

**Growing without Poverty:
The role of good governance and pro-poor growth in the
realisation of socio-economic rights and human development
in Africa**

A dissertation submitted in partial fulfilment of the requirements for the degree of
Masters of Law (LLM Human Rights and Democratisation in Africa)
Centre for Human Rights, University of Pretoria

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1 November 2008

DECLARATION

I, **Ogbonna, Hilary Chima** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed.....

Date.....

Supervisor: Dr Lillian Chenwi

Signature

Date.....

Dedication

I dedicate this research to my colleagues in ActionAid and to all who are working for the eradication of poverty in Africa

Acknowledgements

I would like to express my profound gratitude to Dr. Lillian Chenwi, Senior Researcher, socio-economic rights project of the Community Law Centre in the University of the Western Cape for supervising this research and for her immeasurable patience and support. Jill Classen of the Community Law Centre Documentation Centre was behind the sourcing of most materials used in this research. I will always be grateful Jill. Thanks Trudi for providing ceaseless administrative support for this research and for my entire stay in Western Cape.

To Professor Frans Viljoen and the staff of the Centre for Human Rights, University of Pretoria, I thank you for giving me an opportunity of a life time.

I am indebted to the Abanis (Ikenna, Chukzy, Ibari, Simone and Charles) who gave me a home in Pretoria. I wouldn't have come this far without all of you. I am also grateful to my family for their great support and for holding forth while I was away for this study.

To Aquinaldo, my housemate in Pretoria, thanks for being a brother and for all the Portuguese music. To my colleagues – Rhoda, Japheth, Peace, Remember and Messenbet, it was wonderful sharing those moments of our lives together in the Cape. To the entire LLM class of 2008, I have learnt a lot of from you that will last me a life time. I am grateful.

To my friends in Nigeria and in South Africa (Grace, Udo, Georg-Hill, Dr. Amakom, Mr. Ekwekwuo, Marelie, Hussaini, Omokhudu, Godwin and Chike) and all who provided support in many ways for my study in Pretoria and Western Cape, I pray that God rewards you a million fold.

List of Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
APRM	African Peer Review Mechanism
CESCR	International Covenant on Economic, Social and Cultural Rights
CPI	Corruption Perception Index
ECOWAS	Economic Community of West African States
GEAR	Growth, Equity and Redistribution (GEAR)
GDP	Gross domestic product (GDP)
HIV	Human Immuo-deficiency syndrome
MDGs	Millennium Development Goals
NEEDS	National Economic Empowerment and Development Strategy (NEEDS)
NEPAD	New Partnership for Africa's Development
OAU	Organisation of African Unity (OAU)
OECD	
PPGI	Pro-Poor Growth Index (PPGI)
PPGR	Pro-Poor Growth Rate (PPGR)
PRSPs	Poverty Reduction Strategy Papers
RDP	Reconstruction and Development Programme (RDP)
SADC	Southern African Development Community (SADC)
SAP	Structural Adjustment Programmes
SERAC	<i>Social and Economic Rights Action Centre</i>
TAC	Treatment Action Campaign
TI	Transparency International
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Program
UN-OHCHR	United Nations Office of the High Commissioner for Human Rights
UN-OHRLLS	UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States

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Chapter one

Introduction

"Good governance is perhaps the single most important factor in eradicating poverty and promoting development."

Kofi Annan, Secretary General of the United Nations¹

1.1 Background

The idea of good governance has always occupied the discussions of public administrators, civil society and the development as well as aid communities. As a concept, good governance became popular as a response to the failures occasioned by the Structural Adjustment Programmes (SAP) of the 1980s. It however gained grounds with the disruption of constitutional orders in most African and developing countries in the late 1980s and early 1990s.

In its traditional sense, good governance is usually used with particular reference to political governance. In this guise, it is related to such concepts as democracy, participation, human rights, rule of law and transparency, amongst others. Good governance ensures that political authorities and institutions are accountable to the guarantee of all human rights because all rights are universal, interdependent, interrelated and indivisible as enunciated by the Vienna

¹ K Annan 'Annual report of the Secretary-General on the Work of the Organization' A/53/1 27 August 1998. Available at <http://www.un.org/Docs/SG/Report98/con98.htm> (accessed 31 October 2008)

Declaration.² It also means that traditionally marginalised rights like economic, social and cultural rights be given maximum attention in the design and implementation of economic policies.

The advent of globalisation and the integration of global economies have further extended the concept of good governance to the efficient management of resources to inspire economic growth and development. In this character, good governance is applied to fiscal discipline, economic management, effective markets, monetary control and regulatory institutions.

The challenges of economic recessions and massive poverty occasioned by the ill-fated SAP necessitated a paradigm shift in development discourse in the early 1990s. Economic development anchored on poverty reduction took the centre stage. However, just like SAP, the poverty reduction strategies that became a common feature of the later part of the last century also had neo-liberal colorations and were mostly envisaging growth that were not anchored on the realisation of sustainable human development and the access of individuals to basic needs and socio-economic rights.

As a result, debates about a human development approach to poverty reduction emerged. The human development approach can be defined as a process of “enlarging people’s choices and enhancing human capabilities and freedoms.”³ It is a departure from an econocentric approach to development and focusing mainly on satisfying human needs and the realisation of all rights – civil, political, economic, social and cultural.

Even though traditional concept of economic development still exists in many other forms, the key challenge however is to ensure that such aspect of development lead to human development. It is in this respect that the concept of pro-poor growth has emerged. This entails economic growth that targets the reduction of poverty.⁴ The challenge facing most developing countries today, especially those in sub-Saharan Africa, is how to use the instrumentality of good governance and pro-poor growth to advance human development through the realisation of socio-economic rights.

² Adopted by 171 countries participating in the World Conference on Human Rights, held in Vienna from 14 - 25 June 1993.

³ United Nations Development Program (UNDP) ‘Origins of the human development approach’. Available at <http://hdr.undp.org/en/humandev/origins/> (accessed 10 August 2008).

⁴ A Kraay ‘When is growth pro-poor? Cross-country evidence’ (2004).

Numerous African countries have adopted the poverty reduction strategies papers (PRSPs) as a means of economic and human development. In particular, Nigeria and South Africa, both of which have adopted the poverty reduction strategies, have been said to have recorded growth over the last five and seven years respectively.⁵ The key question then is what is the parameter for the measurement of these growths? Have the growths translated to the guarantee of socio-economic rights? What are the current levels of human development in these two countries as well as other states in Africa when viewed with the much acclaimed growth rates? Related to this is whether these countries have been able to fulfil their obligations in the realisation of socio-economic rights. These rights are expressly linked to the notion of human development as they provide human beings with basic goods necessary for human survival, which are the ends of human development. These include livelihoods, education, healthcare, food, housing as well as water.

1.2 Statement of the Problem

The 20th Century has witnessed the greatest increase in the amount of wealth and yet in the level of poverty. It estimated that in 2006, almost 986 million people lived below the international poverty line, earning less than \$1 per day.⁶

The ravaging effects of conflicts, diseases such as HIV/AIDS and malaria, corruption and the effects of globalization today have made our world one of unequal social, economic and political opportunities. Despite the growing amount of wealth in the world today, a greater number of people live in abject poverty and degrading conditions.

Nigeria, for instance, which was one of the richest 50 countries in the early 1970s, has retrogressed to become one of the 25 poorest countries at the threshold of the twenty first century. It is ironic that Nigeria is the sixth largest exporter of oil and at the same time hosts the third largest number of poor people after China and India. Statistics show that the incidence of poverty in Nigeria using the rate of one US dollar per day increased from 28.1 percent in 1980 to 46.3 percent in 1985 and declined to 42.7 percent in 1992 but increased again to 65.6 percent in 1996. The incidence increased to 69.2 percent in 1997.⁷ The 2006 report by the National Planning Commission indicates that poverty has decreased to 54.4 percent. Nigeria fares very

⁵ Budget Speech of President Umaru Yar'Adua to the Joint Session of the National Assembly, 18 October 2007. Available at <http://www.fmf.gov.ng> (accessed 20 August 2008); T Manuel, Minister of Finance '2008 Budget Speech'. 20 February 2008. Available at http://www.sarpn.org.za/documents/d0003000/SA_Budget_Speech_Feb2008.pdf (accessed 20 August 2008).

⁶ The World Bank *World Development Indicators 2007*. March 2007.

⁷ National Bureau of Statistics *2006 National Statistics* (2007).

poorly in all development indices. The average annual percentage growth of GDP in Nigeria from 1990 -2000 was 2.4. This is very poor when compared to Ghana (4.3) and Egypt (4.6). Nigeria is among the 20 countries in the world with the widest gap between the rich and the poor.

Achieving socio-economic rights in Nigeria is threatened by the fact that the Constitution does not recognise them as fundamental and justiciable but rather as aspiration under the Fundamental Objectives and Directive Principles of State Policy. This state of affairs exists despite the fact that Nigeria has ratified and domesticated the African Charter on Human and Peoples' Rights (African Charter),⁸ which provides for a cocktail of socio-economic rights.

In South Africa, despite economic growth evidenced in huge foreign direct investments and increased domestic outputs and exports, poverty and unemployment still remain endemic. South Africa is Africa's largest economy with an average annual growth rate of 4.5 percent.⁹ A noticeable increase when compared to 3.7% in 2004 and 2.8% in 2003.¹⁰ Its gross domestic product (GDP) is a quarter of the GDP of the entire continent of Africa.

Despite this growth, it is estimated that over 40% of its 48.7 million population are living below the poverty line.¹¹ South Africa is also battling an increasing unemployment rate. Unemployment increased from 11 181 000 by September 2001 to 13 306 000 in September 2007.¹²

South Africa unlike Nigeria made socio-economic rights justiciable under its 1996 Constitution. However, realising these rights for the benefit of the teeming poor seems to be a huge challenge for the government. Despite the favourable jurisprudence that exists for the enforcement of these rights, it is yet to be seen how the government policies and the economic growth being recorded would impact positively on the realisation of socio-economic rights such as the right to favourable conditions of work, access to qualitative healthcare and education.

⁸ Adopted by the Organisation of African Unity in Nairobi, Kenya on 27 June 1981 and entered into force on 21 October 1986.

⁹ OECD 'Economic assessment of South Africa 2008: Achieving accelerated and shared growth for South Africa' (2008). Available at http://www.oecd.org/document/63/0,3343,en_2649_34577_40981951_1_1_1_1,00.html (accessed 24 August 2008).

¹⁰ As above

¹¹ Statistics South Africa 'Mid Year Population Estimates' (2008). Available at <http://www.statssa.gov.za/publications/P0302/P03022008.pdf> (accessed 25 August 2008).

¹² Statistics South Africa 'Labour Force Survey' Statistical Release P0210 (September 2007). Available at <http://www.statssa.gov.za/publications/P0210/P0210September2007.pdf> (accessed 25 August 2008).

Both Nigeria and South Africa are battling various dimensions and levels of human development crises. The same problems face governments all over the continent of Africa as issues around human development continues to occupy the attention of scholars, activists, politicians, development workers and international organisations who have particular interests in Africa.

Even though there are different perspectives to development, this research argues that human development will lead to structural changes manifested in increased capacity of people to have control over material assets, intellectual resources and obtain physical necessities of life (food, clothing and shelter) and employment. This research further argues that such development will promote equality, participation in government, political and economic independence and peace. This is why it has been stated that the purpose of human development is to improve people's lives by expanding their choices, freedom and dignity.¹³

The adoption of the Millennium Declaration in 2000¹⁴ not only gave a boost to poverty eradication efforts but also placed debates on human development on the highest political agenda, leading to the adoption of the Millennium Development Goals. The goals include those dedicated to eradicating poverty, achieving universal primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development.

Despite the above global efforts and the growth in trade and income across the world, African countries still groan under poverty and gross inequality.¹⁵ Every development index paints Sub-Saharan Africa in a very bad light. Twenty-four African countries currently have the lowest human development in the world.¹⁶ This is reflective of the fact that Sub-Saharan Africa alone accounts for two-thirds (67%) of all people living with HIV and AIDS worldwide.¹⁷ It is estimated that 35% of global HIV infections and 38% of AIDS deaths in 2007 all took place in

¹³ UNDP 'Integrating human rights into sustainable human development: A UNDP policy document' (January 1998).

¹⁴ A/res/55/L.2 adopted at the 8th plenary meeting on 8 September 2000. Available at <http://www.un.org/millennium/declaration/ares552e.htm> (accessed 15 June 2008).

¹⁵ United Nations Economic Commission for Africa and the African Union: *Economic Report on Africa* (2008).

