

A call for a 'right to development'-informed pan-Africanism in the twenty-first century

*Serges Djoyou Kamga**

Associate Professor, Thabo Mbeki African Leadership Institute, University of South Africa

<https://orcid.org/0000-0003-3583-055X>

Summary

The pan-Africanism ideology originated from the subjugation of the African people, which manifested itself through slavery, and was followed by the foreign domination of the African development space. In addressing the problem, intellectuals (both in the diaspora and in Africa) came together through various activities that led to the adoption of the Organisation of African Unity in 1963, and informed its transition into the African Union in 2002. Notwithstanding the apparent independence and unity of the continent, Africa's aspiration for freedom, equality, justice and development remains a dream. This article aims to demonstrate that pan-Africanism remains relevant to reclaim Africa's rightful place in the world. To this end it argues that the 'right to development' concept can lead to the development of Africa. It submits that a 'right to development'-informed pan-Africanism would lead to development of the African people. Pan-Africanism should be geared towards the realisation of development recognised as a human right as codified in the African Charter on Human and Peoples' Rights and in other international instruments. This approach calls on Western powers and international institutions that shape the global development agenda to ensure that the international environment is conducive to the development of all, including Africans. Furthermore, it urges Western powers to respect the sovereignty of African countries over their wealth and natural resources. It also calls on African leaders to adopt a people-centred constitutionalism, to cooperate with each other and to adopt responsive national policies for the well-being of the African peoples and to establish an environment conducive to a vibrant civil society.

* Lic-en-droit (Yaoundé II) LLM LLD (Pretoria); dkamgsa@unisa.ac.za or sergesalaindk@gmail.com

Key words: *pan-Africanism; right to development; political independence; socio-economic rights; cultural self-determination; human rights and development; Africa*

1 Introduction

The idea of pan-Africanism was constructed on the need to free Africa from the chains of imperialism and to enable African countries to ascend into the concert of nations on an equal footing with others.¹ While the idea of pan-Africanism was led in the diaspora by intellectuals such as Henry Sylvester-Williams, WEB du Bois, Marcus Garvey and Franz Fanon, to name a few, in Africa the movement was spearheaded by Hastings Banda of Malawi, Kwame Nkrumah of Ghana, Obafemi Awolowo and Namzi, both from Nigeria, and Jomo Kenyatta of Kenya. The movement developed and in 1963 led to the establishment of the Organisation of African Unity (OAU) with the core objective of putting an end to colonialism and apartheid as well as uniting the continent for the well-being of its people. In 2002 the OAU was transformed into the African Union (AU) without diversion from its pan-Africanist mandate revolving around African unity, development and peace and a better life for the people of Africa.

Yet, in spite of the apparent independence of African states, and now the 'Africa is rising' narrative,² African countries remain largely excluded from the global economy, and as a result are among the poorest in the world. Poverty, hunger, diseases, a lack of education and other basic needs for human dignity are daily realities on the continent. This happens amidst a huge quantity of wealth and natural resources, which do not benefit the African people but benefit those who set the prices and define the rules and terms of trade relating to those resources. At the same time Afro-optimists still rely on the pan-African ideology, which in reality has failed to free the African people from fear and from want. This situation, therefore, casts serious doubts on the relevance of pan-Africanism. Put differently: Is pan-Africanism still relevant in the twenty-first century?

This article argues that although pan-Africanism remains relevant for unity and a better life in Africa, there is a strong need to rethink the concept. There is a need to rely on a human rights-informed pan-Africanism or, to be specific, to apply a 'right to development'-informed pan-Africanism to improve people's lives in Africa. This is essential because human rights and the right to development are inherent to all human beings; they are entitlements that cannot be bargained away. The right to development theory not only compels the international community to set up an international environment

1 N Azikiwe 'The future of pan-Africanism' <http://www.blackpast.org/1962-nnamdi-azikiwe-future-pan-africanism> (accessed 6 October 2018).

2 See eg *The Economist* 'Africa is rising, a hopeful continent' (2013).

conducive to the flourishing of rights to foster a better life for all, but also compels nation states to take adequate legal and policy measures at national levels to ensure a good standard of living. The article argues that a right to development-informed pan-Africanism will not only shield the people of Africa from the exploitation, domination and impoverishment caused by Western countries and global institutions, but that it will also protect them against the power of tyrants in their own countries. As a result they will enjoy a better standard of living. Looking at pan-Africanism from a right to development perspective posits a new discursive space for the improvement of human well-being in Africa. This approach provides a platform to examine the vision of pan-Africanism through the lens of the right to development.

In terms of structure the article is divided into four parts, including this introduction. The second part explains the concept of pan-Africanism, and clarifies why it is essential to carve a new road to secure its relevance in the twenty-first century. The third part of the article demonstrates how a right to development-informed pan-Africanism can unite the continent and improve people's lives as was originally conceived by its initiators. The central argument of this part is that reliance on a pan-Africanism-informed right to development is key to securing freedom for the people of Africa from the forces of imperialism as well as from the tyranny of African dictators. The fourth part provides the concluding remarks.

2 Vision of pan-Africanism and the need to carve a new road for its relevance in the twenty-first century

2.1 Pan-Africanist vision

The idea of pan-Africanism originated from five centuries of domination, exploitation, humiliation and indignity inflicted on the African people through the slave trade, colonialism and imperialism.³ Subsequent to this subjugation of Africa, the notion of pan-Africanism was coined to address the issue. The first pan-African conference to address the problems of African people worldwide was held in 1900, when Henry Sylvester-Williams convened a conference in London. The delegates discussed the need to create a movement to campaign for African peoples' rights. A crucial outcome of the conference was to promote the idea of 'oneness in experience' that has vindicated itself throughout the history of pan-Africanism.⁴ Subsequently, under the leadership of WEB du Bois, at the end of World War I in 1919 the first

3 IG Shivji 'Pan-Africanism and the challenge of East African Community integration' Paper presented at the EAC 10th Anniversary Symposium 13-14 November 2009, Arusha, Tanzania (2009) 3 (on file with author); also <https://www.pambazuka.org/pan-africanism/pan-africanism-and-challenge-east-african-community-integration> (accessed 10 October 2018).

4 Eriya Kategaya on the net, https://www.newvision.co.ug/new_vision/news/1300679/pan-africanism-relevant (accessed 10 October 2018).

pan-African congress was held in Paris, France. The core demands at this event focused on the claim for equality of races and the prohibition of discrimination against black people. A fifth pan-African congress was held in Manchester, United Kingdom, in 1945, at the end of World War II. Unlike at the first congress where most participants were from the diaspora, in Manchester the majority of the delegates arrived from Africa. Chaired by George Padmore, the conference was marked by the presence and speeches of pan-Africanists such as Du Bois and Kwame Nkrumah. The latter did not shy away from promising 'strong and vigorous action to eradicate [colonialism/imperialism]', which he identified as 'one of the major causes of war'.⁵ The pan-Africanist vision was also advanced by Jomo Kenyatta who, through a manifesto titled 'Challenge to colonial powers', highlighted the need to fight colonialism in all its forms in ensuring that Africa remains for Africans.⁶ As correctly argued by Shivji, Kenyatta's strategy included reliance on 'a kind of social democracy',⁷ which necessitates state control of the basic means of production and distribution, as well as prominence on the citizens' liberty and freedoms.⁸

After the pan-African conferences and congresses, equipped with the pan-Africanist ideology that shaped African nationalism at the country level,⁹ African leaders had to act to liberate the continent. On the one hand, Julius Nyerere advocated regional integration or federalism at the sub-regional level.¹⁰ On the other hand, Nkrumah called for the immediate unity of Africa in the form of the United States of Africa. He observed: 'We are committed to the idea of pan-African unity and we are afraid that our economic interest in federation will clash with our ideological interests in African unity. There will be no federation because it would prevent African unity. We must come together all at once.'¹¹ Nonetheless, these approaches are not mutually exclusive. According to Shivji 'both regional and continental unity – whether economic or political – has to be cast in a pan-African vision which by definition is anti-imperialist'.¹² However, as will be shown below, so far neither of these approaches has become a reality, thereby urging a need to rethink pan-Africanism.

