

CHAPTER 2 SETTING THE STAGE: CONCEPTUAL, CONTEXTUAL AND THEORETICAL FRAMEWORKS

- 2.1 Introduction
- 2.2 Conceptual framework
 - 2.2.1 Concept of human rights in Africa
 - 2.2.2 The notion of development
 - 2.2.3 The RTD
 - 2.2.4 Sustainable development
 - 2.2.5 Poverty eradication
- 2.3 The RTD and NEPAD: Historical and theoretical contexts
 - 2.3.1 The RTD: Historical context
 - 2.3.2 The RTD: Theoretical context
 - 2.3.2.1 Cosmopolitanism: A snapshot
 - 2.3.2.2 A critique of cosmopolitanism
 - 2.3.2.3 Cosmopolitanism in practice
- 2.4 NEPAD: Historical and theoretical contexts
 - 2.4.1 NEPAD and the new institutionalism theory
 - 2.4.1.1 Compulsory power
 - 2.4.1.2 Institutional power
 - 2.4.1.3 Structural power
- 2.5 A critique of NEPAD
- 2.6 A critique of the APRM and its good governance underpinnings
- 2.7 Concluding remarks

2.1 Introduction

This chapter sets the stage for the entire study. Its aim is threefold: Firstly, it clarifies the concepts of human rights in Africa, development, RTD, sustainable development and poverty

eradication which are constantly used in the study. Secondly, the chapter provides a broader historical and contextual framework through which it establishes the relationship between the RTD and NEPAD. Thirdly, the chapter provides a critique of NEPAD/APRM.

2.2 Conceptual framework

2.2.1 Concept of human rights in Africa

This section examines *inter alia* the concepts of equality, non-discrimination and most importantly human dignity.

One of the main theories underlying the human rights discourse in Africa is the RTD. Though disputed across the world, in Africa, the RTD forms a central part of the paradigm or idea of human rights. At the level of law, African countries have understood the RTD as a right that can be claimed like any other right. According to this idea, every human being, men and women everywhere are entitled to dignity; to use the words of the American Declaration ‘they are created equal and endowed by their creator with certain unalienable rights [such as] life liberty and the pursuit of happiness’. Put differently, the idea of human rights

[r]eaffirms the faith in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to promote social progress and better standard of life in larger freedom.⁹⁵

However, the natural law theory preceded the concept of human rights. Natural law theory was first located in ancient religions that see all human beings as equal creation of God.⁹⁶ This is well illustrated by the Hinduism principle of ‘Non injury to others (*ahimsa*) [or simply] not causing pain to any living being at any time through the actions of one’s mind, speech or body’,⁹⁷ the Christian notion of being all children of God which led to the question ‘Am I my

⁹⁵ Preamble of the UN Charter; also Salomon (2007) 2.

⁹⁶ Free Legal Encyclopedia ‘Natural Law - Divine Natural Law, Secular Natural Law, Historical Natural Law’ available at <http://law.jrank.org/pages/8762/Natural-Law.html> (accessed 2 January 2011).

⁹⁷ P G Lauren *The Evolution of international human rights – Visions seen* (1998) 5.

brother's keeper?'⁹⁸ and by the Buddhism attitude calling for the abandon of specificity of 'castes and rank and become [equal] members of one and the same society'⁹⁹ further highlighted by the Dalai Lama's view that all global problem will come to pass 'if we understand each other's fundamental humanity, respect each other's rights, share each other's problems and sufferings'.¹⁰⁰

These important religious foundations became a platform for early philosophers such as the Chinese Mo Zi who developed a cosmopolitanist approach to relationships,¹⁰¹ Mencius who highlighted the 'infinite value of the individual' *vis a vis* the ruler.¹⁰² More importantly, from the principle of natural equality between human beings, other thinkers developed the natural law theory by arguing that there was no good quality of life outside a cosmopolitan set-up 'based on a clear recognition of individual rights',¹⁰³ that 'the oppressed man should seek protection under the law'¹⁰⁴ and moreover, orders consisted of ensuring that 'all is done according to the law, that custom is observed and the right of each man respected'¹⁰⁵ and finally that 'no one should be allowed to suffer...either because of poverty or of any deliberate action on the part of others'.¹⁰⁶

⁹⁸ *Genesis*, 4:9.

⁹⁹ Budha 'Disappearance of bhuddism' *Observer of Business and politics* (8 August 1993) as quoted by Lauren (1998) 6.

¹⁰⁰ Daila Lama *Ocean of wisdom: Guidelines for living* (1989)13as quoted by Lauren (1998) 6.

¹⁰¹ Mo Zi *La chine antique* (1927) 253-254 as quoted by Lauren (1998) 10.

¹⁰² Mencius in 'Evolution of human rights' *Weekly bulletin of the United Nations* 12 (1946) as quoted by Lauren (1998) 10.

¹⁰³ Hsun-tzu *Birtright of man*, 303, as quoted by Lauren (2007) 10.

¹⁰⁴ Hammurabi in J M Robert *History of the world* (1976) 48 as quoted by Lauren (1998) 10.

¹⁰⁵ P Modinos 'La Charte de la liberte de l'Europe' *Revue des Droits de l'Homme* 8 (1975) 677 as quoted by Lauren (2007) 10.

¹⁰⁶ Apastamba Dharmasutra II, 450-350 B.C *The birth right of Man* 94, as quoted by Lauren 2010.

The ancient ideas of natural law underpinned by equality between all was developed by Greek philosophers such as Plato, Aristotle, and Cicero; they were broadened by Roman thinkers who came up with the theory of *jus gentium* or law of the nations.

Based on the law of nature, Plato is of the view that social justice is achieved in situation with ‘various classes performing their proper functions and individual justice as the proper functioning of the parts of the soul’.¹⁰⁷ Aristotle’s natural law theory recognised the political nature of all human beings who are equal under the law.¹⁰⁸

This theory was further expanded upon by Christian philosophers such as Thomas Aquinas who described the natural law philosophy from a Christian perspective where by ‘living out of justice’ was equated to living out of the love for God.¹⁰⁹ This Christian theory was then developed to establish a bridge between natural law and right through Jesus Christ’s teaching of ‘loving one another [and] not to let the good be suppressed by force and to give every persons his rights’.¹¹⁰ In fact, Christianity prohibits discrimination, hence it could be argued that Christians have the duty not to discriminate. As correctly argued by Lauren, such a duty ‘contributed to a considerable expansion of interest in justice, equality, and individual freedom, and thus to a corresponding shift from natural law as duties to natural law as rights’.¹¹¹ This development was interesting as people seeking freedom from state oppression kept referring to their natural rights to life, property, participation and to practice their religion.¹¹²

¹⁰⁷ P Hayden *Cosmopolitan global politics* (2005) 39.

¹⁰⁸ Aristotle *The politics and the Constitution of Athens* (1996) 127.

¹⁰⁹ Lauren (1998) 13.

¹¹⁰ J Hus in H Gordon Skilling *Charter 77 and human rights in Czechoslovakia* (1981) as quoted by Lauren (1998) 14.

¹¹¹ Lauren (1998) 14.

¹¹² A S P Whoodhouse (ed) *Puritanism and Liberty* (1938) 444 as quoted in Lauren (1998) 14.

The Christian-based natural law was developed by Locke and further expanded upon by philosophers of enlightenment such as Rousseau, Montesquieu, Hume, Hobbes, and Kant who focused on societal problems such as state's oppression to make their case for natural rights. These prolific thinkers were of the view that

[t]he fundamental rationality in the laws of nature could be applied to various aspects of the human condition, thus making humanity and society more rational and more perfectible through human effort.¹¹³

This reasoning finds its way through the second paragraph of the 1776 US Declaration of Independence in these words:

We hold these truths to be self-evident; that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness

As a result of this provision, natural rights were the subject of the US Supreme Court which held that

[T]he right to pursue happiness is placed by the Declaration of Independence among the inalienable rights of man, not by the grace of emperors or kings, or by the force of legislative or constitutional enactment, but by the creator.¹¹⁴

This approach was also followed by the same court that claimed that 'the founding fathers believed devotedly that there was a God and that inalienable rights of man were rooted in him'.¹¹⁵

¹¹³ Lauren (1998) 16.

¹¹⁴ *Powell v Pennsylvania* 127 US 678, 8 S. Ct. 127, 32 L. Ed. 253 (1888).

¹¹⁵ *Edwards v Aguillard* 482 US 578, 107 S. Ct. 2573, 96 L. Ed. 2d 510 (1987).

Natural rights theory also appears in the declarative French political document, the ‘Declaration of the Rights of Man and Citizen’ which defines a set of individual rights and collective rights brought on by the 1789 French revolution. The expression ‘Rights of Man’ which highlights the natural character of human rights as well as their natural attachment to every human being. This idea also featured in the Universal Declaration which affirms that ‘everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised’.¹¹⁶ Salomon correctly observes that the notion of human rights entails ‘the right to everyone to an adequate standard of living including food, clothing, housing and the right health, education and [others]’.¹¹⁷ This is in line with Grotius philosophy maintaining that the right to self-preservation possessed equally by all human beings is at the centre of natural law.¹¹⁸ For Donnelly,¹¹⁹ human rights are ‘the rights that one has simply because one is a human being, are held equally and inalienably by all human beings. They are social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets’.

However, in contrast to the natural law theory that posits that certain normative principles are true or ‘self-evident’ and exist independently of their codification or enforcement by human beings.¹²⁰ Positivism built upon the idea that norms are valid only insofar as they have been created upon a precise rule, and holds that law has nothing to do with morality. Its main proponents such as Auguste Comte and Thomas Hobbes derived their inspiration from well known Protestant philosophers of the enlightenment era such as Vattel, Kant and Hegel as well as twentieth century legal scholars like Kelsen and Dworkin to name a few. From an individualist perspective, such distance from the cosmopolitanist feature of the natural law theory are inclined towards the supremacy of the individual as well of the sovereignty and

¹¹⁶ Art 28 of the Universal Declaration.

¹¹⁷ Salomon (2007) 2.

¹¹⁸ Hayden (2005) 40.

¹¹⁹ J Donnelly *International Human Rights* (1998) 202.

¹²⁰ On the natural law theory, see in general J Finnis *Natural law and natural rights* (1980) 18.

power of the state represented by the ruler to whom ‘subjects are to obey’.¹²¹ According to this theory, people’s rights should be limited by the state power. Even some proponents of natural theory rejected the notion of natural rights, or ‘rights of man’ which were pure dreams and yielded the ‘monstrous fiction’ of human equality.¹²² Interestingly, even the utilitarian Bentham had strong views against natural rights. He wrote: ‘Rights is the child of law; from real law [originating from the state] come real rights; but from imaginary laws, from law of nature, come imaginary rights....Natural rights is simply non sense’.¹²³

It could be argued that Bentham’s rejection of natural rights is based on his belief to the right to property, otherwise how can a utilitarian distance himself from natural rights? His conception of human rights will definitely create a problem in the distribution of world’s resources as will be seen later. Other proponents of the right to property include Hume, Burke, Hamilton and Rousseau. The latter underlines the right to property as ‘the most sacred of all the rights of citizens [and] even more important in some respects than liberty itself’.¹²⁴ This view is also supported by Locke who may have used it as an excuse to own shares in the Royal African Company which was very much involved in the slave trade.¹²⁵

Having said that, it is important to note that the explosion of positivism was linked to the difficult operationalisation of the natural right theory. In fact, the Declaration of ‘the rights of Man’ did nothing for the rights of women, hence in 1791, Olympe de Gouge published her own Declaration of the Rights of Women and Citizens’ with the first article claiming the right

¹²¹ Lauren (1998) 22.

¹²² E Burke *Reflections and on the revolution in France* (1955) 313 and 341 as quoted by Lauren (1998) 22.

¹²³ J Bentham in B H Weston Human rights in R P Claude & B H Weston (eds) *Human rights in the world community* (1992) 16 as quoted by Lauren (1998) 22.

¹²⁴ JJ Rousseau ‘A discourse on political economy’ in *The social contract and discourses* (1950) 311 as quoted by Lauren (1998) 26.

¹²⁵ Lauren (1998) 30.

of equality between man and woman.¹²⁶ In addition, the 1789 Declaration on the rights of man did not reduce discrimination on the ground of race, social class and others.

Notwithstanding the challenges mentioned above, it could be argued that the natural law theory played a vital part in the birth of human rights as understood today. Nevertheless, the concept of human rights is not an easy one. The difficulties related to the concept were observed when the international community had to draft the International Bill of Rights.¹²⁷ It adopted the International Covenant on Economic Social and Cultural Rights¹²⁸ (ICESR) known to be from a socialist tradition on the one hand, and the International Covenant on Civil and Political Rights¹²⁹ (ICCPR) consistent with Western democratic origin¹³⁰ on the other.

The complexity of the concept was further highlighted when in 1979, the Czeck Karel Vasck categorised human rights in terms of ‘generations’ of human rights.¹³¹ According to him, human rights were divided into three generations: first, second and third.

- *First generation rights*

¹²⁶ O de Gouges ‘Declaration des Droits de la Femme et de la Citoyenne, 1791’ *Oeuvres* (1986) 99-112 as quoted by Lauren (1998) 18.

¹²⁷ K Mclean *Constitutional deference, courts and socio-economic rights in South Africa* (2009) 91.

¹²⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976.

¹²⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.

¹³⁰ Mclean (2009) 91 ; also MCR Craven *The International Covenant on Economic, Social and Cultural Rights: A perspective on its development* (1995) 8.

¹³¹ K Vasak ‘International dimensions of human rights’, 1982; www.en.allexperts.com. The article in which the generation’s theory was first presented by Vasak is entitled: ‘A 30-Year Struggle. The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights’, UNESCO Courier, November 1977, 29-30. Vasak became a French citizen.

Also known as civil and political rights, first generation rights include the right to life, personal liberty, freedom from torture, from slavery, from forced labour, right to property, to fair trial, to personal dignity and freedom of movement. These rights are subject to limitation except freedom from torture as well as the right to life. This entails for instance the abolition of the death penalty in protecting the right to life. The implementation of this right imposes negative obligations on the state;¹³² the state should abstain from torturing or encroaching upon rights which are viewed as natural or inalienable. Even in a circumstance of emergency created by a situation of war when rights may be subjected to derogation, the derogation should be proportional with the crisis it attempts to address. This was the position of the European Court of Rights in *Ireland v United Kingdom*¹³³ where the principle of proportionality alluded to earlier was established.

- *Second generation human rights*

Also called economic, social and cultural rights, second generation human rights which include the right to food, health, education, and housing amongst others were denied the attribute of human rights because of their so-called lack of enforceability, non universality of some of them, and the differences of level of economic development amongst states which lead to uneven levels of implementation.¹³⁴

Nevertheless, the international community has protected economic, social and cultural rights through the adoption of the 1966 International Covenant on Economic Social and Cultural Rights (ICESCR) and the adoption of its optional protocol.¹³⁵ These rights impose positive obligations on the state for their fulfillment, but the implementation is progressive as it

¹³² C Mbazira *Litigating socio-economic rights in South Africa: A choice between corrective and distributive justice* (2009) 18.

¹³³ *Ireland v United Kingdom* (1978) ECHR.

¹³⁴ A Eide 'Economic social and cultural rights as human rights' in Eide et al *Economic social and cultural rights: A textbook* (1995) 35-36.

¹³⁵ Adopted by the UN General Assembly Resolution A/RES/63/117 of 10 December 2008.

depends on the availability of resources in a specific country. Nevertheless, the lack of resources is not an excuse for their non implementation.¹³⁶

- *Third generation rights*

Also known as solidarity or groups rights, they include the right to self-determination, to a healthy and ecologically balanced environment, to development, to ownership of the common heritage of mankind and to national and international peace. Though controversial and therefore called ‘contested rights’,¹³⁷ these rights were informed by demands of the third world and African countries in particular, which were confronted to difficulties pertaining to colonialism and were excluded from the global economy,¹³⁸ hence the important place of group rights in the ACHPR.

The debate on the hierarchy of rights simply highlights the controversy on the universality of human rights. Proponents of the natural law theory are of the view that human rights are universal. Accordingly, every human, man or woman is a human being and is therefore endowed with universal and inalienable rights which are inherent to his or her personality; it is about human dignity which is defined by An-Na’im as ‘the particular cultural understanding of the inner worth of the human person and his or her proper political society’.¹³⁹ Furthermore, he argues that dignity is not a ‘claim right’, but a birthright or inherent right. The problem with An-Na’im’s definition is linking dignity to a political society.

¹³⁶ Committee on ESCR, General Comment No 3 (1990) on the nature of state obligations under art 2 (1) of the ICESCR.

¹³⁷ Eide *et al* (1995) 241.

¹³⁸ W D Verwey ‘The new international economic order and the realization of the right to development and welfare - A legal survey’ in F E Snyder & S Sathirathai (eds) *Third World attitudes toward international law: An introduction* (1987) 25-26.

¹³⁹ A A An-Na’im (ed) *Human Rights in Cross-Cultural Perspective- A quest for consensus* (1991) 81.

In opposition to An-Na'im's view, human dignity should not be linked to a particular society, but to the human nature. This approach was advocated by Pope Pius, who from a Christian perspective, defined human dignity 'as something that is inherently a person's God-given inalienable rights'.¹⁴⁰ In this vein, it is argued that God created man with a special rank and thus, 'all social institutions, governments, states, laws, human rights and respect for persons originate in the dignity of man or his personhood. His dignity serves to be the foundation, cause and end of all social institutions'.¹⁴¹

It is also argued that dignity makes a difference between a man and a beast. Soman argues that treatment afforded to men compare to other creatures is nothing but 'the concept of dignity at work';¹⁴² it is 'a property that is supposed to belong to all people, in every condition, just by virtue of their humanity'.¹⁴³

Inclined towards the concept of dignity as defined above, Donnelly is of the view that all humans have rights by virtue of their humanity; and that a person's rights cannot be determined by gender, nationality, and ethnic origin. This view is supported by proponents of the universal validity and applicability of human rights. In this school of thought, Kannyo argues that most civilisations and cultures have given great importance to the preservation of life and the promotion of human welfare.¹⁴⁴ In the same vein, Asante says:¹⁴⁵

¹⁴⁰ E Soman 'Human dignity: A question of definition' (2008) available at <http://socyberty.com/philosophy/human-dignity-a-question-of-definition/> (accessed 9 May 2010).

