

DECLARATION

I, Gadenya Paul Wolimbwa hereby declare that this dissertation is my own academic work. It has never been submitted to this or any other university for the award of a degree.

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DEDICATION

This dissertation is dedicated to my wife Betty, my son Norman and my little Tarmar
who will one day be old enough to add to this work.

ACKNOWLEDGEMENT

This year has been a remarkable year for Africa. NEPAD was adopted as a blue print for ridding Africa of disease, hunger and ignorance. This has brought about renewed optimism in the African dream for a better tomorrow by the way NEPAD promises to transform Africa. It promises to make the 21st century, Africa's proclaimed century.

However this optimism has evoked many questions in the minds of pessimists. They have raised questions ranging from whether NEPAD will succeed when similar programmes failed in the past to such issues as to whether NEPAD will engender the development that it promises to bring to Africa.

The basis of my study has been to investigate the reasons behind the optimism and the pessimism surrounding NEPAD. It has not been an easy task given the plethora of reasons on either side. However I have managed to steer through the troubled waters with the support of the following people and institutions that supported me in this work.

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ABBREVIATIONS

ARP	African Renaissance Plan
AEC	African Economic Community
APRM	African Peer Review Mechanism
AAF-SAP	African Alternative Framework to Structural Adjustment Plan for Social Economic Recovery and Transformation
DDPECG	Declaration on Democracy, Political, Economic and Corporate Governance
ECA	Economic Commission for Africa
ICESCR	International Covenant on Economic, Social and Cultural Rights
APPER	African Priority Programme for Economic Recovery 1986-1990
ACHPR	African Charter on Human and People's Rights
AU	African Union
FDI	Foreign Direct Investment
G77	Group of Seventy-Seven
G8	Group of Eight
HIPC	Highly Indebted Poor Countries Initiative
IBRD	International Bank for Reconstruction and Development
IMF	International Monetary Fund
MAP	Millennium Recovery Plan for Africa
NAI	New Africa Initiative
NEPAD	New Partnership for Africa's Development
NIEO	New International Economic Order
OAU	Organisation of African Unity
ODA	Official Development Aid
SAP	Structural Adjustment Programmes
UDHR	Universal Declaration of Human Rights
UNHCHR	United Nations High Commissioner for Human Rights
UNNADAF	United Nations New Agenda for the Development of Africa

UN PAAERD United Nations Programme of Action for African Economic Recovery and Development

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
ACKNOWLEDGEMENT	iii
ABBREVIATIONS	iv
CHAPTER 1: RESEARCH PROPOSAL.....	1
1 Introduction	1
2 What is an adequate standard of living?	1
3 Africa and the right to an adequate standard of living.....	2
4 Relevancy of the study	3
5 Hypothesis	3
6 Limitations of the study	4
7 Division of the study.....	4
8 Methodology	5
9 Literature review	5
CHAPTER TWO: THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT (NEPAD)	7
1 Introduction	7
2 The Organisation of African Unity and its attention to socio-economic development.....	7
3 Past development programmes in Africa	8

4	The need for involvement of people in development	10
5	From the African Renaissance to NEPAD.....	11
6	Legal Status of NEPAD	13
7	The Review Process of NEPAD	13
8	The substantive components of NEPAD	14
9	The Objectives of NEPAD	15
10	Programmes for achieving the goals and objectives of NEPAD	16
10.1	The Peace, Security, Democracy and Political Governance Initiative	16
10.2	The Economic and Corporate Governance Initiative	17
10.3	Sub-Regional and Regional Approaches to Development Initiative	17
10.4	Sectoral Priorities	18
10.5	The Human Resource Development Initiative.....	18
10.6	The Agricultural Initiative	19
10.7	Cultural Initiative	19
10.8	The Science and Technology Initiative.....	19
11	Financing NEPADS programmes	20
12	The Governance Structures of NEPAD	21
13	Conclusion	22
	CHAPTER THREE: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING ...	23
1	Introduction	23
2	The right to an adequate standard of living under the ICESCR.....	23
2.1	Introduction.....	23
2.2	Normative contents of the right to an adequate standard of living.....	24
2.3	The right to clothing	24
2.4	The right to adequate housing.....	24
2.5	The right to adequate food and freedom from hunger	26
2.6	The right to continuous improvement in living standards.....	27
2.7	Obligations of states under the right to an adequate standard of living.....	27

3	The right to an adequate standard of living under the ACHPR	31
4	Conclusion	33
CHAPTER FOUR: NEPAD AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING		34
1	Introduction	34
2	Can NEPAD's institutional mandate yield results?	35
2.1	General mandate.....	35
2.2	Is there true African ownership to help in enforcing NEPAD's mandate? ..	36
2.3	Will the African Peer Review Mechanism work?.....	37
3	NEPAD's economic programmes for alleviating poverty.....	39
3.1	Liberalisation of the economy.....	39
3.2	What benefits will globalisation bring?	41
3.3	Can foreign direct investment help to attain an adequate standard of living?	42
3.4	Addressing the debt crisis in Africa	43
4	Conclusion	44
CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION		46
1	Strengthening enforcement of the human rights regime in Africa.....	46
2	Strengthening the effectiveness of the decisions of the APRM	47
3	Rights approach to development.....	47
4	Ownership of the programme	47
5	Re-orienting the neo liberal paradigm to development	48
6	Re-thinking liberalisation of the agricultural sector.....	48
7	External debt.....	49
8	Self-reliance initiative.....	49

9	Safety net for the poor	49
10	Globalisation	50
11	Conclusion	50
	BIBLIOGRAPHY.....	52

CHAPTER ONE

RESEARCH PROPOSAL

1 Introduction

Article 25 of the Universal Declaration of Human Rights (UDHR)¹ provides that every one has the right to a standard of living adequate for the health and well being of himself and his family. Included in this right are subsidiary rights to clothing, housing, medical care, and social security in the event of disability. This right has, however been narrowed in the International Covenant on Economic, Social and Cultural Rights (ICESCR).² Article 11 of the ICESCR enjoins state parties to the ICESCR to recognise the right of everyone to an adequate standard of living for himself and his family and to the continuous improvement in their living conditions. This right further encompasses subsidiary rights to clothing, adequate housing, adequate food and freedom from hunger. The subsidiary rights to social security and the highest attainable standard of health, which are mentioned in article 25 of the UDHR, are excluded from article 11 but are now separate rights contained in articles 9 and 12 of the ICESCR respectively.

Article 2 of the ICESCR enjoins state parties to use legislative or other measures to ensure the progressive realisation of the rights mentioned in the Covenant of which, the right to an adequate standard of living is one.

2 What is an adequate standard of living?

There is no standard definition of 'the right to an adequate standard of living' but guidance can be sought from both the UDHR and ICESCR because the two instruments illustrate what is entailed in the right. In the UDHR, it is provided that this right encompasses a standard of living, which is adequate for the health of the individual and his family. It covers the rights to food, clothing, housing, medical care, social services and social security in the event of disability. Article 11 of the ICESCR which draws its inspiration from article 25 of the UDHR defines this right to include an adequate standard of living for the individual and his family and further extends the application of the right to cover clothing, food, adequate housing, freedom from hunger and a continuous improvement in living conditions. Article 11 however leaves the list open to include other analogous rights that promote the spirit of the

¹ GA Res 217A,UN Doc.A/810 at 71-77.

² GA Res 2200(XXI) of 16 December 1966. Entered into force on 3 January 1976.

right to an adequate standard of living. In summary the right to an adequate standard of living covers the minimum subsistence needs that are necessary to support a reasonable standard of life. These include adequate food, clothing, housing, basic medical care and other analogous rights that together with the aforementioned rights support a reasonable standard of living.

3 Africa and the right to an adequate standard of living

Although as of 16 October 2002, 42 states in Africa had ratified the ICESCR,³ the right to an adequate standard of living remains one of the most neglected human rights in Africa due to poverty.⁴ For example, the recently released Human Development Report 2002 (HDR)⁵ gives a grim picture of Africa. The report indicates that in spite of the declining levels of poverty in the world, in Africa 'the level remains disturbingly high.'⁶

Sub-Saharan Africa ended the millennium 5% poorer than it was in 1990.⁷ Statistics available show that 340 million people in Africa live in absolute poverty,⁸ 140 children in every 1000 die before the age of five,⁹ while the infant mortality rate is likely to increase because 47 countries in Sub-Saharan Africa are lagging behind in efforts to reduce infant mortality.¹⁰ In terms of access to food, hunger remains a problem in Africa because only two countries have halved the population exposed to hunger.¹¹ As a result of poverty a majority of people in Africa do not enjoy an adequate standard of living.

In spite of the difficulties mentioned above, Africa has taken steps to address poverty. Africa has developed the New Partnership for Africa's Development (NEPAD), which is an economic and political plan to deal with under-development. The plan seeks to improve the quality of life of the population by reducing poverty, improving human rights and governance. NEPAD has the potential to make the 21st century, Africa's century of development.¹²

In the human rights discourse, the changes promised by NEPAD are significant because they are intended to address socio-economic rights, which have thus far been neglected.

³ C Heyns (1999) 2-3.

⁴ Craven (1998) 287-288.

⁵ UNDP (2002) <<http://www.undp.org>> (Accessed on 14 August 2002).

⁶ As above 18.

⁷ As above 6.

⁸ Para 4 of the New Partnership for Africa's Development (NEPAD).

⁹ As above.

¹⁰ n 5 above 20.

¹¹ n 5 above.

¹² President Thabo Mbeki's address to the United Nations General Assembly on 16 September 2002

It is therefore important to review NEPAD's intended contribution to the realisation of the right to an adequate standard of living.

4 Relevance of the study

First, NEPAD is a programme, which is largely designed to improve the standard of living for the population in Africa by addressing poverty. Poverty has been blamed for the low standard of living in Africa. It is therefore important to review the programmes NEPAD proposes so as to reduce poverty and to determine whether these programmes will enhance the right to an adequate standard of living.

Secondly, since NEPAD puts human rights at the core of its plans to bring about development in Africa, it is necessary to study it to determine whether its institutional framework will improve human rights in Africa.¹³ This is important because effective enjoyment of the right to an adequate standard of living requires the observance of the other human rights.¹⁴

Lastly, the right to an adequate standard of living has received little attention in Africa and it is important to determine whether NEPAD will contribute to the observance and enjoyment of the right.

5 Hypothesis

The research paper is premised on the fact that NEPAD has the potential to reduce poverty and improve the observance of human rights in Africa. Both of these outcomes are relevant because they address the right to an adequate standard of living. It is, however, doubtful whether the economic path chosen by NEPAD to address the key issue of poverty is actually going to have a positive impact on realisation of this right.¹⁵ This is particularly important given the fact that NEPAD's economic plan is premised on free market economics, private sector led growth and Foreign Direct Investment (FDI), which it hopes, will improve the quality of life of the poor. There are problems with this approach because

¹³ reported on South African Broadcasting Corporation (SABC) television channel 3 on 17 September 2002.

¹⁴ S B O Gutto "The rule of law, human and peoples' rights and compliance /non-compliance with regional and international agreements and standards by African states" a paper presented at the African forum for envisioning Africa, Nairobi, Kenya (26-29 April 2002)12.

¹⁵ E Asbjorn, C Krause and A Rosas (1995) 95.

Neo liberal paradigm of development which emphasises free market economics through liberalisation of the economy.

previous economic programmes that were implemented in Africa with similar economic programmes failed because they never put people at the core of their development plans. The success of NEPAD's programme will depend on whether people are put at the core of its programmes otherwise its contribution to improving living conditions in Africa will be minimal.

Secondly, the institutional framework for human rights in NEPAD is not strong enough to address human rights. As a result, human rights issues are not likely to attract the seriousness that they deserve. This paper therefore intends to suggest ways of strengthening the human rights mechanism in NEPAD

6 Limitations of the study

The right to an adequate standard of living as noted above encompasses access to food, freedom from hunger, clothing, adequate housing and an obligation on states to ensure the continuous improvement in the standard of living of its population. To realise this right, the ICESCR places duties on the individual and the state.¹⁶ This is necessary because individuals have obligations to ensure that they work towards their welfare needs. While on the other hand the state has an obligation to put in place the necessary conditions within which individuals can realise this right. This paper takes the discussion from that point of view and discusses the right to clothing, adequate food and housing, continuous improvement in living conditions and the obligations of states in realising the right to an adequate standard of living. The paper does not however discuss the obligations entailed in realising the right to adequate food and housing.

7 Division of the study

The study is divided into five chapters. Besides this chapter, the second chapter will trace the historical development of NEPAD. It will also examine NEPAD is all about, its institutions and proposed programmes.

