**RESEARCH ARTICLE**

# Right-to-Development Governance: An Alternative Development Model for Africa

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**Abstract**

In this article, I carry out an in-depth conceptualization of right-to-development governance to illustrate how, as a rights-based model suited to redressing the challenges that have held Africa back over the decades, it can leverage and accelerate the processes for development on the continent. I do so to provide clarity on the deficits in the understanding of the right to development and the dilemma of its implementation in Africa. Through a theoretical and qualitative socio-legal analysis, I frame the argument that Africa's development setbacks are largely generated and sustained by the lack of an operational model that can drive transformation on the continent. Besides having evolved as a claimable human right, the right to development is equally conceived as a model or paradigm for development which is yet to be fully explored to inform development thinking and practice on the continent, and thus enable shared prosperity and improved quality of life and standards of living for the peoples of Africa. The proposed right-to-development governance model is appropriately theorized in this article to provide the basis for its operationalization, which, as explained, entails a nuanced blend of nominal capitalism, communitarian socialism and contemporary culturalism.

## Introduction

In this article, I carry out an in-depth conceptualization of right-to-development governance to illustrate how, as a home-grown model suited to redressing the persistent challenges that have held Africa back over the decades, it can leverage and accelerate the processes for development on the continent. I do so for the most part to provide discernment of the deficits in the understanding of the right to development and the dilemma of its implementation in Africa. In addition, I illustrate that, besides having evolved in its legal nature as a claimable human right, the right to development is equally conceived as a model or paradigm for development, which is yet to be fully explored to inform development thinking and practice on the continent and thus enable shared

prosperity among the peoples of Africa.[1] Being a model or paradigm for development means and entails that the right to development be appropriately theorized and constructed to provide a set of ideological principles for explaining the processes of development or its operationalization, which in essence is what this article aims to achieve.

Africa's underdevelopment compared to other regions around the world has commonly, and rightly, been attributed to several causal factors, including slavery, colonial exploitation, economic fragility, democratic deficits, governance malpractices, political instability, policy uncertainty and other systemic fault lines. In exploring why the right to development faces a dilemma of implementation in Africa, I shift from a blame angle and instead make an argument that the development setbacks with which the continent is confronted are, to a large extent, sustained by the lack of an operational model with the potential for transformation, which is much needed to raise the bar for living standards on the continent. Consequently, the situational realities can be summed up as a broad range of development injustices characterized by cyclical poverty, insurmountable challenges regarding security of livelihood and unacceptably low standards of living, in response to which disjointed initiatives have continually been experimented with, without much success. The peoples of Africa are consequently not only grossly dispossessed of their entitlement to a sustainable livelihood; they are denied the right to development. Africa is not underdeveloped and its peoples exposed to vulnerabilities because they are incapable of a better life, but rather because, by political design, the norms, policies and systems in place subject them to these conditions. Joseph Udombana affirms that global and domestic politics basically conspire to keep Africa permanently impoverished.[2] Without these constraining factors (as obstacles to development), if opportunities for development were equitably accessible across Africa, the perennial challenges that prevail on the continent would not exist, or at most would be reduced to the barest supportable minimum. Even though the banes of impoverishment and livelihood insecurity that weigh disproportionately on Africa may be characterized as development problems, they are, in addition, a governance problem, necessitating a combination of development and governance solutions.

The fact that these issues are a development problem means that without resolving them, development cannot be sustained. In the absence of a sustainable framework for development, the bad situation is simply exacerbated, which further complicates the extent to which affected persons may

