt that the biggest challenge to a human rights based-approach to development in Africa, is poverty. In discussing the relationship between poverty and human rights, the famous statement of Mary Robinson immediately comes to mind:

*“I am often asked what is the most serious form of human rights violations in the world today, and my reply is consistent: extreme poverty”* (Mary Robinson – former UN High Com-

missioner for Human Rights and President of Ireland).

It is in that context that many have argued that poverty is not only an impediment to the enjoyment and realisation of human rights, but it is – in itself – a violation of human rights. The levels of poverty in Africa and the facts to verify them are well documented. Data provided by the World Bank shows that, in 2011, the Gross National Income (GNI), per capita, of Sub-Saharan Africa was US\$1258 – about 13.2 percent of the world average (US\$9514) (World Bank 2011). Life expectancy was at 55 years, compared to the world average of 70, and the primary education completion rate was 70 percent, compared to 90 percent for the whole world (World Bank 2011). These are just a few of the poverty indicators in Africa. It is submitted that although there is evidence that Sub-Saharan Africa is growing at a strong pace (World Bank 2013), poverty remains one of the most serious challenges to a human rights-based approach to development on the continent. Indeed, it is no wonder that eradicating extreme poverty tops the list of targets of the MDGs, as seen earlier. It is also perhaps because of this, that progress is currently being made in reducing poverty in Africa, and in the most recent past.

Poverty affects the enjoyment of human rights in different ways – including the realisation of socio-economic rights. It also undermines democracy, as many poor people are more pre-occupied with the daily struggles of survival, than with issues of democracy. Indeed, the low levels of democracy and good governance across Africa are another major challenge to a human rights-based approach to development. The researcher has previously argued elsewhere that human rights are a necessary component of any democratic society, and that one of the tenets of democracy is a form of government which encourages, allows, promotes and protects the rights of its citizens (Mubangizi 2013: 8). By extension then, it could be argued that democracy is a critical and essential requisite for development. Unfortunately, democracy and good governance are a huge problem on the African continent. According to The Economist Intelligence Unit's annual democracy index, only one African country, Mauritius, is ranked as a 'full' democracy (The Economist Intelligence Unit 2013). The rest are ranked as flawed democracies, hybrid regimes, authoritarian regimes or failed

states. Lack of democracy is usually accompanied and compounded by other factors such as poor governance, mismanagement, corruption and nepotism. All these have a significantly negative impact on development. They also present a formidable challenge to a human rights-based approach to development – particularly in Africa, where they are prevalent.

It must be pointed out however, that democracy and good governance require a politically stable and socially peaceful environment. Unfortunately, several parts of Africa are currently experiencing political instability, armed conflicts and social strife. Examples of on-going or recent armed conflicts include the never-ending war in Somalia, the sporadic but serious fighting in the DRC, the intermittent armed conflicts in Chad and the Central African Republic, the al Qaeda-led insurgency in Northern Mali, and the violent Islamic-instigated armed violence in northern Nigeria. There are several other pockets of conflicts of less significance – but of no less impact on human rights and development. Mention ought to be made too of the so-called Arab Spring that has had a devastating effect on countries such as Tunisia, Egypt and Libya. There is no doubt that all these conflicts and instabilities do compromise the struggle for human rights, and therefore present a significant challenge to a human rights-based approach to development.

It was stated earlier that social and economic rights are central to the issue of development, and that a human rights-based approach requires that such rights be taken seriously. One challenge to this, however, is that Africa is home to diseases and epidemics such as HIV/AIDS, malaria and tuberculosis, all of which impact on the right to health – an important socio-economic right. For example, HIV/AIDS still remains a problem of epidemic proportions in large parts of Africa. According to the 2012 UNAIDS Global Report, "Sub-Saharan Africa remains most severely affected, with nearly 1 in every 20 adults (4.9%) living with HIV and accounting for 69% of the people living with HIV worldwide" (UNAIDS 2012). Although several factors – including access to anti-retroviral medication – have reduced the HIV/AIDS death rate, it still has a significant impact in terms of human suffering and health care. The concomitant impact on development cannot be over-emphasised. So too is the impact on adopting a human rights-based approach to development.