The third chapter will discuss the concept of the right to an adequate standard of living as enunciated in the ICESCR and the African Charter on Human and People's Rights (ACHPR).¹⁷ The chapter will seek to define the scope of the right to an adequate standard of living and discuss the obligations of the state towards the realisation of this right.

¹⁶ Art 2, 11(2) ICESCR .

The fourth chapter deals with how NEPAD addresses the right to an adequate standard of living as elucidated on in the previous chapter.

The fifth chapter will address the issue of how NEPAD can be made more responsive to addressing the right to an adequate standard of living. The conclusion will be contained in this chapter.

8 Methodology

Books, articles and other materials, which deal with this subject, will be used in this study. The Internet will be used to access documents and articles on the subject. Where possible the study will be complemented by interviews with officials in the NEPAD Secretariat and scholars familiar with the subject.

9 Literature review

NEPAD is a new programme and as a result not much information has been published on it. Below is a review of some of the articles on.

Tandon criticises NEPAD for ignoring popular participation in its programmes.¹⁸ He criticises the development paradigm chosen by NEPAD to transform Africa as being inappropriate for Africa and notes that it will have profound effects on the poor by surrendering their human rights ‘to the whims of globalisation.’¹⁹ Lastly Tandon fears that NEPAD’s programmes will be jeopardized because of shortage of funds.²⁰ Tandon does not however discuss the right to an adequate standard of living.

The South African Churches in their publication²¹ criticise NEPAD’s vision for being blurred by fixing its sight on increased global integration and rapid private sector growth as the answer to overcoming poverty.²²

The United Nations High Commissioner for Human Rights (UNHCHR),²³ hails NEPAD for its efforts at deepening democracy, human rights, sustainable economic development and

¹⁷ ACHPR came into force on 21 October 1986.

¹⁸ Y Tandon “NEPAD and FDIs: Symmetries and Contradictions” a paper prepared for the African Forum for Envisioning Africa held in Nairobi, Kenya 26-29 April, 2002.

¹⁹ As above 25.

²⁰ n 18 above.

²¹ Southern African Catholic Bishops Conference (Justice and Peace Department) “Unblurring the Vision of NEPAD” (2002) 31.

²² As above 7.

²³ “Human Rights, the African Union and NEPAD” available at

peace with greater vigour and determination but regrets NEPAD's shallow grounding in human rights.²⁴

Stremlau doubts whether the peer review mechanism on which the success of NEPAD depends, will work because it is meant to deal with political issues over which they might be very little agreement.²⁵ Finally Stremlau criticises NEPAD for its notable focus on civil and political rights, as pre-conditions for development and yet socio-economic rights are essential in harnessing development.

The Alternative Information and Development Centre (AIDC),²⁶ criticises NEPAD for being oriented towards appeasing donors instead of placing emphasis on the suffering masses in Africa. The AIDC does not however address the human rights implications of NEPAD.

Lastly, Landsberg notes that NEPAD will not work because African leaders hold opposing views about it.²⁷ Landsberg does not, however, answer the question as to whether NEPAD will lead to improvement in living conditions.

²⁴ <http://www.unhchr.ch/html/menu6/Africadialog1.htm> (Accessed on 7 August 2002)
As above.

²⁵ J J Stremlau "NEPAD –Peer Review Mechanism" available at
<http://www.web.net/~iccaf/debtsap/nepadpeerreview.htm> (Accessed on 8 August 2002).

²⁶ AIDC <http://www.aidc.org.za/NEPAD/AIDC.html> (Accessed on 13 July 2002).

²⁷ C Landsberg "NEPAD and globalisation: Some initial thoughts" available at
<http://www.aidc.org.za/NEPAD/Goedgedacht.html> (Accessed on 13 July 2002).

CHAPTER TWO

THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT (NEPAD)

1 Introduction

This chapter traces the historical development of socio-economic initiatives that have been tried in Africa to bring about transformation of social and economic conditions of its people, who have been victims of extreme poverty for decades. This approach is adopted because NEPAD is part of an evolving social, economic and political African history and can be best appreciated through a historical journey of Africa's efforts at improving the livelihood of its people. This chapter begins with a review of the history of transformation then progresses to examine the development of NEPAD, its legal status, programmes, governance structures and ends with how NEPAD is going to finance its programmes. The chapter does not, however, make any in-depth analysis of NEPAD because that will be done in chapter four.

2 The Organisation of African Unity and its attention to socio-economic development

NEPAD is the latest continental plan, aimed at addressing the problems of under-development in Africa. The journey to social, economic and political transformation of Africa started with the formation of the Organisation of African Unity (OAU) in 1963. The African union has since replaced the OAU in July 2002.¹

Although the main objective of the OAU was to speed up the decolonisation process of Africa,² the OAU had a very important core function of intensifying co-operation and efforts to achieve a better life for the people of Africa.³ It therefore became part of the Pan-African revolution to build strong African economies through integration so that together they could prosper through the benefits of integration. This was to be achieved within the framework of a united Africa, which not only would be one economic entity but would also speak with one voice among the larger community of nations.

¹ The OAU has, however, been replaced by the African Union (AU).

² Art 1(d) of the OAU Charter reprinted in C Heyns (2001) 117.

³ Art 1(b) of the OAU Charter.

In spite of these worthwhile objectives, not much was achieved to move African economies towards integration and self-reliance. Instead political turmoil set in and African economies were weakened by ill-advised policies, shortage of resources and inefficiency.⁴

African economies therefore lost even the little gains that they had made prior to decolonisation in the first few years of independence with the effect that from 1960 to 1975 African economies stagnated.

Externally African economies found themselves adversely affected by negative terms of trade, a decrease in commodity prices, unsustainable debts and a harsh international economic order.⁵

3 Past development programmes in Africa

The failure to register growth and a decline in the standard of living conditions compelled African countries to reconsider their predicament. It thus became obvious that if conditions in Africa were to be improved something had to be done both locally and internationally to reverse the trend. Internationally African countries together with other developing countries started calling for a new international economic order to replace the prevailing order, which they considered too hostile for the interests of the weaker nations. These efforts culminated in the passage by the United Nations (UN) of two resolutions calling for the establishment of a New International Economic Order (NIEO), which would be based on a fair international trading regime, greater access to the markets of the industrialised world by developing countries, higher prices for commodities, transfer of technology and increase in development aid to developing countries from the industrialised world.⁶ The NIEO was, however, opposed by the developed countries and it never delivered much.

In Africa efforts were made at a continental level to craft a development programme that would address under-development. A colloquium on Perspectives of Development and Economic Growth in Africa up to the year 2000 was convened in Monrovia in 1979 by the OAU to address the problem of under-development in Africa and how to deal with the implications of NIEO. The colloquium adopted the Monrovia Declaration of

⁴ G J Naldi (1999) 240.

⁵ As above.

⁶ A/RES/3201 (S-VI) and A/RES/3202 (S-VI).

Commitment (Monrovia Declaration).⁷ Under the Monrovia Declaration, African governments committed themselves to promote economic and social development of their countries through integration of African economies, self-reliance and by giving greater attention to human resource development, sufficient food production, adequate nutrition and provision of basic needs necessary for a better standard of living.⁸ The same colloquium mandated the Secretary General of the OAU and the Executive Secretary of the Economic Commission for Africa (ECA) to come up with a plan to implement the Monrovia Declaration. Pursuant to this mandate, a plan of action was drafted and submitted to the OAU. The OAU at its summit⁹ approved the plan and named it the Lagos Plan of Action for the Economic Development of Africa, 1980-2000 (Lagos Plan) and the Final Act of the Lagos Plan.¹⁰ The aims of the Lagos Plan were not different from the Monrovia Declaration save to mention that it set itself to achieve the economic integration of Africa by setting up an African Economic Community (AEC) by the year 2000.

The progress of the Lagos Plan was very slow because African countries did not have sufficient resources and political will to implement the plan. Internationally, the Cold War was not conducive for its implementation. Besides, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) were utterly opposed to the Lagos Plan, which was a reiteration of NIEO, something that they had never accepted.¹¹ The IMF and the Word Bank were not happy with the development paradigm which Africa had chosen. While Africa preferred development which provided basic human needs first, the two institutions preferred a model, which put economic growth above basic human needs. International efforts were therefore made to thwart the Lagos Plan. The World Bank thus worked on an alternative plan for the rejuvenation of Africa.¹² The plan recommended that transformation of African economies could only be achieved if African countries attended to governance issues, allowed free market economies, reduced corruption, removed the policies of subsidisation, foreign exchange controls and deficit financing of budgets. The report eventually formed the basis of Structural Adjustment Programmes (SAPs), which were

⁷ AHG/ST.3 (XVI) Rev.1.

⁸ P Anyang'Nyongo "From the Lagos Plan of Action to NEPAD; The dilemma of progress in independent Africa" a paper presented at Renaissance South Africa Outreach Programme, Continental Experts Meeting, Pretoria (17-19 June 2002).

⁹ 2nd Extra Ordinary Session of the OAU Heads of State and Government in Lagos.

¹⁰ "Lagos Plan of Action for the Economic Development of Africa 1980-2000" Available at <<http://www.uneca.org/itca/ariportal/doc/lagos-plan.PDF>> (accessed on 26 August 2002).

¹¹ n 8 above.

¹² The World Bank "Accelerated development in Sub Saharan Africa: An agenda for action" (1981). A

adopted by the IMF and the World Bank in the late 1980s as a blueprint for turning around African economies.¹³

SAPs did not, however, address the problem of under-development in Africa but rather deepened the level of poverty and thus had negative ramifications on the poor.¹⁴ With increased social and political strife resulting from the effects of SAPs on the continent, the OAU convened another summit in 1985 to consider the negative effects of SAPs. This summit led to the adoption of the African Priority Programme for Economic Recovery 1986-1990 (APPER) whose main focus was on a people centred approach to development.¹⁵ APPER was however modified by the United Nations (UN), which came up with the United Nations Programme of Action for African Economic Recovery and Development 1986-1990 (UN PAAERD). The UN plan added doses of good governance as a core component of the plan. At least at this time the international community appeared to support the new initiative since this initiative had conceded to the demands of the Washington consensus on the way forward for African economies¹⁶. This new initiative did not however address the problem of SAPs but simply compounded them. In 1989 Africa came up with the African Alternative Framework to Structural Adjustment Plan for Social Economic Recovery and Transformation (AAF-SAP) as an alternative to SAPs.¹⁷ Unfortunately, this plan did not, however, make any fundamental changes as it endorsed the same SAPs it was meant to replace.¹⁸

4 The need for involvement of people in development

All the attempts to develop Africa as described above failed to bring about the desired transformation because they did not involve the people in their design and implementation and yet this was crucial for the success of the plans. It thus became crucial that for any programme to succeed, the people had to be consulted. This was the outcome of a conference held in Arusha, Tanzania to consider the issue at the

¹³ team of experts headed by Professor E Berg compiled the report.
¹⁴ n 8 above.

¹⁴ Southern African Catholic Bishops Conference (Justice and Peace Department)
“Unblurring the Vision of NEPAD” (2002) 17.

¹⁵ n 4 above.

¹⁶ The term ‘Washington consensus’ was coined by John Williamson who identified similarities in the policies of the IMF and World Bank for the economic rejuvenation of economies of developing countries which centre on fiscal discipline, macro economic stabilisation, liberalisation, privatisation, de-regulation, and promotion of foreign direct investment. It refers to the policies of the two institutions See also “Towards a post Washington consensus” Available at
<http://www.sigov.si/zmar/apublici/iib/iib0400/08.ahren.pdf> (Accessed on 13 September2002).

¹⁷ The plan was produced by ECA.
¹⁸ n 8 above.

conference there was the adoption of the African Charter for the Popular Participation in Development and Transformation (The Popular Charter).¹⁹ The Popular Charter called for democratic development,²⁰ and development that is rooted in popular initiative.²¹ The conference concluded that it was unacceptable that development and transformation in Africa could proceed without the full participation of the people whose centrepiece was the struggle to achieve economic and social justice for all.²² The conference made a call to the international community to change their concept of development in Africa from technocratic development to democratic development that is people centred.

Following The Popular Charter, the UN developed the United Nations New Agenda for the Development of Africa in the 1990s (UNNADAF).²³ The focus of this plan was on a people centred approach to development and good governance.

