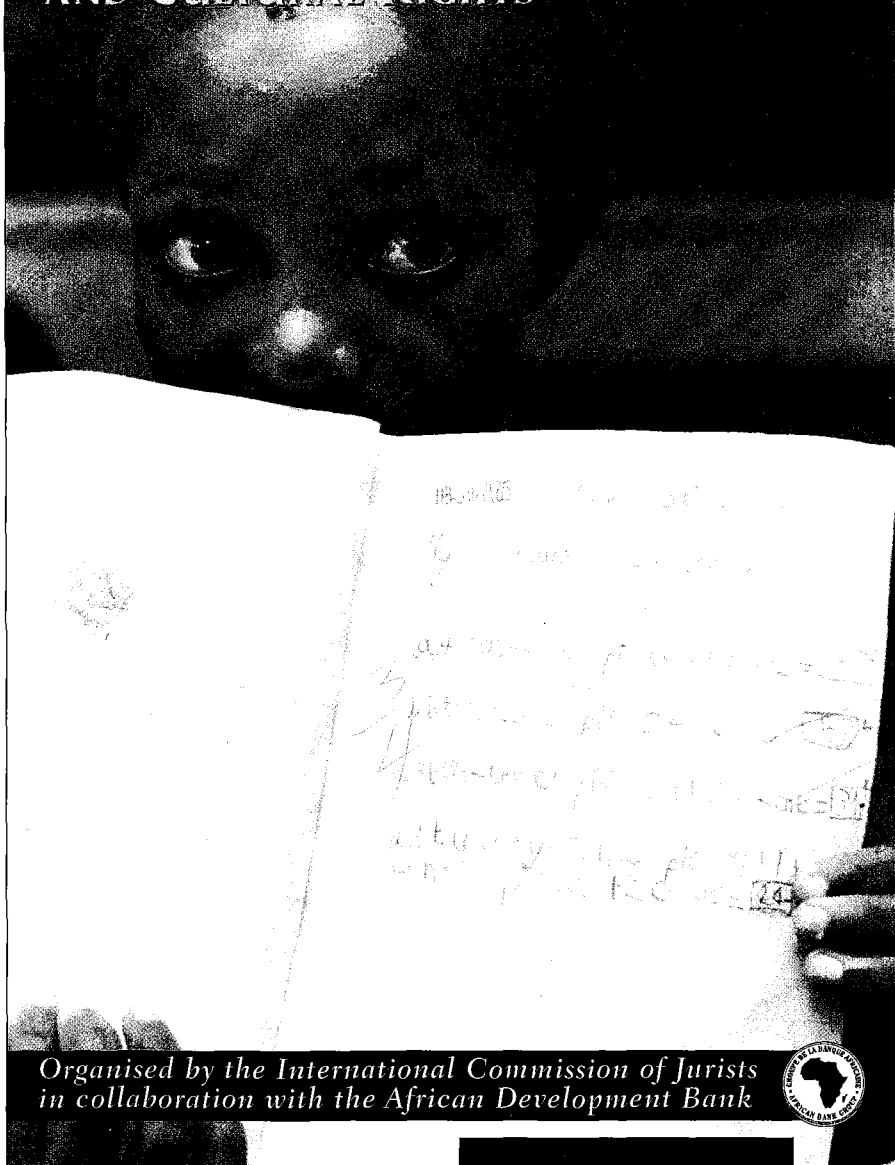




REPORT OF A REGIONAL SEMINAR ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

INTERNATIONAL COMMISSION OF JURISTS



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INTRODUCTION

This is the report of the regional seminar which was organised in Abidjan from 9-12 March 1998. The seminar was designed as a follow-up to the 1995 Conference on Economic, Social and Cultural Rights and the Role of Lawyers organised by the International Commission of Jurists (ICJ), in Bangalore, India. The seminar was one of the initiatives aimed at implementing the Bangalore Plan of Action in Africa.

For most African countries the guarantee of economic, social and cultural rights, as contained in the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), has not been matched with concrete action. Neither the obstacles to the realisation of these norms nor the role of the different actors at the national and regional levels in their implementation have been clearly defined.

Preliminary discussions on how to monitor economic, social and cultural rights (ESCR) in Africa have taken place in various meetings, for example, during some workshops involving NGOs and members of the African Commission on Human and Peoples' Rights. The third, fourth, eighth and ninth workshops organised by the ICJ prior to the ordinary sessions of the African Commission reaffirmed the indivisibility of all human rights and emphasised the need to monitor, promote and protect ESCR on the Continent. The workshops concluded that the right to development is almost meaningless if adequate attention is not given to the enjoyment of ESCR in Africa. NGOs and other actors in the field were called upon to further reflect upon the issues and come up with guidelines for the monitoring of these rights in recognition of their importance in the human rights family.

The seminar identified more clearly, the obstacles to the realisation of ESCRs, strategies to overcome them and determine the role of different actors, particularly jurists, in promoting these rights to ensure equitable and sustainable development in Africa. The seminar was organised within the framework of the principles of universality and indivisibility of all human rights.

Discussions focused on principles for the protection of ESCR. There was an attempt to clarify the meaning of concepts such as good governance and examine the evolving rights framework and approach using case studies from Africa. Participants examined the applicability of this framework within the context of the ACHPR and the ICESCR. For example, how would

the concept of progressive realisation in the ICESCR, the Limburg and Maastricht guidelines, be used in implementing the provisions of the ACHPR?

The seminar also discussed strategies for ensuring the protection of ESCR, such as monitoring, sensitisation and mobilisation, policy reform and advocacy, and the need for an interdisciplinary approach for protecting the rights in question. Within this context participants attempted to distribute responsibilities among the various actors. For example, to be involved in monitoring ESCR, who would be the primary actors (Roles) and who would be the targets at the different levels? Other issues discussed were data collection, processing and dissemination, advocacy, coordination of NGO activity with actions of other institutions such as the African Development Bank (ADB) and an education strategy for promoting ESCR in Africa.

Participants were drawn from the African Commission, the United Nations Committee on Economic, Social and Cultural Rights, intergovernmental institutions such as the ECOWAS and SADEC, multilateral development banks and financial institutions, national and regional NGOs, some members of the legal profession and academia.

This report is expected to be of use to the various national and regional actors and to the OAU mechanism which will be charged with the implementation of the African Economic Treaty.

The report of the seminar was brought to the attention of the 23rd ordinary session of the African Commission on Human and Peoples' Rights in Banjul. The Commission took note of the report and brought it to the attention of the OAU policy organs during the 68th Session of the Council of Ministers and 34th Summit of Heads of State and Government of the OAU which was held in Ouagadougou, Burkina Faso from 4 -10 June 1998. The Summit in its decision AHG/DEC.126 XXXIV (annex) requests the Secretary-General of the OAU in cooperation with the African Commission to convene a high level meeting of Experts to "consider ways of removing obstacles to the enjoyment of economic, social and cultural rights, including fight against corruption and impunity and propose appropriate legislative and other measures".

The ICJ is most grateful to the Ford Foundation for having provided the funds that have enabled the seminar to take place.

ADAMA DIENG
Secretary-General

STATEMENT

BY

M. OMAR KABBAJ

President of the African Development Bank Group

It is an honour and great pleasure for me to address the Continent's legal community and human rights advocacy groups gathered here today for the Regional Seminar on "Economic, Social and Cultural Rights". The presence among us of His Excellency the Prime Minister, despite his many and important commitments, adds special significance to this meeting, and is an attestation of the importance and interest which the Government of Cote d'Ivoire attaches to the issues of economic development and social progress, and the attendant question concerning the promotion of economic, social and cultural advancement of the people of this Continent.

For my part, I consider the invitation extended to the African Development Bank to co-sponsor this Seminar as well as that addressed to me, by the International Commission of Jurists (ICJ), to participate in this Seminar, as confirmation of your confidence in the African Development Bank Group, and its mission to assist in the economic development and social progress of African countries and thereby contribute to the promotion and realization of the economic, social and cultural rights of the people of Africa. I am aware of the importance and implications of this confidence for our Institution, which now, as before, will endeavour to be worthy of it. I am honoured to have been invited to share my thoughts with you on the theme of the Seminar.

It is worth recalling that the very concept of human rights and personal liberties is as old as the human race. However, the first codification of these rights and liberties in an international legal instrument is to be found in the Charter of the United Nations, which enjoins the world body to promote "universal respect for, and observance of human rights and fundamental freedoms", subsequently produced in the Universal Declaration of Human Rights of 1948. The Declaration itself was later defined and elaborated in the two international covenants - namely, Covenant on Civil and Political

Rights and the Covenant on Economic, Social and Cultural Rights, the promotion of which constitutes the theme of this Seminar.

As we all know, Africa has been experiencing encouraging signs of economic recovery during the last three years. The revised estimate of regional 1997 GDP growth rate is 3.7 per cent as against an average annual growth of 1.9 per cent for the 1990-1995 period, although this is slightly lower than the 5 per cent of 1996.

Looking beyond the aggregate regional outcome, a promising trend is that the strides being made in building conducive macroeconomic frameworks and in promoting the role of the private sector are clearly strengthening the economic prospects of an increasing number of countries. This is evident, for instance, from the fact that during the last three years, some two-thirds of the countries in the Continent have been experiencing real GDP growth rates of more than 3 per cent, with consequent improvements in average income. In 1996-97, a record number of 20 African countries achieved GDP growth rates above 5 per cent. In addition, over four-fifths of our countries recorded positive growth rates in the last two years, compared with just one third at the beginning of the decade. Moreover, the international financial institutions forecast a GDP growth rate of 5 per cent for 1998.

While the recent recovery of the African economy is encouraging, it remains quite inadequate when viewed against the need for more secure socioeconomic circumstances. For one thing, aggregate outcomes conceal the difficult conditions prevailing in particular countries, especially those suffering from societal upheavals. Even in regard to the general prospects of the Continent, there is concern about the fragility of the growth process because of structural impediments over which the continent has limited control, at least in the medium term. These constraints must be addressed in order to strengthen the sustainability of the growth process.

Although the recovery remains fragile and the socioeconomic setbacks of the previous two decades have not yet been fully overcome, the deepening of economic reforms and progress in stabilizing the sociopolitical framework provide a basis for hope and encouragement over the Continent's economic prospects.

Allow me to make a brief review of Bank Group operations in the course of the last year. During 1997, the Bank succeeded in making significant

progress in its programme of institutional reforms. You may recall that this programme was launched in September, 1995 and addressed four critical issues: the quality of Bank Group operations; financial management; organizational structure; and institutional governance. I am pleased to state that the achievements registered in all these areas have considerably enhanced the scope and quality of Bank Group operations in our regional member countries. They have also resulted in a renewed confidence on the part of our shareholders and stakeholders in the operations and management of the Bank.

The year 1997 stands out in significance for being the first full year of ADF lending operations since 1993. This has enabled us to increase considerably our support to regional member countries, especially in respect of concessional operations. For 1997, total Bank Group commitments amounted to \$1.9 billion, compared to \$800 million for 1996. Equally important to note in this respect, is the fact that, ADF commitments amounted to \$1.1 billion in 1997 - equivalent to a fourfold increase on the commitments of some \$300 million for 1996. I wish to emphasize that the increase in operations has been achieved in parallel with the setting up of mechanisms for ensuring operational quality. On account of the systematic enhancement of our operational and organizational capacity, we believe that we are now in a strong position to provide support for development projects and programmes in the order of \$2.5 billion per year.

An emergent issue that I believe will require serious and continuing attention in the coming years is promoting and strengthening the practice of good governance in our countries. Clearly, achieving good governance - broadly defined and understood to mean the rule of law, stakeholder participation, accountability and transparency in public sector management - is a worthy goal in itself, and one that the Bank Group will strive for. There are, however, additional reasons for the involvement of financial institutions, such as the Bank Group, in this area.

Recent experience in both Africa and elsewhere has shown that good governance is critical for sustained economic growth and development, as well as for achieving human development. For the Bank Group, it has become increasingly clear that sound development management is essential for the successful implementation of the projects and programmes that we finance. The role of good governance in creating conducive business envi-

ronment and in calling for requisite management of development resources - through fostering transparency and accountability - has become a critical pillar for the Bank Group dialogue with its Member States. The Bank Group, because of its intimate relations with governments in the region, is well-placed to talk and advise on these sensitive matters with senior officials and political leaders. For the Bank, it is important to dwell at the microinstitutional level, rather than at the macro-level - with respect, for instance, to reforms and other improvements in legal systems, strengthening parliaments, and strengthening audit institutions. Bank Group resources, including technical assistance funds, will be used to assist in these directions.

To effectively promote good governance in regional member countries, the Bank Group will provide financing for projects and programmes and support policies that will facilitate the democratic process; transparency in public expenditure management; as well as involvement of the civil society, not only in decision making, policy formulation and programme implementation, but also in terms of access to funds - in other words, the civil society must be given the voice (via decentralized decision-making) as well as the means (fiscal decentralization) in the development agenda.

The Bank's revamped private sector development strategy, which is premised on the institution playing a catalytic role in mobilizing private foreign capital, is comprised of five main elements: first, assisting countries in creating an enabling environment for private enterprise; second, direct financing of private sector projects with an expanded menu of instruments; third, participating in and assisting with private financing of infrastructure; fourth, extending assistance for privatization programmes; and fifth, assisting the development of small and medium-scale enterprises. This latter effort will be complemented by a separate initiative (the ADF Micro-finance Initiative for Africa) to support micro-enterprises through the concessional resources of the African Development Fund - channelled through NGOs and other suitable intermediaries. Although comprehensive in approach, the Bank's strategy will be implemented cautiously and pragmatically, collaborating with other institutions like the IFC, multilateral and bilateral agencies, and private sector institutions. The partnership with private sector organizations and investors will be especially important for implementing the strategy.

An area of equal concern and importance is policy reform in the legal and regulatory frameworks needed to foster real development of most African economies. Despite recent attempts by other development finance institutions (DFIs) contract enforcement continues to be a major constraint in the development of Africa's business entrepreneurship. The Bank Group will continue to work closely with other interested DFIs and bilateral agencies to eliminate bureaucratic bottlenecks in existing laws in order to help regional member countries attract adequate private foreign capital to assure sustainable growth in the years ahead, since it is only through sustained growth that we can hope to reduce and later eliminate poverty on the Continent.

RELEVANCE AND APPLICABILITY OF GOVERNANCE ISSUES IN BORROWING MEMBER STATES OF THE AFRICAN DEVELOPMENT BANK

FRANCIS M. SSEKANDI*

A recurrent concern in the development debate among donor countries, international financial institutions (IFIs) and recipient countries in the 1980s and the 1990s has been governance issues, and the role that IFIs should play in promoting them. This concern has been reflected in the ongoing discussions within the African Development Bank (the "Bank") and the African Development Fund (the "Fund").

The issues featured prominently in the consultative meetings leading to the conclusion of the Seventh General Replenishment of the Resources of the African Development Fund (ADF-VII) in May 1996. The Report of the Deputies representing State Participants of the Fund (Document ADF-VII/CM.11/96/19/Rev. 10, May, 1996) made it clear that allocation of the resources of ADF-VII would be made to eligible Member States of the Bank whose governments are committed to the pursuit of good governance in their development policies and approaches. In addition, the 1994 decision by which the Board of Governors of the Bank established the Ad-Hoc Committee to negotiate and make recommendations on the Fifth General Increase of the Capital Stock of the Bank (GCI-V) emphasised, among other things, governance issues and their impact on the effectiveness of the operations of the Bank.

Notwithstanding the importance of governance issues as indicated above, the legality and propriety of including them in policy instruments of the Bank or the Fund have been questioned by some observers on the grounds that the purposes and functions of the Bank and the Fund do not

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include these issues and that Article 38(2) of the Agreement Establishing the African Development Bank (the "Bank Agreement") and Article 21 of the Agreement Establishing the African Development Fund (the "Fund Agreement") might appear to limit the role of the Bank Group in this sphere, in view of the prohibition in this Article of any interference in the political affairs of any member state of the Bank.

The central question, therefore, is whether issues relating to good governance can be interpreted to be a part of the "political affairs" of a Member State, which is excluded from the purview of the Bank, or an integral part of the "economic considerations" which the Bank is permitted in deciding to grant loans to its members. The present Paper attempts to address this question.

1 - Definition of the Governance

The expression "governance" means and connotes different phenomena and processes to different people. It is useful, therefore, for us to clarify, at the outset, the sense in which the term governance is understood in the Bank and the Fund. Of the numerous definitions of "governance" that exist today, the one which appears appropriate from the Bank's and the Fund's perspectives is that set forth in *Webster's New Universal Unabridged Dictionary* (London, 1979), to wit, "the manner in which power is exercised in the management of a country's economic and social resources for development". The concept of good governance thus relates directly to the management of a country's resources as part of the development process.

Given the meaning thus given to the concept of "governance", there arises the inescapable difficulty of distinguishing between two aspects of governance, namely: a) those which are related to the Bank and the Fund's purposes and functions as set out in the Bank and Fund Agreements and are therefore within the mandates of the Bank and the Fund; and b) such other aspects which represent "political considerations" and, as such are prohibited and, therefore, outside the mandates and functions of the Bank and the Fund.

The primary purpose of this Paper is, therefore, to indicate from a legal perspective, ways in which the Bank and the Fund address governance

issues. The critical issue at hand is to identify aspects of governance which are relevant to the Bank and the Fund's work, and aspects which clearly constitute political considerations and, as such, cannot be taken into account without violating the provisions of the Bank and Fund Agreements.

2 - Purposes and Functions of the Bank and the Fund

The purpose and functions of the Bank are spelt out in Articles 1 and 2 of the Bank Agreement. According to Article 1 of the Bank Agreement, the purpose of the Bank is "to contribute to the economic development and social progress of its regional members - individually and jointly."

- a) To implement its purpose and functions, the Bank is empowered to finance or to facilitate the financing of projects and programmes in regional member countries, and in subdivisions or groupings of these. The projects and programmes may be undertaken or carried out directly by public and private agencies in such countries, or by regional or international agencies concerned with the development of Africa.
- b) The financing of projects and programmes is carried out on sound banking principles, which means that the projects and programmes in question, must be technically, financially and economically viable. Technical, financial and economic viability of a project or programme has thus become a critical test for its financing by the Bank.

Article 2 of the Fund Agreement provides that the purpose of the Fund shall be to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank's members and to the promotion of cooperation and increased international trade. It enjoins the Fund to provide finance on concessional terms for purposes which are of primary importance for and serve the development of Member States.

The mandates of the Bank and the Fund are thus clearly delineated. In the case of the Bank, its mandate relates primarily to investment required and/or necessary for economic development and social progress of its regional member countries. In the case of the Fund, the mandate is to assist the Bank in making "effective contribution to the economic and social

development" of the Bank's less developed members through the provision of concessional financing. It is also worth noting that Article 2(3) of the Bank Agreement provides that the "Bank shall be guided in all its decisions by the provisions" of Articles 1 and 2 of the Bank Agreement, both of which pertain primarily to economic development and social progress of the regional member countries.

3 - Economic Considerations

The Bank Agreement and the Fund Agreement contain virtually identical provisions intended to ensure that the Bank and the Fund take into account only economic considerations in their decision-making processes, and to protect both institutions from the internal political differences in its member countries.

Specifically, the Bank Agreement provides that the Bank shall make arrangements to ensure that the proceeds of any loan made or guaranteed by it are used for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency.

The corresponding provisions in the Fund Agreement provide that the Fund shall make arrangements to ensure that the proceeds of any financing are used for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and competitive international trade and without regard to political or other non-economic influences or considerations.

The reference in the Agreement to "economic considerations" and their respective lines of delineation from "political affairs" in the context of the provisions of the Bank and Fund Agreements, is not free from ambiguity. Nevertheless, it is pertinent to point out that the Bank and the Fund are supposed to be neutral as concerns internal political debates as between various branches of government or political affiliates. However, the Bank in having regard to economic considerations must of necessity concern itself with various aspects of the management and allocation of resources for the economic development of its member countries.

4 - Considerations of Good Governance which Are Relevant, Due to their Direct Economic Effect on International Obligations

The Bank and Fund clearly have a mandate and an obligation to foster the economic development of Member States. This necessarily involves economic reorganization and restructuring which impacts on property, rights, civil infrastructures, and other structural institutions which also serve as political vehicles.

5 - Aspects of Governance within the Mandate of the Bank

Accountability

- a) Accountability is at the centre of the governance issues. An aspect of accountability which is of primary importance to the Bank and the Fund is financial accountability. This involves establishing the requisite infrastructure for sound financial management, for both public and private sector projects.
- b) Accordingly, it is within the domain of the Bank and the Fund to ensure that proper accounting procedures are followed and that adequate auditing, internal and external, constituted or provided for in every financing operation in which they are involved. These are matters which are set forth in the Bank and the Fund Agreements and other legal instruments, such as the General Conditions Applicable to Loan Agreements and Guarantee Agreements, as conditions for the use of the Bank's or the Fund's resources.

6 - Transparency and Information

- a) As set out in the provisions of their respective Agreements, the Bank and the Fund are required to strive for economy and efficiency in the use of their funds. They are also required to provide equal opportunity for suppliers, contractors and consultants from member countries of the Bank. To these ends, the Bank and the Fund have prescribed open international competitive bidding procedures for the procurement of most of the works, goods and services to be financed out of their resources.

- b) To ensure that there is economy and efficiency in the use of the funds they provide to borrowing Member States, the Bank and the Fund have instituted the requirement of transparency and information in all transactions relating to the proceeds of the loan and other financing they provide. Transparency improves the availability and accuracy of information in borrowing countries, particularly in respect of financial markets.

Pour assurer l'économie et la transparence dans l'utilisation des fonds mis à la disposition des pays membres, la Banque et le Fonds ont institué comme impératif la transparence et l'information dans toutes les transactions concernant les ressources du prêt ou de tout autre financement octroyé. Grâce à la transparence, l'accès aux informations dans les pays emprunteurs et leur fiabilité s'améliorent, surtout pour les marchés financiers.

The Rule of Law

- a) The existence of clear laws and efficient legal institutions within which the interaction between economic players and agents and the State can take place is a prerequisite for economic development, in particular, for the development of a viable private sector. An appropriate legal system will provide stability and predictability which are essential elements in creating an economic environment where business risks and benefits and costs of transactions may be rationally assessed.
- b) Inappropriate laws, uncertainty and unpredictability in the application of laws, weak enforcement, arbitrariness and discretionary powers, inefficient court administration, slow procedures and lack of an independent judiciary tend to hinder foreign investments which are critical to development.
- c) The legal system also affects the lives of all sections of society, including the poor and most vulnerable groups. It has, on that account, become an essential dimension of the strategies for poverty alleviation, an important component of the Bank and the Fund's financing. Thus, the efforts of the Bank and the Fund concerning reforms in the legal and regulatory systems in borrowing member countries of the Bank are within their mandates and are being pursued actively.

- d) The Bank and the Fund provide assistance to Member States carrying out economic reforms, particularly privatization programmes, to create an enabling environment and framework for private sector development and to ensure that the processes and procedures employed are transparent and the people affected by such policy measures are treated fairly and equitably.
- e) In laying emphasis on accountability, transparency, the rule of law and participation in their operational activities in borrowing member countries, the Bank and the Fund are working in tandem with the other sister international financial institutions, in particular, the World Bank (*Governance: The Experience of the World Bank*, November, 1993); the Asian Development Bank (*Governance: Sound Development Management*, August, 1995) and the International Monetary Fund (*The Role of the Fund in Governance Issues*, December, 1996).

Popular Participation and Democratization

The representation and participation of affected groups heighten effectiveness and accountability in the development process and activities, particularly with respect to rural or community projects or programmes. The Bank and the Fund recognize the significance of adequate participation of local communities, non-governmental organizations (NGOs), other stakeholders and the general civil society in the design and implementation of projects and programmes they finance. In line with the process of democratization taking place in regional member countries, there has been an intensification of demand for consultations and broad participation in the development decision-making, in particular, the rise in the number of NGOs in African countries. The Bank has, in accordance with policy on "The Promotion of Cooperation between the ADB and NGOs in Africa", in effect since 1991, actively collaborated with NGOs in its operational activities in borrowing member countries.

Legal Assistance in the Implementation of Law Reform, Economic Reform and Privatization Programmes

- a) The inadequacy, in borrowing member countries of the Bank, of an appropriate legal environment and regulatory framework for private

sector operations has been recognized as a principal impediment to the development of that sector. Establishment of an enabling legal environment and regulatory framework is thus a prerequisite to advance the development of the private sector.

- b) The Bank and the Fund provide financing for and actively support economic reform, privatization programmes and law reforms in the borrowing member countries in the context of their broader goals of economic development and poverty reduction, because of the conviction that an efficient private sector makes essential contributions to the attainment of these goals.

Technical Assistance for Institutional Capacity Building

- a) Good governance implies the capacity, primarily of the government, to provide citizens with a satisfactory and acceptable level of services and in an effective and efficient manner. The institutional capacity of a borrowing member country of the Bank to conduct public business determines that country's ability to carry out economic reforms and implement successfully its development project and programmes.
- b) It has, accordingly, been the consistent policy and practice of the Bank and the Fund, in financing projects and programmes, to provide technical assistance components for institutional strengthening.

Assisting Member Countries Fight Corruption

- a) Corruption has become a pervasive phenomenon and, as such, one of the greatest challenges of our time. It is a matter of major and growing concern, particularly to multilateral development banks (MDBs), other donors, government and civil society at large. It is a truism worth repeating; namely that in many countries today corruption must be confronted as a matter of urgency and as a prerequisite to economic growth and sustainable development.
- b) It is well documented and known that the Bank and the Fund conduct their operations in one of the most difficult environments where abject poverty still abounds; where the economic and political situation is least

enabling in terms of attracting private capital and investor; and in countries which have been characterised as some of the most corrupt in the world.

- c) It is important to stress, at the outset, that despite its relatively comprehensive internal controls and operational policies, rules and procedures, strengthened since 1995, the African Development Bank, like most of its sister MDBs, has few set of rules and procedures which were specifically enacted with a view to fighting corruption as such.
- d) Nevertheless, there are policies, regulations, rules and procedures of the Bank which deter, detect and provide remedies to instances of corruption, in particular, in its lending operations. These policies, rules and procedures may be summarised as follows:
 - i) A prerequisite to considering any proposal to lend to a member country is the preparation of a Strategy Paper for that country (the CSP). Among the critical test is the determination that the government of the country in question is committed to the pursuit of good governance in its development policy and approach;
 - ii) The Loan Agreements contain a number of covenants, which limit the opportunity for corruption and enable the Bank to detect the occurrence of fraud and corruption. In particular, the Rules of Procedure for the Procurement of Goods and Works and for the Use of Consultants, both of which emphasise competitive bidding processes; the proceeds of the loan must be used strictly for the purpose of the loan; and disbursement proceedings are tied to contract performance.
 - iii) The General Conditions Applicable to Loan and Guarantee Agreements of the Bank Group require the borrower to cause the records and accounts of the project to be audited and certified annually by independent auditors.
 - iv) Implementation of the policy of donor coordination ensures that no duplication or waste is made by the Bank Group and other donors in the country of operation. It also enhances the ability of the Bank Group to detect opportunities for corruption.

v) Due diligence investigations on prospective private sector borrowers are carried out routinely to determine the reputation and track records of the prospective borrowers. The prospective private sector borrower gives legal representations that it has not violated any law. If these representations prove false the Bank would be entitled to suspend disbursement and/or cancel the loan agreement.

vi) The Bank provides assistance to Member States carrying out economic reforms, particularly privatization measures, to ensure that the procedures employed are transparent and the people affected are treated fairly and equitably, thus discouraging opportunities for fraud and corruption.

vii) At the international level, the Bank is working in concert with other MDBs to design and implement more effective anti-corruption rules and procedures for their operations, and to assist Member States adopt effective legislation and to establish appropriate institutions to combat corruption.

6 - Conclusion

The economic wellbeing of a country is inevitably enshrined with the stability of its government institutions, including peace and security. The thirty years or so of independence of our regional members have demonstrated that peace and security are a *sine qua non* to a country's ability to attract foreign capital in the form of infrastructural and developmental grants and loans. Countries which have experienced political instability have also seen their economies take a downhill spin, almost in proportion to the degree of political upheavals experienced. A close look at the causes of the political instability in most regional countries reveals that in most regional countries, at the core of this are the fragile democratic institutions and including those institutions established to ensure respect of the rule of law, as well as people's economic, social and political rights. Financial institutions established by member countries to promote development must, therefore, concern themselves also with the strengthening of those institutions necessary to create a proper climate for economic growth. It is for this

reason that good governance issues become relevant considerations in the operations of these institutions.

The Bank, the Fund and their officers are thus required not to interfere in the political affairs of members and to take only economic considerations into account. Yet, internal or external political do indeed may have significant direct economic effects which, due to their economic implications, must properly be taken into consideration in the Bank and the Fund's decisions. Situations may also arise where political events lead to the creation of obligations for the Bank members which cannot be ignored in the Bank's or the Fund's decisions.

SOME FALLACIES ABOUT RIGHTS: OF INDIVISIBILITY, PRIORITIES AND JUSTICIABILITY

E. NII ASHIE KOTÉY*

It has been customary to categorise human rights into three - Civil and Political Rights, Economic, Social, Cultural Rights and the so-called group rights like the right to development and the right to a healthy and clean environment. As we all know there are two international covenants on human rights - one on Civil and Political rights and the other on Economic Social and Cultural Rights. Many national constitutions exclude or do not contain economic, social and cultural rights. Of the national constitutions which do, some put "ECOSOC" rights under a separate chapter headed Directive Principles of State Policy and emphasise that they are not justiciable. But there are human rights instruments like the African Charter on Human and Peoples' Rights and national Constitutions like that of Ghana which provide for both civil and political rights and economic, social and cultural rights in the same document and in the same manner. Sometimes civil and political rights are referred to as "first generation rights", economic, social and cultural rights as "second generation rights" and the so-called group rights as "third generation rights". While these categories should be no more than rough and ready, shorthand generalisations and groupings of rights into some sort of manageable form, a reference to some of its characteristics and their elaboration on the international scene, this has not prevented some people from attributing much more to these categories and seeing an essential difference between civil and political rights on the one hand and economic social and cultural rights on the other.

This presentation explores some of these myths - the myth that human rights have a hierarchy with civil and political rights at the top. In other words, the myth that civil and political rights are more important or have a higher priority than economic, social and cultural rights.

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The second related myth - again one that posits that civil and political rights are essentially different from economic, social and cultural rights, and in the process denies that the latter are rights properly so-called - is the myth that economic, social and cultural rights are not justiciable; that is, are not enforceable by the courts, and that this sets them apart from civil and political rights. Obviously, embedded in these two myths are a great number of other myths

The central thesis of this presentation is that these are just myths and, to use the cliché, that human rights are indivisible and interdependent, that there is no hierarchy of rights - the enjoyment of the various rights being closely interlinked and that while in many jurisdictions and systems economic social and cultural rights are not enforced through the courts this is not inherent in the rights themselves nor does it deny or confer an inferior status on them.

Justiciability of Economic, Social and Cultural Rights

First, let's consider the justiciability myth. Some deny that economic, social and cultural rights are rights at all. Other proponents of this view [believe that they cannot be dealt with] in the same way as civil or political rights. The proposition is that civil and political rights are ultimately enforced by recourse to the judicial system but ECOSOC rights are not and that this demonstrates that the latter are not rights in the same sense as the former.

Three responses can be made to that argument. The first is that there is nothing inherent in the nature of ECOSOC rights which makes them unenforceable by judicial process. It is simply that many States and many human rights systems have chosen not to enforce them through the judicial process, but to enforce them through other means. It certainly would be difficult for the judicial system to enforce some ECOSOC rights particularly in developing countries such as ours. Such rights may include the right to work, the right to food and the right to shelter. But I think many would agree that it would not be impossible for such rights to be enforced through the judicial system in developed countries. And that is proof that it is not that these rights are inherently unjusticiable but that the circumstances of some States may make the judicial enforcement of some of these rights impracticable.

But secondly, it is simply not the case that the judicial enforcement of all ECOSOC rights would be impracticable. And in fact even in many developing countries a lot of ECOSOC rights are enforceable and are enforced through the judicial system. These would include the right to work in healthy and safe conditions, the right to paid leave, the right to form and operate trade unions and the right to non discrimination between the sexes at the workplace in terms of salary and conditions.

Thirdly, we deny that enforcement through the judicial system is the litmus test for whether a right is a right properly so-called.

The most important thing about all rights is their enjoyment. The manner of their ultimate enforcement need not be uniform. It is not even proven that the judicial process is the most efficacious means of enforcing a right. Even with civil and political rights the increasing proliferation of specialised institutions, Ombuds-type institutions, Human Rights Commissions, Commissions for Administrative Justice, etc. is evidence of the increasing realisation that for various reasons, including costs, time, its procedures, etc. the judicial process is by no means the best way of protecting all rights. That some ECOSOC rights may not be immediately enforceable through the Courts does not mean that they are not rights in the same way as any other.

Hierarchy of Rights?

Let us now turn to the question of hierarchy of rights and the view that civil and political rights are more important than or should be striven for before ECOSOC rights. Again this is difficult to appreciate. Why is the right to life, to a fair trial, to freedom of speech, religion or assembly or the right to vote and to take part in the governance of one's country of prior importance to the right to food, to shelter or to education.

An aspect of this myth - this insistence on drawing essential difference between civil and political rights and ECOSOC rights is the claim that civil and political rights are inherently different and justiciable because they only require forbearance or inaction by a State whereas ECOSOC rights require positive action and State resources for their actualisation. This claim bears no scrutiny. Many civil and political rights like the rights to a fair trial, the right to vote, the right to demonstrate require considerable

State action and resources for their meaningful enjoyment. Both civil and political rights and ECOSOC rights may, therefore, place positive obligations on the State.

Towards an Integrated Look at Human Rights

We started by saying that human rights are one, indivisible and interdependent and that these categories - civil and political rights, ECOSOC rights, etc. - should be no more than shorthand conveniences. Let us now return to that theme. First, it is important to note that many rights do not neatly fit into just one of these categories. Is the right to life a civil and political right or an ECOSOC right? Similarly, is the right to form and operate trade unions or to freedom of religion a civil or political right or an economic, social or cultural right?

The "double" or "mixed" nature of some rights can best be illustrated by the trade union rights. These rights clearly have economic and social aspects insofar as they are essential for the promotion and protection of economic and social interests, such as the right to work and the enjoyment of just and favourable conditions of work, the right to an adequate standard of living, the right to rest and leisure, etc. In this respect the right to form and join the trade union of one's choice is rightly included in instruments which aim at the realisation of economic and social rights, such as the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. On the other hand, trade union rights are a species of the right to freedom of peaceful assembly and association and as such recognised among the civil and political rights in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights. In fact, the ILO has emphasised time and again the particular relevance of respect for basic civil liberties for the exercise of trade union freedoms.

Secondly, the freedom and dignity of the human person is only attainable with the enjoyment of both civil and political rights and economic, social and cultural rights. In other words, the enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent. When people are denied any of these sets of rights their dignity as human beings is also denied. Of what use is the right to food, to work and to shelter if the right to life, fair trial, etc. are not guaranteed?

Similarly what is the benefit of the right to vote, to participate in the governance of one's country, to free speech, etc. if the person is uneducated, unemployed and starving? Man is a complete being - ensuring that he lives in freedom and dignity cannot be prioritised but should be approached holistically.

The biggest constraint on the attainment of economic, social and cultural rights is the commitment of States and the international community as well as resources. Economic, social and cultural rights are not inherently different from nor inferior to civil and political rights. The challenge is to use all available strategies and options to get States and the international community to commit resources to the achievement of these rights. For they are as much rights and are equally important as any other rights.

THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT

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Over the last three decades, numerous academic papers, symposia, seminars and conferences have been devoted to human rights. Despite this strong effort, there is still a great deal of tension and ongoing debate over a number of issues, including: the concept of human rights itself¹, and the nature, substance, beneficiaries and providers of these rights.²

The struggle to promote human rights remains relevant today and must be continued without respite, given that there is often a discrepancy between the African countries' attachment to international human rights conventions and the actual situation in the field.

While the legal approach is to regard the notion of human rights as a whole, the philosophical and ethical approaches see it as a synthesis of two indissociable elements — the "human" and the "right". This raises the following questions: First of all, to *which humans* do human rights belong? And secondly, *which rights* belong to them?

1. Which Humans?

The breadth and scope of human rights are dependent upon the assumptions one makes in regard to them. This is an issue that cannot be dealt with

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1 See especially Kéba Mbaye: *Les droits de l'homme en Afrique* (Paris, Pedone, 1992); Thaddée Ndayizigiye: *Réexamen éthique des droits de l'homme sous l'éclairage de la pensée d'Emmanuel Levinas* (Berne, Peter Lang, 1997); Frédéric Sudre: *Droit international et européen des droits de l'homme* (Paris, Presses universitaires de France, 1989); Karel Vasak: *Les dimensions internationales des droits de l'homme* (Paris, UNESCO, 1978).