¹⁴¹ Soman 'Human dignity: A question of definition' (2008) available at <http://socyberty.com/philosophy/human-dignity-a-question-of-definition/> (accessed 9 May 2010).

¹⁴² Soman (2008).

¹⁴³ Soman (2008).

¹⁴⁴ E Kannyo quoted from I G Shivji *The concept of human rights in Africa* (1989) 11.

¹⁴⁵ Asante quoted from Shivji (1989) 11&12.

I reject the notion that human rights concepts are peculiarly or even essentially bourgeois or western. Such notion confuses the articulation of the theoretical foundation of western concepts of human rights with the ultimate objective of any philosophy of human rights. Human rights quite simply are concerned with asserting and protecting human dignity and they are ultimately based on a regard for the intrinsic worth of the individual. This is an eternal and universal phenomenon, and is vital to Nigerians and Malays as to Englishmen and Americans.

Asante's opinion is supported by Dietrich who claims that 'beyond all formal standards, individual and society seem to have a common understanding of dignity and humiliation'.¹⁴⁶

However, these opinions ignore that the Universal Declaration uses individualistic expressions like 'everyone, his, no one shall', even though present in Africa, where concepts such as 'we, us and ours' are well established. Focusing on the African environment, Metz, while describing the African concept of *ubuntu* and African morality, uses the maxim of 'I am because we are' as a starting point.¹⁴⁷ Accordingly, African philosophy is community informed and not individual based. Mbiti views it as a 'cardinal point in the African view of man' and that '[w]hat is right is what connects people together; what separates people is wrong.'¹⁴⁸ Metz demonstrates how this philosophy which informs group rights in Africa is explained by African leaders such as Steve Biko who observed 'our action is usually joint community oriented action rather than the individualism which is the hallmark of the capitalist approach'.¹⁴⁹ This philosophy based on *ubuntu* differs from the Western philosophies. Metz defines the concept of *ubuntu* to mean 'an action is wrong insofar as it fails to honor relationships in which people share a way of life and care for one another's quality of life, and especially to the extent that it esteems division and ill will'.¹⁵⁰ In this

¹⁴⁶ W Dietrich quoted from N Koppensteiner 'Are human rights universal' available at <http://www.interpeacenet.org/rr/koppensteiner-humanrights.htm> (accessed 17 February 2008).

¹⁴⁷ T Metz 'Human dignity, capital punishment, and an African moral theory: Toward a new philosophy of human rights' (2010) 9 *Journal of Human Rights* 83.

¹⁴⁸ Metz (2010) 83.

¹⁴⁹ Metz (2010) 83.

¹⁵⁰ Metz (2010) 84.

context, the interests of the collectivity is paramount,¹⁵¹ hence the presence of collective rights in ACHPR. Using Akan proverbs, Appiagyei-Atua illustrates the concept of human rights in the African philosophy in these terms:¹⁵²

If you deny me the right to express myself, you are a murderer'; 'it is your responsibility to see to my welfare in my old age after I helped raise you up'; 'Two-headed crocodiles fight over food that goes to a common stomach because each relishes the food in its throat'; or 'I heard it and I kept it'.

Accordingly, every one has the freedom of expression, an individual is an integral part of the community and does not only have rights, but has duties as well.¹⁵³ In such a set-up, sharing should be the way of live and human rights are generally collective.

It is therefore submitted that the concept of human rights on the continent is informed by African philosophies extracted from the cultural, linguistic, and historical background of African folks.¹⁵⁴

The universalism of human rights is also questionable because among other things when the Universal Declaration was drafted, Asian and African countries except Ethiopia were still colonies and did not participate. The only non-westerners who were at the table were Chang from China and Malik from Lebanon.¹⁵⁵

¹⁵¹ A Cassese *Human rights in a changing world* (1990) 54.

¹⁵² K Appiagyei-Atua 'A rights-centred critique of African philosophy in the context of development' (2005) 5 *African Human Rights Law Journal* 335.

¹⁵³ D M Chirwa 'In search of philosophical justifications and suitable models for the horizontal application of human rights' (2008) 8 *African Human Rights Law Journal* 303.

¹⁵⁴ Appiagyei-Atua (2005) 347.

¹⁵⁵ V A Leary 'The effect of Western perspective on international human rights' in A A An-Naim & F M Deng (eds) *Human rights in Africa – Cross-cultural perspective* (1990) 20.

Put differently, issues related to culture, custom, religion and tradition have important roles in shaping human rights agenda. Therefore, the idea of the universality of rights becomes a difficult one and adds to the complexity of identifying and classifying human rights. Hence, the correctness of the argument that nowadays the scope and abstraction of the Universal Declaration hinders the understanding of the conceptual and practical connections of human rights.¹⁵⁶ In the same vein, MacIntyre argues that human rights only appear at particular historical moments to address particular societal issues.¹⁵⁷ Consequently, it could be argued that there are not human rights established in human nature as argued by the natural law theory.¹⁵⁸ This opinion is sustained by proponents of the relative validity of and applicability of human rights. Koppensteiner questions: ‘How, for example, does the right to life as the most basic of human rights relate to questions like suicide or abortion?’¹⁵⁹ Furthermore, the practice of child labour and female circumcision¹⁶⁰ gives some indication of how divergent moral perspectives can be. Moreover, to use Hansungule’s words, ‘the right to development is probably the best example of the group paradigm’ because while Africa does not believe in human rights without the RTD, the latter is irrelevant to the West.¹⁶¹

Nevertheless, the Vienna Declaration unanimously adopted by UN member states declared the ceasefire on the debate of universalism versus relativism of human rights. It declared all human rights universal, interdependent and indivisible.¹⁶² This thesis subscribes to this view; in other words, civil and political rights, economic, social and cultural rights, as well as the

¹⁵⁶ A Hanella & J Lagan (eds) *Human Rights in Americas: The struggle for consensus* (1982) 1.

¹⁵⁷ A MacIntyre *After virtue* (1981) 67.

¹⁵⁸ MacIntyre (1981) 69-70.

¹⁵⁹ N Koppensteiner ‘Are human rights universal’ available at <http://www.interpeacenet.org/rr/koppensteiner-humanrights.htm> (accessed 17 February 2008).

¹⁶⁰ AD Renteln *International human rights: Universalism v relativism (Frontiers of anthropology)* (1990) 57.

¹⁶¹ Hansungule, Good Governance Academy (2003) 8 (on file with author).

¹⁶² Para 2, 5, 32 and 37 of the Vienna Declaration.

RTD, are all universal and should be implemented simultaneously, and that neither set of rights should be paramount over the other. An-Na'im explains the interdependency of civil and political rights and socio-economic rights in these terms:¹⁶³

From a practical point of view, it is difficult to identify coherent and consistent criteria of classification. Indeed, the rights in both purported categories are indivisible and interdependent, collectively as well as individually, simply because they are all essentials for the well being and dignity of every person As a whole being. For example, freedom of expression will be the prerogative of the privileged few without a right to education that enables all people to benefit from that freedom. Conversely, a right to education is not meaningful unless a person also has the freedom to create knowledge and exchange information. Neither of these rights is practically useful for a person who lacks shelter and health care.

It is however important to note that the proclamation of the universality of human rights did not neglect the regional particularities; hence the important place of human rights at regional levels in general and in Africa in particular.

The term 'human rights in Africa' represents the African human rights architecture or African human rights system broadly. In this study, 'the African human rights system' should be understood broadly. In other words, it includes 'the regional' i.e. AU-based system and 'the subregional' such as the Southern African Development Community (SADC) or the Economic Community of West Africa (ECOWAS) and even national laws with its case law. In effect, the AU human rights system is based on the Organisation of the African Unity (OAU) Charter of 1963,¹⁶⁴ (now 2001 AU Constitutive Act),¹⁶⁵ the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa,¹⁶⁶ the 1981 ACHPR¹⁶⁷ and its 1998

¹⁶³ A A An-Na'im 'To affirm the full human rights standing of economic, social and cultural rights' in Yash Ghai & Jill Cottrel (eds) *Economic, Social and Cultural Rights in Practice* (2004) 12.

¹⁶⁴ Adopted in Addis Ababa, Ethiopia, on 25 May 1963 and entered into force on 13 September 1963; CIAS/Plen.2/REV.2 available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm (accessed 6 May 2010).

¹⁶⁵ Adopted in Lomé, Togo, on 11 July 2000 and entered into force on 26 May 2001; AHG/Dec.143 (XXXVI). The AU Assembly held its inaugural meeting in Durban South Africa, in July 2002.

¹⁶⁶ Adopted in Addis Ababa, Ethiopia, on 10 September 1969 and entered into force on 20 June 1974; available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm (accessed 6 May 2010).

Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights (Protocol on the African Human Rights Court);¹⁶⁸ its 2003 Protocol to the ACHPR on the Rights of Women in Africa (Protocol on the Rights of Women)¹⁶⁹ and the 2008 Protocol on the Statute of the African Court of Justice and Human Rights¹⁷⁰ and finally the 1990 African Charter on the Rights and Welfare of the Child (African's Children Charter).¹⁷¹

At this juncture, it is important to clarify why the thesis is of the view that human rights are the best way for achieving the RTD.

In 'the classic regime of sovereignty' which ran from 1648 to the early twentieth century,¹⁷² international law was based on the principle of equality between states which were concerned with a just and fair relation between them. The 'vertical' relationship between states and their citizens was a matter of national sovereignty which could be addressed nationally and was not included in the scope of international law.

However, after the end of the Second World War, the inclusion of human rights standards into interstate agreements takes international law beyond the law of states, and turns it into the law of peoples or *Jus gentium*. This development led to the adoption of numerous human rights instruments. More importantly, many non-states actors (IFIs, WTO and TNC) became major

¹⁶⁷ Adopted in Nairobi, Kenya, on 27 June 1981 and entered into force on 21 October 1986 June 1974; OAU Doc. CAB/LEG/67/3/Rev5 (1981).

¹⁶⁸ Adopted in Ouagadougou, Burkina-Faso on 10 June 1998 and entered into force on 25 January 2004, available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm (accessed 6 May 2010).

¹⁶⁹ Adopted in Maputo, Mozambique, on July 2003 and entered into force on 25 November 2005; available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm (accessed 6 May 2010).

¹⁷⁰ Adopted in Sharm El-Sheikh, Egypt, in July 2008; Ass/AU/Dec.196 (XI) DOC. ASSEMBLY/AU/13 (XI).

¹⁷¹ Adopted in Addis Ababa, Ethiopia, on 11 July 1990 and entered into force on 29 November 1999; OAU Doc. CAB/LEG/24.9/49 (1990).

¹⁷² D Held 'The changing structure of international law: Sovereignty transformed?' 1 at <http://www.polity.co.uk/global/pdf/GTReader2eHeld.pdf> (accessed 8 January 2011).

players in shaping world politics, international relations and international law; in fact they are the international order makers and their action should be informed by international human rights norms if the latter are to become a roadmap for the realisation of the RTD.

Nevertheless, in spite of various international undertakings on development and the RTD, much more needs to be done to ensure equity and global justice in the redistribution of world resources. For this to happen, the liberal discourse of the right to property should be substituted with a cosmopolitanist approach to human rights. In this context ‘the law [should not] be used to justify the political ... domination of one group over another’.¹⁷³ As pointed out by Baxi, the current globalisation is characterised by ‘the emergence of an alternate paradigm of human rights’¹⁷⁴ which abandons human rights standards as defined by the UDHR and focused on ‘trade-related, market friendly human rights’.¹⁷⁵ The latter is more concerned with the welfare of the corporate world without any attention to human wellbeing. Such an approach will not lead to the realisation of the RTD.

As much as the thesis believes that human rights are the best way to realise the RTD, it is also convinced that this will not happen if the architects of globalisation do not go back to the concept of human dignity that was behind the adoption of the UDHR. In this perspective, international order makers should be held accountable for human rights violations. Hence, the need to criminalise certain acts which will prevent the realisation of the RTD.¹⁷⁶ In this vein, the crime against the RTD should be made of

[I]nternational, regional, or national acts, as comprising intentional acts or omissions or patterns of behaviour designed to defeat, distort, deflect or detracts from laws directed to fulfil the core components of the [RTD].¹⁷⁷

¹⁷³ S Adelman & K Foster ‘Critical Legal Theory: The Power of Law’ *The Critical Lawyers' Handbook* Volume 1 available at http://www.nclg.org.uk/book1/1_7.htm (accessed 4 January 2011).

¹⁷⁴ U Baxi *The future of human rights* (2002) 132.

¹⁷⁵ Baxi (2002) 132.

¹⁷⁶ It is important to note that the criminalisation of such acts will not be enough because outside the municipal system, it will be necessary to identify which forum will hear such cases.

¹⁷⁷ Baxi (2007) 153.

Furthermore, the 2008 international economic crisis was the evidence that liberalism and its right to property need to be put aside. In fact, we witnessed the revival of state intervention in the world capital of liberalism (Washington) and this has the flavour of cosmopolitanism which could open doors for the eradication of poverty and the realisation of the RTD. In fact, for human rights to be the engine of the RTD, there is also a need to ensure that the nation-state and the international community at large play their role of ‘redistributionist’¹⁷⁸ of resources through the realisation of socio-economic rights. It should be noted that if all the stakeholders comply with the universal standards of human rights, this will lead to global justice because the latter will not be realised if human rights are ignored. Therefore, advocating for ‘the language of global justice [and not] human rights [in] pursuit of global development policy’¹⁷⁹ is also correct if the end result is the realisation of the RTD.

Overall, human rights are the best way to realise the RTD, though there is a need to ensure that globalisation is human beings and human dignity friendly.

2.2.2 The notion of development

In the UN system, the link between human rights and development was first highlighted by the 1968 Teheran World Conference on Human Rights in these terms: ‘The achievement of lasting progress in the implementation of human rights is dependant upon sound and effective national and international policies of economic and social development’.¹⁸⁰ In other words, a successful realisation of human rights is directly linked to appropriate development frameworks. Nevertheless, this link does not necessarily translate into reality on the ground because amongst other factors, the concept of development is elusive.

¹⁷⁸ Baxi (2002) 135.

¹⁷⁹ Baxi (2007) 131

¹⁸⁰ The Proclamation of Teheran, para 13 in final Act of the International Conference on Human Rights, UN doc. A/CONF.32/41 (1968).

Like the word *peace*, the term development is used abundantly without provision for a definition. As a result, it is susceptible to different meanings in different societies, communities and countries. Besides its legal context, it could be interesting to try and investigate the concept socially in a mean society.

In the village of Baleng¹⁸¹ in West Cameroon for example, the expression ‘*pah loh long ngoh mbiaeh*’ is commonly used. It simply means ‘let’s bring progress in Baleng’; development is understood to be progress. In Lingala, development is known as *Kobonga* while progress is known as *Konede Kiboso*. In Setswana, development is *Ditlhabololow* and progress is known as *Tswelelopele* and in Igbo, development is *Obodo ime pe*. In other words, development is part and parcel of African languages. The lack of it is ‘poverty’ known as *Mpong* in Baleng, *Mobola* in Lingala, *Lehuma* in Setswana and *Ogbenye* in Igbo. As testified by these expressions, the well-being of the human person matters in African communities. In general, the deficiency of welfare or poverty is associated with the lack of basic goods and services necessary to live with dignity. From this angle, in an underdeveloped community ‘poor people cannot lead a life commensurate with the standards of civilised existence’¹⁸² characterised by electronics, appliances, plumbing and other technologies. Here, development is synonymous with ‘modernisation’.¹⁸³ It can therefore be argued that a rich or developed man or woman is a person who lives in a building with modern toilets, televisions, and many other items of the ‘modern world’. In short, though there are pockets of poverty in big cities, a developed or wealthy man or woman lives in a wealthy environment like New York in the USA or Sandton in Johannesburg and it can be argued that his or her dignity as a human being is ensured. From this angle, ‘development’ is perceived in the classical approach, where it is the accumulation of wealth and is measured by the Gross Domestic Product (GDP).¹⁸⁴

¹⁸¹ Baleng is the author’s village located in West Cameroon.

¹⁸² A Sengupta ‘Poverty eradication and human rights’ Briefing presented at the UN Palais des Nations, Geneva, Switzerland, 31 March 2005.

¹⁸³ D Seers ‘The meaning of development’ (1969) 2 *International Development Review* 2; for more on the concept of development, see The World Bank ‘*Development and human Rights: the role of the World Bank*’ (1998); The World Bank (2000) *Can Africa claim the 21st century?*

¹⁸⁴ The GDP is the total amount of goods and services produced by a country.

Nevertheless, this understanding of development is based on American hegemony as affirmed in President Truman's speech of 1949 in which he noted that America 'should make available to the peace loving peoples the benefits of our store of technical knowledge in order to help them in their aspirations for a better life'.¹⁸⁵ In this respect, from a hegemony perspective, development is a commodity brought to the 'underdeveloped' in order to dominate and conquer them. Escobar correctly observes that such development based on the accumulation of material as prescribed in the liberal ideology characterized by the right to property created the 'Third World'.¹⁸⁶ Such idea of development gave birth to the Third World because the same theory informed the creation of the WTO with its injustices, the 1980 Structural Adjustment Programmes that brought Africa to its knees. As observed by Baxi, the imposed classical theory of development is not informed by 'global justice' but by liberal policies tailored to impose 'the hegemonic project of modernisation'.¹⁸⁷

It could be argued that 'development' from Truman's perspective is hegemonic because it does not consider other people's beliefs. For instance, 'neoliberal development' does not have the same resonance with pygmies living in the forest of East and South Cameroon. In Cameroon, it is common knowledge that, for these people also called 'forest people',¹⁸⁸ development is not about accumulation of wealth or infrastructures. In fact, they retreat to the back of the forest as roads and other attributes of what is known as 'civilisation' are brought to their villages. Their way of life involves hunting for meat, gathering and fishing, eating

¹⁸⁵ Harry Truman's *Public papers of the presidents of the United States* [1949], 1969 quoted by Baxi 'The uncanny idea of development' in *Human rights in posthuman world - critical essay* (2007) 93.

¹⁸⁶ A Escobar *Encountering development: The making and the unmaking of the Third World* (1995) 4, as quoted by Baxi (2007) 93.

