

## Bumps on the road: A critique of how Africa got to NEPAD

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### Summary

*This paper explores the notion of 'political independence without economic independence' in the context of the ground-breaking decision made by African states to embrace the neo-liberal economic path to development. This market-based economic agenda is expressed in the New Partnership for Africa's Development (NEPAD). The paper analyses, in a rights-based context, the ideological battle that has been waged between Western powers and African states (through the now defunct Organization of African Unity, and the United Nations) in terms of defining and controlling the agenda for the economic development of Africa. Among others, the work examines the economic policies developed by African and other developing states, such as the New International Economic Order (NIEO); the Right to Development; the Revised Framework for NIEO; the Lagos Plan of Action; the Structural Adjustment Programme; Africa's Programme for Economic Recovery 1986-1990 (APPER, later converted into the United Nations Programme of Action for Africa's Economic Recovery and Development (UN-PAAERD)); the African Charter for Popular Participation and finally, NEPAD. It concludes, among others, that the decision by African leaders to design and adopt NEPAD as its framework for economic development is a further confirmation of the entrenched economic dependence of African states and reveals the extent to which Western states continue to dictate, control and overrule attempts by African states to set their own economic agenda. Also, the implementation of NEPAD in its present shape and form will not necessarily foster a climate of respect for human rights and fundamental freedoms.*

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## 1 Introduction

In 2001, African leaders took the unprecedented step of endorsing and initiating the process of implementing the New Partnership for Africa's Development (NEPAD), as well as setting up a new political-economic institution, the African Union (AU). In contrast to the militant, uncompromising stance initially adopted by African and other developing states in the 1960s at the United Nations (UN) and through the Organization of African Unity (OAU), the means towards attaining economic emancipation for Africa, as represented in the NEPAD document, marks a radical shift in position. While these developments have attracted the attention of scholars, so far no rights-based analysis of the historical trajectory which Africa followed to get to NEPAD has been done. Another missing dimension is a critical review of the forces and factors that have shaped the traversing of this route and their role in the evolution of a human rights-based democratic culture in Africa.

The paper seeks to fill this gap. It first discusses the two principal economic theories that shaped the initial positions that Western states, on the one hand, and African states (as well as the then Soviet Union and other developing countries, particularly from Latin America) took in defining the economic agenda for Africa. This is followed by a step-by-step review of the various economic agendas that Western states sought to impose on African states, Africa's reaction to those policies and the human rights and democracy implications in those policies.

## 2 Modernisation and dependency theories: A brief overview

Two main positions, founded on the modernisation and dependency theories which dominated the world stage between the 1950s and 1970s, have been influential in shaping the economic fortunes of Africa. Similar to the situation in Latin America, these theories dominated discussions on the causes for, and sources of, underdevelopment in Africa. Through the modernisation theory, Western states<sup>1</sup> contended that the obstacles to development in Africa were internal and culture-related, while African leaders laid the blame on external factors. African states articulated this position through their 'Africanised' version of the dependency theory in African socialism.<sup>2</sup>

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<sup>1</sup> 'Western states' is used with particular reference to the United States and the former colonial powers of Western Europe.

<sup>2</sup> African socialism had many different faces, but generally it represented an economic-political framework that independent African leaders formulated as an alternative to capitalism, in order to propel their countries towards economic independence, which did not materialise with the gaining of political independence in the late 1950s and early 1960s. K Nkrumah 'African socialism revisited' paper read at the Africa Seminar held in Cairo; published in *Africa: National and social revolution* (1967).

The modernisation theory evolved in the 1950s. The theory claims to have found the cause for the lack of development in the then colonised and emerging independent states. It postulates that the problem of underdevelopment is internal and related to the cultural values of colonised people or underdeveloped and developing countries. The supposed solution was for these states to struggle to reach the glorious heights of industrialisation and economic development through a process of change that would take them on a progressive linear path.<sup>3</sup>

Opposed to this concept was the Marxist-influenced model of development, *dependencia* or dependency theory. Largely originating in Latin America through the influence of scholars such as Prebisch<sup>4</sup> and Frank,<sup>5</sup> this theory examined the issue of underdevelopment from the opposite end: the external. Proponents of the theory argued that the external dependency of the periphery (the former colonies) leads to an internal structural deformation, which in turn fuels and swells a cycle of external dependency. Thus, underdevelopment was not a phase or process that would ultimately lead to industrialisation, but rather a consequence of capitalism (the external factor). In other words, the historical process of the spread of capitalism (the centre) was responsible for the underdevelopment of the less industrialised world (the periphery). Hence, until a solution was found around capitalism, underdeveloped states could only chase the shadow of industrialisation.

Among the solutions outlined by dependency theorists to the problem of underdevelopment in developing countries was for periphery states to extricate themselves from the clutches of capitalist exploitation and undergo an internal process of industrialisation. This period of inward development was to enable the periphery states to catch up with the West before re-emerging to join the international forum and compete on a more or less equal footing. The focus would therefore be

<sup>3</sup> T Spybey *Social change, development, and dependency: Modernity, colonialism and the development of the West* (1992); W Schelkle et al *Paradigms of social change: Modernisation, development, transformation, evolution* (2000); ME Latham *Modernisation as ideology: American social science and 'nation building' in the Kennedy era* (2000); O Mehmet 'Globalisation as Westernisation' in BS Ghosh (ed) *Contemporary issues in development economics* (2001).

<sup>4</sup> R Prebisch *Towards a dynamic development policy for Latin America* (1963); R Prebisch 'The Latin American periphery in the global system of capitalism' (1981) *UNCLA Review*. See also D Yergin & J Stanislaw *The commanding heights: The battle for the world economy* (2002) for a general review of *dependencia*, 232.

<sup>5</sup> See eg AG Frank *Capitalism and development in Latin America: Historical studies in Chile and Brazil* (1967); AG Frank 'The development of underdevelopment' in JD Cockcroft et al (eds) *Dependence and underdevelopment* (1972); see also S Chew & R Denmark (eds) *The underdevelopment of development: Essays in honor of Andre Gunder Frank* (1996). See S Amin *Delinking: Towards a polycentric world* (1990); G Myrdal *An international economy, problems and prospects* (1956); G Myrdal *Beyond the welfare state; economic planning and its international implications* (1960); AY So *Social change and development, modernisation, dependency and world systems theory* (1990); O Sunkel 'National development policy and external dependence in Latin America' (1969) 6 *The Journal of Development Studies* 23.

on a resort to import-substitution industrialisation as the main means for transforming their economies.<sup>6</sup>

While fundamentally opposed to each other, one factor, however, united the two camps. That is the political framework that was to facilitate the realisation of the lofty goals of industrialisation and development. In both theories, human rights and democracy were considered stumbling blocks to development, and were relegated to the background.<sup>7</sup> Development was to be realised through the adoption of a strong hand to deal with dissent. However, in the case of the modernisation theory, this was done in a more subtle fashion under the banner of promoting 'law and development',<sup>8</sup> camouflaging its true colours. This means of achieving development led to the idealisation and ideologisation of the two economic theories, with consequent negative consequences for human rights and democratic governance. Thus, according to Schuster, '[n]ot only were they seen as an explanation for the process of development and underdevelopment, they also became programmatic for global politics and social strategies'.<sup>9</sup>

### 3 African states at independence

The objective of using the OAU<sup>10</sup> to achieve a better life for African people and to promote respect for human rights received only lip service from African leaders at the time of independence. In reality, the activities of the OAU were overshadowed by the purposes relating to unity, territorial integrity and liberation.<sup>11</sup> The laudable objectives in the OAU Charter therefore served merely as a façade behind which egregious abuses became the order of the day. There was limited reference to human rights in the OAU Charter. Moreover, they were located in contexts which limited their effective enjoyment. One could therefore legitimately observe that the founders of the OAU merely adopted a

<sup>6</sup> T dos Santos 'The structure of dependence' in KT Fann & DC Hodges (eds) *Readings in US imperialism* (1971).