¹⁶ These according to the UNDP 2007/2008 Human Development Index (in order of lowest human development) are: Sierra Leone, Burkina Faso, Guinea-Bissau, Niger, Mali, Mozambique, Central African Republic, Chad, Democratic Republic of Congo, Ethiopia, Burundi, Côte d'Ivoire, Zambia, Malawi, Benin, Angola, Rwanda, Guinea, Tanzania, Nigeria, Eritrea, Senegal, Gambia and Uganda. Available at <http://hdr.undp.org/en/statistics/> (accessed 20 August 2008).

¹⁷ Joint United Nations Programme on HIV/AIDS (UNAIDS) 2008 *Global HIV/AIDS Report* http://data.unaids.org/pub/GlobalReport/2008/20080715_fs_global_en.pdf (accessed 2 August 2008).

the nine countries in Southern Africa.¹⁸ In addition, Africa alone contributes to more than half of world's maternal mortality rate.¹⁹

African countries also have the worst level of governance institutions and despite the high quality of regional instruments and frameworks, the continent is still bedevilled with very corrupt, inept and very weak governance frameworks. Most constitutions in Africa still have socio-economic rights as non-justiciable rights. This is despite the fact that such rights as education and health amongst other socio economic rights are contained in the African Charter. This and many other factors like conflicts and human insecurity, famine as well as diseases such as malaria and HIV/AIDS are responsible for the poor state of human development on the continent today.

1.3 Research goal

To build linkages between good governance, pro-poor growth and the realisation of socio-economic rights and human development in Africa.

1.4 Objectives of the study

- a. To analyse the various African human rights and governance instruments with a view to identifying their strengths and weaknesses.
- b. To analyse current growth rates by African countries with a view to ascertaining their impact on the state of the enjoyment of socio-economic rights and human development on the continent.
- c. To explore strategies through which African governments and regional bodies can make the realisation of socio-economic rights priorities in their economic and development planning.

1.5 Hypothesis

This research is founded upon three fundamental premises. The first is that good governance is central to human development. The second premise is that the realisation of socio-economic rights is a necessary condition for the attainment of human development. The third premise is

¹⁸ As above.

¹⁹ World Health Organisation 'World Health Report' (2006).

that pro-poor growth policies and frameworks are veritable tools through which human development can be delivered and socio-economic rights realised.

The research advances the view that human development should be the end of every growth policy regime and good governance the means to such end. Socio-economic rights on the other hand should serve as indicators to the formulation, implementation and the measurement of such policies.

1.6 Literature review

There have been a lot of writings on the various subjects and themes covered in this research. From the writings of development and human rights scholars to research and reports of international organisations - the question of the linkages between governance and human development has been pursued with much zeal and passion. In 1997, United Nations Development Program (UNDP) issued a policy paper on the role of good governance in advancing human development.²⁰ In that paper, it argued that human development is the collective enterprise of not only the state but other stakeholders including the private sector and civil society. It suggested frameworks through which a multi-sectoral approach to human development through good governance can be achieved. This includes a right based approach to programming. This policy paper argued from a general perspective as it did not address region specific problems associated with bad governance, which this research deals with.

Following the above policy paper, the UNDP issued another policy paper in 1998 outlining the role of human rights in promoting sustainable human development.²¹ This paper is of particular significance as it outlines a framework for integrating human rights into national policies. The paper sees human rights as the yardstick for measuring any development policy. Apart from helping in providing the useful human rights-development linkages, this paper also assisted in throwing more light into the debates around progressive realisation of socio-economic rights as well as outlining national and regional responsibilities. Just like the first policy paper, this was not region specific and did not look into the impact of economic policies on the attainment of human development, which forms an essential part of this research.

The concept of governance has received various interpretations and analysis. This research relied on various perspectives to good governance and advanced an African view. Ideas

²⁰ UNDP *Governance for sustainable human development A UNDP policy document* January 1997.

²¹ UNDP (n 14 above).

were drawn from Gita Welch and Zahra Nuru²² who have tried to develop a humanistic approach to governance in a 372 paged joint publication of the UNDP and the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States (UN-OHRLLS). 'Governance for the future' is an incisive research into the various aspects of governance and how they impact on the development of poor countries. It was useful in identifying the meaning and scope of good governance as well as providing insights into the linkages between good governance and human development.

Resnick and Birner have attempted to define pro-poor growth and also linked good governance to a pro-poor growth.²³ They analysed some country specific case studies which were useful in this research. However, this paper by Resnick and Birner is lacking in the critical linkage of the impact of pro-poor growth on socio-economic rights, which underscores the need for this research. This research also benefited from international and regional frameworks on human rights and governance.

1.7 Methodology

This research made use of mainly desk library research working with the publications outlined in the literatures above and other resources. Analyses were made of regional, sub-regional and national frameworks for governance, socio-economic rights, macroeconomic policies and poverty reduction strategies. Discussions and unstructured interviews were also conducted with relevant stakeholders.

1.8 Limitation

This research tried as much as possible to collate and analyse information on the various development approaches, problems and perspectives from across Africa. However, large concentration is on Nigeria and South Africa, while comparisons were made with other countries on the continent. It is also worthy to note that access to the policy documents and national strategies could be problematic in Africa. There was scarcity of some relevant documents which are not in the public domain. The greatest challenge however remained the restricted size and very limited time allocated to this research, which did not allow for extensive coverage and writing. This also limited the deployment of certain tools of research like interviews.

²² G Welch and Z Nuru *Governance for the Future: Democracy and Development in the Least Developed Countries* (2006) UN-OHRLLS and UNDP.

²³ D Resnick and R Birner 'Does good governance contribute to pro-poor growth?: A review of the evidence from cross-country studies' (2006).

1.9 Overview of proposed chapters

Chapter one introduces the subject matter and provides a background to the arguments advanced in the research. It also analyses relevant literature and methodologies deployed.

Chapter two deals with the concepts – governance and good governance. It also examines various regional frameworks for good governance in Africa.

Chapter three focuses on conceptual issues around socio-economic rights and human development as well as their thematic linkages. It analyses the obligations and duties of states in respect to these rights.

Chapter four examines the theories and concepts surrounding pro-poor growth such as its definitions, nature, elements and measurement. It also builds linkages between pro-poor growth, governance, socio-economic rights and human development

Chapter five deals with country specific issues, analysing in particular the poverty reduction strategies of Nigeria and South Africa. It makes use of policies, legislations, country economic data and development indicators from UNDP and the World Bank.

Chapter six proffers recommendations and solutions to the problems identified in the research. It also identifies strategies that African countries can adopt in order to advance good governance and human development.

Chapter 2

Governance and good governance: Concepts and application

2.1 Introduction

The concept of governance has gained a lot of prominence since the decolonisation process began with the formation of the United Nations (UN) in 1945. After its formation, the UN was faced with the challenges of decolonisation of territories and the granting of self 'governance' or independence to territories. Debates on governance resurfaced again in the early 1990s with political and economic dimensions especially with the failure of SAP.

The precise meaning of governance is still subject to many debates both in content, parameters and structure.²⁴ According to Weiss, these conflicts of perceptions are due to the ever changing nature of governance, the emergence of diverse global, regional and national frameworks on governance and the increasing interrelatedness of governance to other themes such as economic and social development.²⁵

This chapter explores the various approaches to defining governance and good governance and considers their conceptual and developmental contexts. It also examines the various governance frameworks applicable in Africa and the extent to which these have impacted on the governance institutions on the continent.

2.2 Governance: A journey through definitions

From a rights-based perspective, governance is seen as "the process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights."²⁶ This perspective is meant to integrate the norms, standards and principles of human rights into governance, as the Universal Declaration of Human Rights (UDHR)²⁷ in its preamble has proclaimed human rights "as a common standard of achievement for all peoples and all nations."

²⁴ See U Simonis (ed.) 'Defining good governance: The conceptual competition is on' (2004) *Wissenschaftszentrum Berlin für Sozialforschung* (WZB) 3-4.

²⁵ T Weiss 'Governance, good governance and global governance: Conceptual and actual challenges' (2000) 21 *Third World Quarterly* 795-796. .

²⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR) 'Human rights in development' (undated). Available at <http://www.unhchr.ch/development/governance-01.html> (accessed 7 September 2008).

²⁷ Adopted by General Assembly resolution 217 A (III) of 10 December 1948.

There have also been some thematic approaches to the definition of governance. Some of these are outlined below:

From an economic perspective, the World Bank sees governance as:

[C]oncerned with the management of the development process, involving both the public and private sectors. It encompasses the functioning and capability of the public sector, as well as the rules and institutions that create the framework for the conduct of both public and private business, including accountability for economic and finance performance, and regulatory frameworks relating to companies, corporations and partnerships.²⁸

Administratively, the UNDP opines that:

Governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interest, exercise their legal rights, meet their obligations and mediate their differences.²⁹

2.3 Good governance: Beyond a cliché

2.3.1. Understanding good governance

The concept of good governance has emerged as an important element of discourse in matters of development. Issues of good governance are increasingly taking the centre stage in development discourse at local and global levels. On the international scene, commitment to good governance is now seen as key to the achievement of development objectives.³⁰ Good governance has also formed a major part of the commitment of nations to foster sustainable growth and human development in their respective societies.

Good governance from a human rights perspective is linked to an enabling environment conducive for the enjoyment of human rights and promoting growth and human development.³¹

²⁸ World Bank *Managing development: The governance dimension* (1991) 1; See also OECD *Participatory Development and Good Governance* (1995) 14. Available at <http://www.oecd.org/dataoecd/27/13/31857685.pdf> (accessed 15 October 2008); Weiss (n 5 above) 797.

²⁹ UNDP *Reconceptualising Governance* (1997).

³⁰ Para 13 of the Millennium Declaration (n 14 above).

³¹ 'The role of good governance in the promotion of human rights' – Commission on Human Rights resolution 2000/64. Adopted in its 66th meeting of 26 April 2000.

It has also been described as governing “in a manner essentially free of abuse and corruption, and with due regard to the rule of law.”³² Adding his voice to this perspective, the former UN Secretary-General, Kofi Annan, defined good governance as ensuring respect for human rights and the rule of law, strengthening democracy, and promoting transparency and capacity in public administration.³³

From a political perspective, the UNDP sees good governance as:

[A]mong other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.³⁴

Good governance from an economic point of view “concerns norms of behaviour that help ensure that governments actually deliver to their citizens what they said they will deliver.”³⁵ The proponents of this approach, which are mostly international finance institutions (IFIs) like the World Bank and donor agencies, have linked good governance with effective management of resources.³⁶ Good governance in this sense is important in the transparent and disciplined management of resources, the design and implementation of economic policies for pro-poor growth and human development.

Good governance when applied in practice is capable of ameliorating current problems faced by humanity especially in developing countries of sub-Saharan Africa. Apart from its inclusiveness and creation of political stability, good governance will lead to the efficient management of resources for growth and human development

³² UN - OHCHR (n 26 above).

³³ Weiss (n 26 above) 797, 801-5.

³⁴ ‘Governance for Sustainable Human Development’ (n 20 above).

³⁵ Asian Development Bank *Governance: Sound Development Management* (1995).

³⁶ C Santiso ‘Good governance and aid effectiveness: The World Bank and conditionality’ (2001) 7 *The Georgetown Public Policy Review* 3-5.

2.3.2 Elements of good governance

Good governance thrives when certain conditions are put in place. These conditions range from institutional to legal mechanisms entrenching the following:

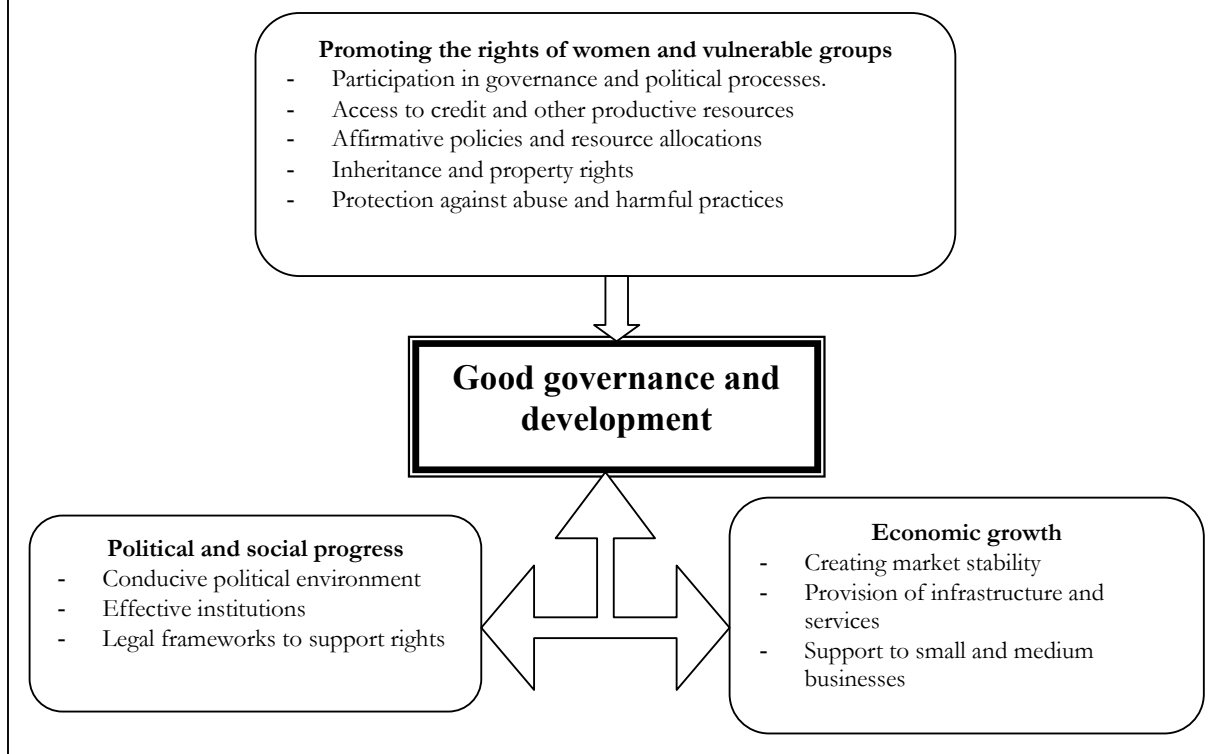
- a. Public participation in the process of governance;
- b. Accountability and transparency on the part of government and its institutions;
- c. Respect for the rule of law and human rights;
- d. Efficient and effective public sector management.