¹⁸⁷ Baxi (2007) 97.

¹⁸⁸ On forest people see in in general see C M Turnbull *The Forest People* (1987); also S Tetchiada 'For Cameroon's pygmies, no forest is impenetrable enough', press review, *News from Africa* 17 May 2005 available at http://www.newsfromafrica.org/newsfromafrica/articles/art_10269.html (accessed 9 May 2010); also 'African people and cultures' available at <http://www.africaguide.com/culture/tribes/pygmies.htm> (accessed 9 May 2010); also survival 'Pygmies' available at <http://www.survivalinternational.org/tribes/pygmies> (accessed 9 May 2010).

fruits and vegetables and having a strong belief in traditional medicine. In addition, they keep their bonds of family life and tribal solidarity alive.¹⁸⁹ In this era of mobile phones, they use drums to send messages miles away. In fact, bringing to pygmies what is known as ‘development’ in various parts of the continent will be hindering their development or under-developing them. In the same perspective, it can be argued that what is known as wealth in the classical sense brings pollution because machinery is the main destroyer of the environment. This approach of development is close to Gandhi’s *swaraj* understood as a development model informed by ‘a cosmopolitan republic of ideas, based on deeply understanding one’s own traditions, combined with a sincere respect for the traditions of the other’.¹⁹⁰

In addition, development is also viewed as culture. In this regard, there is a practical case in the hydropower dam in Uganda¹⁹¹ where Jjajja Bujagali, a spiritual leader was involved in the building of the dam. It is said that after the African Development Bank signed an agreement with the government of Uganda to develop the dam and hydropower, it went to the site and met with eight chiefs/spiritual leaders to introduce the project and ask for their co-operation.¹⁹² The eight spiritual leaders/chiefs consulted their spirits in the waters where the dam was to be sighted, asked them (spirits) for their ‘permission’ to establish the dam, were paid money by the Bank to perform rituals to please the spirits, etc. All this was done and it is said the spirits ‘agreed’ and in fact were taken out of the lake to give way to the construction of the dam and other related works. Jjajja Bujagali who according to an American

¹⁸⁹ Turnbull (1987); Tetchiada (2005).

¹⁹⁰ Baxi (2007) 98.

¹⁹¹ See Independent Review Mechanism 1st Monitoring Report on the implementation of findings of non-compliance and related actions to be undertaken by the ADB Management on the Bujagali hydropower and interconnection projects, 22 July, 2009, Courtesy of the Director, Compliance Review and Mediation Unit (CRMU); also M Lacey ‘Traditional Spirits Block a \$500 Million Dam Plan in Uganda’ *The New York Times* September 13 2001; J Kane ‘Eastern Uganda Grapples with Power Plant Project’ available at <http://www.npr.org/templates/story/story.php?storyId=12742926&ft=1&f=1025> (accessed 15 August 2009); also M Hansungule ‘Policing the African Development Bank: Review of the Independent Review Mechanism’ (2009) 4, Report of the Independent Expert at the ADB (on file with author).

¹⁹² Hansungule (2009) 4.

anthropologist hired by the African Development Bank, is more senior to the other eight spiritual leaders, but who was ignored at first. Jjajja Bujagali did not cooperate when approached because he thought he was ignored by the government and the African Development Bank and the World Bank as the two banks jointly funding the project. Jjajja Bujagali when finally approached, claimed his spirit (s) in the lake have refused to cooperate. He claimed to have spoken to them on several occasions to bless the project but they refused. It appeared what he wanted (according to the bank staff) was to be paid the same amount of money or more than what was paid to his colleagues before the spirits can agree.¹⁹³

This case just adds to the complexity of the concept of development. Belief in African spirits and ancestors is of course akin to belief in witches. People are supposed to have moved on, but the stubborn reality, however, is that it is still the case that many people continue to believe in them; it is their civilisation, culture and religion which are guaranteed as human rights. Though 'positive culture' should be emphasised, it is not yet elaborated what exactly constitutes the scope of culture and may just include beliefs like Bujagali spiritual beliefs. Perhaps there is a need to 're-define' development paradigm to mean modern and positive cultural beliefs and practices which (provided they are positive) help people identify themselves as who they are, and this is ignored by liberal hegemonic concept of development.

It is incorrect to advance material values over other values. To be rich is not only to have a full bank account or buildings, but it also implies 'increased skill and capacity, greater freedom, creativity, self-discipline and responsibility' as Walter Rodney¹⁹⁴ puts it.

During 2008 Alternatives' days in Canada,¹⁹⁵ on the first night of the event, as the participants were free and relaxing around a camp fire not far from a lake, this author held an informal

¹⁹³ Hansungule (2009) 4.

¹⁹⁴ W Rodney *How Europe underdeveloped Africa* (1973) 6, available at http://www.blackherbals.com/walter_rodney.pdf (accessed 15 August 2010).

¹⁹⁵ Alternatives' is a Canadian based NGO. Alternatives' days or the global solidarity forum aims to build a different world. From August 22 to 24 2008, this author participated to Alternatives' Days which took place in Saint-Alphonse-de- Rodriguez, in Montreal, Canada.

debate on ‘what is poverty? After listening to the theory which connects poverty to lack of technology and mechanisation, this author brought a different perspective in these words:

Cultural identity should not be viewed as poverty, connecting to nature is not being poor. We travelled 145 km to hold this conference in a rural area to be in touch with the nature, we are sitting around the fire at night next to a lake. We came here to connect with the nature, but when other people in Africa have these details as their way of life, they are viewed as poor people.¹⁹⁶

This view was sustained on Saturday 23 August 2008 by Raina, Programme Director at Alternatives in Asia and by Pedros Batista the Ecologist Award winner in Brazil who were not present at the informal discussion mentioned above. They used their different presentations to observe that back in 1972, the tiny East Asian country of Bhutan understood that determinants of human happiness go beyond mere economic growth.¹⁹⁷ Bhutan’s King Jigme Singye Wanchuck responding to criticism on the lack of economic growth in his kingdom emphasised the need to build an economy based on their cultural and spiritual values anchored in Buddhism.¹⁹⁸ In Bhutan, development is not defined by the GDP, but by ‘Gross National Happiness’ which defines the quality of life on more holistic and psychological terms. It takes into account culture and way of life. It looks at how many trees are standing, and not just how many roads and buildings are established; in brief, it considers the ecological relationship between humans and nature.¹⁹⁹

¹⁹⁶ S A Djoyou Kamga in an informal debate on poverty in Saint-Alphonse-de- Rodriguez, Montreal, Canada, 22 August 2008 (Alternatives’ Days 2008).

¹⁹⁷ V Raina, and P I Batista ‘Is a sustainable society compatible with capitalism?’ presented during 2008 Alternatives days (Axe 1 on political ecology) at Saint-Alphonse-de- Rodriguez, Montreal, Canada, 23 August 2008.

¹⁹⁸ ‘Gross National Happiness’ at http://en.wikipedia.org/wiki/Gross_National_Happiness; also Gross International Happiness at <http://www.grossinternationalhappiness.org/gnh.html> (accessed 25 August 2008).

¹⁹⁹ For more on Gross National Happiness in Bhutan see amongst others O Schell ‘Gross National Happiness’ at <http://www.pbs.org/frontlineworld/stories/bhutan/gnh.html> (accessed 25 August 2008); ‘Bhutan’s Gross National Happiness’ at <http://www.sepiamutiny.com/sepia/archives/002317.html> (accessed 25 August 2008).

Nevertheless, the fact that some people enjoy nature or consider themselves to be wealthy because of their cultural and ancestral values does not negate the fact that life without food, medicine, houses, schools and technology cannot always enhance human dignity, especially during this time when the world is becoming a global village. This author, while in Canada, regularly attended lectures with his friends who lived in Uganda, Kenya and South Africa. The lectures were delivered from Pretoria, Zambia or other countries in the world by Professor Hansungule. By so doing, the students are getting empowered through education which dignifies our humanity. This is possible because of the technology known as internet. It could therefore be argued that the mere fact of living in the ‘dark’ with no roads, toilet facilities, electricity, healthcare or schools reduces people’s capability to live in dignity. A homeless man who has nothing is almost like an animal which has no place to stay. Indeed, he is a poor man and has no dignity or rights, hence the comment of the UN Committee on Economic, Social and Cultural Rights (Committee on ESCR) claiming that ‘poverty constitutes a denial of human rights’.²⁰⁰

From another angle, development can be the equivalent of liberty. For instance, a black South African who had no rights under apartheid can claim to be developed now that he has the right to vote, freedom of movement as well as all his socio-economic and cultural rights protected by the South African Constitution under chapter two. In other words, following Sen’s perspective, black South Africans can define development as ‘freedom’.²⁰¹

‘Development’ can also be viewed through Julius Nyerere’s eyes that see development as the art of investing in people, in education and human development. Commenting on the Arusha Declaration,²⁰² Nyerere said:

²⁰⁰ See Economic and Social Council ‘Poverty and the International Covenant on Economic Social and cultural Rights’ E/C.12/2001/10, 10 May 2001.

²⁰¹ A Sen *Development as freedom* (1999).

²⁰² The Arusha Declaration was made by the late Tanzanian President Julius Nyerere on 5 February 1967. It was a description of *Ujamaa* or Nyerere’s vision of socialism to develop his country.

What we were doing, in fact, was thinking of development in terms of things, and not people....', based on post Arusha Declaration understanding that what we need to develop is people, not things, and that people can only develop themselves.²⁰³

In other words, development is not 'machinery' or mechanics, or roads and bridges, but the development of a human person to make these machines and roads as well as to respect others. Thus, it can be argued that Nyerere views development from Walter Rodney's perspective according to which development is moral²⁰⁴ and from the Sen's theory of development of human capabilities.²⁰⁵

According to the United Nations Development Programme (UNDP), development amongst others is the research of human well-being as well as the improvement of human capabilities.²⁰⁶ In the same vein, according to World Vision, a 'Christian relief, development and advocacy organisation whose purpose is to create lasting change in the lives of children, families and communities living in poverty',²⁰⁷ development is all about empowering poor communities by helping children move away from poverty to a fuller life. Accordingly, development is not only the provision of 'physical resources, but empowering communities to take ownership of their future and continue to improve their health and quality of life'.²⁰⁸ Though World Vision's developmental agenda is inspired by Christian values, the organisation assists all people regardless of religion, race, ethnicity or gender. Its agenda is

²⁰³ Julius Nyerere on the Arusha Declaration' at www.infed.org/thinkers/et-nye.htm (accessed 6 May 2008).

²⁰⁴ Rodney (1973) 6.

²⁰⁵ Sen's ideas on capabilities, development, freedom and human rights imply moving the focus of development economics from national income accounting to people centered policies. For more on this theory, see M Walker & E Unterhalter *Amartya Sen's capability approach and social justice in education* (2007).

²⁰⁶ Discussion with Ms Lopa Banerjee who is the Advocacy & Policy Advisor at the UNDP, Pretoria, South Africa, 20 April 2009.

²⁰⁷ L Ngcongwane, World Vision Human Resources Coordinator, in discussion with the author on 21 April 2009, also World Vision at <http://www.worldvision.org.za/content/view/13/28/> (accessed 22 April 2009).

²⁰⁸ In discussion with Ngcongwane (21 April 2009).

not discriminatory. Ms Lele observes that development is informed by the need to follow Jesus Christ's principle of helping the poor; it is based on charity and solidarity which is the right thing to do.²⁰⁹

The term development is a complex one and 'is in need of development itself'.²¹⁰ African politicians usually advance development as a reason to be voted into office while the incumbent party asks for more time to finalise its development programme, but none of them defines the concept of development. Nonetheless, as discussed earlier, development may imply disruption of the established way of life and be viewed as acculturation or rather connote increased living standards characterised by an improvement of the societal welfare in general. In the context of this study, development should be understood as a process to improve living standards with special emphasis on freedoms. The second paragraph of the Preamble of the 1986 UN Declaration on the right to development²¹¹ (UNDRTD) sheds more light on this view by defining development as:

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

In other words, development is a holistic human centered process underpinned by the establishment of national and international settings in which every individual and all peoples freely enjoy a sustainable improvement of the economic, social, cultural and political well-being. Such a concept of development entails the establishment of a world order characterised by global justice. Notwithstanding a critical view on this,²¹² it should be a world order where development is characterised by the following:

²⁰⁹ In discussion with Ngcongwane (21 April 2009).

²¹⁰ Statement by Nancy Rubin, U.S. Delegate to the UN Human Rights Commission, Comment on the Working Group on the Right to Development, 54th Sess (27 April 1998).

²¹¹ The 1986 UNDRTD adopted by General Assembly resolution 41/128 of 4 December 1986.

²¹² J Donnelly 'Human rights, democracy and development' (1999) 2 *Human Rights Quarterly* 625-626.

Empowerment – The expansion of men and women’s capabilities and choices increases their ability to exercise those choices free of hunger, want and deprivation. It also increases their opportunity to participate in, or endorse, decision-making affecting their lives.

Co-operation – With a sense of belonging important for personal fulfillment, well-being and a sense of purpose and meaning, human development is concerned with the ways in which people work together and interact.

Equity – The expansion of capabilities and opportunities means more than income – it also means equity, such as an educational system to which everybody should have access.

Sustainability – The needs of this generation must be met without compromising the rights of future generations to be free of poverty and deprivation and to exercise their basic capabilities.

Security – Particularly the security of livelihood. People need to be freed from threats, such as disease or repression and from sudden harmful disruptions in their lives.²¹³

2.2.3 The RTD

The RTD is at the centre of this research. Therefore, its analysis is dealt with in two chapters (chapter 3 and 4). Nevertheless, it should be understood as a right encompassing civil and political rights as well as socio-economic rights. In addition, it emphasises the right to participation.

According to the first article of the UNDRTD, ‘every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development’. In other words, through his or her participation, an individual or a group contributes, enjoys and realises his or her RTD. This is consistent with human rights being indivisible, interdependent, interrelated and universal.

The RTD also entails participation at regional or international level through South-South partnership, partnership between Africa and the rest of the world and puts human rights together interdependently under the same umbrella with the special objective to win the battle against poverty. Nonetheless, as will be shown in the upcoming chapter, the RTD is very controversial in most Western states with the USA as its main opponent.

²¹³ United Nations Development Programme ‘Governance for sustainable development: A UNDP policy document 2 (1997) as quoted by Donnelly ‘Human rights, democracy and development ‘ (1999) 2 *Human Rights Quarterly* 625.

However, there has been a recent development in the human rights discourse worthy to be noted. On 24 December 2009, the US Senate passed the landmark Health Reform Bill. Described by President Obama as ‘the most important piece of social legislation since the Social Security Act passed in the 1930s and the most important reform of our health-care system since Medicare passed in the 1960s’,²¹⁴ this Bill is credited both to late Senator Kennedy and current President Barack Obama. Having sailed through Congress recently, the Bill could shortly be signed into law after some reconciliations and modifications of conflicting clauses.

Most interesting is that this is happening in a country whose Constitution refuses to recognise socio-economic rights. None of the fourteen (14) Amendments to the American Constitution constituting the Bill of Rights refers to socio-economic rights. Yet the people on the ground recognise these rights and hence their representatives in the Senate overwhelmingly adopted the landmark bill by 60 to 39 and it was signed into law on 23 March 2010. People realise that health care is as important as liberty and instructed their representatives to vote for it. This development is important in this research because as mentioned above, socio-economic rights including the right to health is comprised in the RTD which, as will be shown in the next chapter, is always rejected by the USA. The inclusion of the right to health in the fourteen amendments stresses the interdependency of human rights and shows that all human rights are equal; in other words, first, second and third generation human rights are all equal.

During the Human Rights Week commemorating the 61st anniversary of the Universal Declaration, Hillary Rodham Clinton, the US Secretary of State clearly explained the interdependency of human rights in these terms:²¹⁵

Our human rights agenda for the 21st century is to make human rights a human reality, and the first step is to see human rights in a broad context. Of course, people must be free from the oppression of

²¹⁴ S Murray and L Montgomery ‘Senate passes health-care bill, now must reconcile it with House’ *The Washington Post* 25 December 2009 available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/24/AR2009122400662.html> (accessed 26 December 2009).

²¹⁵ H R Clinton ‘Remarks on the Human Rights Agenda for the 21st Century’ Georgetown University's Gaston Hall, Washington, DC, December 14, 2009 available at <http://www.state.gov/> (accessed 20 December 2009).

tyranny, from torture, from discrimination, from the fear of leaders who will imprison or “disappear” them. But they also must be free from the oppression of want – want of food, want of health, want of education, and want of equality in law and in fact.

This is actually how the substance of the RTD that the USA always opposes is understood. In other words, it encompasses freedom from fear and freedom from want. Nevertheless, the adoption of the 2009 Health Reform Bill brings a very big turn in the concept of human rights in the USA for two main reasons:

Firstly, under the Reagan Administration, equating economic, social and cultural rights with civil and political rights (as the Obama’s administration does today) was viewed as ‘distorting’ the concept of human rights.²¹⁶ This view was explained by Alston when presenting the Reagan administration’s opinion on the RTD. Accordingly,

[t]he right to development is little more than a rhetorical exercise designed to enable the Eastern European countries to score points on disarmament and collective rights and to permit the Third World to “distort” the issue of human rights by affirming the equal importance of economic, social and cultural rights with civil and political rights and by linking human rights in general to its “utopian” aspirations for a new international economic order.²¹⁷

In other words, economic, social and cultural rights (second generation human rights) are definitely inferior to civil and political rights (first generation human rights) and the RTD (a third generation human right) was not even on the table. This view was in sharp contrast with Sengupta’s, the Independent Expert on the RTD arguing that the achievement of economic, social and cultural rights is vital to the implementation of the RTD and had chosen the rights to health, adequate food, and education for his studies on how to implement the right.²¹⁸ It is important to note that the Independent Expert on the RTD did not claim that economic, social and cultural rights were paramount or should be implemented to the detriment of civil and

²¹⁶ P Alston ‘Making Space for New Human Rights: The Case of the Right to Development’ (1988) 1 (3) *Harvard Human Rights Year Book* 20.

²¹⁷ Alston (1988) 20.