2 For an analysis, see Ndayizigiye, *op.cit.*, pp. 321 ff.; Georges Vedel: "Les droits de l'homme: quels droits? quel homme?" in *Mélanges René-Jean Dupuy* (Paris, Pedone), pp. 349-362.

as if it were a question of legal technique. Rather, it must be placed in the broader context of one's concept of the human person.

For purposes of simplification, we may group the major viewpoints on this issue into three main categories, as follows:

- a) *the liberal perspective, which places emphasis on the human being as a free and responsible individual. According to this viewpoint, the fundamental freedoms are a means of defining a sphere of autonomy with respect to any form of power (particularly the State);*
- b) *the socialist (in the broad sense) perspective, which places emphasis on the human being as part of a larger social body whose main function is to serve as a source of solidarity. Economic and social rights are assigned a prominent role in this approach;*
- c) *the spiritual perspective, which emphasizes a holistic view of humanity, and specifically takes into account the spiritual dimension of the person. It subscribes to the notion that human beings are at once unique and naturally summoned to solidarity. According to this viewpoint, freedom and solidarity must converge in such a way as to preserve the true nature of the person.*³

The notions of freedom and equality, such as contained in the Declaration of Independence of the United States of America of 4 July 1776 and in the *Déclaration française des droits de l'homme et du citoyen*, French Declaration of Human and Citizens' Rights, of 26 August 1789, were not meant to apply to everyone. Slaves, and populations under colonial domination, did not enjoy such rights.

The rallying of the international community around human rights was in response to the Nazi crimes committed during the Second World War. As Jeanne Hersch has noted, racism, which until then had been directed towards those with black or yellow complexions, now opposed two groups

3 Nicolas Michel/Mvumbi-di-Ngoma Mavungu: *Droit international public*, duplicated lecture notes, Vol. II (University of Fribourg, 1994), pp. 6-7.

of the same white race.⁴ The time had come to proclaim a common faith in "fundamental human rights".

Henceforth, human rights were to be promulgated without distinction as to race, sex, language or religion. Article 1, paragraph 3 of the Charter of the United Nations stipulates that one of the purposes of the United Nations is:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

The principle of "non-discrimination" was also enshrined in several other international documents, notably in the Universal Declaration of Human Rights of 10 December 1948 (Article 2/1); the respective International Covenants of 16 December 1966 on Economic, Social and Cultural Rights (Article 2/2) and on Civil and Political Rights (Article 2/1); and the African Charter on Human and Peoples' Rights of 27 June 1981 (Article 2).

The "human" in "human rights", therefore, refers to the human person in the most general sense of the term.⁵ Yet, international human rights law is characterized by a sector-based codification in order to protect specific rights, such as the rights of children, women, refugees, stateless persons,⁶ etc.

Human rights are sometimes seen as rights designed for men at the expense of women. Even the terminology used in some cases may be considered sexist. The English term "human rights" or the term "persons' rights" is more neutral than the French *droits de l'homme*, which translates

4 Cf. Kéba Mbaye: "Introduction aux droits de l'homme" in Mohammed Bedjaoui (ed.): *Droit international. Bilan et perspectives*, Vol. 2 (Paris, Pedone/UNESCO, 1991), p. 1113.

5 Cf. Jacques Mourgeon: *Les droits de l'homme* (Paris, Presses universitaires de France, 1985), p. 4 (*Que sais-je? Collection*).

6 See especially Council of Europe: *Human Rights in International Law* (Strasbourg, 1992).

literally as the "rights of man". Judge Kéba Mbaye notes, however, that this amounts to little more than a question of semantics.⁷

While there may not be any disagreement as to the definition of the word "human", does this imply that human rights pertain to all human persons? The reality of the situation points to the contrary.

All children do not have the same right to education, or even to life. In the Peoples' Republic of China, for example, to be of the female sex is a misfortune. The male child, on the other hand, is seen as a kind of social insurance. Strict limits on the number of children often lead public authorities to tolerate or even encourage the disappearance of little girls.⁸

The fact that there is an international day of the woman sufficiently illustrates that equality between men and women is far from being guaranteed, as witnessed by the under-representation of women in decision-making circles, job discrimination, the backward status of women, etc.

In Africa some persons are still considered to be second-class citizens, or even sub-humans. This is true of the Pygmies of Central Africa and the Twa in Rwanda and Burundi. In Mauritania, some blacks are apparently still living in slavery.

Elsewhere in the world, the various laws enacted against racism in the Western democracies are presented as a bulwark against any threat to the unity of the human race. However, incidences of police impropriety, administrative harassment, discriminatory practice in issuing visas, and restricted access to certain establishments are no less numerous as a result.

2 - Which Rights?

As regards their substance, human rights are usually broken down into three generations. The first consists of civil and political rights; the second groups together economic, social and cultural rights; and the third - emphasizing the notion of fraternity - consists of the rights of solidarity

7 Mbaye, *"Introduction"*, *op. cit.* p. 1119.

8 Cf. Sylvie Brunel/Yves Blayo: "La mort des petites filles chinoises" in *Le Monde*, 7 March 1998, p. 17.

(the right of peoples to peace, the rights to development, to a healthy environment, to humanitarian assistance, to free access to victims, and to benefit from the common heritage of humanity).

Genetic engineering poses the ultimate challenge to the world's consciousness. In response, the international community is attempting to promote the fourth generation of human rights - those referred to as the rights of protection. Along these lines, the General Conference of UNESCO adopted on 11 November in Paris the Universal Declaration on the Human Genome and Human Rights.⁹

Despite being broken down into generations, the universality and indivisibility of human rights are becoming increasingly prominent.¹⁰ However, the advocacy of universality does not preclude taking into account certain local particularities in regard to both the promotion and the realization of human rights.¹¹

Civil and political rights¹² may be exercised immediately and confer obligations upon the States for meeting them. Claimants of these rights (i.e. human persons, whether acting individually or collectively) are entitled to demand respect for them from the parties who have been assigned duties—i.e. States. These are known as the rights of abstention on the part of the State.

Economic, social and cultural rights may be seen as a type of claim by individuals to the enjoyment of certain living conditions or benefits as

9 See the text of the Declaration in *Documents d'actualité internationale*, issue no. 24, 1997, pp. 845-847.

10 For a controversial analysis, see Patrick Wachsmann: *Les droits de l'homme* (Paris, Dalloz, 1992), pp. 35 ff.

11 Cf. Tunguru Huaraka: "Les fondements des droits de l'homme en Afrique" in A. Lapeyre/ F. de Tinguy/ K. Vasak (ed.): *Les dimensions universelles des droits de l'homme* (Brussels, Bruylant, 1990), pp. 237-251; Mohammed-Allal Sinaceur: "Islam et droits de l'homme", *idem*, pp. 149-173.

12 See especially Tunguru Huaraka: "Les droits civils et politiques" in Mohammed Bedjaoui (ed.): *Droit international*, *op.cit.*, pp. 1131-1152; Fatsah Ouguergouz: *La Charte africaine des droits de l'homme et des peuples* (Paris, Presses Universitaires de France, 1993), pp. 91 ff.

workers and members of society.¹³ These are referred to as the rights of provision.

The third generation of human rights are known as *the rights of solidarity*¹⁴, whereas those of the fourth generation - which is still in its infancy - are referred to as the *rights of protection*.¹⁵

Having briefly discussed the concept of the human person and human rights in general, let us now turn to the right to development.

3 - The right to Development

The term "development" has various meanings in international law. These include: the right to development,¹⁶ developmental law,¹⁷

13 Cf. Nicolas Valticos: "La notion des droits de l'homme en droit international" in *Mélanges Michel Virally* (Paris, Pedone, 1991), pp. 484-485.

See also Michèle Jacquart: "Droits économiques, sociaux et culturels" in Bedjaoui (ed.): *Droit international, op. cit.*, pp. 1153-1171; Vladimir Kartashkin: "Les droits économiques, sociaux et culturels" in Vasak (ed.): *Les dimensions internationales...*, *op. cit.*, pp. 123-251; Ouguergouz, *op. cit.*, pp. 122 ff.

14 See Karel Vasak: "Pour une troisième génération des droits de l'homme" in Christophe Swinarski (ed.): *Etudes et essais sur le droit international humanitaire et les principes de la Croix-Rouge en l'honneur de Jean Pictet* (Geneva/The Hague, CICR, Nijhoff, 1984), pp. 837-850.

15 See especially Guy Braibant/Gérard Marcou (eds.): *Les droits de l'homme. Universalité et renouveau (1789-1989)* (Paris, L'Harmattan, 1990).

16 Cf. Georges Abi-Saab: "Droits de l'homme et développement: quelques éléments de réflexion" in *Annuaire africain de droit international*, Vol. 3 (1995), pp. 3-10; Philip Alston: *Development and the Rule of Law* (International Commission of Jurists, 1981); Mohammed Bedjaoui: "Le droit au développement" in Bedjaoui (ed.): *Droit international, op. cit.*, pp. 1247-1273; Nanni Rojas-Albonico: *Le droit au développement comme droit de l'homme* (Bern, Peter Lang, 1984).

17 Cf. Mohammed Bennouna: *Droit international du développement* (Paris, Berger Levrault, 1983); Maurice Flory: *Droit international du développement* (Paris, Presses Universitaires de France, 1977); "Mondialisation et droit international du développement" in *Revue générale de droit international public*, Vol. 101 (1997), pp. 609-633.

sustainable human development¹⁸ sustainable development,¹⁹ social development, etc.

The notion of development embraces ethical, political, economic, social, cultural and legal aspects. All of the aspects of development contribute, in one way or another, to promoting the right to development.

In its Resolution 35/56 relative to an "International development strategy for the third United Nations development decade", the General Assembly noted that:

The development process must promote human dignity. The ultimate aim of development is the constant improvement of the wellbeing of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom.

The concept of the right to development originated in the 1960s as a slogan for the claims of new countries interested in obtaining political emancipation through economic liberation.²⁰ However, the introduction and incorporation of the right to development in human rights may be attributed to the efforts of Judge Kéba Mbaye, by means of an introductory lesson he gave in 1972.²¹

Twenty-six years later, it is still an important subject, mostly due to the overall reluctance to clearly identify this right, but also because of the hope it arouses in the peoples of the Third World.

The right to development as a human right may be established by examining the following: its legal nature (I), its substance (II), its beneficiaries and the parties to whom duties have been assigned (III).

18 United Nations Development Programme: *Human Rights and Sustainable Human Development* (August 1997).

19 Cf. Astrid Epiney/Martin Scheyli: "Le concept de développement durable en droit international public" in *Revue suisse de droit international et de droit européen*, 2/ 1997, pp. 247-266; Winfried Land (ed.): *Sustainable Development and International Law* (London, 1995).

20 Cf. Bedjaoui: "Le droit au développement", *op. cit.*, p. 1247.

21 See Kéba Mbaye: "Le droit au développement comme un droit de l'homme" in *Revue internationale des droits de l'homme*, Vol. 5 (1972), pp. 505-534.

a - The Legal Nature of the Right to Development

The right to development is considered to be a fundamental right from which all other rights flow. It is the alpha and the omega of human rights - the "droit matriciel" (right upon which all others are based), to borrow the expression coined by Judge Mohammed Bedjaoui.²²

In order for the right to development to be considered a genuine right, it must be supported by an underlying legal foundation. International conventions, customs, standards and jurisprudence provide such a foundation for the right to development.²³

Article 55 of the Charter of the United Nations states that: "The United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development." The State members may act jointly or separately in cooperating with the Organization for the achievement of the purposes set forth in Article 55 (Article 56).

The African Charter of Human and Peoples' Rights of 27 June 1981 enshrines expressis verbis the right to development as a human and peoples' right. Article 22, paragraph 1, states that: "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."

Article 1, paragraph 1 of the Declaration on the Right to Development²⁴ 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

22 Bedjaoui: "Le droit au développement", *op. cit.*, p. 1252.

23 For a detailed analysis, see Mbaye: *Les droits de l'homme en Afrique*, *op. cit.*, pp. 184 -210; Rojas-Albonico, *op. cit.*, pp. 49-99.

24 The Declaration (Resolution 41/128) was adopted by the General Assembly by a vote of 146 to 1, with 8 abstentions. The United States voted against the resolution. The following countries abstained: Denmark, the Federal Republic of Germany, Finland, Iceland, Israel, Japan, Switzerland, and the United Kingdom.

Before the right to development was explicitly formulated in the above-mentioned Declaration, the General Assembly had adopted several resolutions aimed at promoting this right.²⁵

The juridical value of the two foregoing documents cannot be contested, given the fact that they are (multilateral and regional) conventional instruments. On the other hand, that of Resolution 41/128 and of previous resolutions is far from enjoying unanimous acceptance and raises the issue of the normative value of instruments drafted by international organizations.²⁶

In the judgment it handed down in the Southwest African cases (first phase), the International Court of Justice accorded a semantic value to the instruments of the General Assembly. The fact that a decision is contained in a resolution does not mean that it is devoid of all obligation. In evaluating the juridical value of a resolution, several factors enter into consideration, including its substance, the allegiance shown by Member States (in terms of adoption and application), etc.

It is worth noting that in Resolution 3232 (XXIX) of 21 November 1974, which was adopted by consensus, the General Assembly recognized that "the development of international law may be reflected, inter alia, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice".

Today, no Member State of the United Nations may legitimately call into question the right to development; it henceforth falls under the domain of *jus cogens*.²⁷

25 See especially Resolution 1514 (XV) in regard to the Declaration on the Granting of Independence to Colonial Countries and Peoples; Resolution 1803 (XVII) of 14 December 1962 in regard to "Permanent sovereignty over natural resources"; Resolution 2625 (XXV) of 24 October 1970; Resolution 3281 (XXIX) of 12 December 1974 in regard to the Charter of Economic Rights and Duties of States.

26 Cf. Jorge Castaneda: "Valeur juridique des résolutions des Nations Unies" in *R.C.A.D.I.*, Vol. 129, pp. 207 ff; Michel Virally: "La valeur juridique des recommandations des organisations internationales" in *Annuaire français de droit international* (1956), pp. 66-95.

27 Bedjaoui: "Le droit au développement", *op. cit.*, p.1264.

b - The Substance of the Right to Development

The Declaration on the Right to Development provides a nearly exhaustive list of the various components of this right.

The right to development assumes:

- i) the enjoyment of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (Article 1/1);
- ii) the right of peoples to self-determination (Article 1/2);
- iii) the exercise of peoples' inalienable right to full sovereignty over all their natural wealth and resources (Article 1/2);
- iv) the active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom (Article 2/3).

The realization of the right to development must be accomplished by respecting the principles contained in Resolution 2625 (XXV) of the General Assembly concerning abstinence from the use of force, the peaceful resolution of differences, the right of peoples' to self-determination, equality between States, etc.

c - Beneficiaries of the Right to Development and the Parties to Whom Duties Have Been Assigned

According to the pertinent provisions of the Declaration on the Right to Development, the beneficiaries of the right to development include human persons, peoples, countries and States.

Article 2, paragraph 1, states that: "The human person is the central subject of development and should be the active participant and beneficiary of the right to development."

With respect to peoples, Article 1, paragraph 1, states that: "all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development". Paragraph 2 adds that peoples have the right to self-determination and to full sovereignty over all their natural wealth and resources.

Developing countries have the right to benefit from effective international assistance in order to obtain more rapid development (Article 4/2).

Although the Declaration on the Right to Development does not recognize States as beneficiaries of the right to development, the latter nevertheless have been given chief responsibility for claiming the enjoyment of this right from the international community, given that international relations are primarily inter-State relations.

To this end, the States have the right to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals (Article 2/3).

The realization of the right to development is everybody's business: individuals, activists, States (whether individually or collectively). However, States have been given the main responsibility for ensuring this. Article 3, paragraph 1, of the Declaration states that: "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development."

Paragraph 3 goes on to state that: "States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development."

Conclusion

The promotion and realization of the right to development in Africa can only be achieved if the African countries demonstrate an unwavering faith in peace and in the peaceful resolution of differences.

The establishment of democracy and proper governance (understood to mean the sound management of the public affairs, insofar as transparency and accountability are concerned) will also be conducive to the realization of the right to development.

By adopting the Treaty of Pelindaba, the African countries made a commitment to achieving a continent free of nuclear weapons. A perceptible reduction in conventional arms for the purpose of strengthening peace should enable both African countries and military powers to turn substantial sums of money over to development. Without development, the

promotion and realization of human rights will only be jeopardized. As noted by Professor Abi-Saab:

Although it may be true that human rights can formally exist in any society, regardless of its level of development, and that development alone guarantees neither the recognition nor the respect of these rights, it is also true that the quality of their implementation or practical realization depends upon social conditions *lato sensu* that may be termed the society's level of development.²⁸

Globalization - a concept currently in vogue - should not be detrimental to the developing countries.²⁹ The strengthening of derogatory norms, particularly within the context of the World Trade Organization (WTO), and of relations between the European Union and the African, Caribbean and Pacific countries (ACP), will constitute one expression of international solidarity.

The African Development Bank and the other international financial institutions should devise an acceptable formula for the repayment of foreign debt, so that the service of this debt does not gravely compromise the promotion and realization of the right to development.

28 Abi-Saab: "Développement et droits de l'homme...", *op. cit.*, p. 5.

29 Cf. Flory: "Mondialisation et droit international du développement", *op. cit.*

**THE AFRICAN CHARTER
AND THE AFRICAN COMMISSION
ON HUMAN AND PEOPLE'S RIGHTS:
A MANDATE TO PROMOTE AND PROTECT
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IN AFRICA**

GERMAIN BARICAKO*

The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights is an international instrument whose enforceability extends to member States of the Organization of African Unity (OAU) that are parties to the Charter. As a regional legal instrument, accession to the African Charter on Human and People's Rights is open exclusively to member States of the OAU. To date, only two of the OAU 53 Member States (Ethiopia, Eritrea) have not yet ratified it.

The process to adopt the African Charter on Human and Peoples' Rights began with the Colloquium of African Jurists organized in Lagos, Nigeria in 1961. It was continued at the Colloquium of Dakar, Senegal in 1978, and resulted in Decision 115 (XVI) of the Assembly of Heads of State and Government of the OAU which met from 17 to 20 July 1979 in Monrovia, Liberia. Decision 115 (XVI) concerned the preparation of a preliminary draft of the African Charter on Human and Peoples' Rights. It bore results quickly in that the OAU Assembly of Heads of State and Government of 28 June 1981 proceeded to unanimously adopt the draft Charter in Nairobi, Kenya on behalf of all 50 States represented at this historic African human rights summit. Upon learning of the Charter's adoption, the General Assembly of the United Nations sent its congratulations to the OAU by means of resolution A/Res/36/154 of 16 December 1981.

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Three months after its ratification by an absolute majority of OAU Member States, the African Charter on Human and Peoples' Rights entered into force on 21 October 1986..

The African Commission on Human and Peoples' Rights

In order to ensure the adherence of State parties' to its provisions, Article 30 of the African Charter provides for the creation of the African Commission on Human and Peoples' Rights. Apart from the OAU Assembly of Heads of State and Government, to which the Commission reports (Articles 52 - 54), the Commission is the main organ for the promotion and protection of human and peoples' rights. Part II of the Charter (dealing with measures of safeguard) is, in fact, devoted to the Commission, whereas Part I deals with rights and duties.

The Commission was installed on 2 November 1987 and is headquartered in Banjul, Gambia. The secretariat of the Commission, which is headed by a Secretary appointed by the Secretary-General of the OAU (Article 41 of the Charter, § 23 of the Commission's Rules of Procedure), assists the Commission in the effective discharge of its duties.

The Commission is composed of 11 members who are elected by the OAU Assembly of Heads of State and Government for a renewable six-year term and are nominated by State parties to the Charter. Candidates should be known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights and be experienced in legal matters (Article 31 ff.).

The initial composition of the Commission reflected an equitable geographic representation, as is customary for organs of the OAU. Over the years this balance has been disrupted.

The Commission elects its Chairman and Vice-Chairman for a renewable two-year term and lays down its rules of procedure (Article 42). The Commission convenes two ordinary annual sessions and may convene extraordinary sessions.

In addition to the performance of all other tasks which the OAU Assembly of Heads of State and Government may entrust to it, the statutory mandate of the Commission, under the terms of Article 45 of the

Charter, consists of the following functions:

- to promote human and peoples' rights;
- to protect human and peoples' rights;
- to interpret the African Charter on Human and Peoples' Rights.

The promotion of human and peoples' rights

In discharging this task, the Commission shall:

- collect documents; undertake studies and research African problems in the field of human and peoples' rights; organize seminars, symposia and conferences; disseminate information; encourage national and local institutions concerned with human and peoples' rights; and, should the case arise, give its views or make recommendations to governments. In this role, the Commission functions as an information and education provider;
- formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation. In performing this task, the Commission assumes a quasi-legislative function;
- cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights. The Commission's role in this instance is to engage in institutional cooperation, and;
- examine the periodic reports of State parties to the Charter in regard to legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter. This function assigns the Commission a supervisory role.

The protection of human and peoples' rights

By virtue of its role to protect the rights prescribed in the Charter, the Commission is empowered to receive and examine communications or complaints submitted to it from State parties, NGOs or individuals whose above-mentioned rights have been violated.

The procedure of the Commission varies according to the originator of the communication or complaint, depending upon whether the plaintiff is a State party to the Charter, an individual or a legal entity.

Under the provisions of Article 47, if one State party to the Charter has good reason to believe that another State party to the Charter has violated the Charter's provisions, it may take recourse by seeking a diplomatically negotiated settlement. If after a period of three months, a satisfactory solution has not been found, it may submit the matter to the Commission by addressing a communication to the Chairperson, to the Secretary-General of the OAU and to the State concerned.

This constitutes an option that is left to the discretion of the States since, under the terms of Article 49 of the Charter, the State that deems that another State party has violated the provisions of the Charter, has the right to refer the matter directly to the Commission by addressing a communication to the Chairperson, to the Secretary-General of the OAU, and to the State implicated in the matter.

The procedure for referring matters to the Commission appears to be more complex for individuals and legal entities than for States. According to Articles 50, 55 and 56 of the Charter, the Commission may consider communications other than those of State parties, provided a simple majority of its members so decide. Before each session, such communications must be included in a list prepared by the Secretariat of the Commission, which is transmitted to the members of the Commission at their request. Communications contained on the list must meet criteria aimed at respecting the Charter, the sovereignty and honorability of the States, and, to some extent, the authority of the entity being judged, decisions taken by other competent international bodies (OAU, UN), or matters still pending before the same.

In all cases, after obtaining all necessary information on the matters referred to it and after having exhausted all means to reach an amicable solution, the Commission shall prepare a report stating the facts and its findings and recommendations to the OAU Assembly of Heads of State and Government, which is the decision-making body responsible for the protection of human and peoples' rights.

The interpretation of the African Charter on Human and Peoples' Rights

In performing this function, the Commission may interpret the provisions of the Charter upon request of a State party, an OAU agency, or an African organization recognized by the OAU.

In carrying out its mission, the Commission:

- first and foremost, applies the provisions of the African Charter on Human and Peoples' Rights;
- draw inspiration not only from international law concerning human and peoples' rights, but also from the provisions of the Charter of the United Nations, the Charter of the OAU, and the Universal Declaration of Human Rights; from the provisions of other instruments adopted by the UN and by African countries in the field of human and peoples' rights; as well as from the provisions of various instruments adopted by the UN specialized agencies, of which the State parties to the African Charter on Human and Peoples' Rights are members (Article 60);
- takes into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by OAU member States, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African States, as well as legal precedents and doctrine.

Content and Significance of the Provisions of the Charter on Economic, Social and Cultural Rights

The rights recognized and proclaimed by the Charter include human rights and peoples' rights.

With respect to human rights, civil and political rights must be distinguished from economic, social and cultural rights. Civil and political rights are contained in articles 2 to 14, whereas economic, social and cultural rights are discussed in Articles 15 to 18. Articles 19 to 26 deal with peoples' rights. These are preceded by the Preamble, which sets forth a series of guiding principles that explain or clarify the Charter.

Included among the economic, social and cultural rights provided under the Charter are:

- the right to work;
- the right to health;
- the right to education;
- the rights of certain social categories, namely the family, the child, the elderly and the disabled.

The nature of these rights

Economic, social and cultural rights are aimed for human well-being, namely, the material and moral satisfaction of the needs of the individual. The attainment of well-being is an essential condition for exercising civil and political rights. Many human rights specialists have acknowledged the close relationship that exists between civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

The right to work (Article 15)

Article 15 of the Charter stipulates that every individual has the right to work in equitable and satisfactory conditions and receive equal pay for equal work. It may be noted that the provisions relative to the right to work are quite cursory. It is difficult to see how, given the current economic environment, the African States could provide work for all members of the population. Clearly, the right to work does not mean that the State must supply jobs for all able-bodied individuals. Even in countries where this might be thinkable, the result would be underemployment, followed by economic collapse, as witnessed by the socialist countries of eastern Europe. The European Social Charter also guarantees the right to work, but rather than requiring the States parties to furnish jobs directly, it requires them to introduce policies which, in the long run, will lead to the creation of a thriving job market.

The right to work in equitable and satisfactory conditions calls for positive efforts on the part of State parties. Insofar as the State itself is an employer, it must introduce measures in the workplace to protect the health, safety and well-being of its employees. Private employers must be

required by law to adhere to the same standards. This protection must be granted to all employees without discrimination.

According to the interpretation of the ILO Convention on equal remuneration that numerous developed countries have adopted, it is not necessary to undertake a rigorous comparison of jobs, but rather to decide if the jobs in question are similar on the whole. This interpretation is of great importance for women who have the same level of productivity as men, but who are paid less than their male counterparts.

The Charter is silent on the issue of the right to social security. This is not an oversight but rather takes into account the current economic environment in the majority of African States, whose resources could not adequately support a social security system. It is therefore left to the discretion of each State to provide its own social security system.

The right to health (Article 16)

The right to health is recognized by Article 16, which stipulates that every individual has the right to enjoy the best attainable state of health. Consequently, the State parties are to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Obviously, the State parties can only fulfil the obligations set forth in Article 16 to the extent allowed by their available financial resources.

The right to education and to the protection of the moral and traditional values recognized by the Community (Article 16)

Article 17, paragraph 1, guarantees the right to education. But it does not stipulate whether this entails the right of access to schooling or the right to State-sponsored education. Economic indicators are needed to help determine the extent of the State's responsibility.

If education is a right, then governments must be able to ensure it. Furthermore, all who are eligible must be able to enjoy this right, regardless of whether or not they have the financial means.

If the right to education means the right of access to schooling, then the people would be responsible for paying for it, while the State would be responsible for establishing objective and non-discriminatory criteria concerning it.

It is worth noting that among African countries there is a growing, steadfast desire to see basic education declared compulsory and free for all. This, in fact., concerns the application of Article 26 of the Universal Declaration of Human Rights.

In addition to the right to education, Article 17 stipulates that everyone has a right not only to take part in the cultural life of the community, but also to the promotion and protection of moral and traditional values insofar as the Community recognized them. This promotion and protection must be ensured by the State within the scope of its normal duties to safeguard human rights.

**The rights of the family, women, children, the aged and the disabled
(Article 18)**

The family is recognized as being the natural unit and basis of society since it constitutes the very foundation of African society. For this reason, the State must take care of the family's physical and moral health and has the duty to assist it, since the family is the custodian of the morals and traditional values recognized by the community. This importance accorded the family is in conformity with customary African law, which considers the family a privileged subject in legal relations.

The Charter protects women and makes it unlawful to take discriminatory measures against them. Rather, the rights of women are to be protected.

Likewise, children, aged persons and the disabled also have the right to special measures of protection in keeping with their disadvantaged situations

Note: The distinction is commonly made in the Charter between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. despite this, I consider it important and appropriate to point out that certain rights are closely related in purpose to economic

and social rights. These include:

- the right to property;
- the right to development;
- the right to a satisfactory environment.

The right to property (Article 14)

Article 14 of the African Charter guarantees the right to property, which means the right to private property. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. The European and Inter-American Conventions also guarantee the right to private property. The right to private property does not confer upon each person the right to own private property, but grants individuals the right to defend themselves against the expropriation of a legally acquired asset. The African Charter does not provide for compensation in the case of expropriation. However, by virtue of international law, any State that initiates such action must pay the victim of expropriation a proper and equitable compensation. The right to property must therefore be understood as establishing entitlement to adequate compensation in the event of expropriation.

The right to development (Article 22)

Although the drafters of the African Charter on Human and Peoples' Rights do not expressly include the right to development within the category of economic and social rights, it seems appropriate to consider it here. In effect, by precisely defining the components of the right to development, it is clear that this right belongs in the same category as economic and social rights.

The right to development is a fairly recent concept that arose in reflecting upon the failures of developmental aid, and the need to redefine international cooperation in less profit-oriented terms (Kéba Mbaye: *Les droits de l'homme en Afrique*, page 186).

Among the various definitions given for the right to development, we recommend Kéba Mbaye's definition, which reads as follows:

The recognized prerogative of all peoples and of every individual to satisfy their needs in accordance with their aspirations to the full extent permitted by the equitable enjoyment of the goods and services produced by the community.

The African Charter of Human and Peoples' Rights is the first international instrument to recognize the right to development as a human and peoples' right. It is certainly the most explicit text in terms of affirming the existence of this right. Paragraph 7 of the Preamble and Article 22 discuss the right to development.

Paragraph 7 of the Preamble to the Charter states that the African member States of the OAU are convinced that it is essential to pay particular attention to the right to development.

That is the first mention of this right.

Article 22, paragraph 1 states that:

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.

Article 22, paragraph 2 states that:

States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Some think that, according to the Charter, the right to development is both an individual and collective right - a human and peoples' right. The Charter recognizes the right to development as a human right, not as a right of States. It entrusts States, individually and collectively, with the duty to ensure the exercise of the right to development.

The right to a satisfactory environment

The environment has recently become a major global concern. It is therefore fitting that Africa has recognized the right to a satisfactory environment as a human right. According to the African Charter on Human and Peoples' Rights, all people have the right to a general satisfactory environ-

ment favourable to their economic and social development. The Charter thereby underscores the close relationship that exists between the environment and development.

Numerous authors concur in their claim that the right to a satisfactory environment is closely linked to economic and social rights, insofar as the environment affects the quality of life and the safety of the individual. It is no doubt for this reason that several constitutions guarantee the right of their citizens to a healthy and ecologically balanced environment.

**The Status of the Implementation of the Economic,
Social and Cultural Rights enshrined in the African Charter**

It is helpful to recall the duties of the State parties regarding the implementation of the Charter's provisions.

Article 1 states: "The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative measures to give effect to them."

Article 62 stipulates that "Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter."

It follows from the above that Article 1 describes a general duty of the States parties under the African Charter, whereas Article 62 reinforces and clarifies this general obligation.

The African Charter provides for mechanisms to monitor the implementation of its provisions by States parties. The African Commission is the body responsible for carrying out this role as part of its promotion and protection activities. In accordance, the Commission sends missions to the States parties, examines their periodic reports, and handles cases of human and peoples' rights violations.

According to the terms of Article 62 of the African Charter, State parties must present a report to the Commission every two years starting from

the date the Charter enters into force in their particular case. The first report is referred to as the initial report and subsequent ones are referred to as periodic reports. The Charter does not, however, offer details on the manner in which the reports are to be presented.

The Commission has thus requested and obtained authorization from the OAU Assembly of Heads of State and Government to receive and examine the reports of State parties.

The presentation of periodic reports provides an opportunity for constructive dialogue between the Commission and the State parties concerning the fulfilment of the latter's obligations under the African Charter.

In this regard, the Commission has established guidelines to assist the States in the preparation of their reports. These guidelines are based on the following objectives:

- to enable each State party to undertake a study of its basic legislation, rules, procedures and practices in order to conform them as much as possible to the Charter;
- to ensure that each State regularly review the status of its legislation relative to the rights provided and protected by the Charter, in order to determine to what extent the person entitled to these rights do, in effect, enjoy them;
- to facilitate the evaluation of national policies by the public and encourage popular participation in the determination and implementation of policies relating to human and peoples' rights;
- to develop a system for evaluating the progress made by State parties in fulfilling their obligations under the Charter, and;
- to facilitate the exchange of information between State parties, and other bodies working in the field of human rights, with a view to eliminating the obstacles encountered.

Since its inception, the Commission has examined 20 reports presented by 18 State parties.

- thirteen States have presented their initial report;

- two States have presented their second report and one its third report;
- the initial reports of two State parties, which have yet been presented, will be examined at the ordinary session of the Commission in April 1998 in Banjul, Gambia.

An examination of the initial and periodic reports clearly demonstrates that the State parties are beginning to accord increasing importance to economic, social and cultural rights in their reports. The same applies to the rights to education, health, work, housing, property, environment, culture, and development, as well as to those of women, children, the disabled, etc.

The initial report of Egypt (1991) makes reference to trade union freedom; the rights of the family, the child, and the youth; the rights to well-being, social progress and development, and to cultural development (pp.7 - 8).

The initial report of Ghana (1993) also describes efforts made in the area of women's and children's rights and the right to participate in culture (pp.1-2).

The same may be said of the initial report of Mauritius (1994), which mentions developments in the rights to work, health, education, the protection of the family, and the right to development.

A large portion of the periodic report of Senegal (1992) is devoted to the rights to education, culture, work, and to the protection of the family.

Nearly all State reports stress the right to property and the ratification of the international treaties concerning economic, social and cultural rights. However, they do not mention what measures have been taken to ensure the enjoyment of the guaranteed economic, social and cultural rights, as did Zimbabwe's second and third reports of 1992 and 1997.

It is likewise worth noting that at the time certain States presented their initial report, they had not yet taken measures to incorporate the Charter in their national legislations. In addition, civil and political rights seem to predominate markedly over economic, social and cultural rights.

Thus, there is much remaining to be done in order to attain full realization of economic, social and cultural rights, as well as of the other rights enshrined in and guaranteed by the Charter. The regular reminders sent to the State parties concerning the presentation of their reports has not yielded substantive results. There are States that quite simply do not respect this obligation, while others complain of technical problems encountered in preparing their reports. The members of the Commission should deal with these problems and help find solutions to them with the competent authorities in the course of their visits to the State parties. Unfortunately, there are various reasons (busy schedules, insufficient resources, lack of cooperation between State parties, etc.) which prevent the Commission members from performing this task optimally.

The weak performance of the NGOs which have been granted observer status by the Commission and that work within the State parties is also - at least partially - responsible for this situation.

Nevertheless, the Commission is fully aware of this state of affairs and is currently working to find the necessary means to correct it.

Communications/Complaints

Since its inception, the Secretariat of the Commission has registered more than two hundred communications/complaints from individuals and from NGOs working for the promotion and protection of human and peoples' rights.

Yet only a relatively small number of complaints concern economic, social and cultural rights. For example, Communications 100/93 complains of the improper management of public finances, the government's failure to ensure the proper functioning of basic public services (such as the supply of drinking water and electricity), a medicine shortage, and the fact that the universities and secondary schools have been closed for two years..

The Commission found that the government's failure to provide essential services, such as the supply of drinking water, electricity and medicines of sufficient quality and quantity, as alleged in Communication 100/93, constitutes a violation of Article 16 of the African Charter, which proclaims that:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health
2. States parties to the present Charter shall take the necessary measures to protect the health of their people....

The Commission also decided that the closure of the universities and secondary schools for two years, together with the fact that teachers' salaries were not paid in certain regions, which prevented them from teaching their courses, constituted a violation of Article 17 under the African Charter, which stipulates: "1. Every individual has the right to education."

In Communication 39/90 the plaintiff was imprisoned, lost his job, and was unable to regain it, despite being entitled to do so by the amnesty law.

The Commission declared that this constituted a violation of Article 15 of the Charter's provisions concerning the right to work, and recommended that the government proceed to draw all legal conclusions resulting from this decision.

It should be noted that if the State parties refrain from applying to the Commission, the activities of the NGOs and of individuals enable the Commission to ensure its mission of protecting human and peoples' rights, despite any lack of resources.

Obstacles to the realization of economic, social and cultural rights

As illustrated by the foregoing, the African system of human and peoples' rights indeed contains provisions relative to economic, social and cultural rights. The system is also endowed with a mechanism to promote and protect these rights.

An examination of the status of the implementation of the African Charter on Human and Peoples' rights and other international human rights instruments indicates a poor performance, giving rise to such questions as: Why are the provisions of the African Charter, which include economic, social and cultural rights, not applied as they should be by the State parties? Or, put differently: Why do the State parties not perform their duties properly vis-à-vis their people? And: Why do the people never, or almost never, lay claim to their rights?