All these development efforts, however, came to naught because they were opposed, undermined and jettisoned by the IMF and World Bank. African leaders who should have championed development in Africa abandoned their very own plans in favour of external plans.²⁴ Hence again Africa failed to make another start. Similar development initiatives sponsored by the IMF and the World Bank, also failed to tackle under-development in Africa.²⁵

5 From the African Renaissance to NEPAD

It was against this background of failure to achieve economic and socio development that the then South African Deputy President Thabo Mbeki drafted the African Renaissance Plan (ARP) which he envisioned would turn around the continent. ARP laid out an economic and political plan, to bring about development in Africa. The ARP was renamed Millennium Recovery Plan for Africa (MAP) when Mbeki became the President

¹⁹ Adopted by the International Conference on Popular Participation in the Recovery and Development Process in Africa- Arusha 12-16 February 1990 reported G Melander & G Alfredsson (1997) 395.

²⁰ Preamble of the Popular Charter.

²¹ Art 4 of the Charter for Popular Participation.

²² Art 30 of the Charter for Popular Participation.

²³ n 8 above.

²⁴ A Adebayo "From the Lagos Plan of Action to the New Partnership for Africa's Development and from the Final Act of Lagos to the Constitutive Act: Wither Africa?" Keynote address at the African Forum Envisioning Africa, Nairobi, Kenya (26-29 April 2002) 4.

²⁵ The IMF came up with other programs after the SAPs had failed. These included the Enhanced Structural Adjustment Facility, Heavily Indebted Poor Countries Initiative, the Poverty Reduction Strategy Programmes, the Poverty Reduction and Growth Facility, which were and are aimed at tackling poverty in Africa. See also <<http://www.imf.org>> and <<http://www.halifaxinitiative.org/h1.php?IMF/48>> (Accessed on 5 April 2002).

of South Africa. He re-named it the MAP was presented to the fourth Extra-Ordinary Summit of the OAU in Libya, which endorsed it.²⁶

The OAU summit in Libya mandated Presidents Mbeki and Abdelaziz Bouteflika of Algeria to engage the creditor nations to cancel Africa's debt.²⁷ A similar call was also made by the Group of Seventy-Seven (G77) developing countries to Presidents Mbeki and Olusegun Obasanjo of Nigeria to ask the Group of Eight (G8) industrialised countries, the World Bank and the IMF to cancel the external debt of African countries.²⁸ Meanwhile the following OAU summit in Togo mandated Presidents Mbeki, Obasanjo and Bouteflika to develop a constructive partnership with the G8, which the three Presidents did at the G8 summit in Japan in 2000.²⁹ MAP was also presented to the World Economic Forum in Davos, Switzerland, to market and achieve international consensus for the initiative.

Following the successful presentation of MAP, President Mbeki drew up the concept paper for the initiative which now formed a revised MAP. However, around this time President Abdoulaye Wade, of Senegal came up with his own plan of transforming Africa, it was called OMEGA. He presented this plan to the Franco-Africa Summit in Yaounde, Cameroon, in January 2001. This plan also got the attention of the OAU.³⁰ The main focus of OMEGA was on building infrastructure, information and communication technologies (ICT), human resource development, health and agriculture.³¹

Faced with these two proposals, the OAU tasked the ministers of finance and the Executive Secretary of the ECA to study the two documents and merge them into one plan.³² This was done with input from the Compact Plan for the Revival of Africa, which had been prepared by the ECA.³³ A consolidated plan was now produced under the title the New Africa Initiative (NAI). The NAI was discussed and adopted by the OAU Summit

²⁶ Rev Sirte Declaration, 4th Extra-Ordinary Session of the Assembly of the Heads of State and Government of the OAU, 9 September 1999, Sirte, Libya. OAU Doc EAHG/Decl (IV).

²⁷ "NEPAD background 2:Historical overview" Available at <<http://www.dfa.gov.za/docs/nepad2.htm>> (Accessed on 26 August 2002).

²⁸ n 26 above.

²⁹ Y Enoki "NEPAD viewed by a G8 member" a speech presented at the Africa Institute by the Ambassador of Japan on 16 April 2002.

³⁰ Para 318 of the Secretary General's report 2001.

³¹ n 26 above.

³² The 5th Extra Ordinary Session of the OAU Summit of Heads of Government and State 1-2 March 2001, Sirte, Libya reported in NEPAD background (n 49 above).

³³ D Nabudere "Historical background and prospects" a paper presented at African Forum

in Lusaka, Zambia.³⁴ A declaration to this effect was issued by the Summit calling upon the expanded Implementing Committee³⁵ to refine NAI.³⁶ In a meeting convened in Abuja, the implementing committee of Heads of State of NAI decided to re-name NAI as NEPAD.³⁷ NEPAD was then presented to the AU Summit in Durban, South Africa and adopted.³⁸

6 Legal Status of NEPAD

NEPAD is an economic and political plan for the social and economic transformation of the AU.³⁹ It is not a treaty, convention or charter with binding obligations. Membership to NEPAD is voluntary but once a country joins NEPAD, it agrees to be bound by the objective criteria set out in the Declaration on Democracy, Political, Economic and Corporate Governance (DDPECG) African and the Peer Review Mechanism (APRM).⁴⁰

The APRM is discussed in the next section.

In terms of its relationship with the AU, NEPAD is a project of the AU. This is however interesting because NEPAD operates autonomously from the secretariat of the AU. The AU does not control its day-to-day activities. One reason for this is that the authors of NEPAD preferred it to operate autonomously because they did not want it to be bogged down with the bureaucracies within the AU.

7 The Peer Review Process of NEPAD

The mandate of the APRM is to ensure that countries that have adopted NEPAD conform to the agreed political, economic and governance values contained in the DDPECG.⁴¹

³⁴ Envisioning Africa (26-29 April 2002).

³⁵ Declaration on the New Common Initiative (MAP and OMEGA). AHG/Decl.1 (XXXVII).

³⁶ Comprising of the sponsors of NAI-South Africa, Algeria, Senegal and Nigeria together with Egypt, Mozambique, Botswana, Tunisia, Mali, Ethiopia, Mauritius, Rwanda, Sao Tome and Principe, Gabon and Cameroon.

³⁷ OAU Doc AHG/Dec1 (XXXVII) para 12.

³⁸ NEPAD Communiqué issued at the end of the meeting of the Implementation Committee of Heads of State and Government on NEPAD, Abuja, Nigeria (23 October 2001).

³⁹ ASS/AU/Decl.1 (1), Declaration on the Implementation of NEPAD.

⁴⁰ NEPAD was adopted by the African Union as one of its projects.

⁴¹ Para 12 of Declaration on the Implementation of NEPAD, ASS/AU/Decl. 1(1). The APRM as presented by President Obasanjo was endorsed by the 38th Session of the OAU Assembly of Heads of state and Government.

Art 2 APRM.

The purpose of the APRM is to foster the adoption of policies, standards and practices that will lead to sustainable development in Africa.⁴² Accordingly the APRM provides for periodic reviews. At the point of acceding to the APRM, a country is required to give a timetable within which it will implement the DDPECG.⁴³ After this the country is subjected to four types of reviews. The first review is carried out within 18 months from the date when the country acceded to the APRM. This is then followed by periodic reviews, which are conducted after every two to four years. Besides a country can on its own motion subject itself to a review or the Implementing Committee of Heads of State can direct a review to be done if there are signs of an impeding political or economic crisis in a given country.⁴⁴

The review process involves a four-stage process. The first stage involves a study of the political, economic, corporate governance and development environment. This is based on the background material prepared by the APRM Secretariat and any other material provided by national, sub-regional, regional and international institutions.⁴⁵ Then the second stage involves a visit to the country by the review team. Here the team holds consultations with government officials, political parties, parliamentarians and representatives of civil society.⁴⁶ The third stage involves the preparation of the country report, which is scored against the applicable political, economic and corporate governance commitments.⁴⁷ The last stage involves the submission of the report by the review team to the participating heads of state and government through the APRM Secretariat who make the final judgment on the report.⁴⁸

8 The substantive components of NEPAD

NEPAD is a holistic social and economic plan for Africa's development. It is premised on the fact that Africans have their own destiny to use and nurture the resources available on the continent for their own development. NEPAD is also premised on the fact that there can be no meaningful development in African countries in the present globalised world except if they integrate both locally and internationally. NEPAD therefore proposes a new partnership between Africa and the industrialised countries,

⁴² Art 3 APRM.

⁴³ Art 13 APRM.

⁴⁴ Art 14 APRM.

⁴⁵ Art 18 APRM.

⁴⁶ Art 18 APRM.

⁴⁷ Art 20 APRM.

⁴⁸ Art 23 APRM.

which is based on the pursuit of common interests and mutual obligations from the two partners as the way forward.⁴⁹ Such a partnership, it is argued will bring direct material benefits both for African and the rest of the world since ‘there will be no stability and prosperity in the world in the 21st century, unless the problems of Africa are resolved.’⁵⁰

NEPAD is therefore a commitment by African leaders with the support of the rest of the world to bring about the social, economic and political transformation of Africa through structural transformation of the economy and politics.

9 The Objectives of NEPAD

NEPAD has three main goals. First, it is aimed at promoting rapid economic growth to eradicate widespread poverty in Africa.⁵¹ Secondly, NEPAD is aimed at increasing the participation of women in all spheres of economic, social and political life.⁵² Lastly NEPAD intends to harness the benefits of globalisation for Africa by reversing the current marginalisation of Africa in the world.⁵³

The first objective of NEPAD is to ensure African ownership, responsibility and leadership in steering the development of the continent.⁵⁴ Secondly NEPAD is aimed at making Africa attractive to both domestic and foreign investors by creating investor confidence through the establishment and maintenance of peace and provision of an environment climate for investment. Thirdly, NEPAD is aimed at harnessing the vast natural and human resource materials present in Africa to achieve average growth in gross domestic product of over 7% *per annum* for the next 15 years, which is necessary to turn around the continent.⁵⁵ NEPAD also focuses on achieving millennium development goals.⁵⁶ Lastly NEPAD’s objective is to promote integration, improve human resources and strengthening Africa’s bargaining strength in international affairs.

⁴⁹ A M Zenawi, Prime Minister of Ethiopia, speech presented at a symposium organised by the African Development Bank Towards Realising the Objectives of NEPAD (27 May 2002) Addis Ababa, Ethiopia.

⁵⁰ n 29 above.

⁵¹ Para 67 NEPAD.

⁵² Para 67 NEPAD.

⁵³ Para 67 NEPAD.

⁵⁴ Para 47 NEPAD.

⁵⁵ Para 68 NEPAD.

⁵⁶ According to the United Nations Development Programme, UNDP millennium development goals are a set of numerical and time bound targets that express key elements of human development. They include halving income-poverty and hunger; achieving universal primary education and gender equality; reducing mortality under the age of five by two thirds and maternal mortality by three quarters; reversing the spread of HIV/AIDS; and halving the population of people without access to safe water by 2015.

NEPAD proposes to achieve the above objectives by putting in place initiatives for sustainable development through the Peace, Security, Democracy and Political Governance Initiative;⁵⁷ the Economic and Corporate Governance Initiative;⁵⁸ Sub-Regional and Regional Integration to Development Initiative;⁵⁹ and through the establishment of sectoral priorities by bridging the infrastructural gap;⁶⁰ human resource development Initiative;⁶¹ Agriculture;⁶² the Environment Initiative;⁶³ Culture,⁶⁴ and technology initiatives.⁶⁵ Resources for these programmes will be mobilised through the Capital Flow Initiative,⁶⁶ and the Market Access Initiative.⁶⁷ Each of these initiatives is briefly discussed below.

10 Programmes for achieving the goals and objectives of NEPAD

10.1 The Peace, Security, Democracy and Political Governance Initiative

This initiative is based on the fact that sustainable development in Africa can only occur if there is peace, security, democracy and good governance, rule of law, human rights and sound economic management.⁶⁸ Accordingly the initiative identifies maintenance of peace and security as crucial to the establishment of a safe environment for economic activity. It is hoped that sustenance of peace and security will lead to crystallisation of democracy and good governance in Africa. In this regard, the AU has adopted the DDPECG,⁶⁹ which *inter alia* provides for human rights, democratic and governance principles to be followed by African states. In support of democracy, African countries have bound themselves to entrench principles of democracy in their constitutions, promote political pluralism, refrain from unconstitutional means of seizing power, establish effective electoral commissions and sensitise the public on the ACHPR.⁷⁰ In support of good governance African leaders have committed themselves to adopt adequate codes of conduct and indicators for good governance and maintain effective

⁵⁷ Para 71 NEPAD.

⁵⁸ Part A2 NEPAD.

⁵⁹ Part A3 NEPAD.

⁶⁰ Part B1 NEPAD.

⁶¹ Part B2 NEPAD.

⁶² Part B3 NEPAD.