5 L Levering *WEB du Bois: The fight for equality and the American century 1919-1963* (2000) 514.

6 Shivji (n 3) 3.

7 As above.

8 G Padmore *Pan-Africanism or communism?* (1956) 21-22.

9 Shivji (n 3) 3.

10 J Nyerere 'The second scramble' in JK Nyerere (ed) *Freedom and unity* (1966) 204-208.

11 Shivji (n 3) 5.

12 Shivji 8.

2.2 Need to rethink pan-Africanism

As indicated above, historically the concept of pan-Africanism emerged from the need to liberate Africa and its people from the yoke of colonialism. At its centre, there was a need to ensure the political and economic independence of African countries, unite these countries and ensure a better and more dignified life for all Africans. An assessment of these core objectives of pan-Africanism and the emergence of various international blocks in time of globalisation will shed some light on why it is important to rethink pan-Africanism.

The independence of Africa was at the centre of the 1963 OAU Charter,¹³ which underlined the principle of state sovereignty, territorial integrity and independence and the eradication from the continent of all forms of colonialism.¹⁴ Eradicating colonialism encompassed the self-determination of African countries and the abolition of apartheid in South Africa. The notions of independence and self-determination were and remain crucial for pan-Africanism. El-Obaid and Appiagyeyi-Atua observe: 'The right to self-determination has special relevance to Africa, since it occupies a central position in its modern political history.'¹⁵ Echoing this view, Shivji writes: 'The experience of national and anti-imperialist struggles ... shows that the "right of peoples and nations to self-determination" remains central in Africa to-day'.¹⁶ The notion of independence has two pillars: political self-determination or independence, and economic independence.

The independence of Ghana followed by the subsequent political independence of African countries in the 1960s as well as the end of colonialism in Namibia in 1990 and apartheid in South Africa in 1994 were great achievements of pan-Africanists. It was a manifest application of the pan-Africanist motto of 'hands off Africa! Africa must be free!'¹⁷

However, political independence is reduced to nothing by neo-colonialism that continues to violate African political autonomy. In this regard many African countries still consult with formal colonial masters in taking decisions. For instance, African French-speaking countries are still influenced by Paris, France.¹⁸ Similarly, the influence

13 Adopted on 25 May 1963 in Addis Ababa, Ethiopia.

14 Arts 2 & 3 OAU Charter.

15 EA El-Obaid & K Appiagyeyi-Atua 'Human rights in Africa: A new perspective on linking the past to the present' (1996) 41 *McGill Law Journal* 838.

16 IG Shivji 'State and constitutionalism: A new democratic perspective' in IG Shivji (ed) *State and constitutionalism: An African debate on democracy* (1991) 36.

17 In 1958 the All-African People's Conference met under the banner 'Hands off Africa! Africa must be free'.

18 A Cowell & Special to the New York Times 18 April 1982 'Former African colonies retain strong French ties' <https://www.nytimes.com/1982/04/18/world/former-african-colonies-retain-strong-french-ties.html> (accessed 5 October 2018); M Venkatachalam & A Niang 'Despite the rhetoric, Macron isn't about to loosen France's paternalistic grip in Africa' *Quartz Africa* 3 June 2017 <https://qz.com/africa/998126/emmanuel-macron-will-not-change-frances-francafrique-grip-in-africa/> (accessed 5 October 2018).

of Britain in former British colonies cannot be overemphasised.¹⁹ In this regard Nagel writes: 'In Britain's former colonies we can still find visible traces of British influence in language, education, politics and culture.'²⁰ This is to say that although colonialism seems to be dead, neo-colonialism, which hinders political independence, is very much alive. In this context, in spite of some progress it cannot be argued without reservation that the idea of pan-Africanism leads to full political liberation in Africa.

On the economic terrain African countries remain the weakest link in the global economy.²¹ African economies have for years been bogged down by unfair trade rules and high tariffs; the prices of commodities have been unstable and have negatively affected African economies; and interest rates have risen at the will of powerful countries.²² Bond summarises the catastrophic situation in these terms: 'The economic structure of Africa's neo-colonial societies was relatively homogenous, suffering from international commodity price fluctuations, an overdose of foreign debt and "dependency"'.²³

Global institutions such as the World Trade Organization (WTO) and international financial institutions such as the International Monetary Fund (IMF) and the World Bank did not assist much in improving African economies. Instead of assisting, the World Bank and IMF-sponsored structural adjustment programmes of the 1980s and early 1990 created havoc in Africa.²⁴ Far from improving economic conditions in Africa, these institutions have been tools for Western hegemony.²⁵ So far, even with the 'Africa is rising' narrative, unfortunately 39 out of 54 African countries are among the lowest-ranked countries in the 2018 Human Development Indices and Indicators of the United Nations Development Programme (UNDP).²⁶ This suggests that in these countries the maternal mortality rate, the lack of education and widespread poverty are among the highest in the world.²⁷ This led one commentator to argue that

[u]nderdevelopment in Africa is the direct consequence of continued imperialism of the Western capitalist nations on African states and the weak

19 J-L Nagel 'The legacy of an empire' <https://ndla.no/en/node/109145?fag=71082> (accessed 5 October 2018).

20 As above.

21 RS Foncesca 'The World Trade Organization: Africa's dilemma' in H Stephan & M Power (eds) *The scramble of Africa in the 21st century: From the old world to the new* (2012) 241.

22 P Bond 'Cultivating African anti-capitalism' *Z Magazine* (2003).

23 As above.

24 A Ismi 'Impoverishing a continent: The World Bank and the IMF in Africa' Report commissioned by the Halifax Initiative Coalition <http://www.halifaxinitiative.org/updir/ImpoverishingAContinent.pdf> (accessed 5 October 2018).

25 RW Cox *Production, power, and world order: Social forces in the making of history* (1987) 212.

26 See http://www.hdr.undp.org/sites/default/files/2018_human_development_statistical_update.pdf (accessed 5 October 2018).

27 As above.

economic, political and socio-cultural structures created by colonialism and sustained by imperialism-in-continuum.²⁸

In other words, Africa's ongoing impoverishment is directly linked to imperialism that deprives the continent of its wealth. This situation simply illustrates the failure of pan-Africanism to secure socio-economic independence for African states, hence the need to revisit the approach, otherwise the concept of pan-Africanism may lose its relevance.

2.3 African unity

African unity was an important building block of pan-Africanism. The sanctity of unity was highlighted by the establishment of the OAU in 1963 and the constant calls for unity by the organisation. The content of African unity was explained by Dubois in one of his speeches entitled 'The future of Africa', delivered on his behalf by his wife. Dubois wrote:²⁹

If Africa unites, it will be because each part, each nation, each tribe gives up a part of the heritage for the good of the whole. That is what union means; that is what pan-Africa means: When the child is born into the tribe, the price of his growing up is giving a part of his freedom to the tribe.