²¹⁸ Report of the Independent Expert on the Right to Development, U.N. GAOR, 55th Sess., at 11, 38, UN Doc. A/55/306 (2000).

political rights.²¹⁹ On the contrary, he stressed the interdependence of all human rights and noted that²²⁰

[i]t is not merely the realization of those rights [civil and political and economic, social and cultural rights] individually, but the realization of them together in a manner that takes into account their effects on each other, both at a particular time and over a period of time. Similarly, an improvement in the realization of the RTD implies that the realization of some rights has improved while no other right is violated or deteriorated.

Secondly, under the Bush Administration, socio-economic rights and the RTD was definitely not part of the human rights discourse in the USA. In 2003, the US delegate at the UN Commission on Human rights, (now Human Rights Council) rejected both the RTD and socio-economic rights in these terms:²²¹

In our estimation the right to development (RTD) is not a “fundamental,” “basic,” or “essential” human right. The realization of economic, social and cultural rights is progressive and aspirational. We do not view them as entitlements that require correlated legal duties and obligations. States therefore have no obligation to provide guarantees for implementation of any purported “right to development.”

Put differently, economic, social and cultural rights were not human rights because of their aspirational character. Following the same logic, the RTD was also neglected.

However, as mentioned earlier, the 2009 Health Reform Bill which equates socio-economic rights with liberties is a significant change in the USA human rights framework. Nevertheless, will the recognition of socio-economic rights on the same line with liberties lead to the official acceptance of the RTD by the USA? Or will the interdependence of human rights

²¹⁹ S Marks ‘The human right to development: between rhetoric and reality (2004) 17 *Harvard Human Rights Journal* 147 available at <http://www.law.harvard.edu/students/orgs/hrj/iss17/marks.shtml> (accessed 25 December 2009).

²²⁰ Third report of the independent expert on the right to development, Arjun Sengupta, 2 January 2001, UN Doc. E/CN.4/2001/WG.18/2, 5.

²²¹ United States Government, Statement at the U.N. Commission on Human Rights, 59th Sess., Comment on the Working Group on the Right to Development (10 February 2003).

apply only within the confines of the USA? Or, further still, will the adoption of the Health Reform Bill have a global impact with the USA leading a movement towards the adoption of an international legally binding instrument on the RTD? At this stage, only time will tell what the answers to the questions are.

2.2.4 Sustainable development

Sustainable development is development which caters for the needs of the present generation without compromising the ability of the future generation to meet its own needs.²²² The achievement of

[s]ustainable development requires the promotion of values that encourage consumption standards that are within the bounds of the ecological possible and to which all can reasonably aspire... At a minimum, sustainable development must not endanger the natural systems that support life on earth: the atmosphere, the waters, the soils, and the living beings...²²³

The duty bearer of sustainable development is the state.²²⁴ However, issues related to sustainable development go beyond the state's jurisdiction and might have transboundary effects.²²⁵ In fact, to ensure sustainable development, the nation-state should take appropriate institutional and other measures to realise lasting development, but such actions should be complemented by the international community through international co-operation. This concept will be further discussed because the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol on the Rights of Women) makes sustainable development women's right in its article 19.

²²² The World Commission on Environment and Development *Our common future* (1987) 43.

²²³ The World Commission on Environment and Development, *Our Common Future* (1987) chap 2.

²²⁴ G Maggio and O J Lynch 'Human Rights, Environment, and Economic Development: Emerging Standards in International Law and Global Society' Revised Draft, November 15, 1997 at <http://www.ciel.org/Publications/olpapers3.html> (accessed 25 May 2006).

²²⁵ Maggio & Lynch (1997).

2.2.5 Poverty eradication

Poverty is a condition in which a person or a community lacks, a condition of insufficiency, which disfigures and destroy human grandeur, [human dignity], it is an evil that humanity should strive to eliminate'.²²⁶ Poverty eradication is the restructuring of society to avoid this situation. The UN had been instrumental in using the concept of 'poverty eradication' to address development issues. In its preamble, the UN Charter pledges to promote the economic and social advancement for all.²²⁷ The same instrument refers to the promotion of 'higher standards of living, full employment, and better conditions of economic and social progress and development.'²²⁸ Furthermore, the 2000 UN MDGs have the eradication of poverty by 2015 as their main objective. However, as mentioned earlier, poverty should not be understood only in terms of income or material goods. It can also mean the lack of capabilities and opportunities.²²⁹ The link between poverty eradication and the RTD was established by the MDGs which read: 'We are committed to making the right to development a reality for everyone and to freeing the entire human race from wants'.²³⁰ With regard to human rights, the Committee on ESCR highlights that poverty is nothing, but the 'denial of human rights',²³¹ and it is also the contention of this thesis. The Committee on ESCR also emphasises and this thesis agrees that 'the human rights dimensions of poverty eradication policies'²³² should be given more consideration, especially if the RTD is to become a reality.

²²⁶ T Matura 'The Franciscan concept of poverty' in *World Poverty – Franciscan reflections* (2007) 3.

²²⁷ Preamble of the UN Charter.

²²⁸ Art 55 of the UN Charter.

²²⁹ Poverty Group, World Bank *A Review of World Bank Participatory Poverty Assessments: Consultations with the Poor* (1999); also World Development Report 2000-01: *Attacking Poverty*.

²³⁰ UN Millennium Declaration, 2000, para 11.

²³¹ E/C.12/2001/10, 10 May 2001, paras 1&2.

²³² E/C.12/2001/10, 10 May 2001, paras 1&2.

2.3 The RTD and NEPAD: Historical and theoretical contexts

2.3.1 The RTD: Historical context

In its early days, the call by developing countries for the RTD was based on the claim for the establishment of the NIEO²³³ to eliminate world injustice and allow third world countries to enjoy their development. In 1974, this call led to the adoption of the UN Declaration and Program of Action of the New International Economic Order²³⁴ which was followed in the same year by the adoption of the Charter of Economic Rights and duties of the states.²³⁵ Though in principle these instruments aimed to empower the developing world, the latter did not have ‘the economic power to enforce implementation’,²³⁶ hence by the end of the 1970s, these documents had become irrelevant and the developing world poorer.

As a result of extreme poverty which yielded heavy debts and the inability to pay them, developing countries including African went back to the international community through the international financial institutions (IFIs), the pro-USA World Bank and International Monetary Fund (IMF) to beg for loans. This was the entry point of neo-liberal policies in developing countries. According to the neo-liberal theory, economic success is linked to the economic competition, the non involvement of the state, privatization of public enterprise, reduction of public spending in social spheres and reduction of ‘human rights to rights of personal autonomy and protection of property’.²³⁷ The neo-liberal theory opposes the Keynesian theory which believes in state intervention in the economy, in terms of regulations,

²³³ NIEO, UN G.A/ Res 3201 (S-VI), 1 May 1974.

²³⁴ UN GA/ Res 3201 (S-VI).

²³⁵ UN GA/ Res 3281 (XXIX).

²³⁶ A Eide ‘Human rights-based development in the age of globalization: Background and prospects’ in Andreassen and Marks (eds) *Development as a human right: Legal, political and economic dimension* (2006)228.

²³⁷ A Eide (2006) 231.

entrepreneurship and protection of small enterprises,²³⁸ for example. Neo-liberal theory stands for the supremacy of the individual²³⁹ *per* opposition to cosmopolitanism which believes in a world community and stands for global justice as will be discussed in the next section.

Neo-liberal policies entered Africa in the form of Structural Adjustments Programmes (SAPs). Such policies, implemented in Africa in the 1980s, were disastrous and contributed extensively to the acceleration of poverty and the marginalisation of the continent. Research shows that prior to the SAPS, ‘from 1960-80 Sub-Saharan Africa’s ‘failed’ statist economic model grew at an annual per capita rate of 1.6 per cent, [whereas, in SAPs time] Africa’s GDP grew by annual capita rate of only 0.5 percent’.²⁴⁰ The SAPs imposed on developing countries by the IFIs were designed to serve western companies who were solely able to purchase public industries in the developing world and who could benefit from compulsory deregulations imposed by the donors.²⁴¹ It could be argued that developing countries’ economies were hijacked for the benefit of the developed world. This situation was exacerbated by the adoption of the ‘Washington Consensus’ which called for more trade liberalisation, financial sphere liberalisation and more privatisation of public enterprise which led to an expansion of trade shortage, excluded small local entrepreneurs respectively.²⁴² For the architects of these policies of global capitalism, human rights, socio economic rights and the RTD were not in the equation.²⁴³ In fact, poor countries were expected to ‘spend less on

²³⁸ A Eide (2006) 225.

²³⁹ V Morozov ‘Is Cosmopolitan Community Possible? Liberalism, Global Solidarity and the Political’ Paper to be presented at SGIR 7th Pan-European Conference, Stockholm, 9-12 September 2010 available at http://stockholm.sgir.eu/uploads/SGIR_September_2010.pdf 8 (accessed 13 December 2010).

²⁴⁰ D Green *from poverty to power – How active citizens and effective states can change the world* (2008) 299.

²⁴¹ Eide (2006) 232.

²⁴² Green (2008) 299 Auckland Park (South Africa).

²⁴³ A Eide (2006) 232.

education and healthcare in order to service their debts'²⁴⁴ to the North. In this vein, African people were deprived of 'the rights to be and remain human'.²⁴⁵

In fact, under the so-called 'globalisation' characterised by the *diktat* of 'undemocratic and unaccountable international, and regional financial institutions and multilateral treaty frameworks', global justice is simply thrown in the dust bin.²⁴⁶

In this regard, as we shall show later, the WTO established on the ashes of the General Agreement on Tariffs and Trade (GATT)²⁴⁷ in order to regulate trade for the development of all became an organ of global capitalism whose rules do not favor the developing world. The WTO regime enables wealthy countries to 'favour their own companies through tariffs, quotas, anti-dumping duties, export credits and huge subsidies to domestic producers'.²⁴⁸ In addition, the WTO's TRIPS and AoA condemn third world citizens including Africans to death. This sad situation produces extreme poverty which deprives human beings of their dignity and humanity on which the claim of the RTD is grounded. Concretely, the claim of the RTD is informed by three important problems:

- 1) the impact on human rights derived of powerful actors *external* to the developing state advancing rules governing world markets that are widely criticized for being inequitable
- 2) the pervasive influence of international economic organizations that continue to espouse neoliberalism (or its more recent variant), and

²⁴⁴ T Pogge (ed) 'Introduction' in Freedom from poverty as a human rights – Who owes what to the very poor' (2007) 5.

²⁴⁵ U Baxi 'From human rights to the right to be human: Some heresies', in *Rethinking Human Rights* S Kothari and H Sethi (eds)(1989) 187.

²⁴⁶ Baxi 'The development of the right to development' in *Human rights in a post human world - Critical essays* (2007) 154.

²⁴⁷ The WTO will be thoroughly discussed in chapter 7 of this work.

²⁴⁸ T Pooge 'World Poverty and Human Rights'(2005) 19 *Ethics & International Affairs* 6.

3) the corresponding reduction in domestic autonomy that limits the ability of states – particularly poor and less influential states – to decide independently their own economic and social policies.²⁴⁹

After a look at the historical context of the RTD, the following section focuses on its theoretical context.

2.3.2 The RTD: Theoretical context

The RTD is grounded in the cosmopolitanism philosophy which believes in global justice without consideration of state boundaries because all human beings have the same moral standards.²⁵⁰ This section will be divided into three parts: the first one will present an overview of the cosmopolitanism theory, the second one will provide its critique and the third one will focus on its application through Sen's and Pogge's approaches.

2.3.2.1 Cosmopolitanism: A snapshot

'Cosmopolitanism' is derived from the Greek words 'cosmos' which means world and 'polis' which means city, together forming 'cosmopolis' or world city.²⁵¹ The 'world city' originates from the stoic idea claiming that all human beings possess a natural faculty of reason and are therefore citizens of the same community notwithstanding their various differences.²⁵² Hence, cosmopolitanism is world citizenship without consideration of race, gender and other status. Diogenes declared himself being 'a citizen of the world'²⁵³ and not of Sinope, his country of

²⁴⁹ M E Salomon 'Legal Cosmopolitanism and the Normative Contribution of the Right to Development Margot Salomon' *Implementing the right to development - The role of international law* S Marks (eds) (2008). 19.

²⁵⁰ H Janér 'Cosmopolitanism vs the political view: John Rawls and the debate on global justice', 5 available at <http://www.pafis.shh.fi/~henjan06/cosmo.pdf> (accessed 10 December 2010).

²⁵¹ For more on this see *Stanford Encyclopedia of philosophy*, available at <http://plato.stanford.edu/entries/cosmopolitanism/#1> (accessed 1 December 2010).

²⁵² See *Stanford Encyclopedia of philosophy* above.

²⁵³ *Stanford Encyclopedia of philosophy*, available at <http://plato.stanford.edu/entries/cosmopolitanism/#1> (accessed 1 December 2010).

birth. According to the cosmopolitanism theory, the individual is the subject of moral attention (individualism), the principle of equality applies to all human beings with attention to nationality and citizenship (universality) and the problem of all human beings should be attended to wherever they reside (generality).²⁵⁴ In support of this theory, while Singer is of the view that ‘neither race nor nation determines the values of a human being’s life and experience’,²⁵⁵ Hayden argues that ‘human status has a global scope’²⁵⁶ and ‘cosmopolitan justice’ knows no borders.²⁵⁷ In this respect, being a citizen means thinking of the good of the society in an abstract manner and forgetting about one’s personal interest, identity and culture and just views the world as a single community.²⁵⁸

According to this belief, justice is universal, knows no frontiers and all human beings have the responsibility to ensure justice to every other person on earth on the basis²⁵⁹ of the *jus gentium* or law of the people applicable to all countries.²⁶⁰ Cosmopolitanism philosophy informed the work of intellectuals such as Locke, Paine and Kant who stood for equality and respect for human rights in their different work.

²⁵³ See *Stanford Encyclopedia of philosophy*.

²⁵⁴ T Pogge *World poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (2008) 178; also P Hayden *Cosmopolitan global politics* (2005)11.

²⁵⁵ P Singer *One World: The Ethics of Globalisation* (2002) 154.

²⁵⁶ P Haden *Cosmopolitan Global Politics* (2005) 11.

²⁵⁷ K-C Tan *Justice without borders: Cosmopolitanism, Nationalism and Patriotism* (2004) 1.

²⁵⁸ B Szerszynski and J Urry, ‘Visuality, mobility and the cosmopolitan: Inhabiting the world from afar’ (2006) 57 *The British Journal of Sociology* 20.

²⁵⁹ C R Beitz *Political theory and international relations* (1999); also T Pogge *Realising Rawls* (1998) part III.

²⁶⁰ C Jones *Global justice: Defending Cosmopolitanism* (1999) 51.

In his *Perpetual Peace*,²⁶¹ Kant describes cosmopolitanism in the sense of morality. Accordingly, the world is a single community of a human family where all members of the family are morally equal. This theory was followed by Rawls through the concept of a postmodern state of nature - the 'original position'- where everyone forgoes all social, political, economic, and cultural specificities for the sake of choosing the first principles of a just society, though he acknowledges limits on the extent to which individuals can be subordinated to the general interest.²⁶² The idea of universal or global justice underneath cosmopolitanism informs the claim for the RTD.

According to the literature, there are three major forms of cosmopolitanism which are the utilitarianism, rights-based and the obligation based cosmopolitanism'.²⁶³

Utilitarianism theory

Utilitarianism entails moral universalism which is secured in the community of nations as understood by the stoics. For Harding, utilitarianism,

[I]s the moral theory that judges the goodness of outcomes - therefore the rightness of actions in so far as they affect the outcomes – the degree to which they secure the greatest benefits to all concerned.²⁶⁴

In this context, the result determines whether the act was right or wrong, any endeavour or action should benefit all members of the community without exception.²⁶⁵ In addition, from Pogge's perspective, it is not only about action, but also omission. Accordingly, no omission should harm a member of the community.²⁶⁶ It could therefore be argued that utilitarianism

²⁶¹ I Kant *Perpetual peace* (1795).

²⁶² J Rawls *A theory of justice* (1971) 12.

²⁶³ Jones (1999) 23.

²⁶⁴ R Harding *Morality within the limit of reason* (1998) XV.

²⁶⁵ Harding (1998) 24.

²⁶⁶ Pogge (2007) 20.

brings members of a community on the same scale by ensuring benefits from the common good. It ensures access to basic needs such as water, food and housing and so on which are necessary to have a good standard of living.²⁶⁷ On the international plane, the manifestation of utilitarianism should entail a significant ‘redistribution’ of world resources from wealthy to poor countries.²⁶⁸

However, it could be argued that utilitarianism is too exigent. Nevertheless, given the level of inequity in the world, utilitarianism seems to be the appropriate road to ensure that the poor do not die; it is the tool to ensure that every human being is given a fair share of resources needed for his or her subsistence.²⁶⁹

Nonetheless, who has the responsibility to ensure the survival of the poor? It would be ethically incorrect to deprive a rich individual of his wealth in order to ensure the well being of the poor. Hence, the need to transfer the burden on states and other institutions such as the IFIs, donors and governmental institutions²⁷⁰ (international order designers) that shall use a human rights informed approach in their activities to play their utilitarian role in the world. Moreover, Pogge’s utilitarianism approach sustains that there is no harm for individual intervention in assisting fellow human being where there is no institution to do so.²⁷¹

It could be argued that utilitarianism is important for the realisation of the RTD as it caters for the poor and the underdeveloped and calls for a global responsibility for human rights.

The rights-based cosmopolitanism

²⁶⁷ Harding (1998) 25.

²⁶⁸ T Pogge ‘World poverty and human rights’ (2005) 19 *Ethics and International Affairs* 4.

²⁶⁹ Jones (1999) 35; also Pogge’s Global Resource Dividend to be discussed later.

²⁷⁰ Jones (1999) 37; also Pogge (2007) 6.

²⁷¹ Pogge (2007) 6.

The rights-based cosmopolitanism stresses that the right not to be poor should be enjoyed at the national as well as at the international level bearing in mind that individuals and communities are morally obliged to assist fellow citizens as well as the broader family of human beings.²⁷² This theory encompasses a moral origin of human rights. Proponents of this theory such as Jones, Rawls and Shue use the concept of ‘basic human interests’²⁷³ or ‘basic rights’²⁷⁴ or the right to subsistence to argue that everyone should be afforded basic necessities such as food, water, housing without which he or she cannot live. At the core of their arguments is the belief that all human beings are entitled to the minimum needed to survive and those who lack the minimum shall claim it from those who can help.