I will attempt to respond to these questions by pointing out what I consider to be the most salient factors involved.:

Unsound governance and a poor distribution of resources

The State parties to the Charter have, by the act of ratification, assumed the general obligation contained in Article 1 of the Charter, which stipulates that they shall recognize the rights, duties and freedoms set forth in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Yet, many State parties pay no attention whatsoever to this important commitment and forget about it altogether. Other State parties take this commitment lightly and go so far as to violate these rights deliberately. Still other State parties create a situation for themselves whereby, through poor resource allocation and distribution, it becomes impossible to honour their commitments to their people, or to the international bodies charged with promoting and protecting the rights in question.

The explanation given by some States, which place the blame on their economic underdevelopment, is not valid for the simple reason that any State - no matter how poor - can cover the basic needs of its people, provided that it is properly managed and governed. A number of examples may be found in our midst

Ignorance of rights

The denial and/or the inadequate application of economic, social and cultural rights is facilitated by the ignorance of our mainly illiterate people. They do not know their rights and the few who do are uninformed as to how to exercise them, or of the means available for giving effect to them. Ignorance of one's rights, or being aware of them without knowing how to exercise them, is equivalent to not having them at all.

The lack of resources for the proper functioning of the African Commission on Human and Peoples' Rights (ACHPR)

The budget of the African Commission is funded by the ordinary budget of the OAU, which itself is funded by the Contributions of member

States. These member States have economies that, for the most part, are bordering on bankruptcy.

Thus, the ACHPR has had to rely for years on extra-budgetary financing in order to carry out such duties as the promotion and protection of human rights. Obviously, the ACHPR is stymied with regard to the activities that lack funding

Conclusions

The meagre results indicated by the implementation of the provisions of the African Charter on Human and Peoples' Rights and other instruments relative to human rights have already been written and spoken about at length.

The present seminar provides an opportunity to attempt to eliminate the obstacles encountered and to find answers to the problems raised.

Among the numerous possible approaches, I propose the following:

- a) to clearly define the concepts of the rights, freedoms, duties and obligations contained in the Charter, and to define the main parameters of what might constitute a violation or ignorance of the provisions of the Charter, which include economic, social and cultural rights;
- b) to develop a permanent framework of cooperation and discussion among the different actors working in the field of human rights in the area of the promotion and protection of human and peoples' rights in Africa (ACHPR, NGOs, inter-governmental organizations, national human rights institutions), and;
- c) increase African public awareness of the existence and the content of the rights, as well as of the mechanisms available for the realization and the protection of economic, social and cultural rights.

THE AFRICAN ECONOMIC COMMUNITY TREATY AND THE PROTECTION AND PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

BEN KIOKO*

The Treaty establishing the African Economic Community (AEC) was adopted by the 27th Ordinary Session of the Assembly of Heads of State and Government held in Abuja, Nigeria, from 3 to 5 June 1991. It was signed by 51 Member States immediately after adoption. It entered into force on 11 May 1994, after the instruments of ratification and accession had been received from 37 States representing two-thirds of the Member States of the OAU. The adoption of the Treaty was premised on the Lagos Plan of Action and the Final Act of Lagos of April 1980. Those instruments had reaffirmed the commitment of the OAU Member States to establish by the year 2000, an African Economic Community in order to foster the economic, social and cultural integration of the continent. A declaration adopted on the occasion of the 25th Anniversary of the OAU in 1988 also reaffirmed the commitment and determination of the Assembly of Heads of State and Government to accelerate the establishment of the proposed African Economic Community. The Treaty envisages the establishment of the community gradually in six

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stages of variable duration over a transitional period not exceeding thirty-four (34) years.¹

The Regional Economic Communities (RECs) will be the building blocks for the Community. Perhaps, this is why the first stage of the Community is the strengthening of the existing RECs and the establishment of new RECs where they do not exist.

The Treaty does not make specific mention of economic, social and cultural rights but, as will be demonstrated shortly, some articles make reference to the promotion of activities touching on the enjoyment of these rights.

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- 1 Article 6 of the Treaty, stipulates that at each stage, specific activities shall be assigned and implemented concurrently as follows: The **first stage** (within a period not exceeding five (5) years from the date of entry into force of this Treaty) is the strengthening of existing regional economic communities; establishing economic communities in regions where they do not exist. The **second stage** (8 years) relates to the stabilization of Tariff Barriers and Non-Tariff Barriers, Customs Duties and Internal Taxes; the determination of a timetable for the gradual removal of Tariff Barriers and Non-Tariff Barriers; strengthening of sectoral integration at the regional and continental levels and coordination and harmonization of activities among the existing and future economic communities. The **third stage** (10 years) is the establishment of a Free Trade Area through the observance of the timetable for the gradual removal of Tariff Barriers and Non-Tariff Barriers to intra-community trade and the establishment of a Customs Union by means of adopting a common external tariff. The **fourth stage** (2 years) is the coordination and harmonization of Tariff and Non-Tariff systems among the various RECs with a view to establishing a Customs Union at the Continental level by means of adopting a common external tariff. The **fifth stage** (4 years) relates to the establishment of an African Common Market through the adoption of a common policy in several specified areas; the harmonization of monetary, financial and fiscal policies; the application of the principle of free movement of persons as well as the provision herein regarding the rights of residence and establishment and; constituting the proper resources of the Community as provided for in Article 82 of the Treaty. The **sixth stage** (5 years) will involve the consolidation and strengthening of the structure of the African common market; integration of all the sectors, establishment of a single domestic market and a Pan-African Economic and Monetary Union; implementation of the final stage for the setting-up of an African Monetary Union; the establishment of a single African Central Bank and the creation of a single African Currency and the implementation of the final stage for the setting-up of the structure of the Pan-African Parliament and election of its members by continental universal suffrage; implementation of the final stage for the setting-up of African multinational enterprises in all sectors; and implementation of the final stage for the setting-up of the structures of the executive organs of the Community.

The objectives of the Community are, *inter-alia*, to promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and promote an endogenous and self-sustained development; to establish a framework for the development, mobilization and utilization of the human and material resources of Africa; to promote cooperation in all fields of human endeavour in order to raise the standard of living of the African peoples and maintain and enhance economic stability in order to achieve self-reliant development.

The Treaty is also premised on principles to which the High contracting parties affirmed and declared their adherence.

Among these principles are:

- solidarity and collective self-reliance;
- promotion of a peaceful environment as a prerequisite for economic development;
- recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights, and,
- accountability, economic justice and popular participation in development..

The Treaty does not specifically make mention of the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Universal Declaration of Human Rights (UDHR). Nevertheless, it does refer in the preamble to the principles of international law governing relations between States, the African Charter on Human and Peoples' Rights and to the principles and objectives set forth in the Charter of the OAU. The OAU Charter, in turn, makes a cross reference to the Universal Declaration of Human Rights, while the African Charter on Human and Peoples' Rights for its part makes reference, *inter-alia*, to the right to development. Thus, the Treaty has introduced an inter-relationship among the three relevant legal instruments adopted under the aegis of the OAU.

The Treaty contains a chapter devoted to social affairs (Art. 72). In that connection, Member States have agreed to ensure the full participation and rational utilization of their development efforts with a view to eliminating

other social scourges plaguing the continent. To that end, they undertook to:

- a) encourage the exchange of experiences and information on literacy, vocational training and employment;
- b) harmonize gradually their labour and social security legislations with a view to eliminating poverty and promoting balanced socioeconomic development within the Community;
- c) take necessary measures for the survival and development of the child and the protection of the child against abuse, neglect and exploitation;
- d) provide disabled persons with adequate training likely to facilitate their social integration and enable them to contribute to the attainment of the objectives of the Community;
- e) create conditions conducive to the training of young school leavers, and other youth, in order to enable them to be gainfully employed;
- f) adopt, coordinate and harmonize their policies with a view to ensuring a decent life for the aged; and
- g) harmonize their efforts to put an end to the illegal production, trafficking and use of narcotic drugs and psychotropic substances and formulate sensitization and rehabilitation programmes in this field.

The Treaty also contains provisions relating to gender and development. By virtue of Article 75 of the Treaty, Member States agree to formulate, harmonize and coordinate development of the African Woman through the improvement of her economic, social and cultural conditions. To that end, Member States shall take all measures necessary to ensure greater integration of women in development activities within the Community. The Treaty also contains general provisions on issues relevant to our discussions such as health (Art. 73), environment (Art. 58), education and training Art. 68), culture (Art. 69) and population and development (Art. 74) etc. It envisages the negotiation of 49 protocols to be annexed to it and which will contain detailed provisions on its implementation including the articles already referred to. To date, twelve protocols are available in draft form.

In considering protection and promotion of economic, social and cultural rights under the AEC Treaty, it is important to recall that the Community is an integral part of the OAU. Thus, when the Assembly met in its 33rd Ordinary Session of the OAU in Harare, Zimbabwe, in June 1997, it converted itself and met as the first Assembly of the Community to consider and take decisions on community matters. It is perhaps for that reason, that it has not been considered necessary to adopt provisions that are already enshrined in other OAU Treaties.

Certainly, the OAU was for the greater part of its existence preoccupied with political issues such as self-determination and the fight against colonialism and Apartheid. However, all policy statements made in the last five years point towards the main challenges of the Organization as being three-fold, namely, economic integration, conflict prevention, management and resolution and democratization and human rights. Indeed, the inter-relationship between peace and stability, or observance of human rights and socioeconomic development, has been given official recognition by the Policy Organs of the OAU/AEC. Thus, the Policy Organs have recognized that socioeconomic development is not possible in the absence of peace and stability which, in turn, is not possible in the midst of gross violations of human rights.

In this connection, reference could be made to the 1990 OAU Declaration and the 1994 Cairo Agenda for Action for the Socio-Economic Transformation of Africa. The 1990 OAU Declaration² stipulates, *inter-alia*, as follows:

we reaffirm that Africa's development is the responsibility of our governments and peoples. We are now more than before determined to lay a solid foundation for self-reliant, human-centered and sustainable development on the basis of social justice and collective self-reliance so as to achieve accelerated structural transformation of our economies. Within this context we are determined to work assiduously towards economic integration through regional cooperation. We are also determined to take urgent measures to rationalize the existing economic groupings in our Continent in order to increase their effectiveness in promoting economic integration and establishing an African Economic Community

We are fully aware that in order to facilitate this process of socioeconomic transformation and integration, it is necessary to promote popular participation of our peoples in the process of government and development. A political environment which guarantees human rights and the observance of the rule of law, would assure high standards of probity and accountability particularly on the part of those who hold public office. In addition, popular-based political processes would ensure the involvement of all including in particular women and youth in the development efforts. We accordingly recommit ourselves to the further democratization of our societies and to the consolidation of democratic institutions in our countries. We reaffirm the right of our countries to determine, in all sovereignty, their system of democracy on the basis of their sociocultural values, taking into account the realities of each of our countries and the necessity to ensure development and satisfy the basic needs of our peoples. We, therefore, assert that democracy and development should go together and should be mutually reinforcing.

In conclusion, I would like to emphasize three points: First, the Treaty makes scant treatment of economic, social and cultural rights. Second, this casual treatment may have been deliberate or the result of lack of full awareness of these rights. If deliberate, the reasoning would have been that other OAU Treaties have made provision for such matters. However, and this brings us to the third point, the Treaty should not be read in isolation from the other relevant OAU treaties such as the African Charter on Human and Peoples' Rights, the Cultural Charter for Africa and the African Charter on the Rights and Welfare of the Child.

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- 2 Declaration of the Assembly of Heads of State and Government of the Organization of the African Unity on the Political and Socio-Economic situation in Africa and the fundamental changes taking place in the world, adopted on 11 July 1990, during the 26th Ordinary Session of the Assembly held in Addis Ababa from 9-11 July 1990. The declaration was adopted after having undertaken "a critical review of the political, social and economic situation in our Continent in the light of the rapid changes taking place in the world and their impact on Africa as presented in the Report of the Secretary-General on the fundamental changes taking place in the world and their implications for Africa: Proposals for an African Response."

THE EXPERIENCE OF THE AFRICAN DEVELOPMENT BANK GROUP IN FINANCING POVERTY REDUCTION PROJECTS AND PROGRAMMES

THE AFRICAN DEVELOPMENT BANK AND THE POOR IN AFRICA

ABDULLAHI M. YAHIE*

I - Background

Introduction

As African economies suffered economic setbacks, particularly in the 1980s, addressing the growing poverty concerns became a central theme of discussion between the donor community and the Bank Group, as well as an important dimension of policy dialogue between the Bank Group and regional member countries. As a result, during the negotiations of the fifth replenishment of ADF V (1988-1990) the issue of poverty alleviation drew increased interest. The Bank Group recognized that underlying goals for practically all assistance should be "meeting the primary needs of the poorest sections of the population in low-income countries; fostering employment creation and increased incomes; as well as "eliciting or promoting the direct involvement of the ultimate beneficiaries, including women, in the design and implementation of projects and programmes". It was also agreed that a set of indicators would be developed to monitor quantitatively the progress of the poor over time. Since then, this has been the focus of the Bank Groups lending programme. ADF VI included explicit measures aimed at addressing poverty concerns in the continent and ADF-VII lending policy for 1996-1998,

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reemphasized the need for placing poverty alleviation concerns at the centre of all development activities in the borrowing countries.

Historical Perspective

Overview of Poverty in Africa

According to UNDP's Human Development Index three-quarters of the four dozen poorest countries in the world are in Africa. Moreover, African countries occupy all but one of the lowest 14 positions. In terms of the evolution of social indicators, however, the African Development Report (ADB 1997) shows that the record for the continent is mixed. Life expectancy at birth among African males increased from 46 years in 1975 to 53 years in 1995, while that of women increased from 48 to 56 years over the same period. Nevertheless, Africa still lags behind other regions. For example, life expectancy in Central America, South America and Asia were 74.1, 68.5 and 64.8 respectively in 1995. Infant mortality rates have declined from 138 per thousand in 1972 to 87 per thousand in 1995, but they still lag behind the 65 per thousand live births in Asia. The increase in mortality rates in some countries is due to declining trends in the quality of health care as a result of social spending cuts, the rising incidence of AIDS and an increase in the level of impoverishment. Adult literacy rates doubled between 1975 and 1995 from about 27 per cent to 54 per cent. Over the same period, net enrolment ratio at primary schools also doubled, and more than tripled at the secondary level.

Overall, Africa accounts for a large proportion of the world's population living under absolute poverty. Currently, almost half of Africa's 700 million people live in absolute poverty. The World Bank (1990) has estimated that while the number of poor people elsewhere in the developing world would have declined by 400 million by the turn of the century, Sub-Saharan Africa will, in contrast, see an increase of nearly 100 million in the number of its poor. Furthermore, by the turn of the Century, the region will account for more than 30 percent of the developing world's poor, as against 16 percent less than ten years ago (Lufumpa, 1997).

Evolution of Conceptual Issues

After attaining independence, countries in Sub-Saharan Africa made the achievement of economic growth a primary goal. At the time, many development scholars believed that the benefits of higher economic growth would "trickle down" to the lower income groups of the population. In the same vein, the Bank Group, operated under the assumption that all its projects, if well conceived would contribute to poverty alleviation directly or indirectly (English and Mule, 1996). However, although it is generally acknowledged that sustained economic growth is a necessary condition for sustained poverty reduction, there is considerable debate concerning the extent to which growth actually benefits the poor. Some people even argue that there has been a trickle-up effect through which most of the resources intended for the poor actually benefit the small middle class and the very rich.

In the 1980s, the proliferation of structural adjustment programs in Africa was accompanied by a growing concern among African governments and the donor community regarding the effect of these programmes on the poor. This was mainly due to the UNICEF's most cited publication - *Adjustment with a Human Face*. The supply response to structural adjustment policy reform and the participation of the poor in that response were issues of particular concern. It was recognized that the linkages between policy reform and the living conditions of households are complex. A better methodological and empirical understanding of macro-micro linkages and group-specific welfare consequences of adjustment processes were deemed necessary. It was hoped that this would lead to insights on how to design a new generation of adjustment programmes that would explicitly incorporate social dimensions and poverty alleviation concerns.

In light of these concerns, the Bank Group realized the need to redefine its approach by focusing more on the poorer countries and in certain sectors such as agriculture, education and health. This was mainly due to the strong relevance of investment in these sector to the poor and the need to adopt explicitly equity oriented sector policies. In addition, the Bank Group joined the World Bank and the United Nations Development Programme to launch the Social Dimensions of Adjustment (SDA) Programme in May 1988. The main objective of the initiative was to integrate social concerns in the design of structural adjustment programs.

While the initiative focused on building local capacities to generate the statistical data necessary to devise more poverty focused interventions, it also put emphasis on the need to produce a conceptual framework for a systematic integration of poverty concerns into macroeconomic policies and strategies. More than thirty countries in Sub-Saharan Africa joined the SDA initiative and more than a dozen countries prepared programs targeting those groups affected by the process of adjustment.

However, there is a growing concern on whether to rely on targeted priority poverty projects and programs or to provide social services to the whole public through traditional entities such as ministries of health, education, water, etc. Some analysts argue that strengthening these institutions and the use of broad based programs, may result in a bigger impact on the population than relying on targeted programs which may lead to the exclusion of some sections of the poor. A counter argument against this is that the benefits of non-targeted programs are likely to go to the politically and economically more powerful groups while targeting can provide a very cost effective manner of ensuring that services and benefits do reach the intended beneficiaries (Grosh 1992). The concerns of both the supporters and opponents of both approaches is how to minimize the exclusion of significant sectors of the poor who may be unable to obtain the benefits of the programme. Consequently, one may argue that a combined approach of providing universal primary education and health and introducing targeted poverty programs to protect groups who may be negatively affected in the short run could be more appropriate.

Purpose and Organization of the Paper

The present paper attempts to document the Bank Group's experience in addressing poverty reduction in the continent. Its main purpose is to review and examine the Bank's experience in assisting Regional Member Countries (RMCs) in devising viable policies, programs and projects that address the needs of the poorer segments of their respective societies. The paper is organized into five chapters. The first chapter will present background reflection on the history and conceptual issues of concern. The second chapter describes the Bank Group's experience in addressing poverty concerns in the Continent. In the third chapter, an attempt will be made to shed some light on some of the emerging issues as the Bank Group embarks on aggressive poverty-focused policies and strategies. Chapter

four, presents the way forward and highlights some of the issues that need more attention. The final chapter provides some concluding remarks.

Source of information

The main source of the information used in this paper are Bank Group documents, such as policy papers, evaluation reports, various poverty reduction appraisal reports and supervision reports. It is worth noting that this paper greatly benefited from discussions with Bank staff members in various departments, who provided valuable information and insight into some of the issues.

II - Bank Group Experience in Poverty Reduction

Although underdevelopment and poverty in Africa were some of the underlying reasons for establishing the Bank Group, the creation of the African Development Fund (ADF) in 1972 explicitly manifests the resolve to better serve the poorest countries in the continent. The main purpose of ADF is to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank's regional member countries (RMCs). It provides finance on concessional terms for purposes which are of primary importance for and serve such development. Over the past three decades, this instrument has been continuously sharpened to increase its focus on reducing poverty in the continent. At this stage of its development, ADF's overall approach embraces macro level policy and institutional reforms aimed at improving economic performance, increasing the productivity of the poor especially in agriculture and food production, and investments in the social sectors for the provision of basic primary and informal education and basic primary health care. This is combined, with targeted safety nets for the poor.

Supporting Policy Reform

Policy Based-Lending

The Bank Group has adopted a policy dialogue with RMCs as a means of harmonizing its operations with the development priorities of countries

and coordinating assistance with other donors. Consultations are mainly held in the process of formulating Country Strategy Papers (CSPs); and through policy-based lending operations. These are instruments used to support social and economic reform which is aimed at establishing the foundation for sustainable growth, and ensuring the consistency of country policies with long-term reduction of poverty in RMCs. During the early 1980s, the Bank Group financed Policy Based Lending (PBL). The allocation of resources between policy-based and project lending followed the general guidelines set for ADB and ADF. During the mid-1980s, 20 percent of both ADB and ADF resources were allocated to policy-based lending. Between 1987 and 1990, these figures were revised upward to 25 percent and 22.5 percent, respectively, to meet the increased demand for short-term balance of payment support and for complementary sectoral investments. During ADF-VII, policy-based lending is not expected to exceed 22.5 percent of the total three-year replenishment resources.

The Bank increased attention to macroeconomic and sectoral lending operations, which are designed to generate economic growth while, at the same time, promoting human resource development. Since 1990, emphasis has been placed on agricultural sector and macroeconomic adjustment incorporating the social dimensions. It should be noted that in certain circumstances where adjustment programmes are already in place, compensatory programmes have been designed to deal with short-run, transitional impacts of adjustment operations on the poor. It is in this context that the SDA activities originated.

The effectiveness of the consultations and the means for carrying out policy based lending have proved to be mixed. In this regard, it would be appropriate to note two important factors bearing on future Bank Group involvements in the design of macroeconomic policy frameworks. The first has to do with the predominant role accorded to the Bretton Woods Institutions by the donor community on work relating to the design and implementation of macro-economic policies. The experience and competence gained by these Institutions, coupled with their pre-eminent role in mobilizing financial support for macroeconomic reforms, has enabled them to be key players in the area. The second factor that should be borne in mind has to do with the growing complexity of structural adjustment operations - having evolved from standard balance of payments and public finance adjustments into comprehensive reform programs, addressing

structural, legal and institutional issues. The preparation of such comprehensive programs is a complex and time-consuming process, sometimes requiring lead time of up to two years. Considerations of efficiency and economy, therefore, indicate that the Bank Group intensify its collaboration with the Bretton Woods Institutions on macroeconomic matters, while concentrating resources on those sector policy issues where the Group has the capacity to bring about evident value added.

In view of these issues, Bank Group policy-based operations will shift from economy-wide structural adjustment lending to sector adjustment lending. In consequence, the share of PBLs could decline, relative to earlier years. Typically, Bank Group interventions in a given country will tend to be concentrated in a few sectors in which its projects have focused over the years. The Bank Group will use its assistance to leverage policy reforms in such sectors. With a growing number of countries moving towards stabilization, sectoral adjustment loans (SECALS) would assist adjusting countries expand their productive capacity and address longer-term institutional and capacity-building issues. The loans will be used mostly to support adjustment programs in the agricultural and industrial sectors, including trade-related sectoral activities, such as export promotion. They may also be used selectively in support of institutional support programs addressing civil service reforms and economic and social sector management. For instance, this could be done in the context of institutional capacity programs designed to strengthen national economic management.

Debt Relief

The situation of the poor in Africa has been aggravated, on the one hand, by the decline in external resource flows (including private capital), and, on the other hand, by a mounting external debt burden. The external debt problem impeded economic prospects not only by diverting unsustainable volume of resources to debt servicing, but also by increasing uncertainties in regard to financing of external transactions, thereby undermining confidence in investment and growth opportunities. The external debt problem persists in its gravity, as evidenced, for instance, by the fact that Africa accounts for 28 of the 35 countries in the World Bank's latest classification of Severely Indebted Low-Income Countries (SILICs). To this end, the Bank Group has participated in the Heavily Indebted Poor Countries (HIPC) Initiative which is led by the International Monetary

Fund (IMF) and the World Bank. The main aim of the initiative is to bring poorest member countries' debt burden to sustainable levels and in designing a comprehensive resolution of the debt problem in Africa. The Bank Group's share of this initiative is estimated at \$700,000. The first batch of African countries that will benefit from this initiative include Uganda, Mozambique, Côte d'Ivoire, Congo and Burkina Faso. At the completion point of the initiative which takes around five years, participating countries are expected to achieve better performing economies which would lead to higher economic growth and reduced poverty.

Bank Group Institutional Reform

With respect to institutional reform, the Bank Group has increased its efforts to integrate in priority cross-cutting themes, such as those relating to gender, population, and the environment into its policy, programming and project cycle. To this end, in the process of restructuring the Bank, the Environment and Sustainable Development Unit (OESU) was created. The unit which was placed under the Vice Presidency for Operation which assists Bank operations departments in harmonizing and balancing of basic human needs and critical natural resources in regional member countries [for more details see Box 1 at the end of this paper].

In another institutional dimension, the Bank Groups established in 1997 the Micro-finance Initiative for Africa (AMINA). For the first time the Bank is financing and implementing a major initiative aimed at building the capacity of micro-finance institutions in selected member countries to better serve the credit needs of the poor [see Box 2 - end paper].

Sectoral Level Interventions

While the major mode of Bank Group assistance will continue to be project oriented, the identification and selection process will be based on sectoral priorities as articulated in the country operational strategy. According to the Bank Group's strategic framework, priority is given to the agricultural and social sectors, considering the high impact on poverty reduction that such sectoral interventions generate in Africa. A significant share of Bank Group resources is committed to projects related to agricultural development and the social sectors, particularly education and health. In agriculture, support would be given to activities promoting food

security, the integration of rural communities, and sustainable natural resource use and conservation. Interventions in the social sectors will be guided by the need to improve the status of women, basic education and health; key elements in lowering population growth and reducing poverty. In education, the priorities are basic education, encompassing primary and non-formal education; and, manpower development, with emphasis on technical and vocational training. In the health sector, the focus will be on primary health care, composed of elements such as communicable disease control, health manpower training, family planning and nutrition.

By 1987, 90 percent of ADF financing had gone to the poorest regional member countries, while on a sectoral basis 40 percent had been earmarked for agriculture and another 15 percent for education and health. Given the predominance of smallholders in most of rural Africa, and the neglect that the agricultural sector had suffered, this was an appropriate step in the right direction. Policy in the area of social sector was more explicitly equity oriented. The 1986-education sector policy paper made it quite clear that primary and non-formal education would be priorities, while rural areas and women would be particularly targeted. The 1987 health policy paper reiterated similar concerns emphasizing primary health care, access for all, and preventive medicine.

The ADF-VII Lending Policy for 1996-1998, re-emphasized the need for placing poverty alleviation concerns in the centre of all development activities in the borrowing countries.

Project Level Interventions: Assessment of Impacts

The Bank's support to RMCs is mainly through projects with limited duration (on average 4 years). Traditionally, all developmental projects were devised as instruments aimed at providing broad-based and universal developmental assistance to the whole population in a specific geographical location. However, as it became apparent that certain policies may have negative impact on specific groups of the society and the gap between the rich and the poor in Africa grew wider. The Bank Group realized the need for targeted projects and programs that will address the needs of vulnerable and poor groups, - namely, those classified as suffering from structural poverty such as women, children, the disabled, and those who became poor

mainly due to the implementation of certain policies such as retrenched civil servants.

Therefore, it is only recently (1992) that the Bank Group recognized the need for stand-alone poverty reduction projects in its lending programme. Many of these projects targeted the poor in general using instruments such as Social Funds for Development (SFDs), while some projects were designed to target particular groups such women. Currently, there are 28 ongoing targeted poverty reduction and WID projects and another 15 of such projects in the lending programme for 1998 and 1999. In addition there are 215 projects in agriculture, social, and industry sector with direct relevance to the poor. If one excludes studies (117) and multinational project, almost half the 639 ongoing Bank Group financed projects are directly focusing on poor.

The impact of the ongoing targeted poverty projects has not been assessed. Therefore, there is very limited information on the performance of these projects. However, supervision reports show that some of the ongoing targeted poverty projects are performing relatively well. The Uganda Poverty Alleviation Project is a good example [see Box 3 - end paper]. One of the key factors which has contributed to its speedy implementation is the Government of Uganda's serious commitment to addressing the concerns of the poor in the country.

The Gambia SDA project is another success story. The project which was initiated in 1991 has succeeded in establishing a strong statistical office which is capable of monitoring changes in the living conditions of the population in the country. This is mainly attributed to the sound design of the project. In the same vein, the Ghana and Senegal Women In Development (WID) projects are performing well mainly due to the conducive political environment and strong project implementation units. On the other hand some of the ongoing projects are showing indications of poor performance [see Box 4 and Box 5 - end paper].

The Central African Republic's SDA project had to be cancelled due to poor management. The Zambia Poverty Alleviation Project which was approved by the Bank Group Board in 1993 has not yet become effective and is yet to be implemented.

However, there is a large number of Bank financed projects in agriculture, education, health, water and sanitation, rural electrification, rural development, etc., with strong poverty focus. In most of these projects poverty alleviation was not a specific objective. A quick review of project completion reports (PCR) and Project Performance Audit Reports prepared by the Bank's Operations Evaluation Department (OPEV) provides some information about their socio-economic impact, particularly, towards lower income and more impoverished groups.

The rural development project in Rwanda improved the living conditions and incomes of about 32,000 families living in the Byumba area through increased agricultural, animal and wood production and provision of primary health and water supply facilities. In addition, during project implementation over a million man-days of jobs were generated. The tea and palm oil plantation projects helped create additional permanent employment for about 1,500 workers in addition to jobs created during project implementation. The projects contributed to an improvement in the living conditions of their workers as well as the rural populations in the surrounding areas through provision of infrastructure and community facilities such as roads, markets, schools and health facilities.

The hydroelectric project in Benin/Togo with its damming of the Mono River was expected to help in the controlling of floods and prevention of crop losses for the downstream rural poor communities. The rural electrification project in Malawi promoted fast infrastructure development and helped establishment of small industries, workshops and irrigation pumps to the benefit of the rural population. The road projects in Rwanda, Burundi, Central African Republic and Côte d'Ivoire stimulated agriculture and trade and in some tourism development in areas newly opened up by the projects and contributed to enhancement of the quality of life of the people in the usually poor communities of those areas. The Burundi/ Rwanda and the Côte d'Ivoire projects also facilitated movement of inter-regional traffic and trade and contributed to the welfare of border communities.

The rural water supply project in Zimbabwe provided for the first time the basic amenity of potable water to about 429,000 persons. Availability of water facilitated location of schools, rural health centres, business centres and markets and bus stations and growth of new population centres, with better living conditions for the rural populations. The health projects

which covered primary, secondary and tertiary services and disease control directly contributed to extend the reach of the health systems to remote and generally poor areas and improved the quality of services. In all the project countries a general improvement in the health status and life expectancy of the populations was noted.

The two polytechnic complexes in the education project in Benin helped reduce regional imbalances in the availability of training facilities and were perceived to play a role as a centre of interest and a symbol of development of the region. They also played a role in employment generation by imparting skills to unskilled labour which could promote local investment and reduce migration to the bigger towns and cities. The education programme in Morocco had addressed the problems of high degree illiteracy and inadequate emphasis on basic education and thereby widened the education base to the benefit of the poorer and rural sections of the society.

The line of credits helped promote new businesses and expand, rehabilitate and modernize existing capacities. The activities generated about 100,800 direct and 200,000 indirect additional jobs and helped in higher employment and incomes for the domestic labour force of the countries.

On the negative side, the policy-based lending with its economy-wide structural and sectoral adjustment programmes often involved withdrawal of subsidies, reduced allocation of budgetary resources for social services, particularly in the health and education sectors and retrenchment in the public sector (which is the major employer in borrower countries) with its concomitant increase in unemployment. The bulk of the adverse impact of these measures was on the poor, the under-privileged and the vulnerable segments of the society creating resentment and opposition to the adjustment process, but the structural or sectoral PBL operations did not include any components to address social dimensions of adjustment at the time of appraisal.

In the Mali Public Enterprises Adjustment Programme the measures required to implement the organizational improvement of enterprises and enterprise liquidations inevitably resulted in the termination of employee contracts and staff reductions in line with the requirements for sound resource management but the social components were not considered at

project preparation. Similarly in the country's Structural Adjustment Programme projects aimed at ameliorating the social dimensions of adjustments under the civil service voluntary departure programme covered only 2.4 percent of those affected and the reinsertion measures involving the reintegration of retrenched workers and voluntary retirees into economically active life for cushioning the programme's social effect were inadequate.

In Mauritius' Industrial Sector Adjustment Programme, the social dimensions of the programme were not specifically addressed during the appraisal stage. Only later during implementation did the government implement a worker social protection programme particularly in the export promotion zone. In the Guinea-Bissau Structural Adjustment Programme the social effects of the programme from a cut in civil service manpower and the low level of resources allocated to social expenditures were not addressed. Similarly, PBL programmes in the Gambia and Morocco failed to address their social consequences.

The rural water supply project in Zimbabwe and the rural electrification project in Malawi (which facilitated pumping of water and installation of taps) directly benefited rural women who thus did not have to travel long distances to fetch water. Easy availability of water improved the health of men, women and children. The availability of electric power and establishment of power driven maize mills also relieved the women in the project areas in Malawi of the tedious tasks of manual pounding and grinding of maize. Many Bank financed electricity, telecommunications, health, water supply, tea, palm oil, and sugar projects all generated direct employment which was shared by women. In the palm oil project in the Central African Republic and the sugar project in Madagascar authorities had actively helped in or encouraged the establishment of women's marketing cooperatives, generating additional family incomes.

The Home Economics course at Pobe Institute in the education project in Benin was almost exclusively for the benefit of female students. There were some female students in civil and mechanical engineering courses as well. Women students represented about six percent of the student population at Natitingou Institute at the time of PPAR mission. In the educational reform programme in Morocco the policy of appointment of greater number of female teachers was implemented. Priority in housing in remote

areas was also given to female teachers. However, the objective of increased enrolment of girls in basic education was not achieved. The achievement of the objective was expected to require more time as it was largely linked to changes in basic social and cultural attitudes towards gender equality and women's education.

Bank financed lines of credit (LOC) operations did not explicitly have as an objective the integration of women in development but some of them in countries such as Tunisia, Seychelles and Kenya were noted to have an impact on development of women entrepreneurs and creation of jobs for women. In Tunisia the tourism sector received the bulk of the LOC financing where about 19 percent jobs in the sector were held by women. Some of the sub-projects were also sponsored by women. In the Seychelles, 30 percent of the portfolio under the lines of credit is owned by female promoters. Also, 23 percent of the DBS staff of 30 persons were females. In the East African Development Bank (EADB), the Managing Directors of three of the sub-projects were women and most of the workers of Kays Textiles, Kibo Paper, Cable Corporation, Tanpack Industries, United Garment Factory were women.

On the other hand, in the PBL programmes the major share of the burden of social costs of adjustment for the poor and vulnerable sections of the society was borne by women. The PPAR on Gambian SAP II noted that women in The Gambia, bore the direct brunt of the macro-economic stabilization measures under the Structural Adjustment Programme and that these measures had impacted negatively on the livelihood and status of women including their role in production and marketing. It was also noted that the liberalization of the banking system in Morocco tended to undermine the objective of developing concessional credit lines in favour of women. The contraction in social sector budgets including the application of user fees and cost recovery had affected the educational and health status of women. Women were also affected by changes in labour market conditions.

III - Emerging Issues: Need for Improvement

Project Preparation and Design

According to the OPEV reports, the most serious project implementation problems generally originate at the preparation and design stage. Many projects suffered from inadequate project preparation which adversely effected project implementation and performance. This has led to numerous implementation problems with resulting delays, cost overruns, and reduced benefits. Poverty reduction projects are no exception and suffer from most of the constraints facing other sectoral projects. However, the success of these projects is largely determined by behavioural patterns about which less can be known in advance. Furthermore, lack of prior experience to implement similar projects and dependence on institutions inherently weak may make the task of project preparation even more difficult. Projects have to be prepared with limited information while little is known about the socio-cultural factors which may effect the implementation of the project.

Naturally, there will be a tradeoff between the amount of time and resources devoted to project preparation and the likelihood of implementation problems. It is also recognized that there is, at least beyond certain point, a tradeoff between the investment of additional resources in project preparation and the use of these resources to help project implementation or to benefit the targeted beneficiaries.

During implementation, the design of such projects may require considerable adoption to fit various beneficiary needs in a rapidly changing environment. Under such uncertain circumstances, project preparation teams need to be conscious to allow sufficient flexibility to be built into the project design so that certain aspects of the project could be subject to further review and screening at the implementation stage and arrangements could be made to modify or introduce new procedures, in light of the new experience.

Implementation: Lessons to Be Learned

There are no short cuts to designing a viable poverty reduction project. A key factor is striking a balance between achieving immediate short-term

objectives and the need to lay the foundation for an institution capable of tackling the problem of poverty in the long run. A key feature of these projects is to establish speedy, flexible and effective mechanism to reach targeted groups while creating an enabling environment which promotes transparency of its operations and accountability of project resources.

To the contrary, the implementation of such interventions has been very slow. This has been due to several reasons: namely, long review, screening and approval procedures of sub-projects proposed by target beneficiaries; bureaucratic and time consuming disbursement procedures; and lack of supervision and monitoring of sub-project progress which resulted in lack of feedback from earlier interventions which could have provided valuable lessons that would enhance the performance and impact of future interventions. This is aggravated by the inherent institutional weaknesses at government, civil society and grassroots levels.