As alluded to earlier, while Nkrumah called for the immediate unity of Africa, Nyerere was a proponent of regional integration. This in itself was not the problem as the continent realised that both approaches could go hand in hand to defeat imperialism. Therefore, while calling for the unity of the continent, regional integration was also considered by the founders of the OAU. In an effort to integrate the continent, African states committed themselves to setting up sub-regional economic blocs. Thus far eight of these blocs, recognised by the AU, have been established.³⁰ Theoretically these blocs should lead to freedom of movement of goods and people on the continent.

So far the sub-regional institutions have mainly concentrated on intra-regional trade promotion through preferential measures, the establishment of common currency areas and the coordination of macro-economic policies to achieve a level of convergence.³¹ However, efforts are limited by the fact that 'some of the sub-regional economic arrangements have remained loosely structured in their

28 PWO Oguejiofor 'The interrelationships between Western imperialism and underdevelopment in Africa' (2015) 6 *Arts and Social Sciences Journal* 1.

29 HL Gate (ed) *The world and Africa and colour and democracy (The Oxford WEB Du Bois)* by WEB Du Bois (2007) 198; see also JC Hall *Mercy, mercy me: African-American culture and the American sixties* (2001) 196.

30 These are the Arab Maghreb Union (AMU/UMA); The East African Community (EAC); the Intergovernmental Authority on Development (IGAD); the Southern African Development Community (SADC); the Common Market for Eastern and Southern Africa (COMESA); the Economic Community of Central African States (ECCAS); and the Community of Sahel-Saharan States (CENSAD).

31 Kategaya (n 4).

roles with national economies continuing to operate largely autonomously and thus continuing to be subjected to greater manipulation and marginalisation by the rich countries'.³²

As far as the freedom of movement of people is concerned, besides the current progress in the Economic Community of West African States (ECOWAS) where people do not need a visa to travel across the sub-region, in many sub-regions freedom of movement of persons is yet to become effective. This was illustrated by various xenophobic attacks in the sub-regions. For instance, in West Africa, ECOWAS, Ghanaians were asked to leave Nigeria in what was known as 'Ghana must go'.³³ In Central Africa, the Economic Community of Central African States (ECCAS) (most often referred to as CEMAC, in line with its French title), Gabon and Equatorial Guinea closed their borders to Cameroonians.³⁴ Similarly, the Southern African Development Community (SADC) region was wrecked by xenophobic attacks in South Africa³⁵ and in Botswana.³⁶ These examples clearly show that another pan-Africanist objective, namely, the unity of African people, is yet to be achieved. In fact, as correctly argued by Oni and Okunade,

[d]ocumented xenophobic attacks across the continent do not underscore a united African people and government, rather a more fragmented, self-centred and self-serving people supported by state actions and regulations and regulations encapsulated in national interests.³⁷

Unfortunately, African leaders so far have not been able to give up part of their countries' sovereignty 'for the good of the whole'. Unity is hindered by the fact that several leaders cling to their position of heads of state, focus on their sovereignty and self-interest and not on the continental interest, and do not present a united position, but care more for their country's or personal interest. Such an approach is detrimental to the unity and integration of the continent and *par ricochet* fosters neo-colonialism. This situation clearly shows that under the current implementation of pan-Africanism the continent has failed to unite politically and to integrate economically. Mkandawire

32 As above.

33 I Toju 'South Africa's xenophobic attack and the Ghana-must-go case – Politics' *Nairaland* 28 February 2017 <https://www.nairaland.com/3654526/south-africas-xenophobic-attack-ghana-must-go> (accessed 6 October 2018); EO Oni & Okunade 'The context of xenophobia in Africa: Nigeria and South Africa in comparison' in AO Akinola (ed) *The political economy of xenophobia in Africa: Advances in African economic, social and political development* (2018) 37.

34 YK Nsom 'CEMAC region: Equatorial Guinea, Gabon accused of stalling free movement' *Cameroon Post* 15 January 2014.

35 Oni & Okunade (n 33); see also D Mavhinga 'Xenophobic violence erupts in South Africa: Local group's march against immigrants in Pretoria today turned violent' Human Rights Watch Report 24 February 2017.

36 M Dube 'Botswana being taken over by creeping xenophobia despite government "compassionate" policy' *The East African* 14 November 2014, <http://www.theeastafrican.co.ke/magazine/Xenophobia-in-Botswana-despite-policy-/434746-2522696-fy83bp/index.html> (accessed 6 October 2018).

37 Oni & Okunade (n 33) 47.

underlines the failure of the pan-Africanist project in uniting the continent as follows:³⁸

Political unification and economic integration of the continent have so far failed to materialise, at least when assessed against the dreams of the main figures of the pan-African movement, documents and programmes prepared for pan-African conferences, and declarations and speeches of African leaders. They failed when compared to other regional co-operation projects in other continents. They failed in relation to the continent's well-defined and clearly perceived needs. They failed in the face of the motive force of pan-Africanism in African speeches.

The failures highlighted here simply demonstrate that it is essential to rethink pan-Africanism or else the ideology will remain a mere slogan without significance.

2.3 Dichotomy between pan-Africanism and nationalism

The dichotomy between pan-Africanism and nationalism is linked to the challenges to African unity. While African nationalism may be equated to political revolt against colonialism, pan-Africanism is the aspiration for continental solidarity and equality.³⁹ Both these concepts are significant for the liberation of Africa as a whole. However, African nationalism, which echoes the love or attachment one has for one's specific nation, is likely to neutralise pan-Africanism, which is the ultimate outcome. Addressing students on the occasion of the inauguration of Kenneth Kaunda as the Chancellor of the University of Zambia in 1966, Nyerere observed:⁴⁰

Pan-Africanism demands an African consciousness and an African loyalty [nationalism]; on the other hand is the fact that each pan-Africanist must also concern himself with the freedom and development of one of the nations of Africa. These things can conflict. Let us be honest and admit that they have already conflicted.

This is an acknowledgment that pan-Africanism creates nationalism, which starts at home, as one cannot work for freedom of a whole without thinking of self in the context of nationalism. The danger is that being nationalist can be counterproductive for pan-Africanism as one is inclined to work first and foremost for the development of one's nation before seeing how it can be translated at the sub-regional or continental level. This problem is illustrated with the advent of emerging economies.

In recent times the advent of emerging economies has led to the establishment of new blocs aiming to address specific concerns of their member states. As a result, ideologies such as pan-Africanism are diluted as specific African countries will pay allegiance to a specific

38 Mkandawire pleads for a new brand of pan-Africanism, <http://www.panapress.com/Mkandawire-pleads-for-new-brand-of-Panafricanism--12-555998-72-lang2-index.html> (accessed 10 October 2018).

39 N Sithole *African nationalism* (1968).

40 Nyerere (n 10) 208.

group and not pay attention to the pan-African vision but rather to self-interest,⁴¹ as their actions are informed by nationalism.

For instance, the groups of BASIC (Brazil, India, South Africa and China) and BRICS (Brazil, Russia, India, China and South Africa) often take specific stances on trade issues that may be contrary to the pan-African vision on the issue. In these contexts, South Africa's view is likely to be more in line with these economic interest groups or its national interest and not necessarily pan-Africanist. Decisions, therefore, are informed by 'competing national, regional, or factional interests'⁴² that member countries have to deal with. In this context, nationalism is likely to be the defining factor and pan-Africanism would be added as an afterthought or incidentally.

Due to its size and the changing global economy, the pan-Africanist ideology has been weakened by the rise of a strong incentive for African countries to join groupings and adhere to world institutions based on their self-interest or loyalty to their nation and not ideology. As a result, African countries do not always speak with one voice at international fora. One rarely sees an African position on world affairs, but rather various African views which confirm that nationalisms are still at play.