However, ‘to every right, there is a correlative duty’.²⁷⁵ From this theory established by Wesley Hohfeld in 1919,²⁷⁶ the sentence ‘A has the right to food’ implies a claim right. It is a claim that A has against another entity, B who has the duty to provide. If A has the right to food, it implies that B has the duty to give food to A. It is a positive duty when B must take action to deliver food to A. Hence, ‘the right to subsistence is a positive right [as it calls for] positive action rather than mere omission’.²⁷⁷

The duty can also be a negative one, when B should not take any action which constraints A to enjoy his food. In this case, B should refrain from tampering with A’s ability to obtain

²⁷² P Haden *Cosmopolitan Global Politics* (2005) 11.

²⁷³ Jones (1999) 52.

²⁷⁴ H Shue *Basic rights: Subsistence, Affluence, and the US Foreign Policy* (1999) 60.

²⁷⁵The notion of rights and duties will be further discussed below. However on this, see W N Hohfeld, *Fundamental Legal Concepts as Applied in Judicial Reasoning* (1919). For a clear summary of his work, see J Waldron *Theories of Rights* (1984) 6-10; also A R. White, *Rights* (1984) 115-132; also A Heard ‘Human rights: Chimeras in sheep’s clothing at <http://www.sfu.ca/~aheard/intro.html> (accessed on 7 July 2009); also R W M Dias *Jurisprudence* (1970) Chap 8 & 9.

²⁷⁶ J Waldron (1984) 6-10.

²⁷⁷ Jones (1999) 63.

food. Shue refers to this as the ‘duty to avoid depriving right-holding individuals of the content of the right’.²⁷⁸ It is important to note that the duty bearer can be an individual, a state, a financial institution or the international community at large.

In general, the rights-based cosmopolitanism also entails ‘duties to protect the rights-holders from being deprived of the rights content and duties to aid deprived rights-holders when avoidance and protection have failed’.²⁷⁹ Under this doctrine, there is a universal right to assistance with a corresponding obligation to those in position to assist to do so.

Now, who is the duty bearer of the basic rights discussed earlier? The rights-based cosmopolitanism argues that all human beings have the duty to assist fellow human beings on the ground of their humanity²⁸⁰ and the international community of states shall assist through partnership, and here NEPAD comes into play as will be shown later. Put differently, the rights-based cosmopolitanism provides an appropriate framework to avoid the structural causes of human rights violation.

The weakness of this theory however, is its assumption that all activities are informed by human rights or that all human beings operate in a ‘human rights world’. Unfortunately, in reality, many people have no knowledge of human rights. Nevertheless, knowledge deficit in terms of human rights cannot justify the refusal of providing food or clean water to a fellow human being who needs them for his or her existence.

In opposition to rights-based cosmopolitanism, O’Neill acknowledges the obligation to help the poor, but does not believe that such obligation entails a right of the poor to be assisted.²⁸¹

²⁷⁸ Shue (1996) 51-64.

²⁷⁹ Shue (1996) 51-64.

²⁸⁰ Jones (1999) 58.

²⁸¹ Jones (1999) 92. More on O’Neill’s libertarian philosophy will be discussed shortly.

In this regard, the poor is not entitled to assistance, and the obligation to help is located in the sphere of ‘virtue, [and] not of right’.²⁸²

It is contended that applying a rights-based cosmopolitanism to the RTD may lead to the realisation of the right for two main reasons: Firstly, the nation-states remain the primary duty bearers of the right for their citizens and is therefore obliged to take all appropriate measures to provide the right, and the poorest states should be assisted by states in position to do so.

Secondly, in terms of negative duty, wealthy states have the obligation to keep away from actions or policies that hinder the realisation of the RTD in the developing countries. For instance, actions taken at international level through the WTO, the TRIPS and AoA agreements shall be conducive to the realisation of the RTD. These actions should not harm the poor or deprive them from the content of the right. Similarly, actions and policies from the IFIs should be RTD friendly. However, as will be demonstrated later, this is not happening.

Obligation-based cosmopolitanism

According to obligation-based cosmopolitanism theory, there is a right only if there is a positive obligation to realise it; it entails an obligation to fulfill without which the right is non-existent.²⁸³ This highlights Hohfeld theory claiming that ‘to any right, there is a correlative duty’ and referring to the right to entails ‘a counterpart obligation to provide that food which everyone has a right to’.²⁸⁴ From a libertarian perspective and in opposition to Sen,²⁸⁵ O’Neill is of the view that only clear and specific or perfect obligations are in the realm of rights while those aiming to eradicate poverty or imperfect obligation are from a moral or ethical domain.²⁸⁶ In opposition to Pogge,²⁸⁷ O’Neill is of the view that the abstract character of a

²⁸² Jones (1999) 93.

²⁸³ O’Neill ‘Hunger, needs and rights’ in S Luper-Foy (ed) *Problems of International Justice* (1988) 67-86,70.

²⁸⁴ O’Neill (1988) 67-68.

²⁸⁵ A Sen ‘Elements of a theory of human rights’ (2004)32 *Philosophy and Public Affairs* 315-356.

²⁸⁶ O’Neill *Towards justice and virtue: A constructive account of practical reasoning* ((1996) 127-128.

notion such as freedom from poverty hinders its accession to the realm of rights²⁸⁸ as well as in its enforcement.²⁸⁹

Sen disagrees and his position as we shall see later represents an important departure not only from libertarianism, but also from liberalistic theories that claim that ‘imperfect positive obligations’ to fight miseries such as hunger and, health problems, and illiteracy are ‘charity’ rather than ‘justice’ related – and do not belong to the realm of human rights.²⁹⁰

Nevertheless, O’Neill joins proponents of rights-based cosmopolitanism by accepting the notion of basic needs or interests as condition *sine qua non* for human subsistence and maintains that the duty to eradicate hunger rests on those in position to do so.²⁹¹

2.3.2.2 A critique of cosmopolitanism

Critics of cosmopolitanism advocate for self-reliance and self-sufficiency.²⁹² They believe in oneself without the assistance of others. According to them, the world is not a shopping mall where everything is free and at the disposal of all.²⁹³ Opponents of cosmopolitan philosophy include nationalism, individualism and liberalism as fundamentalist tenets in sustaining their theory.

²⁸⁷ Pogge (2007).

²⁸⁸ O’Neill (1996) 152.

²⁸⁹ O’Neill (1988) 76-77.

²⁹⁰ Sen’s Cosmpolitanism theory will be further discussed under the section allocated to the application of cosmopolitanism.

²⁹¹ O O’Neill *Faces of hunger: An Essay on poverty, justice and development* ((1986) 141-143.

²⁹² Haden (2005) 12.

²⁹³ M David *On nationality* (1995) 14.

Nationalism

Nationalists are against cosmopolitanism which ignores patriotism or the strong attachment to a nation.²⁹⁴ Schlosser says ‘it is better to be proud of one’s nation than to have none’.²⁹⁵ According to nationalists, cosmopolitanism is not practical and is mere idealism. Tan observes that the idea of cosmopolitan justice is ‘out of touch with what is of value to ordinary human beings’.²⁹⁶

However, in opposition to this view, Appiah believes that in the context of globalisation ‘the more familiar nation-state, citizen-of-a-single-country paradigm is just as ambiguous’. He adds:

National partiality is, of course, what the concept of cosmopolitanism is usually assumed to oppose, and yet the connection between the two is more complicated than this...Nationalism, too, exhorts quite a loftily abstract level of allegiance – a vast, encompassing project that extends far beyond ourselves and our families.²⁹⁷

Accordingly, people have no choice of their place of birth, or the culture and other attributes learned through the ‘nationhood’. Therefore, a cosmopolitan openness shall be encouraged.²⁹⁸

Liberalism/Individualism

²⁹⁴ M David (1995) 14.

²⁹⁵ J G Schlosser quoted in *Stanford Encyclopedia of philosophy*, available at <http://plato.stanford.edu/entries/cosmopolitanism/#1> (accessed 1 December 2010).

²⁹⁶ K-C Tan *Justice without borders: Cosmopolitanism, nationalism and patriotism* (2004) 2.

²⁹⁷ A K Appiah *The ethics of identity* (2005) 239.

²⁹⁸ A K Appiah *Cosmopolitanism: Ethics in a world of strangers* (2006) 5.

Modern-day rights discourse is informed by the classic liberal conception of the nature of the human person. It is a notion that imagines an individual living in an isolate island without fellow human beings, and watching carefully over his ‘property’ and liberty from Locke’s perspective.²⁹⁹ The idea revolves around six words ‘me, my, mine, myself and I’. In this register, Nozick views a society in terms of its individual members and sustains that ‘there are only individual people, different individual people, with their own individual lives.’³⁰⁰ Even in a societal context where individuals have to live together, their choices and institutions governing them are informed by their individual self-centeredness without any attention to society as a group;³⁰¹ their choices are not informed by togetherness.

Proponents of liberalism such as Scheffler believe that their theory provides the necessary compromise between cosmopolitanism and nationalism as it allows for patriotism without threatening the principle of broad equality.³⁰² The problem with liberalism is that it does not provide the appropriate framework for poverty eradication and the realisation of the RTD as cosmopolitanism does. In fact, it could be argued that it advocates the right of the strongest and ignores the weakest as was demonstrated earlier.

In spite of its critics, cosmopolitanism seems to be the road map for the realisation of the RTD. Salomon correctly argues that

[t]he right to development typifies a cosmopolitan ethos that reveal its most distinctive and vital component: it is preoccupied, not with a state’s duties to its own nationals, but with its duties to people in far off places. The duties of international cooperation for addressing poverty and underdevelopment that form its core, distinct from the classical human rights model, are thus interstate duties with the beneficiaries being the poor of developing countries. Far from being unprecedented under international law, this horizontal aspect of human rights protection has a rich pedigree.³⁰³

²⁹⁹ J Locke *Two treaties of civil government* (1689).

³⁰⁰ R Nozick *Anarchy state and utopia* (1974) 33.

³⁰¹ J Rawls *A theory of justice* (1971) 12.

³⁰² S Scheffler *Boundaries and allegiances* (2001) 67.

³⁰³ Salomon (2008) 24.

2.3.2.3 Cosmopolitanism in practice

This section will focus on cosmopolitanism as understood by Sen, look at its critique, before turning to Pogge's cosmopolitanism and its critique as well.

Sen and cosmopolitanism: Development as freedom

Sen departs from the libertarian and liberal theories that believe in negative rights and classifies positive rights in the realm of ethic. Proponents of these theories such as Hayek³⁰⁴ and Nozick³⁰⁵ posit that 'impartiality in ethics requires an 'end-independent' approach that focuses on procedures and rules, rather than consequences, outcomes and results'.³⁰⁶ Accordingly, the assessment of individual freedom shall disregard

(1) the fulfillment of individual needs, opportunities, desires and the ability or effective power to fulfil particular goals; 2) the outcomes of impersonal circumstances and processes (including market allocations and the outcome of socio-economic development and growth).³⁰⁷

In short, poverty does not restrict freedom. The libertarians are also of the view that negative obligations of non-interference (with someone's property) gives rise to negative duty easy to comply with and are therefore feasible, whereas positive obligations such as the obligation to assist the needy are associated with positive duty to assist which may not be feasible because of the lack of resources.³⁰⁸

³⁰⁴ F A Hayek *The Constitution of Liberty* (1960) as quoted in P Vizard 'The contribution of Amartya Sen in the field of human rights' Case paper 91 (2005) 7 available at <http://sticerd.lse.ac.uk/dps/case/cp/CASEpaper91.pdf> (accessed 3 December 2010).

³⁰⁵ R Nozick (1974).

³⁰⁶ P Vizard 'The contribution of Professor Amartya Sen in the field of human rights' Case paper 91 (2005) 10 available at <http://sticerd.lse.ac.uk/dps/case/cp/CASEpaper91.pdf> (accessed 3 December 2010).

³⁰⁷ Vizard (2005) 10.

³⁰⁸ Nozick (1974) 28-30.

Distancing himself from this view, Sen sees the human person as the centre of development. He, through the ‘capability approach’ has provided a framework that brings freedom from poverty, hunger and starvation into the realm of fundamental human rights. Accordingly, poverty is not forcibly linked to the absence of growth but to the lack of freedoms, hence Sen’s argument that all development stakeholders should get rid of unfreedoms or hindrances to freedom which include ‘poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or activities of a repressive state’.³⁰⁹

In so doing, Sen calls for respect for human rights through restrictive measures such as non interference (like in negative freedom) and positive action through assistance,³¹⁰ though without clarifying who is the duty bearer. In any event, from a cosmopolitanism standpoint, Sen, like Pogge, believes that every one in a position to help should not hesitate to do so. In this register, Sen sustains the theory of ‘imperfect obligations’ which amongst other compels non-state actors, such as individuals, IFIs and international companies not only to abstain from violating human rights through their actions and policies (negative obligation), but also to take positive actions (positive obligation) to promote and fulfill human rights.³¹¹

In this perspective, Sen refutes the neo-classical evaluation of human well being informed by wealth and commodity by standing for the connection of economic wealth with the ability of people to choose their way of life.³¹² Hence, the correctness of the view that Sen’s contribution ‘include far-reaching proposals for incorporating individual entitlements, functionings, opportunities, capabilities, freedoms and rights into the conceptual foundations

³⁰⁹ A Sen *Development as Freedom* (1999) 3.

³¹⁰ Vizard (2005) 22.

³¹¹ Human Development and Capability Approach association ‘The human development capability approach and human rights’ Briefing note, 4 available at <http://www.capabilityapproach.com/pubs/HumanRights100306.pdf> (access 3 December 2010).

³¹² Sen (1999) 13.

and technical apparatus of economics and social choice'.³¹³ In this register, a person's entitlements 'are the totality of things he can have by virtue of his rights'.³¹⁴ Sen explains by suggesting that

[m]ost cases of starvation and famines across the world arise not from people being deprived of things to which they are entitled, but from people not being entitled, in the prevailing legal system of institutional rights, to adequate means for survival.³¹⁵

Hence, the emphasis is on the need to 'righten' basic needs or have them in the form of entitlements.

Functionings entails what matters to a person, what the person values doing or being which can be achieved if the person has the capability to do so. Therefore, capability empowers a person to 'achieve different combination of functionings'.³¹⁶ Nussbaum explains the functionings scheme in these words:

Instead of asking "How satisfied is person A," or "How much in the way of resources does A command," we ask the question: "What is A actually able to do and to be?" In other words, about a variety of functions that would seem to be of central importance to a human life, we ask: Is the person capable of this, or not? This focus on capabilities, unlike the focus on GNP, or on aggregate utility, looks at people one by one, insisting on locating empowerment in *this* life and in *that* life, rather than in the nation as a whole.³¹⁷

³¹³ 'Economic theory, freedom and human rights: The work of Amartya Sen' ODI Briefing paper, November (2001)1 available at <http://www.odi.org.uk/resources/download/1564.pdf> (accessed 3 December 2010); also D Bilchitz *Poverty and fundamental rights – The justification and enforcement of socio-economic rights* (2007) 10-16.

³¹⁴ ODI briefing paper (2001) 2.

³¹⁵ ODI briefing paper (2001) 2.

³¹⁶ ODI briefing paper (2001) 2.

³¹⁷ Nussbaum 'Capabilities and human rights' (1997) 66 *Fordham Law Review* 285.

In other words, in the capability theory, what matters are not the resources, but how people are empowered to access the available resources.

In short, development encompasses improvement of capabilities and freedoms to the benefit of people during the development process.³¹⁸ Any development endeavor must advance political freedom, economic facilities, social opportunities and transparency³¹⁹ or good governance. Notwithstanding the success of East Asian countries that developed without democracy, Sen is of the view that democracy and good governance are very influential for development.

In any event, there is no tangible evidence that the economic success of Asian countries is linked to dictatorship because if it was the case, Africa could have been the most developed part of the universe.³²⁰

It could be argued that Sen and Nussbaum provide an appropriate framework for the protection of the poor against the negative effects of globalisation on which the claim for the RTD is based.³²¹ In this register, the so called ‘free market’ rules which underpinned the hegemonic idea globalisation shall be informed by human rights standards³²² and not restrict people’s capacity. To use Baxi’s words,

³¹⁸ J P Martin ‘development and right revisited: Lesson from Africa’ 4 *Sur International Journal of Human Rights* (2006) 98.

³¹⁹ Sen (1999) 38.

³²⁰ ODI briefing paper (2001) 3.

³²¹ Nussbaum (1997) 273 & 300.

³²² See in general Pogge (2007); and Pogge (2008).

[h]uman beings have basic needs, shelter, clothing, health, education [and] any process of growth that does not lead to their fulfilment –or even worse disrupt them- is a travesty of the idea of development.³²³

Sen's doctrine definitely protects poor people's 'humanity'.³²⁴ In the context of this study, Sen's theory will not only assist in identifying the duty bearers of the RTD, but it will also be useful in analysing to what extent NEPAD can assist in establishing a human rights friendly globalization. Put differently, it will assist to assess to what extent NEPAD enhances people capabilities in Africa.

A critique of Amartya Sen

Though the capability approach seems reasonable, the difficulty seems to be in its application as Sen does not prescribe a clear framework for its application. For instance, the criteria to assess the level of capabilities enjoyed by a person are not clear.

The other limit of the capability approach is that it forgets to stress the need to assist people with disabilities extensively as they are more in need of positive duty of those who can assist. They need what the Convention on the Rights of People with Disabilities calls 'reasonable accommodation'³²⁵ in the society.

In addition while Sen associates capabilities and equality, Nussbaum argues that 'these two concerns are logically independent' and argue that capabilities are actually indicators of what sort of equality is needed.³²⁶

³²³ Baxi (1989)188-189.

³²⁴ Baxi (1989) 187.

³²⁵ Adopted on 13 December 2006 and entered into force 3 May 2008, art 2.

³²⁶ Nussbaum (1997) 280.