IV - The Way Forward

Social Analysis: Learning from the Poor

Reducing poverty is a process that evolves over humans with both fiscal and emotional needs. In addition, poverty is multidimensional and it involves cultural, social and political issues. These issues are complex and intertwined and their neglect could be detrimental to project success. In recent years, social scientists have been in search of appropriate tools that will enhance our understanding of the intricate social and cultural factors surrounding the poor to enable designing sustainable projects. The need for social analytical tools arose from the lack of harmony between national interests that have for long dominated the ensuing programmes and projects, and the various local needs and interests often neglected, which resulted in frustration with project quality and effectiveness (Fadayomi 1997).

The case of the Rwanda Byumba Rural Development project provides a good example of miscalculated judgment. Although studies were carried out by FAO/IFAD, because of failure to consult with beneficiaries during project preparation, lack of links between peasants, agricultural research and extension workers was noted. This resulted in inclusion of some unrea-

listic components not suited to local customs or habits. This included sunflower oil extraction unit when sunflower as a crop or its oil as an item of diet was unknown to Rwandan people. Similarly, diesel driven pumps were installed without assessing the willingness or capability of the peasants to pay for the operating costs including the cost of diesel oil. In the case of the Lomé University Hospital Project in Togo, the local cultural and climatic environment was overlooked in the design of the buildings. A recent analysis of 57 World Bank financed projects, showed that project which included some form of social analysis showed an economic pay-off. Projects found socio-culturally sensitive scored an average rate of return at audit time of 18.3 percent, while those that did use such tools scored a low 8.6 percent.

An implicit lesson to be learned from the above examples is the need to learn from the poor. Experience has shown that the poor may be illiterate and may not enjoy material wealth, however, they possess a rich knowledge and expertise of their local environment. To many, their knowledge may seem trivial, however, the lack of it has been recognized by many professionals as the enigma in efforts to reduce poverty in Africa and elsewhere in the world.

Because no baseline indicators have been collected during project preparation, it has usually been difficult to monitor the impact of poverty oriented projects over time. For example, although the Poverty Alleviation Project (PAP) in Uganda has shown indications that the beneficiaries are receptive and the project's popularity is growing in the country, its impact on the poor has not been analyzed. Similarly, the Social Dimension of Adjustment project in Mozambique is well underway and a large number of small scale business ventures are under implementation.

Early indications show that the project may have benefited unintended target groups. There is need to improve the collection of socioeconomic data and to employ relevant information to increase efficiency in the planning and management of projects and programmes.

Although many of the instruments used, such as the Rural Appraisal Procedure or the Beneficiary Assessment, are proven to be effective tools in preparing pro-poor projects, a common feature which makes them unattractive to those looking for quickfixes is that one needs to invest a lot of time in advance to gain the confidence and trust of the community. Without

this initial investment, one may not be able to obtain an accurate picture of the critical issues, which are detrimental to the success of the project. To this end, it is imperative to consider the tradeoff between the cost of inputs (time and money) and the potential achievement of project goals and objectives.

Participation: A Process Approach

Community participation in poverty projects has been recognized as an important factor in achieving sustainable development at the local level. This brought a desire to reorient the blueprint style of planning and management of development projects by placing more emphasis on a stronger open-ended learning process approach. This approach is structured around an interactive or participatory mode. Beneficiaries and programme management share resources and knowledge while building the institutional capacity that allows the poor to analyze their needs, initiate their own efforts, and stress their demands. Furthermore, the precise scope and objectives of projects in the process approach, as well as their appropriate implementation methods, could only be defined as the project evolves.

The design and management of such projects, however, is usually difficult, not only because their goals can be quite abstract (for example, community self-reliance) but more specifically because these projects involve changing human behaviour patterns and learning about social and psychological needs. Project managers have to work with unskilled beneficiaries and poorer groups and must try to create the demand, because the success of the project depends on whether the intended beneficiaries want the services the project has to offer. One of the biggest stumbling blocks to active community participation is when such projects have been designed without consultation with beneficiaries and where the implementation methods and schedules have been precisely defined and can not be changed.

The process approach, however, is not intended to be a total substitute for, or a complete alternative to, conventional approaches to development programmes and projects. Many of the approaches and techniques developed under the blueprint approach, such as criteria for assessing project performance, accountability for funds, regular monitoring, must be retained. Conventional approaches will also continue to play an important

role beyond the micro level action domains of individuals and small groups.

The process approach is particularly useful for poverty projects for the following reasons among others:

- A direct and active stake for people at grassroots levels in the organized self-development of their areas' economies and consequently in reducing significantly project costs.
- Mobilization of local resources, such as land, labour, savings, assets, ideas and experience, and specific indigenous knowledge of local conditions, such as environmental and socio-cultural norms.
- Building capacity and strengthening local institutions to effectively plan and implement projects.
- More self-reliance, which increases the community's control over resources and development efforts while enhancing the community's sense of ownership as it assumes the responsibility of maintenance of completed projects.
- More efficiency and effectiveness by more cost-efficient project design and project implementation owing to contributions by participants of their ideas, labour, assets, and indigenous knowledge of local conditions.
- Enhanced project sustainability and long-term viability.

A more equitable distribution of benefits as the project management is accountable to more representative community.

Strengthening Capacity to Analyze Policy

The major challenge facing most Sub-Saharan African countries is to pursue a combination of macro-economic and sectoral policies aimed at achieving growth with equity. This calls for not only programmes that foster the participation of the poor in the process of economic growth, in particular by improving their access to jobs and income-generating opportunities; but also a critical review of the assumptions which are the driving force behind some of the policies. For instance, most of the policies and

projects that donors promote are based on the assumption that the market is highly efficient in allocating resources and motivating their supply.

However, the realities of the economies under consideration are far from being perfect. There are a lot of exogenous factors, which, if not accounted for, may influence the effectiveness of a macro-economic policy measure. The situation is further aggravated by the absence of a comprehensive set of socio-economic statistical data, which could lead the policy makers and planners to adopt realistic measures that correctly reflect the unconventional nature of these economies. Failure to respond to price incentives provided to rural farmers in an effort to raise production when there is little potential market is a case at hand..

A major concern among many people is that poverty reduction projects are rarely seen as a serious effort to address poverty and usually come as an afterthought. They typically lack clear relationship with other developmental ventures and are not fully integrated into the overall sectoral planning process. Planner's and policy makers tend to be quite sceptical of the overall outcome of the numerous micro-level interventions of poverty projects which have been documented in many parts of the region. After all these developmental experiences are usually small scale to begin with, sporadic in nature, spatially quite dispersed and rather diverse in character. They encompass many interventions ranging from sensitization of community groups to micro interventions such as zero grazing. The main issue of consideration is, therefore, whether it would be possible to derive more generalized policy and operational guidelines from projects under implementation. The overview of current status of a number of Bank financed projects reveals that mistakes, failures and successes of ongoing interventions could provide invaluable inputs in formulating new national level projects and reformulating the existing ones.

There is a need to systematically integrate the interrelationship between macro-economic policy, employment and income generation, and poverty reduction in the analysis of macro-economic and sectoral policies and instruments that underpin social and economic reform programmes. In other words, while continuing to support policies that allocate more resources to social sector activities, action oriented poverty alleviating programmes/projects should be viewed as innovative operational tools that can

feed directly into the policy making process in order to make the design of social and economic sector policies more poverty conscious.

V - Conclusions

A close review of Bank Group policies on addressing the worsening poverty situation in the continent would reveal that, it has adopted sound policies and approaches which could assist the efforts of regional member countries in tackling the concerns of the poor in the respective populations. Poverty projects face more or less the same constraints faced by many of the Bank Group financed sectoral projects. Though their preparation and design could benefit from many of the lessons learned, such projects would require special attention given their unique nature and specialized design features such as community participation, building flexibility into the project design, establishing quick disbursement mechanisms, closer supervision and monitoring, and the involvement of civil society organizations in their design and implementation.

The Bank Group has accumulated through the years a wealth of experience, which if properly harnessed, could improve the implementation and performance as well as the impact of its interventions. However, the Bank Group requires considerable financial and human resources in order to be able to address poverty effectively in the Continent.

BOX 1

THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT UNIT:**TARGETING SUSTAINABLE DEVELOPMENT**

The turning point in the evolution of the Bank Group's moves toward sustainable development is the year of 1987, when the *Environment and Social Policy Division* (CEPR-3) was established within the Central Projects Department. As part of its efforts towards promoting sustainable development, the Bank revisited in 1996 the organizational structure adopted in January 1995 and created the *Environment and Sustainable Development Unit* (OESU) with a view of providing an effective focal point for addressing the Bank's cross-cutting themes namely environment, poverty reduction, gender, population, non-governmental organizations, stakeholder participation, and institutional development. Through linking the concerns on social dimensions with environmental assessment, the Unit is expected to ensure a harmonious and long term balancing of basic human needs and critical natural resources in Regional Member Countries.

The Units policy functions in relation to Poverty Reduction are the following:

- Revise Bank policies, strategies and programmes regarding poverty reduction;
- Revise the guidelines for the implementation for the Action Programme for Poverty Alleviation in light of the ADF VII, and ensuring their integration in the Operations Manual;
- Disseminate best practices in the area of poverty reduction. Such an approach will emphasize beneficiary involvement, especially through NGOs and other Community-Based Groups (CBOs);
- Conduct studies on poverty and prepare Country Poverty Profiles and Country Poverty Assessment papers;
- Coordinate Bank involvement in poverty related fora, including the Special Program for Africa (SPA) and others,
- Monitor the integration of poverty reduction aspects in Bank operations, involving clear reporting relationships beginning at the project level; and
- Organize training for Bank staff on the integration of poverty analysis into projects.

BOX 11

**ADF: MICRO-FINANCE INITIATIVE FOR AFRICA (AMINA):
BANKING FOR THE POOR**

The impetus for the ADF AMINA initiative is derived from the Consultative Meetings, which led to the seventh replenishment of ADF. During the meetings the participating countries stressed that poverty reduction should continue to be the main focus of activities financed by ADF-VII.

At the time it was noted that an important condition for poverty reduction is the availability of a range of appropriate and accessible financial services for poor urban and rural households. However, in most African countries, banks have made little effort to reach this potential clientele due to the high cost of managing small loans and handling savings accounts with low average balance and frequent deposits and withdrawals. This situation has been exacerbated by the restructuring and privatization of many banks in the region, which while enhancing the long-term viability of the banking systems, has had the effect of reducing the banking network and farther decreasing access to financial services. The decline of agriculture and development banks has also contributed to a decrease in services to rural areas by formal financial sector institutions.

In reaction to the failure of commercial banks to serve the poor, a variety of grassroots organizations, credit unions, savings and credit cooperatives, village banks and NGOs have become active in microfinance activities in rural and urban areas. These non-traditional financial institutions or (MFIs) undertake microfinance: the provision of basic financial services such as small loans and deposit instruments to microenterprise and disadvantaged groups. These institutions represent the only access by the poor and rural population to financial services except for limited services provided by moneylenders.

In recognition of the importance of the microfinance sector, ADF therefore allocated UA 15 million to a pilot project. Resources under this initiative will be used to finance projects proposed by MFIs in ADF countries with the aim of onlending such resources to the poor in order to generate income and employment opportunities. Special attention will be given to women entrepreneurs. The ultimate objective of this initiative is, therefore, to increase the access of microentrepreneurs (specially women) to a more formal credit mechanism including those of commercial banks and other formal financial institutions.

Box III

UGANDA: POVERTY ALLEVIATION PROJECT (PAP)

The Uganda PAP has been under implementation since November 1994. Its main objective is to alleviate poverty at the grassroots level through the provision of credit for employment creating and income generating micro-projects. As of April 1996 the project has on-lent a total of US\$9.4 million to approximately 20,000 micro-projects in 22 out of 39 districts in Uganda. Intermediary entities such as NGOs and CBOs have played a major role as conduits for micro-projects finance to many beneficiaries. However, some districts have difficulties in identifying intermediaries and the project staff directly disbursed loans to viable micro-projects. This alternative approach has ensured that funds reach those in need.

Project beneficiaries are engaged in diverse economic activities ranging from agriculture and general trade to small scale manufacturing among others. Beneficiaries have indicated that the project contributed to their socio-economic well being as their businesses had the potential to grow while diversifying their activities and a substantial number of jobs are created in almost all the sectors of the local economies. Many of these projects have shown signs of sustainability, particularly those that were providing skill development training such as tailoring, handcart making, zero grazing, auto mechanics and brick making among others.

Box IV

GHANA WOMEN'S COMMUNITY DEVELOPMENT PROJECT

The Bank approved this project in 1991. However, project activities did not start until 1993 due to delays in the fulfilment of loan conditions by the government. Lack of knowledge about Bank procedures also contributed to the delay in the start up of the project. The project is designed to assist women in all 10 regions to improve their socio-economic conditions. To this end, a multisectoral approach was adopted in the conceptualization of project components. The project activities include provision of institutional support to the National Council of Women and Development, construction of 26 community centres, 14 collective structures for income generating sheds and 15 water wells in the 10 regions of the country. The project also includes the provision of labour saving devices and processing equipment, and a revolving credit fund amounting USD 0.6 million to finance income generating initiatives of about 20,000 women. The project is one of the rare Bank funded projects being executed by an NGO, The 31st December Women's Movement.

The first cycle of the credit fund amounting USD 114,000 was accorded to 3270 women beneficiaries in five regions in June 1996 at an interest rate of 10% for a loan period of six months. Monitoring and evaluation results on the utilization and reimbursement situation of this first cycle of the credit scheme indicated that the beneficiaries used the credit fund appropriately and were able to generate a total savings of 25.1% of the total loan amount granted to them. The reimbursement rate was recorded as 100%. The second loan cycle planned to benefit 6300 rural and periurban women in the remaining five (5) regions of the country is underway.

The credit mechanism put in place is spearheaded by a very dynamic PIU (Project manager). The Ghana Commercial Bank is collaborating with the PIU by serving as a conduit for the disbursement of the credit fund to Community Credit Committees (CCC) formed under the project. The flexibility of the credit mechanism and the strong collaboration between the PIU, the Commercial Bank of Ghana and the CCC has contributed to the success of the credit activity. The project, by forming these rural CCCs being tested for their efficiency in credit delivery to rural women, has paved the way for the development of sustainable financial intermediaries specialized in the delivery of appropriate financial products to rural women.

Box V

SENEGAL: SUPPORT TO WOMEN'S GROUP PROJECT

The Senegal "Women's Groups Support Project" is cofinanced by the Bank and the Nordic Development fund. This four year project was approved by the Bank in 1991 but it did not become operational until July 1992. The total project cost amounts to 10.9 million USD. The Bank through ADF loan finance 5.4 million USD while the Nordic Fund finances 4.3 million USD of the total project cost. The project is multisectoral comprised of 125 day and health care centres for children, management training and credit for both agricultural and non-agricultural income generating activities, provision of 50 water wells, 50 small grain mills, training of 200 day care teachers, construction of 50 women's centres and institutional support for the National Federation of Women's Group. This project mainly involves 500 Women's Groups, affiliated with the National Federation of Women's Group. Its targeted beneficiaries are 25,000 women and 5000 children.

The credit fund of about 1.2 million USD is designated to finance women's investment projects and loans for revolving credit fund for agricultural and small income generating activities of women. The maximum loan amount for investment projects is fixed to 30,000 USD with interest rate of 10 to 12% and loan repayment period of 6 to 48 months while the maximum loan for the revolving credit fund for agricultural and non-agricultural income generating activities is fixed to 4000 USD with an interest rate of 10% and loan repayment period of 6 to 18 months. The first disbursement amounting to USD 200,000 and representing 16.7% of the total credit fund has been effected to finance 68 projects of which 23% are large and medium scale projects and 62% are revolving credit funds for small agricultural and non-agricultural income generating activities. About 3300 women have benefited from the first loan cycle. The second disbursement for USD 594, 000 representing 49.5% of the credit fund is currently being executed to benefit 57400 women organised through 137 women groups. The credit scheme has recorded a loan repayment rate of 98%. Important discussions on the future of the credit scheme to ensure sustainability of the positive results is planned to be held with the Ministry of Finance, Ministry of Women, Children and Family Affairs in the upcoming supervision mission.

THE EXPERIENCE OF FOVAD

MAZIDE N'DIAYE*

The time has come to change the perception of classical law that sees it as irrelevant to question for whom the law was originally written, and to replace it with a broader view of the law - one that is more concerned with its legitimacy. The law in Africa can no longer remain inexorably linked to power and to the authority to impose it on others, and this is something that we believe very strongly.

FOVAD may be described as a continent-wide consortium of NGOs that brings together organizations of every kind from 36 African countries.

FOVAD's member organizations are involved in rural development, in improving the living conditions of the most impoverished populations in outlying urban areas, in associations of handicapped persons, in women's rights movements, in environmental concerns, in cultural action groups, etc. Essentially, these non-profit, non-governmental organizations are involved in all areas relating to sustainable development. They are also apolitical, which means that they must remain independent of political party affiliation. This does not mean, however, that at the individual level, NGO leaders and staff should adopt a passive stance under the guise of apoliticism.

On the contrary, the NGOs have a political duty - that is, to support the most disadvantaged segments of the population, those without a societal voice. This can sometimes lead to conflict with governments, or even with opposition parties, but any NGO not committed to change in favour of the poor, with all the risks that this entails, is no more than a loosely organized instrument for attracting the money of others.

It is for this reason that FOVAD and its member organizations often encounter problems with those who think that following their "election",

* M. Mazide N'Diaye, President of the *Forum des organisations volontaires africaines de développement* (FOVAD), Dakar, Senegal.

they represent authority, and hence force, and can afford to ignore the viewpoint of the poor.

There appears to be a fine line between political parties and NGOs; however, it is one that is plainly visible to the people. This is because any action on the part of an NGO requires the participation of all those concerned, regardless of their political views, whereas a political party seeks to increase the number or loyalty of its constituents.

Our actions are, therefore, those of the people - those with a government and those without, as in the case of Zaire during the last days of Mobutu, and in Somalia, to mention a few.

Our history thus begins with a demand for popular participation, and the refusal to let the people lag behind so-called "decision makers" who, either legitimately or not, exercise power on their behalf. They cannot exercise this power without the consultation or participation of the people.

We must, therefore, assist the people of Africa to understand that they hold the power, and that they have delegated this power to individuals who, instead of being accountable to them, use force to impose upon them what, in many cases, they never asked for in the first place.

Countless projects are carried out in the name of the people. Yet many refuse to get involved in the projects and have no desire to take over or manage them. This is because they were never included in the decision to create the particular tool or the particular infrastructure in question, and because the projects are often so enormous in scale that they exceed their management capabilities.

This situation has given rise to a multitude of public enterprises, which, for their part, usually profit only the incumbent officials and their constituents.

This also explains why many NGOs consider privatization to be a worthy undertaking. But privatization seems too much like a form of recolonization to be popular. Indeed, the concept is "tainted" by the fact that potential buyers always seem to be from the countries of the North, or even from former colonial powers. If the privatization of public enterprises were spread out over time, this might allow national enterprises a better chance at purchasing them. Privatization could prove to be an important factor for

democratization since, almost everywhere, the funds of public enterprises are used to finance electoral campaigns of the leading parties.

In order to educate the people, the African NGOs needed to educate themselves. Because they were operating with minimal numbers of staff, they were working 150% of the time managing the numerous day-to-day problems of the people, and had very little spare time to follow the current of international debates.

To educate ourselves also means to free ourselves from the guardianship of the NGOs of the North who, because of their greater financial resources, have had a tendency to impose on us their views concerning development, and to finance only projects they considered easy to handle or to manipulate.

In certain capitals of the North, heated battles were needed to convince others that we should be in charge of our own development and that we no longer found it acceptable that this or that model should be imposed upon us.

I must point out, however, that FOVAD's greatest battles involved the multilateral organizations, in particular the UNDP and the World Bank.

At issue with the UNDP was the use of funds that had been attributed to Africa, but in relation to which there were no visible signs of progress a number of years later.

Our main adversary has been the World Bank, and this is in regard to the structural adjustment issue, but I must say that we have been very impressed with its flexibility vis-à-vis our criticisms concerning structural adjustment.

FOVAD has engaged in battle with NGOs the world over, which is probably what has enabled us to obtain results. Yet African NGOs everywhere are still in the frontlines of this battle.

We have had serious differences with many NGOs of the North, who favour influencing the US government to stop financing the IDA. This caused us temporarily to rejoin forces with the World Bank, despite our divergent views on other issues.

It would have been irresponsible for an African to support a reduction or an elimination of IDA funds, since these have been used to finance (under very advantageous conditions) our social infrastructures (hospitals, schools, roads, etc.). We had no choice but to confront this issue.

Concerning multilateral organizations once more, from the UN we were able to obtain the Arusha Conference on Popular Participation. This was a veritable struggle for FOVAD, but one in which it had the support of the NGOs of the North, especially the Canadian and American ones.

Progress with the World Bank has been slower in coming, but the way it took charge of the issue of popular participation was notable in that it formulated instructions to the effect that no project may be adopted or implemented without involving the population concerned in its development.

Nevertheless, there are two difficult obstacles remaining. Despite these, the struggle continues and the authorities of the World Bank seem willing to move forward alongside the NGOs.

The first and most difficult obstacle concerns our politicians' ability to stimulate popular participation. This is because experts are in such a hurry to conclude important projects for the sake of their careers, that politicians are often not aware of what is at stake.

The second obstacle concerns the bureaucratic understanding that most World Bank experts have of the term "popular participation". Indeed, popular participation is perceived by some as a means of mobilizing the people to participate in existing government projects.

In our opinion, it is the people who should propose the projects and the government who should support them.

Progress with the African Development Bank has been slow. Even establishing an initial contact with it was made possible thanks only to the environmentalist NGOs at the Rio Summit.

A team has been forming over the past year and we have high hopes given that initial meetings with the team have been very promising.

In conclusion, I would like to make a few observations concerning our experience with professional jurists.

It is often difficult for our people to understand legislative texts because those who draft them usually refer to international standards and notions that are written in language accessible only to a restricted intellectual circle. In our countries, where 60 to 80 per cent of the population is illiterate, the complexity of the laws makes them incomprehensible to the majority of the people. What is more serious, however, is the disdain that many jurists seem to have regarding efforts to translate or simplify the texts in order to popularize them.

Jurists seem to be mystified by their own texts to the point that they have the same attitude towards the law as they do towards fetishes — that is, they should not be touched.

The NGOs are of the opinion that the law consists, in many cases, of nothing more than a set of rules imposed by the strong, who, for their part, transgress them with impunity on a daily basis.

If jurists would assist in formulating laws or informing victims of injustice about what important elements legislative texts should contain, they would be advancing the struggle for change.

Laws will not be changed for grammatical reasons alone, nor for logical or even moral reasons. Change will come about only if it is fought for by those who suffer as a result of its imbalance or injustice. Jurists should, together with society, devise a means of interactions as part of a joint strategy to benefit the majority. Such a strategy should be aimed at sustainable development, and hence, at peace based on equity.

MAKING ECONOMIC SOCIAL AND CULTURAL RIGHTS JUSTICIABLE: A CASE STUDY OF THE RIGHT TO HOUSING¹

JOSEPH OTTEH

Discussing the right to housing, in a forum coorganised by the African Development Bank is, from the perspective of a national group involved in housing rights work quite useful. Many housing problems and issues, for example, forced evictions, arise in the context of development and development financing provided by multi-lateral banking institutions - not the ADB. This paper will explore, amongst other things what the "right" to housing means in a developing country and various approaches to making the right legally realizable, or, in more technical parlance, justiciable within national jurisdictions.

Housing Rights: What Are They?

Housing rights spring from shelter needs. Because of the fundamental importance of shelter to human life and dignity, housing is veritably expressed as a human right. Housing comprises more than physical shelter. It has been said to act as a spatial expression of one's place in society and has innumerable linkages to employment, access to services, levels of health, security, self-identity and self-respect.² "When housing is understood as a place from which to build social relations, influence the surrounding environment and create culture - instead of purely as a building - the social and political nature of housing emerges. Because housing transcends mere shelter, the United Nations has stated that more than one billion persons in the world do not reside in adequate housing and an expert has asserted that "one-half of the world's population do not currently enjoy the full spectrum

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- 1 Joseph Otteh, Director of Programmes, Social and Economic Rights Action Centre (SERAC), Lagos State, Nigeria.
 - 2 Scott Leckie, *Destruction by Design: Housing Rights Violations in Tibet*, Centre for Housing Rights and Evictions (COHRE), 1994.

of entitlements recognized under the housing rights sphere³, in other words, half are inadequately housed. Housing as a human right has been recognized by most States either through their ratification of treaties recognizing the right to housing or through their affirmative participation in international resolutions on the right to housing. In 1987, the UN declared an International Year for the Homeless and in 1988, adopted the Global Strategy for Shelter to the Year 2000 in UNGA res. 43/181 on 20 December 1988. Point 13 of the Strategy provides that:

The right to adequate housing is universally recognized by the community of nations... All citizens of all States, poor as they may be, have a right to expect their governments to be concerned about their shelter needs, and to accept a fundamental obligations to protect and improve houses and neighbourhoods, rather than damage or destroy them.

The Right to Housing under International Law

The right to housing has received explicit recognition in a plethora of international and regional instruments. Amongst these is the International Covenant on Economic, Social and Cultural Rights,⁴ International Covenant on the Elimination of All Forms of Racial Discrimination,⁵ International Covenant on the Elimination of All Forms of Discrimination Against Women,⁶ International Covenant on the Rights of the Child,⁷ International Convention Relating to the Status of Refugees,⁸ International

3 Scott Leckie, "The Right to Housing" in *Economic Social and Cultural Rights*, (ed). Eide, Krause and Rosas, Martinus Nijhoff Publishers 1995. According to Leckie, even such terms as housing rights or a right to adequate housing may not be entirely appropriate; many groups and organisations, including the UN utilize terms such as the *right to a place to live in peace and dignity*. According to him, commodified visions of housing and the physical associations of the term with a finished structure, while perhaps applicable to the West, have much more limited relevance to dwellers in the developing world.

4 Article 11 (1).

5 Article 5(e)(3)

6 Article 14(2)(h)

7 Article 27(3)

8 Article 21.

Convention on the Protection of the Rights of Migrant Workers and Members of their Families.⁹

This paper would examine the nature of State responsibility for and individual rights to housing under the International Covenant on Economic Social and Cultural Rights (ICESCR) which is "the most comprehensive and perhaps the most important of the relevant provisions" hereafter called the Covenant.¹⁰

Article 11(1) provides that:

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the importance of international cooperation based on free consent. (emphasis supplied).

In Article 2 of the said Covenant, a State party is required to take steps,

to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including the adoption of all legislative measures.

The Nature and Scope of State Obligations under the Covenant

Although State parties to the Covenant recognize the right of everyone to housing, the Covenant provides no clear definition of housing. For example, what kind of housing are people entitled to? Would it comprise

9 Article 43(1)(d). Other instruments include ILO Convention N° 117, International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). There have been other UN resolutions on the right to adequate housing, for example, UN res. 41/146 of 4 December 1986, and 42/146 of December 1987, UN res. 1987/62 of 29 March 1986. See generally, *Legal Provisions on Housing Rights* COHRE booklet series 4.

10 Para. 3 of General Comment N°. 4 (1991) adopted by the UN Committee on Economic, Social and Cultural Rights on December 12, 1991.

barely roofed physical structures, or exotic 2, 3 or 4 roomed apartments? Should there be a commonalty in housing types and quality that is applicable to all peoples across every region? Are there economic, social cultural or environmental relativist perspectives to the right to housing?

The answers are gradually being worked out by the Committee on Economic, Social and Cultural Rights established under the Covenant. The Committee has opined that the right to housing should not be interpreted so as to equate it with shelter synonymous with "a roof over one's head" or view [] shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.

One of the first principles to be developed is that the reference to housing in the Covenant means the right to adequate housing.¹¹ In the Committee's view, adequacy of housing is determined in part by social, economic, cultural, climatic, ecological and other factors... Apart from this, adequacy of housing comprises in the view of the Committee legal security of tenure, the availability of services essential to health, security, comfort and nutrition, affordability of housing, habitability, locational suitability and culturally adequate housing.¹²

Again, in objective terms, what obligations do States contract in relation to housing rights under the Covenant? What does it mean, for instance, for a State to "take steps" to the "maximum of its available resources" to realize the right to housing? The Covenant does not furnish any principles or directives on the hows of achieving the rights. It does not detail any specific programmes of achievement in the Bill,¹³ nor provide specific indicators to measure the extent of a State party's "available" resources.

11 Para. 8, *Ibid.* According to the Committee

... the concept of adequate housing is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant.

12 Para. 8, *Ibid.*

13 Indeed, the Committee has reasoned that

...the most appropriate means for achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another," and that the Covenant "clearly requires that each State party take whatever steps are necessary for that purpose. Para. 12, *Ibid.*

There are no obligations on States to prioritize their social and political programmes in order to give human rights a frontline position of importance in place of, say, defence.¹⁴

These difficulties are undeniably impressive. They present challenges not only for the mechanisms charged with monitoring State compliance with the Treaty but for constitutional efforts at making these rights legally subject to redress within the domestic forum. Again, the Committee has stepped into the slippery terrain and is venturing to establish both universal and economy-relative standards for the achievement of State obligations to realize the right to housing

The Committee has for example stated that while the full realization of the obligations on States under Article 2 of the ICESCR may be over time, States should move as expeditiously and effectively towards the goal of realizing the rights concerned.¹⁵ In the view of the Committee, States have:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights...

The Committee has also said that

...a State party in which any significant number of individuals is deprived of essential...housing... [is] *prima facie*, failing to discharge its obligations under the Covenant”.

Again, according to the Committee

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of

14 "A standard of resource allocation must recognize human rights to be a priority, but must balance that recognition against other state obligations and private property rights" - Robert Robertson, "Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social and Cultural Rights" in *Human Rights Quarterly*, Vol. 16, N°. 4 (1994).

15 According to the Committee, "...any deliberate retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources." - Para. 9 of General Comment N°. 3, UN doc. E/1991/23.

available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.¹⁶

State Housing Obligations under Regional and Municipal Instruments

The African Charter on Human and People's Rights does not contain a specific reference to housing, but to property, (which encompasses housing). The Charter expresses State responsibility in this regard in a negative or regulatory not aspirational mode. "The right to Property", according to the Charter "is guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community..."

Nationally, some 52 State Constitutions, (that is about 38% of the world's constitutions¹⁷) enshrine housing entitlements with varying degrees of State responsibilities towards their realisation, ranging from unenforceable directives to enforceable obligations. The Nigerian Constitution for example, requests the State to ensure "that suitable and adequate shelter...are provided for the citizens"¹⁸ but these confer no legally enforceable rights.

The Justiciability of Housing Rights

As a lawyer involved in social and economic rights advocacy, one of my major challenges is to inspire and mobilize members of my professional vocation into social and economic rights advocacy. The reaction has especially been stereotyped. In a perfunctory manner, I am reminded that these rights are non-justiciable. Once the Constitution does not empower courts of law to enforce these rights, it is hopeless trying, the reply. Undoubtedly, what lawyers look out for are norms that are usually more than manifestos.

16 Para. 10 *ibid*.

17 *Legal Provisions on Housing Rights, op.cit* 35.

18 Section 16(1)(d).

Rules and directives that can be objectified, in some measure in the municipal sphere. We must therefore accept that a valid point of departure for this discourse (especially as they concern jurists) would be to establish that correlation between the character of human rights norms at the international and at the national level as legally binding norms.

No international human rights lawyer can afford to ignore the realities of domestic law. It is within national legal systems that real people live their everyday lives, and these are legal systems backed by the reality of State power.¹⁹

What does it mean for rights to be justiciable? Literally, justiciability means that which is capable of being settled by law or by the action of a court.²⁰ Using this connotation, it means that the question of the observance or violations of a right may be "settled" by a supranational body - where this is established by law - or a national institution. At the national level, justiciability would denote for example, that the rights are enforceable by the domestic legal system and their breaches legally subject to redress.

At the international level, the right to housing may, in a way of speaking, be said to be "justiciable" by the Committee on Economic, Social and Cultural Rights for the Committee has responsibility for monitoring States' compliance with their treaty obligations under the Covenant. The Committee has issued a series of guidelines concerning States reporting obligations under the Covenant and adopted a number of standard-setting General Comments elaborating the provisions of the Covenant.

For example, in response to the assertion of the delegate of the Dominican Republic that his country was making "great efforts to ensure the enjoyment of the right to housing", at its 5th Session, a member of the Committee responded that the Dominican Republic was "deliberately flouting" the provisions of the ICESCR. The Dominican Republic had, in anticipation of the 500th anniversary of the landing of Christopher Columbus, undertaken urban rebuilding which had led to the eviction of nearly 15,000 families over the last five years. At its 6th session, the

19 Professor Rosalyn Higgins, QC, "The relationship Between International and Regional Human Rights Norms and Domestic Law" in *Developing Human Rights Jurisprudence*, Volume 5", Commonwealth Secretariat & Interights.

20 *Webster's Encyclopedic Unabridged Dictionary of the English Language*, Gramercy Books, New York, 1989.

Committee declared that the Dominican Government had violated Art. 11 of the ICESCR. With further evidence that the government could further evict another 70,000 people, the Committee issued what, in the words of a writer, "amounted to an injunction".²¹ Similarly, in its 5th and 6th Sessions, the Committee declared the States of Ecuador and Panama to be in violation of the ICESCR.

At the Municipal Level

Under most national legal systems, enforceable individual rights are often defined with a certain degree of precision so that there is little doubt about State responsibilities. The question therefore is whether municipal legal systems can give effect to a State's internationally contracted obligation to achieve the right to housing? The question becomes more relevant where the international treaty does not automatically become enforceable in the municipal legal system upon ratification. This is probably the case with many African legal systems.

The question of whether the State is fulfilling its domestic obligations to achieve housing rights in the municipal sphere would take account of a cocktail of factors. It is important to always keep in focus the nature of obligations which the State has undertaken and to realise that housing or, even speaking broadly, socioeconomic and cultural rights fulfilment does not occur in an instant. Some of these factors include the availability of resources, its allocation and application, social development programming diplomatic politics and relations, etc. which have all led an author to remark that "...the implementation [of Article 11 of the ICESCR] is a political matter, not a matter of law, and hence not a matter of rights."²²

The complications notwithstanding, this paper would demonstrate that this is an insufferable proposition and there are striking dimensions of housing which give no anxieties of justicing. If I am constructing a house and the government refuses to allow me use particular architectural plans because "they are colonial", I should be entitled to seek a court's interven-

21 Scott Leckie, "From Infancy to Adulthood: UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing" *Tribune des droits humains* (Fall 1992).

22 Vierdag E, "The Legal Nature".

tion. Equally, if my house gets destroyed along with others in a tornado and the government is resettling all those affected, I should be entitled to seek a court's intervention if the resettling authority decides that I should not benefit from that gesture because I am a known critic of the government. It might be different for example, if I seek the court to compel the State to build me a house to live in "my retirement age".

State legal obligations arising from the right to housing differ in character ranging from those which consists in the "thou shalt not act" kind of obligations (for instance the obligation not to interfere with individual endeavours to adequately house themselves (the negative obligations)²³ to the "thou should act here and now" (for example the duty to provide housing to homeless people or to develop legislative and other policy initiatives to protect vulnerable groups) (positive obligations).

Approaches have been developed to enforce housing rights in domestic courts if the local Constitution does not recognize them, or where it does, fails to empower their enforcement.²⁴

23 According to an expert in this field.

If there is anything that is abundantly clear regarding housing processes over the past century, it is the simple truth that no State has shown an ability to house its populace in State-built housing resources. While social (or public) housing remains a crucial dimension of the total approach towards satisfying collective housing requirements in many countries, such approaches can only ever solve part of a larger problem. Consequently, international housing policy has shifted discernibly away from this approach, to what are generically labelled as "enabling strategies".

- Scott Leckie, "The Justiciability of Housing Rights" unpublished.

24 For example, section 6(6)(c) of the Nigerian Constitution which provides:

The Judicial Powers vested in accordance with the foregoing provisions of this section

© shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of this Constitution.

Many lawyers (and even judges) almost plainly refuse to acknowledge socio-economic rights as rights since the Constitution does not empower courts of law to enforce their obedience. In a notable Nigerian case, *Uzoukwu v. Ezeonu 11*, the Nigerian Court of Appeal had noted that:

There are other rights which may pertain to a person which are neither fundamental or justiciable in the Courts. These may include rights given by the Constitution as under the Fundamental Objectives and Directive Principles of State Policy under Chapter 11 of the Constitution.