Another hindrance facing pan-Africanism is the problem of multiple memberships by some of African countries, a fact also informed by nationalism. For example, some African countries that are members of the African Group of the WTO are at the same time also affiliated to the African, Caribbean and Pacific (ACP) group and least-developed countries (LDCs). All these groupings have their dominant interests and positions that are not necessarily linked to pan-Africanism.

Even though holding multiple memberships to groups may well be the opportunity for pan-Africanist nations to look for partners to advance their ideologies and needs, negotiations in international fora generally are informed by self-interest or nationalism. Landers observes:⁴³

Following the global economic slowdown, which has turned the global development agenda into highly contested terrain, with many countries seeking to reshape it completely in order to try and restore their comparative economic advantage, maintaining unity among the countries of the South [and African in particular] itself, has become a real challenge.

41 L Swart 'The emergence of the Group of 77' in L Swart & J Lund (eds) *The Group of 77: Perspectives on its role in the general assembly* (2011) 5.

42 Swart (n 41) 23.

43 L Landers 'Statement at the symposium G77 and China at 50: South Africa/Africa and the changing multilateral diplomacy of the South' Pretoria 25 July 2014 <http://www.dfa.gov.za/docs/speeches/2014/land0725.html> (accessed 10 October 2018).

In sum, the advent of the BASIC, BRICS and others groupings in which African nations seek their national prosperity has led to the comment that 'pan-Africanism is death'.⁴⁴ However, it is submitted that pan-Africanism is not death, but needs rethinking and a shift towards the right to development approach. This will assist in striking a balance between pan-Africanism and nationalism and keeping it relevant.

2.4 Pan-Africanism and human rights in Africa

One of the main objectives of pan-Africanism was to ensure a better standard of living for all or a life with dignity and a life where human rights are treasured in Africa. In this respect the pioneers of pan-Africanism stressed that 'our independent status' will be meaningless if it does not enable us to 'attain full human rights and human dignity as citizens'.⁴⁵ So, from its onset pan-Africanism was associated with freedom and human rights. In this respect, a paragraph of the Declaration of the 1945 pan-African congress reads:⁴⁶

We are determined to be free. We want education. We want the right to earn a decent living; the right to express our thoughts and emotions, to adopt and create forms of beauty. We will fight in every way we can for freedom, democracy, and social betterment.

Put differently, concepts of freedom, the right to education, the right to employment, freedom of expression and the right to decent lives, which echo the human rights discourse, were essential in the pan-African vision. It is important to note that the rights echoed in the 1945 Declaration are individual rights.

Besides individual rights, collective or group rights were also at the centre of pan-Africanism. In this context human rights were for all Africans as a people; they were claimed from the colonial masters. As correctly argued by El-Obaid and Appiagyei-Atua, national freedom, for example, was seen as *national* freedom, not *individual* freedom. The class struggle was to be between the 'developed' and 'developing' nations.⁴⁷ This interpretation of human rights was well captured by the OAU Charter. The latter recognised 'the inalienable right of all people to control their own destiny';⁴⁸ that 'freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples';⁴⁹ and the 'responsibility [of African states] to harness the natural and

44 MA Jmal "'Pan-Africanism is dead", "dictatorship is born": Africa needs a new breed of core pan-Africanists' <https://www.facebook.com/OfficialMumiaAbuJamal/posts/pan-africanism-is-dead-dictatorship-is-born-africa-needs-a-new-breed-of-core-pan/10153117045137665/> (accessed 5 October 2018).

45 Kategaya (n 4).

46 El-Obaid & Appiagyei-Atua (n 15) 823.

47 El-Obaid & Appiagyei-Atua (n 15) 828.

48 Preamble para 1 OAU Charter.

49 Para 2 OAU Charter.

human resources' of the continent 'for the total advancement of our peoples in spheres of human endeavour'.⁵⁰

This led Sharpe to argue that 'at a time when the rest of the world was more concerned about civil and political rights, the African [continent] reflected the human rights concern about equality and non-domination of most Africans'.⁵¹ In this context the notions of the rule of law and good governance were not an issue and national inequalities characterised by the gap between the political elites and the citizens were accepted.⁵²

In sum, the specific lack of a focus on individual rights in the OAU Charter led to the critique that the 'OAU's commitment to human rights was vague and weak'.⁵³ However, this was corrected in the AU Constitutive Act which puts a strong emphasis on respect for human rights. This is specific in its right to encroach upon the sovereignty of a member state where massive violations of human rights such as war crimes, genocide and crimes against humanity occur.⁵⁴ Moreover, the AU is empowered to impose sanctions such as 'the denial of transport and communication links with other member states, and other measures of a political and economic nature' on member states that do not comply with the decisions and policies of the AU, including on human rights.⁵⁵ Furthermore, prior to the creation of the AU in 2002, the African Charter on Human and Peoples' Rights (African Charter),⁵⁶ with a clear provision on the right to development,⁵⁷ was adopted. Many other human rights instruments subsequently were also adopted to strengthen the African legal architecture for the protection of human rights in Africa.⁵⁸

However, in most parts of Africa human rights are yet to become a reality. The violation of human rights and the rule of law is illustrated by the high level of corruption on the continent, the high level of

50 Para 3 OAU Charter.

51 ME Sharpe 'The challenge to international human rights' April 2003 https://www.carnegiecouncil.org/publications/articles_papers_reports/905 (accessed 10 October 2018).

52 El-Obaid & Appiagyei-Atua (n 15) 828.

53 As above.

54 Art 4(h) AU Constitutive Act.

55 Art 23(2) AU Constitutive Act.

56 Adopted in Nairobi in 1981, entered into force in 1986.

57 Art 22 African Charter.

58 Instruments for the protection of human rights in Africa include the African Convention on the Rights and Welfare of the Child, adopted in Addis, Ababa, Ethiopia, on 11 July 1990, entered into force 29 November 1999; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted on 11 July 2003 in Maputo, Mozambique, entered into force in 2005; the African Youth Charter adopted on 2 July 2006 in Banjul, The Gambia, entered into force on 8 August 2009; the African Charter on Democracy, Elections and Governance adopted in Addis Ababa, Ethiopia, on 30 January 2007, entered into force on 15 February 2012; and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted on 23 October 2009 in Kampala, Uganda, entered into force on 6 December 2012.

poverty and indignity illustrated by the lack of basic needs such as sanitation, education, housing and adequate health care that hinders the realisation of human rights in Africa. These are some of the challenges faced by African people who are often among those who die at sea while attempting to enter Europe illegally in search of a better life. The human rights challenges facing the continent is testimony to the fact that the idea of pan-Africanism is yet to yield result on issues of human rights because, as correctly argued by Nkrumah, 'the complete emancipation of this continent, our independent status' would be unfinished business if it does not 'help to attain full human rights and human dignity as citizens in [African] countries'.⁵⁹ Therefore, it could be argued that the pan-Africanism ideology as advanced by its precursors is yet to ensure the protection of human rights in Africa and consequently should be revisited.

Overall, so far the pan-African objectives of ensuring political and economic self-determination, African unity and integration, and establishing a continent where dignity and respect for human rights are realities are yet to be realised. Furthermore, the dichotomy between pan-Africanism and nationalism does not provide an environment in which pan-Africanism can thrive. Nevertheless, rethinking pan-Africanism by looking at it from the lens of the right to development could assist in ensuring that pan-Africanism yields positive results as was originally envisaged by its forerunners.