⁶³ Part B4 NEPAD.

⁶⁴ Part B5 NEPAD.

⁶⁵ Part B6 NEPAD.

⁶⁶ Part C1 NEPAD.

⁶⁷ Part C2 NEPAD.

⁶⁸ Para 71 NEPAD.

⁶⁹ n 38 above.

civil service, parliaments and independent judicial systems.⁷¹ Under the promotion of human rights, African leaders have committed themselves to facilitating the growth of a vibrant civil society; promoting national, sub-regional and regional human rights institutions; supporting the ACHPR and the African Commission on Human and Peoples' Rights (African Commission); strengthening cooperation with the UNHCHR and ensuring freedom of expression and freedom of the press.⁷²

10.2 The Economic and Corporate Governance Initiative

The rationale for this initiative is based on the fact that the state in Africa is a facilitator of development but is short of the institutional and legal framework to carry out this vital function.⁷³ Accordingly the initiative seeks to build capacity of African governments by strengthening the regulatory framework of governments, improving financial and public finance management functions of the government.⁷⁴ Consequently, African leaders have bound themselves to adopt codes of good practices on transparency in monetary and fiscal policies, adopt codes of good practices on fiscal transparency, implement best practices for budget transparency, set up guidelines for public debt management, corporate governance and develop core principles of effective banking supervision.⁷⁵ The main task of the initiative is, however, to empower the private sector to act as the engine of development.

10.3 Sub-Regional and Regional Approaches to Development Initiative

This initiative focuses on strengthening and accelerating the existing regional blocks and integrating African economies at both local and international levels.⁷⁶ African economies can only be viable if they integrate, as they are presently too small and vulnerable to survive on their own. NEPAD therefore identifies the provision of regional goods such as transport, human resource development, energy, water, ICT, diseases eradication, environmental preservation, regional research capacity and promotion of intra-African trade and investment as avenues through which integration can be harnessed.⁷⁷

⁷⁰ Art 13 of DDPECG.

⁷¹ Art 14 DDPECG.

⁷² Art 15 DDPECG.

⁷³ Para 86 NEPAD.

⁷⁴ Para 88 NEPAD.

⁷⁵ Art 18 DDECAG.

⁷⁶ Para 91 NEPAD.

⁷⁷ Para 92 NEPAD.

10.4 Sectoral Priorities

NEPAD seeks to achieve its main goal of rapid economic growth through sectoral activities, which are central to the achievement of its goals. Firstly, NEPAD seeks to develop the infrastructure through construction of roads, highways, airports, railways, waterways and telecommunications to facilitate the integration of the continent. Secondly NEPAD seeks to develop the ICT sector to support democratisation, good governance, trade, investment and education in Africa.⁷⁸

Thirdly, the energy sector will be developed to free the demand caused by industrial and domestic pressure on the environment.⁷⁹ Adoption of a sound environmental policy is therefore being considered as part of NEPAD's energy plan to provide environmentally sustainable energy. The energy and environment plan is also targeted at tackling poverty because a sustainable energy and environmental plan can contribute to job creation, social and economic empowerment and reduction of poverty.⁸⁰

On the side of transport, NEPAD seeks to develop the transport sector to increase the easy movement of people and goods on land, water and in air.⁸¹ Lastly NEPAD seeks to develop water resources to provide clean water to the people, adequate and sustainable water for irrigation to reduce the dependence of African agriculture on the weather, increase food production and security and to use water as a focal point of regional integration.⁸² The water programme will be complemented by the need to provide sanitation to the poor sectors of society.⁸³

10.5 The Human Resource Development Initiative

The Human Resource Development Initiative has four components namely poverty reduction, bridging the education gap, reversing brain drain and improving health care of the population. The rationale for this initiative is based on the realisation that the most important resource Africa has got is its own people and that no development will take place in Africa unless its people are empowered to deal with poverty, improve their

⁷⁸ Paras 104 & 105 NEPAD.

⁷⁹ Para 109 NEPAD.

⁸⁰ Para 136 NEPAD.

⁸¹ Para 111NEPAD.

⁸² Para 113 NEPAD.

human resource potential, improve their health to levels that can sustain a healthy living and production.⁸⁴ Accordingly, NEPAD provides for accelerated steps to give universal education to all primary school going children by the year 2015, make the school curriculum to be more relevant to Africa's development needs, attract back African skilled manpower which is in the industrialised world by making social and economic conditions at home attractive and lastly to improve delivery of health services through increasing allocation of budgetary funds to the health sector and by convincing donors to increase aid to the health sector to \$10 billion *per annum*.⁸⁵

10.6 The Agricultural Initiative

The backbone to NEPAD's agricultural policy is focused on achieving food availability and security to all the population and modernising agriculture.⁸⁶ The strategy will solve the problem of famine, improve incomes of the rural population and improve the standard of living of peasants and farmers.⁸⁷ The success of this programme, however, depends on NEPAD making more land available for agricultural production, developing irrigation and attracting investment in the agricultural sector.⁸⁸

10.7 Cultural Initiative

Under this initiative NEPAD seeks to give special attention to the protection and nurturing of indigenous knowledge through the adoption of appropriate local and continental legislative measures.⁸⁹

10.8 The Science and Technology Initiative

The main objective of this initiative is to develop and adopt information collection and analysis capacity to support production, to generate a critical mass of technological experts, to assimilate and adopt existing technologies, to facilitate transfer and sharing of technology between African countries and to use technology to improve marketing.⁹⁰

⁸³ Para 113.

⁸⁴ Art 21 DDPECG.

⁸⁵ Paras 115,117,121, 123 and 124 NEPAD.

⁸⁶ Para 130 NEPAD.

⁸⁷ Para 131 NEPAD.

⁸⁸ Para 134 NEPAD.

⁸⁹ Paras 140-141 NEPAD.

⁹⁰ Para 142 NEPAD.

11 Financing NEPADS programmes

NEPAD is an ambitious plan, which requires US \$64 billion *per annum* to implement its programmes. Unfortunately Africa does not have this money. NEPAD therefore focuses considerable attention on sourcing funding for its programmes.

The driving force of financing NEPAD is through self-reliance, which will be achieved through effective utilisation of Africa's vast resources, rationalising government expenditure and reforming the taxation system to free more resources to develop the continent. NEPAD also seeks to increase domestic savings and provide incentives to local investors to buy into its programmes.⁹¹ These resources are, however, insufficient to finance NEPAD's programmes and will be complemented by external sources.

Firstly NEPAD seeks to convince the G8 to give debt relief to African countries by linking debt relief to debt sustainability in the short term and debt relief to poverty reduction in the long term. The objective of this strategy is to make savings on debt repayments and servicing, which will then be allocated to the development budget.⁹²

Secondly NEPAD calls for increased official development aid (ODA) to help it achieve its development targets.⁹³ Mindful of the reluctance of donors to provide extra funds, NEPAD has put in place criteria for effective utilisation of donor funds to convince the donors to increase their aid. In spite of this NEPAD does not intend to pursue this source as a long-term capital mobilisation goal.⁹⁴

Thirdly NEPAD focuses a lot of attention on attracting FDI through creating the pre-conditions for development and implementing investor friendly policies.⁹⁵

Fourthly NEPAD identifies the market access initiative as a means of harnessing resources to finance its programmes. NEPAD is therefore calling upon the industrialised world to open up its markets to the products of developing countries,⁹⁶ and to remove non-tariff barriers that are used to block commodities of least-developed countries to the

⁹¹ Para 145 NEPAD.

⁹² Para 146 NEPAD.

⁹³ Para 152 NEPAD.

⁹⁴ Para 148 NEPAD.

⁹⁵ Para 151 NEPAD.

⁹⁶ Para 155 NEPAD.

markets of the developed world.⁹⁷ NEPAD also calls upon African countries to diversify their export base; improve the quality of their products to make them competitive on the international market and to increase their manufacturing capacity. NEPAD, however, recognises that this will not be easily achieved given the reluctance of the industrialised world to open up their markets to African products and therefore calls upon African countries to unite so that they can negotiate with one voice in trade talks.⁹⁸ To this end NEPAD calls for the strengthening of Africa's negotiating skills to enhance the continent's ability to compete globally. Lastly, NEPAD calls for the development of a constructive partnership with the industrialised countries and multilateral institutions so as to create a fair trading system, which is mutually reinforcing, beneficial to all and above all based on social and economic equity.

12 The Governance Structures of NEPAD

NEPAD's governance structure is composed of a three-tier structure, which is headed, by the Heads of State Implementing Committee, the Steering Committee and lastly the Secretariat.⁹⁹

The Heads of State Implementing Committee is composed of the sponsor nations of NEPAD and fifteen other countries representing the regions of Africa.¹⁰⁰ This Committee is mandated with identifying strategic issues that need to be researched, planned and managed at a continental level, setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and standards and finally with reviewing the implementation process.

The Steering Committee, which is composed of personal representatives of the five initiating presidents, is charged with developing the terms of reference for identified programmes and projects. It also oversees the Secretariat.

Lastly the Secretariat is made up of a small core staff that is in charge of performing day-to-day activities of NEPAD, liaising with the organs of NEPAD and providing administrative and logistical support for NEPAD.

⁹⁷ Para 170 NEPAD.

⁹⁸ Para 168 NEPAD.

⁹⁹ Para 200 NEPAD.

¹⁰⁰ Declaration on the Implementation of NEPAD, ASS/AU/Decl.1 (1).

13 Conclusion

In summary NEPAD's development strategy is a mixture of both inward and outward looking policies but with a bias towards an outward looking development paradigm, which bases development on FDIs, free market economies and substituting government with the private sector as the engine of growth. It is this shift in focus in strategy that has evoked much criticism from the critics of NEPAD who argue that it sacrifices the common man at the altar of international capital which is merciless and devoid of humanity.¹⁰¹

¹⁰¹ Y Tandon "NEPAD and FDIs: Symmetries and contradictions" a paper prepared for the African Forum for Envisioning Africa held in Nairobi, Kenya 26-29 April, 2002.

CHAPTER THREE

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1 Introduction

This chapter discusses some of the law relating to the right to an adequate standard of living. The first part of the chapter discusses article 11 of the ICESCR. A considerable amount of space is allocated to discussing the right to an adequate standard of living in the ICESCR because it is here that the right became legally binding. As a result, the normative elements of the right and the obligations of the state under this right are discussed save the obligations under the subsidiary rights to food and housing, which are outside the ambit of this work. The last part of the chapter traces and discusses the right to an adequate living the ACHPR.

2 The right to an adequate standard of living under the ICESCR

2.1 Introduction

The right to an adequate standard of living is provided in article 11 of the ICESCR. Article 11 which derives its inspiration from article 25 of the UDHR, has almost the same normative elements like its parent article. For example, both instruments provide for the right to an adequate standard of living, have some common normative elements of the right and both of them do not list all the normative elements of the right to an adequate standard of living.

In spite of the similarities, there are differences in the way the two instruments approach the right. Firstly, while the UDHR provides that the right to an adequate standard of living is a right without any qualification, the ICESCR simply requires states to recognise the right to an adequate standard of living. To recognise a right is interpreted as having less weight in juridical terms than to unequivocally grant a right. Secondly, unlike the UDHR, the ICESCR imposes an obligation on the states to work towards the continuous improvement in living standards. Thirdly, the ambit of what the right to an adequate standard of living means in the UDHR is more extensive than in the ICESCR. The UDHR defines this right to include medical care, social security and social assistance. On the

other hand the ICESCR omits these vital rights in the article.¹ Fourthly, the UDHR compels states to give protection to mothers and children, which is not stated in the ICESCR. Fifthly, the ICESCR has added a new dimension to the right to food. An obligation is imposed on states to recognise the fundamental right of every person to be free from hunger. There is also an obligation on states to promote effective nutrition and to ensure equitable distribution of food throughout the world. Lastly the ICESCR places an obligation on the states to progressively realise the right to an adequate standard of living while on the other hand the UDHR makes it an immediate obligation.

2.2 Normative contents of the right to an adequate standard of living

The normative components of the right to an adequate standard of living are discussed below:

2.3 The right to clothing

The ICESCR does not define what clothing means.² It leaves the issue open to interpretation. However over the years, there is emerging consensus that the clothing provided must be adequate to support an adequate standard of living.³ The clothing should provide sufficient cover to the individual. People who live in the cold climate must have warm clothing, while those who live in warm areas must have suitable clothing. Secondly the clothes must be physically and economically accessible. They should be available and affordable. Lastly, the clothes must be culturally suitable and must enhance the dignity of the person.