2.4 Good governance and the development discourse

From the above discussions on the meanings, concepts and elements of governance and good governance, it becomes imperative to explore the role good governance plays in the development process. This is underscored by the fact that since governance is all about managing institutions, systems, processes and complex relationships; it invariably could impact in a lot of ways on the ends of development.

Apart from impacting on social and political progress through the creation of environments to foster interests and social well being, governance also impacts on economic growth and human development. This is seen from the manner in which government exercises control and manages human and material resources as well as provide social services and infrastructure. Governance also plays a huge role in empowering women and other vulnerable populations to live meaningful lives as box 1 below shows.

Box 1: Good governance and the development discourse



2.5 Africa and the quest for good governance

2.5.1 African early approaches to good governance

As a result of a history of colonialism, independent African states embraced firmly the principles of sovereignty and non-interference. This, as expected, formed a major principle of the Charter of the Organisation of African Unity (OAU).³⁷ The implication was that there was no mechanism on the continent through which sound governance will be promoted, practiced and monitored leading to decades of mis-governance and underdevelopment.³⁸

³⁷ Adopted in Addis Ababa, Ethiopia on 25 May 1963 and entered into force on 13 September 1963. The OAU has been replaced with the African Union in 2002.

³⁸ Weiss (n 26 above) 798.

2.5.2 The African Union: A new dawn

The Constitutive Act of the African Union (the Constitutive Act)³⁹ left no doubt that it will seek to promote good governance when it made provisions to “promote democratic principles and institutions, popular participation and good governance.”⁴⁰ In a radical departure from its predecessor (the Charter of the OAU), the Constitutive Act made glowing provisions aimed at ensuring peace and security, promoting gender equality, respect for democratic principles, human rights, the rule of law and good governance, social justice as well as economic development.⁴¹

In furtherance of its mandate to promote good governance on the continent, the AU has established the Peace and Security Council (the PSC)⁴² with a mandate to “promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, as part of efforts for preventing conflicts.”⁴³ In addition, the AU has adopted the Declaration on the Principles Governing Democratic Elections in Africa,⁴⁴ which recognises in paragraph 2(2) that “regular elections constitute a key element of the democratization process and, therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development”.

2.5.3 The New Partnership for Africa’s Development (NEPAD) and African Peer Review Mechanism (APRM)

NEPAD is an attempt by African leaders to respond to the historical challenges of governance and development faced by the continent.⁴⁵ Amongst other objectives, NEPAD aims at the

³⁹ Adopted in Lome, Togo on 11 July 2000 and entered into force on 26 May 2001. Protocol amending the Act was adopted in Maputo, Mozambique on 11 January 2003. As of 31 October 2008, the Protocol has not entered into force. <http://www.africa-union.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Amendments%20to%20the%20Constitutive%20Act.pdf> (accessed 11 September 2008).

⁴⁰ Art 3(g).

⁴¹ See generally the Principles of the AU in art 4.

⁴² Created by the Protocol relating to the Establishment of the Peace and Security Council of the African Union adopted in Durban South Africa on 10 July 2002 in terms of art 5(2) of the Constitutive Act and entered into force on 26 December 2003. Heyns & Killander (eds) *Compendium of key human rights documents of the African Union* (3rd edition) (2007) 17.

⁴³ As above, art 3(f).

⁴⁴ Adopted in Durban, South Africa on 8 July 2002 at the 38th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) AHG/Declarations 1 - 2 (XXXVIII).

⁴⁵ Initiated by the heads of state of Algeria, Egypt, Nigeria, Senegal, and South Africa. Adopted by the OAU Assembly in Lusaka in July 2001 as the New Africa Initiative and was renamed the New Partnership for Africa’s Development at the first meeting of the implementation Committee in Abuja, Nigeria in October 2001. See Heyns and Killander (n 43

eradication of poverty, the attainment of sustainable growth and development as well as the integration of Africa into the global economy. In order to attain these primary objectives, the NEPAD framework document articulate a set of broad mandates which states should adopt to inform the development process. These include: good governance and human rights;⁴⁶ leadership; institutional reforms,⁴⁷ partnership; integration, competitiveness and development.

Re-emphasising the importance of good governance in the realisation of the aims and objectives of NEPAD, a Declaration on Democracy, Political, Economic and Corporate Governance was adopted in 2002.⁴⁸ This Declaration commits African countries to cooperate and work together in policy and actions relating to democracy, rule of law and good political governance; economic and corporate governance; socio-economic development; and an APRM.⁴⁹

In order to operationalise the above Declaration and the entire NEPAD vision, the APRM was adopted as a political tool to ensure country compliances to a set of standards that ensures good governance.⁵⁰ The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental integration.⁵¹

APRM involves levels of country self assessment and external assessments aimed at examining the performance of African countries on the following key areas contained in a set of objectives, standards, criteria and indicators for the APRM:⁵²

- a. Democracy and good political governance;
- b. Economic governance and management;
- c. Corporate governance;

above) 338. NEPAD is a merger of the Millennium Partnership for African Recovery Programme (MAP) and the OMEGA plan for Africa.

⁴⁶ As above, art 79.

⁴⁷ As above, art 83.

⁴⁸ Adopted by the NEPAD Implementation Committee in Rome, Italy in June 2002. Endorsed by the Assembly of Heads of State and Government of the AU, Durban, South Africa in July 2002.

⁴⁹ As above, art 7.

⁵⁰ 'African Peer Review Mechanism (APRM): Base Document.' Adopted by the NEPAD Implementation Committee in Rome, Italy in June 2002. The APRM is voluntary and has been acceded to by the following 25 African countries: Algeria, Angola, Cameroon, Republic of Congo, Egypt, Ethiopia, Gabon, Benin, Burkina Faso, Mali, Mauritius, Senegal, Tanzania, Lesotho, Sierra Leone, Malawi, Ghana, Kenya, Mozambique, Nigeria, Rwanda, South Africa, Sudan, Uganda and Zambia.

⁵¹ As above, art 3.

⁵² Adopted by the NEPAD Implementation Committee in Abuja, Nigeria in March 2003.

d. Socio-economic development.

Almost all strands of the APRM address the issues of democracy, good governance, accountability and constitutional democracy, which are all essential if development is to be attained.⁵³

2.5.4 The Charter on Democracy, Elections and Governance

The African Union later adopted a Charter on Democracy, Elections and Governance (the Charter on Democracy).⁵⁴ Amongst other objectives, the Charter on Democracy seeks to “nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance.”⁵⁵ The Charter on Democracy recognises the role of democracy and good governance in the development of the African continent. It makes provision in article 27 seeking improved public sector management for political, economic and social governance.⁵⁶ Further, provisions enhancing good governance for development are made in articles 32 and 33.

The adoption of the Charter on Democracy has been seen as a “culmination of a series of initiatives to create stability and prosperity in Africa”⁵⁷ and a remarkable effort to enthrone a culture of democracy and good governance in Africa.⁵⁸ The provisions of the Charter on Democracy, when applied to governance in Africa, will no doubt usher in political stability and human development.

⁵³ As above, art 2(2).

⁵⁴ Adopted by the 8th Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa, Ethiopia on 30 January 2007. The Charter requires 15 ratifications to enter into force in terms of art 48 but as at 30 October 2008 only Mauritania has ratified it.

⁵⁵ Art 2(6).

⁵⁶ The political and economic approaches to governance have been discussed in section 2.3 above.

⁵⁷ S Saungweme “A critical look at the Charter on Democracy, Elections and Governance in Africa” (2007) African Governance Monitoring and Advocacy Project (AFRIMAP) 7. Available at http://www.afrimap.org/english/images/paper/ACDEG_Saungweme.pdf (accessed 8 August 2008).

⁵⁸ J Ilo ‘Nigeria: The African Charter on Democracy, Elections and Governance: Case for Ratification’ *Vanguard* 11 July 2008.

2.5.5 Good governance frameworks of sub-regional economic communities

A. Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS)⁵⁹ in recognition of the centrality of governance in economic development and integration adopted a Revised Treaty,⁶⁰ which recognised the role of good governance in advancing economic and human development.⁶¹

The Revised Treaty was followed by the adoption of a Declaration of Political Principles⁶² (the Abuja Principles) where member countries pledged to uphold a set of 8 principles bothering on issues of peace and security, the guarantee of human rights, good governance, democratic process and political pluralism. Other instruments signed by ECOWAS countries and aimed at fostering good governance and political stability include:

- a. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security;⁶³
- b. Protocol on Democracy and Good Governance;⁶⁴
- c. The Protocol on the Fight Against Corruption.⁶⁵

ECOWAS, in addition, has other institutions like the Parliament of the Community⁶⁶ and Court of Justice of the Community⁶⁷ that promote good governance as well as political and economic integration within the sub-region.

⁵⁹ Established on 28 May 1975 by the signing of the Treaty of Lagos by 15 countries in West Africa. ECOWAS was formed for the promotion of harmonious economic development, cooperation and integration of states within the West African sub-region.

⁶⁰ Adopted in Cotonou, Republic of Benin on 24 July 1993.

⁶¹ Art 4.

⁶² Adopted at the 14th Session of the Authority of Heads of State and Government, Abuja, 6 July 1999. Available at http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/7DecPolPrin.pdf (accessed 10 September 2008).

⁶³ Adopted in Lome, Togo on 10 December 1999. Available at <http://www.comm.ecowas.int/sec/index.php?id=ap101299&lang=en> (accessed 10 September 2008).

⁶⁴ Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security adopted in Dakar, Senegal on 21 December 2001. Available at <http://www.sec.ecowas.int/sitecedeo/english/protocoles/Protocol%20on%20good-governance-and-democracy-rev-5EN.pdf> (accessed 10 September 2008).

⁶⁵ Adopted in Dakar, Senegal on 21 December 2001 during the 25th Session of the Authority of Heads of State and Government.

⁶⁶ Art 13 of the Revised Treaty.

B. The Southern African Development Community (SADC)

The Southern African Development Community (SADC) was formed on 17 August 1992 in Windhoek, Namibia when the Declaration and Treaty of SADC (SADC Treaty) was signed at the Summit of Heads of State and Government.⁶⁸ In the preamble of the SADC Treaty, member states recognised the need for good governance and “the need to involve the people of the region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law”. In addition, SADC has as part of its principles and objectives the realisation of human rights, democracy and rule of law.⁶⁹

As part of her commitment to entrench good governance, SADC has also adopted the following instruments and frameworks:

- a. Protocol Against Corruption;⁷⁰
- b. Protocol on Politics, Defence and Security Cooperation,⁷¹ and the Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation of SADC (SIPO),⁷² as the implementation framework of the Protocol.

2.5.6 Failures and limitations of African led frameworks

Despite the above litanies of frameworks on the African continent, African governments are far from being close to imbibing the ideals of good governance. Politically, there seem to be duplicity and multiplicity of frameworks, which does not show any form of coordination within the African Union.

Institutionally, there is no gain saying that the poor quality of institutions that are responsible for the implementation of these frameworks makes them mere ‘wish lists’.⁷³ The

⁶⁷ As above, art 15.

⁶⁸ Amended in Blantyre, Malawi in August 2001. Available at <http://www.sadc.int/shd/browse/page/120> (accessed 10 September 2008).