3 Rethinking pan-Africanism: A right to development approach

This part of the article prescribes reliance on the right to development discourse in rethinking pan-Africanism. To this end, it deconstructs the discourse and shows how its formulation can assist the continent in reaching its well-deserved place on the world stage. This part unpacks the right to development discourse and, accordingly, proceeds to establish the responsibility of the international community, African countries at the regional level, countries of the Global South as well as the nation state in addressing factors of Africa's subjugation.

3.1 The right to development: An overview

Secured in the 1986 UN Declaration on the Right to Development (RTD Declaration)⁶⁰ and in the African Charter,⁶¹ the right to development is a multifaceted human right made up of a bundle of rights with an emphasis on their indivisibility and interdependence. Focusing on the nexus between development and human rights, right to development theorists examine the livelihoods of individuals and

⁵⁹ Nkrumah as quoted by Kategaya (n 4).

⁶⁰ UN General Assembly Resolution 41/128 of 1986.

⁶¹ Art 22 African Charter.

communities and how national and international factors can improve their conditions. From this perspective, the right to development is an articulation of rights which, while mainstreaming human rights into economics, compels states to ensure that development policies and programmes resulting from international relations and corporation are equitable and not detrimental to the achievement of human rights in other states. The right to development is defined as:⁶²

- (1) an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised;
- (2) the human right to development also implies the full realisation of the right of peoples to *self-determination* which includes, subject to the relevant provisions of both international covenants on human rights, *the exercise of their inalienable right to full sovereignty over all their natural wealth and resources*.⁶³

This provision suggests that the right to development has five characteristics:

- The right to development is attached to the human condition and, as such, is non-negotiable.
- It fosters the right to participation of beneficiaries.
- It is a process that ends with all human rights and fundamental freedoms being achieved.
- It is an individual and collective right.
- The right to development is central to the right of people to self-determination.

These features of the right to development echo the objectives of pan-Africanism and are summarised by Azikiwe as follows:⁶⁴

[T]he right of African states to equality of sovereignty irrespective of size and population; the right of each African state to self-determination and existence; the right of any African state to federate or confederate with another African state; respect for the principle of non-interference in the internal and domestic affairs of African states *inter se* and the inviolability of the territorial integrity of each African state. These are well-known accepted principles of international law.

Ultimately, complying with these recognised principles of international law would secure the right of African peoples and individuals to the relentless enhancement of their standard of living and to a national and global enabling environment favourable to a 'just, equitable, participatory and human-centred development respectful of all human rights'.⁶⁵

62 Preamble para 2 & art 1 African Charter.

63 Art 1 RTD Declaration (my emphasis).

64 Azikiwe (n 1).

65 For an overview of the history of the task force, see High-Level Task Force on the Implementation of the Right to Development, Right to Development Criteria and Operational Sub-Criteria, UN Doc.A/HRC/15/WG.2/TF/2/Add.2 (Annex).

Under the right to development regime there are three levels of states' responsibilities. First, states are to act collectively in global and regional partnerships. Second, they should act individually in adopting and implementing policies that affect persons not within their jurisdiction. Third, they are to act individually as they formulate national development policies and programmes affecting persons within their borders or jurisdiction.⁶⁶ It could be argued that a right to development reading of pan-Africanism compels the international community, countries in the Global South as well as the national government to take appropriate measures to achieve the political and economic independence of African countries. These measures should also lead to respect for African countries' autonomy over their wealth and resources and ensure that human rights are paramount on the continent. A failure to do so would be a violation of inalienable human rights and recorded as such.

3.2 Responsibility of the international community towards African people

Although controversial, the right to development theory calls on the international community, including UN member states, global institutions as well as transnational companies, to ensure the realisation of the right to development across the world.⁶⁷ These stakeholders have important roles to play in tackling all aspects of imperialism.

3.2.1 UN member states

Under articles 55 and 56 of the UN Charter the international community is to improve the standard of living for all through international cooperation. Building on this obligation, article 4(1) of the RTD Declaration provides that '[s]tates have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development'. The obligation of the international community towards victims of colonialism is even more clear in article 5 of the RTD Declaration:⁶⁸

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from *apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.*

66 High-level Task Force (n 65) Annex I.

67 SD Kamba *The right to development in the African human rights system* (2018) 45-71.

68 My emphasis.

This provision, which reads like a statement from a pan-Africanist anthem, compels the international community to take action to remedy the injustices suffered by African countries. It suggests that the international community has the obligation to ensure that the international environment is conducive to the realisation of the right to development. Therefore, clothing the issues of Africa's economic independence in a human rights uniform obliges the international community to take action to ensure that Africa is effectively independent economically. In this regard the international community is obliged to address unfair trade rules that keep Africa's economies low and insignificant. It is obliged to rely on international cooperation to ensure that Africa's wealth and natural resources are not looted, but first benefit African people. This will be in line with international law in the form of UN Resolution 1803, which provides for '[p]ermanent sovereignty over natural resources'.⁶⁹ This Resolution cascaded down to the Common Article 1 of the two 1966 Covenants,⁷⁰ and was confirmed by the International Court of Justice in its judgment of 19 December 2005 in the *Case concerning armed activities on the territory of the Congo*.⁷¹ This means that pan-Africanists should craft their call for self-determination in terms of international law, which is 'a legal shield against infringements of their economic sovereignty'.⁷² This approach will further the pan-African call to respect African countries' sovereignty over their wealth and natural resources.

Furthermore, the international community has the obligation to ensure that partnership agreements with African countries do not jeopardise their economic independence or regional integration. In this regard, initiatives such as the Economic Partnership Agreements (EPAs) should strongly consider the developmental needs of African countries.⁷³ While the EPAs between the European Union (EU) and ACP countries seek to ensure that trade arrangements are compatible with WTO rules, so far they have been disruptive of Africa because

69 General Assembly Resolution 1803 (XVII) of 14 December 1962.

70 International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976; International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976.

71 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment ICJ Reports 2005 168 paras 243-246.

72 N Schrijver 'Self-determination of peoples and sovereignty over natural wealth and resources' in UN Human Rights (ed) *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development* (2013) 95.

73 For more on the EPAs, see S Djoyou Kamga 'Economic Partnership Agreements: Another tool for the scramble of Africa or a viable undertaking for the continent's development?' in M Muchie et al (eds) *Unite or perish: Africa fifty years after the founding of the OAU* (2014) 247; see also SO Olorunfoba *Regionalism and integration in Africa: EU-ACP economic partnership agreements and Euro-Nigeria relations* (2015).

they reduce poverty to trade issues without attention to human rights. Gathili writes:⁷⁴

When poverty is induced by trade policies such as the heavy agricultural subsidies in Western markets that displace cheaper produce from developing countries, the ability of government to safeguard socio and economic rights is undermined.

In other words, partnerships between Africa and the West should be informed by the need to uplift people and, therefore, should rely on a human right approach. This also entails giving the opportunity to African leaders to negotiate as equal partners and not based on a partnership between the horse and the rider or an asymmetric partnership between European countries and Africans to the detriment of the latter. Given the asymmetric nature of EPA negotiations, the Italian Vitorrio Agnoletto, member of the European Parliament, writes that '[t]he [EU] Commission has been able to apply the notion of divide and conquer ... I think this is the logic the European Commission will continue to follow.'⁷⁵

While many UN member states refuse to be held accountable for human rights beyond their borders, it is imperative to note that decisions taken at the global level in the name of globalisation affect people's lives in the Global South. Consequently, the global law and policy makers should ensure that their decisions do not lead to the impoverishment of African countries. Linking this responsibility to the right to development, Aguirre writes that '[t]he RTD is versatile and promotes global responsibility for globalization'.⁷⁶ In other words, globalisation should not provide a bridge to violate African countries' sovereignty. Put differently, the obligation of UN member states to foster the right to development in Africa could be interpreted as a clear request to ensure that other countries 'keep their hands off' Africa, which needs to enjoy its political and economic self-determination.