In spite of these criticisms, Sen's cosmopolitanism approach provides a link between economics and human rights and had been adopted by the UNDP that relies on it to measure the quality of life based on human capability and functioning,

Thomas Pogge and cosmopolitanism

A great proponent of cosmopolitanism, Pogge supports the notion of realisation of global justice through the reform of global institutions. This approach seats well within the context of the RTD. In developing his theory, Pogge observes that several millions of people live in squalor and are therefore vulnerable and expose to unnecessary risk which may lead to their death.³²⁷ Inspired by Rawls who developed a theory of justice³²⁸ grounded on a social contract as an instrument of distributive justice, Pogge undertakes to implement Rawls' theory by defining individual as the vital aim of justice.³²⁹ According to Pogge's theory, the well-off who participate to institutional processes that produce severe poverty are to blame as their participation in such unjust processes develops poverty and creates generations of poor.³³⁰ Pogge is also of the view that without the wealthy person's support or participation to unjust world institutions which produce neoliberal policies such as the SAPs under the umbrella of globalisation, poverty would have been defeated.³³¹ He believes that 'there is a shared institutional order that is shaped by the better-off and imposed on the worse-off'.³³² Supporting such institutions amounts to the violation of 'moral duties not to harm'.³³³ This

³²⁷ T Pogge (ed) *Freedom from poverty as a human right: Who Owes What to the very poor?* (2008) 2.

³²⁸ J Rawls *A Theory of justice* (1971).

³²⁹ T Pogge *Realising Rawls* (1989) chap 2.

³³⁰ Pogge (1989) chap 2, 11.

³³¹ Pogge (1989) chap 2, 12.

³³² Pogge (2005) 4.

³³³ Pogge (2005) 5.

reasoning leads Pogge to go one step further than Rawls by underlining the negative duty not to harm the poor,³³⁴ whilst Rawls' focus was on the positive duty to assist the poor.³³⁵

Pogge's condemnation of institutions is interesting as this thesis assesses an African institution (NEPAD) in terms of realising the RTD. Furthermore, this thesis examines the WTO as well as some aspects of the TRIP Agreement within the RTD context, and Pogge has expressly blamed the WTO and these agreements for developing poverty on the one hand while protecting the interest of the wealthy on the other.³³⁶ Therefore, the road to poverty eradication goes through national and international institutions reforms.³³⁷ In fact, Pogge observes:

This institutional order is implicated in the reproduction of radical inequality in that there is a feasible institutional alternative under which such severe and extensive poverty would not persist. The radical inequality cannot be traced to extra-social factors (such as genetic handicaps or natural disasters) which, as such, affect different human beings differentially.³³⁸

A possible solution to poverty may be a full implementation of cosmopolitanism in terms of sharing natural resources. This entails establishing a 'global resources dividend' (GRD) where products of natural resources are distributed to the members of the society, in order to afford the basic needs of everyone.³³⁹ In practice, the GRD entails that 'states and their governments shall not have full libertarian property rights with respect to the natural resources in their territory, but can be required to share a small part of the value of any resources they decide to

³³⁴ T Pogge 'Assisting the global poor' in K Deen Chatterje (ed) *The ethics of assistance: Morality and the distant needy* (2004) 279; also Pogge (2007) 25.

³³⁵ J Rawls *The law of peoples: With the idea of public reason revisited* (1999) 42-43.

³³⁶ T Pogge *World Poverty and human rights: Cosmopolitan responsibilities and reforms* (2008) 18-23.

³³⁷ Pogge (2004) 263; also Pogge (2007) 26.

³³⁸ Pogge (2005) 4.

³³⁹ Pogge (2008) 202-220.

use or sell.³⁴⁰ The GRD provides a way to compel ‘those who make more extensive use of our planet’s resources [to] compensate those who, involuntarily, use very little’³⁴¹ A GRD may have the advantage to allocate more money to development assistance.

A critique of Thomas Pogge

Pogge’s theory on blaming the wealthy for the world’s poverty seems to be too radical, because natural disaster, inappropriate climates and other factors can also cause poverty.³⁴² In addition, domestic factors such as bad national institutions (bad governance) and a lack of technological capacity can also produce poverty. Cohen is of the view that poverty is the result of ‘a large concern, requiring technological innovation and not simply institutional renovation or better distribution’.³⁴³

Furthermore, the concept of ‘global order’ as understood by Pogge is vague and encompasses everything.³⁴⁴ The other shortcoming of Pogge’s argument seems to be the failure to indicate how reforming national and global institution will lead to the abolition of poverty. In this regard, Pogge’s argument seems to be mere speculation and does not rest on any reliable substantiation.³⁴⁵

On the GRD, the arbitrary feature of sharing GRD may affect its good intention. In fact, as Hayward puts it ‘a major element of arbitrariness in the proposal concerns its likely

³⁴⁰ Pogge (2008) 202.

³⁴¹ Pogge (2008) 204.

³⁴² D Satz ‘What do we owe the global poor’ Response to world poverty and human rights’ (2005) 19 *Ethics and International Affairs* 47-54.

³⁴³ J Cohen ‘Philosophy, social science, global poverty’ in A M Jaggard (eds) (2010) *Thomas Pogge and his critics* (2010) 19.

³⁴⁴ Cohen (2010) 20.

³⁴⁵ Cohen (2010) 20.

distributive effects³⁴⁶ as the distribution will be done randomly and will run the risk of disenfranchising several needy people who were the intended beneficiaries, especially if one has to consider that developing countries are not all at the same level of development/underdevelopment.³⁴⁷

Second, taxing products of natural resources while selling them to the North, will have a negative spill over effect as these taxes ‘will be passed right back to poorer nations, in the form of higher prices for manufactured goods’³⁴⁸

Hayward is of the view that ‘if any redistributive resource-based tax should be levied on nations, they [should be linked] to a nation’s per capita utilisation of ecological space rather than the GRD’.³⁴⁹

2.4 NEPAD: Historical and theoretical contexts

After the independence years, Africa was bogged down by extreme poverty and as highlighted in the introduction of this work, this was the result of power imbalances between Africa and the developed countries. In his keynote address at the International Peace Academy Workshop, Adedeji observed that ‘The NEPAD initiative is set within the context

³⁴⁶ T Hayward ‘Thomas Pogge’s global resources dividend: a critique and an alternative’ 2.3 *Journal of Moral Philosophy* 317-332 available at <http://www.era.lib.ed.ac.uk/bitstream/1842/914/3/Hayward-on-Pogge.pdf> (accessed 10 December 2010).

³⁴⁷ Hayward ‘Thomas Pogge’s global resources dividend: a critique and an alternative’ available at <http://www.era.lib.ed.ac.uk/bitstream/1842/914/3/Hayward-on-Pogge.pdf> (accessed 10 December 2010)

³⁴⁸ J Heath, ‘Rawls on global distributive justice: A defence’, online version <http://www.chass.utoronto.ca/~jheath/rawls.pdf>, p.20 as quoted in Hayward ‘Thomas Pogge’s Global Resources Dividend: A critique and an alternative’ available at <http://www.era.lib.ed.ac.uk/bitstream/1842/914/3/Hayward-on-Pogge.pdf> (accessed 10 December 2010).

³⁴⁹ Hayward ‘Thomas Pogge’s global resources dividend: a critique and an alternative’ 2.3 *Journal of Moral Philosophy* 317-332 available at <http://www.era.lib.ed.ac.uk/bitstream/1842/914/3/Hayward-on-Pogge.pdf> (accessed 10 December 2010).

of dismal economic performance by African states both in relative and absolute terms when compared to other regions of the world'.³⁵⁰ In an attempt to resolve the poverty crisis, the continent adopted several development plans referred to in the introduction and that will not be repeated here. Following the trend of seeking a new development paradigm, NEPAD, an initiative of African leaders to realise development in Africa, came into existence through the Millennium Africa Recovery Plan (MAP), conceived in 2000 by presidents Mbeki of South Africa, Obasanjo of Nigeria and Bouteflika of Algeria. MAP was later merged with Senegal's President Abdoulaye Wade's Omega Plan, resulting in the New African Initiative (NAI) in 2001. NAI was approved by the 37th OAU meeting of Heads of State and Government held in Lusaka, Zambia in July 2001 and its name was changed to NEPAD.³⁵¹ The NEPAD Declaration of Democracy, Political, Economic and Corporate Governance³⁵² clearly observes that NEPAD was established to eradicate poverty.

However, the non productivity of the neoliberal IMF and World Bank sponsored SAPs of the 1980's was the defining moment for the adoption of NEPAD.³⁵³ The main characteristics of neoliberalism (market fundamentalism, no state intervention, privatization of public assets, strong individualism, approval of inequality)³⁵⁴ mentioned earlier were behind the collapse of SAPs. As a result of this failure, NEPAD was born, but as will be shown shortly, it was

³⁵⁰ A Adedeji A. 2002b. 'NEPAD: A View from the African Trenches', keynote address, International Peace Academy Workshop, July. Page 3 as in quoted by C I Obi 'Reconstructing Africa's Development in the New Millennium Through NEPAD: Can African Leaders Deliver the Goods?'(2001) 4 *African Journal of International Affairs* 155.

³⁵¹ AHG/Decl.1 (XXXVII). The controversy on this official version of NEPAD will be addressed in chapter 5 of the study.

³⁵² Assembly of Heads of State and Government, 38th Ordinary Session of the OAU, 8 July 2002, Durban South Africa, NEPAD Declaration on Democracy, Political, Economic and Corporate Governance AHG/235 (XXXVIII) Annex I.

³⁵³ C I Obi 'Reconstructing Africa's Development in the New Millennium Through NEPAD: Can African Leaders Deliver the Goods?'(2001) 4 *African Journal of International Affairs* 147

³⁵⁴ A Giddens *The third way: The renewal of social democracy* (1998) 8.

criticised for being the resurgence of neoliberal policies which did not bring any happiness to the continent.

In any event, it is important to underline here that the advent of NEPAD and the claim for the RTD were both underpinned by poverty and international hegemonic policies; since the aims and objectives of both the RTD concept and NEPAD are to eradicate poverty. This said, however, while the theoretical framework of the RTD is clearly secured in the cosmopolitanism theory, the theoretical underpinnings of NEPAD is a topic of controversy.

For NEPAD architects, the continental plan is Africa's own plan underpinned by the theory of 'African renaissance' proposed by Thabo Mbeki, the former President of South Africa. The term was used to express his vision of a new Africa; a prosperous Africa underpinned by peace and stability, democracy, sustainable development, better life for all, equality amongst nations and fair global governance.³⁵⁵

However, this view was rejected by several analysts³⁵⁶ who correctly identified similarities between NEPAD and the neoliberal/Washington Consensus doctrine. The neoliberal characteristic of NEPAD can be found in its language which insists on 'capital flows', mainly in the structure of 'investment', within Africa and from abroad. In addition, NEPAD notes the '...urgent need to create conditions that promote private sector investment by both domestic and foreign investors'; it also provides for 'great opportunities for investment', especially through 'public-private partnerships', as well as 'lowering the risks facing private investors',

³⁵⁵ B M Magubane, 'The African renaissance in historical perspective' in MW Makgoba (ed) *The African renaissance - the new struggle* (1999) 21.

³⁵⁶ Most of these criticisms will be discussed in the section allocated to 'A critique of NEPAD. Meanwhile in general, see example Y Tandon 'NEPAD = SAP+GATs+DSB' (2002) *Southern and Eastern African Trade Information and Negotiations Initiative (SEATINA) Bulletin*. No. 5.4; J O Adesina, 'Development and the challenge of poverty: NEPAD, Post-Washington Consensus and beyond' (2002) Paper presented at the SASA Congress, East London, 30 June-3 July; (2004) *Africa Research Bulletin* 41; S K B Asante *NEPAD: A partnership of unequal partners* (2003) London: New African; P Bond 'Can NEPAD survive its proponents, sponsors, clients and peers?' (2003) Organisation for Social Research in Eastern and Southern Africa (OSSREA) Newsletter 21(3); P Bond *Fanon's warning: A civil society reader on the New Partnership for Africa's development* (2005) 28.

emphasises 'financial market integration', 'market enlargement', 'urgent need to diversify production', acknowledges 'the new trading opportunities that emerge from the evolving multilateral trading system' highlights 'the unparalleled opportunities that globalisation has offered to some previously poor countries', but that 'pursuit of greater openness of the global economy has created opportunities for lifting millions out of poverty' and calls for the urgent reintegration of Africa into the global economy.

In addition to the above, concepts such as 'governance', 'transparency', 'accountability', 'anti-corruption', 'trade liberalisation', and 'poverty reduction' which characterise the IFIs jargon are all over the NEPAD document. This led Obi to argue that NEPAD is the domestication of 'the macro-economic, macro-political frameworks and market-led growth policies' of the Bretton Woods institutions by African leaders',³⁵⁷ or rather a 'self-imposed structural adjustment programme'³⁵⁸ in Africa, to use Landsberg's words.

However, it is important to note that the advent on NEPAD created many reactions and interpretations including the view that NEPAD was not informed by neoliberal ideology, but was a post-Washington Consensus plan that reconciles positive aspects of social democracy and positive aspects of neoliberalism that can lead to the continent's development.³⁵⁹ Such a view cannot be discarded without examination.

From a classical social democracy perspective, NEPAD commits itself to invest in education, healthcare, infrastructure and to diversify the economy. Such commitments stand in contrast with the SAPs, hence the comment that they were not made 'as a means to placating the West'.³⁶⁰

³⁵⁷ Obi (2001) 148

³⁵⁸ C Landsberg 'NEPAD: What is it? What is missing?' paper written for NALEDI, 11, available at http://www.sarpn.org.za/documents/d0000550/P503_Landsberg.pdf (accessed 2 December 2010).

³⁵⁹ R M Tawfik 'NEPAD and African development: Towards a new partnership between development actors in Africa' (2008) 11 *African Journal of International Affairs* 64.

³⁶⁰ C Landsberg 'The birth and evolution of NEPAD' in J Akokpari, A Ndinga-Muvumba & T Murithi (eds) *The African Union and its institutions* (2008) 212.

In addition, apart from the neoliberal language observed earlier, NEPAD also puts emphases on the need to strengthen the state in recognising that ‘the weak state remains a major constraint to sustainable development’ and highlight the need to strengthen ‘the capacity to govern and to develop long term policies’.³⁶¹

Furthermore, NEPAD commits itself to develop ‘the entrepreneurial, managerial and technical capacities of the private sector by supporting technology acquisition, production improvements, and training and skills development; to ‘strengthen and encourage the growth of micro-, small and medium-scale industries through appropriate technical support from service institutions and civil society’.³⁶²

This way of mixing neoliberal ideas and classical democracy approaches led to the argument that NEPAD ‘advocates a partnership between state, market and civil society, with the main emphasis on the first two actors’.³⁶³ According to Tawfik, putting free trade and state involvement together was a way to accommodate MAP which praises state intervention as well as capacity building and UNECA’s Compact for African Recovery which believes in the role of the private sector.³⁶⁴ This reconciliatory approach was an attempt to have a plan which incorporates ‘components aimed at developing the private sector, the state (the public sector), the community, the family, and the individual’ to use the words of Stiglitz.³⁶⁵

³⁶¹ NEPAD 2001, para 23.

³⁶² NEPAD 2001, para 164.

³⁶³ Tawfik (2008) 64.

³⁶⁴ Tawfik (2008) 64.

³⁶⁵ J E Stiglitz ‘Towards a new paradigm for development: strategies, policies and processes’ (1998) 24, Prebisch Lecture, Geneva: UNCTAD as quoted by Tawfik (2008) 63.

This is in line with the argument that ‘the way out of the African economic predicament is to be found in some form of market-friendly state interventionism’,³⁶⁶ to which what can also add a ‘*society-friendly* private sector’.³⁶⁷ In this register, it could be argued that NEPAD sees the private market as instrumental, but does not ignore the need for state intervention to facilitate the functioning of the market, which could be called the ‘third way’³⁶⁸ to borrow Giddens’s expression. This way seeks to ‘transcend’ aspects of classical social democracy and neoliberalism.³⁶⁹ In this perspective, in looking at NEPAD, perhaps we should consider Kanbur’s view echoed by Kahn in these terms: ‘[B]oth proponents and opponents are arguing on too grand a scale – proponents are in danger of taking on too much, whereas opponents risk losing an opportunity to do some small things right’.³⁷⁰ Furthermore, Kahn argues that

NEPAD is to some extent a reaction to the Washington Consensus, taking some of the positive aspects and attempting to promote greater integration of Africa into the international economy from which it has been marginalised. It emphasises the collective responsibility of Africa to meet its developmental challenges and recognises the external constraints³⁷¹

Still in the contextual framework, the advent of NEPAD is also located in the era of the IFIs’ Poverty Reduction Strategy Papers (PRSPs). In this register, in 1996 the IFIs initiated the Heavily Indebted Poor Country Initiative (HIPC) before replacing it with Enhanced HIPC in 1999. These initiatives aimed to cancel debts owed by developing countries to the IFIs and regional development banks. To qualify, every applicant was asked to show that the

³⁶⁶ R Kamdiza, K Matlosa and A Mwanza (2004) *The role of the state in development in the SADC region: Does NEPAD provide a new paradigm ?* Harare: SAPES, as quoted by Tawfik (2008) 68.

³⁶⁷ Tawfik (2008) 68.

³⁶⁸ Anthony Giddens is author of *The third way: The renewal of democracy*. Giddens defines the ‘Third Way’ as ‘an attempt to transcend both old style social democracy and liberalism’ (1998) 26.

³⁶⁹ Giddens (1998) 26.

³⁷⁰ B Kahn ‘Africa and the Washington Consensus’ in J J Teunissen and A Akkerman (eds) *Diversity in Development: Reconsidering the Washington Consensus* (2004) 221.