2.4 The right to adequate housing

According to the UN Committee on Economic, Social and Cultural Rights (ESCR Committee),⁴ the right to housing⁵ 'is central to the enjoyment of economic, social and cultural rights.'⁶ Its importance lies in the fact that shelter like food supports human life

¹ But these right appear in their own separate articles in the ICESCR e.g. the right to health is in art 12, the right to social security is in art 9 of the ICESCR.

² Art 11(1)ICESCR.

³ M Craven (1998) 291.

⁴ The committee is composed of 18 experts and it is the principal supervisory body of the ICESCR. See R Hanski & M Suksi (2000) 113.

⁵ Art 11(1) ICESCR.

⁶ General Comment No.4, HRI/GEN/1/Rev.1 at 53 (1994) (Gen Com 4).

and enables the individual to enjoy other human rights. While the ICESCR limits this right to the individual and his family, the ESCR Committee has however interpreted this right to apply to everyone regardless of whether they have a family or not.⁷

According to the ESCR Committee, the right to housing should be interpreted 'in a broad way to mean the right to live somewhere in security, peace and dignity.'⁸ Consequently the ESCR Committee has over the years expanded the normative content of the right to housing. According to the ESCR Committee, an adequate house must provide the occupants with privacy, adequate security, adequate lighting, adequate ventilation, adequate space, and sufficient infrastructure and should be accessible to the place of work and facilities at a reasonable cost.⁹

In determining whether a house fulfills the above criteria one has to look at the social, economic, cultural, climatic and other factors to arrive at a decision.¹⁰ This allows different countries to have different housing requirements and yet meet the objective criteria of an adequate house. However, in choosing the quality of housing to provide, it is important that a country observes the following minimum requirements, which the ESCR Committee has laid down in its General Comments.¹¹ Firstly, the individual must enjoy security of tenure of the house regardless of whether he is in rented accommodation or on leased land or in any other form of housing.¹² The state is required to put in place the legal and policy framework to guarantee security of tenure. A similar obligation has also been put on the World Bank and the IMF to promote security of tenure in housing by not funding large-scale projects that displace big numbers of people without adequate compensation.¹³ Secondly, the house must contain the necessary services and infrastructure to support a decent standard of living. A house should have access to water, sanitation and refuse disposal facilities. Thirdly, the house must be affordable to rent. However, the individual after paying rent must remain with sufficient money to provide an adequate standard of living. Fourthly, the house must be habitable and physically and economically accessible for both the able-bodied and disabled. Fifthly, the house should be located in a place which allows easy access to the place of

⁷ Para 4 Gen Com 4.

⁸ Para 7 Gen Com 4.

⁹ As above.

¹⁰ Para 8 Gen Com 4.

¹¹ Gen Com 4.

¹² Para 8(a) General Comment No. 4 (Sixth session, 1991)[UN Doc E/1992/23].

¹³ General Comment No. 07 on the right to adequate housing reported in A Eide, C Krause & A Rosas (2001) 165 in footnote 56.

work, health care facilities, schools, child care and social services. Lastly the house must be consistent with a person's cultural heritage.

2.5 The right to adequate food and freedom from hunger

The right to food is one of the most important human rights because human life derives its strength and sustenance from food.¹⁴ In view of the importance of food, the committee has broadened the normative content of the right to food as covering more than a ' minimum package of calories, proteins and specific nutrients.'¹⁵ The food should be accessible both physically and economically meaning the food must be available and the people must have the means to purchase it.

Secondly, the food must be adequate in quantity and be of a high nutritional value to meet the dietary needs necessary for 'physical, mental growth, development and maintenance and physical compliance with human physiological needs at all stages.'¹⁶ Adequacy is interpreted as being relative to the prevailing social, economic, cultural, climatic, ecological and other conditions.¹⁷ Thirdly, the food must be clean and environmentally safe for human consumption.¹⁸ Fourthly, the food must meet peculiar needs of consumers and should also be culturally acceptable.¹⁹ Fifthly, there must be a well-developed distribution, marketing and processing system to ensure a steady supply of quality food to the consumers.²⁰ Lastly, food must be available both in the short and long term.

Article 11(2) of ICESCR imposes an obligation on the state to guarantee the freedom of individuals from hunger. This requires the state to focus its attention 'on the respect for (and protection of) vulnerable people's access to food and the introduction of fulfillment systems that give people threatened by hunger access to production resources.'²¹ The state is also under an obligation to supply its citizens with food during times of famine.

¹⁴ Art 11(1) & (2) ICESCR.

¹⁵ Para 6 Gen Com 4.

¹⁶ Para 9 Gen Com 4.

¹⁷ Para 6 Gen Com 4.

¹⁸ Para 10 Gen Com 4.

¹⁹ Para 11 Gen Com 4.

²⁰ Para 12 Gen Com 4.

²¹ UNESCO (1986) 84.

2.6 The right to continuous improvement in living standards

It is important to note from the outset that very little has been said about the normative element of ensuring that there is a continuous improvement in living conditions.²² In spite of this, a number of normative principles can be derived from it. First and foremost, the obligation to progressively realise the right to an adequate standard of living requires that development programmes should lead to continuous improvement in the living standards of people. This is consistent with the requirement that people must be the focus and beneficiaries of development.²³ States are therefore required to work towards improving all the normative elements of the right to an adequate standard of living as part of their overall development goals. However, in so doing states must pay particular attention to the poor to uplift their status.²⁴

2.7 Obligations of states under the right to an adequate standard of living

The right to an adequate standard of living imposes both general and specific obligations on the state parties. General obligations relate to the overall obligations that are imposed in article 2 of the ICESCR towards the fulfilment of the entire Covenant. Specific obligations on the other hand, relate to obligations that arise from specific rights under the ICESCR. Each of these obligations are discussed below save to mention that obligations relating to housing and food are excluded as they are outside the ambit of this work.

2.7.1 General obligations of states towards realising the right to an adequate standard of living

The right to an adequate standard of living like all the socio-economic rights is subject to progressive realisation due to scarcity of resources. Article 2(1) of the ICESCR provides that:

Each state party to the present Covenant undertakes to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant

²² Art 11(1) ICESCR.

²³ Art 3 Declaration on the Right to Development (General Assembly Resolution 41/128 of 4 December 1986).

²⁴ n 3 above 294.

by all appropriate means, including particularly the adoption of legislative measures.

The ESCR Committee has interpreted the provisions of the above article and given it a realistic and a contextual meaning.²⁵ According to the ESCR Committee, the phrase ‘to take steps’ requires each state to take steps within a short time towards realising the rights in the ICESCR. Such steps ‘should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant.’²⁶ It should be evident that the state in question is taking steps to give effect to the treaty through positive action.

The phrase ‘by all appropriate means’ has been considered by the ESCR Committee to mean legislative measures, judicial remedies, administrative, financial, educational and social measures, which in their overall objective satisfy the right in question.²⁷ While the ESCR Committee reserves the right to determine the appropriateness of the means chosen, the committee has indicated that the appropriateness of the measure chosen is a question of fact.²⁸ What is important is that a state should indicate the reasons why it considered the measures to be appropriate. Furthermore the ESCR Committee has emphasised that the realisation of the rights in the Covenant do not require any form of government provided that the government in question respects human rights and is democratic.²⁹

On the phrase ‘progressive realisation of the rights’, the ESCR Committee has expressed the view that it is subject to two interpretations. Firstly, out of reality we live in a world which is short of resources and so all rights may not be immediately realisable.³⁰ Secondly, in spite of this obvious fact, there are clear obligations in the covenant that are imposed on states to realise the rights in the Covenant. There is hence an obligation on the part of states to move as expeditiously as possible towards meeting its goals in the covenant.³¹ In addition states must regardless of scarcity of resources satisfy minimum requirements under each right. Lastly the ESCR Committee requires states in conditions of severe hardships, to pro-actively move towards the fulfillment of the core minimum obligations.³²

²⁵ General Comment No.3 (5th session, 1990) UN Doc. E/19991/23 [Gen Com 3].

²⁶ Para 2 Gen Com 3.

²⁷ Para 3 Gen Com 3.

²⁸ Para 4 Gen Com 3.

²⁹ Para 8 Gen Com 3.

³⁰ Para 9 Gen Com 3.

³¹ Para 9 Gen Com 3.

³² Para 12 Gen Com 3.

In the final analysis observance of the obligations set out in article 2 of the ICESCR should be targeted at promoting ‘ social progress, freedom from want, and better standards of life as called for by the Universal Declaration.³³ Any movements away from the core values of the UDHR and the ICESCR would be contrary to the spirit under which the two instruments were adopted.

2.7.2 Specific obligations of state parties

Besides the principal obligations set out in article 2 of the ICESCR above, states have got additional obligations under the ICESCR to give effect to the right to an adequate standard of living. The most important obligation of the state is to ensure that every individual in society is in a position to enjoy an adequate standard of living.³⁴ This requires the state to put in place a suitable environment under which individuals can obtain amenities of life that are necessary to support human life. The most important step that the state must take is to accept the right in question is by incorporating it in its domestic legislation and putting in place an enforcement mechanism people can use if there is a violation of the right. Secondly, the state must respect the freedom of individuals to use their available resources to provide for their basic needs.³⁵ This will require the state to guarantee the right to property and not to interfere with individuals in their pursuit of satisfying subsistence needs. It will also be incumbent upon the state to provide conditions under which individuals can work towards enjoying their rights.

The state is also required to respect the entire spectrum of human rights because human rights are indivisible and complement each other.

The state has an obligation to be the provider of basic necessities to indigent persons in society.³⁶ There are two duties involved here. Firstly, the state must move to fulfill the right in question by providing a suitable environment to indigent persons to meet their daily requirements. Secondly, the state must directly provide basic necessities to the indigent as part of a strategy to empower them to enjoy this right. Effective implementation of this process, however, requires the state to put in place an institutional mechanism for identifying the vulnerable groups in society. The ESCR

³³ J. Oloka-Onyango “Beyond the rhetoric: Reinvigorating the struggle for economic and social rights in Africa” . Available at < <http://www1.umn.edu/humanrts/africa/Oloka-Onyango.html#asterick> > (Accessed 23 April 2002).

³⁴ n 1 above.

³⁵ n 1 above 101.

³⁶ n 1 above 103.

Committee has left this issue open to the state but it is crucial that any institutional mechanism and yardstick chosen must be able to identify what the basic human needs are and the people who are in need of help. In addition, this calls for the identification of basic indicators to be used as a yardstick of analysis. Once this is done, the state must put in place relevant social assistance and social security schemes for the vulnerable groups through which the entitlements can be sought.

The mechanism chosen should enable indigent people to support themselves in future. Hence handouts must be supported with programmes that improve human skills and place people where they could be gainfully employed. It is also vital that policies, laws, cultures and other shortcomings in society that prevent vulnerable groups from enjoying their subsistence rights should be done away with to enable every individual to participate effectively in realising for himself and his family, the right to an adequate standard of living. In a nutshell the overall strategy of this effort should be aimed at creating a society in which no individual lives in want and deprivation.

On the national level, states have an obligation to ensure that over a period of time development brings about a qualitative change in living standards of the people.³⁷ Development must be reflected in figures and in a holistic improvement in all the general living conditions of people. Hence those who design and implement government policies must bear in mind that development must benefit people. It is essential that the planners take into account the needs of the people by involving them in the conceptualisation and implementation of plans to make development people oriented.

Internationally, states have obligations under the ICESCR to put in place good policies to achieve the rights in the ICESCR.³⁸ According to article 2(1) of the ICESCR, states have an obligation individually and through international assistance and co-operation to give effect to the rights in the ICESCR. Consequently, states have to work together in solving global problems like poverty, parasitic economic policies, diseases, wars and pollution that prevent a larger part of the world's population from enjoying a decent standard of living and the rights in the ICESCR. While the obligations placed on states in the above article are not mandatory, there are growing moral considerations that the rich nations should assist the poor ones.³⁹ One such consideration is the Declaration on the Right to Development, which calls upon rich nations to assist poor states to break out of poverty

³⁷ Art 8(1) Declaration on the Right to Development.
³⁸ Art 23 ICESCR.

and improve living conditions. It is a moral obligation, which must be taken seriously to turn around great inequalities that reflect themselves in the divide between the rich and poor nations.

3 The right to an adequate standard of living under the ACHPR

The ACHPR does not explicitly provide for the right to an adequate standard of living. In spite of this there are a number of provisions in the ACHPR, which provide for some of the normative elements of this right. However, before considering the normative elements of the right to an adequate standard of living, it is worth noting that the ACHPR is set in the African concept of human rights, which places a lot of emphasis on group rights.⁴⁰ Group rights are important because they are seen as guaranteeing the survival of the community.⁴¹ Needless that group rights reinforce the core value of the right of people to exist.⁴²

The community approach adopted by the ACHPR ensures that everybody in society is looked after and has basic necessities of life. Individuals therefore have obligations to support group rights and to work towards the survival of the entire community. Children are required to look after their parents in situations when they cannot provide for themselves.⁴³ This is in line with African customary practice, which views the young generation as the custodians of the older generation.