3.2.2 *Global institutions*

Global institutions are the WTO, the World Bank and the International Monetary Fund (IMF), the other role players in securing Africa's political and economic independence.⁷⁷ At the WTO, for instance, it is imperative to ensure that decisions relating to trade are development-friendly, especially for African countries. Following this road will be complying with UN Resolution 523(VI) on integrated economic

74 JT Gathili 'The Cotonou Agreement and economic partnership agreements' in UN Human Rights (n 72) 271.

75 D Cronin 'TRADE: Barroso's EPA intervention to be more than symbolic' <http://www.ipsnews.net/2008/01/trade-barrosorsquos-epa-intervention-to-be-more-than-symbolic/> (accessed: 11 October 2018).

76 D Aguirre *The human right to development in a globalised world* (2008) 10; see also L Wenar 'Responsibility and severe poverty' in T Pogge (ed) *Freedom from poverty as a human right* (2007) 255.

77 Kamga (n 69) 49-62.

development and commercial agreements in which the General Assembly clearly provides that 'commercial agreements shall not contain economic or political conditions violating the sovereign rights of the underdeveloped countries, including the right to determine their own plans for economic development'.

Similarly, development initiatives by international financial institutions should not hinder African nations' development. For example, the World Bank should ensure that development projects conducted under its auspices do not violate the rights and livelihoods of communities. Therefore, this responsibility should be included in the discourse on pan-Africanism with clear accountability mechanisms. Moreover, at the IMF level initiatives such as debt relief for African countries should be considered to enable Africans to realise their right to development. This is important because, as Puvimanasinghe correctly argues:⁷⁸

[D]ebt repayment may take place at the expense of peoples' most basic rights such as food, health and education, and conditions linked to debt relief can undermine a country's policy space and a people's ability to determine its own development path.

The responsibilities of these institutions originate from their central place in designing global policies that affect African countries and peoples. In this respect global trade policies from the WTO should ensure not only a better standard of living for all, including Africans, but should also guard against the exploitation of African peoples. Similarly, international financial institutions such as the World Bank and the IMF have similar responsibilities as far as global financial policies are concerned. A failure to ensure that their policies advance the right to development simply is a violation of pan-Africanism.

3.2.3 *Role of transnational companies*

Although the human rights discourse was originally designed to protect people against the power of the state, transnational companies now are more powerful than many states, leading to arguments to advance their responsibility to protect human rights and the right to development in particular.⁷⁹ A transnational company that loots resources, pollutes the environment, engages in land-grabbing and other forms of abuses violates the right to development and becomes a barrier to Africa's development. Therefore, multinational companies investing in Africa should use a human rights-based approach in ensuring that their activities do not violate human rights. Situations such as those witnessed in the Niger Delta in Nigeria, where the mining of oil has been detrimental to the rights to

78 S Puvimanasinghe 'International solidarity in an interdependent world' in UN Human Rights (n 72) 190.

79 Aguirre (n 78) 11.

health, food and livelihoods,⁸⁰ are contrary to the objectives of pan-Africanism. Similarly, the mining of diamonds and other minerals in the Democratic Republic of the Congo and other parts of the continent without regard to the right to development of communities is unacceptable, as it deprives Africa of its economic autonomy, which is at the centre of pan-Africanism. That is to say that the pan-African discourse should include the 'need to take up the activities and effects of TNCs on, for example, employment practices, the environment and general effects on the economies of host countries as well as on total inflows and outflows of currency and funds from Africa'.⁸¹

Ultimately, casting pan-Africanism in legal terms and, specifically, the right to development terminology is important to stress the legal entitlement guaranteed to Africans. Although international law has its weaknesses, especially as far as implementation is concerned, it is instrumental in terms of standard-setting, hence the call for a pan-Africanism with a legal flavour and, specifically, right to development features. This approach relies on international law to call on the violators of Africans' dignity to keep their 'hands off Africa'.

3.3 Regional and South-South cooperation

Pan-Africanism was born through cooperation by Global South thinkers as well as Africans in the diaspora. Therefore, it is important to explore how cooperation within the right to development discourse could enhance pan-Africanism. This endeavour should be undertaken within the framework of regional cooperation as well as south-south cooperation.

3.3.1 Regional cooperation

International cooperation should not be limited to engagement between the West and African countries. The OAU Charter urged its members 'to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights'.⁸² Furthermore, article 19 of the African Charter stipulates that '[a]ll peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.' Similarly, article 20(1) of the African Charter amplifies this by asserting:

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely

80 J Donovan 'Shell's complicity in human rights violation abuses in the Niger Delta' <https://royaldutchshellplc.com/2016/12/27/shells-complicity-in-recent-human-rights-abuses-in-the-niger-delta/> (accessed 11 October 2018). For more on these violations, see *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

81 F Azzam 'The right to development and implementation of the Millennium Development Goals' in UN Human Rights (n 72) 358.

82 Art 2(1)(e) OAU Charter.

determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

For this to happen, Africans must work together and collaborate with one another. This requirement was well formulated in article 22 of the African Charter, which reads as follows:

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

Article 22(2) prescribes both individual and *collective* actions by states so as to ensure the realisation of the right to development. This compels African states to cooperate with one another to seek solutions to ensure the achievement of the right. In line with this provision, African countries have to set aside narrow national interests for the benefit of the entire continent. The duty to act *collectively*, to ensure the enjoyment of the right to development is a legal prescription that compels African countries to prioritise broader continental interests over those of the nation. Factoring this into pan-Africanism will help mitigate the effect of narrow nationalism that hinders the effectiveness of the pan-African discourse.

Applying regional cooperation with a special objective to advance the right to development on the continent can only strengthen the discourse on pan-Africanism. From this perspective, African frameworks for development should be tapped into in order to better people's lives in Africa. This means that African institutions, such as the New Partnership for Africa's Development (NEPAD)⁸³ and its governance tool known as the African Peer Review Mechanism (APRM),⁸⁴ should be nurtured to secure the right to development for African citizens. This is to say that far from relying exclusively on cooperation with the West, global institutions and multinational companies, African countries also have the obligation to rely on one another to deliver a better Africa as dictated by the pan-Africanist ideology. Failure to do so will not secure the relevance of pan-Africanism in the twenty-first century.

83 Assembly of Heads of State and Government of the African Union, 37th ordinary session/5th ordinary session of the African Economic Community, Lusaka, Zambia, 9-11 July 2001, Declaration on the New Common Initiative, Document AHG/Decl.1(XXXVII); Assembly of the African Union, 1st ordinary session, Durban, South Africa, 9-10 July 2002; Declaration on the Implementation of the New Partnership for Africa's Development (NEPAD) Document ASS/African Union/Decl.1(I).