One important challenge relates to African cultural and traditional practices, which not only violate human rights, but also have the effect of marginalising certain groups of people, such as women. Among the more common repugnant African cultural practices are: female genital mutilation (FGM), virginity testing, marriage by abduction, bride price, polygamy and primogeniture (the right of the eldest surviving male to inherit the estate of the parents). Whereas many might argue that cultural rights are protected by international law and domestic constitutional systems, there is no doubt that many cultural practices do clash with human rights norms. Most of these traditional and cultural practices violate the right to equality, the right to human dignity, and in some cases even the right to life. It must also be pointed out that most African cultural practices are gender-related, and therefore often result in human rights abuses that function as instruments of socialising women into prescribed gender roles within the community. Such practices are also linked to the unequal position of women in the political, social and economic structures of societies where they are practiced (Mubangizi 2012: 14). This has the effect of marginalising women and denying them full participation in economic and other development activities of their communities. Therein lies the challenge of adopting a human rights-based approach to development – in the face of such marginalisation, discrimination and abuse.

### CONCLUSION

Peculiar conditions that prevail in Africa – and the assorted challenges highlighted above – are not the only inhibiting factors to the adoption of a human rights-based approach to development. There are, for example, challenges facing the African human rights implementation organs (the African Commission on Human and Peoples' Rights, and the newly established African Court of Justice and Human Rights). Other factors include low levels of education, widespread unemployment, natural disasters, and crime. It is submitted that despite (and perhaps) because of those challenges and obstacles, the need for adopting a human rights-based approach to development is even more urgent and critical. It has been shown that there are opportunities through which this can be done. Not only is there a continental human rights framework – with instruments such as the African

Charter on Human and Peoples Rights – there are also other continental and international frameworks such as NEPAD and the UN MDGs. Moreover, opportunities also exist through national constitutional and judicial frameworks. The South African experience, over the last two decades – though not without its own shortcomings – is an example that could be emulated, and there are many lessons than can be learnt from it.

### RECOMMENDATIONS

This paper sought to highlight the opportunities and prospects for promoting a human rights-based approach to development in Africa on one hand, and the challenges of doing so, on the other. On the basis of the discussion and in light of the conclusion, it is recommended that the international legal and institutional framework should play a more meaningful role in this endeavour. In particular, the African Charter on Human and Peoples Rights, the African Commission on Human and Peoples' Rights, and the African Court of Justice and Human Rights can provide a legitimate starting point in establishing processes and principles of adopting a human rights-based approach to development. It is also recommended that the opportunities provided by the NEPAD framework and the Millennium Development Goals should be exploited. Finally, it is recommended that African countries should take advantage of the opportunities for adopting a human rights-based approach to development through constitutional and judicial means. The South African experience, though not exactly perfect, has shown that this is possible.

### REFERENCES

- CIFEDHOP 2012. *The Human Rights-based Approach: A Field of Action for Human Rights Education*. Geneva: CIFEDHOP
- D'Hollander D, Marx A, Wouters J 2013. *Integrating Human Rights in Development Policy: Mapping Donor Strategies and Practices*. Leuven: Leuven Centre for Global Governance Studies.
- Filmer-Wilson E 2005. The human rights-based approach to development: The right to water. *Netherlands Quarterly of Human Rights*, 32(2): 213-241.
- Forsythe DP 1997. The United Nations, Human Rights, and Development. *Human Rights Quarterly*, 19(2): 334-339.