First, there is the direct method of enforcement. Certain breaches of the right to housing can be remedied by constitutionally afforded remedies. Thus, if in the construction of a railway line I am forcibly evicted from my house, in the "national interest" I am entitled to adequate compensation and the same goes if your property is compulsorily acquired. Most local Constitutions offer this protection. Moreover, in States where the African Charter is in force, this will offer additional protection to housing which is undoubtedly covered by the phrase property.²⁵

The second approach is what I have tagged the "organic-relation" method. It builds on the conceptual holism of human rights, their inseparatedness, interconnectedness, indivisibility and infeasibility²⁶ and attempts to develop legal consequences and responsibility for the right to housing by using the "window" of an "implicated" justiciable norm within the domestic system. This synergetic method has been validated by Committee on Economic, Social and Cultural Rights when it said that:

...the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in

25 As at November 1995, 50 African States had ratified the African Charter on Human and People's Rights which came into force in October 1986. It is not known how many States where its provisions are locally in force. Nigeria for example, only promulgated the Charter into law in accordance with its Constitution in 1991.

26 The unity of human rights finds overwhelming support. Though different Covenants, the International Covenant on Civil and Political Rights ICCPR and the International Covenant on Economic, Social and Cultural Rights ICESCR espouse human rights "... the existence of two Covenants was by no means intended to weaken the indivisibility and interdependence of the different sets of human rights. Quite to the contrary, the drafters of the Covenants made every effort to emphasize the principle of indivisibility." - Rulf Kunnemann, "A Coherent Approach to Human Rights" in *Human Rights Quarterly*, Vol. 17, N°2, 1995. See also Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights", 27 *Osgoode Hall Law Journal*, 769 (1989), Martin Scheinin, "Economic and Social Rights as Legal

public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.²⁷

And the European Court of Human Rights has held that:

Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature...[T]he mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.²⁸

This approach may be illustrated using the four layer of obligations criterion widely accepted to define State responsibilities under the Covenant. These consist of the obligation to respect, promote, protect and fulfil the rights therein enshrined.

The obligation to respect, for example, entails largely non-interventionist conduct from the State, abstaining for example, "... from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual..." and refraining from "...carrying out, advocating or condoning the practice of forced or arbitrary evictions of any

27 General Comment, N° 4, *op.cit.* para. 9.

28 *Airey case*, judgement of 9 October 1979, Publications of the European Court of Human Rights, Series A, N° 32.

persons or groups from their homes."²⁹ The right to housing, (constitutive of the freedom from forced removals and the right to security of tenure in a dwelling) can be enforced by alluding to the spectrum of justiciable rights which forced evictions will infract upon.

In the inter-State complaint case of *Cyprus v. Turkey* of 1976, Cyprus had accused Turkey of carrying out mass forced evictions against Greek Cypriots. The European Convention on Human Rights did not guarantee the right to housing and so the complaints were founded on the violations of the right "to respect for the home."

The European Commission held that:

The evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under Article 8(1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life... The Commission concludes... that... Turkey has committed acts not in conformity with the right to respect for the home guaranteed in Article 8 of the Convention.³⁰

In other respects, courts have protected individuals and groups from forced evictions by referring to the potential violations of their "right to life" if they suffered removals from their dwellings. Indian courts have illuminated this approach to housing rights protection quite creatively in

29 Scott Leckie, "The Right to Housing", *Economic, Social and Cultural Rights*, *op. cit.* 113. Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also involve physical injury and in some cases cause sporadic deaths. Children may easily take to delinquent criminal behaviour. Evictions break up families and increase existing levels of homelessness. They can also be psychologically alienating and may lead to nervous breakdowns or even suicides. On March 10, 1993, the United Nations Commission on Human Rights unanimously adopted resolution 1993/77 describing forced evictions, wherever they occur as "a gross violation of human rights, in particular the right to adequate housing". It urged all governments to eliminate the practice of forced eviction and confer legal security of tenure to all persons currently threatened with forced evictions.

30 European Commission cases 6780/74 and 6950/75, *Cyprus v. Turkey*, EHRR, Report of the Commission; and opinion (10 July, 1976) pp. 72 - 73.

my view. In *Shanti Star Builders v. Naryan Khimalal Totame & Ors.* the Indian Supreme Court defined the right to life to be constitutive of the fulfilment of basic needs of life. According to the Court:

Basic needs of man have traditionally been accepted to be... food, clothing and shelter. The right to life... would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in... For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual.³¹

In *Olga Tellis v. Bombay Municipal Corporation*,³² the petitioners know as the Bombay Municipal Dwellers "protested the government's plans to demolish their rudimentary shelters. They argued that they had opted to live in slum and pavement dwellings to avoid the time and prohibitive cost of commuting to their places of work. They claimed that the eviction would be tantamount to deprivation of life and hence unconstitutional because it would deprive them of their livelihood. The court agreed with the reasoning holding, however, that the deprivation of life could only come about after due process which was followed in this case. The court allowed for time before the petitioners could be evicted and suggested that steps may be taken to resettle some of the dwellers. In the following year, the Supreme Court made a more far-reaching pronouncement proclaiming that "shelter is one of our fundamental rights."³³

31 JT 1990 (1) S.C. 106, Civil Appeal N°. 2598 of 1989. In *Maneka Ghandi v. Union of India*, the Indian Supreme Court declared that the right to life meant the "right to live with dignity." In another case, the Supreme Court expounded the doctrine thus:

The fundamental right to life which is the most precious human rights and which forms the arc of all other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head" - *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746

32 AIR 1986 SC 180.

33 *Prabhakaran Nair v. State of Tamil Nadu*, AIR 1987 SC 2117.

Another aspect of States housing obligations is the duty to promote and protect housing rights through the reviews of and instrumental use of legislation to protect individuals from the violation of their rights to housing by other people or non-State actors like landlords and property developers in order, for example to make housing affordable, habitable and ensure the availability of services essential to health, security comfort and nutrition. For example, government may pass rent-control laws, or provide for tenant-protective rules for recovery of dwellings. While it may be difficult to compel by injunction, the State to pass necessary legislations or undertake legislative reviews, if legislations have actually been passed and are in force in this regard, individuals may enforce their rights against third parties or potential violators even though this may breach proprietary or contractual rights.

In *Mellacher and others v. Austria* for example, the applicants alleged that rent-control laws affecting their property was a violation of their rights to the "peaceful enjoyment of possessions" under the European Convention on Human Rights. The European Court disagreed holding that no violation occurred given the wide margin of appreciation in the implementation of social and economic policies, including housing.³⁴ In another case, the European Court of Human Rights stated that "modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to play of market forces".

Therefore, the court reasoned, legislation aimed at securing greater social justice in the sphere of peoples' homes was justified, even when it "interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large."³⁵

States are also under obligation to fulfil housing rights. This obligation is perhaps more difficult to enforce for it is "... the most interventionary and positive in nature."³⁶ This duty, for example, "...involves issues of public

34 Judgment of 19 December 1989, Publications of the European Court of Human Rights, Series A, N° 169.

35 Case of *James and others*, judgement of 28 February 1986, Publications of the European Court of Human Rights, Series A, N° 98, para. 47.

36 Scott Leckie, *ibid*, at page 115.

expenditure... housing subsidies... the provision of public housing, basic services, taxation and subsequent redistributive economic measures.³⁷

From experience, it might be difficult to compel the deployment of State financial resources towards meeting housing needs³⁸ but it is quite possible to construct such a duty from the Covenant. Indeed the Human Rights Committee has determined that duty placed on States to respect the right to live, can be understood as calling for "positive measures" in the protection of life.³⁹ While it may be that courts may be reluctant to interfere with how the executive or legislature allocate and apply public resources for social programmes, it is possible in my view for courts to direct positive interventionist measures by the State to meet individual claims in a number of situations.

One of such situations may be, for example, if an action sought to challenge discrimination in the provision of public housing.⁴⁰ Also, courts may compel the provision of housing, if for example, a project, locally or externally financed makes provision for the housing or re-housing of individuals or groups of individuals affected by its implementation, even if the beneficiaries are not parties to the agreement. A possible judicial determination of this issue is likely as some evictees in Nigeria would soon explore the possibilities of a court-ordered resettlement following their displacement in the course of the implementation of a World Bank assisted Drainage and Sanitation project of the Lagos State Government. In this case, the agreement with the World Bank made provision for resettling communities of

37 *Ibid.*

38 In a case based on the European Convention on Human Rights, the European Commission had held that though "...Article 8(1) provides that the State shall respect an individual's home, and not interfere with this right... the Commission considers that Article 8 in no way imposes on a State a positive obligation to provide a home" - Application N° 5727/72.

39 UN docs A/37/40 and a/40/40.

40 The Committee on Economic, Social and Cultural Rights has stated for example, that

Indeed those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated... to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated shall have an effective remedy...

General Comment N° 3, *op.cit.*, para. 5.

individuals who were to be evicted from their dwellings but who were not resettled by the government.

I am not in any doubt that it is possible to envisage, despite these difficulties court-mandated programmes for the provision of housing based on the International Covenant on Economic, Social and Cultural Rights. The social necessity for it is present, and the playing field of judicial activism in this regard is quite ample. According to Justice Bhagwati,

I may point out that sometimes a question is raised as to how we can incorporate into our domestic jurisprudence economic and social rights embodied in the International Covenant on Economic Social and Cultural Rights, if they represent merely objectives which are to be attained by a State to the extent to which its resources may permit. But I do not think this question presents any real difficulty. In the first place, while interpreting and applying the human rights in our respective constitutions, we can certainly take into account economic and social rights and interpret and apply the specifically enumerated human rights in such a manner as to advance and achieve economic and social rights. The scope and ambit of the specifically enumerated human rights can and must receive colour from economic and social rights (such as those set in our articles 6, 7 and 10) which can be spelt out from the specifically enumerated human rights and thus become enforceable by the judiciary. Everything depends on the creativity, valour and activism of the judge deciding the particular case.

Some of us in India have internalised in our national jurisprudence to a fairly large measure many of the international human rights norms through our own judicial creativity and activism. But this has to become a global phenomenon...⁴¹

41 "Fundamental Rights in their Economic Social and Cultural Context" in *Developing Human Rights Jurisprudence* Volume 2, Commonwealth Secretariat.

Conclusion

The jurisprudence of economic social and cultural rights is still growing. It is important as we strive to make ESC rights meaningful for our citizens, to also cultivate not just the judiciary, but the entire public. As more and more national and international groups doing ESC advocacy work evolve and take root, I am hopeful that we would see tremendous change in judicial attitudes in the near future, especially as the citizenry begin to clamour for their rights. The judiciary, especially in a democratic system, must be the stimulus of that quest. For the lawyers and judges in this forum, perhaps a parting statement from, again, Justice Bhagwati may just be apposite. He had stated that:

the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and the lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective.⁴²

41 *People's Union v. Union of India* [1983] 1 S.C.R. 456, at 469.

CORRUPTION, IMPUNITY VS. GOOD GOVERNANCE AND THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

CHARITY NGILU*

Let me first salute the International Commission of Jurists (ICJ) and the African Development Bank (ADB) for organising this Regional African Seminar on Economic, Social and Cultural Rights (ESCR). Thank you for inviting me to be one of these distinguished participants. I do believe that most of the participants gathered here are lawyers. I am not a lawyer. But I am one of the lawmakers in my country. I have just been reelected in Parliament for the Second Term. I was also one of the Presidential Candidates during the just concluded general elections in Kenya in December 1997. I did not win to be the President of Kenya but I have great hopes for the future.

The theme of my campaign for the Presidency was putting in place "Corruption-free" leadership.

It is therefore my privilege and pleasure to make this presentation on "Corruption, impunity vs. good governance and the enjoyment of economic, social and cultural rights in Africa".

Corruption and the impunity that has characterised it throughout Africa in particular, and the Third World in general, is the very antithesis of the enjoyment of economic, social and cultural rights and an enemy of good governance. Corruption is a pervasion of economic and cultural order in any society.

In Africa, right from the time of independence (early 1960s) to date, leadership has been characterised by official corruption where leaders hand out privileges, be it in business or politics to either members of their families, tribes, political parties or sycophants. Increasingly, hard work, merit,

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competence, professionalism, academic qualifications or proven capabilities and good order are *all* sacrificed at the alter of corruption. In the absence of a viable, strong and responsible opposition, more and more African leaders are acting corruptly with absolute impunity.

The noble principles of accountability, transparency and democracy which guard against official corruption and abuse of power are ignored, neglected or at most mere lip service is paid to them.

Corruption in Africa, whether in former Mobutu's Zaire, Mugabe's Zimbabwe, Moi's Kenya or Abacha's Nigeria and others has undermined economies that would otherwise be competitive and viable and brought them to mere shadows of what they should be.

I have always argued that it is dangerous to have a leader whose powers extend from unfettered authority to appoint and anoint a successor to that of appointing and sacking of chairmen/women of small organisations and parastatal boards. This limits the degree of checks and balances and accountability at lower but effective levels of leadership and governance.

The enjoyment of economic, social and cultural right cannot be realised in a sea of poverty. As it often said, poverty dehumanises, poverty kills morals, poverty kills hope, poverty kills confidence. As the outcome of corruption is often the deprivation of the majority by a privileged minority it naturally and automatically undermines the appreciation and enjoyment of these rights.

There is enough evidence in the public domain that poverty and suffering are caused by bad governance and corruption in Africa. There is also enough evidence that where governments are corrupt, people are politically oppressed and democratic participation in the process of government difficult. This is so in spite of situations where elections are held regularly like in my country (Kenya). Precisely because corrupt leaders are afraid to lose power, they will do all they can to subvert the democratic process. They will do all they can to ensure that the participation of people in elections is meaningless. Politics in the final analysis becomes a money game, where the rich and the powerful fight it out to determine who controls and benefits from the regime of corruption.

New leaders who are emerging in Africa, the second generation leaders who are slowly replacing the leaders that brought independence in early 1960s must be women and men of integrity and free of corruption. At independence time, people rightly or wrongly thought they had the right to restore our assets and wealth stolen from us by the colonial masters. Some freedom fighters even said that stealing from a colonial master was an act of heroic restoration.

The colonial thief is long gone. The African people, men, women and children are now caught up in a vicious web of a conspiracy executed by the former colonial master and the local collaborator in stealing African wealth. Ninety percent of African thieves - namely the top African leaders - stash their ill-gotten wealth in foreign bank accounts in Europe and elsewhere. *No* European leader has ever voiced opposition against, this. *No* European Country is ready to deny these corrupt African leaders visas to prevent them from reaching and subsequently enjoying their ill-gotten wealth. Something must be done now.

The ICJ, ADB and all of us gathered here today need to agree now to take up this point on the issue of corruption seriously on the same scale as drug peddling and trafficking. For a start, we could recommend the elaboration of a Continental Code of Conduct against corruption and ensure that every African Country subscribes to it. I believe that the ICJ can lend technical assistance in the formulation of this Code of Conduct. I also believe that if we eliminated corruption and brought back all the billions stashed in foreign banks, Africa would be able to pay its foreign debts totally.

In this context, it is surprising how many African governments and some leaders are calling for an increase in aid. I just want to say that an increase in aid is not going to solve a myriad of problems facing the African economies. It is improved fiscal management and reduced corruption that are going to provide the answer.

In conclusion, the struggle we engage in must embrace the following:

1. making people aware that they must participate in politics as the only way to liberate themselves;
2. empower citizens through intensive civic education and self help programs and especially sensitise people (masses) on their rights;

3. create viable institutions in the Society to enhance popular participation. Institutions such as, political parties trade unions, neighbourhood associations, etc.;
4. establish constitutions which are democratic;
5. undertake liberalisation process which will improve efficiency in both private and public sectors;
6. peg aid on accountability and corrupt free governance.

Change unsuitable top-down development approaches which are totally unresponsive to grassroots needs. Governments should ensure that the initiatives of ordinary people in both planning, costing, implementing monitoring and evaluating of projects and the programs are made an integral part of the development process. This is the only way that will guarantee sustainability of development programs.

CORRUPTION AND IMPUNITY: OBSTACLES TO THE EFFECTIVE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ADAMA DIENG*

Corruption today is a widespread socioeconomic phenomenon. The embezzlement of public funds, the corruption of government officials and employees, the plundering of currency reserves, the brazen transfer of capital from the countries of the South to the banks of the West, not only constitute impediments to the democratic process and to development, but also jeopardise the effective enjoyment of economic, social and cultural rights. Corruption undermines the credibility and transparency of democratic institutions and inhibits the proper management of the affairs of the State. It results in a poor utilisation of resources in both the public and private sectors, and has adverse effects on the economy, in general. It wears away at the foundations of the State and compromises any attempt to edify a credible and legitimate rule of law. The phenomenon of corruption aggravates poverty and diminishes a country's opportunities for development. It is for these reasons that the battle against corruption ought to rank high among the priorities of the international community in its efforts to promote development. Raising the moral standards of top State officials, enacting national legislation and international instruments to regulate the handling of public funds and resources, and combating injustice - these must be the favourite themes of all who are involved in the civil, economic and political spheres of society, at both the national and international levels. The battle against corruption must be directed to the root causes of the phenomenon. Why are our high-level officials so susceptible to corruption? Why is the temptation so great? It is our contention that corruption is the result of poor methods of governance within a State. Many government employees feel victimised by a system in

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which their efforts to participate or to have an impact are in vain. The spirit of the civil servant ministering to the needs of the nation seems to have vanished.

It has been said that the flight of capital presents an obstacle to public and private investment. The billions of dollars which would otherwise serve to build schools and hospitals, and to create jobs, are illegally funnelled into accounts in the large multinational banks of the West. Yet, clearly, this system of pillage could not function without the complicity of the banks. While these banks watch their profits grow, children in Africa are dying of hunger in countries where hardship and severe economic stagnation are more the rule than the exception.

Popular movements in some African countries, having recently ousted corrupt regimes responsible for plunging their economies into terrifying financial crises, are seeking to bolster democratic systems. These governments, supported by meagre economies, are attempting to recover public funds that have been sheltered in Western banks in the form of personal assets. Unfortunately, the response of the financial empires in question has been to defend their clients' interests above all. To the dismay of the divested populations, efforts to recover stolen capital from the ousted despots are proving to be in vain. The implementation of economic, cultural and social rights is thus trapped in a vicious cycle. It is important to stress, in this regard, that an outright battle against corruption and the illegal acquisition of funds by high government officials is a question of life or death for these distraught populations.

Persistent poverty, ignorance and inequality are the scourges that gnaw away at the roots of human dignity. To invest in human development is to respond to the legitimate desire for the fulfilment of individual potential, and constitutes an unquestionable obligation. In order for private or public initiatives to result in genuine development, they must be based on respect for the law and a spirit of public-mindedness. Hence, the dynamic notion of the rule of law must be called upon to safeguard and advance not only the civil and political rights of the individual, but economic, social and cultural rights as well. With this in mind, we have taken steps both to reflect and to act upon the issue of the illegal acquisition of funds by top government officials at the expense of the populace.

Our efforts have given rise to a project that is being carried out under the auspices of the United Nations to address the issue of the illegal acquisitions of funds by top State officials.

Consequently, experts from the Sub-Commission on Human Rights have, by consensus, adopted a resolution aimed at halting the flight of capital, which calls upon industrial countries to prohibit the import of fraudulently acquired funds and to promote the restoration of stolen capital to dispossessed peoples. We see this as a first step towards the drafting of an international convention which, once adopted, would create a system of judiciary assistance to help such peoples recover their funds.

Yet, the road is still long and the response of the international community is made more urgent by the fact that national legislation aimed at combating such illegal acquisitions is either non-existent or insufficiently enforced. At stake in the battle against corruption is not only an increased standard of moral conduct on the part of heads of State and high-level government officials, but also the rectification of injustices that jeopardise the application of the principles of the rule of law.

Put differently, the battle against corruption is intrinsically linked to the struggle for democracy and human rights. The elimination of this scourge requires the commitment of NGOs, parliaments, opinion leaders, the media, etc. The only way that parliaments will play an effective role is if parliamentarians themselves demonstrate transparency in their activities, as well as an ability to correct the deficiencies of the executive office.

Many newly formed democratic governments are confronted with the thorny question as to the fate that should be reserved for former leaders suspected of perpetrating what are commonly referred to as "economic crimes" - including largescale corruption. Often the firm commitment of the new leaders to bring such perpetrators to justice declines gradually over the course of the transition period. In this way, numerous perpetrators of crimes involving corruption escape justice. Such impunity does nothing to strengthen the people's confidence in the current system, especially when officials remain in power despite their crimes. Total impunity - whether as a result of amnesty, clemency measures, or simply the ineffectiveness of the courts - constitutes a denial of justice. Impunity also applies to situations in which investigations to ascertain the facts are not conducted, when the facts of a case are covered up or denied, when the identity of the perpetrators is

covered up, or when the courts fail to punish those responsible. This is true whether these attitudes stem from deliberate actions or are motivated by political reasons.

Then there is a more subtle form of impunity - but it is impunity just the same - which consists of applying punitive sanctions that are completely disproportionate to the seriousness of the charges, especially in relation to the exorbitant toll exacted by corruption.

Corruption and impunity are grave, universal phenomena, and constitute obstacles to the effective enjoyment of economic and social rights. They are a major hindrance to democracy and represent a failure of the law's authority. In refusing to tolerate impunity, the goal is, on the one hand, to discourage the repetition of economic crimes, and, on the other, to strengthen the rule of law. Legal and moral responsibility are incumbent primarily upon the State, but non-governmental organizations have a role to play as well.

In conclusion, I would like to invite you to reflect upon what I call the "Rule of Three Truths", or, if you prefer, the "Rule of Three Principles":

1. The mission of any government is to work toward the development of the people it is charged with governing.
2. The fulfilment of this obligation is a condition upon which the legitimacy of the government is based.
3. Development cannot be achieved unless effective measures for opposing corruption are taken.

As you can see, there is a three-way relationship between legitimacy, development and corruption: 1) A government that does not develop its country forfeits its legitimacy. 2) Development and corruption are mutually exclusive. 3) A government is chosen on the basis of its ability to ensure development.

Consequently, I propose the following slogan:

"Legitimacy may only be achieved through efforts to oppose corruption."

THE PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SCOPE, CHALLENGES AND PROSPECTS:

THE AFRICAN DEVELOPMENT BANK EXPERIENCE

DOTSE TSIKATA*

A few months from now the African Development Bank (ADB) will mark the thirty-fifth anniversary of its establishment. In these thirty-five years, the African Development Bank and its associated entities, the African Development Fund (ADF) and the Nigeria Trust Fund (NTF) (collectively referred to as the African Development Bank Group), have made available to their Regional Member States resources amounting to more than US \$33 billion in the pursuit of economic development. From a borrower's point of view, the difference between the three entities is that the ADB lends at close to commercial rates, the ADF at highly concessional rates and the NTF, which is by far the smallest of the three, at rates about midway between the two.

My focus in this paper will be on the part of the ADB Group's operations which is most relevant to the pursuit of the rights set out in the International Covenant on Economic, Social and Cultural Rights. Of these, the rights particularly relevant to the present discussion are found in Articles 11, 12 and 13 of the Covenant, i.e. the right of everyone to an adequate standard of living for themselves and their family and to the continuous improvement of living conditions, the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to education. I should stress at the outset that the relationship between the work of the ADB and the promotion of economic, social and cultural rights is more complicated than that of a direct promotion of such rights by the

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Bank. As I will be explaining, the Bank's mandate is development rather than the promotion of rights as such. However, to the extent that the Bank pursues its development tasks effectively, it should, and indeed does, contribute to the realization of these rights.

I will focus on the parent entity the African Development Bank in the early part of the discussion in order to locate the institution within the community of Multilateral Development Banks (MDBs). Subsequently as I move into the discussion of the Bank Group's contribution to the enjoyment of the rights of the Covenant, the emphasis will shift, for reasons that will become clear, to the African Development Fund. The principal points I will be developing in this paper are the following:

- i) the ADB is one of the four regional multilateral development banks created since the United Nations Monetary and Financial Conference held at Bretton Woods in 1944;
- ii) although the ADB's mandate is not specifically the promotion of economic, social and cultural rights, and not all of its Member States are parties to the International Covenant, the ADB Group's lending and investment operations have made a substantial contribution to the realization of the economic, social and cultural rights of citizens of the Bank's borrowing member countries;
- iii) the Bank's intervention on major policy issues affecting Africa has also made a significant contribution to the prospects of realizing economic, social and cultural rights in Africa;
- iv) present global trends and current African reality present considerable challenges as well as opportunities for effective work by the ADB, by governments of its Member States and by private voluntary organisations such as the International Commission of Jurists, to improve upon their particular contributions, and to develop ways of working together towards the realization of the economic, social, and cultural rights of all Africans.

II - The African Development Bank in the Multilateral Development Bank Community

The pioneer multilateral development bank is the World Bank (more formally the International Bank for Reconstruction and Development (IBRD)), which, together with the International Monetary Fund, was established at the conclusion of the United Nations Monetary and Financial Conference held at Bretton Woods, New Hampshire, in 1944. As the progress of postwar reconstruction in Europe advanced, the pursuit of development in the less developed countries (LDCs) of Asia, Africa and Latin America became the increasing focus of the World Bank's activity.

Despite the involvement of the World Bank in this area, leaders of the LDCs were of the view that the development needs of their countries were greater and more urgent than could be fully addressed by existing institutions. It was this concern which led to the abortive effort to create a Special United Nations Fund for Economic Development (SUNFED), and later, to the creation of a new affiliate of the World Bank, the International Development Association (IDA). The same considerations led to the creation of the Inter-American Development Bank in 1959, the African Development Bank in 1963 and the Asian Development Bank in 1965. The last of the regional multilateral development banks, the European Bank for Reconstruction and Development was established in 1990 specifically to address an agenda of reconstruction and development in post-communist Eastern Europe and the Commonwealth of Independent States.

Briefly, the African Development Bank was created because in the early 1960s, governments of newly independent African countries, eager to accelerate the process of economic development of their countries, accepted the idea of a regional development bank as an institution which could significantly contribute to that development process. The United Nations Economic Commission for Africa (ECA) was the forum in which the idea was taken up by representatives of African States. The ECA became the centre of the preparatory work culminating in the meeting of African Finance Ministers in Khartoum in 1963 at which the Agreement establishing the African Development Bank was adopted.

III - The ADB's Mandate

The ADB's mandate as set out in its Charter is strikingly similar to that of the other multilateral development banks. Article 1 of the Agreement establishing the African Development Bank prescribes as the Bank's purpose:

to contribute to the economic development and social progress of its regional members individually and jointly;

This purpose is to be pursued through the exercise of the following functions:

- a) to use the resources at its disposal for financing investment projects and programmes relating to the economic and social development of its African regional members...;
- b) to undertake, or participate in, the selection, study and preparation of projects, enterprises and activities contributing to such development;
- c) to mobilize and increase in Africa and outside Africa, resources for the financing of such investment projects and programmes;
- d) generally to promote investment in Africa of public and private capital in projects or programmes designed to contribute to the economic development or social progress of its members;
- e) to provide such technical assistance as may be needed in Africa for the study, preparation, financing and execution of development projects or programmes;
- f) to undertake such other activities and provide such other services as may advance its purpose.

In carrying out its functions the Bank is required to seek to cooperate with national, regional and sub-regional institutions in Africa and to cooperate with other international organizations and other institutions concerned with the development of Africa.

The Bank Agreement like the Agreement Establishing the African Development Fund, is quite specific about the ways in which the institution's functions in the pursuit of the goals of economic development and

social progress are to be carried out. Articles 12-16 of the Bank Agreement and Articles 14-16 of the Fund Agreement set out the categories and methods of operation and include a number of explicit restrictions of a prudential character. The nature of the Bank's operations is further spelt out in Article 17, 18 and 19 of the Bank Agreement. The key points to be noted are that while the Bank performs its functions by lending, by equity investments and by the use of guarantees, the Fund operates primarily by loans and grants. Both institutions are required to apply sound banking principles in their operations.

The framework established by these legal provisions is largely shared by all the MDBs and distinguishes the MDB's functions from those of commercial or investment banks on the one hand and those of other international organisations on the other.

IV - The Mobilization of Resources

The ADB obtains its funds from the capital subscribed by Member States, from its borrowings in the capital markets repayments of past loans, and returns on equity investments.

The Bank's authorized capital has grown from an initial amount of \$250 million at the time of its establishment to the current figure of \$23.7 billion. Negotiations are underway for a further increase in the Bank's capital.

An important achievement of the ADB has been to gain and to maintain access to the international capital markets. The Bank is able, on the basis of its triple A credit rating and its record as an established borrower in these markets, to raise capital on favourable terms to fund its lending and investment operations. The financially conservative philosophy expressed in the rules governing the Bank's lending and investments has helped to preserve the Bank as a successful supranational borrower.

The ADF was established in 1972 to enhance the resource mobilization of the African Development Bank. At the time the Bank's membership was restricted to regional States. The ADF provided a means by which non-regional States could supplement the resources of the ADB with resources

that could be made available to borrowers at concessional rates and for a longer term than ordinary ADB facilities.

V - The Enhanced Role of the African Development Fund

The African Development Fund (ADF), the concessional lending entity of the Bank, is financed by subscriptions of its State Participants, all of which are currently non-regional members of the Bank, and by the Bank itself. The Fund has since 1995 become the primary source of Bank Group financing for 39 of the Bank's 53 regional member countries. This is the result of the new credit policy which is based on the view that given the economic situations of the 39 countries, lending at the near commercial rates of the ADB was likely to increase their debt burdens. Therefore, concessional lending would be the best way to support the development efforts of these countries. The concessional terms of ADF loans make ADF resources ideal for projects which may have a high "social rate of return" so to speak, but do not generate the scale of financial returns to enable repayment at a commercial rate of interest.

VI - ADF Priorities and Policies

One of the overriding objectives of ADF policy has been to address the problem of poverty. Thus for example the current ADF policy provides:

"Poverty reduction will continue to be the principal objective of Fund development activities in borrowing countries. Poverty reduction considerations will therefore be reflected in all the activities of the Fund, especially in investment in human capital, environmental management, activities aimed at creating productive opportunities for the poor and those that further strengthen the role of women in development."

You will have heard from my colleagues an account of the manner in which this policy is implemented in the projects supported by the Fund.

Sectoral Distribution

The sectoral distribution of African Development Funds financing to regional members between 1974 and 1996 was as follows: agriculture (32.6%), transport (19.4%), social sector (comprising health, education, and related sub-sectors) (17.2%), public utilities (16.2%), multisector (including poverty reduction and policy based loans) (10.8%), and industry (3.8%).

The above sectoral distribution reflects the choices made in past Fund policy. Under current policy it has been decided that 40% of Fund resources should be allocated to agriculture, and 20-25% to the social sector. The latest review of current ADF funding shows that these proportions are indeed being respected. Within this sectoral distribution of resource allocation, preference is given to projects which address the issues of poverty reduction, environmental management and the role of women in development.

Country Allocation

The volume of ADF resources that may be made available to each country depends on an assessment of the country's past performance and its need for resources. A country's need is determined by reference to such factors as relative poverty, size of population and absorptive capacity. The key performance criteria are the following:

- i) sound economic management;
- ii) growth with equity and poverty reduction;
- iii) development sustainability;
- iv) sound ADB Group country portfolio performance;
- v) good governance based on respect for human and political rights, rule of law, freedom of information and association and participation in government.

VII - ADF Operations and Economic, Social and Cultural Rights

I will now set out in a few points the ways in which the ADF's interventions do contribute to the realization of economic, social and cultural rights:

- a) a project involves an addition to resources normally available and enables an increase in economic activity within the project area and beyond, leading to the creation of jobs, and increased income;
- b) projects typically involve the provision of facilities that did not previously exist- e.g. schools, clinics, irrigation, roads, water supply, credit;
- c) projects contribute to institution building, development of skills through training, and the making available of improved technology;
- d) foreign exchange savings, and other economic returns such as increased output, and productivity are also generated.

VIII - Impact Assessments

One of the lessons I have learnt in the process of preparing this paper has been the difficulty of assessing by means of some objective quantitative and qualitative measure, the Bank's operations in terms of their impact on the realization of economic, social and cultural rights in member countries. There are two sources of difficulty. First there are the difficulties inherent in measures progress in the realization of these rights. I have noted that others including the United Nations Committee on Social Economic and Cultural Rights have grappled with these difficulties in their efforts at monitoring compliance with the Covenant. I found of particular interest in this regard, the paper written by Audrey Chapman for the ICJ's Bangalore Conference in 1995 [See ICJ Review No.55, at 23]. The second source of difficulty is that since the promotion of economic, social and cultural rights as such is not directly the purpose of the ADB or ADF lending and investment operations, it has not been the Bank's practice to evaluate its operations by reference to their impact on economic, social and cultural rights as such. I have mentioned the connections between what the Bank seeks to achieve, what it actually has done, and the realization of

the commitments which State Parties to the Covenant have made, but in my view the more rigorous assessment is still needed, focused more specifically on economic, social and cultural rights. That project is a larger undertaking than has been possible in this paper. It is certainly one area of possible collaborations with groups such as the ICJ.

The Bank Group itself measures the success of its operations by reference to two main criteria- the meeting of project implementation targets, and development effectiveness. The first has to do with the completion of projects on schedule, within budget and without substantial revisions. The second pertains to positive impact of the project on the intended beneficiaries. Reviews of the Bank's operations show substantial achievements on both fronts.

The Bank Group has continued its efforts to continually improve project quality and implementation. Institutional reform, enhanced project supervision, post-implementation evaluation and an annual portfolio performance review are among the tools that the Bank is deploying to improve its work with demonstrably positive results as may be seen in its annual reports.

IX - Other Bank Group Intervention

There is another area in which the ADB' interventions have made a contribution to economic, social and cultural rights in Africa. The Bank has played an important role in shaping international policy in relation to Africa. One of the areas in which this is particularly apparent is the treatment of African sovereign debt. From the early nineteen-eighties the Bank has drawn attention to the debt problems of African States and the need for specific initiatives to address the problem. This intervention has been based on the understanding that unsustainable debt burdens are an obstacle to satisfactory economic development. The Bank was a pioneer in this area at a time when the conventional view was that debt relief was unacceptable. Partly as a result of such interventions a series of debt relief measures have been adopted by the international financial community. These include the Toronto terms and subsequently the Naples terms for the treatment of Paris Club debt. Most recently, the Bank has joined the World Bank and the IMF to support relief on debt owed to multilateral financial institutions by

eligible highly indebted poor countries (HIPCs) with unsustainable debt burdens. Of the forty-one (41) HIPCs, thirty-three (33) are African.

X - Challenges and Prospects

There are two sets of challenges that I wish to address in concluding. On one side, the African Development Bank is faced with the challenge of promoting development in a continent emerging from more than a decade of severe and widespread economic decline. The Bank, itself adversely affected by that decline has been constrained in its ability to intervene to respond to these problems at the time when the need for its intervention has increased. Given the existing constraints, the quality of the ADB's interventions becomes all the more crucial as more needs to be done with fewer resources.

Within this general context the Bank faces the specific challenge of how to adapt the new global economic policy consensus which prescribes a greater market orientation, a limiting of the role of governments, an increased role for the private sector, greater fiscal discipline and the liberalization of domestic and external trade and payments regimes, to the very specific conditions of African countries in a way that is sufficiently sensitive to possible adverse effects of some economic reform measures, and imaginative in addressing these.

On the other side, those whose work is more directly the promotion of economic and social rights continue to face the challenges of establishing that these rights are of a status equal to the traditionally favoured civil and political rights. The challenge remains fifty years after the Universal Declaration, of giving substance to the rhetoric of universality, indivisibility and interdependence of all human rights, and establishing effective mechanisms for the monitoring and enforcing of economic social and cultural rights. While I have been struck over the last decade by the progress that has been made at the intellectual level in the discussion of legal rights and in particular of the status of economic, social and cultural rights, it seems to me that the insights generated in the analysis of these rights could make a difference if they were to make the journey from academic discourse to the realm of a more public and practical discourse. The

recognition of rights such as the right to work or the right to an adequate standard of living is undermined not so much by challenges as to their juridical status, nor the doubts of those generally sceptical about the utility of pursuing rights, nor the doctrines of those who would abandon rights in favour of such other welfare criteria as wealth, utility, or efficiency, but most of all by the absence of these rights in the lived experience of far too many people. While economic, social, and cultural rights are increasingly recognised in the Constitutions of African States, the economic and social reality in much of Africa in the last two decades has heightened scepticism about the status and value of these rights. In this atmosphere, it is not surprising that cynical laughter is often the response when the litany of economic, social and cultural rights in national constitutions is read out. And yet, the situation that breeds cynicism is also the very situation in which these rights are most needed. The prospects for overcoming cynicism will depend on the extent to which the different actors whose work addresses these matters can build on the commitments that have already been made.