84 Declaration on Democracy, Political, Economic and Corporate Governance, Document AHG/235 (XXXVIII) annex I.

3.3.2 *South-South cooperation*

South-South cooperation refers to cooperation between countries from the Global South. According to Puvimanasinghe, South-South cooperation can be characterised as echoing

[a] joint struggle for justice, and bonds that were nurtured in a spirit of solidarity and friendship. It implies cooperative interaction through building solidarity based on mutual benefit among developing countries in their struggle to compensate for their relative lack of global power.⁸⁵

African leaders should look beyond cooperation with other African countries by including South-South cooperation on their agendas. In this vein, they should approach countries in the Global South as they generally share similar concerns about development issues. This approach entails striking alliances with countries in South America, the Caribbean and Asia as well as other countries that suffer global marginalisation. Historically, this approach led to the Bandung Conference in which the Global South came together to frame what was needed for its development. A similar approach led to the establishment of the Non-Aligned Movement and the Group of 77 (G77),⁸⁶ later joined by China, who together spearheaded the claim for the right to development, which ended up being recognised in the RTD Declaration.⁸⁷

South-South cooperation shows that notwithstanding the challenges posed by narrow nationalism discussed earlier, many countries that feel disenfranchised will be willing to come together for a greater cause. Even with the advent of emerging economies with multiple groupings or alignments based on nationalism, if the issue of the right to development is well formulated in various countries or between them through bilateral discussions, this question is likely to surface in different groupings and fora and trickle down to African countries. Even though this approach cannot entirely solve the challenges of nationalism that hinder African unity, it is likely to assist in alleviating its negative impact on pan-Africanism.

In sum, to address the global injustices that in the first place led to the idea of pan-Africanism, international cooperation is mandatory. Such cooperation framed in the human rights discourse compels all actors and role players in the international community to ensure that Africa is given its rightful place in world affairs and that its citizens enjoy a good standard of living. Moreover, international cooperation

85 Puvimanasinghe (n 78) 191.

86 'The Group of 77 is the largest intergovernmental organisation of developing countries in the United Nations, which provides the means for the countries of the south to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote south-south cooperation for development'; see https://www.southafrica-newyork.net/pmum/SA_G77.html (accessed 7 October 2018).

87 1986 UN Declaration on the Right to Development, General Assembly Resolution 41/128.

should also comprise regional collaboration between African countries as well as South-South engagement between all marginalised countries or the Global South that meet to advance their concerns. These avenues are likely to address the challenges posed by nationalism as the question of the right to development will become a cross-cutting issue in all countries of the South, as their cooperation will be informed by common interest.

3.4 Responsibility of national governments towards African people

Not only was imperialism an obstacle to African unity and to development and the enjoyment of the right to development in Africa, but the African elite that replaced the colonial masters also became an obstacle to the enjoyment of this right. Therefore, to give relevance to pan-Africanism, national governments should play their role of primary duty bearers of human rights by laying a solid constitutional framework informed by pan-Africanism and establishing an environment conducive to a flourishing civil society.

3.4.1 Adopting a pan-Africanist-informed constitution

A pan-Africanist-informed constitution should seek a better life for citizens; it should be participatory and human-centred with the ultimate objective to serve people. According to article 3(1) of the RTD Declaration, states have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development. This entails terminating the wave of tyranny that followed the departure of the colonial masters.

The objectives of pan-Africanism were to confront not only the international antagonists of Africa, but also national adversaries. After the departure of the colonial masters many African countries were ruled by 'strong men' such as Jean Bedel Bokassa in Central African Republic, Mubutu Sesseko in Zaire (now the Democratic Republic of the Congo) and Idi Amin Dada in Uganda, who personified every aspect of government, including executive, legislature and the judiciary powers in their countries. The tenets of pan-Africanism were abandoned and the countries were run by their accomplices to the detriment of the African people. Abdoulaye Bathily, a former Minister in the office of the President of the Republic of Senegal, writes:⁸⁸

The broad anti-colonial coalition broke up in most countries to give way to dictatorship, personality cult, rise of state nationalism at the expense of pan-Africanism. The common vision for national liberation and unity and economic advancement was replaced among party members by tribalism,

88 Abdoulaye Bathily, Senior Minister, Office of the President of the Republic of Senegal 'Panafricanisme et Renaissance Africaine' <http://www.dri.gouv.sn/sites/default/files/ins-ua/PANAFRICANISME%20ET%20RENAISSANCE%20AFRICAIN.pdf> (accessed 13 June 2019).

ethnic solidarity and other sectarian affiliations. Most positive gains of the anti-colonial struggles were lost during the 70s to the 80s.

A pan-Africanist-informed constitution entails adopting a supreme law characterised by the separation of powers between the three branches of government, each of them enjoying full independence.⁸⁹ With the advent of constitutionalism in the 1990s, many African countries adopted a constitution with an apparent separation of powers. However, many of these countries were characterised by presidentialism or a regime in which the pre-eminence of the executive was incontestable as its representative appointed the members of the judiciary and had an indirect or direct say in what takes place in the legislature.⁹⁰

Under the current mode of separation of powers, many African leaders have been in power for 20 years or longer. As Lord Acton observed some centuries ago, 'all power tends to corrupt, and absolute power corrupts absolutely'.⁹¹ The truth of this assertion had been tested in post-colonial Africa. In some African countries, where there is a presidential term limit, the latter had been revised or amended through so-called 'consultation' with the legislature or a referendum to ensure presidency for life. Numerous African leaders cling to power or attempt to do so by various means, including cultivating systemic corruption and tribalism as a system of government.⁹² This attitude on African soil defeats the objectives of pan-Africanism, which is all about delivering security and well-being to the African people. In other words, due to democratic deficits many countries in this part of the world are yet to ensure that respect for the rule of law and human rights become a reality. In addition, the accountability of their governments remains questionable. This state of affairs cannot advance pan-Africanism, as the precursors of the ideology were fighting for the citizens of Africa and not for a group of leaders with their accomplices. In fact, the current lack of unity and effective regional integration in Africa is linked to dictatorship at national level where the dictator is the alpha and the omega and the

89 For more on the separation of powers, see K McLean *Constitutional deference, courts and socio-economic rights in South Africa* (2009) 105-108.

90 K Prempeh 'Progress and retreat in Africa: Presidents untamed' (2008) 19 *Journal of Democracy* 110; SEE also HS Adjolohoun 'Between presidentialism and a human rights approach to constitutionalism: Twenty years of practice and the dilemma of revising the 1990 Constitution of Benin' in MK Mbondenyei & T Ojienda (eds) *Constitutionalism and democratic governance in Africa: Contemporary perspectives from sub-Saharan Africa* (2013) 245.

91 CM Fombad 'The constitution as a source of accountability: The role of constitutionalism' (2010) 2 *Speculum Juris* 46.

92 KJ Maphunye 'Weaning African leaders off addiction to power is an ongoing struggle' <https://www.timeslive.co.za/news/africa/2018-04-17-weaning-african-leaders-off-addiction-to-power-is-an-ongoing-struggle/> (accessed 7 October 2018).

sole person in charge of deciding on 'anything coming from the outside world',⁹³ whether from the global or regional level.

Generally, despots hide behind state sovereignty to avoid any compromise that is likely to reduce their power even where Africa's unity and integration are at stake. In the process human rights are violated as tyrants use all means to cling to power. As Acheampong rightly argues, '[t]he hardships of developmental dictatorship are well known: Liberty is suppressed; labour is regimented and exploited; freedom of movement is curtailed; personal choice is severely restricted.'⁹⁴ Acheampong calls for a change of gear, arguing that pan-Africanism should 'also aim at casting aside the cloak of national sovereignty behind which governments have committed serious crimes against their people'.⁹⁵ In many African countries human rights and the right to development are non-existent as the funds needed for their realisation are embezzled in an environment where corruption and a lack of accountability are daily realities.