At the level of the family, the ACHPR obliges parents to support their families through the provision of basic necessities.⁴⁴ A lot of emphasis is placed on the family, because it is the nucleus of society.⁴⁵ Where the family is unable to meet its subsistence needs, the ACHPR places an obligation on the state to protect the family by taking care of its physical and moral needs.⁴⁶

³⁹ Art 4(2) Declaration on the Right to Development.

⁴⁰ 'A Legesse, Human rights in African political culture' (1980) 120 quoted in J Donnelly 'Human rights and human dignity: an analytic critique of non-western conceptions of human rights' (1982) Virginia Journal of International Law 303, 311. See also Communication 143/95, 150/96 *Constitutional Rights Project and Civil Liberties Organisation v Nigeria* para 26.

The African Commission ruled that the ACHPR should be interpreted in a culturally sensitive way.

The African Commission was echoing the strong African tradition, which underlies the ACHPR.

⁴¹ Preamble to the ACHPR.

⁴² Art 20(1) ACHPR.

⁴³ Art 29 (1) ACHPR.

⁴⁴ Art 18 ACHPR.

⁴⁵ 159/96 *Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Senegal and Association Malienne des Droits de l'Homme v Angola*, para 17.

⁴⁶ Art 18 ACHPR. See E A Ankumah who says that the provision is concerned about preserving the

The ACHPR offers protection to the aged and the disabled in society by providing that they ‘ have the right to special measures of protection in keeping with their physical and moral needs.’⁴⁷ While the ACHPR does not specifically provide for what should be provided, it can be assumed that what is envisaged in the ACHPR is provision of subsistence needs like food, water, medical care and other needs which are necessary to provide a decent standard of living for this category of people.

On a broader scale the ACHPR guarantees everyone the right to property.⁴⁸ According to the African Commission, confiscation, expropriation and destruction of property by the government and individuals violates the right to property.⁴⁹ It is vital that the right to property be protected because individuals use property to provide for themselves basic necessities of life. Individuals must have access to their property and the right not to have their property illegally taken.⁵⁰ However, the protection offered by the ACHPR is inadequate because the ACHPR on the other hand gives the state power to interfere with the right to property.⁵¹ Further protection is given to individuals to dispose of their wealth and natural resources freely so that they can sustain their subsistence rights.⁵²

In addition the ACHPR provides that every individual shall have the right to enjoy the best attainable standard of physical and mental health.⁵³ The best attainable health involves not only the absence of diseases and infirmity but also the entire wellbeing of the individual.⁵⁴ The African Commission has interpreted this provision as imposing an obligation on the state to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.⁵⁵ The African Commission has also expanded the normative content of the right to health as placing a duty on the state to provide basic services such as safe drinking water and

⁴⁷ familyin an effort to preserve the society at large reported in E A Ankumah (1996) 154.
Art 18 (4) ACHPR.

⁴⁸ Art 14 ACHPR.

⁴⁹ 54/91 Malawi African Association/Mauritania; 61/91 Amnesty International/Mauritania; 98/93 Ms. Sarr Diop, Union Interafriqueaine des Droits de l'Homme and RADDHO/ Mauritania; 164/97a/196/197 Collectif des Veuves et Ayants-droit/Mauritania; 210/98 Association Mauritanienne des Droits de l'Homme /Mauritania paras 127-128.

⁵⁰ 140/94,141/94,145/95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda V Nigeria, para 54.

⁵¹ E A Ankumah (1996) 142.

⁵² Art 21(1) ACHPR.

⁵³ Art 16(1) ACHPR.

⁵⁴ The World Health Organisation definition of health in Basic documents, WHO, 1988, 37th edition, 1-2.

⁵⁵ Communication 25/89,47/90,59/91,100/93 (joined), World Organisation against Torture, Lawyers’ Committee for Human Rights, Union Interafriqueaine des Droits de l'Homme, Les Temoins de Jehovah v Zaire. See also C Heyns (Ed) *Human rights law in Africa* 1997 (1999) 90.

electricity, besides the more obvious requirement to supply adequate medicine.⁵⁶ The right to health therefore reinforces the core values contained in the right to an adequate standard of living.

The above rights are complemented by article 22 of the ACHPR, which provides for the right to development. The right to development simply requires the state to put in place the right conditions under which individuals can enhance their social, cultural, economic and political development, without which they would not enjoy an adequate standard of living.

4 Conclusion

The right to an adequate standard of living still remains the most important socio-economic right. It underpins the survival of mankind because people need food, water, housing, clothing, social security and social assurance to survive. Fortunately, these requirements are listed, codified and protected in the ICESCR and ACHPR, hence securing the survival of mankind.

⁵⁶

As above.

CHAPTER FOUR

NEPAD AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1 Introduction

In September 2002, NEPAD received the endorsement of the international community as a master plan for getting Africa out of poverty.¹ This came shortly after NEPAD had received similar endorsement by the G8 in Genoa.² The overwhelming support received has helped to concretise Africa's hopes in NEPAD as its lifeline to development.³ Such optimism is not misplaced because Africa has tried many programmes before without success. Previous programmes failed because of a harsh international economic order, lack of ownership, absence of political will, lack of capacity and funds to implement the programmes.⁴ The question that must be answered is whether NEPAD has overcome these constraints because if it has not, its ability to empower Africans to enjoy an adequate standard of living will be in vain. The debate even becomes more engaging when one considers that some of the leaders championing NEPAD were partially responsible for the failed start in Africa.⁵ Added to this is the presence of the same hostile external environment that is still inimical to Africa's development. Will NEPAD therefore succeed where others tried and failed?

NEPAD conceptualises the above analysis and tries to offer Africa a new chance with renewed optimism. NEPAD's optimism is aptly expressed by President Mbeki who summarises NEPAD's strength as lying in the new crop of African leaders and the ripeness of the moment.⁶ Unfortunately such optimism does not satisfactorily answer the question of whether NEPAD will deliver on its objective of improving living standards in Africa. This question can only be resolved by reviewing NEPAD's institutional mandate and programmes to determine whether NEPAD will address the issue of poor living standards in Africa and help states to meet their obligations under the right to an adequate standard of living.

¹ "United Nations Declaration on the NEPAD" Available at <<http://www.dfa.gov.za/docs/unnepad.htm>> (Accessed on 17 October 2002).

² "NEPAD" Presidents and Prime Ministers, November-December 2001 31.

³ As above.

⁴ S Ngubane, "African challenges against NEPAD" Available at <<http://www.ai.org.za/monograph/paper132002.html>> (Accessed on 2 September 2002).

⁵ President Obasanjo, President Daniel Arap Moi.

2 Can NEPAD's institutional mandate yield results?

2.1 General mandate

The core mandate of NEPAD is to develop Africa. NEPAD derives its mandate from the AU, which adopted NEPAD as one of its programmes for achieving sustainable development in Africa.⁷ NEPAD in its mandate gives prominence to creating the pre-conditions for development in Africa as being the key to fighting poverty.⁸ Consequently, NEPAD considers the establishment of peace in Africa as a precursor for laying the right conditions under which development can take place. NEPAD identifies prevention and management of conflicts as being the key to bringing peace in Africa.⁹ This is significant because conflicts in Sudan, the DRC, Uganda, Angola and Somalia have made it virtually impossible for these countries to develop.¹⁰ The success of this initiative, however, requires solving the root causes of conflict in Africa, which range from absence of democracy, misrule, economic exclusion of sectors of the population, greed, religious fanaticism, lack of respect for human rights and the rule of law.¹¹

Resolving conflicts in Africa is even more challenging for NEPAD given the fact that previous efforts by Africa at addressing conflicts have failed. The OAU conflict resolution mechanism, which is now taken over under the AU, failed to address this problem because of lack of funds capacity, the principle of none interference into internal affairs of member states and lack of political will to support it.¹² On the side of democracy, there have been several efforts in Africa to harness democracy. The more recent of these was the Yaounde Declaration under which African countries undertook to respect only constitutional means of changing governments in Africa.¹³ Despite the commitment to support democracy in Africa, democracy continues to be flouted in Africa. The recent elections in Zimbabwe, Madagascar and Zambia all point well to the task that lies ahead

⁶ n 2 above 30.

⁷ Art 3(1)(j) Constitutive Act.

⁸ Para 71 NEPAD.

⁹ Paras 72-78 NEPAD.

¹⁰ n 4 above.

¹¹ Para 73 NEPAD.

¹² An assessment of the OAU mechanism for conflict prevention, management and resolution 1993-2000 <<http://www.ipacademy.org/Publications/Reports/Africa/PublRepoAfriAssessPrinthtm#part5>> (Accessed on 21 October 2002). See also Decision on establishment of the peace and security council of the African Union, ASS/AU/Dec.3(1).

¹³ AHG/Decl.3 (XXXII) July 1996. Art 4(p) of the Constitutive Act outlaws unconstitutional changes of government.

in Africa's way to achieve democracy.¹⁴ The same could be said of human rights and the lack of respect for the rule of law, which are a daily occurrence in Africa.¹⁵

The issue that comes out of Africa's failure to establish pre-conditions for development lies in the absence of mechanisms to enforce the implementation of these principles and the requisite political will. The challenge that NEPAD must therefore attend to is to try and use its mandate to improve compliance with the principles fundamental to the pre-conditions for development, without which it cannot succeed. The next section takes up the issue of the enforcement mandate under NEPAD.

2.2 Is there true African ownership to help in enforcing NEPAD's mandate?

Ownership of NEPAD by African people is considered to be very crucial in steering NEPAD to success. This is significant because previous programmes failed due to lack of local ownership.¹⁶ As a result, the issue of local ownership of NEPAD was taken up from its conception. African leaders were involved in drafting NEPAD and are directly in charge of implementing NEPAD. Their involvement is necessary to emphasise ownership but most important to make political implementation of NEPAD easy.

Despite the rhetoric of local ownership of NEPAD, not all African leaders share this view. For instance pronouncements by President Yahya Jammeh of Gambia indicate that not all of Africa's leaders are giving the programme full support because they were excluded from the process of initiating NEPAD.¹⁷ President Jammeh questioned why NEPAD, which is said to be an African project was first, presented to the G8 before it was ever brought to the OAU.¹⁸ This issue even becomes more problematic when ordinary Africans are asked whether they are aware of NEPAD. To many African people NEPAD is an unknown programme and yet it claims to be an African owned programme. It cannot be over-emphasised that the need to involve people is paramount because people are the focus and beneficiaries of development.¹⁹ They are the ones who make development to happen because their values and aspirations are the driving force

¹⁴ n 4 above 2.

¹⁵ Amnesty International country reports on human rights reports testify to this fact
<Available at <<http://www.amnesty.org>>(Accessed on 26 August 2002)

¹⁶ SAPs are one such example.

¹⁷ "Jammeh: 'NEPAD will never work'" *New Africa* September 2002 18.

¹⁸ As above.

¹⁹ Art. 2(1) Declaration on the Right to Development.

behind development.²⁰ NEPAD therefore needs to address this problem if it is to avoid failure like SAPs, which ignored this aspect to their peril.²¹ NEPAD has to deepen African ownership of its programmes through involving African leaders and the local people because local ownership is essential to the successful implementation of poverty reduction and addressing the low standards of living in Africa.²²

2.3 Will the African Peer Review Mechanism work?

The APRM represents an innovation in fostering the implementation of NEPAD. The APRM is an in-built mechanism, which is supposed to compel African leaders to implement the principles of NEPAD contained in the DDPCEG.²³ In a way one could say that it is an African response to avoiding supervision by donors who are always insisting on supervising African countries to ensure that they are following principles of good governance.²⁴ This time Africans have taken it upon themselves to supervise each other on the basis of agreed principles, which are not different from the donors. The mandate of the APRM is to ensure that policies implemented by African countries participating in peer review mechanism conform to democratic ideals, human rights, good governance and socio-economic development principles.²⁵

The wide mandate of APRM's is likely to approach the issue of development in a holistic manner. There will be improved response to how governments respond to poverty both in policy and allocation of resources. APRM will also enhance good governance among African leaders for fear of being rebuked by their peers. APRM will hence lead to implementation of the right policies, which on their own could lead to advancing human development even with low incomes.²⁶

The success of the APRM is, however, likely to be limited by a number of constraints. Firstly the success of the APRM will depend on whether a competent body can implement its decisions. Under the APRM mechanism this is supposed to be done through expelling guilty countries from NEPAD or a request to donors to stop funding that particular country. The hope is that donors will respond to the recommendations of

²⁰ C Welch & R Meltzer (1984) 212.