<sup>7</sup> D Apter 'Some economic factors in the political development of the Gold Coast' (1954) 4 *The Journal of Economic History* 409; D Apter *The politics of modernisation* (1965); A Organski *The stages of political development* (1965); V Randal & R Theobald *Political change and underdevelopment: A critical introduction to third world politics* (1985); SP Huntington & JM Nelson *No easy choice: Political participation in developing countries* (1976).

<sup>8</sup> J Gardner *Legal imperialism: American lawyers and foreign aid in Latin America* (1980).

<sup>9</sup> M Schuster 'Modernisation theory and *dependencia*: Why did they fail?' <http://tiss.zdv.uni-tuebingen.de/webroot/sp/barrios/themeA1a.htm> (accessed 31 July 2006).

<sup>10</sup> On this day, 32 newly independent African leaders and representatives signed the Charter; 22 other states joined gradually over time; South Africa became the youngest member in 1994. The OAU was replaced by the AU in 2002.

<sup>11</sup> El-Obaid A El-Obaid & K Appiagyei-Atua 'Human rights in Africa: A new perspective on linking the past to the present' (1996) 41 *McGill Law Journal* 819.

half-hearted attitude towards respect for human rights. Indeed, 'human rights' was mentioned only once in the Preamble<sup>12</sup> and in the Charter itself. Naturally, the attitude of African leaders towards human rights defined the place of democracy in the shaping of the political culture of the newly independent states. For many African countries, the elections that preceded independence were the last to be held until the 1990s. For others, it still remains an illusive dream.<sup>13</sup>

By harping on the rhetoric of development, politicians found a sure way to maintain political legitimacy with the people. As noted by Ake:<sup>14</sup>

For one thing, development was an attractive idea for forging a sense of common cause and for bringing some coherence to the fragmented political system. More important, it could not be abandoned because it was the ideology by which the political elite hoped to survive and to reproduce its domination. Since development was the justification for rallying behind the current leadership, for criminalising political dissent, and for institutionalising the single-party structure, to abandon it would undermine the power strategy of the elite.

Hence there was a leaning towards modernisation theory as a vehicle to attain development. Modernisation theory was premised on, and promised, the delivery of aid, loans and technology transfer which would transform backward economies overnight to be on even keel with the West. According to Esteva, the United States opened the era of development when, on 20 January 1949, President Truman, on assumption of office, declared, amongst others:<sup>15</sup>

We must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas. The old imperialism — exploitation for foreign profit — has no place in our plans. What we envisage is a program of development based on the concepts of democratic fair dealing.

African leaders, attracted by the bait, promised their citizens that they would transform Africa into paradise within a few years of assuming office.

However, the former colonial powers had no new economic agenda to kick-start the economies of African states after years of exploitation. Thus, Ake contends that 'the problem [of Africa] is not so much that

<sup>12</sup> Para 8 of the Preamble to the OAU Charter reads: 'Persuaded that the Charter of the United Nations and the Universal Declaration of Human Rights, to the Principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive cooperation among States.'

<sup>13</sup> M Bratton & N van de Walle *Democratic experiments in Africa: Regime transition in comparative perspective* (1997); H Bienen & J Herbst 'The relationship between political and economic reform in Africa' (1996) 29 *Comparative politics* 23.

<sup>14</sup> C Ake *Democracy and development in Africa* (1996) 7.

<sup>15</sup> Harry S Truman, Inaugural Address, 20 January 1949 in *Documents on American foreign relations* (1967) quoted in G Esteva 'Development' in W Sachs (ed) *The development dictionary: A guide to power as knowledge* (1992) 6.

development has failed as that it was never really on the agenda in the first place'.<sup>16</sup> Any development that occurred was incidental.

The downward spiral of the economies of newly independent states, as well as increased political repression, created a state of demoralisation and agitation in many African countries. In response to this crisis, African leaders sought a scapegoat for their inability to deliver on their promises. The dependency rant, anti-colonial slogans and anti-imperialistic rhetoric became easy routes to political escapism; telling the people that the elite were doing their best to promote their well-being but were frustrated by 'external forces'.

As a result, African socialism was born. African socialists argued, amongst others, that a lack of resources and the slow economic development of the continent were not conducive towards the pursuit of a free market economy. Building on the premise that African societies were communitarian, it was contended that capitalism would produce a class structure that would defeat the goal of pan-Africanism. These and other arguments were used to justify the institutionalisation of a planned and controlled economy and the nationalisation of industries, projects, parastatals, import-substitution measures, the promotion of large-scale industrialisation, the adoption of protectionist measures, and so on.

The dependency theory gained practical expression at international level in the New International Economic Order (NIEO), which was espoused by less industrialised states and the communist bloc at the United Nations (UN).

#### 4 The New International Economic Order

The NIEO was an attempt by less developed states to highlight the inequalities, injustices and imbalances inherent in the economic relations between the North and the South, and to call for radical reforms to redress these inequities.<sup>17</sup> The NIEO was embodied in three main

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<sup>16</sup> Ake (n 14 above) 1. The 'agenda' refers to the one African leaders set for their various countries at the time of independence, and not that of the former colonialists for their colonies. According to Ake, the following issues became the principal preoccupations of African leaders at the dawn of political independence: the struggle over which of the nationalist groups that had joined forces to negotiate an end to colonialism should take over the colossal power structure left by the colonial power; increased competition and conflict among elements of 'civil society' and nationalities and ethnic groups at independence; the tendency to use state power for accumulation of profit by individuals and groups; and alienation of leaders from followers in the post-colonial era.

<sup>17</sup> For a detailed discussion on the subject, see JN Bhagwati (ed) *The new international economic order: The North South debate* (1977); C Murphy *Emergence of the NIEO ideology* (1984); T Waelde 'A requiem for the "New International Economic Order"'. The rise and fall of paradigms in international economic law' (1995) 1-2; *Internet Journal of the Centre for Energy, Petroleum and Mineral Law and Policy*—CEPMLP, <http://www.dundee.ac.uk/cepmlp/journal/html/about.html> (accessed 7 January 2006).

declarations adopted by the UN in 1974: the Declaration on the Establishment of a New International Economic Order, the Programme of Action on the Establishment of a New International Economic Order<sup>18</sup> and the Charter of Economic Rights and Duties of States (CERDS).<sup>19</sup>

Building on the twin concepts of sovereignty and territorial integrity, the NIEO conceived a '*dirigiste*' international economic system, working in favour of states characterised by national and regional economic planning.<sup>20</sup> Multinational companies were identified as exploiting and perpetuating developing states in a subordinate stage of underdevelopment. They were also seen as challenging the concept of sovereignty held dear by developing states, hence the policy of nationalisation of industries that was adopted.