⁶⁹ Art 4(c) & Art 5(1)(b)(c).

⁷⁰ Adopted in Blantyre, Malawi on 14 August 2001 and entered into force on 6 July 2005, art 2(b). Available at <http://www.sadc.int/shd/browse/page/122> (accessed 10 September 2008). As at 31 July 2007, the Protocol has got 14 signatories and nine ratifications. See Transparency International http://www.transparency.org/global_priorities/international_conventions/conventions_instruments/sadc_protocol (accessed 11 September 2008).

⁷¹ Adopted in Blantyre, Malawi on 14 August 2001, art 2(g).

⁷² Available at <http://www.sadc.int/shd/browse/page/116> (accessed on 10 September 2008)

poor quality of most civil service across Africa as well as the skewed electoral processes that throw up the least qualified individuals into positions of governance are critical limiting factors to the successful implementation of these regional and sub-regional governance frameworks.⁷⁴

In addition, the sincerity and political will of African leaders in adopting most of these frameworks are highly questionable. For instance, present during the adoption of the ECOWAS Declaration of Political Principles were some of the worst dictators Africa ever knew – Gnassingbe Eyadema of Togo and General Ibrahim Babangida of Nigeria. At that time also, West African countries were governed by seven military regimes. The lack of participation of the citizens in the preparation of some of the above frameworks has also been the bane of their acceptance and implementation.

2.6 Conclusion

From the above discussion, it is evident that the problem with governance in Africa has never been the absence of frameworks. Rather, the political will to implement and enforce the frameworks have been a major problem. It is sad to note that this situation has impacted negatively on the level of human development on the continent and has relegated to barest background, the realisation of socio-economic rights. The next chapter introduces us to the linkage between socio-economic rights and human development.

⁷³ R Alence 'Political institutions and developmental governance in sub-Saharan Africa' (2004) 42, 2 *Journal of Modern African Studies* 168.

⁷⁴ See 'Our common Interest: Report of the Commission for Africa' (2005) 126-130.

Chapter 3

Socio-economic rights and human development

3.1 Introduction

The notion of human rights has always been identified with that of human dignity and the belief that human beings occupy a higher pedestal than other beings and hence have to be provided with an environment which enhances their abilities to achieve their potentials. The Charter of the United Nations in its preamble reaffirmed “faith in fundamental human rights, in the dignity and worth of the human person.” In addition, both the International Covenant on Civil and Political Rights (ICCPR)⁷⁵ and the International Covenant on Economic, Social and Cultural Rights (CESCR)⁷⁶ affirm that human rights “derive from the inherent dignity of the human person”. The African Charter also recognises human dignity as the basis for the enjoyment of human rights.⁷⁷

This research argues that economic, social and cultural rights by far have direct impact on human dignity. This assertion is founded on the nature of economic, social and cultural rights. These set of rights impact greatly on the welfare and well-being of human beings and principally involve access to basic resources and living standards without which people cannot live dignified lives and attain any form of development.

This chapter, therefore, explores the linkages between socio-economic rights and human development. Throughout this chapter and the entire research work, references will be made only to the body of rights designated as social and economic rights such as the rights to health, education, work, social security, food and housing, amongst others. As such, the terminology socio-economic rights will be deployed all through this work.

3.2 State obligations under CESCR

CESCR contains the greatest body of international legal provisions establishing socio-economic rights, notably; the rights to: work in just and favourable conditions,⁷⁸ social security and

⁷⁵Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976. Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁷⁶Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976. Available at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

⁷⁷ Art 5.

insurance,⁷⁹ an adequate standard of living (food, clothing, housing and improved living conditions),⁸⁰ the highest attainable standards of physical and mental health,⁸¹ and education.⁸² CESCR, in article 2, imposes an obligation on state parties,

*to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*⁸³

The UN Committee on Economic, Social and Cultural Rights (the Committee on ESCR) in its General Comment 3 on the nature of states parties' obligations (GC 3)⁸⁴ sought to interpret and lay guidelines on article 2(1). The Committee on ESCR stated that the steps envisaged by the phrase "to take steps" "must be taken within a reasonably short time after the Covenant's entry into force for the States concerned".⁸⁵ It also stated that the phrase – "by all appropriate means" does not imply the adoption of legislations alone but also extends to the administration, financial, educational and social measures as well as the provision of judicial remedies. The Committee on ESCR requires states to show in their reports that steps taken were indeed the most appropriate within the circumstances of the state.⁸⁶

In interpreting the phrase "with a view to achieving progressively the full realization of the rights recognized", the Committee on ESCR was of the view that though all socio-economic rights cannot be achieved at the once, state parties are still under obligation "to move as expeditiously and effectively as possible" towards realising the rights in the CESCR.⁸⁷ It went on to provide for a minimum core obligation, which should serve as a threshold for all state parties in the guarantee of socio-economic rights.⁸⁸ In this regard, the Committee on ESCR further stated that in order to satisfy the obligations under the phrase "to the maximum of its available

⁷⁸ Art 6 & 7.

⁷⁹ Art 9.

⁸⁰ Art 11.

⁸¹ Art 12.

⁸² Art 13.

⁸³ My emphasis.

⁸⁴ Adopted at the fifth session of the Committee in 1990. U.N. Doc. E/1991/23.

⁸⁵ Para 2.

⁸⁶ Para 4 – 5 & 7.

⁸⁷ Para 9.

⁸⁸ Para 10

resources”, a state 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”.

3.3 Understanding socio-economic rights in development and policy contexts

3.3.1 Socio-economic rights and development

Despite the established relationship between human rights and development enshrined in most instruments,⁸⁹ this linkage in development practice and planning is hardly ever made. This usually affects the realisation of socio-economic rights. The nature of socio-economic rights makes their violations central to the key development problems which African countries face today. They range from hunger and diseases to very low life expectancy - occasioned by high rate of maternal and infant mortality. Where, for instance, women do not have access to emergency obstetric care, child birth becomes risky and capable of claiming lives of both mother and new born. In the same vein, where girls and boys of school age do not have access to quality and free early education, this stunts their development and affects their ability to function as individuals in the society.

The above situation is worsened by the poor legal and institutional socio-economic rights frameworks prevalent on the African continent. This is seen from the fact that only the South African Constitution⁹⁰ provides extensively for the enforcement of socio-economic rights on the continent. In other countries, these rights are reserved as non-justiciable directive principles of state policy. These countries include Nigeria, Kenya, Ghana, Uganda and Namibia. Apart from not having socio-economic rights as justiciable rights in their constitutions, most countries in Africa do not have the financial and technical resources to implement these rights. This is evident in the 2007/2008 UNDP Human Development Report citing 22 African countries as currently having the worst human development statistics in the world.⁹¹

3.3.2 Socio-economic rights in a policy context

Realising socio-economic rights depends squarely on the making of policy choices on the one hand and the allocation of resources on the other.⁹² As distinguished from civil and political

⁸⁹ Declaration on Social Progress and Development, adopted by the General Assembly Res 2542(XXIV) of 11 December 1969, art 2; and the preamble to the Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986;

⁹⁰ Act 108 of 1996, secs 26-29

⁹¹ 2007/2008 Human Development Index (n 16 above)

rights, socio-economic rights relate to access to essential amenities such as education, healthcare, water, shelter, improving the quality of human lives and increasing the capabilities of citizens. These attributes subject the realisation of socio-economic to the whims and caprices of economic and political exigencies.

The above underscores the eminent role which macroeconomic policies and strategies play in the reduction of poverty through the provision of social amenities and human infrastructures. In this guise, such policies can be veritable tools through which socio-economic rights can receive practical fulfilment.⁹³ However, macroeconomic policies could also be stumbling blocs to the realisation of socio-economic rights when governments through such policies embark on far-reaching economic reforms targeted at liberalisation or privatisation of social services and thereby strengthening the markets.⁹⁴ Economic policy reforms could also take the form of either restricting or capping spending on the social sectors which are usually imposed by the IFIs - the World Bank and the International Monetary Fund.⁹⁵ The key challenge for developing countries especially those in sub-Saharan Africa are to devise home-grown, hybrid and right-centred economic policies that would promote market growth as well as human development.

3.4 Socio-economic rights, human needs and human development

3.4.1 Understanding human development

UNDP defined human development as “both the process of widening people’s choices and the level of their achieved well-being.”⁹⁶ The purpose of human development is therefore to enhance people’s range of choices, in the present and in the future, in all areas of their life - economic, social, political and cultural. In principle, these choices can be infinite and can change over time. The goal of any human development endeavour is to respond to these changes.

A human development regime sees the human person as the central subject of the

⁹² But it has also been argued and rightly too that other sets of human rights like the civil and political rights also require resource commitments in order to fulfil them. See C Mbazira ‘A path to realising economic, social and cultural rights in Africa? A critique of the New Partnership for Africa’s Development’ (2004) 4 *African Human Rights Law Journal* 39.

⁹³ S Dicklitch & R Howard-Hassmann ‘Public policy and economic rights in Ghana and Uganda’ in S Hertel & L Minkler (eds) *Economic rights: conceptual, measurements and policy issues* (2007) 325.

⁹⁴ F Iyayi ‘Privatisation and the poor in Nigeria’ (2005) ActionAid Nigeria policy research 10 (on file with author).

⁹⁵ ActionAid International USA & Global AIDS Alliance ‘Blocking Progress: How the fight against HIV/AIDS is being undermined by the World Bank and International Monetary Fund’ (2004).

⁹⁶ Human Development Report (1990) 9.

development process and every development policy should, therefore, make human beings the main participant and beneficiary of development. Towards this end, the assessment of any development policy is done on the basis of what marked impact it has had on the quality of lives of the people.⁹⁷

Human development thus aims to eliminate poverty, promote human dignity and rights, and provide equitable opportunities for all through good governance, thereby promoting the realisation of all human rights - economic, social, cultural, civil and political.⁹⁸

Even though human development seeks to achieve all rights, it nevertheless represents a paradigm shift in previous approaches to socio-economic rights. By focusing on human needs, human development is eliminating the potentials for inequality, exclusion and marginalisation that usually characterise traditional development practices at national and international levels.

3.4.2 Linking socio-economic rights to human development

Human development thrives on a 'basic needs' approach to development. This approach was developed in reaction to the economic failures of the early 1980s, which served as great retrogression to the realisation of socio-economic rights, especially with the structural adjustment regimes.⁹⁹ The basic need approach seeks to attack the very inequalities engendered by poverty and lack of access to essential needs. The International Labour Organization sees basic needs as including: access to adequately remunerated employment opportunities; essential services and amenities needed to live a healthy and happy life as well as an environment that satisfies freedoms and livelihoods.¹⁰⁰

The nature of the above components of human development and basic human needs makes them to fall within the domain of socio-economic rights. Since human needs such as food, shelter, clothing, education, health and work are all provided for in human rights instruments guaranteeing socio-economic rights, there is no doubt therefore that human needs, which form the components of human development, are also socio-economic rights. It is in this guise that it

⁹⁷ See the Khartoum Declaration 'Towards a human-focused approach to socio-economic development in Africa' (1988).

⁹⁸ UNDP 'Integrating human rights with sustainable human development' (1998) 6.

⁹⁹ D Olowu 'Human development challenges in Africa: A rights-based approach' (2004) 5 *San Diego International Law Journal* 201.

¹⁰⁰ International Labour Organisation 'Employment, Growth and Basic Needs: A One-World Problem' (1976) in Olowu as above, 201.

is safe to assert that human development seeks to provide an environment where socio-economic rights are not only prioritised but are ultimately achieved.

3.5 The Millennium Development Goals: A new paradigm for socio-economic rights?

All of the eight Millennium Development Goals (MDGs) enumerated in the Millennium Declaration deal with socio-economic rights directly and indirectly. Goal one deals with the broad issues of poverty and hunger, which is at the heart of the rights to adequate standard of living, work and social security. Goals two and three deal with the rights to education and equality for women and girls. Goals four, five, six and seven deal with issues concerning the right to health - child mortality, maternal mortality, combating HIV/AIDS and ensuring environmental sustainability, respectively. Goal eight just like art 2 of ICESCR urges for international cooperation between the rich and poor nations targeting amongst other things, “access to affordable essential drugs in developing countries”; “decent and productive work for youth” as well as debt relief.

The signing of the Millennium Declaration represented a paradigm shift in international commitments towards the realisation of socio-economic rights and the attainment of human development. When more than 180 leaders gathered in New York in that fall of 2000 to sign the Declaration, little did they know that they were committing themselves in another form to the achievement of socio-economic rights, which were not even justiciable in most of their national constitutions. The MDGs today, represent a set of high level policy and development commitments which no doubt have focused a lot of political attention on issues around human development and are capable of increasing actions in the funding and realisation of socio-economic rights. What remains to be seen, however, is the institutional capacity and political will to deliver on the goals. African countries are lagging behind in the realisation of these goals; and without sustainable aid, a lot of them would not meet the targets.¹⁰¹

3.6 Impact of African frameworks on human rights and human development

3.6.1 African Charter on Human and Peoples' Rights

¹⁰¹ African Union and the Economic Commission for Africa ‘Assessing Progress in Africa towards the Millennium Development Goals Report’ (2008). Available at <http://www.uneca.org/cfm/2008/docs/AssessingProgressinAfricaMDGs.pdf> (accessed 27 September 2008).