XI - Conclusion

By way of a conclusion, I would like to say that the ADB's in pursuing the mandate entrusted to it by its members can, and must, play the role, to paraphrase Keynes, of "trustee", not of economic, social and cultural rights as such, but of the possibility of an economic development for Africa that enables the promise of the Covenant, that everyone enjoy their economic, social and cultural rights to be fulfilled.

THE WORLD BANK AND HUMAN RIGHTS

IBRAHIM F.I. SHIHATA*

Let me start this presentation by stating clearly that, in terms of individual human progress, the concepts of development and human rights are so intertwined that they cannot in my view be meaningfully addressed as separate issues. Let me also hasten to add, with the same clarity, that such a close linkage between development and human rights cannot in my opinion mean that a development finance institution like the World Bank (IBRD and IDA) must disregard the explicit provisions of its charter concerning its specialized mandate and the insulation of its decisions from political influences and considerations.

The role of the Bank is to promote the economic development of its member countries. Its success in this role helps to create an environment for the enjoyment by individuals in these countries of *all* their human rights. But the Bank is not a supranational world government for the borrowing members. Nor does it have general powers and an unlimited mandate to pursue, through incentives and sanctions, the promotion of democracy and political reform in these countries. Taking these two paradigms as my starting points, I will devote this presentation to answering three main questions:

- 1) does the World Bank contribute to the promotion and protection of human rights?
- 2) if so, can the World Bank use its interventions and its immense influence with its borrowers to place the protection of *political* rights on its agenda? and
- 3) if this is not possible under the present Articles of Agreement of the Bank, shouldn't these be amended to give the Bank a clear political

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mandate, as in the case of the EBRD, to enable it to act as an instrument of political reform?

I - The answer to *the first question* is a definite YES. The World Bank does contribute, through its lending operations and policy dialogue with borrowing members, and through its research, publications and cooperation with other agencies and governments, to the promotion and protection of a broad array of human rights of an economic, social and cultural character. As I had the occasion to explain in several publications and in my speech before the UN World Conference on Human Rights in May 1993, this is demonstrated in practically all Bank activities. To put it simply, the Bank's work has always been a series of attempts to assist its less developed members in the exercise of their "right to development," a right proclaimed by the UN in 1986 as a basic human right and strongly reiterated in the 1993 Vienna Declaration of the World Conference on Human Rights. The following examples of Bank activities explain its role in transforming the ideals of UN declarations and covenants into realities that can be physically measured in our member countries:

- The Bank's overriding objective is to enable people in its borrowing countries to enjoy *freedom from poverty*. This is a basic freedom which is needed in fact for the full enjoyment of other human rights and yet is still denied to more than one billion people. The Bank's contribution to poverty reduction consists mainly of assisting its borrowing members to create macroeconomic frameworks conducive to growth and macroeconomic conditions which help the expansion of production and trade, in addition of course to its major role in the financing of projects and programs for human resources development, infrastructure and a broad array of productive purposes.
- The Bank's increasing concern with, and lending for, *human resources development* enables people in its borrowing countries to have better opportunities for *education* and *health* services, which are not only human rights themselves, but also prerequisites for the full attainment of other human rights.
- The Bank also provides advice, technical assistance and financing to enable its borrowing members to improve the efficient management of

their human and economic resources, that is, to *strengthen their systems of governance* in so far as they are relevant to the Bank's mandate. The Bank's increasing involvement in recent years, at the request of its borrowing countries, in supporting their efforts towards legal reform, judicial reform and civil service reform helps the goals of openness, transparency and accountability which are also basic requirements for the enjoyment of human rights, including political rights.

- The Bank now routinely encourages and increasingly requires *the involvement of affected peoples and local NGOs* in the design and implementation of the projects it finances. NGOs are now directly involved in half of all Bank-supported projects. This participatory approach to development has a direct demonstration effect beyond these projects.
- *Environmental protection* has become firmly established in the Bank's policies and practice. The projects it finances help ensure that as many people as possible have access to basic facilities such as clean air and water, health care, nutrition and basic sanitation facilities. Through trust funds supported and administered by the Bank, it also addresses issues such as ozone depletion and global warming. No other international organization has today a greater role than the Bank in the environment field. Not surprisingly, consensus has just been reached in the world community to charge the Bank once again with the responsibility of trusteeship for the restructured Global Environment Facility.
- The Bank has long emphasized the *central role of women in development* and supports a myriad of projects aimed at allowing women full access to education, health and credit services. The suggestion that "investing in the education of girls is the best investment a developing country can make" was coined in the Bank based on its long and broad experience.
- The Bank's policies on the *resettlement and rehabilitation* of peoples involuntarily displaced by projects financed by it attempt to ensure that development is not achieved at the expense of those people. The Bank requires that such displaced persons must regain, if not improve, their standards of living. It calls for such persons, including the landless, to receive full compensation and rehabilitation. It also requires that they should share in the project's benefits. Instances of the failure of some governments to implement their obligations under the Bank's ambitious

requirements have not prevented the Bank from conducting independent reviews and taking remedial actions.

- The Bank was the first development agency to adopt a policy on *indigenous and tribal peoples* and to advocate through specific covenants in its loan agreements the recognition, demarcation and protection of indigenous lands and the provision of "culturally appropriate" services.
- In recent years, through adjustment lending and its policy dialogue with its borrowing members, the Bank has strongly advocated *the liberalization of investment and trade and the transition to outward-looking, open economies*. These changes call for a *freer flow of services, goods and information across borders, developments which are bound over time to help the evolution of freer societies*.
- The Bank is also taking new initiatives to reduce harmful forms of *child labor* by clarifying and introducing new projects or project components addressing exploitative aspects of child work, increasing the emphasis on child labor in other projects, introducing child labor concerns in social assessments for new projects, reviewing old projects in light of child labor concerns, sensitizing staff to child labor issues, and working closely with UNICEF and ILO. The Bank will also require covenants in loan agreements with countries where violation of legal child labor standards could affect Bank projects.
- Finally, the Bank has been careful, in light of its early experience with adjustment lending, to assist in the *alleviation of the social cost of adjustment* through the financing of social funds and social safety nets.

As a result of these achievements the World Bank can claim a good part of the credit for the development record of the last 50 years. During this period, it is now recognized, there has been faster progress in improving the human condition than during the entire previous span of human history. Speaking of that record, the former President of the Bank was able to state in a speech before the Trilateral Commission:

Over the past five decades, average per capita incomes in the developing world have more than doubled; the GDPs of some economies have quintupled. Life expectancy in the developing countries has increased by 23 years — more than 50 per-

cent. There has been a "green revolution" in *South Asia*; an "economic miracle" in *East Asia*; *Latin America* has overcome the debt crisis; and there have been substantial gains in health and literacy in *Africa*. In this process, large numbers of people have escaped from poverty— and the developing countries have become increasingly integrated with the global economy.¹

In addition to its lending and non-lending activities, the Bank is playing a key role in the coordination of international aid efforts and in influencing the direction and quality of international aid flows. To ensure that its work does achieve its purposes and to be able to correct mistakes when they occur, the Bank has recently further liberalized its information disclosure policy and has established an independent Inspection Panel to investigate complaints that it may have failed to observe any of its operational policies and procedures, even though it realizes that some of these policies are written with a view to what should, and not necessarily what realistically can, be done by its borrowers. This unprecedented step in global organizations has been followed by two similar institutions, thus opening a new chapter in the law of international organizations and in the development of the status of private groups under international law and their direct access to international remedies.

II - The *second question* I wish to address here is whether the Bank can place the protection of political human rights (as differentiated from economic, social and cultural rights) on its agenda. Although this is often discussed as a socioeconomic or ethical question, it is basically a legal question in view of the requirements of the Bank's Articles of Agreement which I shall soon be quoting. The question is whether these statutory requirements can correctly be interpreted to give the Bank a role in the promotion and protection of political rights, e.g., by reducing or eliminating its lending programs to a country on the basis that it has violated internationally recognized human rights or by taking this matter otherwise into account in the Bank's decisions.

1 Speech by Lewis T. Preston, President, before the Trilateral Commission, Vienna, November 4, 1994.

The purposes of the IBRD, it should be recalled, are stated in specific terms in its Articles of Agreement which also specify means through which these purposes will be met. Such purposes and means include: (1) assistance in the reconstruction and development of members' territories by facilitating the investment of capital for productive purposes; (2) the promotion of private foreign investment by guarantees and participation in loans and supplementing such investment by direct loans; and (3) promotion of the growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment. In addition, the IBRD is mandated by its Articles of Agreement to coordinate its loans and guarantees with other sources and to pay due regard to the effect of international investment on business conditions in post-war economies in order to bring about a smooth transition to a peacetime economy. IDA's Articles of Agreement speak more generally of its mandate "to promote economic development, increase productivity and thus raise standards of living in the less-developed areas of the world included in the Association's membership, in particular by providing financing to meet their important development requirements."

In addition, both the Articles of the IBRD and IDA specifically stipulate that these institutions and their officers "shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned." The Articles state that "[o]nly economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the [institutions'] purposes...." As if this were not clear enough, the Articles further provide that the IBRD and IDA "shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations." The latter injunction applies both to the Bank and to its borrowers as far as the use of Bank loan proceeds is concerned.

Great attention was given by the drafters of the Articles to these provisions which were deemed necessary to protect the financial and technical character of the institution, and to protect it, to the extent possible, from the shifting sands of politics, as explicitly indicated at the time in official publications of the U.S. Treasury, in U.S. Congressional Hearings and in

speeches by the two progenitors of the Articles, Harry D. White of the United States and Lord Keynes of the United Kingdom.

In spite of the Articles' clear provisions, both with respect to the mandates of the institutions and the prohibition of political considerations, some academics, politicians and NGO activists suggest that the Bank must recognize the relevance and importance of political rights and democracy to economic development and should use its powers to serve these objectives. The academics base their argument mainly on three grounds. The first is that human rights are indivisible and interdependent. The second is that the Articles of Agreement should not be read literally but should be subject to the overriding values and policies that they are meant to serve, taking into account the evolution of such values and policies over time. In other words, questions of the Articles' interpretation should be addressed as issues of conflict of interests and values where the higher interests and values should be given preference, even if this would contradict the language of the text. The third argument assumes that human rights law is of a higher order than the Bank's Articles which should only be read in a manner consistent with that law.

As to the first argument, I agree that human rights are indeed interdependent and mutually reinforcing. This does not mean, however, that each international organization must concern itself with every and all human rights. Each of these organizations is a juridical body, the legal capacity of which is confined by its respective mandate as defined in its charter. It does not belittle any international organization if its charter specifies its specialized functions in a manner that excludes concern for certain aspects of human rights. But it demeans the organization to ignore its charter and act outside its legal powers. This is simply a matter of specialization of international organizations.

As to the second argument, I also agree that the Bank's Articles of Agreement should not always be read literally. This may suggest that they should be interpreted in a purposive, teleological manner. It cannot reasonably suggest that they should be interpreted in a way that totally negates the ordinary meaning of the text in the light of its object. Nor can it require the Bank to do the opposite of the clear injunctions of its charter by taking political considerations into account for the sake of what is perceived as the higher values of the interpreter. To do so would give the

interpreter the authority to apply the Articles in any way he sees fit. It renders the text meaningless for practical purposes.

The third argument is really irrelevant, as the Articles of Agreement in no way contradict human rights law.

Some writers, mainly non-lawyers, have tried to belittle the distinction made in the Articles between economic and political considerations, pointing to the inevitable overlapping between the two. Such overlapping exists; it cannot mean, however, that we must or can correctly disregard the Articles' explicit distinction. It can, as I have written elsewhere, allow for taking economic considerations into account even when they originate from, or are otherwise associated with, political factors.²

Writers such as Professor Amartya Sen of Harvard, while noting the controversy on the linkage between democracy and economic growth, have argued that political rights are "central to the conceptualization" by the population of their economic needs.³ This is true. It can hardly suggest, however, that Bank lending must be conditional on the attainment of such rights. If it did, others could argue that legal education for all would be a more relevant criterion.

Other writers, such as Professor Jon Elster of Chicago University,⁴ see that efficiency of the economy requires constitutional safeguards (precommitments) for the protection of property and contracts and that the credibility of such precommitments require that citizens be endowed with effective political rights. But as that writer himself acknowledges, other mechanisms could also ensure the credibility of government commitment to economic measures, e.g., the consultative government/business councils established in East Asian countries and, indeed, external obligations such as those established by agreements with the World Bank and the IMF.

2 For details, see I. Shihata, *The World Bank in a Changing World*, Vol. I, 99-108 (1991).

3 See A. Sen, "An Argument for the Primary of Political Rights - Freedom and Needs", *The New Republic* 32-38, January 11 - 17, 1994.

4 See J. Elster, *The Impact of Constitutions on Economic Development* (a paper submitted to the Annual World Bank Conference on Development Economics, April 1994).

In my official opinions in the Bank, I have taken the view that the Bank is not authorized in principle to interfere in the political relationship between a member country and its citizens. However, an extensive violation of individual political rights which takes pervasive proportions could impose itself as an issue in the Bank's decisions. This would be the case if the violation had significant direct economic effects or if it led to the breach of international obligations relevant to the Bank, such as those created by binding decisions of the UN Security Council. This position respects the Articles' injunctions that "only economic considerations" shall be taken into account by the Bank and its officers in their decisions. It realizes, however, that political events can have economic effects, and authorizes the taking of these effects into account when they are clearly established. It also recognizes the supremacy of the UN Charter over other international agreements. But it does not accord the Bank, as an international financial institution, the role of a political or ethical reformer of its members.

There are of course others who feel free to ignore the Articles' provisions or try in fact to amend them under the guise of interpretation, in spite of the strict procedures required for such amendment. Clearly, this cannot be the position of someone whose official duties include certifying to the Bank's Board, auditors and underwriters that the Bank is in full compliance with its Articles of Agreement. There is a limit to the extent to which institutional elasticity can be credibly advocated.

III - If the above position is correct, as I believe it is, and as the Bank's Board which has the official power of interpreting the Articles has concurred, the *third question* arises. Should the Articles be amended, according to the proper procedure, to give the Bank a clear political role, in view of the changes in the world order and the importance of human rights and democratization values both in themselves and for development purposes?

This is obviously a matter of policy where opinions may differ. What matters here would be the opinions of Bank member countries. I would only like to call a few pertinent points to attention.

First, an amendment of the Bank's Articles requires, after approval by the Board of Governors, the approval of member countries by a majority of three fifths (60%) of the members having at least 85 % of the total vote

(80% in the case of IDA). Such a high majority may not be attainable for this kind of amendment.

Second, there is a serious question on how political reform can best be achieved in a borrowing country. Specifically, if the Bank is to play a role in this area, should it do so through plain intervention in the domestic political affairs of such a country, or by assisting in raising the standards of living, achieving education for all, opening the economy and introducing the basic elements of good governance (in terms of rules and institutions), as the Bank does at present? With the typical suspicion of foreign interventions in a country's politics, couldn't the former approach be counter-productive?

Third, if a member country of the Bank is plagued by a despotic government, should the Bank add to the suffering of its people by denying them any assistance or should it instead target its assistance to help those people improve their standards of living and their education while working with the government on liberalizing its economy and improving the elements of governance that the Bank takes into account at present (i.e., the rule of law, accountability and transparency, in particular through support of legal, judicial and civil service reform)? Such reforms can clearly have a positive impact on the status of all human rights in the country and should facilitate political reform efforts pursued by other organizations with a mandate in this field.

It may also be recalled that if the political situation in a country is so repugnant to internationally acceptable behaviour or if the violation of political rights in such country is so pervasive, there will inevitably be *economic* repercussions to these political events which the Bank may have no choice but to take into account as relevant economic considerations. This raises another question: Is an amendment of the Articles, even if possible and desirable, really needed, if the objective is merely to deny lending to a country whose behaviour vis-à-vis its citizens is so repugnant and unacceptable as to isolate it in the international community? Would it not be more sensible, in other words, to keep the Bank's operations governed by the considerations of economy and efficiency which have served it well, while realizing that the present system has built-in safeguards against extreme cases?

Personally, I am of the view that drawing the Bank, which, I should repeat, is an international *financial* institution, directly into politically charged areas, with their typical vagaries and double standards, can only politicize its work and jeopardize its credibility, both in the financial markets from which it borrows and in the member countries to which it lends.

In the final analysis, the purposes of the world community may be better served if political reform is pursued by political organizations, and *political* human rights are monitored by the relevant UN organizations, regional agencies, courts, commissions and the NGOs established for this purpose. These institutions are not only in a better position to weigh political considerations; their representation and voting structure are not tied to financial contributions, as is the case in the Bank.

The recent creation of the office of the UN High Commissioner for Human Rights is a clear recognition of an appropriate allocation of roles in this field. Bilateral aid agencies, as instruments of the foreign policy of their respective countries, may also play a useful role in the promotion of human rights in recipient countries. Meanwhile, the World Bank can expand its attention to the fulfilment by its borrowing members of their right to development, to the reduction of poverty, to the more efficient management of resources and to universal education. In so doing, the Bank would continue to promote economic and social human rights and, indirectly, would lay the foundation for the promotion of political human rights as well. Socio-economic development may, in the final analysis, be the best guarantee for political development. Conversely, further politicization of the Bank's work, even for a moral purpose, could undermine its ability to play the roles for which it was created and for which no other institution is nearly so well qualified.

THE ROLE OF JURISTS IN THE DETERMINATION OF STATE RESPONSIBILITY FOR THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

TOKUNBO IGE¹

In spite of the predominant view particularly in legal circles, that for rights to be, they have to be justiciable and not mere aspirations, international discourse is gradually changing in favour of equal treatment for all human rights. This, in effect, means that human rights are not limited to civil and political rights, and that they include economic, social and cultural rights as set out in the Universal Declaration of Human Rights adopted by the United Nations in 1948. This principle was restated in clearer terms at the World Conference on Human Rights held in Vienna in 1993 with its Declaration insisting on equal treatment and emphasis for all human rights. The preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹ states that the human rights ideal can only be achieved "if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights". These rights should, therefore, not be seen as mere aspirations, but as fundamental and basic as all human rights are.

As with civil and political rights, States are under an obligation to ensure the full enjoyment of these rights by persons within their territories. These obligations derive from the ICESCR and have been further explained in the Limburg Principles and the general comments of the Committee on Economic, Social and Cultural Rights (the Committee) in its General

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1 Adopted in 1966 by the United Nations, as at December 1996, the ICESCR has been ratified by 135 States including Morocco.

Remarks No 1.² The Principles observe among other things that the full realisation of economic, social and cultural rights is to be attained progressively, while it is possible that some of these rights can be justiciable immediately, others can only be justiciable over a period of time. Unfortunately, as with many other international initiatives, the Limburg Principles are not very well known in legal circles, therefore the level of understanding of the concepts involved with violations of economic, social and cultural rights, let alone their causes, scope and rectification, remains limited.

There are many misconceptions which have been developing as a result of some of the myths referred to earlier. Misguided interpretations are being given to concepts such as "progressive realisation" clauses linked to the realisation of these rights, the definition of who the beneficiaries of these rights are and the nature of State obligations under the ICESCR. In an attempt to further overcome some of the obstacles to the implementation of the ICESCR, a meeting of experts was called in early 1997³ to expand upon the Limburg principles by giving legal substance to some of the issues relating to the violations of ESC rights.

A set of guidelines were adopted at the end of the meeting. The purpose of the guidelines are to:

- a) define the extent of violations of ESC rights, i.e. what would amount to a violation of the rights and how can they be determined;
- b) provide indicators for those concerned with understanding the nature of violations for easier identification of their occurrence. This should be particularly useful to monitors of violations of these rights.

2 The Limburg principles were adopted in 1986 following a meeting of experts organised by the ICJ to examine the legal obligations created by the ICESCR and how to give full effect to them. General Comments adopted by the Committee on ESCR can be obtained from the UN Centre for Human Rights (HRI/GEN/1 Rev. 1) 29 July 1994.

3 The Maastricht meeting was convened by the University of Limburg, the Urban Morgan Institute of Human Rights and the ICJ to commemorate the 10th anniversary of the adoption of the Limburg Principles in January 1997.

State Obligations under the ICESCR and the African Charter

The main obligation of States under the ICESCR is to implement its provisions at the national level. This has been interpreted to mean that States must take steps without any conditional or limited compliance allowing to abstain from their obligations. The legal content of this obligation has been described as one of conduct and of result. The concept of progressive realisation in Article 2 of the Covenant, while acknowledging the constraints which may be posed by limited available resources, also imposes other obligations which are of immediate effect such as the undertaking to guarantee non-discrimination in the enjoyment of the rights and the undertaking to take steps in Art 2 {1}.

The undertaking to take steps is in itself not qualified nor limited by other considerations. This means that all States rich or poor must demonstrate their will through positive action. Thus, while the full realisation of economic, social and cultural rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant has entered into force in the State concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations imposed by the Covenant.

The State obligation to report to the Committee is essentially a means of promoting the implementation of the Covenant⁴; the nature of the State reports envisaged in Art 17 (2) also confirms this. Therefore, the reporting process should be considered as an integral part of a continuing process and an opportunity for governments to reaffirm their commitment to respect the rights of their citizens both internationally and domestically. The Committee has been very conscious that the differences in economic and political systems of State parties constitute an obstacle to the establishment of an international standard applicable across the board. It, therefore, over the years, developed a method for assessing the period reports submitted by State parties, laying a lot of emphasis on dialogue.

Certain guidelines have been adopted regarding the form and content of State reports under articles 16 and 17 of the ICESCR. The guidelines are in

4 Article 16 (1) of the ICESCR.

two parts. The first part relates to the general provisions of the Covenant, i.e. the general legal framework within which human rights are protected and information concerning the ICESCR and the country's report to the Committee. The second part relates to the legal status and implementation of specific rights under the Covenant (Art 6-15); it also requires information regarding the role of international cooperation in the implementation of the ICESCR.

In its consideration of State reports, the Committee attaches great importance to the provisions of articles 16(1) and 17(2&3) which requires information such as:

- detailed cross-references on reports to other UN agencies such as the ILO or other human rights treaty bodies like the Human Rights Committee;
- relevant factors and difficulties encountered in legal and *de facto* implementation of the Convention;
- provisions of appropriate statistics to indicate progress made in achieving the observance of the rights.

The Committee has used two approaches in dealing with State Reports. One is to make general comments which focus on a particular right. Through the comments they attempt to clarify issues concerning the requirements associated with the specific provisions of the Covenant. The other approach is to insist on State adherence to some minimum obligations. States are required to demonstrate efforts they have undertaken as a priority to use available resources to satisfy the minimum obligations created by the Covenant. Furthermore, States are expected to protect the most vulnerable members of society in times of severe shortage of resources such as under structural adjustment policies by adopting relatively low cost targeted programmes.

Ten years after the coming into force of the African Charter, the Commission has not yet begun to give adequate attention to the promotion and protection of economic, social and cultural rights. The nature of State obligations under the Charter, though similar in general terms to those under the ICESCR, are yet to be clearly defined. The ambiguity of the provisions of the Charter and the other weaknesses of the implementing

mechanism as a whole do not help to make the situation any easier to deal with. However, the provision of Article 66 of the Charter creates a useful framework for dealing with problem. The African Commission can draw inspiration and guidance from what exists in the UN or other regional human rights systems. This in effect means that the minimum core content concept which operates at the UN level can be applied.⁵ The Commission, by virtue of articles 45 and 55 of the Charter, can initiate an indepth study into the nature of obligations created by the Charter and how to ensure adherence to them. The general guidelines developed by the African Commission to assist States in the preparation of their periodic reports could be revised on the basis of the outcome of such a study.

Jurists Role in the Protection and Promotion of Economic, Social and Cultural Rights in Africa

The term jurist here refers to all members of the legal profession - including judges. As promoters and defenders of the cause of justice, jurists have the primary responsibility of ensuring that economic, social and cultural rights are respected. This can be done by giving legal backing for the full enjoyment of economic, social and cultural rights through legal interpretation to obligations of relevant actors. Advancing a view shared by many experts working for the promotion and protection of this category of rights, Scott Leckie⁶ states that problems of perception and resolve, rather than any inevitable limitation of law or jurisprudence, have kept economic, social and cultural rights wallowing in the relative purgatory of global efforts to secure human rights. He further states that the legal, conceptual, economic and political obstacles commonly associated with the procedural aspects of enforcing these rights are often overstated and tend to be couched in terms more reflective of ideology or self-interest than the prevailing status of the law. What is most probably true for African jurists is that there is general apathy in many countries towards the sociopolitical climate - take for example the current crisis in Zimbabwe.

5 This was the basis upon which a communication alleging the violations of several articles of the African Charter by the Nigerian government was submitted to the African Commission by two NGOs (SERAC and CESCR).

6 See "Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights", *Human Rights Quarterly*, Vol. 20 N° 1 Feb. 1998.

Jurists themselves need to get a better understanding of the nature of economic, social and cultural rights, their normative content and the obligations created thereby. The provisions of the ICESCR and the African Charter on Human and Peoples' Rights need indepth study by African jurists. The efforts made by the UN Committee to give guidelines on the core or minimum content of these rights and the definition of progressive realisation can be useful in this regard.⁷ There is an urgent need for an education and mobilisation campaign among jurists themselves and in the community at large towards creating a better understanding of the nature of these rights.

Some experts have stated that the development and application of human rights standards in the sphere of economic, social and cultural rights requires close collaboration between State and non-State actors such as NGOs (particularly community-based ones). This is primarily because most of the information required in the determination of compliance or violation of economic, social and cultural rights usually requires a data analysis which is not easily accessible to NGOs. Monitoring and challenging the violations of these rights, particularly if one is to use the advocacy approach requires a multidisciplinary effort. The implementation of these rights cannot be achieved by jurists only.

The realisation of ESC rights requires monitoring the status of legislative and policy development designed to meet the socioeconomic needs of a country. Jurists, in particular, need to be able to identify and demonstrate cases where legislative or policy reform will not constitute progressive implementation of a State's obligation under the ICESCR. In this regard, prompt intervention in the parliament or with the appropriate authorities could be more productive than the filing of class action suits when the consequences of such laws and policies take effect.

At the national level, the mere fact that almost all African constitutions, which have included a bill of rights, distinguish civil and political rights from economic, social and cultural rights - by categorising the former as

7 See General Comment 3 of the UN Committee on Economic, Social and Cultural Rights on the nature of State parties obligations, in *Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies*, UN Document, HRI/GEN/1/Rev.1 July 1994.

'fundamental rights' and the latter under 'principles of State policy' - poses a challenge to jurists. Already, at the level of drafting, the legal nature of economic, social and cultural rights could be advocated to prevent the often deliberate subclassification of these rights. Where the provisions already exist in this form, there is a need to ameliorate the consequences by mobilising for change, the most appropriate route being through raising awareness of law and policy makers and /or getting judicial pronouncements to support reform.

Some other suggestions have been made regarding action which can be undertaken by jurists in collaboration with NGOs, particularly those engaged in development activities (who most of the time do not see their activities from a rights' perspective).⁸ Some of the ideas suggested in the articles and the Bangalore Plan of Action can form the basis for national follow-up activities after this seminar.

8 See various articles in, "Special Edition on Economic, Social and Cultural Rights", The Review of the International Commission of Jurists, N° 55, December 1995.

BUILDING ALLIANCES: MDBs, NGOs & IGOs

WORKING TOGETHER FOR DEVELOPMENT

AFRICAN DEVELOPMENT BANK EXPERIENCE

JEANNINE B. SCOTT*

Background and Policy Context

The African Development Bank's collaboration with NGOs effectively began in the late 1980s, and has gained increasing importance since that time. This collaboration was formalized with the Bank's adoption of its Policy Paper on the Promotion of Cooperation between the ADB and NGOs in Africa in 1990; followed in 1991, by the adoption of the document on "Procedures, Mechanisms and Guidelines" for facilitating this cooperation.

The Bank's move to promote increased cooperation with the NGO community – both African and international – can be seen as part of a global trend in response to the African economic crisis of the time. Coming out of the 1980s, the African continent was mired in the global recession. It suffered from an unfavourable economic performance attributable to inadequate agricultural incentives, natural and man-made calamities, environmental degradation, over-expansion of the public sector at the expense of the private sector, poor project selection and weak institutional mechanisms; as well as a decline in non-oil commodity prices. This situation was exacerbated by the continent's foreign debt situation, which at the time amounted to two-thirds of expected export earnings in many countries, and indeed exceeded this amount in others.

The immediate consequence of this unfavourable economic performance was reflected in an inadequacy of resources to support social services,

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particularly to the detriment of the poorest and most vulnerable groups such as women, children, rural "landless" farmers, etc. Overall, the unsustainability of development models which had been adopted in the post-independence era had become clear, as reflected by escalating poverty and a declining socio-economic environment on the continent. Furthermore, there was the response by African governments to adopt and implement economic reform/structural adjustment programmes, which called for cut-backs in government staffing and spending levels, including spending in social services, thus making the social costs of economic reform very high.

In view of this situation, the need to redefine goals and refocus development strategies with a view towards promoting sustainability became clear to the Bank, as well as to other multilateral and bilateral development organizations. Indeed, the NGO community had already stepped in, in both operational and advocacy capacities, and their role and effective presence grew exponentially in the 1980s. This trend represented a "shifting paradigm" in which the NGOs became recognized as ["non-State-led"] development actors and partners. NGOs were, therefore, called upon to fill the gaps that were being created by these austerity programmes and the State's diminishing developmental role. As a result, increased resources were also deployed to them to carry out this role. Further reflecting this shift, at the same time that the Bank was adopting its policy on cooperation with NGOs in Africa, the African Charter for Popular Participation in Development was also adopted in 1990 by the ECA-sponsored International Conference on Popular Participation in the Recovery and Development of Africa, in recognition of the new and increasing role of NGOs as "change agents" for sustainable development in Africa. Concomitantly, the Bank Group also introduced new orientations and initiatives in the areas of environment, women in development, and population in an attempt to enhance the development process through the activities it supported.

ADB/NGO Collaboration

Late 1980s to 1996

As stated earlier, the Bank's collaboration with the NGO community began in the late 1980s. Until about 1996/97, this cooperation can be cha-

racterized as having been a bit sporadic, with NGOs collaborating in relatively few Bank-financed projects and programmes, as well as in the formulation of certain policies and guidelines; and, it is also now recognized that this collaboration was often not structured in the most appropriate manner. Nonetheless, this experience served an impetus for the Bank to begin cooperating with NGOs, and it has no doubt provided the Bank with valuable lessons which are now being used as the ADB rethinks and reshapes its collaborative relations with the NGO community and civil society as partners in the development process – an element which shall be addressed later in this paper.

By way of the ADB's brief, initial experiences in collaborating with NGOs, the following provides an overview. In 1989, the ADB undertook a study on the operations of NGOs in Africa with the primary purpose of: a) formulating a suitable strategy and related policy for effective and efficient cooperation with NGOs; and b) compiling a directory of African NGOs. It was agreed, with the cooperating NGO partners in this initial exercise, that as a result of the study, the ADB could collaborate with NGOs by providing financial assistance – such as grants, loans, lines of credit – and Technical Assistance. It was also recommended that the ADB should establish a unit or other appropriate functional structure, as well as a consultative forum with NGOs, to ensure the effective implementation of Bank Group policy relating to NGOs.

From 1990-1991, in consultation with the NGO community, the Bank developed the earlier mentioned policy and guidelines documents for the promotion of cooperation with NGOs. In addition, during this period, the Bank's Cooperation Department established an NGO Coordinator's Position, in response to the need to nurture and strengthen this new partnership.

Other areas of ADB/NGO cooperation during the period of 1991-1995, include: a) finalization of the Bank's Forestry Guidelines (1991), for which the NGOs provided inputs through workshops and seminars at the Bank, and they commented extensively on working drafts of the document; b) two meetings in 1992, to discuss the implementation of Agenda 21, following the June 1992 Rio Earth Summit; c) NGO Symposia during the Bank's 1994 and 1995 Annual Meetings; and d) periodic consultations on policy issues such as the Information Disclosure Policy.

In terms of project cooperation during this period, there was effective NGO collaboration in about 10 or so Bank-financed projects, in four sub-regions of the continent, including East, West, Central and Southern Africa. NGOs have worked as partners in these projects, comprising primarily poverty alleviation, WID, agriculture and social services projects, as well as social funds. They have provided service delivery, training in areas such as literacy, vocational education, basic health and management, and micro-credit delivery, to project beneficiaries at the grassroots level.

In general, these projects have accrued positive results and brought about improved standards of living for project beneficiaries. However, almost all of the projects have also been fraught with implementation problems and delays at some stage, due to: NGOs' lack of experience and management capacity; difficulties on the part of project implementation units to adhere to Bank Group procurement and disbursement requirements, mostly due to unfamiliarity. Likewise, on the Bank's side, there has been poor choice of cooperating partners; poor design of credit components; lack of understanding of community level involvement in projects, particularly the role of women in these communities. The combination of these factors have left the sustainability of some of these projects and programmes in doubt.

From this limited experience, the Bank has learned that there is:

- a need for capacity building initiatives for African NGOs;
- a widened scope for Bank Group interventions in Regional Member Countries, including enhanced participation of civil society in the development process;
- the need for non-traditional credit schemes with appropriate credit delivery services and intermediaries; and
- a need for more rational and realistic mechanisms for ADB/NGO collaboration which better reflect the capacities and (community-based) characteristics of NGOs.

1996 – The Crossroad to Change

Following the ADB's restructuring exercise of 1995, the Bank resolved, *inter-alia*, to improve the overall quality of its operations. Part of this focus included to more rigorously promote the objective of achieving sustainable development for Bank-financed operations by mainstreaming the cross-cutting issues of: environment, poverty reduction, gender, population, local institutional development/capacity building, and participation/ stakeholder involvement (principally through NGOs), in its operations. Thus in mid-1996, the Bank created the Environment and Sustainable Development Unit (OESU), under the Vice President for Operations, to serve as the Bank's focal point for addressing and ensuring the effective integration of these cross-cutting themes in its operations. Accordingly the function of NGO coordination was shifted into the Bank's Operations Complex, from Cooperation, and the role of the Coordinator was expanded to address issues of local participation, stakeholder and beneficiary involvement in relevant ADB policies, projects and programmes.

Likewise in 1996, the ADB renewed its commitment to the NGO community to address the issue of enhancing its efforts to strengthen and enhance its cooperation with NGOs. This commitment was manifest in the Bank's hosting of a major three-day ADB/NGO Consultation Meeting in December 1996, at its headquarters in Abidjan. This Consultation was the climax of the Bank's commitment to engage proactively in forging a new agenda to work with the NGO community in Africa. The meetings were attended by representatives of 41 African and 6 Northern NGOs, and included plenary and working group sessions focussed on "Strengthening Partnerships for Economic and Social Development in Africa".

1997 to Present

These fruitful consultations resulted in a Joint ADB/NGO Declaration which provided the framework and basis for the ADB to pursue its programme to strengthen collaboration with the NGO community. The "Joint Declaration" provides a Plan of Action from which the Bank is now undertaking its new orientation/initiatives in this important area. Principal elements and objectives of the Joint Declaration include:

- i) establishment of an NGO Liaison Office to be attached to the Bank as a source for permanent ADB/NGO consultation. An Interim Committee

of 15 members from 6 regions in Africa (North, South, East, West, Central and Indian Ocean) was provided for initially to implement the Plan of Action with the Bank. The Abidjan-based umbrella organization CONGACI was selected to serve as the Secretariat to this Interim Committee;

ii) NGO participation in project implementation under the Bank's micro-finance initiative [AMINA];

iii) NGO consultation on and review of the revision and/or formulation of ADB policies and guidelines, particularly in areas such as participatory development, information disclosure, gender, environment, etc.;

iv) NGO collaboration on a joint study on the modalities of participatory development, and in training Bank staff on correlative approaches;

v) provision, by the Bank, of assistance for NGO capacity building;

vi) preparation of an NGO database, in collaboration with the NGO community;

vii) establishment of an ADB Public Information Center, with a view to improving communication and information dissemination between NGOs and other stakeholders; and

viii) exploration of possibly providing financial assistance to the Interim Committee to facilitate implementation of the Plan of Action.

Though neither the Bank nor the Interim Committee was able to launch into the Action Plan's recommendations immediately following the consultations, by August 1997, with the full-time appointment of an NGO Coordinator in the Bank, an effective work programme was established and the process of regular consultation was reinitiated. Most importantly here was the December 1997 First ADB-NGO Interim Committee Consultation Meeting, during which the parties took stock of accomplishments and problems encountered during the year with regard to launching the activities enumerated in the Action Plan. From this meeting, the work programme was revised on the basis of the most crucial next steps which should be undertaken jointly and separately, by the Bank and the NGO community, to strengthen ADB/NGO collaboration and establish a permanent consultative mechanism to facilitate this cooperation.