The NIEO affirmed and strengthened common article 1 of the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR) regarding the right of peoples to freely dispose of their 'natural wealth and resources'. It modified this right in CERDS to include the right to 'full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities'.<sup>21</sup>

Apart from the above, the NIEO identified traditional concepts of international law as being supportive of capitalism, and responsible for provoking the injustices of the international economic order. These international law concepts included the principle regarding the protection of alien property against nationalisation (through application of the Hull doctrine of paying 'prompt, adequate and effective compensation'<sup>22</sup> and international arbitration to resolve international commercial disputes) and the principle of commercial freedom<sup>23</sup> as handmaidens of this exploitative mechanism.

Thus, in an attempt to change the lopsided rules, article 2(2) of CERDS was proposed. It reads as follows:<sup>24</sup>

- 2 Each State has the right:
  - (a) to regulate and exercise authority over foreign investment within its

<sup>18</sup> Proclaimed by the General Assembly in its Resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974.

<sup>19</sup> Adopted by the General Assembly in its Resolution 3281 (XXIX) of 12 December 1974.

<sup>20</sup> Waelde (n 17 above) 3.

<sup>21</sup> Art 2(1) CERDS.

<sup>22</sup> See eg the *Norwegian Ships* case (1921) UNRIIAA I 307 338, *Arabian-American Oil Co v Saudi Arabia* (1958) 27 *International Law Reports*; and *Texaco Overseas Petroleum Co v Libyan Arab Republic* (1979) 53 *International Law Reports* 389.

<sup>23</sup> The right of multinationals to invest, disinvest, repatriate profits, enter into binding contracts, etc.

<sup>24</sup> It is equally important to note that it was to offset the Hugo doctrine that developing states fought against the inclusion of the right to property in both international covenants; contrasted with its incorporation in the Universal Declaration which was drafted with virtually no contribution from developing states. A Cassese *International law in a divided world* (1989).

- national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;
- (b) to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies;
  - (c) to nationalise, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalising State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Other demands embodied in the NIEO included increased exports from the developing to the industrialised world; transfers of capital and technology to the developing world; and provisions to increase aid and to change the international monetary system.<sup>25</sup>

Western reaction to the NIEO was swift and steadfast. Led by the US, Western opposition to the NIEO resulted in the 7th Special Session of the UN General Assembly in September 1975. This resulted in UN General Assembly Resolution 3362 in which the US noted detailed reservations. The US proposal ensured that the existing economic system was maintained while making room for the provision of development assistance by way of increased trade liberalisation, transfer of aid and technology, and so on. Ultimately, when it came to voting on the Resolution in 1976, the US and West Germany voted against the NIEO.<sup>26</sup>

Critics of the NIEO are right in pointing to the massive borrowings that developing country governments engaged in to support state projects. These did not contribute to the development of national wealth, but to waste.<sup>27</sup> Indeed, the NIEO was in some respects a set of demands, without any real economic foundation for a deal with the West.

However, these are not enough to justify a dismissal of the analysis done by NIEO which exposed the injustices and imbalances in the international economy. There is some justification for criticism of the role of international law in the perpetration of economic injustice. It is

<sup>25</sup> G Verges *The New International Economic Order legal debate* (1983).

<sup>26</sup> For a detailed analysis and critique of anti-US moves to torpedo the NIEO, see M Hudson *Global fracture: The New International Economic Order* (1977).

<sup>27</sup> A Adedeji 'From the Lagos Plan of Action to the New Partnership for African Development and the Final Act of Lagos to the Constitutive Act: Wither Africa?' Keynote address prepared for presentation at the African Forum for Envisioning Africa, held in Nairobi, Kenya 26-29 April 2002 <http://www.worldsummit2002.org/texts/AdebayoAdedeji2.pdf> (accessed 30 June 2006) 14.



held that aspects of international law were used to perpetrate abuses and injustices against 'non-civilised' states. In that respect, the NIEO rightly exposed and challenged such international concepts as the payment of 'full, prompt and adequate' compensation.

From a rights perspective, the major criticism against the NIEO is that governments of developing countries overlooked the internal factors that favoured exploitation by the local ruling elite and impeded the development of their people. Much as the international system needed structural modifications, the internal issues relating to human rights and democracy could not be ruled out of the development question. Thus, the problems of the developing world could not simply be resolved through the NIEO. Also, even if the lofty goals imagined in the NIEO could have been attained, there is no guarantee that these gains would have been shared equitably among the citizenry, absent a thriving human rights regime. In sum, the diagnostics were generally right, but the solutions were largely faulty.

## 5 Post-NIEO African economic policies and Western reactions

The NIEO served as the basis for defining development policies and programmes formulated by African states. Thus, these policies contained half-hearted, unbalanced Western-biased analyses of the economic morass Africa was engulfed in.

Yet, it is significant to note that such policies and programmes still posed 'major threats' to capitalist interests.<sup>28</sup> Therefore, in response to each programme designed by African states, a counter-policy was developed by the West. Thus, the stage was set for a battle of policy and counter-policy formulations. Yet still, what was common to both camps was the lack of, or at best cosmetic attention to, human rights, civil society and democratic principles.

The NIEO came into being at the time of the second UN development decade.<sup>29</sup> This decade had resorted to the basic needs approach, after the failures of the growth-oriented approach which characterised the first decade.<sup>30</sup> In reaction to the NIEO, Western states re-introduced the growth-oriented approach to development plus the negative conditionality regime in aid disbursement to the developing world.<sup>31</sup> While denying aid to egregious human rights violating regimes was seen as a

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<sup>28</sup> While developing countries saw the NIEO as legally binding, the industrialised world saw it differently. See Verges (n 25 above) 42-43.

<sup>29</sup> 1970 to 1980.

<sup>30</sup> 1960 to 1970. See CIDA *Strategy for international development corporation 1975-1980* (1975).

<sup>31</sup> See D Marantis 'Human rights, democracy and development: The European Community model' (1994) 7 *Harvard Human Rights Journal* 1.

step in the right direction, it was in reality a face-saving measure by Western states to be seen to be concerned about human rights. Aid and soft loans continued to pour in to support dictatorial regimes. In reality, the negative conditionality regime was used as a strategy to shift the blame for human rights abuses and the lack of development to African leaders.

The externalisation of the sources of Africa's problems continued in each policy and counter-policy formulation by African and Western leaders, until Africa began to admit that some internal factors were responsible for its state of underdevelopment and made an almost complete capitulation in the new millennium through NEPAD.

### 5.1 The right to development

While the NIEO debate continued, in 1972 a prominent African jurist, Keba M'Baye of Senegal, initiated the process towards the postulation of the right to development. During his thought-provoking lecture at the International Human Rights Institute in Strasbourg, he remarked that 'every man has a right to live and a right to live better'.<sup>32</sup>

Set in the emerging framework of the NIEO, the right to development was initially proposed as a normative concept by M'Baye. However, the right to development captured the attention of developing states at the UN. They sought legal justification for it in the UN Charter, the Universal Declaration on Human Rights (Universal Declaration) and CCPR and CESC. For example, reference was made to articles 1(3),<sup>33</sup> 55<sup>34</sup> and 56<sup>35</sup> of the UN Charter, and article 28<sup>36</sup> of the Universal Declaration. The UN High Commissioner for Human Rights, in supporting this relationship between rights and development, states:<sup>37</sup>

The Universal Declaration on Human Rights contains a number of elements

<sup>32</sup> K M'Baye 'Le Droit au Developpement comme un Droit de l'Homme' (1972) 5 *Revue des Droits de l'Homme* 503.