- Häusermann J 1998. *A Human Rights Approach to Development*. London: Rights and Humanity.
- Mubangizi JC 2007. The protection and enforcement of socio-economic rights in Africa: Lessons from the South African experience. *African Yearbook of International Law*, 15: 87-106.
- Mubangizi JC 2012. Building a human rights culture in the face of cultural diversity: Context and conflict. *African Journal of Legal Studies*, 5(1): 1-20.
- Mubangizi JC 2013. *The Protection of Human Rights in South Africa: A Legal and Practical Guide*. 2<sup>nd</sup> Edition. Claremont: Juta and Company Ltd.
- Mubangizi JC, O'Shea A 1999. An African court of human and peoples' rights. *South African Yearbook of International Law*, 24: 256-269.
- Murray R 2004. *Human Rights in Africa: From the OAU to the African Union*. Cambridge: Cambridge University Press.
- OHCHR 2006. Frequently Asked Questions on a Human-Rights-Based Approach to Development Cooperation. From <[www.ohchr.org/Documents/Publications/FAQen.pdf](http://www.ohchr.org/Documents/Publications/FAQen.pdf)> (Retrieved on 20 April 2013).
- OHRHC 2010. Applying a Human Rights-Based Approach to Climate Change Negotiations, Policies and Measures. From <<http://www.ohchr.org/Documents/Issues/ClimateChange/InfoNoteHRBA.pdf>> (Retrieved on 20 April 2013).
- Offenheiser R, Holcombe S 2003. Challenges and opportunities in implementing a rights-based approach to development: An Oxfam America perspective. *Non-profit and Voluntary Sector Quarterly*, 32(2): 268-301.
- Pogge T 2008 Poverty and Human Rights, Unpublished. From <[http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas\\_Pogge\\_Summary.pdf](http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_Summary.pdf)> (Retrieved on 22 April 2013).
- Pogge T 2004. Severe Poverty as a Human Rights Violation, Philosophy Seminar, UNESCO Poverty Project, Oxford. From <[http://portal.unesco.org/shs/en/files/4363/10980840881Pogge\\_29\\_August.pdf/Pogge+29+August.pdf](http://portal.unesco.org/shs/en/files/4363/10980840881Pogge_29_August.pdf/Pogge+29+August.pdf)> (Retrieved on 22 April 2013).
- Pogge T 2008. *World Poverty and Human Rights*. 2<sup>nd</sup> Edition. Cambridge, UK: Polity Press.
- Robinson M 2001. *Bridging the Gap between Human Rights and Development: From Normative Principles to Operational Relevance*. From <<http://www.unhchr.ch/huricane/hurricane.nsf/94ec9fed71c04647802566100031b4bd/2da59cd3ffc033dcc1256b1a0033f7c3?OpenDocument>> (Retrieved on 29 April 2013).
- Sen A 1999. *Development as Freedom*. Oxford: Oxford University Press.
- SHRC 2013. *Care about Rights: What is a Human Rights-Based Approach?* From <<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>> (Retrieved on 20 April 2013).
- The Economist Intelligence Unit 2013. *2012 Democracy Index 2012: Democracy at a Standstill*. From <[https://portoncv.gov.cv/dhub/porton.por\\_global.open\\_file?p\\_doc\\_id=1034](https://portoncv.gov.cv/dhub/porton.por_global.open_file?p_doc_id=1034)> (Retrieved on 28 April 2013).
- The World Bank 2013. *As Africa's New Wealth Grows, Poverty Must Come Down*. From <<http://www.worldbank.org/en/news/feature/2013/04/15/as-africa-s-new-wealth-grows-poverty-must-come-down>> (Retrieved on 28 April 2013).
- Udombana NJ 2000. The third world and the right to development: Agenda for the next millennium. *Human Rights Quarterly*, 22: 753-787.
- Ugiabe TB 2010. *The African Court of Justice and Human Rights: Future Political and Jurisdictional Realities and Challenges*. From [http://www.monitor.upeace.org/innerpg.cfm?id\\_paper=714](http://www.monitor.upeace.org/innerpg.cfm?id_paper=714) (Retrieved on 20 May 2013).
- United Nations 2012. *UNAIDS Global Report 2012*. From <[http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/20121120\\_UNAIDS\\_Global\\_Report\\_2012\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/20121120_UNAIDS_Global_Report_2012_en.pdf)> (Retrieved on 20 May 2013).
- United Nations 2008. *Claiming the Millennium Development Goals: A Human Rights Approach*. New York: Office of the High Commissioner for Human Rights.
- UNDP 1992. *Human Development Report 1992*. New York: UNDP.
- UNDP 1998. *Integrating Human Rights with Sustainable Development: A Policy Document*. From <<http://mirror.undp.org/magnet/Docs/policy5.html>> (Retrieved on 20 May 2013).
- UNDP 2000. *Human Development Report 2000*. New York: UNDP.
- UNDP 2013. *Mainstreaming Human Rights*. From <[http://www.undp.org/content/undp/en/home/our-work/environmentandenergy/focus\\_areas/water\\_and\\_ocean\\_governance/human-rights-based-approaches/](http://www.undp.org/content/undp/en/home/our-work/environmentandenergy/focus_areas/water_and_ocean_governance/human-rights-based-approaches/)> (Retrieved on 22 May 2013).
- Ussor M 2011. *Integration of the Human Rights-Based Approach to Development Policies: A Guide to the New EU Member States*. London: Minority Rights Group International.
- Xiaoling Z 2009. *On Relations between Human Rights and Development*. From [http://www.china.org.cn/china/human\\_rights/2009-10/29/content-ent18792599.htm](http://www.china.org.cn/china/human_rights/2009-10/29/content-ent18792599.htm). (Retrieved on 20 May 2013).