The African Charter remains the *primus* human rights instrument in Africa making provisions for socio-economic rights as well as civil and political rights. A cocktail of socio-economic rights provided for include: the rights to work,¹⁰² health¹⁰³ and education.¹⁰⁴ It is important to note that even though other socio-economic rights such as the rights to food and housing are not expressly mentioned in the African Charter, the African Commission on Human and Peoples' Rights (African Commission) has found these rights to be implicit in articles 4, 16 and 22, and articles 14, 16 and 18(1), respectively, of the African Charter.¹⁰⁵

An important highlight of the provisions of the African Charter is the right to self determination – particularly, the right of state parties “to pursue their economic and social development according to the policy they have freely chosen.”¹⁰⁶ It is argued that the right to pursue ‘economic and social development’ should be construed as implying the recognition of the right and obligations of state parties to pursue development policies that will give effect to the socio-economic rights enshrined in the African Charter.

3.6.2 Protocol to African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ¹⁰⁷(the African Women's Protocol) is one of the most progressive instruments on women's rights in the world today. It seeks to advance the socio-economic development of women,¹⁰⁸ protect women in conflicts and from violence¹⁰⁹ as well as secure their health and reproductive rights.¹¹⁰

The African Women's Protocol is a watershed in the realisation of women's socio-economic rights and empowerment on the continent. Articles 2(1)(c), 4(2)(i) and 19(a) all

¹⁰² Art 15.

¹⁰³ Art 16.

¹⁰⁴ Art 17.

¹⁰⁵ *Social and Economic Rights Action Centre (SERAC) and another v Nigeria* (2001) AHRLR 60 (2001) ACHPR, para 63-65 (SERAC case).

¹⁰⁶ Art 20(1).

¹⁰⁷ Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005.

¹⁰⁸ As above, arts 13, 15 - 21

¹⁰⁹ As above, arts 4, 10 – 11.

¹¹⁰ As above, art 14.

provide for the introduction of gender perspectives into development planning and budgeting. More specifically, article 19 (e) and (f) both urge that indicators of human development, specifically relating to women, be taken into account in the elaboration of development policies and programmes; and that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

3.6.3 African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (African Children's Charter)¹¹¹ made provisions protecting children from economic¹¹² and sexual¹¹³ exploitation; harmful socio-cultural practices¹¹⁴ and abuse.¹¹⁵ It also provides for the right to education¹¹⁶ and the right to enjoy the "best attainable state of physical, mental and spiritual health."¹¹⁷

3.6.4 The African Commission on Human and Peoples' Rights

The African Commission has been instrumental in the development of human rights jurisprudence on the continent as well as placing issues of human development on political, academic and civic discussions. Apart from adopting resolutions on various themes in human development such as economic, social and cultural right, HIV and AIDS, status of women and refugees, it has handed down groundbreaking decisions bothering on human development. In the *SERAC case*¹¹⁸ the African Commission in interpreting various provisions of the African Charter adopted the doctrine of implied rights and held that the respondent state violated the rights to food and housing.¹¹⁹

3.7 Governance, socio-economic rights and human development

¹¹¹ Adopted in Addis Ababa, Ethiopia on 11 July 1990 and entered into force on 29 November 1999.

¹¹² As above, art 15.

¹¹³ As above, art 27.

¹¹⁴ As above, art 21.

¹¹⁵ As above, art 16.

¹¹⁶ As above, art 11.

¹¹⁷ As above, art 14.

¹¹⁸ n 107 above.

¹¹⁹ See also *Purobit and others v the Gambia* (2003) AHRLR 96 para 57.

Good governance plays important roles in realising socio-economic rights and delivering human development. Prudent and effective management of human and material resources is essential in creating an enabling environment for political and economic stability leading to human development.¹²⁰ In addition, the realisation of socio-economic rights and the attainment of human development are squarely dependent on attributes of good governance such as policies, legislations, effective institutions and their capacity to deliver on pro-poor economic growth and social services.¹²¹

There is no doubt that in order to meet its obligations under article 2(1) of CESCRR as well as adhere to GC 3, a state will have to adopt effective governance frameworks ranging from appropriate legislations to policies. Governance is thus essential to facilitate the implementation of socio-economic rights.¹²²

For states in Africa, the absence of good governance reflected in corruption, nepotism, failed political processes and institutional weaknesses have led to years of poor economic performance and abysmal human development indices. According to the 2008 Transparency International (TI) Corruption Perception Index (CPI), of the 10 most corrupt countries in the world, six are in Africa. These are: Democratic Republic of Congo, Equatorial Guinea, Chad, Sudan, Guinea and Somalia.¹²³ On the other hand, of the 180 countries surveyed, the following seven West African countries were placed in the bottom 20: Cote d'Ivoire, Gambia, Guinea Bissau, Sierra Leone, Equatorial Guinea, Chad, and Guinea.¹²⁴

A good look at these affected African countries reveals that they are also struggling with the realisation of socio-economic rights and human development. A good number of them are amongst the 22 countries designated as having the worst forms of human development in the world. This shows a clear linkage between corruption and the realisation of socio-economic

¹²⁰ See 'Yokohama Declaration: Towards a vibrant Africa.' Adopted at the 4th Tokyo International Conference on African Development (TICAD IV), Yokohama, Japan 28 - 30 May 2008. para 5. Available at <http://www.ticad.net/ticadiv/yokohamadeclaration.shtml> (accessed 29 October 2008).

¹²¹ M Kimenyi 'Economic rights, human development effort and institutions' in Hertel & Minkler (n 94 above) 198 – 199.

¹²² IE Koch 'Good governance and the implementation of economic, social and cultural rights' in H Sano & G Alfredsson *Human right and good governance: Building bridges* (2002) 86 – 87.

¹²³ Transparency International '2008 Corruption Perceptions Index'. Available at http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table (accessed 20 October 2008) 'TI: Corruption still rides high in Africa' *Africa News* 24 September 2008. available at http://www.africanews.com/site/list_message/15857#m15857 (accessed 10 October 2008).

¹²⁴ *Africa News*, as above.

rights. For instance, Cape Verde, the only West African country to have graduated to the UN status of middle-income country, ranked 47 on the ranking. Also, Botswana, which enjoys one of the continent's most stable governance system and impressive human development index, is the least corrupt country in Africa with a CPI score of 5.8 out of 10 and placed 36th on the global CPI table.

3.8 Conclusion

Providing choices and empowering people are at the heart of both socio-economic rights and human development. The ends of a human development paradigm will never be attained without the realisation of socio-economic rights. However, it is important to note that human development also relies on other components of development like economic growth in order to be realised.

Economic circumstances, policy choices and strategies play a lot of roles in the realisation of socio-economic rights and the attendant human development. Changes in public finance, fiscal policies and other macroeconomic policy choices could impact greatly on the enjoyment of socio-economic rights. It is therefore important to interrogate the role of economic policies and growth in the realisation of socio-economic rights and human development.

Chapter 4

Understanding pro-poor growth

4.1 Introduction

Poverty reduction has become a major policy and development goal at national and international levels over the past three decades. This has been evidenced in major conferences and high level decisions emanating from the United Nations and other international and regional bodies. As early as the Declaration on Social Progress and Development,¹²⁵ issues of poverty and inequality have been placed on the international political and development agenda.

Other declarations that followed like the Copenhagen Declaration, the Declaration on the Right to Development and the Millennium Declaration of 2000 all had elements of eliminating poverty and inequality amongst peoples and nations. The MDGs dealt with broad and specific issues of poverty and inequality.¹²⁶ The first of the MDGs which targets halving the population of people living on less than a dollar per day clearly places poverty and hunger at the top of the international and national political agenda.

At national levels, the adoption of the PRSPs brought about economic reforms geared towards poverty reduction. But the key challenge that remained however is that of using economic growth to advance poverty reduction. The fact that economic growth is critical in achieving poverty reduction has been one without much disagreement.¹²⁷ Economic growth is essential in the creation of an enabling environment for poverty reduction. However, it is not every type of economic growth that will reduce poverty. Poverty reduction requires growth which is accompanied by redistributive policies in order to eliminate poverty.

Views differ as to whether growth within an economy will automatically translate to redistribution of wealth and a reduction in the level of poverty. In other words, what kind of economic growth will benefit the poor? This has led to an emergence of the term 'pro-poor growth' and a proliferation of literature discussing it as well as an upsurge in economic policy directions within the last decade targeting pro-poor growth.¹²⁸ What then is pro-poor growth?

¹²⁵ n 89 above.

¹²⁶ See section 3.5 of chapter 3.

¹²⁷ Overseas Development Institute 'Pro-poor growth and development: Linking economic growth and poverty reduction' (2008) Briefing Paper No. 33 1

¹²⁸ D Dollar & A Kraay 'Growth is good for the poor' in A Shorrocks & R van der Hoeven (eds) *Growth, inequality and poverty: Prospects for pro-poor economic development* (2004) 29

When is growth said to be pro-poor? How can it be measured? Does pro-poor growth have any relationship with the current discussions on governance, socio-economic rights and human development? What are the failings in current approaches to pro-poor growth?

Apart from analysing the above questions, this chapter reviews the content of the concept of pro-poor growth, its relationship with governance and the realisation of socio-economic rights and human development. The chapter also examines the challenges that pro-poor growth currently faces.

4.2 Meaning and approaches

Despite the increase in the use of the term 'pro-poor growth', its definition and measurements is still subject to a lot of debates within the development and academic communities. In its simplest interpretation, the concept of pro-poor growth implies the type of growth that benefits the poor.¹²⁹ In another sense, it is suggested that as long as growth is associated with a reduction in the proportion of the poor in the population, then it is pro-poor.¹³⁰

These definitional and conceptual debates on pro-poor growth have largely been done along the same lines of controversies inherent in the definition of poverty – the relative and absolute poverty debates. In other words, pro-poor growth can refer to either the relative or absolute concept of poverty reduction and various researches¹³¹ have thus developed two dimensional approaches to defining pro-poor growth.

The 'relative' approach suggests that growth can only be pro-poor if the growth rate of income of the poor exceeds the average income growth rate.¹³² The main justification for this type of approach is that, if one succeeds with biasing growth in this relative sense towards the poor (holding average growth constant), this will lead to faster poverty reduction. The relative school argues that pro-poor growth comes with the reduction of inequality - at least inequality between the poor and the non-poor.¹³³

¹²⁹ Overseas Development Institute "The political economy of pro-poor growth" (2008) Briefing Paper No. 35 1.

¹³⁰ MS Kimenyi "Economic reforms and pro-poor growth: Lessons for Africa" (2006) Department of Economics Working Paper Series 2006 – 02 9.

¹³¹ See, for instance, S Klasen 'Economic growth and poverty reduction: Measurement and policy issues' (2005) 11 OECD Working Paper No 246; M Grosse et al "Measuring pro-poor growth with non-income Indicators" (2005) 5.

¹³² Grosse (as above).

¹³³ Grosse (as above).

Kakwani and Son have criticized this approach to defining pro-poor growth stating that “[u]nder this definition, the poor may receive only a small fraction of total benefits of growth, still the growth process will be called pro-poor.”¹³⁴ This definition, it is opined, will characterise most growth as pro-poor.

The ‘absolute’ school sees growth as pro-poor only if the absolute income-gain of the poor is larger than those on average, of the rich. Even though this is hard to achieve, its proponents fault an approach to pro-poor growth in relative terms and asserts that absolute inequality might be widening even if relative inequality is shrinking.¹³⁵ In contributing to this debate, Ravallion and Chen see pro-poor growth as “growth that reduces poverty”¹³⁶ and “which benefits the poor people in absolute terms”¹³⁷ They consider growth to be pro-poor if, and only if, poor people benefit in absolute terms. This follows the view that the poor must benefit disproportionately from an economic growth for it to be pro-poor. This approach is further bolstered by the ‘income approach’ to defining pro-poor growth which according to Kraay is “a high rate of growth of average incomes” for the poor.¹³⁸

This research argues that there are limitations to the above definitions and approaches to pro-poor growth. The first is that they do not recognise the non-income aspects of poverty and inequality. This research further argues that over-concentration on the income aspects of poverty seem to ignore the impact of non-income dimensions of poverty to the widening of inequalities. Social indicators such as education, basic healthcare and mortalities (life expectancies) demand more than an increase in income due to their major reliance on access and state provision.¹³⁹ In addition, the definitions and approaches showed limited appreciation of the human rights dimensions of poverty and the fact that growth could have both positive and negative impacts on the realisation and enjoyment of socio-economic rights.