<sup>33</sup> 'To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'

<sup>34</sup> 'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'

<sup>35</sup> 'All Members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55.'

<sup>36</sup> 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.'

<sup>37</sup> <http://www.unhchr.ch/development/right-01.html> (accessed 30 June 2006).

that became central to the international community's understanding of the right to development. It attaches importance, for example, to the promotion of social progress and better standards of life and recognizes the right to non-discrimination, the right to participate in public affairs and the right to an adequate standard of living. It also contains everyone's entitlement to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

Through informal discussions, working groups and the like, the right to development was finally formulated and came before the UN General Assembly for a vote in 1981. Western opposition to the right to development was vehement. Led by the US, Western states feared that the right was a means for developing states to bolster their claim and resuscitate attempts to obtain full recognition and implementation of the NIEO. US opposition ensured that the Declaration of the Right to Development, adopted by the General Assembly on 4 December 1986, did not create 'any entitlement to a transfer of resources; and was a matter of sovereign decision of donor countries and could not be subject to binding rules under the guise of advancing every human being's RTD'.<sup>38</sup> According to Marks, US rejection of the right to development were based on the underlying political economy, the relation of the right to economic, social and cultural rights, conceptual confusion, conflicts of jurisdiction, and general resistance to international regulation.<sup>39</sup>

It was not until the Vienna World Conference on Human Rights in 1993 that the world achieved consensus and agreed to recognise the right to development as 'a universal and inalienable right and integral part of fundamental human rights'.<sup>40</sup>

It is important to note that the right to development was first approved by African states. The concept was incorporated in the African Charter on Human and Peoples' Rights (African Charter) in article 22(2).<sup>41</sup>

- 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.

The African Charter was adopted by the OAU in June 1981 and came

<sup>38</sup> S Marks 'The human right to development: Between rhetoric and reality' (2004) 17 *Harvard Human Rights Journal* 138 144.

<sup>39</sup> As above.

<sup>40</sup> Para 10 of the Vienna Declaration and Programme of Action A/CONF 157/23 12 July 1993.

<sup>41</sup> Also, part of the Preamble reads: 'Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.'

into force in October 1986, while the UN General Assembly adopted the right to development two months later.

## 5.2 The Revised Framework for the NIEO

In response to criticism, and to tailor the NIEO to the specific needs of Africans, the Revised Framework of Principles for the Implementation of the New International Economic Order in Africa (Revised Framework) was proposed by the Economic Commission for Africa (ECA)<sup>42</sup> in 1976. The Revised Framework was built on four fundamental principles as the way towards attaining credible and appropriate development for Africa: self-reliance, self-sustainment, democratisation of the development process<sup>43</sup> and a fair and just distribution of the benefits of development through the progressive eradication of unemployment and mass poverty.<sup>44</sup> The Revised Framework fed into the Monrovia Strategy and the Lagos Plan of Action for the Economic Development of Africa (1980-2000) and the Final Act of Lagos. It is important to note that the Revised Framework incorporated elements of democratisation and a welfare approach to development, which form the basis of our analysis below.

## 5.3 The Lagos Plan of Action (LPA) and structural adjustment

The LPA and the Final Act of Lagos were initiated by the ECA to revise the development paradigm and strategies pursued since the time of independence in the 1960s. The Preamble to the LPA made reference to the fact that '[t]he effect of unfulfilled promises of global development strategies has been more sharply felt in Africa than in the other continents of the world'. It admitted that

rather than result in an improvement in the economic situation of the continent, successive strategies have made it stagnate and become more susceptible than other regions to the economic and social crises suffered by the industrialised countries.

Therefore it 'resolved to adopt a far-reaching regional approach based primarily on collective self-reliance'.<sup>45</sup>

Paragraph 2 of the Preamble recalls the adoption in July 1979<sup>46</sup> of the

<sup>42</sup> ECA is the regional arm of the UN, mandated to support the economic and social development of Africa.

<sup>43</sup> It is important to note, however, that 'democratisation' here is not democratisation of the political framework, but of the development process.

<sup>44</sup> Adedeji (n 27 above) 7.

<sup>45</sup> Para 1 to Preamble, Lagos Plan of Action for the Economic Development of Africa, 1980-2000 [http://www.uneca.org/itca/ariportal/docs/lagos\\_plan.PDF](http://www.uneca.org/itca/ariportal/docs/lagos_plan.PDF) (accessed 8 May 2003). Adopted by the OAU Assembly in 1980.

<sup>46</sup> During the 16th ordinary session of the OAU in Monrovia, Liberia.

Monrovia Declaration of Commitment<sup>47</sup> with the preceding paragraphs highlighting some of the salient features of the Declaration. They include the '[n]eed to take action to provide the political support necessary for the success of measures to achieve the goals of rapid self-reliance and self-sustaining development and economic growth'.

Among individual and collective commitments were promoting 'economic integration of the African region';<sup>48</sup> establishing 'national, sub-regional and regional institutions which will facilitate the attainment of objectives of self-reliance and self-sustainment';<sup>49</sup> human resource development through the elimination of illiteracy; and ensuring that development policies reflect Africa's socio-cultural values adequately.

In the view of Adedeji, the cause for this turn of events was 'Africa's persistent failure to decolonise its political economy . . . [b]y trying to march into the future 'hand-in-hand with its colonial, monocultural, low-productivity and excessively dependent and open economy, Africa ensured no dignified future for itself'.<sup>50</sup> As a derivative of the Revised Framework, the LPA is argued as having been premised on the Revised Framework's four principles<sup>51</sup> and the attainment of regional integration by 2000. In essence, the LPA, continuing in the mode of *dependencia* framework, prescribed the withdrawal of African countries from the world economy.

Again, following along the lines of *dependencia*, in the 104-page document there is no mention of 'human rights', 'democracy' or 'rule of law', apart from references to 'rights' in relation to women.<sup>52</sup> It is stated thus:<sup>53</sup>

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<sup>47</sup> Full title Monrovia Declaration of Commitment of the Heads of State and Government of the OAU on the Guidelines and Measures for National and Collective Self-reliance in Economic and Social Development for the Establishment of a New International Economic Order.

<sup>48</sup> Para 3(ii).

<sup>49</sup> Para 3(iii).

<sup>50</sup> Adedeji (n 27 above) 6.

<sup>51</sup> Self-reliance, self-sustainment, democratisation of the development process and equitable distribution.

<sup>52</sup> See 2 paras under ch XII on 'Women and development'.

<sup>53</sup> Para 325, 92 & 93. At the same session during which the Monrovia Declaration was made, the Assembly of Heads of State and Government called on the OAU Secretary-General to organise a meeting of experts to prepare a preliminary draft for an 'African Charter on Human and Peoples' Rights'. What the Charter came up with on the rights of women was a paragraph in art 18(2). The inclusion of women in the document was a reflection of the Women in Development paradigm, which has been criticised as being entrenched in the World Bank policy of exclusion of women in the development process. See eg N Visvanatan *The women, gender and development reader* (1994). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted by the 2nd ordinary session of the Assembly of the AU in Maputo in 2003; [http://www.achpr.org/english/\\_info/women\\_en.html](http://www.achpr.org/english/_info/women_en.html) (accessed 30 June 2006).