³⁷¹ Kahn (2004) 221.

cancellation of debts under the Enhanced HIPC was going to reduce poverty. Applicant countries had to prepare what was known as a PRSP. To assist countries to design their PRSP, the World Bank produced a *Sourcebook on Poverty Reduction Strategies* which was basically the reference book on how to design a PRSP.³⁷² Amongst other things, the applicant had to emphasise participation, transparency at every level of society and also involve the media. Good governance characterized by the rule of law, transparency, total accountability as well as a focus on health, education and nutrition were also part of the requirements.³⁷³

The PRSPs' architects however, without mentioning the failure of the SAPs underpinned by free trade rules, sustain that free market with the explosion of the private sector is 'the engine for growth'³⁷⁴ and poverty alleviation. This position takes preeminence on the inclusion of the capability approach which calls on governments to provide specific policies in the realm of education, health, environment and others. This preeminence led to the comment that under the SAPs,

[F]ighting poverty becomes the newest justification for the aging prescriptions geared to increasing the overall opening of the "host country" to external economic actors and free market rules.³⁷⁵

The quote above highlights the place of neoliberalism policy (in the PRSPs) which hinders development processes. Nevertheless, it is important to highlight the inclusionary approach of

³⁷² J Klugman *A Sourcebook for Poverty Reduction Strategies* (2002) World Bank, also available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,contentMDK:22404376~pagePK:210058~piPK:210062~theSitePK:384201~isCURL:Y,00.html> (accessed on 24 December 2010).

³⁷³ N Girishankar *et al* 'Governance' in J Klugman (ed) *A Sourcebook for Poverty Reduction Strategies* (2002) chap 8.

³⁷⁴ C Mutasa 'How NEPAD can engage with poverty reduction strategies: Developing an appropriate framework' 1, paper presented to the Southern Africa Research Poverty Network (SARPN) and Center for Civil Society workshop on "Engaging NEPAD: government and civil society speak to one another" 4th July 2002, University of Natal, Durban, South Africa available at http://www.sarpn.org.za/documents/d0000066/P69_Mutasa.pdf (accessed 24 December 2010).

³⁷⁵ J Levinsohn 'The World Bank's Poverty Reduction Strategy Paper approach: Good marketing or good policy' (2002) 14, available at <http://www.g24.org/levintgm.pdf> (accessed 24 December 2010).

the PRSPs in which every government is in charge of drafting its first poverty reduction strategy (with the cooperation of its national ministries and civil society), even if sometimes they are exception to this rule.³⁷⁶

There are serious doubts however, on the efficiency of the so-called ‘inclusionary approach’, hence the comment that

[T]oo often, PRSPs fail to reflect a broader approach to poverty reduction that fully addresses dimensions related to security or empowerment as essential ingredients for poverty reduction.³⁷⁷

In other words, civil society is not included in the process of drafting the PRSPs or its contribution is simply discarded before the adoption of the final draft. Therefore, it could be argued that NEPAD came to live in an environment tailored to suit the needs of the West because as correctly observed by Levinsohn,

[a]lthough the PRSP documents are peppered with references to molding the particulars of a poverty alleviation program to the details of the country, the discussion of trade policy (as well as some of the macroeconomic prescriptions) seem to come from a one-size-fits-all mentality.³⁷⁸

It could be argued that the ‘one-size-fits-all mentality’ is the product of neoliberalism doctrine. Nevertheless, the 2008 international economic meltdown was the failure of neoliberalism which turned to social democracy approaches with massive state intervention in the form of ‘bail out’ in the developed world. This raises the question if it is the end of neoliberalism or a move towards a third way.

As much as this thesis recognises the claim that NEPAD is a neoliberal agency, it would like to consider dissenting opinions who welcomed NEPAD from a positive angle.³⁷⁹ Therefore,

³⁷⁶ Levinsohn (2002) 22.

³⁷⁷ Catholic Relief Services ‘Review of the Poverty Reduction Strategy Paper Initiative,’ December 2001, Catholic Relief Services, page 12. Available on-line at: <http://www.worldbank.org/poverty/strategies/review/crs1.pdf> as quoted by Levinsohn (2002) 15.

³⁷⁸ Levinsohn (2002)15.

without trying to protect NEPAD from its neoliberal criticism, the thesis will attempt to look at NEPAD from ‘a problem solving perspective’. In other words, the thesis will look at the shortcomings of NEPAD and APRM (neoliberal and others) to assess what can be done to ameliorate its performance or what can be reformed to enable the continental institution to yield development. This will be in line with Pogge’s cosmopolitanism that calls for a global ‘institutional reform’ in the fight against poverty, because not only international institutions shall be reformed, but regional as well as national institutions shall be reformed.

2.4.1 NEPAD and the new institutionalism theory

In Pogge’s cosmopolitanism, the realisation of the RTD in this time of globalisation goes through global institutional reforms.³⁸⁰ This provides an entry point for every institution that has a role to play in the eradication of poverty. Therefore, it is important to look at ‘NEPAD [which] partly represents a new continental international institution in response to [the] trends in governance and rule-making in the global order’.³⁸¹ In this analysis, NEPAD could be located in the theory of institutionalism which can be defined as ‘a belief in the usefulness or sanctity of established institutions’;³⁸² In fact, not only does NEPAD claim to be informed by the ‘functionalism’ theory which sustains that ‘social institutions and practices can be understood in terms of the function they carry out in sustaining the larger social system’,³⁸³

³⁷⁹ Z Kebonang ‘The New Partnership for Africa’s Development: Promoting foreign direct investment through moral political leadership’ 2005 *Africa Insight*, 35(1) April 2005, Africa Institute of South Africa; C Landsberg ‘Democratic governance pivotal from Africa’s future’ (2002) *Global Dialogue*, 73 Institute for Global Dialogue.

³⁸⁰ Pogge (2007) 29.

³⁸¹ E Jönsson ‘New Economic Partnership for Africa’s Development Power and State compliance’ (2009) <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=1405429&fileOid=1420818> (accessed 10 December 2010).

³⁸² ‘Institutionalism’ available at <http://www.yourdictionary.com/institutionalism> for more on institutionalism, see O R Keohane & L Martin ‘Institutional theory as research program’ in C Elman & M F Elman (eds) *Progress in international relations theory* (2003) 71-107.

³⁸³ A Heywood, *Key concepts in politics: Palgrave Key concepts* (2000) 89 as quoted by Landsberg (2008) 217-218.

but it also claims its place in the institutionalism theory which advocates for ‘an enduring and stable set of arrangements that regulate individual and/or group behavior on the basis of established rules and procedures’.³⁸⁴ Looking at NEPAD from an institutionalism perspective will give some clues on the challenges faced by the continental institution in the context of capitalistic international relations.

There are several forms of institutionalisms: The ‘old’ institutionalism which considers the historical background and a holistic approach to economics.³⁸⁵ This approach is criticized for its inability to confront ‘the classical hegemony’³⁸⁶ and therefore failed to influence the direction of modern economics.³⁸⁷

The rational institutionalism on the other hand attempts to clarify how institutions impact on individual behaviors.³⁸⁸ In this approach, actors’ attitude is shaped by the outcome of other actors’ behaviours,³⁸⁹ and finally the new institutionalism which will be used in this thesis.

Based on neoclassical economic theory, new institutionalism underscores the need to undertake ‘institutional analysis within a neoclassical economic framework and to include

³⁸⁴ Heywood (2000) 89 as quoted by Landsberg (2008) 217-218.

³⁸⁵ A Hira & R Hira ‘The new institutionalism: Contradictory notions of change’ *American Journal of Economics and Sociology* (2000) available at http://findarticles.com/p/articles/mi_m0254/is_2_59/ai_63295358/?tag=content;col (accessed 5 December 2010).

³⁸⁶ Hira & Hira (2000) available at http://findarticles.com/p/articles/mi_m0254/is_2_59/ai_63295358/?tag=content;col (accessed 5 December 2010).

³⁸⁷ R H Coase ‘The new institutional economics’ (1984) *Journal of Institutional and Theoretical Economics* 230.

³⁸⁸ P A Hall & R C Taylor ‘Political Science and the three New Institutionalisms’ (1996) 44 *Political Studies* 945 as quoted by Jönsson (2009) 11.

³⁸⁹ P A Hall & R C Taylor (1996) 44 *Political Studies* 945 as quoted by Jönsson (2009) 11.

institutional change as an important variable to be studied'.³⁹⁰ As a result, an institution is multidimensional and encompasses 'rules, norms, practices and values that constrain and shape behaviors [as understood by NEPAD]'.³⁹¹ New institutionalism provides room for the analysis of how powers influence international relations. The latter are shaped by concepts of powers which include compulsory power, institutional power and structural power.³⁹² It is important to analyse these powers because they are important to determine NEPAD's capacity to tackle poverty in the globalisation arena, or risk being drowned in the sea of liberalism politics.

2.4.1.1 Compulsory power

According to Barnett and Duvall, compulsory power exists in a partnership relation where an actor or a partner can apply direct power or influence on its counterpart to obtain a beneficial outcome.³⁹³ This sort of power could be exercised through material or ideological means. Quoting Dahl, Barnett and Duval identify three characteristic of compulsory which entails 'intentionality' from the strongest partner, a 'conflict of desires' between the partners and the success of the stronger party because of its ability to use 'material' or ideological means.³⁹⁴ It could be argued that generally, compulsory power is imposed through hegemonic ideologies such as neoliberalism or through material resources such as aid in the form of financial assistance³⁹⁵ or military equipment for example. In fact, it could be argued that the IFIs used

³⁹⁰ Ron and Ira (2000) available at http://findarticles.com/p/articles/mi_m0254/is_2_59/ai_63295358/?tag=content;col (accessed 5 December 2010).

³⁹¹ Jönsson (2009) 10.

³⁹² M Barnett & R Duvall 'power in global governance' in Barnett Duval (eds) *Power in global governance* (2005) 3.

³⁹³ Barnett and Duval (2005) 3.

³⁹⁴ R Dahl 'The concept of power' 1975 *Behavioral Science* 202-203 as quoted by Barnett and Duval (2005) 13.

³⁹⁵ M'baye (1972) 518-520

(its resources) compulsory power through the SAPs to shape policies in the borrowing developing countries in the 1980s.

The concept of compulsory power is interesting as it will assist in understanding whether such a power is applied on NEPAD, materially or in an ideological way (neoliberalism for example). If so, such a constraint will hinder NEPAD's ability to achieve the RTD on the continent and consequently, there will be a need for institutional reforms.

2.4.1.2 Institutional power

The scenario of institutional power is characterised by the exercise of power through an institution. It is an indirect control where the stronger partner uses an (international) institution or organisation on which he has control to oppress its partners.³⁹⁶ The control is more pronounced when the strongest partner can actually set the rule of the game through the institution. For instance, in assessing the relation or partnership between NEPAD and its northern partners, it will be interesting to look at the role of the WTO,³⁹⁷ the World Bank and IMF and who pulls the strings in these IFIs. The nature of such a relation can shed some light on the extent to which NEPAD can realise the RTD in Africa. It will also clarify cosmopolitanism through institutions, from Pogge's perspective.

It could be argued that the RTD and NEPAD fall in the same ambit in terms of fighting poverty. Though criticised for being neoliberal, in principle NEPAD is one of the institutions through which such a right can be realised, hence its important place in the thesis. In fact, in expressing their political will underpinning NEPAD, African leaders recognise that 'the right to development and the eradication of poverty' are key elements to be addressed in 'the new phase of globalisation'.³⁹⁸

³⁹⁶ Barnett and Duvall (2005) 3.

³⁹⁷ On 'compulsory and institutional power in the WTO context' see G Shaffer 'Power, governance and the WTO: A comparative institutional approach' in Barnett and Duvall (2005) 130-160.

³⁹⁸ NEPAD 2001, para 43.

2.4.1.3 Structural power

According to Barnett and Duvall, structural power addresses ‘the constitution of social capacities and interests of actors in direct relation to one another’.³⁹⁹ This form of power is exercised through the structure of international relations. This could be found in ‘the workings of the capitalist world-economy in producing social positions of capital and labor with their respective differential ability to alter their circumstances and fortunes’.⁴⁰⁰ Structural power and institutional power are therefore linked.

When structural power is exercised, the weaker party is pressurised through institutional power which targets its interests; the weaker party faces consequence for not complying with the will of the stronger.⁴⁰¹ In such a relation, the stronger party enjoys the privilege of a master while the weaker one is the slave;⁴⁰² and more importantly the *status quo* remains, even when the stronger party does not act to keep the pressure.⁴⁰³ It could be argued that structural power is generally exercised in the arena of international trade informed by unfair rules.

As mentioned earlier, the concept of powers on the international plane will be determinant in investigating NEPAD’s capacity to make a difference in people’s life on the continent.

The thesis looks at NEPAD from a new institutionalism perspective as this approach assists in understanding behaviors on the international plane and provides a framework to assess the game of power or what North calls the ‘the rules of the game in [the international society]’⁴⁰⁴

³⁹⁹ Barnett and Duvall (2005) 3.

⁴⁰⁰ Barnett and Duvall (2005) 3.

⁴⁰¹ Barnett & Duvall (2005) 18.

⁴⁰² Burnett & Duvall (2005) 18.

⁴⁰³ Burnett & Duvall (2005) 18.

⁴⁰⁴ D C North *Institutions, Institutional Change and Economic Performance* (1990) 3.

used by different actors to reach their various objectives. In this register, NEPAD could be looked at from the obligation-based cosmopolitanism perspective which entails the need to build or reform institutions in charge of ensuring the effective operationalisation of cosmopolitan law to ensure global justice.⁴⁰⁵ In addition, looking at NEPAD from an institutionalism perspective is in line with Pogge's doctrine that believes in reforming global institutions including regional and even national one to eradicate poverty;⁴⁰⁶ it is also in line with Rawls' teaching that establishes a causal link between poverty and national institutions.⁴⁰⁷ In addition, the link between the RTD is underlined by Sengupta who considers NEPAD as 'a remarkable development in the evolution of the international process of realising the right to development',⁴⁰⁸

The other link between NEPAD, APRM and the RTD could be located in the work of the UN High Level Task Force on the Implementation of the Right to Development. Under the auspices of this institution, the APRM and other development partnerships (United Nations Economic Commission for Africa (ECA) and Organization for Economic Cooperation and Development (OECD)-Development Assistance Committee (DAC) Mutual Review of Development Effectiveness) in the context of NEPAD were included among the frameworks through which the 'criteria for periodic evaluation of global development partnerships from the perspective of the right to development' could be applied.⁴⁰⁹

2.5 A critique of NEPAD

⁴⁰⁵ P Haden (2005) 35.

⁴⁰⁶ Pogge (2007) 29.

⁴⁰⁷ J Rawls 'The law of people' in Shute and Hurley (1993) as quoted by Pogge (2007) 31.

⁴⁰⁸ A Sengupta 'Development cooperation and the right to development' at http://www.hsph.harvard.edu/fxbcenter/FXBC_WP12--Sengupta.pdf (accessed 20 October 2007).

⁴⁰⁹ Report of the High-Level Task Force on the implementation of the right to development on its third session established by the Human Rights Council resolution 1/4 UN Doc. A/HRC/4/WG.2/TF/2, 13 February 2007, at para. 27 & 29.

NEPAD had been widely criticised. Amongst other reasons, the African economic plan is informed by neoliberal ideologies and has similarities with the IMF and World Bank sponsored SAPs which had aggravated underdevelopment in Africa.⁴¹⁰ According to Bond,⁴¹¹

[T]he neoliberal economic policy framework at the heart of the plan repeats the structural adjustment policy packages of the preceding two decades and overlooks the disastrous effects of those policies

NEPAD embraces the forces of neoliberal globalisation, and promotes these forces as a cure for Africa's ills. This argument has to do with the fact that NEPAD aims to reduce state intervention in social and economic development to the benefit of the market and the private sector, hence the comment that NEPAD is nothing, but the expression of the 'Washington Consensus' and the reimplementing of the SAPs.⁴¹² In fact, neoliberal leaders showed a great enthusiasm about NEPAD and multiplied various actions to sell the plan to Africans. In this respect, Tony Blair the former Great Britain Prime Minister in his speech to the Nigeria Parliament said:

The New Partnership for Africa's Development presents a profound opportunity to turn a page in human history. Implementing its principles is not just the right thing to do. It is good investment. An investment in our common future. In our collective security and common humanity. ...So, I applaud the

⁴¹⁰ I Lesufi 'South Africa and the rest of the continent: Towards a critique of the political economy of NEPAD' (2004)52 *Current Sociology* 2, available at <http://csi.sagepub.com/content/52/5/809> (accessed 9 December 2010).

⁴¹¹ P Bond 'Cultivating African anti-capitalism' *Zmagazine* (2003) available at Z Net - The Spirit of Resistance Lives <http://www.zcommunications.org/cultivating-african-anti-capitalism-bypatrick-bond> (accessed 5 December 2010); also P Bond *Fanon's warning: A civil society reader on the New Partnership for Africa's Development* (2005) 33; see also M J Kankwenda 'Revisiting the African development trajectory: From LPA to NEPAD in J C Senghor and N K Poku *Towards Africa's renewal* (2007); L Diamond 'Promoting real reform in Africa' in E Gyimah-Boadi (ed) *Democratic reform in Africa – The quality of progress* (2004) 277.

⁴¹² P Bond *Talk left, walk right – South Africa's frustrated global reforms* (2004) 103; For a counter-argument, see P Mashele 'The New Partnership for Africa's Development – Four years of a promising attempt or hollow optimism?' ISS paper 125 (March 2006) 3-4.

efforts of the NEPAD committee to devise a coherent set of codes and standards for economic and political governance.⁴¹³

This support to NEPAD was reiterated by the G8 Africa action plan in these terms:

We, the Heads of State and Government of eight major industrialized democracies and Representatives of the European Union, meeting with African Leaders at Kananaskis, welcome the initiative taken by African states in adopting the *New Partnership for Africa's Development* (NEPAD), a bold and clear-sighted vision of Africa's development.⁴¹⁴

As a result of western support, it could even be argued that NEPAD came from the corridors of wealthy countries and not from Africa. In fact, Wade's Omega plan was first presented at the Franco-African Summit held in Yaounde in January 2001 and was formally launched 6 months later at the International Conference of Economists on the Omega plan, attended by selected African and non African states.⁴¹⁵

Furthermore, before NEPAD was drafted and tabled at the OAU Summit, its architects had started mobilising for support through meeting with the USA, Britain, Russia, Japan, the Nordic countries, the European Council, the World Bank and IMF before even consulting with the African National Congress (ANC) of South Africa⁴¹⁶ where Mbeki comes from. It was after all these meetings with foreign powers that Mbeki briefed his colleagues at the OAU Summit with the intention to welcome on board the willing countries to join in the actualisation of his proposals and not to make his plan an all-African initiative.⁴¹⁷ In fact, this approach shows that the exclusionary approach used by NEPAD which did not consult or

⁴¹³ 'An Address by Prime Minister of Great Britain before the Nigerian Parliament, Friday 7 February 2002' available at <http://www.waado.org/NigerDelta/FedGovt/ForeignAffairs/TonyBlair.html> (accessed 10 December 2010). Also The Guardian On-Line - <http://ngrguardiannews.com> (accessed 10 December 2010).