It becomes urgent to rethink pan-Africanism by ensuring the adoption of constitutions with strong and effective principles of the separation of powers. Azikiwe described a model constitution for pan-Africanism as follows:⁹⁶

The constitutional implications of pan-Africanism present to its builders a challenge to create a heaven on earth for African humanity. Therefore, the powers of the executive must be clearly defined, bearing in mind that in most of the progressive states of the world, heads of states exercise powers formally and heads of governments formulate policy and do the actual governing. Nevertheless, the vogue is to accept the supremacy of the legislature, as a forum for airing the views of the electorate and strengthening the hand of the executive. Pan-Africanists must also guarantee the independence of the judiciary, not necessarily by stratifying judges as a select and privileged elite but by ensuring that they shall perform their functions without fear or favour and at the same time be responsible to the people for their actions and behaviour. To obtain maximum efficiency in the machinery of administration, the civil service must be insulated from partisan politics. As for the people themselves, their fundamental rights must be guaranteed and entrenched in [the Constitution].

Furthermore, it is imperative to establish independent constitutional institutions such as a human rights commission and an ombudsman to oversee the enforcement of the right to development. In this way these institutions will support the three branches of government in giving effect to the right to development. Their activities are instrumental as they will foster constitutionalism which at the national level is the backbone of the right to development. Fombad writes that

93 Mkandawire pleads for A new brand of pan-Africanism, <http://www.panapress.com/Mkandawire-pleads-for-new-brand-of-Panafricanism--12-555998-72-lang2-index.html> (accessed 7 October 2018).

94 KA Acheampong 'Human rights and the African renaissance' (2000) 5 *African Journal of Political Science* 112.

95 Acheampong (n 94) 119.

96 Azikiwe (n 1).

constitutionalism watches the way the government 'protects its citizens as well as the government as to what to do or not to do'.⁹⁷ In other words, constitutionalism provides a framework for the government's accountability which is essential for the achievement of the right to development at the national level and, as such, fosters pan-Africanism.

In sum, a pan-Africanist-informed constitution will compel the government to work for its people or face the might of the law. Nevertheless, for this to happen the emphasis should be on the level of participation of people through civil society organisations.

3.4.2 *Establishing an enabling environment for a vibrant civil society*

Given the history of dictatorship (by the former colonial masters and their successors), which hinders development in Africa, besides credible constitutionalism it is imperative to enable civil society to play its role of watchdog in controlling the powers of the state and the market, which often poses a threat to human rights and the right to development. While the notion of civil society is broad and open to various definitions, this article espouses the definition of the UN Office of the High Commissioner for Human Rights (OHCHR) that considers civil society as

[i]ndividuals and groups who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realisation of the development and the promotion and respect for human rights.⁹⁸

In the context of a right to development-informed pan-Africanism, civil society should play a role in keeping an eye not only on leaders within their jurisdiction, but even beyond so as to ensure that their activities do not jeopardise the right to self-determination over their territory and resources as well as human dignity, which are central to the pan-African discourse. Locating the importance of civil society within the right to development, Puvimanasinghe writes that '[i]n realizing the right to development, civil society can be the vital impetus in moving forward in the common interests of all, despite the divisions which have traditionally coloured the intergovernmental debate'.⁹⁹

In a right to development-informed pan-Africanism, civil society organisations would be empowered to lead campaigns and activism for the promotion of human rights both at the local and global levels. They will foster good governance and the rule of law that are core elements of pan-Africanism. The former UN Secretary-General, Ban Ki-Moon, observed that '[a] free and independent civil society is the

97 Fombad (n 91) 51.

98 UN OHCHR *A practical guide for civil society: Civil society space and the United Nations Human Rights System* (2014) 3.

99 Puvimanasinghe (n 78) 192.

foundation for healthy, responsive governance at the local, national and global levels'.¹⁰⁰ Sharing this view, Puvimanasinghe indicates that global civil society seems to hold the solutions for sustainable development.¹⁰¹ In the quest for sustainable development, global civil society has played a crucial role and may hold the key to a shared future.

In discharging their functions civil society organisations will be at the forefront of activism to ensure that pan-Africanism no longer is a rhetoric that seems far away from the African citizens who appear to have been forgotten in the equation. In this context civil society will be instrumental in building pan-Africanism from below by ensuring that whoever speaks in the name of citizens does so deservedly.

Another benefit of a vibrant civil society is that it will not only embark on activism for social justice at the local/national level, but can also join hands with other organisations working on social justice at the sub-regional and global levels. Based on the search for 'common good', civil society organisations can strike partnerships beyond their borders to be more efficient in dealing with local issues including subjugation from local dictators and hegemony from former colonial masters. In other words, a local civil society has the potential to attract partners willing to join in the fight against national tyrants, imperialists as well as transnational corporations that violate human rights echoed through pan-Africanism principles.

Under article 71 of the UN Charter, the Economic and Social Council has the obligation to consult civil society organisations, including those from Africa, on global policy at the UN. This provides a platform to these organisations to penetrate the global policy arena to interrogate national and international activities that hinder pan-Africanism and its quest for global justice. Access to the UN enables civil society to be involved in law making at the global level and to fight for those adversely affected by international norms and policies that violate human dignity through subjugation of a people by global powers.

Although some civil society organisations face challenges related to their legitimacy, funding and capacity, their importance cannot be undermined because in general they promote accountability in advancing the rule of law necessary for the enjoyment of a better life to be brought about by pan-Africanism. Having said that, the accomplishment of a civil society organisation is conditioned by a conducive environment to be established by the government that is obliged to do so in the context of a right to development-informed pan-Africanism.

100 Secretary-General Ban Ki-Moon, video message to the 25th session of the UN Human Rights Council, March 2014.

101 Puvimanasinghe (n 78) 192.

Overall, for pan-Africanism to be relevant in the twenty-first century it is imperative that African patriots confront domestic and international antagonists of African unity by any means necessary to create a stronger, democratic, powerful, productive and just Africa. Focusing on international factors of subjugation only will not be enough to ensure the relevance of pan-Africanism. Adopting a right to development-informed pan-Africanism will capture both the local and the global conditions for the well-being of Africans. In this perspective, as correctly argued by Nkandawire, pan-Africanism is expected to

adopt a more democratic and more participatory process as a basis for the Panafrican project ... Failure to do so will lead to the total irrelevancy, even if this is not a mathematical sum of the preoccupations of the new social movements for which pan-Africanism provides a new framework to implement local and national programmes.¹⁰²

4 Concluding remarks

The aim of this article is to examine the relevance of pan-Africanism in the twenty-first century. It argues that to remain relevant, pan-Africanism needs to be informed by the right to development discourse. The article unpacks the notion of pan-Africanism, which aims to free Africa from the shackles of colonialism, imperialism and global inequities that frustrate the development of the continent. It notes that the pan-African objectives of political and economic independence are yet to be fully realised. Similarly, African unity and the enjoyment of human rights, which are central to pan-Africanism, remain illusory.

Therefore, the article calls for a right to development-informed pan-Africanism, which will not only ensure that the international community is held accountable for the violation of Africa's sovereignty over its territory and resources, but will also ensure accountability of national tyrants who hinder the realisation of the pan-African ideals. It finds that focusing exclusively on external factors of subjugation would not free Africa from poverty and underdevelopment. It concludes that tackling both internal factors (fostering constitutionalism and empowering civil society) and external considerations (neo-colonialism and domination or asymmetric relations between Africa and developed countries) as prescribed by the right to development discourse would be significant in securing the relevance of pan-Africanism in the twenty-first century.

102 Mkwandawire (n 93).