²¹ J D Wolfensohn "A partnership for development and peace." Available at <<http://www.worldbank.org/html/extdr/extme/jdwsp030602.htm>> (Accessed on 7 August 2002).

²² n 1 above para 5.

²³ Art 28 DDPECG & Art 2 APRM.

²⁴ Interview with Prof M Hansungule, University of Pretoria (20 October 2002).

²⁵ Art 6 DDPECG.

the APRM. This approach is naïve because it assumes that donors share NEPAD's values. Even if they did, individual countries interests may make them act otherwise.²⁷ In addition the law of privity of contract will exclude bilateral agreements (outside NEPAD's net) between individual donor countries and the country in issue from the scope of APRM's mandate. Hence financial sanctions within APRM may not be effective.

Secondly appointees to the APRM may be compromised by political bias if governments appoint only their supporters. Thirdly the APRM is going to deal with political issues over which there might be very little room for consensus.²⁸ Fourthly the APRM may not work except if it is able to break a destructive solidarity between African leaders who have supported each other in stifling civil liberties.²⁹

Fifthly, the human rights content of the APRM is very limited because it ignores vital human rights treaties like the ICESCR and ICCPR, which many African countries have ratified. In addition, it is not clear what the APRM means by supporting the Africa Commission, the African Court and the ACHPR. Is it to support their decisions or is it support ratification of the Protocol on the Establishment of the African Court or domesticating the ACHPR. Sixthly, the APRM does not specify what the objective criteria for poverty reduction or spending on the social budget is going to be. Lastly the work of the APRM may be jeopardised by lack of funding which might be a result of members failing to pay their subscriptions.

Hence the APRM must address the above constraints because they risk weakening the implementation of NEPAD's programmes. A weak implementation regime will weaken NEPAD's efforts to compel states in Africa to implement the preconditions for development, which are essential in enabling people to work towards realising the right to an adequate standard of living for themselves. On the part of the states a comprehensive peer review mechanism will compel them to progressively realise the right to an adequate standard of living. States will be required to show steps that they are taking to reduce poverty and how much of the budget is being allocated to the social sector where this right falls. This will be good for holding states to their obligations under articles 2 and 11 of the ICESCR. Hence it is crucial that NEPAD addresses the issue of

²⁶ HDR 34.

²⁷ The current President of Pakistan Gen. Musharaff is being supported by USA in spite of the fact that he came to power through a military coup. In this case democracy does not seem to count.

²⁸ J J Stremlau "NEPAD –Peer Review Mechanism." Available at <<http://www.web.net/~iccaf/debtssap/hepadpeerreview.htm>> (Accessed on 8 August 2002).

establishing an efficient peer review mechanism without which NEPAD cannot succeed in harnessing the right to an adequate standard of living.

3 NEPAD's economic programmes for alleviating poverty

3.1 Liberalisation of the economy

NEPAD supports liberalisation of African economies to make them efficient, attract FDI and to achieve rapid economic growth. Liberalisation is to be done through promoting the role of the private sector as the engine of growth, scaling down the role of government in the economy, privatisation and opening up markets in Africa to foreign competition. NEPAD's over-zealousness for liberalisation is backed by the successful liberalisation of Asian economies, which has produced for those countries improved living standards through the creation of wealth.³⁰ NEPAD hopes that the same benefits that have made Asian countries successful will deliver results in Africa. This optimism is not misplaced because liberalisation of the Ugandan economy has enabled the country to achieve high rates of growth.³¹ It has enabled the government to expand its internal and external production capacity leading to efficiency in the economy. Uganda's success story is therefore an inspiration to other African countries seeking to better living standards of its people. But liberalisation is not without shortcomings.

Firstly liberalisation adopts a top-down approach to development, which puts economic growth at the fore of development. This model benefits the rich who have better access to the economy. The poor therefore continue to suffer in spite of economic growth.³² Secondly, economic growth in Uganda and Ghana has not translated into positive social indicators thus pointing to the unsuitability of using this model to fight poverty.³³ Thirdly, African countries have not yet reached a stage where the government can withdraw from the economy and leave it for the infant private sector. A strong presence of an entrepreneur state is therefore a necessity to purposely steer the economy.³⁴ Fourthly liberalisation of water, electricity and transport increases the cost of services because

²⁹ 'An African cure for Africa's ills' Economist (363) (6 June 2002) 15.

³⁰ G Mills (2000) 156.

³¹ "Uganda" <<http://www.usaid.gov/country/afr/ug/>> (Accessed on 21 October 2002).

³² S Buthelezi, E Le Roux (2002) 28.

³³ HDR (2002) 48 Uganda and Ghana Uganda 150 and 129 respectively on the human development Index.

³⁴ E, Maloka and E, Le Roux (eds) (2001) 41.

producing these goods at a profit is not possible.³⁵ Market rates for the services therefore exclude the poor from enjoying a decent standard of living.

Fifthly, African agriculture is not yet ready for complete liberalisation. For instance a recent study of the coffee market has revealed a significant decline in the quality of coffee.³⁶ At the moment one third of the coffee stock held on the international market is of poor quality and risks being destroyed.³⁷ The unwillingness of Trans National Corporations (TNCs) who control both national and international markets to back efforts to restore quality standards in the sector goes to show that liberalisation is ineffective in controlling quality.³⁸ In addition liberalisation has led to a decline in the production of cash crops because peasants are not using fertilisers and pesticides, which are now beyond their reach following the removal of subsidies on these products. This has resulted in the fall of household incomes thus constraining government efforts to empower peasants to develop through liberalised agriculture.

Lastly, while privatisation has the potential of turning around inefficient state enterprises into highly productive enterprises because of efficient management, improved management and capital, yet it has negative consequences on the economy. In Malawi privatisation has contributed very little to the economy.³⁹ Privatised industries have not fared as they were supposed to have done. This in turn has led to job losses, which has affected the right to an adequate standard of living of a large number of people given the fact that public enterprises used to employ 20% of Malawi's total labour force.⁴⁰ Privatisation of profitable enterprises has also been a source of concern because when such enterprises are privatised, the new owners resort to cost cutting measures leading retrenchments. The benefits received from such enterprises do not match the lost opportunities for retrenched workers and their families.

In summary while liberalisation accelerates economic growth and facilitates the state to discharge its obligations under the right to an adequate standard of living, it however

³⁵ Southern African Catholic Bishops Conference (Justice and Peace Department) 'Unblurring the Vision of NEPAD' (2002) 18.

³⁶ "Multi nationals roasted over falling coffee prices" *Guardian weekly* 26 September to 2 October 2002 14.

³⁷ As above.

³⁸ Muradian "NEPAD and the environment: Envisaging the ecological consequences of outward – oriented development in Africa" African Forum for Envisioning Africa, Nairobi, Kenya (26-29 April 2002)11.

³⁹ T Hughes, Country reports, Malawi: The erratic pulse of the warm heart of Africa, country report 5 SAIIA (2001)23.

⁴⁰ As above.

ignores the poor who in most cases need to be empowered and supported by the state to enjoy a decent standard of living. Liberalisation without measures to support the poor such as income redistribution, safety nets for the poor, and deliberately targeted programmes of poverty reduction is inadequate to improve living standards. There is therefore a need for NEPAD to make some changes in this regard.

3.2 What benefits will globalisation bring?

Globalisation refers to the unprecedented degree of freedom in the international exchange of goods, services and capital in the world.⁴¹ Globalisation has brought economic prosperity for the industrialised countries and new emerging economies in Asia.⁴² However, for Africa, globalisation has marginalised the continent. Yet because of the unstoppable nature of globalisation, Africa cannot exclude itself from the process. It represents its hope and unfortunately its economic ruin if it does not respond appropriately. If globalisation is left unchecked, Africa will not be able to sell its products on the international market because of Non-tariff barriers (NTBs), subsidies and the poor quality of its products.⁴³ NEPAD prefers further integration of Africa in the global process. Such a strategy will not bear fruit unless market conditions are reversed in favour of Africa through the removal of subsidies for European and America farmers and abolition of NTBs.⁴⁴ Global policies should address the problem of international markets for agricultural products if Africa is to break out of poverty. This should, however, be supported by increased participation of developing countries in global governance, global economic policy and, coherent co-ordination between IMF, the World Bank, WTO and UN so as to manage globalisation.⁴⁵

Internally, NEPAD should support structural transformation of production to make African products competitive. But as Africa transforms its production process, some measure of protection will be necessary to protect industries in Africa so that cheaper products from outside do not harm Africa's infant industries.⁴⁶ This is because the strength of African economies to deliver development will come out of its own internal ability to produce

⁴¹ L Eveu 'Economic globalisation and policies for sustainable development' 6 (1) South African Journal of International Affairs (1998) 74.

⁴² "Globalisation and developing countries"
<http://www.acci.asn.au/text_textfiles/issues_papers/globalisation/gO1.pdf> (Accessed on 21 October 2002).

⁴³ Y Tandon "NEPAD and FDIs: Symmetries and Contradictions" a paper prepared for the African Forum for Envisioning Africa held in Nairobi, Kenya (26-29 April, 2002) 5.

⁴⁴ HDR 33.

⁴⁵ n 13 above Para 7 & HDR 33.

goods it needs. Africa needs to boost its internal market through regional cooperation and through establishment of economic co-operation and collaboration through joint ventures, sector-by-sector co-operation to address the problem of producing the same goods by African countries, which complicates integration.⁴⁷

3.3 Can foreign direct investment help to attain an adequate standard of living?

The corner stone of NEPAD's development strategy is to attract FDI by making Africa attractive to investors. The aspirations of NEPAD are noble given the fact that FDI plays a crucial role in bringing the much-needed capital to poor countries. It contributes to development through job creation, poverty reduction and increases government revenue through taxation. African economies stand to benefit from FDI. The success of this initiative however depends on the ability of Africa to attract investors into the continent.

African countries have not been very successful in attracting investors in spite of offering them friendly policies like tax holidays and priorities in accessing and repatriating their profits.⁴⁸ Many reasons ranging from range from internal weaknesses in African economies but the larger problem relates to finding investors who are willing to invest in Africa account for this. Africa is not a priority area given promising larger markets in China, Asia and Latin America, which are receiving most of the FDIs.⁴⁹ Africa therefore has to break this tide to convince investors to come. Fortunately NEPAD has a friendly investor regime, which it can use to woo new investors and to stimulate domestic investment.

NEPAD's efforts may however not work miracles in Africa because Africa may not be in position to attract FDI. Secondly, FDI may not contribute to enhancing living conditions because there is a possibility that investors will trample on workers and environmental rights because of a weak regulatory regime.⁵⁰ FDI in the absence of a strong regulatory regime to enforce standards will not bring about economic rewards that NEPAD is looking for.

⁴⁶ E Maloka & E Le Roux (2001) 54.

⁴⁷ L White "South Africa-Mercosur Long process, little progress South Africa" Institute of Foreign Affairs, Report No 23 (2002) 15.

⁴⁸ n 36 above 6-7.

⁴⁹ As above.

⁵⁰ "Human rights and democratic development in Africa, policy considerations for Africa's development in the new millennium" Available at <<http://www.ichrdd.ca/frame00e.html>>

The success of NEPAD's regulatory regime requires infusing the regime with a rights approach to development, which requires respect for human rights and environmental standards.⁵¹ Obviously, this will require NEPAD to strengthen national institutions to enforce the standards otherwise Africa may find itself in a position where it spends a lot of money on dealing with health related problems resulting from pollution.⁵² NEPAD should also push for adoption of corporate best practices in investments around the UN Global Compact to ensure that TNCs act in the best interests of the country they are investing in.⁵³

3.4 Addressing the debt crisis in Africa

The debt burden in Africa has constrained development.⁵⁴ Many countries have debts which they cannot pay while others spend 40% of their revenue on debt servicing.⁵⁵ According to Jubilee 2000 coalition debt servicing is withdrawing resources from the development and hurting the poor.⁵⁶ NEPAD in its debt strategy supports the extension of debt relief to make it sustainable and in the long run to link it to poverty reduction.⁵⁷ Many writers on this subject have criticised NEPAD's debt relief strategy as being unsustainable.⁵⁸ Others argue that NEPAD's debt strategy of limiting debt servicing to 10% of export revenue is just like the IMF and World Bank strategy, which has failed to work.⁵⁹ There is support for this position because the Highly Indebted Poor Countries Initiative (HIPC) of the IMF is not working. Of the 42 countries in HIPC only 11 are said to be on track.⁶⁰ However, even for those countries like Uganda and Ghana, which are on track, HIPC initiative has not significantly transformed their social indicators because the debt relief provided is insignificant.⁶¹ Besides, under the HIPC initiative, debt relief is

⁵¹ (Accessed on 18 July 2002).