- (c) One of the reasons why many women shy away from enforcing their rights is fear of intricacies and expenses involved. Free legal aid centres, staffed by lawyers who are committed to the principle of equality between the sexes, should be established in low-income urban and rural areas. These should include free consultations and discussions. Such offices should inform women of their rights.
- ...
- (e) Publication of rights and duties of both men and women in society and as husbands, wives, fathers, mothers at home. This should be done through campaigns in the mass media as well as through wide circulation of booklets on these issues.

The democratisation process in the LPA generally was limited to participation, in turn reflected in the following objectives/processes expressed in the LPA: physical infrastructural development and the improvement of social facilities to be undertaken through voluntary self-help participation;<sup>54</sup> the full participation of all segments of the population in gainful and productive employment; and provision of all essential services for the enrichment of the life of the community and the mobilisation of the masses for the development of public works and community services, and so on.<sup>55</sup>

These forms of participation are categorised as 'defective' participation. They are among those developed under the modernisation theory to promote the concept of community development. They include the 'ceremonial' or 'supportive',<sup>56</sup> the 'pseudo',<sup>57</sup> 'the unreal',<sup>58</sup> or 'partial' types.<sup>59</sup> Participation under the modernisation theory typically involved the management of a community development project by government officials and the insertion of citizens into the projects as employees or volunteers.<sup>60</sup>

The question arises as to the way in which the development process could be democratised when a state was not democratic, civil society was not functional and one-party dictatorships were the order of the day. To own the development agenda, people have to be able to enjoy their right to freedom of expression, both at the community and national levels. It is thus important to note that, in the entire document's analysis of the causes and effects of Africa's underdevelopment, no reference was made to human rights violations, including indigenous rights abuses and the lack of respect for democratic principles and

<sup>54</sup> With respect to food production, para 29.

<sup>55</sup> Para 93.

<sup>56</sup> Where citizens 'take part' by expressing support for the government marching in parades. S Vettivel *Participation and sustainable development: Theory and practice in government and NGOs* (1993) 15.

<sup>57</sup> The situation in which members are induced to agree to decisions already taken.

<sup>58</sup> Where participation is a mere smokescreen due to the decisional outcome being structurally predetermined.

<sup>59</sup> The process by which the final power to decide rests with one party only.

<sup>60</sup> D d'Abreo *From development worker to activist: A case study in participatory training* (1983) 164.

the rule of law as major factors impeding development in Africa; nor to human rights, democracy and rule of law as factors necessary in the promotion and sustaining of development. Adedeji and others who have expressed much confidence in the LPA overlooked the political/human rights angle to development. Ake contends rightly that:<sup>61</sup>

The crisis is, to my mind, primarily a crisis of politics, from which the economic crisis derives. We do not see it as such because we have always regarded development as an autonomous process not significantly mediated by cultural or political factors . . . Development always occurs in the context of a state system and a political leadership committed to development.

Full and effective participation should include mobilising the people, involving them in the consultation, planning and decision-making processes regarding what project to undertake and how to go about it, implementation and evaluation of the project, and the realisation, equitable sharing and protection of the benefits from the projects.

Another significant borrowing of the LPA from the NIEO is the blame it lays on an external factor — Western imperialism. Paragraph 6 of the LPA states that 'Africa, despite all efforts made by its leaders, remains the least developed continent'. The economic woes of the continent were attributed to Africa's position as a 'victim of settler exploitation arising from colonialism, racism and apartheid'. It was asserted in the document that this process of exploitation was inherited from the colonial period and continued through 'the past two decades [and was] carried out through neo-colonialist external forces which seek to influence the economic policies and directions of African states'.<sup>62</sup> In this document it was stated further that this 'colonial and racist domination and exploitation' have resulted in 'political constraints on the development of our continent'.<sup>63</sup>

However, African states cannot escape blame for internal factors, such as egregious violations of human rights, exploitation of ethnic divisions and their escalation into inter-ethnic conflicts, mismanagement, corruption, over-bureaucratisation, political instability, political cronyism, militarisation of politics, and so on.

Unique and indicating a serious sign of attempts by African states to put together an economic agenda, was the call for self-reliance and self-sustainment. However, this was mere rhetoric, considering the fact that the LPA, like the NIEO, was to be built on technology, aid and technological assistance to Africa on Africa's own terms. This approach was tantamount to rejecting modernisation theory with one hand and receiving it with the other. Thus, paragraph 275 of the document states:<sup>64</sup>

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<sup>61</sup> Ake (n 14 above) 72.

<sup>62</sup> Para 6.

<sup>63</sup> Para 11.

<sup>64</sup> LPA.

The summit therefore endorses the following recommendations:

- (a) that the volume of Official Development Assistance (ODA) to African least developed countries should immediately increase substantially, in real terms, so that these countries can realise economic and social changes and make real progress in the present decade. In that context, donors should:
  - (i) make commitments to give financial and technical assistance to individual least developed African countries on a continuous and automatic basis and on highly concessional terms;
  - (ii) streamline procedures of aid in order to reduce delays in approving projects and in disbursing funds;
  - (iii) adopt criteria for project evaluation and selection based on the conditions and needs of African least developed countries.

In spite of its flaws such as not linking human rights and development, the LPA represented an improvement over the NIEO and the Revised Framework. At least it recognised the importance of participation, though limited to implementation. Yet, in spite of its inherent weaknesses, the LPA was opposed, and rejected by the World Bank and the International Monetary Fund (IMF).<sup>65</sup>

#### 5.4 The classical Structural Adjustment Programme

In place of the LPA, the Structural Adjustment Programme (SAP) was proposed and foisted on Africa and other developing countries by the World Bank and the IMF. In diagnosing the economic morass that most developing countries found themselves in, the IMF came to the realisation in the late 1970s — after the granting of huge loans for ideological reasons — that the less industrialised states were no longer in a position to remedy their balance of payment problems through short-term loans. In an attempt to resolve this crisis, the World Bank and the IMF devised conditionality clauses in loan granting which culminated in the designation of SAPs in the economies of African states.<sup>66</sup>

As the modernisation theory dictates, the practical application of classical SAPs under the direction of the World Bank and the IMF prompted serious abuses of human rights in Africa in order to pave the way for the liberal economic reforms to be implemented.

#### 5.5 Africa's Programme for Economic Recovery/United Nations Programme of Action for Africa's Economic Recovery and Development and neo-Structural Adjustment Programme

In response to the first stage of the SAP, African states designed Africa's Programme for Economic Recovery 1986-1990 (APPER), later converted into the United Nations Programme of Action for Africa's Economic

<sup>65</sup> Adedeji (n 27 above).

<sup>66</sup> A Steele 'The past and future of the World Bank and the International Monetary Fund' (1995) 11 *International Insights* 27.



Recovery and Development (UN-PAAERD).<sup>67</sup> The basic tenets of the UN-PAAERD were an inward-looking development strategy based on collective self-reliance, requiring the existence of an alternative model of world economic order. The state and public sectors would be the main economic actors. Again, the programme called for the participation of African peoples, with special mention made of women, the youth and the private sector. The self-reliant economy envisaged would produce mainly for the national and regional markets, finally resulting in the effective transformation of African economies. The implementation of the programme seemed to favour a redistributive system and governmental intervention as a convenient and indirect attempt to maintain some elements of the dependency theory.