⁴¹⁴ Obi (2001) 162.

⁴¹⁵ B Omonide *et al* (2004) 238.

⁴¹⁶ Omonide *et al* (2004) 238-239.

⁴¹⁷ Omonide *et al* (2004) 239.

allow the African folks to participate as will be discussed in chapter 5 of this study. Thus, NEPAD is elitist both in conception and in architecture because of its top-down approach. Popular participation is the key of a people-centered development vision and because it is not paramount in NEPAD, Bade Onimode thinks that NEPAD was established for the fame of its founders.⁴¹⁸

More significantly, the NEPAD structure does not provide any following process to ensure civil society's participation in future NEPAD policy and implementation.⁴¹⁹ Therefore, one can assume that the future of NEPAD will continue to be a closed, top-down approach.⁴²⁰

NEPAD has also been criticised for relying abundantly on international assistance and its inability to rely on itself.⁴²¹ While Mbazira argues that Africa should begin to eradicate its problems by utilising the locally available resources as opposed to seeking solutions from the outside,⁴²² Moyo correctly shows that in terms of resources mobilisation, NEPAD relies almost exclusively on external financial support,⁴²³ and expect more foreign direct investment from the North.⁴²⁴

⁴¹⁸ Omonide *et al* (2004) 235- 239.

⁴¹⁹ R Naidoo 'The New Partnership for African Development (NEPAD): Where to from here?'" in *Building alternatives to neo-liberal globalisation: The Challenges facing NEPAD*"(2004) 2.

⁴²⁰ Naidoo (2004) 2.

⁴²¹ I Taylor *Nepad - Toward Africa's development or another false start?* (2005) 88.

⁴²² Mbazira (2004) 47.

⁴²³ T Moyo 'The Resource Mobilization Strategy (RMS) of the New Partnership for Africa's Development (NEPAD): A Critical Appraisal' in Peter Anyang' Nyong'o, Aseghedech Ghirmazion, Davinda Lamba (eds.), *New Partnership for Africa's Development: A New Path?* (2002) 183-208.

⁴²⁴ Moyo (2002) 207.

Much also had been said on the vagueness of NEPAD programme which is too ambitious. Herbert argues that⁴²⁵

[T]he Nepad text and even its sectoral documents fall far short of any common sense definition of a plan or a strategy. They organise the many African development problems into a structure, but offer no guide about which problems must be solved first. The Nepad text and subsequent documents say nothing about how, given the many priorities competing for scarce resources, governments should choose strategically from those competing priorities. They also offer wish lists but fail to note how funds will be raised or how the proffered solutions would do more than tinker expensively around the margins.

Quoting Rukato, the former NEPAD Deputy CEO in her 4 June 2009 presentation in Pretoria, Killander observes 'NEPAD brings together stakeholders that can build a road but does not build the road itself',⁴²⁶ hence, its tendency to claim ownership for every development initiative including those that preceded its adoption.⁴²⁷

As far as human rights are concerned, NEPAD faces the criticism of lacking human rights-based to development. To use Manby words, 'NEPAD's endorsement of human rights is segregated from its discussion of objectives in relation to infrastructure, health, education, and other areas.'⁴²⁸ Furthermore, issues of discrimination (including on the ground of gender) and systematic violations of human rights is inappropriately covered.⁴²⁹

⁴²⁵ R Herbert 'The survival of Nepad and the African Peer Review Mechanism: A critical analysis' (2004)11 *South African Journal of International Affairs* 24.

⁴²⁶ M Killander 'The role of the Africa Peer Review Mechanism in inducing compliance with human rights' LLD thesis (2009) 43, University of Pretoria.

⁴²⁷ Herbert (2004) 27, Taylor (2005) 92. For a positive overview of the impact of NEPAD see D Malcolmson 'Implementation of the Nepad initiative – Overview' (2004)11 *South African Journal of International Affairs* 11-20. R K Edozie 'Promoting African "owned and operated" development: A reflection on the New Partnership for Africa's Development' (2004) 3(2) *African and Asian Studies* 145-173.

⁴²⁸ B Manby 'The African Union, NEPAD, and human rights: The missing agenda' (2004) 26 *Human Rights Quarterly* 1003.

⁴²⁹ Manby (2004) 1005.

In addition to the above, even the concept of good governance *a la* NEPAD (under the APRM) was criticised.

2.6 Criticism of the APRM and its good governance underpinnings

Adopted at the first AU summit in Durban,⁴³⁰ ‘the APRM is the cornerstone of NEPAD’,⁴³¹ It is a tool for enhanced collective responsibility within the family of African countries; it is voluntarily acceded to by AU member states; it is an instrument and criterion for measuring African governments’ compliance with their commitments encompassed in the Declaration on Democracy, Political, Economic and Corporate Governance. According to the APRM Memorandum of Understanding (MoU), its primary purpose is to

[f]oster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated subregional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the need for capacity building of participating countries.⁴³²

In short, the APRM is known to be the engine of good governance in the NEPAD programme. Nonetheless, good governance under APRM will hinder development if it does not ‘entail substantial reworking of the value of ‘participation’ that resists appropriation by the libertarian notion of rights, governance and justice’.⁴³³

According to the World Bank, good governance is described ‘as the manner in which power is exercised in the management of a country’s economic and social resources for development’.⁴³⁴ The definition provided by the World Bank entails three aspects.⁴³⁵

⁴³⁰ Adopted at the 1st Assembly of the AU held in Durban, South Africa, 8-10 July 2002; Declaration on the implementation of NEPAD, Assembly/AU/Decl.1 (I).Assembly /AU/Decl.1 (I).

⁴³¹ International Federation for Human Rights (FIDH) (2004) 121.

⁴³² MoU para 8; APRM Base Document para 3.

⁴³³ Baxi (2007) 148.

⁴³⁴ World Bank *Governance and Development*, (1992) 1.

- The structure of a political regime
- The methods by which authority is exercised in the management of a country's resources
- The ability of a government to formulate and implement policies and the way in which it fulfills its functions.

According to Bowao and Samb, based on a pursuit of well being, good governance is the

[D]esire, constantly renewed over time, for liberty, justice and growth that fuels the drive and determination, admittedly controversial but never incomplete, of human society. This contradictory yet universal quest which, under diversified and historically changing forms, merges with the refusal to accept any kind of oppression, alienation, social hardship or moral decay...⁴³⁶

Good governance is also 'creating well functioning and accountable institutions (political, judicial and administrative) which citizens regard as legitimate and in which they participate in respect of all decisions that affect their lives and by which they are empowered'.⁴³⁷

However, the World Bank's view sustaining that human rights, democracy and good governance are prerequisites for socio-economic development is the dominant model in Africa.⁴³⁸ This view is sustained by the AU and African leaders who believe that democracy, good political as well as corporate governance and government accountability are fundamentals for Africa's development.⁴³⁹ This reflects that improper political environments,

⁴³⁵ B Campbell 'Quelques enjeux conceptuels, ideologiques et politiques autour de la notion de bonne gouvernance' in *Bonnes Gouvernance et Developement en Afrique*, (1997) 65-94.

⁴³⁶ C Bowao & M Samb, 'La bonne gouvernance: une nouvelle ethique du developpement?' [Good Governance: A New Development Ethic?] in *Bonne Gouvernance et Developpement en Afrique* (1997) 64.

⁴³⁷ K Annan *NEPAD/AU country Self-Assessment for the African Peer Review Mechanism* 17 available at www.nepad.org (accessed 20 December 2010).

⁴³⁸ O Deme 'Between hope and scepticism, civil society and the African Peer Review Mechanism *Insights* (2005) 11 available at http://idl-bnc.idrc.ca/dspace/bitstream/10625/27418/1/121268_e.pdf (accessed 8 January 2011).

⁴³⁹ C M Fombad 'The African Union, Democracy and Good Governance' in H Melber (ed) *AU, NEPAD and the APRM: Democratisation Efforts Explored* (2006) 10.

in particular poor governance, have been recognized as major hindrances to economic reforms and growth.⁴⁴⁰

Nevertheless, the historical practices of certain non-democratic countries such as Germany under Hitler, North Korea and South Africa under apartheid have demonstrated that the causal link between good governance and development is not always true⁴⁴¹ because these countries were developed, but had no good governance. The other counterfactual case to Sen's opinion that links poverty to lack of democracy is Malawi, where in over 20 years of dictatorship, the country did not experience hunger and today, under a democratic dispensation, the country is facing severe famine.⁴⁴² Onis notes that South Korea, Taiwan, Singapore and Thailand, which are the main success stories of economic growth in the third world, did not happen in democratic settings, but rather under developmental states.⁴⁴³

It is argued that democracy and good governance interfere with African sovereignty in the field of development cooperation.⁴⁴⁴ The good governance and democracy theories were introduced to hinder the main economic and social forces in Africa, so removing any popular basis for contesting the implementation of SAPs. To this end, economic forces should participate in adjustment policies and also have confidence in their political leaders, who in

⁴⁴⁰ E E Otopo 'Contemporary external influence on corporate governance: Coping with the challenges in Africa', in Omonide *et al African development and governance strategies in the 21st Century, Looking back to move Forward, Essay in Honour of Adebayo Adedeji at Seventy* (2004)101.

⁴⁴¹ A A Dieng, 'Gouvernance et developpement' ['Governance and development'], in *Bonne gouvernance et developpement en Afrique* (1997) 101- 109.

⁴⁴² J O Adesina 'NEPAD and the Challenge of Africa's Development: towards a political economy of a discourse' Paper prepared for the 10th General Assembly of the Council for Development of Social Science Research in Africa 8th to 12 December (2002) 1-2 , Kampala, Uganda.

⁴⁴³ O Ziya 'The logic of the developmental state' *Comparative Politics*, October 1991.

⁴⁴⁴ M Kankwenda 'Forty years of development illusion: Revisiting development policies and practices in Africa' in Omonide *et al African Development and Governance Strategies in the 21st Century. Looking Back to Move Forward; Essays in Honour of Adebayo Adedeji at Seventy* (2004) 12.

turn are required to be accountable to their people and economic social stakeholders.⁴⁴⁵ Mbaya believes that good governance *à la* Bretton Woods or NEPAD does not cater for peoples' interest.⁴⁴⁶ According to Arts,⁴⁴⁷ developing countries are being bogged down by numerous standards including democracy and governance.⁴⁴⁸ Bond shares this view and argues that 'good governance' was introduced in NEPAD/APRM to disguise 'the neo-colonial relationship during the period of the 2000s – in the wake of two decades of rampant structural adjustment that demolished living standards except for newly empowered political, financial and commercial elites'.⁴⁴⁹ He emphasises that the neocolonial direction of the [APRM] is similar to that 'imposed by the IMF, the US State Department and Brussels',⁴⁵⁰ and Samir adds:

Unquestionably, the NEPAD document lines up with liberal thought on the discourse of "good governance." This is a concept that is useful as a way to dissociate democratic progress from social progress, to deny their equal importance and inextricable connection with one another, and to reduce democracy to good management subjected to the demands of private capital, an "apolitical" management by an anodyne civil society, inspired by the mediocre ideology of the United States.⁴⁵¹

⁴⁴⁵ Kankwenda (2004) 12.

⁴⁴⁶ Kankwenda (2004)12.

⁴⁴⁷ K Arts *Integrating human rights into development cooperation: The case of the Lome Convention* (2000) 136.

⁴⁴⁸ Arts (2004) 12.

⁴⁴⁹ P Bond 'Removing neocolonialism's APRM mask: A critique of the African Peer Review Mechanism' (2009) *Review of African Political Economy* 596-597. For dissenting views, see R Herbert, & S. Gruzd 'Taking stock of the African Peer Review Mechanism' (2007) 14 *South African Journal of International Affairs*. 5–28; also R Herbert and S Gruzd *Le mecanisme Africain d'evaluation par les pairs : Lecons des poinniers* (2008).

⁴⁵⁰ Bond (2009) 596-597.

⁴⁵¹ S Amin 'The Millennium Development Goals: A Critique from the South' *Monthly review* (2006) available at <http://www.monthlyreview.org/0306amin2.php> (accessed 9 December 2010).

In a similar vein, Olukoshi is of the view that NEPAD's democracy and governance proposal is tailored to feed the donor's interest and not the African populace.⁴⁵²

In spite of its commitment to ensure the respect of rule of law, human rights, transparency and accountability, the APRM, has also been criticised for its 'soft' character or non-binding features; its reliance on a simple memorandum to which countries access voluntarily. It was argued that the process is weak as

[I]t does not prescribe sanctions or penalties and as such it runs the risk of being ineffective. Unless there are penalties or sanctions, the review will become a sham and attempts at achieving sustainable development through the adoption of best practices will fail.⁴⁵³

Furthermore, the APRM documents were also criticised for their lack of harmony. In this regard, Gruzd observes:⁴⁵⁴

The rules and regulations governing the process are loose. Later documents contradict earlier ones, without revoking or revising them. The wide-ranging flexibility afforded to countries in developing their national APRM structures — particularly their national governing council or national commission and local APRM secretariat — has spawned a variety of different institutional models. This permissive approach has mollified some nations to be apprehensive about the process but it has also undermined the ability of the system to establish governance norms or bring about genuinely improved dialogue around governance reform. The Panel has been reluctant to publicly challenge governments even when their APRM plans are contrary to the written and verbal guidelines.

Moreover, just like NEPAD, the APRM had been criticised for being too ambitious.⁴⁵⁵

⁴⁵² A Olukoshi 'Governing the African political space for sustainable development: A reflection on NEPAD', in Peter Anyang' Nyong'o, Aseghedech Ghirmazion, Davinda Lamba (eds) *New Partnership for Africa's Development: A New Path?* (2002) 90.

⁴⁵³ Z Kebonang & C M Fombad 'The African Peer Review Mechanism: Challenges and Prospects' in H Melber (ed) *AU, NEPAD and the APRM: Democratisation Efforts Explored* (2006) 51.

⁴⁵⁴ Gruzd (2007) 24.

⁴⁵⁵ Gruzd (2007) 24.

2.7 Concluding remarks

The aim of this chapter was to set the stage for the study. To attain this objective, the paper looked at three main issues: Firstly, it explained the main concepts and terminologies used in the study. Secondly, it offered a broader historical and contextual framework through which it established the relationship between the RTD and NEPAD. Thirdly, it provided a critique of NEPAD/APRM.

On the first issue, the chapter clarifies *inter alia* the concepts of human rights in Africa, the natural law theory, the debate on the hierarchy of human rights, addresses the concept of human dignity, equality and non-discrimination; it also focuses on the debate on universalism versus relativism of human rights before providing a definition of human rights as understood under the African human rights system. In addition, the chapter unpacks the concept of development, RTD, sustainable development and poverty eradication. While looking at the concept of human rights, the chapter argues that human rights are the best way for the realisation of the RTD, provided all development actors' activities are informed by human dignity as initially understood during the adoption of the UDHR.

On the second issue, while addressing the historical context of the RTD, the chapter showed that in its early days, the claim for the RTD was based on the request for the establishment of a NIEO by developing countries; then the claim evolved to be linked to the effects of the World Bank, IMF sponsored SAPs as well as the WTO unfair trade rules which impoverished Africa. Finally, the claim for the RTD was based on the request for global justice and fairness in the distribution of world's resources.

In terms of theory, the chapter located the RTD in the cosmopolitanism philosophy which sees the world as a global village where based on their humanity, all human beings are equal. It identified the utilitarianism, rights-based cosmopolitanism and obligation-based cosmopolitanism as theories through which global justice can be achieved. It however, presented the critique of cosmopolitanism which revolves around the nationalism, liberalism and individualism theories that maintain that the individual is paramount and advocates for the right to property.

In attempting to further clarify the cosmopolitanism theory, the chapter examined the application of cosmopolitanism through Sen's capability approach which revolves around 'development as freedom', assessed Pogge's theory which revolves around global responsibility for human rights with

special attention to the role of the affluent countries and their citizens as well as the role of global institutions. In addition, the chapter offered a critical analysis of Sen and Pogge's theory.

Shifting its attention to NEPAD, historically, the chapter located the African institution in the context of development policies which preceded its advent, the context of widespread poverty in Africa before concluding that the defining moment for its adoption was the poverty crisis caused by the neoliberal SAPs in Africa.

In terms of theory underpinning NEPAD, the chapter showed that the theoretical foundation of NEPAD was controversial. While fundamentalists supported by functionalists argued that NEPAD was secured in the African renaissance theory, sceptics were of the view that NEPAD was a neoliberal organisation. As result of this disagreement, the thesis approaches NEPAD from a 'problem solving perspective', not from fundamentalist or sceptic viewpoints, but from an 'engagist' perspective. In doing so, the chapter located NEPAD in the institutionalism theory which believes in the sanctity of institutions. This approach examined the role of institutions in eradicating poverty; it assessed the game of power (compulsory, institutional and structural power) at global level. This was the entry point for NEPAD in the cosmopolitanism theory (and the link with the RTD) where Pogge encourages the study or reform of institutions at global, national and even regional level whereas Rawls focuses on the institutions at national level. The other link between NEPAD and the RTD was identified by Sengupta who considered NEPAD as 'a remarkable development in the evolution of the international process of realising the right to development'. Furthermore, the UN High Level Task Force on the Implementation of the Right to Development included the APRM and other development partnerships (United Nations Economic Commission for Africa (ECA) and Organization for Economic Cooperation and Development (OECD)-Development Assistance Committee (DAC) Mutual Review of Development Effectiveness) in the context of NEPAD as frameworks to monitor periodically the performance of global development partnerships within the context of the RTD.

On the final issue, the chapter showed that NEPAD is widely criticised for its neoliberal ideology, its lack of resources, its overdependence on aid, its exclusionary policy characterised by the lack of popular participation, its over ambitious programme and its lack of human rights approach to development. In a similar register, the APRM is criticised for being toothless, ambitious, for being neoliberal, resourceless and over dependant on aid.