General Comment 2: International Technical Assistance Measures (Art 2)
4th session, 1990 UN Doc. E/1990/23 para 8(d).

⁵² "The big smoke" *Sunday Times* 25 August 2002 19. Johannesburg' City Council spends \$130 million *per annum* on treating respiratory problems caused by industrial pollution

⁵³ Chairman's text for negotiation, para 42(l).
<<http://www.earthsummit2002.org/es/preparations/global/prep-comm4/Microsoft%20Word%20-20%chairmantext final 0905021.pdf>> (Accessed on 27 August 2002).

⁵⁴ n 16 above para 26.

⁵⁵ Jubilee 2000 Coalition "Through the eyes of a needle, the Africa debt report" Available at <<http://www.jubileeplus.org/analysis/reports/africa.pdf>>(Accessed on 9 October 2002).

⁵⁶ As above.

⁵⁷ Para 146 NEPAD.

⁵⁸ n 33 above 16.

⁵⁹ Justice and peace department, Southern African Bishop's Conference "Unblurring the vision of NEPAD" (2002) 21.

⁶⁰ "Critique of the HIPC Initiative Africa action, June 2002". Available at <<http://www.africaaction.org/action/hipc0206.htm>> (Accessed on 6 August 2002)

⁶¹ Uganda and Ghana are ranked 150 and 129 respectively on HDI. See HDR 48.

tagged to a country's export revenue.⁶² The problem is that industrialised countries are not opening up their markets to African products nor are prices for African exports increasing hence rendering the HIPC initiative ineffective. It is therefore misleading for NEPAD to hail the present debt initiatives as being sustainable.

Any attempt at resolving the debt crisis requires either a complete cancellation of the entire debt or a very substantial reduction of the entire debt to enable African countries to pay their debts but also to attend to their development needs. Debt relief should be linked to poverty reduction.⁶³ Any debt relief efforts must however be supported by reforms in African countries targeted at fighting corruption, stopping externalisation of funds⁶⁴ and better management of public funds. Without internal reform, debt relief will not be sustainable and the vicious cycle will continue.⁶⁵

4 Conclusion

NEPAD programme with its programmes that will deliver results in helping states to fulfill their obligations under the ICESCR provided its programmes are implemented. The success of its implementation, however, depends on how the APRM is able to creatively use its rich mandate to give effect to NEPAD's goals. NEPAD will do better in addressing the right to an adequate standard of living, which is the main objective of NEPAD by mainstreaming human rights.⁶⁶ Adoption of a human rights approach to development should focus on empowering all people to claim their rights to the opportunities made

⁶² R Greenhill "Latest HIPC report brings more bad news for poor countries-September 2002" <http://www.jubileeresearch.org/hipc/hipc_news/latest190902.htm> (Accessed on 12 October 2002).

⁶³ E Squire "Global governance, NEPAD, and the G-18" Available at <<http://www.geocities.com/ericsquire/articles/ericg8a.htm>> (Accessed on 7 August 2002).

⁶⁴ n 16 above Para 33.

⁶⁵ G Mills (2000) 175.

⁶⁶ Human Rights, the African Union and NEPAD Available at <<http://www.unhchr.ch/html/menu6/Africadialog1.htm>> (Accessed on 7 August 2002). Para 17

available through pro-poor development.⁶⁷ In addition a rights approach to development will provide a value system through and against which NEPAD can perform efficiently and be measured respectively.

⁶⁷ DFID “Realising human rights for poor people” (October 2000) para 1.10.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

There is perhaps no better time than now for Africa to put its house in order. The Cold War is over, there is a uni-polar world, foreign aid is decreasing and globalisation is wrecking havoc on weak economies. Africa can no longer afford to ignore the changed times or the pace at which the global revolution is turning many into paupers while making the few strong ones more and more powerful. NEPAD is Africa's response to the anxieties of the moment and represents the shared optimism of Africans taking care of their own destiny, which is driven by a power of togetherness and unity of purpose. In the little African villages, the years of waiting for a better Africa have worn out the patience of the villagers and they are asking for improvements in living standards. Will NEPAD deliver better living conditions for the villagers? Yes and no. NEPAD can however be made more effective in responding to the needs of the villagers if it responds to its weaknesses. Below are the recommendations for turning NEPAD into a programme that will assist in realising the right to an adequate standard of living for its people.

1 Strengthening enforcement of the human rights regime in Africa.

NEPAD should devote attention to strengthening the enforcement mechanisms of human rights in Africa because what is lacking are enforcement mechanisms and not human rights instruments.¹ The APRM should focus more on ensuring that countries respect and observe human rights treaties and instruments applicable to them. Country reports from the African Commission and other treaty bodies should form the basis of NEPAD's peer review mechanism. The APRM should give human rights issues priority in ranking because human rights are the key to sustainable development, which is the ultimate goal of NEPAD. Sustainable development leads to better living standards and so enhances the enjoyment of an adequate standard of living.

¹ Human Rights, the African Union and NEPAD Available at <<http://www.unhchr.ch/html/menu6/Africadialog1.htm>> (Accessed on 7 August 2002). A statement attributed to Mr Salim Ahamed Salim former Secretary General of the OAU.

2 Strengthening the effectiveness of the decisions of the APRM

Improving the effectiveness of its decisions should strengthen the APRM. The first step should be to bring all bilateral agreements between donors and African countries within the ambit of APRM. This will ensure that when the APRM makes a decision recommending suspension of donor funding, donors will implement it without pleading privity of contract. Secondly the APRM should define clearly its standards on human rights and democracy. It is not currently clear whether the APRM will use African or universal standards of these values. The best way to go round this is to take the approach of the African Commission, which has used article 60 of ACHPR, to expand its ambit of jurisdiction to include international human rights instruments that are applicable to African countries. Alternatively the mandate of the APRM should be amended to include international instruments that have been ratified by African countries as one of the basis for evaluating a country's performance.

With regard to social development, a country should be evaluated on the basis of its achievements in meeting MDGs. However in the long run indicators of human development that ensures an adequate standard of living should be developed and form the basis for evaluating a country's social development.

3 Rights approach to development

NEPAD needs to adopt a rights-approach to development in all its programmes. Programmes should be measured against regional and international human rights instruments, which are applicable to Africa. A rights based approach will ensure that programmes do not violate but rather enhance human rights. A rights approach will also protect Africa from the devastating social and ecological consequences that are caused by unregulated economic activities of TNCs and other enterprises because business entities will be required to conform to a rights approach to development. NEPAD should in this direction develop a code of best practices for investment in Africa, which should be supported by an efficient national regulatory regime.

4 Ownership of the programme

NEPAD needs to engage more with people in Africa to concretise ownership of the programme. NEPAD as it stands today is viewed as an elitist programme devoid of any public participation and highly tilted to meeting donor demands. This is risky because

previous development programmes in Africa failed, as they did not involve African people both in conceptualisation and implementation. Ownership is crucial because development ought to reflect people's views, aspirations and values. Ownership enhances this value by involving people in development. This should be done through involving national parliaments, a civil society that represents the views of the people and on a larger scale the people themselves. Thus NEPAD should move out of its elitist closet and embrace the people. As part of the process, NEPAD's democratic principles should strengthen participation of people in decisions that affect them. NEPAD should hence move beyond mere plural pluralism to a democratic culture that ensures the greatest participation of people in activities that affect them. Democracy can protect the right to an adequate standard of living only if it empowers people to a country's political and economic agenda.

5 Re-orienting the neo liberal paradigm to development

NEPAD should reconsider its neo-liberal paradigm of development, which places a lot of faith in the private sector as the engine of growth. Such a strategy is not viable in Africa which is characterised by poverty and marginalisation of the poor who constitute about half of Africa's population. Redistributing incomes and empowering the marginalised to stand on their own and enjoy an adequate standard of living requires the state to take an active role in directing economic activities and social programmes to respond to the peculiar needs of the poor. Besides any meaningful development in Africa will require that the state take a strategic interest in modeling the economy against both short term and long term development goals. This is something that cannot be done by the private sector. The neo liberal approach should therefore be mixed with state participation in strategic sectors of the economy and programmes that empower the poor as a way of improving living standards of poor people in Africa.

6 Re-thinking liberalisation of the agricultural sector

Africa should rethink its policy on liberalising its agricultural sector. The agricultural sector supports more than 80% of the population in Africa and accounts for most of Africa's export revenue. It is therefore an important player in the economic livelihood of African people and the day-to-day functioning of the economy. Experience has shown that while liberalisation of the agricultural sector has brought some benefits to farmers by way of increased income at household level, yet these benefits cannot be sustained because liberalisation is not investing in the agricultural sector. Farm yields and income

are dropping for most peasants thus compounding poverty. To turn around this unfortunate situation, governments need to invest more money in agriculture through provision of cheap fertilizers, pesticides and extension services.

7 External debt

The present debt is inimical to Africa's development especially in the social sector, where the right to an adequate standard falls. The social sector is one of the most neglected areas in development because Africa spends a lot of money on debt servicing, some of which could have gone to the social sector. At the present debt levels and debt relief, there is very little hope that Africa will get out of its debt crisis. The social sector will also not get the attention it deserves. It is therefore important that NEPAD should champion efforts for total debt cancellation for poor countries because the present debt relief is not helping to sustainably address the problem. The instruments setting up the IMF and the World Bank should be amended and give the two institutions power to cancel debts, a power they do not have at the moment. Alternatively deeper debt relief which is sufficient to enable countries achieve MDGs should be introduced. This will improve living standards in Africa and strengthen the ability of African countries to reduce poverty, which are far beyond their reach at the present level. NEPAD should however supplement these efforts by strengthening good governance, accountability and transparency in the management of public funds. NEPAD should support efforts towards zero tolerance for corruption and other forms of misrule. Otherwise debt relief without solving some of the internal problems behind the debit crisis will be a waste of time.

8 Self-reliance initiative

The surest way of developing Africa is by making use of its present resources and involving people to actively participate in development. This is a point well captured in NEPAD but is rather watered down by NEPAD's over reliance on foreign aid and investment. Both these two sources are unreliable and cannot therefore be relied on to support sustainable development. It is the energies within Africa that must be harnessed for Africa's development. More efforts should therefore be directed at empowering people to save, to participate in economic activities

9 Safety net for the poor

NEPAD should encourage African countries to provide a safety net for the poor. Many programmes that are to be introduced by NEPAD have negative consequences on the poor in the short term, which can be ameliorated by introducing safety measures to protect the poor.

10 Globalisation

Africa should embrace globalisation with caution because it is not fully ready for it. Its production capacity and standards cannot match those of strong economies that are benefiting from globalisation. This fact is well known to NEPAD and so efforts should be directed at addressing Africa's constraint in tamping the fruits of globalisation. African production methods need to be improved, increase value to agricultural products, protect infant industries by seeking exemptions from the WTO, co-ordinate efforts with other agricultural producers to boost market prices for agricultural products by regulating demand and supply on the world market and to press for better global governance of globalisation. Otherwise NEPAD's over-zealousness for deeper globalisation should give thought to Oliver Tree's assessment of globalisation and determine how Africa would fare in the race:

if globalisation were a sport, it would be the 100-metre dash, over and over and over. And no matter how many times you win, you have to race again the next day.²

Africa needs a lot of energy to engage in globalisation without which it can never hope to pull itself out of under-development.

11 Conclusion

NEPAD is a programme that promises to structurally transform and uplift the living standards of the poor in Africa. Its beauty lies in the fact that it has been conceptualised within the African setting and should find African cures to under-development in Africa. In terms of opportunity, it offers Africa a realistic opportunity of putting its development in its own destiny, by drawing on African resources and nurturing a mutually beneficial partnership with the developed countries of the north, which are crucial to the success of the programme. Africa is united in purpose and determination to positively change its image and thus should use this new strength to advocate for a better trading world, which is fair and equitable without which its efforts would not yield the fruits Africa is

² Quoted in G Mills (2000) 110.

looking for. However the success of NEPAD in bringing about effective realisation of the right to an adequate standard of living will depend on the adoption of a rights approach to development and an efficient mechanism for implementing NEPAD's programmes. These are not well developed in NEPAD and should therefore be given some measure of thought.

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