In line with the on-going arguments in this research, especially the links drawn in the previous chapter, pro-poor growth is seen as that growth which creates opportunities and infrastructures for the poor to enjoy their socio-economic rights. It is an ideal environment

¹³⁴ N Kakwani & H Son “Pro-poor growth: concepts and measurement with country case studies” (2003) 42 *The Pakistan Development Review* 420.

¹³⁵ Klasen (n 133 above).

¹³⁶ M Ravallion “Pro-poor growth: A primer” (2004) Development Research Group, World Bank 2.

¹³⁷ M Ravallion & S Chen “Measuring pro-poor growth” (2003) in Kimenyi (n 133 above) 9.

¹³⁸ A Kraay ‘When is growth pro-poor? Cross-country evidence’ (2004) World Bank Policy Research Working Paper 3225 2.

¹³⁹ Grosse (n 133 above).

where government has been able to balance the demands of creating market centred economic growth with a people-centred and right based growth evidenced in the ability of the poor and excluded groups to reach their potentials and capabilities.

4.3 Classical measurements and elements

Since the debate as to poverty reduction centred growth emanated as a result of the perceived inequality, poverty and income gap resulting from economic growth (or zero growth), it is important that in measuring pro-poor growth, information on the distribution of gains from growth is necessary. That is, to determine whether growth is pro-poor, it is necessary to evaluate how the benefits of growth are shared amongst the different income groups. The increased focus on pro-poor growth is a consequence of mounting evidence that in some cases of economic growth, gains are not shared by all members of the population and, in fact, growth may have been associated with declining well-being of the poor.¹⁴⁰

Two important measurements of pro-poor growth which appear in most literatures are pro-poor growth rate (PPGR) and pro-poor growth index (PPGI). PPGR takes into account not only the number of poor people but also what happens to changes in incomes of the poor.¹⁴¹ This is done by showing the rate of growth for a given period of time at each percentile of the distribution.

The PPGI on the other hand takes into account the effect of growth on income distribution and poverty.¹⁴² This measurement recognises that poverty reduction is dependent on both economic growth and changes in income distribution. Specifically, increases in growth reduce poverty but if such increases also associate with increases in inequality, then the magnitude of poverty reduction is lower. In other words, increases in inequality lower the poverty reduction effectiveness of growth.

A visible shortcoming in the above definitions and measurement of pro-poor growth is that they focus largely on income, ignoring the non-income aspects of poverty and inequality. Measuring pro-poor growth on the basis of income alone assumes that income growth is accompanied by non-income growth, which is not always the case. In the same vein, measuring income alone does not recognise the multidimensional nature of poverty.

¹⁴⁰ Kimenyi (note 132 above) 9.

¹⁴¹ Kimenyi (as above) 11-13.

¹⁴² N Kakwani & E Pernia "What is pro-poor growth?" (2000) 18(1) *Asian Development Review* 1-16 in Kimenyi (as above)11.

Another shortcoming of the measurement tools discussed above is that they do not recognise a rights-based approach. The tools are overtly *econocentric* and do not see the link between poverty, pro-poor growth and the realisation of socio-economic rights. Normative standards of socio-economic rights could serve as a veritable tool in not only designing policy frameworks for economic growth but also their measurement.

Socio-economic rights as have been discussed earlier¹⁴³ represents some consensus on human needs and contain the essential elements of well-being necessary for the eradication of poverty. Developing indicators to measure pro-poor growth using socio-economic rights will not only be broad based but will also include non-income elements of pro-poor growth such as education, health, life expectancy and mortality. These apart from falling squarely under socio-economic rights also form the very foundations of development goals, such as the MDGs, aimed at the eradication of poverty.

4.4 Governance dimensions of pro-poor growth

Since both governance and pro-poor growth are high on development policy agenda, the question arises as to whether and how they are related to each other. There is no gainsaying the fact that achieving pro-poor growth depends on the policies a country adopts, including policies related to trade, investment, social protection, and redistribution. On the other hand, the success or otherwise of these growth-targeting policies will be highly dependent on their implementation through the governance processes, structures and institutions.

On a political side, the governance dimension of pro-poor growth recognises the role of the state in ensuring that economic growth benefits the poor. This role is normally seen as including investing in public goods, delivering services and providing an enabling environment for private sector investment.¹⁴⁴ Growth on its part can only be achieved if there are effective governance processes and institutions. For instance, an effective electoral and political process enables certainty, predictability and continuity in governance, which in turn, creates a stable economic climate

¹⁴³ See generally, chapter 3.

¹⁴⁴ ODI 'Political economy' (note 131 above) 1.

Recent studies¹⁴⁵ have shown increased relationship between democracy, good governance and growth. The areas of constant convergence include decision-making, political systems, citizens' participation, transparency, policies and strategies, macroeconomic stability and provision of public goods. In Africa, Resnick and Birna found that poor or failed governance structures in Nigeria, Madagascar, Zambia and Zimbabwe have led to massive inequalities and poverty.¹⁴⁶ However, it is not all grim for Africa as it has also been shown that progresses in governance and political stability in Botswana and Mauritius have led to remarkable pro-poor growth.¹⁴⁷

Human rights framework, citizens' participation and accountability are well known pillars of good governance. They are also essential for pro-poor growth. Through an affirmative and rights-based budgeting regime, government can advance the cause of the poor, vulnerable groups and women in the society to realise their socio-economic rights. Budgeting for socio-economic rights will not only have huge impacts in reducing poverty but will also increase human capacities, which are important for pro-poor growth.

4.5 Institutional capacity, reforms and pro-poor growth

It is important to note that for the above linkages between governance and pro-poor growth to be firmly rooted, there is a need for the reform and strengthening of institutions of governance. In a lot of ways, institutions play decisive roles in ensuring pro-poor growth.¹⁴⁸ A powerful, independent, corrupt-free and effective public service is needed to drive the implementation of policies. For most countries in Africa, institutional reforms or even changes are necessary before the state is capable of engaging effectively in providing the required leadership for growth as well as in dialogue with its citizens, the private sector and civil society, which is necessary if it is to know what goods and services are needed, where and by whom.

It is also important to note that the state may also need to create specialised institutions and agencies that will deal with highly technical and thematic matters, which may not necessarily fall into the domain of the traditional civil service but is needed for pro-poor growth. Evidence

¹⁴⁵ Resnick & Birna (n 23 above); H Gray 'Governance for economic growth and poverty reduction: Empirical evidence and new direction reviewed' (2007).

¹⁴⁶ Resnick & Birna (as above) 20-21.

¹⁴⁷ 'Botswana gets high marks in 2008 governance Indicators' <http://go.worldbank.org/QDU96Q3BV0> (accessed 8 August 2008).

¹⁴⁸ S Mehrotra & E Delamonica *Eliminating human poverty: Macroeconomic and social policies for equitable growth* (2007) 59.

has also shown that such specialised institutions usually lead in the development of policies, strategies and implementation of sectoral growth needs.¹⁴⁹

4.6 Pro-poor growth and human development

Pro-poor growth is related to the on-going discussions on human development in this research. This is because just like human development, pro-poor growth puts the people, albeit the poor at the centre of economic growth. Pro-poor growth is a biased growth process in favour of the poor, which aims to lift a majority of them from the traps of poverty. An interface between pro-poor growth and human development ensures that economic processes focus largely on the poor, providing the needed enabling environment for them to attain their potentials and realise their rights – economic, social, cultural, civil and political.

4.7 Challenges of pro-poor growth

4.7.1 Pro-poor growth and sustainable human development

The controversies surrounding the definition and measurement of pro-poor growth and the uncertainties on what is the final outcomes of a pro-poor growth leave no doubt as to whether pro-poor growth as conceived and interpreted by most scholars and policy makers will deliver sustainable human development. Human development, apart from envisaging the realisation of all human rights, also centres on building human capacities and putting the human person at the centre of every development endeavour.

The above poses a great challenge to pro-poor growth because its conception and even measurement do not envisage a rights regime. Proponents of pro-poor growth do not also view it from an accountability perspective. In view of these, it is very apparent that for pro-poor growth to be people-centred and result in a reduction of poverty to the barest minimum, it must adopt a human rights approach in conceptualisation and measurement. This, as discussed earlier, will depend largely on the political will and the efficacy of institutions.

4.7.2 Pro-poor growth and socio-economic rights: Between neo-liberal and people centred growth

¹⁴⁹ R Mahadevan *Sustainable growth and economic development: A case study of Malaysia* (2007) 185

Even though pro-poor growth came as a response to the failure of economic centred growth to respond to the demands of increasing levels of poverty, it however still focuses on market-led growth and has had a lot of limitations in advancing new approaches that will eliminate the discriminatory perception which earlier approaches held of socio-economic rights.

Pro-poor growth is a fall out of economic reforms, which thrives on neo-liberalism and the strengthening of market forces. Such reforms, while preaching poverty reduction, still promote liberalization, commercialization and privatisation. The reforms see the private sector as the key driver of the economy and seek to divest government of any role in the provision and delivery of services. In discussing neo-liberalism, Pieterse stated that:

Under its neo-liberal conceptualisation, the state must give up its interests in redistributing social capital and transforming socio-economic inequalities, leaving imbalances in this regard to be redressed by the private sphere itself.¹⁵⁰

The divestment of interests that Pieterse alluded to above is achieved through the process of privatisation and commercialisation. These key pillars of modern economic reforms negatively impact on the enjoyment of key social services, which characterise the enjoyment of socio-economic rights.

Neo-liberalism relegates socio-economic rights through the policies and conditionalities of IFIs that drive most economic reforms in developing countries. States are required to curtail their spending in areas that are non-income yielding in nature, which could undermine socio-economic rights. This threatens to weaken socio-economic rights at both policy and structural levels by delegitimizing and characterising them as ‘anti-market, anti-libertarian and anti-growth.’¹⁵¹

If growth is to be pro-poor, attention must be given to state responsibility in the fulfilment of socio-economic rights. Above all, in its design and implementation, pro-poor growth policies and strategies must target the realisation of socio-economic rights aimed at building human capabilities (right to education); securing life expectancies (rights to health, food and water); providing livelihoods (right to work) and ensuring human dignity (rights to housing and good standard of living).

¹⁵⁰ M Pieterse ‘Beyond the welfare state: Globalisation of neo-liberal culture and the constitutional protection of social and economic rights in South Africa’ (2003) 3 *Stellenbosch Law Review* 18.

¹⁵¹ As above, 16.

4.8 Conclusion

This chapter has attempted to discuss the vexed issue of pro-poor growth and its relationship with other concepts already under discussions in this research. The discussion leaves no doubt as to the importance of pro-poor growth in human development and the realisation of socio-economic rights. There, however, remains the challenge of balancing inevitable economic reforms with sustainable poverty reduction programmes, which aim at addressing social inequalities and the fulfilment of socio-economic rights.

Chapter 5

Growing without poverty? Case study of South Africa and Nigeria

5.1 Introduction

The discussions in the previous chapters clearly point to the direction that pro-poor growth is a desirable tool, which if well thought out and executed, could improve the realisation of socio-economic rights and human development. However, the extent to which pro-poor growth in fact advances socio-economic rights is dependent on a number of factors such as institutional capacity, legal frameworks and approaches to governance.

This chapter reviews pro-poor growth in South Africa and Nigeria. This is done using the macroeconomic frameworks from both countries against current realities of socio-economic rights and human development. The aim is to establish whether pro-poor growth in these countries has in fact translated to the realisation of socio-economic rights and human development.

5.2 Legal framework for socio-economic rights

5.2.1 South Africa

Recovering from a regime of political and economic inequality perpetrated by racial minority rule, South Africa had to deal with the issues of poverty with both policy and legal measures. From a legal perspective, South Africa adopted a new constitution in 1996¹⁵² (South African Constitution), which came with the revolutionary inclusion of socio-economic rights as justiciable rights. The South African Constitution is a transformative document and a trail blazer. As at the time of its adoption (and even now), very few countries had such provisions in their constitutions even though a lot of countries are signatories to the ICESCR.

Liebenberg has categorised the socio-economic rights provisions in the South African Constitution into three.¹⁵³ The first classification is that referred to as ‘qualified rights’. These include the right of everyone to have access to adequate housing in section 26 (1) and to health

¹⁵² Constitution of the Republic of South Africa Act 108 of 1996.