In any case, the prevailing capitalist material capabilities, together with the world economy and globalisation, were able to prevail over Africa's attempts to adopt alternative policies towards the attainment of sustainable development. As contended by Ratsinbaharison:<sup>68</sup>

Indeed, in order to prosper, each country must produce for the world market, promote domestic and foreign investment, welcome the implantation of MNCs, adopt the latest and highest technologies (the information technology, for example), and participate in the globalisation process. Failing to follow these prescriptions may automatically lead to marginalisation from the world economy, which may generate disastrous consequences for any country in the world. Marginalisation may deprive the country of the hard currencies it needs to purchase any kind of goods it cannot produce. Marginalisation may also keep the country, in the long run, in a state of total backwardness.

Thus, to 'help' African states find their feet and integrate into the world economy in order to 'enjoy its benefits', the neo-SAP was introduced. The neo-SAP was also meant to give a human face<sup>69</sup> to the orthodox SAP, whose implementation went hand in hand with rights abuse and corruption. An additional goal for the neo-SAP was to pave the way for the institutionalisation of the 'new international order' or the post-Cold War order.<sup>70</sup> As noted by Adedeji, '[t]heir objectives were less to help African countries than to "discipline" them, and above all, reorient their economic policies to the market economy model'.<sup>71</sup>

<sup>67</sup> S-13/2 of 1 June 1986. UN Programme of Action for Africa's Economic Recovery and Development (UNPAAERD) called for \$82,5 billion to be raised through African resource mobilisation and a further \$46 billion by external actors.

<sup>68</sup> A Ratsinbaharison 'The United Nations and development: Explaining the failure of the UN Development Programs for Africa in the 1980s and 1990s' <http://www.angelfire.com/mi/ratsimbah/chapter5.htm> (accessed 28 February 2005).

<sup>69</sup> And such related programmes as the Programme of Action to Mitigate the Social Cost of Adjustment (PAMSCAD).

<sup>70</sup> Steele (n 65 above).

<sup>71</sup> *African alternative framework of structural adjustment programs for socio-economic recovery and transformation* 6 [http://www.uneca.org/eca\\_resources/Publications/ESPD/old/aaf\\_sap.pdf](http://www.uneca.org/eca_resources/Publications/ESPD/old/aaf_sap.pdf) (accessed 31 December 2005).

The implementation of the neo-SAP equally entailed untold hardships for Africans:<sup>72</sup>

Instead, SAPs simply led to the postponement or total abandonment of development programs . . . As the 1980s drew to a close, it became clear that economic turnaround had not occurred in almost all of the countries that had tried SAPs . . . In several instances, the installation of structural adjustment programs were met with popular discontent, riots and political instability . . . By imposing the terms of adjustment programs from the outside, the SAPs undercut the development of national leadership and indigenous economic management capabilities . . . The package of fiscal reforms spelled out a tight austerity policy bringing pain and suffering for the people and political risks for governments.

## 5.6 The African Alternative Framework to SAP

In response to the SAP, the Africa Alternative Framework to Structural Adjustment Programs for Socio-Economic Recovery and Transformation (AAF-SAP) was drawn up.<sup>73</sup> While still relating to, and drawing on, the recommendations for Africa's recovery noted in the LPA, the AAF-SAP identified two crucial components for Africa's recovery which had been missing in all previous African alternative programmes. These are the social and political circumstances Africa finds itself in. Thus, the report asserts:<sup>74</sup>

The social structures also fundamentally contribute to Africa's persistent crisis. First, Africa has very distinct and deeply rooted types of social differentiations. These relate to linguistic affinities, gender, ancestral origins or blood relations such as those that result in ethnic groups or nationalities or clans. This has many implications on social mobilisation for development; on efficient and objective economic management; on the proper functioning of national institutions; and, on political stability in general.

Regarding political conditions, the report had this to say:<sup>75</sup>

The political environment is also a major cause of African problems. Basic rights, individual freedom and democratic participation are often lacking in African countries. Yet, without them people feel alienated and are unable to devote their energies to development and productivity. Indeed, in a place where injustices are the norm rather than the exceptions, it is almost impossible to expect a momentum of progress. What you often find is disillusion, lethargy, repression, civil strife and an environment where fear and man's inhumanity against man prevail. Given such circumstances, people do not work hard or produce optimally and, naturally if people do not work hard, the pace of development, if any, is at snail's speed.

<sup>72</sup> As above.

<sup>73</sup> The project originated from studies by Adedeji in July 1989. It was accepted at the UN as a 'basis for constructive dialogue' in November 1989. Only the US voted against it. ECA, Addis Ababa 1991.

<sup>74</sup> *African alternative framework* (n 71 above) 2.

<sup>75</sup> As above.

### 5.7 The African Charter for Popular Participation/United Nations New Agenda for the Development of Africa and globalisation

The AAF-SAP was followed, in 1990, by the African Charter for Popular Participation (Charter)<sup>76</sup> and the United Nations New Agenda for the Development of Africa (UN-NADAF) in 1991.<sup>77</sup> Both documents made significant inroads. The Charter, for instance, identified factors such as the over-centralisation of power in the state and impediments to the effective participation of people in development as having contributed to the curtailing, under-utilisation and under-valuing of creativity. It founded the basis for Africa's development on the AAF-SAP and on endogenous, people-centred development.

UN-NADAF, for its part, recognised the need to, and committed itself to, 'press ahead with the democratisation of development and the full implementation of' the African Charter on Human and Peoples' Rights, the African Charter for Popular Participation and the OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World.<sup>78</sup>

Yet, the UN-NADAF still called for an inward-looking approach to development for Africa. It proposed, among others, bypassing the World Bank and the IMF, and adopting the UN as its principal source of funding and relying on the UN to play the role of the Fund and Bank in maintaining and supervising the NIEO.<sup>79</sup>

However, about this time, with the fall of communism and the end of the Cold War, globalisation had begun to bloom. No wonder these programmes were also jettisoned. Again, as observed by Ratsimbaharison:

In sum, the liberal ideas of the late 20th century constrain all international actors to respect the basic principles of capitalism and democracy. The constraints imposed by these liberal ideas can also explain the rejection and failure of the two UN development programs [the UN-PAAERD and UN-NADAF], which promoted ideas related to collectivism and substantial government intervention in the economy. Furthermore, the Bretton Woods institutions, as the most powerful institutions of the late 20th century world economic order, also imposed constraints, which contributed to the failure of the two UN development programs.

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<sup>76</sup> The African Charter for Popular Participation in Development and Transformation was adopted in Arusha, Tanzania, in February 1990, at the end of the International Conference on Popular Participation in the Recovery and Development Process in Africa. The Charter emerged from suggestions by non-governmental organisations to the 1988 mid-term review of the UN Programme of Action for African Economic Recovery and Development, 1986-1990 (UN-PAAERD).

<sup>77</sup> GA Res 46/151.

<sup>78</sup> Para 13.

<sup>79</sup> Ratsimbaharison (n 68 above) 15.

## 6 The African Economic Community/The African Union

As noted in the LPA, the commitments made in the Monrovia Declaration 'will lead to the creation, at the national, sub-regional and regional levels, of a dynamic and interdependent African economy and will thereby pave the way for the eventual establishment of an African Common Market leading to an African Economic Community'.<sup>80</sup>

The commitments made in the Lagos Plan of Action and the Final Act of Lagos resulted in the Treaty Establishing the African Economic Community (AEC), which was adopted in Abuja, Nigeria, in June 1991 during the 27th ordinary session of the OAU Heads of State and Government (AEC or Abuja Treaty). The AEC Treaty came into force in May 1994, following the deposit of the required number of ratifications. This process culminated in changing the official name of the OAU to OAU/AEC.