Some concrete actions which are underway or are to be undertaken within 1998, in this regard include:

- i) revising the Bank Group's policy and guidelines documents for cooperation with NGOs, including the development of a handbook for stakeholder analysis and participatory methods for use by Bank staff;
- ii) preparing correlative training programme for Bank staff on participatory development methodologies and working with NGOs;
- iii) assisting the Interim Committee in securing financial resources required to carry out its (autonomous) work programme for an initial 30-month period;
- iv) participating actively in and forging links with regional and international bodies engaged in promoting the participation of civil society organizations in the development process, such as the ECA, OAU, World Bank, Congress of NGOs in Consultation with the UN (CONGO), the International Working Group of Capacity Building (IWGCB), etc.;
- v) developing a database of African NGOs engaged primarily in development;
- vi) working with the Country Departments to effectively a) integrate issues related to all stakeholders and particularly to local communities, and b) ensure their involvement in the project cycle, Country Strategy Paper preparation and subsequent policy dialogue with governments; and
- vii) investigating modalities and possibilities for establishing a special fund to assist NGOs in the area of capacity building, as well as to promote the incorporation of participatory methods in Bank Group activities in Regional Member Countries.

Conclusions

There is a growing international consensus that an active and viable civil society is essential for the promotion of sustainable development, and NGOs are widely recognised as the principal actors or "change agents" for ensuring popular participation and involvement in local development processes. As such, NGOs in Africa are increasingly being called upon, as

partners in development, to fill certain gaps which are being created by constricting or decentralized State roles, especially in the delivery of social and related services. NGOs are viewed as being well suited for this role as their administrative costs are less; they are less bureaucratic and more operationally flexible; they adapt quickly to new development policies and strategies; and they have grassroots outreach which enables them to be more in tune with the needs and realities of the poor and vulnerable groups who are often excluded as actors in their communities and societies.

Increasingly, some of the highest and most ambitious expectations in sustainable development are attached to NGOs. These huge expectations are being placed upon them by governments and the international aid/development community. For example, where governments implement policies or reforms which may call for civil service retraction, NGOs are called upon to implement income-generating projects; where infrastructure development and maintenance budgets may be cut, NGOs are expected to promote integrated rural development initiatives which require support infrastructure on a scale that government can or should provide.

Nonetheless, NGOs constitute a relatively small sector of development in most African countries, in comparison to other actors such as the State and the formal private and informal business sectors. In spite of increased recognition and demand as valuable partners in development, requisite resource flows are not readily flowing for longer term and broader development objectives, as opposed to resources which are more easily accessed for emergency and punctual interventions. And, this situation is further complicated by the continuing challenge of NGO capacity and institutional development issues which are improperly matched to the demands being placed upon them. Thus while the Bank is making strides to strengthen its collaboration with the NGO community, there are a number of challenges which it faces, along with other international actors, the NGOs and African governments, if more progress and positive results are to be achieved.

The overall aim is to facilitate enhanced cooperation between African governments and civil society/NGOs. In this process governments should take appropriate steps to promote an environment which is conducive to the growth of NGOs. Likewise, there is a need to strengthen the organizational, management and programmatic capacities of NGOs to fulfil the demands that they are facing. In turn, this requires more decentralized

mechanisms, particularly with regard to providing and accessing necessary financial resources to carry out the role of development actors at the grass-roots level. Combined initiatives in these areas will go a long way towards empowering NGOs to set and implement agendas which promote locally-driven, equity enhancing sustainable development. The ADB, through its renewed efforts to strengthen partnerships for social and economic development in Africa, is working collaboratively towards achieving this new dispensation.

COMBINED STRATEGIES FOR THE ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS THE SOUTH AFRICAN MODEL

DANIE BRAND¹

Economic and social rights can only be called rights if they are legally enforceable. Although the practicalities of their implementation - the building of houses and the provision of food, medical services and education for instance - is in the hands of political, social and economic actors and not lawyers, economic and social rights can only be effective as rights if those who violate them can be forced or persuaded to cease their violations and if those with the power and resources to implement them can, if need be, be forced or persuaded to use that power and those resources to that end.

Effective enforcement therefore remains a central issue. In my presentation I will discuss appropriate legal enforcement mechanisms for these rights, looking in illustration at aspects of the new South African constitutional order.

First a few general remarks about the legal enforcement of economic and social rights.

The debate about the enforcement of economic and social rights in international legal circles is often characterised by absolute positions.

Some vigorously deny the justiciability of these rights, arguing that they are, for want of a better phrase, "programmatic rights", that require time, resources, specialist expertise and sustained social and economic pressure and commitment to be realised. They support the enforcement of these rights through "soft law" mechanisms such as reporting or monitoring systems.

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Others, pushing for equal status for economic and social rights, insist that they are no different from other human rights and are judicially enforceable in exactly the same way as other rights.

The truth, such as it is, lies somewhere in between. It is true that economic and social rights, with regard to some of their most important entitlements, are capable of judicial enforcement and should receive that level of protection. It is however also true that most economic and social rights, and especially the so-called subsistence rights, require, more than other rights, sustained, flexible and responsive enforcement strategies, quite different from the immediate, but reactionary, localised and intermittent relief that judicial action can provide.

Any effective system for the enforcement of economic and social rights would therefore have to combine these two strategies: "hard law" linked to "soft law".

An example of such a combined system for the enforcement of economic and social rights is found in the new South African Constitution.²

The South African Model

The Constitution of the Republic of South Africa contains a fully justiciable Bill of Rights.³ The rights enshrined in the Bill of Rights are protected and enforced through the ordinary courts, with a special Constitutional Court acting as court of highest instance in constitutional matters. A number of so-called "State institutions supporting constitutional democracy"⁴, such as the Public Protector, the South African Human Rights Commission and the Commission for Gender Equality are furthermore entrusted with the promotion and non-judicial implementation of the rights. In its basic structure, the Constitution, in other words, provides for a combination of "hard law" judicial protection and "soft law" implementation of protected rights.

2 The Constitution of the Republic of South Africa, Act 108 of 1996, adopted on 8 May 1996.

3 Chapter 2 of the Constitution.

4 See Chapter 9 of the Constitution.

The Rights

The Bill of Rights enshrines, amongst the traditional list of civil and political rights, an extensive list of economic and social rights. These are: the rights to access to housing, food, water, social security and health care services; the right to basic education; the rights of children to basic care, nutrition, shelter, health care services and social services; and the rights of detained persons to adequate accommodation, nutrition and medical treatment.

Broadly speaking the rights can be divided into two categories: those that impose direct obligations to certain tangible benefits on the State on the one side, and those that impose only obligations on the State to create the necessary enabling environment for individuals to obtain benefits themselves on the other.

The first category includes rights such as the right to basic education, the rights of children to basic nutrition, shelter, health care services and social services, the rights of detained persons to adequate nutrition, accommodation and medical treatment, the right not to be arbitrarily evicted and the right not to be refused emergency medical treatment^{*a}.

These rights, without any qualification, impose direct obligations on the State to provide the benefits they imply, regardless of resource and other constraints. Once, for example, it has in a specific case been decided what adequate medical treatment for a prisoner entails, then the State has to provide that treatment. These rights may only justifiably be limited in terms of section 36 of the constitution, the so-called «general limitations clause»^{*b}.

The second category includes the rights to access to housing, medical services, sufficient food and water, and social security^{*c}. The obligations imposed on the State by these rights are limited in a number of ways.

^{*a} Sections 29(1)(a), 28(1)(c), 35(2)(e), 26(3) and 27(3) respectively.

^{*b} An infringement, or limitation of anyone of the rights protected in the South African Bill of Rights, may be justified, if the requirements of Section 36 are met.

^{*c} Sections 26(1) and 27(1) respectively.

In the first place the rights are only rights to access to benefits: access to housing, access to food etc. In general terms this means that the State is only obliged to provide and maintain the environment within which individuals can obtain implied benefits for themselves. An example: the right of access to sufficient food does not give the individual a right to claim food from the government, but does oblige the government to respect and protect existing access to food (for example to respect and protect existing occupation of land that is a person's only source of food); does oblige the government to regulate food provision and distribution in such a way as to make basic foodstuffs available and affordable; and does oblige the government to devise and implement policies rationally aimed at ensuring an adequate and stable food supply and adequate access to that supply.

Secondly, the State is expressly only obliged to take reasonable legislative and other measures, within the limits of its available resources, to implement the rights in the second category progressively. Limitations of time and resources are in other words expressly recognised with regard to this second category of rights.

Enforcement

There is very little that is unique in the formulation of the economic and social rights in the South African Constitution.⁵ The system designed for their enforcement does however present exciting new possibilities. The rights are enforced through a two-pronged system, combining direct justiciability (*hard protection*), with a system of non-judicial monitoring of their implementation (*soft protection*).

The rationale for this combined system of enforcement is simply that neither judicial protection nor non-judicial monitoring on their own are comprehensive enough. Whilst the immediate and localised relief provided by judicial protection is necessary to respect and protect the rights, the long term pressure and focus of "soft law" monitoring and reporting are required for the promotion and ultimate fulfilment of the rights.

5 The formulation closely mirrors Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

"Hard law" Enforcement

All the economic and social rights in the South African Constitution are, on an equal footing with all the other rights in the Bill of Rights, directly judicially enforceable. A person can bring a legal claim based directly on one of these rights in court.

The judicial enforceability is direct but limited: the formulation of the rights, as discussed above, limits the obligations imposed by the rights in certain instances to only the provision of access to benefits, through progressive realisation, within the limits of available resources. In this way the institutional and principled limits of the judicial process in enforcing these rights is recognised.

A number of cases brought on the basis of the economic and social rights in the South African Constitution have already been decided in South African courts, dealing with health care rights⁶, housing rights⁷ and the right to education.⁸

In these cases the courts have grappled with difficult issues in the interpretation of the rights⁹, but have also been able to provide fast and effective relief where no other avenue was open.¹⁰

6 See for instance *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 (12) BCLR 1696 (CC), and *B and Others v Minister of Correctional Services and Others* 1997 (6) BCLR 789 (C).

7 *Despatch Municipality v Sunridge Estate and Development Corporation (Pty) Ltd* 1997 (8) BCLR 1023 (SE) and *Uitenhage Local Transitional Council v Zenza and Others* 1997 (8) BCLR 1115 (SE).

8 *Motala and Another v University of Natal* 1995 (3) BCLR 374 (D) and *In Re The School Education Bill of 1995 (Gauteng)* 1996 (4) BCLR 537 (CC).

9 See for instance the *Soobramoney*-case, *supra* note 6, where the Constitutional Court discussed terms related to health care rights and other economic and social rights such as "access", "progressive realisation" and "within the limits of available resources".

10 With regard to housing rights, courts have declared unconstitutional legislation permitting arbitrary demolition of structures providing shelter (*Despatch Municipality*-case, *supra* note 7); with regard to health care rights, courts have ordered prison authorities to provide particular expensive treatments to prisoners, regardless of resource constraints, based on prisoners' right to adequate medical treatment (*B v Minister of Correctional Services*, *supra* note 6).

"Soft law" Enforcement

Section 184 (3) of the South African Constitution, in terms similar to the monitoring system under auspices of the United Nations Committee on Economic, Social and Cultural Rights in international law, creates a mechanism for the monitoring of the implementation of economic and social rights on the national level in South Africa.

The section requires organs of state to submit annual reports to the South African Human Rights Commission, one of the "State institutions supporting constitutional democracy" referred to above, detailing measures taken to implement economic and social rights relevant to them. The Commission itself is required to report annually to Parliament on its own activities. In this way a system is created in terms of which the Human Rights Commission receives annual reports from organs of State about their implementation of economic and social rights, evaluates those reports, and in turn reports to Parliament (and vicariously to the public) about the economic and social rights "performance" of different organs of State.

The possible benefits of this system are many. The system of annual reporting and monitoring:

- ensures that economic and social rights remain on the agenda of policy makers and implementers (State officials, knowing that they have to prepare an annual report on their implementation of economic and social rights, that their reports will be evaluated, and that the result of this evaluation will be made public, will prioritise the rights as guiding principles in their policy formulation and implementation);
- creates the opportunity for constructive dialogue between organs of State and the Human Rights Commission about the content and nature of economic and social rights and appropriate strategies for their enforcement;
- opens up State policies and practices to public scrutiny and the requirements of accountability by requiring State officials to justify their policies and practices in economic and social rights terms (civil society is drawn into the process in two instances: NGOs are given the opportunity to participate in the initial evaluation of the reports and the final

report of the Human Rights Commission is made public when presented to Parliament);

- provides an opportunity for public pressure to be brought to bear on organs of State which perform badly in their implementation of the rights, as well as an opportunity for those that are more successful to publicise their success; and
- ensures that information is collected and analyzed regularly, enabling assessment of the status of the implementation of economic and social rights, charting of progress and adjustment of planning.

In sum the system ensures that economic and social rights remain on the national agenda, and that government can be held politically accountable for its policies and practices in terms of economic and social rights.

The first cycle of the monitoring system was put in motion in December 1997 and was completed in February 1998, when the Human Rights Commission published its report.

Conclusion

One should for obvious reasons be careful to regard the South African constitutional model for the enforcement of economic and social rights as an example to be followed elsewhere. I would nevertheless submit that it presents certain exciting possibilities.

Under the South African system a wider range of economic and social rights have been made justiciable than is the case in any other national legal system in the world. The answers that South African Courts will in future attempt to give to questions of interpretation and content surrounding these rights should make a substantial contribution to the developing jurisprudence surrounding economic and social rights.

The system of "hard law" judicial protection coupled with "soft law" monitoring combines for the first time enforcement strategies that have hitherto operated almost exclusively on the national and international levels respectively and provides a nuanced and multifaceted approach to the enforcement of economic and social rights.

PARTICIPATION IN DEVELOPMENT: ADDRESSING GENDER AND RURAL-URBAN INEQUALITY

ALICE HAMER*

Gender: The ADB Experience

The issue of gender draws into sharp focus other issues such as equality, and human rights in Africa and the rest of the world. Just as in the case of race, age, ethnic background, etc., - gender is cross-culturally one of the most pervasive bases of discrimination. In spite of a number of international conventions on human rights as well as the development of numerous international instruments to protect and promote the elimination of inequality on all legal, cultural and social fronts - the differences between men and women in the respect of their access to resources, their legal rights, as well as their treatment are generally skewed in favour of men in practically all societies.

A number of international conferences in the 1990s sponsored by the United Nations have brought attention to many issues related to gender inequity. These include the World Conference on Human Rights in 1993; the Conference on Population and Development in 1994; the World Summit for Social Development, 1995; and the Fourth UN World Conference on Women in 1995. These conferences served to broaden and deepen the discussion of gender-related issues to create a global consensus on gender and its role in development. Two of the issues that repeatedly emerged at these conferences and are related to our discussion today are that:

- human rights are indivisible and interdependent, whether economic, civil or political, and

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- that there are strong connections between human rights, democracy and development.

One of the most positive dimensions of these UN international conferences was that they helped to mobilise and consolidate international support in favour of gender equity. Another outcome of these international discussions was that the linkages between gender, equity and development have been brought into sharper focus. Empirical evidence that supports the connection between them is clear. For example, evidence is that on a micro level, the health and general welfare of households in which women are more educated and are economically empowered are usually better off than those that are not. On a more macro level, countries investing in human capital development for both men and women in a more equitable fashion expand their opportunities for development. In this sense gender equality is a pragmatic approach to development and makes sound development and business sense.

The African Development Bank has taken, and will continue to take action, on several fronts to contribute to gender equity on the continent by mean of economically and socially empowering women. The Bank has translated these objectives into, among other things, the financing of a number of different interventions with different approaches across the various sectors of African economies. This includes, for example, interventions that open up credit opportunities for women. In most African countries formal credit opportunities for women have been very limited. To address this issue the Bank has financed numerous projects in which credit has been extended to disadvantaged women in numerous countries. Credit components in agriculture projects, women and development projects, as well as those on the social dimensions of structural adjustment, have all been a frequent feature through which many women have been beneficiaries of Bank Group operations. Our experience to date on these credit schemes, as in many other parts of the work, has been that when women are loan-takers, they have the highest repayment rates.

Recent trends in Bank Group lending have intensified the expansion of credit opportunities for women. Within the past few years the Bank has financed a number of poverty stand alone projects that have substantial micro-credit components, where women have been the primary beneficiaries. One of the most substantive initiatives of the Bank has been its

approval of a pilot micro-credit scheme called the ADF Microfinance Initiative for Africa (AMINA) which will cover 10 countries in Africa. This project, which seeks to increase credit opportunities as well as to strengthen micro-finance institutions, is expected to benefit many women in the countries selected.

Another approach taken by the Bank in respect of the social and economic development of women has been the expansion of women's access to social services. Investments in education, for example, have enormous potential to improve women's socio-economic status. Bank Group lending in education has been and will continue to be undertaken within a policy framework that emphasis equity - equity among men and women - and equity among rural and urban communities.

A second area of social services in which women have benefited from Bank Group investment is that of health. Again, our policy framework in health sets parameters whereby our lending is targeted at poor communities, largely in rural areas. These health services are used most by women and children, whose economic and social wellbeing are intricately linked to their health status.

It is important to note that part of the Bank's vision of socio-economic development is that it be people-centred to ensure its sustainability. For that reason, the Bank is increasingly emphasising a participatory approach to ensure that both women and men, in equal partnership, take the responsibility to define their development agenda, set the vision and goals, and develop necessary strategies for its implementation. It is hoped that this participatory approach will engender a situation of gender equity and provide women with negotiation skills to improve their wellbeing and increase their decision-making powers.

The Bank also seeks to contribute to gender equity through including it as a standard part of its policy dialogue with its regional member countries. This policy dialogue is engaged during discussions with African countries of the Bank's Country Strategy Papers, which are policy papers that develop the framework for Bank Group investment for the country at hand. Each Country Strategy Paper has an analysis of gender, which focuses on its status in a particular country and its relationship to the wider macro-economic context.

In the future the Bank will continue to not only expand economic and social opportunities for women by means of increasing its use of financial resources for such purposes. The Bank will also look for new and innovative mechanisms and techniques which are vehicles to gender equity. In addition the Bank Group will strengthen its activities in regard to advocacy for gender and equity issues.

However, more than anything else, gender equality needs commitment at all levels of civil society.

PARTICIPATION IN DEVELOPMENT: ADDRESSING GENDER AND RURAL-URBAN INEQUALITY

JAMILLAH KAMULEGEYA¹

Contextual Background on Economic, Social and Cultural Rights

Economic, Social and Cultural Rights are derived from the articles of the Universal Declaration of Human Rights and are laid down in the United Nations International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) which entered into force in 1976.

The Economic, Social and Cultural rights are:

- the right to work;
- the right to food;
- the right to housing;
- the right to social security;
- the right to health care;
- the right to education;
- the right to form and join a trade union, to go on a strike, and;
- the right to participate in cultural life and scientific progress.

An indissoluble linkage exists between human rights and development and this is made clear in Article 1 of the United Nations Declaration on the Right to Development (December 1986):

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

In the new Constitution of Uganda the 9th National Objective and Directive Principle of State Policy highlights the right to development, which states "In order to facilitate rapid and equitable development, the State shall encourage private initiative and self-reliance".

The 10th Objective - the Role of the people in development states "The State shall take all necessary steps to involve the people in the formulating and implementation of development plans and programmes which affect them".

The 11th Objective - Role of State in development states:

- i) The State shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development.
- ii) The State shall stimulate agricultural, industrial, technological and scientific development by adopting appropriate policies and the enactment of enabling legislation.
- iii) In furtherance of social justice, the State may regulate the acquisition, ownership, use and disposition of land and other property, in accordance with the constitution.

Participation in Development

The central aim of international and national development agencies as well as NGOs and women's organisations directly involved in development is to address and reverse marginalisation processes and foster the emancipation and full participation of people in determining their own destinies and the shape of their society with reference to development. Marginalisation expresses itself in a lack of control over one's own mate-

rial environment and life and decreasing access to the decision-making processes that determine people's material and non-material living conditions. Marginalisation is the result of a political process and involves social, economic, cultural and political exclusion caused by unequal power relations. Power inequalities express themselves in unequal access to and control over resources, production, property, income, information, knowledge, and decision-making within households, communities, nations and the world as a whole.

Equal opportunities and emancipation will have to be pursued at all these different levels. This implies that unqualified notions of the "poor" or the "marginalised" have to be abandoned. Not only differences between rural and urban and ethnic background, age, ability and sexual preference and gender account for differences in power but also determine the nature and extent of the marginalisation process.

Emancipation is a process which requires organised and collective expression of shared interests and needs of the marginalised. This, however, should not be achieved at the expense of dominating others, but it does require a redistribution of power and control over material and immaterial resources. Redistribution and emancipation are more easy to strive for in a situation of growth and abundance. Under conditions of scarcity a conflict of interest will be apparent.

Emancipation implies a commitment to democratic social relations between people in order to enable participation by all, irrespective of the scale and form of social organisation. Gender, more than any other manifestations of difference, cuts across all social relations between people and at all organisational levels, including processes of reproduction which are considered to be "private" and are experienced between individual human beings and yet these "private" experiences tend to reproduce, signify and legitimise gender inequalities which manifest themselves as relations of power and domination in the so-called public and private sphere.

A commitment to emancipation and full participation for all in development has forced organisations such as Action for Development (ACFODE) to reconsider boundaries between the public and the private. ACFODE adheres to the individual right to self-determination without violating this right for other human beings.

Interventions aiming to redress women's subordination have been evident during the past two decades. Progress has been achieved: commitments by national governments and international institutions by adopting global declarations recognising the principle of equal rights for women and men. However Human Development Reports, especially for the South, still paint a rather gloomy picture of the extent and universality of the inequalities between women and men.

Whereas progress in some instances has been made in closing the gender gaps in health and education, as of today there is no society where women enjoy the same opportunities as men, nor do women enjoy the same protection and rights in the laws of many countries.

Examples that are an indication of a process of ongoing marginalisation of women are:

- of the 1.3 billion people living in poverty, 70% are women;
- in all regions of the world women's wages are considerably lower than men's, (on average women are paid 30 to 40% less than men for the same jobs);
- all regions record a higher unemployment rate among women than men;
- women's non-monetised, invisible labour contribution is estimated at US\$ 11 trillion a year;
- women constitute a very small proportion of borrowers from formal banking institutions;
- two-thirds of the 900 million illiterates in the South are women and girls;
- maternal mortality and morbidity account for half a million female deaths each year of which 99% are in the South;
- 25-50% of all women experience some form of domestic violence;
- about 80% of the world's 24 million refugees and internally displaced persons are women and children. (UNDP, 1995 *Human Development Report*, 1995).

The statistics for the African Region are even more grim.

For the social, economic, political and cultural empowerment of women it is necessary to secure equal well-being, equal access and opportunities, self-esteem, equal rights and control for women and men to enable them to participate fully in development.

Gender and Rural - Urban Inequality

Gender stands for the rules, traditions and social relationships in societies and cultures that together determine and sanction feminine and masculine behaviour and how power is allocated and used by women and men.

The value of the gender concept is that it examines the social processes and interventions in terms of their effects on women, on men and on relationships between women and men.

As gender refers to both women and men, it might be mistaken for a neutral concept, denying that, within the gender hierarchy, it is the men who are in control. A gender analysis therefore is not a question of looking at differences, but an analysis of how these differences have led to inequalities in power between women and men.

It is important to remember that gender is an analytical concept. Using gender analysis means that organisations assess the potential impact of their policies, programmes and interventions on women, men and female-male relationships. The gender approach promotes strategies that redress gender hierarchies and inequalities.

There is an increasing need for development interventions to be engendered. When, for example, the Uganda human development indices are computed separately, a wide disparity is discernible by gender and by rural-urban divide. In 1995 the human development index for females of 0.372, fell below the national average, whilst the index of 0.504 derived for males far exceeding the national average. This disparity arises from several inter-related factors but the most crucial is the unequal access to income and social services, all of which stems from the fact that women continue to be disadvantaged, both economically and socially, compared to men. The lack of access to productive assets and unequal opportunities in education are fundamental in this regard.

Akin to gender inequalities, rural-urban disparities/inequalities also remain quite clear, for example, in Uganda. Based on most current official estimates, rural indices for life expectancy, education and income are much lower than those for urban areas, which further confirms the extent to which income poverty remains binding in rural areas. (Uganda Human Development Report, UNDP, 1997).

In the quest for sustainable development the perverse effects of income deprivation underscores the critical need for policies and programmes to improve household incomes in rural areas where 90% of the population live.

Some 19% of females between the ages of 15 and 19 have no education whereas the figure for males is 7%. The gross primary education enrolment for boys is 55% and 35% for girls; the literacy rate for females is only 49%.

While the preponderance of the agricultural labour force is made up of women - 70% of the total, and the bulk of food production - 70-80% of the total is undertaken by women, only 7% of women own land.

A recent analysis of the Ministry of Health showed that gender disparities is virtually officialised. Long distances, cost sharing, morning delivery of services, lack of privacy and health messages targeting males put women to a disadvantage. The general health service is inaccessible especially to rural women.

The most recent statement of the government's development strategy is contained in its Poverty Eradication Action Plan (PEAP). The aim of PEAP is to set priorities for public policy and interventions, taking NGO and donor support into account. It integrates poverty issues in the national development strategy instead of presenting a separate strategy for the poor. PEAP is designed to ensure that growth is sustained and that its benefits are spread more widely. It reflects a conviction, which commands an increasing consensus in Uganda, that the best way out of poverty is for people to earn incomes from productive employment, including self-employment, and to actively participate in decision-making processes.

Because the government appreciates the marked disparity in incomes between rural and urban dwellers it introduced a soft loan scheme targeting mainly the rural poor. This scheme is popularly called "ENTANDIKWA".

Table 1

Human Development Indices by Gender
and by rural-urban classification - Uganda, 1995

Human Development Index Gender		Human Development Index by Rural-Urban divide	
Male	0,405	Urban	0,584
Female	0,372	Rural	0,358
Uganda	0,380	Uganda	0,380

Disparités entre les sexes considérés pour l'ensemble du système éducatif. Le taux d'alphabétisation des jeunes filles et des femmes a toujours été inférieur à celui des hommes.

Table 2

Illiterate Levels of Uganda (% of each Gender)

Population	Female	Male
Rural	42,6	27,9
Urban	21,05	11,8

Source : Derived from the Uganda Household Budget Survey, 1991

As about 90% of Ugandans and 92% of the poor live in rural areas, the emphasis of PEAP and ENTANDIKWA is heavily on rural development, including agricultural productivity, infrastructure, land policy, credit, small-scale enterprises, food security, environment and water. However policy formulation is seriously constrained by limited information. Agricultural data for example, are not systematically collected and neither is it gender desegregated.

Improved access and quality of education is a key area to PEAP. Universal primary education (UPE) has been singled out as a national priority. The enrolment jumped from 2.9 million pupils to 5.2 million and gender equity was a prerequisite but in most cases this was ignored.

Over the past twelve years the Government of Uganda has endeavoured to address some of the gender inequalities in the following ways:

- A democratisation process which saw the establishment of the Inspector General of Government which is an avenue for civil society to seek redress.
- The promulgation of a new Constitution which lay the foundation for the devolution of power to the people, through the creation of Local Councils as part of the decentralisation process as well as legalising affirmative action by allotting one-third of decision-making positions on the Local Councils for women. In addition electoral colleges elect women representatives to parliament from the existing districts.
- The creation of a Ministry of Gender and Community Development charged with the responsibility of tackling gender issues and advising government on ways of addressing gender inequality. Uganda now has a Gender Policy.
- Affirmative action was also extended to Institutions of higher learning so as to increase the number of females entering University. Since 1990, a 1.5 points bonus is given to any eligible female entrant in addition to individual examination scores. This has increased the girls enrolment to about 30%.
- Uganda currently has six female ministers, 52 female members of Parliament and the Vice President of the country is a woman.

The above illustrations show that some official steps have been taken to address the gender disparities, however the Constitution has to be supported by statutory laws as well as common practices, which are yet to change.

In spite of some positive achievements the gender gap as well as rural - urban disparities still exist. The government alone cannot tackle this immense problem and in this regard international and national development agencies as well as NGOs and women's organisations are working together with government to positively change the lives of the people.

There has been a tremendous growth in the NGO sector over the last ten years with over one thousand NGOs registered with the NGO Board and

participating in development. This has increased the visibility and power of civil society in terms of participation in development.

Action for Development's Participation in Development

Action for Development (ACFODE) is an indigenous women's organisation formed in 1985 to spearhead women's issues. Its Mission is "to build a just society by consolidating the gains and setting the pace for the attainment of women's empowerment and gender equity and equality".

ACFODE fully participates in development and in its response, to the serious problem of pervasive poverty; gender inequalities as well as the socio-economic rural-urban disparities it has programmes which address some of these issues.

As a membership organisation, ACFODE depends on the volunteer service of its members. Its main distinguishing factor from other women's NGOs is that it is a multi issues, integrated development organisation.

When ACFODE started its work its focus was purely on women and women are still the heart of its development work. However ACFODE has grown, has had a chance to identify its partners and revisit its method of delivery of services. The initial focus of working only with women - Women in Development - WID approach. This has changed to Gender and Development - GAD approach. Men can now become Associate members and participate in all ACFODE programmes. The identification of all ACFODE's partners enabled the organisation to see the need to reach women and men who would influence and impact on its work.

Today, ACFODE is a pacesetter in gender and development work in Uganda. In the continued determination to ensure leadership, in establishment of gender equality and effective implementation of the organisation's goals and objectives, a "Gender Framework" was developed for use in the planning, designing, implementing and monitoring gender responsive programmes. It was realised that ACFODE membership and partners cut across many levels; the urban and rural, the professional and non-professional, women, men, girls and boys. It is the dedication of members, staff and partners which makes it possible for ACFODE to meet its commitments in developing and implementing gender programmes. Commitment

alone, though necessary, is not sufficient for effective implementation of gender responsive programmes. Therefore, ACFODE needed to establish and adopt a common conceptual understanding and clearly defined gender perspective, at the individual, institutional and organisational levels.

ACFODE addresses gender inequalities from different angles, for example, through advocacy and lobby, sensitisation and awareness creation, interventions and networking.

ACFODE has six development programmes which directly address gender and rural-urban disparities.

Economic Empowerment

This programme seeks to empower women economically. Its emphasis is on training the rural woman in project identification, planning, management and marketing of their produce.

The objectives of this programme are:

- to enhance women's capacity to be self-reliant;
- to increase women's participation in the socio-economic development of their community and the nation.

Initially ACFODE used to restrict the programme to women, now both genders are involved.

The Pilot Revolving Fund illustrates this change in the table below.

The repayment rate as at February 1998 was 65% and an evaluation conducted at the end of 1997 indicated increased incomes for the groups and resultant improved family welfare.

Table 3**ACFODE Revolving Fund**

District	N° of males	N° of females	N° of groups
Lira	45	143	7
Pallisa	11	76	4
Kiboga	21	73	8
Rukungiri	10	165	8
Total	87	447	27

Source : ACFODE Revolving Fund Report, 1997

Education and Training

This programme works towards the removal of all the gender imbalances in the education system. It carries out a Family Life Education (FLE) in the six districts where ACFODE operates. It also builds the capacity of its members and staff through skills development.

The objectives of this programme are:

- to advocate for the elimination of discrimination of girls in the areas of education and health;
- to advocate for the elimination of negative cultural attitudes, practices against women;
- to promote gender awareness, analysis and planning among policy makers at different levels;
- to build the capacity of members and staff.

These objectives are accomplished through gender awareness seminars and workshops for students, youth who are out of school, parents, teachers as well as community leaders. An evaluation conducted in Luweero district with the out of school youth revealed that there was a great demand from the out of school youth (drop-outs) to return and further their education. Booklets on sex and sexuality are distributed to the schools.

Legal and Human Rights Education

Now that Uganda has a gender sensitive Constitution in place the challenge for ACFODE is to lobby for the repeal of some of the negative laws to be in consonance with the Constitution.

ACFODE organises rural based sensitisation and awareness creation seminars and workshops for both men and women.

The objectives of this programme are:

- to create awareness among women and men about their human rights;
- to advocate for law reform and encourage women to participate actively in politics;
- to address issues on land and property ownership by women; inheritance, child marriages, domestic violence, rape and defilement;
- to provide information about current and outmoded laws, customs and religious practices that need changing, all of which combine to keep women in bondage;
- help women gain access to and control over economic resources which will enable women not only to contribute but to benefit from development.

Gender issues discussed include inheritance, succession, women's rights, child custody, bride price, child marriages, divorce and maintenance and domestic violence as well as the rights of the child.

Information and Documentation

ACFODE believes that progress will be made through continuous conscientisation and to this end it handles the production of publications at regular intervals. Topical socioeconomic issues are shared with women and men and the publication are an avenue for people to air their views.

The objectives are:

- to build confidence in women and a good image of women;
- to change society's negative attitudes that hinder women's advancement;

- to publicise ACFODE's activities through the media;
- to promote responsible gender sensitive writing.

Civic Education

Citizens need to be made aware of the provisions in the new Constitution. Some provisions which are already being implemented are not understood by the people especially the women. ACFODE identified a number of priority issues that are being addressed:

- basic rights and duties of a citizen;
- fundamental human rights and freedoms;
- democracy and development;
- gender and political participation;
- local government and decentralisation;
- the electoral process.

The objectives of ACFODE's long term civic education programme are:

- to stimulate and encourage women to participate effectively as candidates and voters in all the political spheres;
- to explain laws governing Local Council elections;
- to sensitise the people about the importance of women's participation in leadership at community level.

Research

Under this programme emphasis is on action oriented research for strengthening the other programmes of ACFODE and to contribute information to other organisations working on gender.

The objectives are:

- to generate information on gender related issues in education, health, politics, legal and socio-economic situations;

- to publicise ACFODE research findings to partners;
- to assess the strategies and impact of ACFODE programmes;
- establish a data bank on gender related issues;
- to avail baseline data for the implementation of ACFODE's programmes, for example education and empowerment of women.

Research has been done on "School Girl Drop-Out in Uganda: Family and Attitudinal Constraints to Girl's Education".

A critical observation made was that dropout rate for girls was higher than that for boys and this was attributed to negative sociocultural factors, for example, early marriage and pregnancy.

ACFODE continues to strengthen its networking initiatives with other NGOs with similar goals and objectives in development. ACFODE is a member of Development Network of Indigenous Voluntary Associations (DENIVA), Uganda Women's Network (UWONET), and National Association of women's organisations in Uganda (NAWOU). ACFODE networks with Association of Uganda Women Lawyers (FIDA) and Uganda Debt Network (UDN) on gender and rural-urban inequalities.

Concluding Remarks

Civil society, NGOs, governments as well as international and national development agencies will have to continue to collectively participate in development addressing gender as well as rural-urban disparities.

Gender inequalities still exist in the social, economic, political and cultural sectors and the stark disparities between rural and urban are far from being abridged. Women continue to be marginalised.

Consultation is particularly important because the delivery of services involves a wide range of agents who have local and specific knowledge. In addition to being sensitised on issues of gender and development, civil society has to be consulted if any policy is to be based on a realistic understanding of the prevailing unfavourable situation, especially in the rural areas.

Participation in development denotes both the process of widening women and men's choices and levels of their achieved well-being. The most critical ones are to lead a long and healthy life, to be educated and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights and self respect.

In conclusion therefore, all programmes to fight against poverty through active participation in development have to be coordinated. It is of utmost importance that a good functional partnership be established among all the parties, especially the government at all levels, NGOs donors and civil society. This is necessary in order to avoid competition, the pervasive duplication of efforts and more crucially the dissipation of limited resources.

PARTICIPATION IN DEVELOPMENT: ADDRESSING GENDER AND RURAL / URBAN INEQUALITY

ASHA RAMGOBIN*

Increasing social empowerment of disadvantaged citizens and communities, as well as universal community economic and social development are goals of international convention on Economic, Social and Cultural Rights. Experience in South Africa and elsewhere in the world has revealed that one means of pursuing these goals is through direct community participation in development projects, programmes and processes. Experience has also shown, however, that there are many factors that can inhibit the potential benefits of participatory processes. If participatory mechanisms and processes are not carefully selected, planned and managed, they can become ineffective and inefficient, slow the delivery of needed resources to communities, and entail many other costs that could outweigh potential benefits.