¹⁵³ S Liebenberg ‘The interpretation of socio-economic rights’ in Chalkalson et al. *Constitutional law of South Africa*, chapter 33, 5. For a general and more detailed discussion, see D Brand ‘Introduction to socio-economic rights in the South African Constitution’ in D Brand and C Heyns (eds) *Socio-economic Rights in South Africa* (2005) 3-6.

care, food, water and social security in s 27 (1). These are qualified with the following words regarding state obligation in subsection 2 of sections 27 - “*The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*” They are qualified because they are perceived as access rights and their realisation are subject to standards of reasonableness and *progressive realisation* depending on *available resources*.

The second category are basic rights, which includes children’s socio-economic rights in s 28 (1)(c); the right to basic education in section 29 (1)(a); and the socio-economic rights of detained persons and sentenced prisoners in section 35 (2)(e). These rights are not subject to qualification - the obligation of the state is not qualified by references to *progressive realisation* and *available resources*. The third category of rights are phrased as prohibitions of certain actions - the prohibition of evictions without an order of court made after considering all relevant circumstances in section 26 (3), and the prohibition of the refusal of emergency medical treatment in section 27 (3).

Despite the above glowing provisions, the extent to which individuals enjoy these rights as entitlements is still subject to a lot of judicial and academic debates. Whilst the Constitutional Court of South Africa has shown great faith towards upholding these rights,¹⁵⁴ a lot is still yet to be seen on the part of practical enforcement (especially with regard to policies and court orders) and enjoyment of the rights.¹⁵⁵ The judgments have, however, led to a high level of knowledge of the constitutional provisions relating to socio-economic right and have even in some cases led to review of public service delivery and even the provision of services like in the *TAC case*.

5.2.2 Nigeria

After 29 years of military dictatorship that saw the interruption of two democratic governments, Nigeria finally had multi-party elections which ushered in a civilian government on 29 May 1999. On the same date, Nigeria also adopted a new Constitution (Nigerian Constitution).¹⁵⁶ Unlike the South African Constitution, the Nigerian Constitution did not make provision for justiciable

¹⁵⁴ *Minister of Health v Treatment Action Campaign 2002* (5) SA 721 (CC) (TAC case); *Khosa v Minister of Social Development 2004* (6) SA 505 CC; *The President of the Republic of South Africa and Another v Modderklip Boerdery (PTY) Ltd Case CCT20/04* decided 13 May 2005; *Occupiers of 51 Olivia road and another v City of Johannesburg and others CCT24/07* decided 19 February 2008.

¹⁵⁵ M Wesson ‘Grootboom and beyond: Reassessing the socioeconomic Jurisprudence of the South African Constitutional Court’ (2004) 20 *South African Journal of Human Rights* 298; see also *Government of the Republic of South Africa v Grootboom 2001* (1) SA 46 (CC) where the applicant though successful at the Constitutional Court died eight years after the judgment without receiving formal housing from the government. See ‘Grootboom dies homeless and penniless’ *The Mail and Guardian Online* 8 August 2008. Available at <http://www.mg.co.za/article/2008-08-08-grootboom-dies-homeless-and-penniless> (accessed 29 October 2008).

¹⁵⁶ Constitution of the Federal Republic of Nigeria 1999.

socio-economic rights. References to what look like a set of socio-economic rights were made in chapter two of the Nigerian Constitution as Fundamental Objectives and Directive Principles of State Policy. However, the entire provisions of chapter two are precluded from enforcement by a constitutional ouster clause in section 6(6)(c) of the Nigerian Constitution. As a result, the courts in Nigeria have held that socio-economic rights (unlike civil and political rights) are not justiciable.¹⁵⁷

Despite the above scenario, Nigeria is one of the few countries which have domesticated the African Charter.¹⁵⁸ As such, the African Charter is part of Nigerian domestic law and this has been re-echoed by Nigerian courts in a long line of cases.¹⁵⁹ The Supreme Court of Nigeria has gone further to proclaim the Charter as being in a class of its own amongst local legislations.¹⁶⁰

The cases decided under the African Charter mainly dealt with the civil and political rights aspects of the Charter. There is not yet a concluded case dealing specifically with socio-economic rights under the African Charter, which has been brought before the courts in Nigeria.

5.3 Pro-poor growth and socio-economic rights

5.3.1 South Africa

With the end of apartheid and the holding of multiparty elections in 1994, there was a need for the new government to deal with the poverty occasioned by the inequities promoted by white minority rule. As a result, the new government led by Nelson Mandela in consultation with the African National Congress (ANC) and its Alliance partners - the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP) as well as the wider civil society movement adopted the Reconstruction and Development Programme (RDP).¹⁶¹

¹⁵⁷ *Uzoukwu v Ezeonu II* (1991) 6 NWLR Pt 200, 708; *Okojie v AG of Lagos* (1981) 2 NCLR 337. Note: Both cases were decided under similar provisions in the defunct 1979 Nigerian Constitution.

¹⁵⁸ See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, chapter 10, Laws of the Federation 1990.

¹⁵⁹ See *the Trustees of the Constitutional Rights Project v The President of Nigeria* (1994) 4 Journal of Human Rights Law and Practice 218; *Ogugu v The State* (1994) 9 NWLR Part 366 1.

¹⁶⁰ *Abacha v Famvebinmi* (2000) 4 NILR 28.

¹⁶¹ For the full text see <http://www.anc.org.za/rdp/rdpall.html> (accessed 20 October 2008).

The RDP is a South African socio-economic policy framework which targets far reaching transformations needed to address massive inequalities that were facing post-apartheid South Africa. RDP focuses on five main programs:

- a. Meeting basic needs (job creation, land, housing, water, electricity, food and social security and welfare);
- b. Developing human resources (education, literacy, skills and youth development);
- c. Democratising the state and society;
- d. Building the economy ;
- e. Implementing the RDP.

A key aspect of the RDP was that it linked reconstruction and development. The RDP recognised that all the problems (lack of housing, a shortage of jobs, inadequate education and health care, a failing economy) are connected. It proposed job creation through public works — the building of houses and provision of services would be done in a way that created employment.

A major criticism of RDP was that it was too ambitious and even though it recorded some measure of achievement especially in the provisions of housing, water and some social services, it represented more of ‘political promises’, which required funds, management and donor support for its accomplishments. As a result, not too long after its introduction, RDP was replaced by the Growth, Equity and Redistribution (GEAR) policy.¹⁶² GEAR is a macroeconomic strategy adopted by the Department of Finance in June 1996 as a medium term plan aimed at strengthening economic development, broadening of employment, and redistribution of income and socio-economic opportunities in favour of the poor. In other words, GEAR was South Africa’s blue print for pro-poor growth in the medium term.

GEAR represents a paradigm shift from the traditional thinking of welfare and equity, which characterised the GDP. Under GEAR, government’s role will be more of policy coordination, whilst strengthening the private sector to take a driving seat in the economy. GEAR emphasises fiscal restraint, controlled inflation, interest rates and loosening of foreign exchange control. It also saw to the opening up of markets leading to privatisation of state owned enterprises as well as public service reforms. GEAR envisages a moderation of government’s role in social and welfare services provision.

¹⁶²Department of Finance Republic of South Africa ‘Growth, Equity and Redistribution: A macroeconomic strategy’ (1996). Available at <http://www.stanford.edu/class/history48q/Documents/GEAR.pdf> (accessed 20 October 2008)

GEAR has been largely successful in stabilising the South African economy. It has created confidence for foreign direct investments as well as maintaining an average annual growth of 4.5% growth. This according to the OECD reflects an increase from 2.8% in 2003 to 3.7% in 2004.

Despite the above, GEAR can easily be faulted for its non-rights based approaches. Its integrated approach, which formed the nucleus to its plans, did not even envisage a poverty reduction regime anchored on rights but rather focussed largely on the markets and believing rather in the impact of the ‘trickling down’ effect, which is the assumption that in the event of growth in the economy resulting in investment, incomes will increase as a result of employment. Over reliance on the private sector to provide jobs clearly made GEAR a neo-liberal strategy and a failure in its target of providing over 1.3 million jobs over a five-year period.¹⁶³ In reality, during the period of implementation of GEAR, South Africa recorded over 800 000 jobs.¹⁶⁴ After more than a decade of implementing GEAR, over 40% of the population of South Africa live in abject poverty¹⁶⁵ while 30% remain unemployed.¹⁶⁶

In addition, a study on access to health and educational services in South Africa reveals that the inequities that characterised apartheid the enjoyment of social services still persist with huge disparities between funding to schools and hospitals in disadvantaged areas and those patronised by the hitherto privileged populations.¹⁶⁷ Within this period also, life expectancy declined rapidly from 61.1 years in 1990 to 55.5 in 2000 and increased a little from 49.2 in 2003 to 50 in 2005 (most recent figures).¹⁶⁸ South Africa still has the world’s second largest prevalence of HIV.¹⁶⁹ This situation has negatively impacted on the overall human development ranking of South Africa, which currently stands at 121 out of 177 ranked countries. South Africa fell from 95 in 1995 to 101 in 1999, 111 in 2003, 119 in 2004 and 120 in 2005.¹⁷⁰

¹⁶³ M Esau *Understanding good governance and democracy in the context of poverty alleviation* (2005) 11.

¹⁶⁴ As above.

¹⁶⁵ See ‘Mid Year Population Estimates’ (n 11 above).

¹⁶⁶ See ‘Labour Force Survey’ Statistical Release (n 12 above).

¹⁶⁷ AFRIMAP & Open Society Foundation for South Africa ‘South Africa: Effective service delivery in the education and health sectors’ (2007) (Effective service delivery).

¹⁶⁸ UNDP ‘Human development report – Country rankings: South Africa’. Available at http://hdrstats.undp.org/countries/data_sheets/cty_ds_ZAF.html (accessed 22 October 2008); see also ‘Effective service delivery’, 12.

¹⁶⁹ 2008 *Global HIV/AIDS Report* (n 17 above).

¹⁷⁰ UNDP ‘South Africa: The Human Development Index - going beyond income’ Available at http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_ZAF.html (accessed 30 October 2008).

It must be noted however that the judgments from the South African Constitutional Courts as well as affirmative policies such as the Black Economic Empowerment programme and a well developed social security and assistance regime have tried to ameliorate hardships faced by poor South Africans.¹⁷¹ The challenge still remains the institutional capacity to tackle, to a large scale, the socio-economic problems that poverty and inequality have thrown up in the post-apartheid South Africa.

5.3.2 Nigeria

Since the return to democracy in 1999, Nigeria has embarked upon far reaching economic reforms targeted at placing the country on the path of economic renewal and human development. The year 2004 saw the Government of Nigeria introducing the National Economic Empowerment and Development Strategy (NEEDS). NEEDS is a poverty reduction and development strategy. NEEDS seeks to promote enterprise, competition and efficiency within the public and private sectors, whilst providing for human and infrastructural development anchored in value re-orientation and economic prosperity.¹⁷²

Just like GEAR in South Africa, NEEDS operates as a macroeconomic framework and is also overtly neo-liberal focusing on strengthening the markets, liberalisation and privatisation. NEEDS thrived in a period where Nigeria also experienced great boom in sales of crude oil and relative political stability. NEEDS has been largely successful in stabilising the Nigerian economy whilst economic reforms orchestrated by NEEDS were instrumental in Nigeria's debt buy-back in September 2005. There has also been an average GDP growth rate of 6.3 within the last 3 years.¹⁷³

Part of the economic reforms envisaged under NEEDS is the building of a solid foreign reserve. This has paid off as Nigeria has recorded an astronomical increase in its foreign reserve

¹⁷¹ The current social grants include: grants for the aged, the disabled, child support and for foster children. See generally, S Liebenberg 'The right to social security assistance: The implications of Grootboom for policy reform in South Africa' 2001 17 *South African Journal of Human Rights* 234 – 237

¹⁷² See generally, H Ogbonna 'NEEDS: Building on four pillars' in S Amadi & F Ogwo *Contextualizing NEEDS: Economic and Political reform in Nigeria* (2004). Available at www.boellnigeria.org/contextualizingneeds.html (accessed 20 October 2008).

¹⁷³ Central Bank of Nigeria '2007 Annual report'.

base. From a paltry less than 2 billion US dollars in 2000, Nigeria's foreign reserve as of July 2008 stands at 60 billion US dollars.¹⁷⁴

However, despite the increase in oil wealth and allocations to the various levels of government, four years after the introduction of NEEDS, Nigeria cannot be said to be on the right track in the realisation of socio-economic rights, as poverty still plague more than 54.6% of the population.¹⁷⁵ This can be attributable to the following factors:

- a. Corruption and embezzlement of public funds;
- b. Non-implementation of the budget by various governmental agencies;
- c. Non-justiciability of socio-economic rights under Nigerian 1999 Constitution;
- d. Weak procurement frameworks affecting the award of contracts.