Article 6 of the Treaty sets out the implementation of the Treaty through a gradual process covering six stages within a 34-year time frame, by which time the AEC is supposed to be in full bloom, that is by 2028. The regional economic communities (RECs) would serve as the building blocks of the AEC.<sup>81</sup>

The AEC represent perhaps the most comprehensive and far-reaching attempt by African states to get their act together. The AEC, however, has not been without its implementation difficulties. Among the concerns raised by Babarinde are the numerical size of the AEC, the nature of the African leadership, the disparate economies of member states, entrenched national traditions which are an aberration to democracy, human rights and minority rights protection, and the short time frame envisaged to bring the AEC to fruition.<sup>82</sup>

While African leaders continued to review the externalisation of the sources of the continent's woes, the West never did. Their view was, and remains, that the problem is solely with Africa. Thus, under globalisation, Western states sought to impose, with full force, their ideas of how the world political and economic order ought to be run. Thus, as expected, the AEC did not meet the expectations of Western states either. It became the next victim to undergo revision or relegation to the background. African states felt they had no choice but to shed their

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<sup>80</sup> Kinshasa Declaration by the Council of Ministers in December 1976 concerning the ultimate establishment of an African Economic Community.

<sup>81</sup> Examples of existing RECs are the Arab Maghreb Union (AMU); Economic Community of Central African States (ECCAS); Common Market of Eastern and Southern Africa (COMESA); Southern African Development Community (SADC); and Economic Community of West African States (ECOWAS).

<sup>82</sup> OA Babarinde 'Analysing the proposed African Economic Community: Lessons from the experience of the European Union' Paper prepared for the Third ECSA-World Conference on The European Union in a Changing World, Brussels, Belgium, 19-20 September 1996 [http://www.ecsanet.org/conferences/ecsa\\_world3/babarinde.htm](http://www.ecsanet.org/conferences/ecsa_world3/babarinde.htm) (accessed 9 May 2003) 5.

'socialist/*dependencia* past' which was still reflected in the OAU, and to fully embrace the neo-liberal capital economic model of development embodied in NEPAD.

Consequently, an extraordinary session (the 4th) of the OAU was convened and held in Libya in September 1999. There, African Heads of State, based on their 'conviction that our continental Organisation needs to be revitalised in order to be able to play a more active role and continue to be relevant to the needs of our peoples and responsive to the demands of the prevailing circumstances',<sup>83</sup> decided to '[e]stablish an African Union, in conformity with the ultimate objectives of the Charter of our continental Organisation and the provisions of the Treaty establishing the African Economic Community'.<sup>84</sup> It was agreed that the 34-year transitional period, agreed on in Abuja towards the ultimate establishment of an AEC, was too long. Therefore, the session decided to 'accelerate the process of implementing the [Abuja] Treaty' by 'shorten[ing] the implementation periods of the Abuja Treaty', and to ensure 'the speedy establishment' of the institutions provided for in the Abuja Treaty.<sup>85</sup> This was to be followed by the drafting of the Constitutive Act of the African Union. The AU Constitutive Act came into effect on 26 May 2001,<sup>86</sup> and became operative in July 2002 during the 76th ordinary session of the OAU in Durban, South Africa.

NEPAD is the brain child and the handmaiden of the AU.<sup>87</sup> It is described as<sup>88</sup>

[a] pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.

Central to NEPAD is the African Peer Review Mechanism (APRM), a self-monitoring mechanism which governments of African states agree to accede to voluntarily. It seeks to help African states improve, among others, governance, the rule of law, democracy and a respect for human rights.

<sup>83</sup> Para 6 Sirte Declaration. The paragraph concluded: 'We are also determined to eliminate the scourge of conflicts, which constitutes a major impediment to the implementation of our development and integration agenda.'

<sup>84</sup> Para 8(i).

<sup>85</sup> Para 8(ii); such as the African Central Bank, the African Monetary Union, the African Court of Justice and, in particular, the Pan-African Parliament.

<sup>86</sup> Thirty days after ratification by the 36th state, Nigeria, upon depositing its instruments of ratification.

<sup>87</sup> NEPAD is a new vision and strategic plan designed to address the current challenges facing the African continent. Its priorities include establishing conditions for sustainable development by ensuring peace and security; democracy and good, political, economic and corporate governance; regional co-operation and integration; capacity building. The 37th Summit of the OAU in July 2001 formally adopted the strategic framework document.

<sup>88</sup> Para 1 of the NEPAD Document, Introduction.

Like the Lagos Plan of Action, NEPAD contrasts Africa and the developed world by highlighting the 'poverty and backwardness of Africa [which] stand in stark contrast to the prosperity of the developed world'.<sup>89</sup> However, under NEPAD one sees a complete change in direction.<sup>90</sup> For the first time, African leaders admit that the economic malaise has an internal element to it, that<sup>91</sup>

[p]ost-colonial Africa inherited weak states and dysfunctional economies, which were further aggravated by poor leadership, corruption and bad governance in many countries. These two factors, together with the divisions caused by the Cold War, hampered the development of accountable governments across the continent.

Also, unlike previous development programmes, which were inward-looking and based on self-reliance and self-sustainment, NEPAD calls for partnership with the Western world. Again, NEPAD embraces democracy and, to some extent, human rights. The human rights dimension, unlike before, is skewed in favour of civil and political rights while sidelining economic, social and cultural rights.

It is not in doubt that the NEPAD concept borrows heavily from Western neo-liberal economic theories on development. The NEPAD document therefore reflects pronouncements of Western states, theories and policy papers presented by neo-liberal Western scholars, various pieces of legislation passed by Western states, UN declarations and the like. For example, one could discern from the 'Washington Consensus' position on market reforms, which was proposed by John Williamson in 1989<sup>92</sup> and included a list of 10 policy recommendations as the gateway to the attainment of market-economies for the developing world:<sup>93</sup>

Fiscal discipline, redirect public expenditure, tax reform, financial liberalisation, adopt a single, competitive exchange rate, trade liberalisation, eliminate barriers to foreign direct investment, privatise state owned enterprises, deregulate market entry and competition, ensure secure property rights.

One may also refer to America's African Growth and Opportunity Act

<sup>89</sup> Para 2 of the NEPAD Document.

<sup>90</sup> The document itself admits in para 59 that '[t]he New Partnership for Africa's Development differs in its approach and strategy from all previous plans and initiatives in support of Africa's development, although the problems to be addressed remain largely the same'.

<sup>91</sup> Also, read para 42: 'The New Partnership for Africa's Development recognises that there have been attempts in the past to set out continent-wide development programmes. For a variety of reasons, both internal and external, including questionable leadership and ownership by Africans themselves, these have been less than successful. However, there is today a new set of circumstances, which lend themselves to integrated practical implementation.'

<sup>92</sup> J Williamson (ed) *Latin American adjustment: How much has happened* (1990).

<sup>93</sup> M Naim 'Fads and fashion in economic reforms: Washington consensus or Washington confusion?' (1999) *Foreign Policy Magazine*. Eg, compare with para 154 of the NEPAD Document: 'The first priority is to address investors' perception of Africa as a "high risk" continent, especially with regard to security of property rights, regulatory framework and markets.'