Participatory Development in Context

The past several decades have witnessed an evolution in methods and processes of development planning worldwide. These changes have, to a large extent, paralleled the widening conceptualisation of development itself. Development in the narrower conceptualisation of "modernisation theory", is defined merely as economic growth. Over time, the concept of development has been broadened, at least by some, to more comprehensive social and human development. This was done by including concepts and objectives such as "redistribution with growth", the satisfaction of a variety of "basic human needs", the protection of civil and political human

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rights, the pursuit of economic, social and cultural rights, and the use of environmentally appropriate and sustainable technology. Similarly, development planning methods have evolved and now commonly include community participation as opposed to mere reliance on outside experts, technicians and planning professionals.

Community participation generally refers to the active involvement of the broad mass of the affected population, but especially the disadvantaged and marginalised, in the formulation, implementation and monitoring of development policies, programmes and projects (Martin 1985). It is pursued both as an important condition for economic and social development and empowerment, and as a goal of development in its own right. While there is wide, albeit not universal, agreement on the importance of participation toward development, it also evokes a wide variety of methodological practices and objectives. This is arguably appropriate given the diverse cultural, political and socioeconomic settings in which it is employed (Martin 1985). For example, in some instances participation is used as a research and appraisal method to determine the extent, causes or nature of poverty or other conditions targeted by development initiatives. More specifically, participation by local residents in poverty assessments is encouraged in order to ensure that initiatives respond to root causes rather than symptoms of poverty (Chambers 1992; Burkey 1993). In other instances, participation is encouraged in order to increase learning from the poor about traditional practices and indigenous technologies or to increase a sense of local ownership and follow-up (Jazairy 1992:351). In still other cases, participation in development planning is seen as a means for preventing or managing community conflict (Max-Neef 1989).

In the context of international literature and practice, participation is pursued as both a means and an end. As an end, it is the fulfilment of a basic human need to be part of the processes that shape one's life. It is sought to move away from dependency to self-reliance. As a means, participation can attain other political, social and economic objectives. It can provide sustainability and replication, reduce project costs, and take advantage of local practices and technologies that are suited for the environment or local human capacities (Jazairy 1992:342-3).

Potential Benefits of Community Participation in Development

It is clear that community participation in the development process is a necessary prerequisite to true empowerment and transformation of disadvantaged communities. In stating this, women, people in rural areas, people in periurban areas, the youth, the elderly and other marginalised groups are included. What follows is a discussion on the benefits of community participation.

- 1) It is only through real participation in the planning, implementation and monitoring of projects by the communities themselves that the *real needs of communities are met*. People who live in rural areas know what their needs are. Women, who are often the key beneficiaries of development programmes and aid, know what their needs are. Developers, service providers (including government and the private sector) sometimes make erroneous assumptions about the needs and priorities of communities.

For example, women will state that for them to work and to be able to participate effectively, they need crèches. Further, in a rural area in South Africa, the Department of Health renovated an existing clinic without first consulting the community about their specific needs. Consequently, in spite of these renovations, people (mainly women) from that area still prefer to travel approximately 60km for their medical requirements.

- 2) Through community participation, the inherent skills, capacities and resources of communities are identified and enhanced.

In certain periurban areas in South Africa, youth who participated actively in development process have developed the capacity and skills required to act as consultants to other developers in the future. Their inherent skill of assisting their fellow community members identify their developmental needs and priorities have been enhanced through participatory process.

- 3) Communities are able to monitor the progress of development in their areas. If they are included in participatory processes, they develop a deeper understanding of development cycles and are more equipped to monitor progress effectively.

- 4) Through participation, communities are able to assist developers, service providers and government agencies to preempt conflict and plan in advance.
- 5) Popular participation in development also increases sustainability of these initiatives. For example, in a rural community in South Africa, women and men were involved in rural road committees. Through participation, members of the community were empowered (through training and capacity building programmes) to build the roads themselves. They set up a legal entity that was employed to perform the work. They manage this project themselves and are able to increase employment in the area and tender for other such contracts.
- 6) Contrary to some views, appropriate participatory methodologies increase the efficiency of projects in that they are completed within a shorter time period, in a cost effective manner, and with minimum loss of time in managing conflict.
- 7) Even though representatives in government have been elected by popular vote, in some instances in free and fair elections, mandates must be revisited and elected officials must be continuously held accountable. Participatory development processes assist communities to hold elected officials accountable. This is most true at municipal /local/village level government.
- 8) Participatory development also encourages communities that are not already organised, to build organisations. In rural areas, it is often found that the limited resources available are also reflected in the limited level of organisational development that exists. When representative and effective organisations are built, to deal with the specific needs of women and communities in rural areas), longterm development and empowerment results.
- 9) Communities, more importantly, those marginalised in rural areas, women and those in periurban areas, begin to become self-reliant when they are involved in realising their own socioeconomic upliftment.
- 10) Finally, through effective models of participation, strong partnership may be created between government, civil society and development agencies. These partnerships serve to ensure that government is as

close to the community as possible; they result in a greater flow of information across the partnership and hence, it leads to the community acquiring greater knowledge and consequently greater power.

Hence, it is clear that participatory development facilitates a process whereby marginalised communities and poor communities are more able to take control of their lives. In most instances, women, people in rural areas and the periurban poor have been far removed from all decisions that effect their lives. They have been conditioned to believe that they are incapable of making these important decisions and of being able to impact in any positive way on their own development. Officials, on the other hand, believe that with their level of expertise and training, they are able to understand and "know" what these communities need.

As discussed above, however, most often the real needs of communities are best articulated by them. Once heard and understood, the community, and the marginalised groups within the community, develop a renewed sense of self-worth and confidence in its ability to contribute meaningfully to its own growth and development. People within the community are then fully able to begin to take control of their own lives.

Impediments to Participation in Development

While it is clear that participatory development has tangible benefits, such processes ought to be embarked upon with a great deal of caution, as there are concomitant impediments or costs that may result

- 1) One of the most common concerns is the potential for "capture" and "cooption". In situations where resources are scarce, communities are not homogenous and where development is a highly politicised concept, such potential is even greater.

Cooption often occurs when the service provider, government, the development agency or developer involves limited community groups to minimise opposition and to neutralise individuals who are potential opponents. Through a process of cooption, and not real participation, a legitimate community organisation with legitimate concerns could become neutralised by veneer of inclusion in a process.

The process could also be captured by party political interests as opposed to the interests of meeting the social, economic and cultural needs of communities.

Governments, development agencies and other service providers also run the risk of the process being captured by opportunists, those who wield power in the area, people with vested interests by criminals and so-called "warlords".

- 2) Additionally, participatory processes sometimes result in the disempowerment of the vulnerable sectors of the community i.e.. women, people in rural areas. This results when the leadership within communities are elitist, do not really represent the community and when they maintain control by the sheer use of force, threats or the withholding of information as opposed to obtaining proper mandates.
- 3) Participatory process sometimes creates conflict between elected officials, community-based representatives and traditional authorities. In urban and periurban areas, elected officials at local government level often see participation as a threat. They view mechanism or institution of participation such as development committees for example as a "fourth tier" of government. In rural areas, conflict often arises where tribal or traditional authorities still rule.
- 4) A key impediment to proper participatory development is the lack of adequate financial resources to support such programmes. In most instances, delivery takes places at local level and usually local level government is not endowed with sufficient resources. Hence, they are given an "unfunded mandate" to ensure participatory development. It is in this area that national budgets, provincial budgets and grants from development agencies need to be scrutinised to ensure that communities are able to participate fully in the development process.
- 5) A future impediment to community participation is inefficient and ineffectual government. Clearly, when government is unable to coordinate and integrate its efforts at planning, managing, implementing and evaluating development projects, communities are likewise unable to add value to the process by participating. On the other hand, integrated organised and efficient planning and management within government and development agencies enhance participatory processes. It prevents

the emergence of several disjointed institutions being established in one geographic area or community. It also prevents government from relating to communities in a haphazard manner.

- 6) Political violence, crime and corruption specifically directed at blocking development also act as impediments to participatory development.
- 7) Additionally, low literacy levels, lack of the organisational skills required to establish and manage organisations among communities, and the lack of basic resources such as venues in which to meet, are major impediments to participatory development.

Finally, it is clear that participatory processes that are designed without taking into account specific needs of rural areas, women and other marginalised sections of the population cannot achieve the stated objectives.

Initiatives in South Africa

Local Level

Certain local jurisdictions have developed policy whereby they have devised institutional mechanisms for communities to participate more effectively. In one such area the local authority took a decision to set aside a substantial sum of money for this purpose. The model used is one where a forum of community-based organisation across the various sectors is established. Community Policing Forums, business (small medium, micro and established), local civic organisations, development committees, rate-payers, women and youth are represented. The elected local authority participates, but does not have decision making power. This Local Authority proudly proclaims that it is committed to good governance and strengthening civil society. Hence it has invested money in civil society, knowing that this means that elected officials will be held accountable.

Provincial level

The Campus Law Clinic has been commissioned to research and draft policy and legislation for KwaZulu Natal to develop institutional mechanisms for community participation in the development process. The

method adopted is participatory in and of itself. A substantial portion of this paper has been informed by the research already conducted in that project.

National Level

At a national level, the policy formulation process toward linking growth and development and improving participatory process is almost complete. Government has also devised strategies for integrated planning, devising local economic, development objectives and is currently looking specifically at participation of women. The basic framework emerges from the national reconstruction and development plan seen together with the new financial policy. National government has also committed itself to setting aside resources to empower local government, as government closest to the people, to perform the mandate of planning and implementing development programmes.

Recommendations

General Principles

1. Mechanisms for community participation in development should embody, at least, the following five general purposes.
 - a) to assess local conditions and resources;
 - b) to build local human capacities;
 - c) to monitor progress and determine any need for modification in development projects and programmes;
 - d) to anticipate issues which may engender development related community conflict; and
 - e) to create community commitment to and the ownership and development of projects or programmes.
2. Steps need to be taken by government and the community to meet these objectives.

National Level

1. Existing laws at national, provincial and municipal level ought to be examined to assess their impact on community participation processes and for determining needed changes. For example, in South Africa, the laws on fundraising, which clearly operated to restrict the functioning of civil society, are currently being amended. Specific attention should be given to funding mechanisms, registration requirements and legal status, use and tenure rights over assets (especially natural resources), and accountability.
2. National government guidelines or laws should be developed regarding community participation processes for use by government contractors and subcontractors within the private sector and civil society.
3. National government ought to be lobbied to develop a comprehensive policy on community participation mechanisms.
4. Jurists ought to examine the need for national, provincial and/or municipal legislation or enabling regulations to create an enabling environment within which community participation is able to flourish.
5. National government, provincial government departments, even those not commonly or regularly involved in development projects, should systematically evaluate their specific role in the development process as well as in enhancing community participation in development.

Continentwide

1. Mechanisms and strategies for community participation ought to be shared in a structured and planned manner. To this end, institutional support ought to be developed through the establishment of regional networks.

Local Level

1. Jurists ought to assist community organisations in the formulation of appropriate legal entities and the drafting of constitutions which enshrine basic principles of democracy and human rights.
2. Where necessary, such assistance should go beyond legal drafting to include workshops on the concepts and principles.

Finally, in designing any mechanism, the specific context of rural, urban and periurban areas, the specific needs of marginalised groups such as women, youth, the elderly and children ought to be considered.

ADJUSTMENT PROGRAMMES AND THE REALISATION OF WOMEN'S ECONOMIC AND SOCIAL RIGHTS

JOANA FOSTER*

As a result of the split between civil and political rights on the one hand and economic social and cultural rights on the other hand, into two separate conventions, there has been a tendency to split the rights into first generation and second-generation rights. This split is an artificial one which only came about because the Western States in the UN managed to reverse a decision of the General Assembly to adopt a single convention on the basis that all categories of human rights were interdependent. The classification of economic, social and cultural as "second generation" is also misleading as the convention on civil and political rights and the convention on economic and social rights were drafted as a single convention at the same time and not drawn up later like the solidarity rights which are described as "third generation" rights.

The African Charter on Human and Peoples Rights does not make this distinction. Both areas of rights are included in the single Charter. In fact, in the African Charter, the enjoyment of economic social and cultural rights is regarded as a guarantee for the exercise of the civil and political rights. Unfortunately, the infrastructure needed to realize these rights is largely lacking in Africa, thus the potential effectiveness of the Charter in promoting and protecting human rights as indivisible, inalienable, interdependent and interrelated is lost. Further the Commission itself has not yet begun to give adequate attention to the promotion of economic, social and cultural rights.

One of the reasons why the split was made was the perceived role of the States in relation to the different rights. Civil rights incur passive

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obligations of abstention by the State, whereas economic social and cultural rights are programmatic and require active measures by the State. In this regard it is easier for a State simply not to interfere with the rights, positive action is not required of a State.

Economic and social rights have all the basic characteristics of human rights. They are universal, inherent (i.e. not granted or obtained) inalienable, indivisible, interdependent and interrelated. As Mr. Kotteh stated in his presentation, dignity is the essence of human rights and is only attainable through all the categories of civil and political rights, economic, social rights and solidarity rights.

For women, development and human rights are so closely linked that to separate the rights into civil, political as first generation and economic, social and cultural rights as second-generation rights is meaningless.

Development has to be placed squarely with the human rights framework if it is to be sustainable, equitable and democratic. A more holistic human rights approach to development will avoid the pitfalls of past development projects that had come to naught in many instances. For women it also avoids the welfare approach, which has proved unsustainable because of the lack of culture of human rights for women in Africa. Access by women to their human rights transforms their economic activities from the subsistence level to a sustainable level.

In working out strategies for development for all, the central role of women in the developmental process must not be overlooked and their treatment as full human beings must inform all the strategies that are undertaken.

Women have a much wider description of poverty that goes beyond narrow economic development as envisaged by the international finance institutions. It includes deprivation and livelihood. For them deprivation means lack of what is needed for wellbeing and a full and good life. It is not limited to low income and low consumption only but includes security, exploitation, abuse, violence, treatment as second class citizens, lack of access to social services, education and decision-making in the home and in the community. Deprivation is therefore physical, economic, social, political and psychological. Livelihood is regarded as a living that is adequate for the satisfaction of basic needs.

An economic and social framework grounded in the idea of well being/ill being forces us to use human rights to confront conditions such as malnutrition, starvation, hunger and premature death. Poverty is not caused by choice or by lack of effort. The agents who create and perpetuate the conditions are governments and international institutions such as the World Bank, ADB and transnational corporations who make investment, social, trade and macroeconomic policies without consultation or participation of the people the policies affect most. These are the same actors who, to a different degree, are associated with the lack of or the vision of civil and political rights.

Structural Adjustments

The status of women in Africa is shaped by a combination of patriarchy, tradition and customs, which have resulted, in the marginalization of women in the life of their countries, communities and their homes.

But the design of structural adjustment policies (SAP) and the assessment of their impact have taken little cognisance of gender disparities that exist across Africa. Women's contribution to national economics has been omitted in the assessment for the introduction of structural adjustment because a large proportion of their work is unpaid. This, together with the low status of women in Africa and the fact that they constitute a larger proportion of the poor meant that the mechanics of structural adjustment, with its attendant cuts in social services, devaluation, privatisation and deregulation and development of a free market, impacted negatively on women. Women being poorer, depended more on social security, subsidies on agricultural inputs, low or no cost for health services and where they were in the formal sector, they were often the first to be retrenched following the last in first out principle. Further, the proportion of women in the formal sector was very low, being approximately only 28% immediately before SAP and were in the lower rungs and predominantly in the social service sector which was the hardest hit by layoffs. In the situation where their husbands were retrenched, they had to assume an increased role in the support of the family. The future lives of women are affected in that because of the fall in household incomes, girls are more likely to be withdrawn from school than boys thereby leaving women in low paid jobs in the future. It is obvious that SAP

creates the environment for the inherent prejudice against women to be acted out.

The imposition of SAPs on African economies did not take into account the already diverse socioeconomic problems of African nations and neither did planners consider their effect on the various groups within their societies. In the end they have a disastrous effect on groups that are already disadvantaged. Among these groups women are the worst affected. Consequently, SAPs have eroded women's basic rights to economic, social cultural, civil, political, health and education rights and to social development.

Conclusion

In general, economic and social rights are very important to the lives of women especially poor and rural women in Africa. They regard enjoyment of economic social and cultural rights as a guarantee for the enjoyment of civil and political rights. Economic social and cultural rights are part and parcel of fundamental human rights. It is, therefore, important that the proscriptive, descriptive and prescriptive aspects of economic and social rights stipulated in international and regional covenants be strengthened and located firmly within the overall human rights framework.

Recommendations

1. Human rights instruments, constitutions etc. do not - unless they are explicitly related to women - refer to the ways women are affected by violations of these rights and how the interest of the female half of humankind should be taken into consideration. Therefore, there is a need for comprehensive non-discriminatory laws to be enacted in every country on the continent.
2. The OAU/ECA/ADB and organisations [taking part in this Regional Seminar] need to support and encourage countries to promote and promulgate comprehensive non-discriminatory legislation and to repeal negative laws and general law reform.

3. The World Bank needs to include such law reform within its Governance Programme.
4. Just as there is an environmental impact assessment when projects are proposed, there should be gender impact assessment by the IFIs on programmes. An analysis should be done through a gender lens and account should also be taken of factors connected with the realization of economic and social rights of women.
5. Lawyers, judges and all those in the legal profession and NGOs who use a rights based approach to their programmes, should start elaborating the rights that are in existence to make linkages between justiciable rights and the so called non-justiciable rights.
6. Support by the banks to NGOs for a comprehensive rights awareness programme to assist in making development sustainable.
7. Support to NGOs to disseminate information, share experience, exchange information on best practices, best elaboration etc. to access information from the banks before schemes and agreements on economic reform are instituted. The importance of this recommendation is illustrated by the Multilateral Agreement on Investment, which is now being negotiated. The form in which it is being discussed at the moment, would eliminate restrictions on international investments, prevent governments from instituting policies aimed at strengthening local economies and allow multinationals to sue governments establishing new worker protections, public safety regulations or measures protecting the environment.
8. The various instruments, which protect the economic, social and cultural rights of women, should be strengthened.
 - a) The ICESCR should be strengthened and the Covenant's institutional and supervisory framework greatly improved to include the creation of an optional protocol.
 - b) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has a protocol which is in the process of negotiations by State parties at the UN. There is a need to advocate form a strong and effective protocol.

- c) The rights under the African Charter on Human and Peoples' Rights must be strengthened by the adoption of the Additional Protocol on Women to the Charter.

CLOSING REMARKS

BY

M. FRANCIS M. SSEKANDI,

General Counsel,

Legal Services Department, African Development Bank

It is an honour and a great pleasure for me to address you again, in particular on the closing day of what has been a busy four-day of intensive and extensive deliberations on the theme of the Seminar, namely, the roles of law, legal institutions, jurists, lawyers and other actors in the process of economic, social and cultural development.

The theme of the Seminar, as I have indicated above, has centred on examination of the relevance and applicability of law and legal institutions to the development process in Africa, and the roles of lawyers, human rights advocacy groups, and other actors in that process. Nevertheless, vital and cross-cutting issues such as poverty reduction; commitment to and pursuit of good governance; accountability and transparency in the management of public affairs and resources; gender mainstreaming; popular participation in the formulation, design and implementation of development projects and programmes; collaboration with regional and local NGOs, other stakeholders and the wider civil society; and the fight against corruption, have featured prominently during Seminar deliberations. It is important to note that these are the same crosscutting issues which inform and underpin the Bank Group's operations and activities in African countries. The statement by Mr. Omar Kabbaj, President of the Bank Group to, and the various presentations made at this Seminar by staff members of the Bank underscore the relevance and importance of the Seminar to the work of the Bank Group.

The deliberations of the Seminar and the contents of the Abidjan Declarations will be carefully examined by the Bank with a view to providing assistance as appropriate.

Finally, permit me to express my appreciation and gratitude to my illustrious Brother, Mr. Adama Dieng, Secretary-General of the International Commission of Jurists, for his initiative in holding this Seminar and in extending invitation to the Bank to cosponsor the Seminar.

CLOSING SPEECH

OF

M^{ME} VERA DUARTE MARTINS

Member of the Executive Committee of the ICJ

For the past three days, government representatives, multilateral development agencies, inter-governmental organizations and non-governmental organizations have, at the invitation of the International Commission of Jurists, gathered around this table and intensively deliberated the issue of how to achieve not only greater recognition for economic, social and cultural rights, but also how to make them more realizable, more applicable and to ensure greater respect for them.

These are certainly ambitious goals, as ambitious as any goal aimed at improving the living conditions of the African people and at lifting the continent out of its poverty and despair.

It is true that jurists, of which there are many of us here today, believe strongly in the law, and as human rights activists, have an unwavering faith in the protection that respect for human rights can afford the world's citizens.

Along with Adama Dieng, and so many others, we belong to a group that actively defends the notion that it is necessary to protect the fundamental, universal asset known as the human being. And that it is necessary to do so behind the most extensive legal barrier possible - one made of mandatory provisions and injunctions, especially as concerns equality and freedom. All this in order to prevent the kinds of holocausts provoked by inequality that we have witnessed in the past, and that, unfortunately, we continue to witness today.

The conditions of wretchedness, poverty and exhaustion in which the majority of the African population lives, even now in the final year of this century, demand that particular attention be given immediately to economic, social and cultural rights.

As has already been written, this leads to one of the most difficult questions, which is how to establish a priority among human rights without calling into question their indivisibility.

But I think that the Preamble to the African Charter puts it quite well when it states that the enjoyment of rights and freedoms implies the performance of duties on the part of everyone, and that it is essential for the future to pay particular attention to the right to development. Yet, it goes on to state that civil and political rights cannot be dissociated from economic, social and cultural rights, either in their conception or in their universality, and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

The speakers at this seminar have also had to take into account the urgency and the gravity of the situations of poverty that exist in our continent, as well as the notion that the battle against poverty demands the contribution of all the social sciences, if what is desired is to restore and ensure the human dignity and integrity of our African people.

It is for this purpose that we have attempted at this seminar to create opportunities for interaction between the various approaches and disciplines involved.

This seminar has brought together the economic, social and legal disciplines in a rather innovative fashion in an attempt to define effective methods for implementing economic, social and cultural rights at the international, regional and national levels. It has also sought to define the role of governments, institutions, and jurists in the promotion and protection of these rights and to identify strategies for overcoming the obstacles to their enjoyment.

This seminar has brought together the economic, social and legal disciplines in a rather innovative fashion in an attempt to define effective methods for implementing economic, social and cultural rights at the international, regional and national levels. It has also sought to define the role of governments, institutions, and jurists in the promotion and protection of these rights and to identify strategies for overcoming the obstacles to their enjoyment.

The breadth of the conclusions arrived at by the working groups and the final report that was presented reflect the liveliness of the discussions that took place.

We are convinced that it is primarily incumbent upon the governments of the African countries to work for the development of our nations, and to make it possible for Africa, once and for all, to break out of the vicious cycle of wretchedness, poverty and marginalization in which it is trapped.

This can happen only in conditions of peace, democracy and sound government. Yet, that won't be possible without the contribution of all the social partners, particularly the multinational development banks, the inter-governmental organizations and the non-governmental organizations.

That is why I would like to thank first of all the Government of Côte d'Ivoire, which accepted the challenge of coming to sit with us and to reflect together on the issue of economic, social and cultural rights. I am likewise grateful to it for having provided us the ideal working conditions so that our reflections might be of the highest quality possible.

Furthermore, I would like to thank the representatives of the African Development Bank and the World Bank for the pertinent teachings and information they contributed to our deliberations, and for helping to bring us closer together through "multidisciplinary dialogue".

I would also like to thank all the representatives of the non-governmental organizations and their inter-governmental organizations active in the human rights arena -people with an unshakeable faith in the notion that the future of humanity and of our African peoples depend upon respect for human rights.

Lastly, I would like to thank the interpreters, the members of the secretariat, the administrative staff and all who have contributed to the success of this regional seminar on economic, social and cultural rights within the context of the universality and indivisibility of human rights, organized by the International Commission of Jurists in collaboration with the African Development Bank, in honour of the fiftieth anniversary of the Universal Declaration of Human Rights.

REGIONAL SEMINAR ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ORGANISED BY

**THE INTERNATIONAL COMMISSION OF JURISTS
(ICJ)**

IN COLLABORATION WITH

THE AFRICAN DEVELOPMENT BANK (ADB)

ABIDJAN, CÔTE D'IVOIRE

9-12 MARCH 1998

REPORT

From 9-12 March 1998, the International Commission of Jurists (ICJ) in collaboration with the African Development Bank (ADB), organised a regional seminar on the realisation of economic, social, and cultural rights in Africa. The seminar was designed as a follow-up to the 1995 Conference on Economic, Social and Cultural Rights and the Role of Lawyers organised by the International Commission of Jurists (ICJ), in Bangalore, India. The over 60 Participants to the seminar included representatives of governments, intergovernmental organisations, financial institutions and non-governmental organisations mainly from Africa.

The seminar was declared open by the Minister of State of the Republic of Côte d'Ivoire who represented the Prime Minister. His opening address was preceded by a welcome speech delivered by ICJ Secretary General, Mr Adama Dieng and that of the President of the ADB delivered on his behalf by Mr Francis Ssekandi ADB's General Counsel. Ambassador Saraka, representative of the Minister of Foreign Affairs Mr Amara Essy presided over the closing ceremony.

The objectives of the seminar were to identify more clearly, the obstacles to the realisation of economic, social and cultural rights, strategies to overcome them and determine the role of different actors, particularly jurists, in promoting these rights to ensure equitable and sustainable development in Africa. It was organised in the framework of the principles of universality and indivisibility of all human rights.

Several issues were discussed and debated during the seminar: they include;

- Development as a human right;
- Good governance, decision-making and participation;
- Relevance and applicability of governance issues in the ADB's loan-making process;
- The African Charter on Human and Peoples' Rights;
- The African Economic Treaty;
- The justiciability of economic, social and cultural rights;
- The experience of the ADB and the World Bank in the promotion and protection of economic, social and cultural rights;
- Corruption, impunity versus good governance and the enjoyment of economic, social and cultural rights;
- The role of jurists in the determination of State responsibility in the protection of economic, social and cultural rights;
- Structural Adjustment Programmes and the realisation of the rights of the poor and vulnerable groups.

Obstacles Identified

The seminar identified among others the following obstacles to the enjoyment of economic, social and cultural rights:

- Existing economic and human rights treaties in Africa as well as the purpose, objectives and role of multilateral development institutions

are not well understood by civil society and to a large extent by decision-makers.

- The use of figures and statistics as a basis for measuring economic development without taking into consideration the human rights dimension.
- The absence of a culture and respect for constitutionalism.
- The role of ethnicity in encouraging bad governance and failure of democratic processes.
- Lack of independence of the judiciary.
- Corruption and impunity of perpetrators. Both of these constitute an impediment to the Rule of Law and lead to increase in economic crimes.

Participants agreed that the conclusions and recommendations emanating from the meeting be referred to as the **Law of Abidjan** and that its contents be distributed widely.

THE LAW OF ABIDJAN

Affirmation of Principles

The participants recalled and reaffirmed the principles relative to the promotion and protection of economic, social and cultural rights. They affirmed among others that:

- human rights are indivisible, interdependent, inalienable and non-hierarchical;
- the right to development is a human right;
- it is imperative to have an independent and strong judiciary as a guarantee for the realisation of all human rights;
- it is the responsibility of all governments to assure development for its population;

- all human rights including economic, social and cultural rights must be protected by law;
- good governance contributes to the full enjoyment of human rights;
- corruption and impunity constitute obstacles to the enjoyment of human rights;
- There is a general lack of consciousness among African jurists of their social responsibility towards society. The conservative attitude of jurists has been identified as an obstacle to the legal protection of economic, social and cultural rights.

Conclusions

The following conclusions were made from the presentations and discussions:

1. The promotion and realisation of economic, social and cultural rights can be achieved if African countries give high priority to peace and stability, the restoration of democracy and good governance. Globalisation should not be carried out to the detriment of developing countries. It is important that at the continental level, the ADB plays a leading role by accepting to support projects aimed at the realisation of economic, social and cultural rights. Debt servicing should not be used to compromise the right to development.
2. Good Governance, decision-making and popular participation processes are interlinked and contribute towards the achievement of respect for human dignity and progress for society as a whole. In this regard, good governance should be targeted towards the reinforcement of democracy, peace and stability and transparency. It is clear that the full participation of civil society in the decision-making process can ensure the equitable distribution of national resources.
3. Good governance and development are indivisible and they contribute towards the realisation of economic, social and cultural rights. This objective cannot be achieved without strict adherence to respect for a constitutional order understood within the framework of a government

with limited powers observing the Rule of Law, the guarantee and protection of the independence of the judiciary, operating an army serving only in the interest of peace. It should be noted that human rights are not given by States, they rather have the duty to ensure the full enjoyment of these rights to ensure development.

4. All human rights interlinked, they should not be subjected to a hierarchical sub-classification which prejudices the effective realisation of economic, social and cultural rights. It is imperative for the legal profession to assist in giving legal backing to the justiciability of these rights when violated.
5. The African Charter on Human and Peoples' Rights should be effectively implemented in the area of economic, social and cultural rights. Its application can be complemented by the implementation of other OAU treaties such as the Bamako Convention on the Environment and the African Economic Treaty. Participants note the progress made towards the establishment of an African Court on Human and Peoples' Rights. Strong support is expressed for the early adoption and ratification of the draft protocol.
6. Corruption and impunity for perpetrators of this menace exist side by side with the quest for good governance and the enjoyment of economic, social and cultural rights. The contradiction in the nature, effect and coexistence of these concepts is detrimental to societal development. Corruption and impunity legitimise the misuse of national resources in the public and private sectors and reduce the chances of any meaningful development.
7. There is a tripartite relationship between legitimacy, development and corruption. A government which does not develop its country loses its legitimacy. A government is elected for its ability to lead its country towards attaining sustainable development.
8. The obligations of States under the international human rights instruments for the protection of economic, social and cultural rights includes that of conduct. This obligation requires that some of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) can be implemented immediately as they are not resource contingent.

9.
 - i) The obligation of any government is to ensure the development of its population;
 - ii) the execution of this obligation is a condition for the legitimacy of that government;
 - iii) effective measures have to be taken to fight against corruption if development is to be achieved.
10. International and regional development institutions such as the ADB and the World Bank should develop approaches and strategies aimed at strengthening their relationship with intergovernmental and non-governmental organisations with a view to ensuring real development. The organisation of this seminar by an NGO in collaboration with a Development Bank is a useful exercise for the strengthening of respect for human rights, good governance and the attainment of development.
11. The role of the legal profession as a watchdog is important in the monitoring of democratic processes and good governance. Jurists should pay close attention to the realisation of economic, social and cultural rights even if they are political actors. Only a dynamic interpretation of the law and existing human rights standards can guarantee the full enjoyment of these rights.

Recommendations

At the end of the deliberations, participants agreed upon the following recommendations:

1. To publish the proceedings of the seminar and launch a campaign to disseminate and implement its recommendations.
2. To begin a campaign against corruption and impunity of its perpetrators by developing normative strategies along the lines of the struggle against drug trafficking. In this regard it is recommended that the process towards the drafting of an African Convention against Corruption should be initiated with the assistance of the ICJ and a monitoring s

system be put in place in the form of an "observatoire". This mechanism should have representation from the OAU, governments, civil society, the legal profession, the African Commission, the ADB and other sub-regional economic communities.

3. African human rights and development NGOs, African intergovernmental organisations and multilateral development institutions should meet to develop closer strategies for collaboration. To this end follow-up seminars at sub-regional levels should be organised within the next six months bringing together all the actors at that level to facilitate the implementation of these and other recommendations that may be adopted at such fora. There are other obstacles to the enjoyment of economic, social and cultural rights which were not covered during this seminar, such issues could be deliberated upon during the sub-regional consultations.
4. NGOs should aim at publishing reports on the impact of activities and programmes of financial and monetary institutions as a means to ensuring their positive contribution towards the realisation of ESC rights.
5. African governments should tap on the existing wealth of knowledge and expertise within their national and regional borders. This could be done for example, by including experts from civil society, particularly NGOs in their official delegations when going for negotiations with financial and monetary institutions.
6. The ADB and all organisations monitoring the implementation of economic, social and cultural should institute a gender impact assessment in all their collaborative programmes and projects particularly with States.
7. States should take concrete steps towards reviewing their domestic laws to bring them in conformity with internationally accepted human rights standards. They should also enact legislation to end discrimination, both "de jure" and "de facto" in the application of human rights norms, in particular to protect the rights of women.
8. To ensure effective clarification of concepts, dissemination and protection of economic, social and cultural rights, NGOs, (human rights and development), professional associations of jurists,

intergovernmental organisations; in particular the OAU and its organs need to work closely together to develop an education campaign. In this regard, the Mauritius Plan of Action adopted by the African Commission should be the basis of this effort with the Commission launching an education for human rights campaign within the framework of the 50th anniversary of the Universal Declaration of Human Rights.

9. The report of this seminar should be brought to the attention of the OAU policy organs during their next meeting scheduled to be held in Ouagadougou, Burkina Faso, in June 1998.

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ANNEX

AHG/DEC. (XXXIV)

**AHG/DEC.126 (XXXIV) – ANNUAL ACTIVITIES OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

The Assembly,

1. **TAKES NOTE** with satisfaction of the Activity report of the African Commission on Human and Peoples' Rights, and **COMMENDS** it for the quality of work accomplished during the period under review;
2. **ENCOURAGES** the African Commission to pursue its activities for the protection and promotion of Human and Peoples' Rights;
3. **REQUESTS** the African Commission, for reasons of efficiency, to review its criteria for granting observer status and to suspend further granting of observer status until the adoption of a new criteria;
4. **REITERATES** its earlier decisions concerning the means for the functioning of the Commission and **REQUESTS** the Advisory Committee and the General Secretariat to endeavour to provide the African Commission with the adequate resources as early as possible to enable it discharge its tasks satisfactorily and independently;
5. **URGES** Member States to honour their obligations enshrined in the African Charter and to lend the African Commission the full support and the cooperation needed for the efficient accomplishment of its mission;
6. **REQUESTS** the OAU Secretary-General to convene, in cooperation with the African Commission on Human and Peoples' Rights, a high level meeting of experts to consider ways and means of removing obstacles to the enjoyment of economic, social and cultural rights, including fight against corruption and impunity and propose appropriate legislative and other measures;
7. **ALSO REQUESTS** the African Commission to finalize the Protocol to the African Charter, relating to Women's Rights as early as possible;
8. **REQUESTS** the African Commission to conduct the necessary consultations with the competent organs and OAU Member States to ensure a rapid implementation of the present decision and to report thereon to the 35th Ordinary Session of the Assembly of Heads of State and Government.

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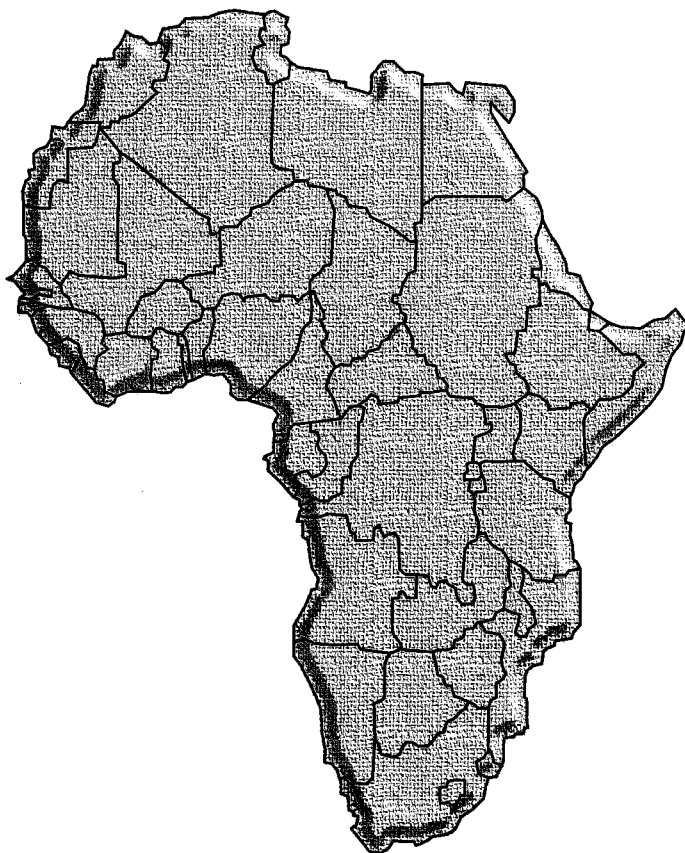
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The International Commission of Jurists (ICJ), headquartered in Geneva, is an international non-governmental organization in consultative status with the United Nations Economic and Social Council, UNESCO, the Council of Europe and the OAU. Founded in 1952, its task is to defend the Rule of Law throughout the world and to work towards the full observance of the provisions contained in the Universal Declaration of Human Rights. It is composed of up to 45 distinguished jurists from around the world and has national sections and affiliated organisations in all continents.



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