Two main challenges that confronted NEEDS were that fact that it was a neo-liberal strategy and the endemic corruption had eaten deep into the polity in Nigeria. As a neo-liberal strategy, NEEDS led Nigeria through economic reforms that were growth-targeting without the requisite impact on the lives of the average Nigeria. For instance, Nigeria undertook one of the largest debt repayments in history when in September 2005; it repaid a whopping 18 billion US dollars to the Paris Club of creditors as part of a debt rescheduling program. As at that time, there were many developed countries including the United States that were also heavily indebted but none has spent as much as Nigeria in repayment. At this period, Nigeria was occupying an embarrassing 158th position on the human development index table.¹⁷⁶

Nigeria ranks highest in the number of out of school children. According to the United Nations Educational Scientific and Cultural Organisation (UNESCO), Nigeria currently has 8.11 million children out of school.¹⁷⁷ Out of this number, it is estimated that 80 percent will never make it to school.¹⁷⁸ Nigeria also has one of the continent's worst record of maternal deaths with an average of 55 000 annual deaths. Currently, life expectancy is put at a meagre 46.5¹⁷⁹ as Nigeria continues to bear the world's third largest disease burden of HIV and AIDS.¹⁸⁰

¹⁷⁴ Central Bank of Nigeria 'Economic report for the month of July 2008'. Available at <http://www.cenbank.org/OUT/PUBLICATIONS/REPORTS/RSD/2008/MRP-07-08.PDF> (accessed 30 October 2008).

¹⁷⁵ National Planning Commission 'Nigeria Millennium Development Report' (2007).

¹⁷⁶ Human development report (n 16 above).

¹⁷⁷ Education for All Global Monitoring Report (2007).

¹⁷⁸ UNESCO Institute for Statistics 'Out of school children: how many are there and who are they?' Fact Sheet, January 2007 – UIS/FS/07/01.

¹⁷⁹ UNDP 'Human development report – Country rankings: Nigeria'. Available at http://hdrstats.undp.org/countries/data_sheets/cty_ds_NGA.html (accessed 22 October 2008).

Even though, it must be acknowledged that a lot is being done to combat corruption in Nigeria, greater political will still needs to be shown to check corrupt practices and to recover stolen funds including those of former military rulers.

5.4 Explaining the relationships and gaps

South Africa and Nigeria represent two distinct economies and levels of growth, but both have in common a history of bad governance and human rights violations. In terms of the impact of pro-poor growth, both also enjoy some level of similarities. Whilst the South African huge economic gains have not been able to translate into bridging the gap between the rich white minority and the majority black poor, Nigeria's gains from crude oil as well as debt savings has not also impacted positively to increase infrastructure and the enjoyment of public social and welfare services.

Factors that could be responsible for the above include weak institutional capacity, endemic corruption, external donor influence, absence of effective policy and legal frameworks and adequate political will. Generally, good governance plays a huge role not only in the conceptualisation of pro-poor growth frameworks but also in their implementation.

5.5 Conclusion

It is important to stress that despite the above shortcomings, pro-poor growth in its right frame still remains a formidable tool through which the principles of economic planning can be brought into the debate of the realisation of socio-economic rights. Pro-poor growth still presents policy makers, activists and development practitioners opportunities to put poverty reduction at the centre of economic planning and policy implementation. The next chapter provides in detail how this can be achieved for the realisation of socio-economic rights and the attainment of human development.

¹⁸⁰ 2008 *Global HIV/AIDS Report* (n 17 above).

Chapter 6

Conclusion and Recommendations

6.1 Conclusion

Good governance and pro-poor growth are central to the idea of human development and the realisation of socio-economic rights. This research has established the clear linkage between socio-economic rights and human development. It has also drew linkages between good governance frameworks and the development and socio-economic rights discourse; and showed the relationship between good governance practices and the realisation of socio-economic rights on one hand and the attainment of human development on the other. This research further explored the concept of pro-poor growth and its implication for socio-economic rights and human development. The research has shown that good and effective governance is needed to attain pro-poor growth, which will effectively tackle poverty and realise socio-economic rights. Lastly, the research has shown that in the absence of effective institutions and rights based policy frameworks, pro-poor growth may not translate to human development.

For pro-poor growth to have the desired poverty reduction effect, effective policies and institutions are needed to engineer and deliver not only on service delivery but to manage the expected impact on the economy and be able to create a balance that will favour the poor and vulnerable. This research argues that with effective and implementable governance frameworks, pro-poor growth can deliver on human development and the realisation of socio-economic rights.

6.2 Recommendations

6.2.1 Pro-poor growth with a human face: Towards a right-based approach to poverty reduction strategies and development planning

Right based approaches have gained grounds as important aspects of development planning, especially since the failure of SAP. A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed at promoting and protecting human rights.¹⁸¹ A rights-based approach to development sees people as the architects of development and seeks

¹⁸¹ UHCHR 'Human Rights in Development' (n 27 above).

to involve them at all stages of the development process. Rights-based approach to budgeting and development planning seeks to use the instrumentality of poverty reduction strategies and the budget to advance human rights.

Economic policies such as NEEDS and GEAR are veritable tools that can be used in strengthening human development in Africa. Thus, policy makers should see various economic policies as 'vehicles' through which socio-economic rights can be guaranteed. It is also important that drafters of economic and social policies approach their tasks from a human rights perspective. In doing this, they should set out clear and workable medium and long term plans as to how to attain their socio-economic rights obligations.¹⁸² This should include outlining:

- a. The socio-economic right government is addressing in a given policy or framework;
- b. Clear targets as to the population and geographical coverage;
- c. Realistic indicators that will be deployed in measuring the success or otherwise of the initiatives and programmes
- d. Financial commitments of government to the programme in form of budgets.

Participation of the people and special attention to the special needs of women, girls and other vulnerable groups are important aspects of a rights-based approach to budgeting and development planning.

6.2.2 Changing perceptions: Policy and judicial attitudes towards socio-economic rights

For socio-economic rights to be enjoyed and human development attained, judicial perception of socio-economic rights as not rights would have to change. Judges should see the law as a tool for 'social engineering' and evolve an expansive interpretation of national and international instruments to give effect to socio-economic rights. In addition, governments will have to be committed to implementing the judgments of courts in this regard.

On a policy angle, governments should strive to adopt laws that operationalise socio-economic rights. Apart from assisting in their obligations under the ICESCR, such laws would have the effect of institutionalising the realisation of socio-economic rights and become *vehicles* for the attainment of human development through the allocation of funds for the sectoral interventions.

¹⁸² D Elson & N Cagatay 'The social content of macroeconomic policies' (2000) 28 *World Development* No. 7, 1347.

6.2.3 Developing and implementing effective national human rights strategies

National human rights strategies are very important in the process of human development. Apart from putting issues of socio-economic rights on the political agenda, they set clear and workable timelines for countries to progressively realise socio-economic rights. It is also important for countries in Africa to have internal mechanisms through which they can evaluate the extent to which they are meeting their obligations arising from various human rights treaties, especially socio-economic rights obligations. This could be done by independent institutions with the collaboration of national human rights institutions.

6.2.4 The role of political leadership

A. Making NEPAD and APRM work for Africa

African countries stand to gain immensely from both NEPAD and APRM. Both NEPAD and APRM Nigeria will gain a lot through the adherence to current regional governance and human rights framework within the auspices of the African Union. It is important that NEPAD is not allowed to suffer the fate of previous regional frameworks that failed due to poor implementation and lack of political will. For NEPAD to achieve its lofty goals, adequate implementation strategies and effective mechanisms for persuading African nations to enact good governance and sound macroeconomic policies are needed.¹⁸³

On the part of APRM, strong political will is needed for African leaders to enforce the results of the country assessments without necessarily shielding one another. However, the point must be made that both frameworks provide opportunities for the implementation of policies that are geared towards the respect and realisation of socio-economic rights and the attainment of human development. By placing emphasis on good and effective governance, these Pan-African frameworks are capable of ensuring political stability and effectiveness, which are needed for pro-poor growth and human development.

B. Regional and national strategies for combating corruption

¹⁸³ O Chukwumerije 'Peer review and the promotion of good governance in Africa' (2006) 32 *North Carolina Journal of International Law and Commercial Regulation* 49, 111.

Corruption is a major impediment to the realisation of socio-economic rights. Corruption is usually seen in the mismanagement of public funds meant for the provision of public services and the diversion of the same for private ends. As the 2008 Transparency International CPI has shown, corruption is a barrier to Africa's socio-economic development. Fighting corruption is then key to the realisation of socio-economic rights and human development.

Due to its link to the provision of services, in poor countries, "corruption levels can mean the difference between life and death, when money for hospitals or clean water is in play".¹⁸⁴ It is therefore important that African countries develop national and regional programs aimed at cooperating to fight corruption and assist one another to bring corrupt officials and corporate bodies to book in the spirit of the African Union Convention on Preventing and Combating Corruption.¹⁸⁵

Anti-corruption commissions should be strengthened to meet the ever increasing dynamics of corruptions. This should be in the form of dedicated and independent financing and legislations that will guarantee their independence. Independence in this sense should target security of tenure of office, appointment and removal to be subject to legislative approval as well as the commissions having powers to recruit its own staff.

6.2.5 The role of effective institutions

Since socio-economic rights, as has been shown in this research, have both development and policy contexts, the role of institutions in their realisation can never be over emphasised. Poor institutional quality is often the main reason behind the failure of policies, the collapse of the growth process, poverty and civil conflicts.¹⁸⁶ These will have adverse effects in the enjoyment of socio-economic rights and human development. Effective institutions are essential for the delivery of services. For the realisation of socio-economic rights, public institutions need to be strengthened to meet with the development challenges of service delivery.

With the retinue of governance and development frameworks on the continent, African countries need a strong 'back bone' in the form of effective institutions to realise the objectives

¹⁸⁴ Statement of H Labelle, Chair of TI, *Africa News* (n 125 above).

¹⁸⁵ Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 5 August 2006. Available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf> (accessed 21 October 2008).

¹⁸⁶ W Easterly 'Social Cohesion, Institutions, and Growth' Center for Global Development working paper Number 94 (2006) 1.

of these instruments. Investment in capacity building of the civil service should be a major objective of various governments on the continent.

6.2.6 Role of national human rights institutions

The national human rights institutions of respective African states have special roles to play in the development of a human rights culture for the realisation of socio-economic rights. These institutions, through their mandates, can develop effective monitoring and investigative frameworks that could serve as policy foundations for governments.

As a result of the special positions they occupy, these institutions can also develop tools in partnership with independent bodies and civil society to monitor and analyse the impact of macroeconomic policies on the enjoyment of socio-economic rights. They can also serve as ‘watch dogs’ on the practices of both government and non-state actors in order to ensure accountability to human rights obligations.

6.2.7 Sustainable foreign aid structure

Foreign aid is an essential element of current efforts towards development. It is important to note however that for aid to have its desired impact, it must be targeted at financing development activities that will improve the level of human development. Foreign aid must not also come with onerous conditionalities that will impede the deployment of such funds or any other national fund to the provision of social services and infrastructure by the state for the enjoyment of socio-economic rights in accordance with the Paris Principles. Developed countries in the spirit of brotherhood should endeavour to reach their target of aid as provided in the Monterrey Consensus and Goal 8 of the MGDs.

6.2.8 The role of internationally agreed development targets

Current groundswell of international development targets provides opportunities for the realisation of socio-economic rights and human development. As has been seen from chapter 3, the MDGs, which target human development by 2015, have a lot of similarities with socio-economic rights. It goes without saying that commitment to the MDGs will impact positively on the enjoyment of socio-economic rights on one hand and the attainment of human development on the other. In the same vein, the Abuja Declaration on HIV/AIDS and other Infectious

Diseases,¹⁸⁷ which mandates African governments to set aside 15 percent of their annual budgets to health, will have positive impact on the enjoyment of the right to health. A lot will, however, depend on political will and international assistance for some of these to be achieved.

6.2.9 The role of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The Draft Optional Protocol to the CESCER (Optional Protocol) when in force could assist poor developing countries with technical capacity to realise socio-economic rights. The Optional Protocol makes provision for a fund, which will assist in the provision of “expert and technical assistance” to countries for effective realisation of socio-economic rights.¹⁸⁸ Another expected impact of the Optional Protocol is in the area of individual communication, which will increase the justiciability of socio-economic rights and place it at par with similar arrangements relating to civil and political rights.¹⁸⁹ The inquiry procedure under article 11 of the Optional Protocol will also provide opportunities for the close monitoring of systematic violations of socio-economic rights by states and non-state actors through neo-liberal economic policies.

Word Count – 17966 (excluding table of contents, preliminary pages and bibliography)

¹⁸⁷ Adopted at the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases in Abuja, Nigeria on 27 April 2001.

¹⁸⁸ Art 14 of the Draft Optional Protocol to the ICESCR.

¹⁸⁹ As above, arts 1 & 2.

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