(AGOA), signed into law on 18 May 2000 by President Clinton.<sup>94</sup> The Act offers tangible incentives for African countries 'to continue their efforts to open their economies and build free markets'. The Act sets out criteria that are supposed to be met by African states or to show that they are making continual progress toward meeting, in order to receive the benefits of AGOA. These are market-based economies; the rule of law and political pluralism; the elimination of barriers to US trade and investment; the protection of intellectual property; efforts to combat corruption; policies to reduce poverty; increasing availability of health care and educational opportunities; the protection of human rights and worker rights; and the elimination of certain child labour practices. President George Bush also signed amendments to AGOA, also known as AGOA II, into law on 6 August 2002.<sup>95</sup>

Also, in February 2003, to affirm the US position, US President George Bush unveiled his Millennium Challenge Account (MCA) before Congress. According to the White House, MCA represents a new approach to providing and delivering development assistance.<sup>96</sup> Ghana qualified to access the MCA this year following its generally positive showing at the APRM.<sup>97</sup>

These goals largely mirror those expressed in the NEPAD document, though they are not as detailed and comprehensive as those laid down in the Millennium Development Goals (MDGs). Further similarities are expressed in the Millennium Compact outlined in the Human Development Report 2003.

NEPAD is indeed an amalgamation of policies borrowed from or influenced significantly from sources other than African. NEPAD was planned, designed and put into effect without consultation with the people who are supposed to own it, but first and foremost with the potential financiers of the plan. African leaders seek to justify their sidelining of the people in the decision-making process thus:<sup>98</sup>

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<sup>94</sup> Title 1 of The Trade and Development Act of 2000. Sec 3108 of the Trade Act of 2002 AGOA II substantially expands preferential access for imports from beneficiary sub-Saharan African countries [http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html) (accessed 30 June 2006).

<sup>95</sup> Sec 3108 of the Trade Act of 2002 AGOA II substantially expands preferential access for imports from beneficiary sub-Saharan African countries.

<sup>96</sup> <http://www.usaid.gov/mca> (accessed 14 May 2003). The report also states that '[g]iven this commitment, and the link between financial accountability and development success, special attention will be given to fighting corruption. The goal of the Millennium Challenge Account initiative is to reduce poverty by significantly increasing economic growth in recipient countries through a variety of targeted investments.'

<sup>97</sup> Ghana was the first country to accede to the APRM in 2004, and also the first to be peer-reviewed. The review took place at the 4th Summit of the African Peer Review Forum held on 22 January 2006 in Khartoum, Sudan.

<sup>98</sup> Para 47 (my emphasis). Compare to art 4 of the Declaration on the Right to Development: 'States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the right to development.'

The New Partnership for Africa's Development centres on African ownership and management. Through this programme, African leaders are setting an agenda for the renewal of the continent. The agenda is based on national and regional priorities and development plans that must be prepared through participatory processes involving the people. *We believe that while African leaders derive their mandates from their people, it is their role to articulate these plans and lead the processes of implementation on behalf of their people.*

The lack of democratic participation in the drawing up of the NEPAD document permeates the democratic process that African leaders have designed for implementation. In the NEPAD document, African states undertake 'to respect the global standards of democracy'.<sup>99</sup> These seem to find expression in the Declaration on Principles Governing Democratic Elections in Africa. One does not see any elements of traditional African political systems incorporated therein. It is a wholesale adoption of the majoritarian vision of the liberal international orthodoxy, which does not, for instance, take into account the multi-ethnic composition of societies, such as Africa's. Judging by Africa's past record on the lack of recognition of minority rights and also the fact that the new Constitutive Act of the AU does not deal with minority rights issues, unless indirectly when a situation degenerates into a crisis.<sup>100</sup> This type of democratic arrangement does not bode well for the future stability and democratic development of Africa.<sup>101</sup>

The lack of serious attention on the part of African leaders to promote democracy is exemplified by the fact that the criteria for membership of the AU did not include the fundamental principle of democracy. Even though at the Durban Summit that gave birth to the AU, a Declaration on the Principles Governing Democratic Elections in Africa<sup>102</sup> was made, it was not incorporated into the Constitutive Act, nor used as criteria for membership, unlike the EU. Incidentally, the primary criterion for membership of the AU is simply being an African state.<sup>103</sup>

Like previous development agendas, a cursory glance at the NEPAD initiatives indicates that the proper place of human rights has been downplayed. The human rights equation in NEPAD cannot simply be considered as forming part of such concepts as 'good governance', 'political governance', 'economic governance' and 'civil society', not even in the concept of 'democracy'. Such terms are not only vague,

<sup>99</sup> NEPAD Document para 47.

<sup>100</sup> Genocide, crimes against humanity, etc.

<sup>101</sup> K Appiagyei-Atua 'The African Union and minority rights' Paper presented at Minority Rights Summer School 2003, organised by the Irish Centre for Human Rights, National University of Ireland, Galway.

<sup>102</sup> OAU/AU Declaration on The Principles Governing Democratic Elections In Africa — AHG/Decl 1 (XXXVIII) 38th ordinary session of the Assembly of Heads of State and Government of the OAU 8 July 2002, Durban, South Africa AHG/Declarations 1-2 (XXXVIII).

<sup>103</sup> Art 29 on Admission to Membership. Art 27(1) also states: 'This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.'



but concepts that tend to play into the hands and in the interests of corporate bodies and foreign investors.

African leaders have failed to articulate an effective concept of rights that positively link human rights to development in relation to their culture and history. The development agenda should therefore be placed in the hands of the people. For a true, holistic and sustainable African initiative for development to be realised through NEPAD, the concept of human rights that should be used to examine the viability of NEPAD needs to be derived from the traditional roots of human rights in African political systems that tend to draw the proper balance between human rights and development.

## 7 Conclusion

This paper sought to establish that the evolution of the OAU into the AU, and the adoption of NEPAD in place of the NIEO and the Lagos Plan of Action did not happen out of the blue. It was a culmination of events in which the mighty hand of Western powers in dictating the economic fortunes of African states was clearly manifest. Relying on the principle that human rights and democracy are fetters to development, the former were supposedly traded for the latter. However, it turned out that the latter was not pursued either. Or even if it was, it could not attain a level of development that is sustainable, without effective exercise and enjoyment of rights. While the dependency theory may have lost support, at least one fundamental precept of the theory continues to manifest itself and influence the so-called success story of modern day modernisation, which is globalisation, namely, the continued spread of poverty, the entrenchment of poverty and the widening of the poverty gap between the haves and have-nots.

Even though through the NIEO African and other developing states were able to make a proper diagnosis of the economic quagmire they found themselves in, their analyses were lopsided. In the same way, Western states' analysis of the causes of underdevelopment was unbalanced. What proponents of the NIEO failed to do, or do rightly, was to diagnose the internal stumbling blocks impeding development in Africa and other decolonised states. These include the question of democracy and respect for human rights: how to disaggregate and share power and adopt a holistic approach to the problem of underdevelopment in Africa, which calls for, among others, the adoption of a multi-ethnic/pluralistic notion of democracy; an indigenous conception of human rights; reliance on alternative forms of development; and culturally-sensitive and appropriate notions of alternate conflict resolution. This approach, combined with some of the *dependencia* internal and insular economic policy arrangements as noted in particularly the Lagos Plan of Action, could have saved the day for African states and put the continent on the true path to effective and sustainable development.