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1 The African human rights system is well advanced in jurisprudence on the right to development, where a range of claims have been adjudicated by the African Commission and the African Court. Some of the prominent cases include *African Commission on Human and Peoples' Rights v Republic of Kenya* (*Ogiek*) [2017] appl no 006/2017, paras 207–11; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya* comm 276/2003 [2009] AHRLR 75 (ACHPR 2009), para 298; *Democratic Republic of Congo v Burundi, Rwanda and Uganda* [2009] AHRLR 9 (ACHPR 2009), para 95; and *Sudan Human Rights Organisation and Another v Sudan* [2009] AHRLR 153 (ACHPR 2009), para 224. On the model or paradigm for development, see CC Ngang *The Right to Development in Africa* (2022, Brill) at 266–67; CC Ngang "Complexity in balancing the pursuit of FDI with the obligation to achieve the right to development in Africa: A focus on China–Africa relations" in CC Ngang and SD Kamga (eds) *Insights into Policies and Practices on the Right to Development* (2020, Rowman and Littlefield International) 267 at 270; CC Ngang "Systems problem and a pragmatic insight into the right to development governance model for Africa" (2019) 19/2 *African Human Rights Law Journal* 365; CC Ngang "Towards a right-to-development governance in Africa" (2018) 17/1 *Journal of Human Rights* 107 at 115; CC Ngang "Differentiated responsibilities under international law and the right to development paradigm for developing countries" (2017) 11/2 *Human Rights & International Legal Discourse* 265 at 278–82; M Kanade *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages* (2018, Routledge) at 195–30; OO Oduwole "International law and the right to development: A pragmatic approach for Africa" (2014) *International Institute of Social Studies* 1 at 3–4; 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, UN Publications) at 495; WP Nagan "The right to development and the importance of human and social capital as human rights issues" (2013) 1/6 *Cadmus Journal* 1 at 30; B Ibhawoh "The right to development: The politics and polemics of power and resistance" (2011) 33/1 *Human Rights Quarterly* 76 at 103; and NJ Udombana "The third world and the right to development: Agenda for the next millennium" (2000) 22/3 *Human Rights Quarterly* 753 at 762.

2 Id at 755–61.

be expected to develop the coping capacity to overcome their precarious circumstances. As a governance problem, without a proper governance model that is people-centred and responsive to human exigencies, the appropriate framework for development will not be established, resulting, as Dan Kuwali intimates, in "poor socio-economic development in Africa".[3] The central issue here is not only about governance conceived generically; it begs the question of what kind of governance model would be able to drive the processes for development in a direction that can suitably respond to livelihood concerns and the well-being of the peoples of Africa.

Besides people being responsible for creating their own development, it is primarily the duty of the state to provide the enabling institutional and regulatory framework for sustainable development to take place, and hence for the right to development to be achieved, which in essence envisages shared prosperity, expansive welfare benefits, sustainable livelihoods and better standards of living for all the peoples across the continent. I have argued elsewhere that the attainment of these standards is possible through a right-to-development governance model, which has the potential to radically transform the development landscape in Africa.[4] In furtherance of that argument, I aim to illustrate here that the imperative for egalitarian redistributive justice, adherence to human rights standards, poverty eradication, aspirations for better standards of living and sustainable development, among other considerations, can be actualized through the right-to-development governance model, which, as will be explained here, blends components of capitalism (pertaining to growth and expansion of the market economy), socialism (relating to collective well-being and social progress) and culturalism (having to do with the advancement of African value systems) in a unique manner.

The enquiry is principally theoretical and qualitative in nature, involving a socio-legal analysis of the law that enshrines the right to development, which is given purposive interpretation, as conceptually intended, as a model for development with the potential to engineer socio-economic and cultural transformation in Africa. The socio-legal method enables an understanding of how law impacts on social phenomena. As David Schiff puts it, it has to do with how "law is directly linked to the analysis of the social situation to which the law applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and / or change of the situation".[5] It allows for the reading of applicable instruments of law within the African human rights system in combination with a desktop review of secondary literature, to illustrate that when African proponents pioneered the idea of a right to development and proceeded to incorporate it into law, it was conceived as a paradigm for development necessitating the elimination of systemic obstacles that hinder advancement and, in turn, the optimization of conditions for expanded freedoms and the equalization of opportunities for development.[6]

The discussion is structured as follows: in the next section, I look at governance and development with the intent of demonstrating how both concepts ought to be explored constructively to accelerate the transformation of existing systems beyond the threshold of the marginal standards of living that the peoples of Africa are subjected to. I then proceed to explore the context for development in Africa, providing justification for a rights-based operational model in driving the processes for development. The right-to-development governance model is then given more theoretical insight regarding how it ought to shape understanding on development thinking in Africa. A conclusion is then drawn to the effect that if the development landscape in Africa is to experience radical transformation, the context necessitates recourse to a rights-based model for development, in terms of which the right-to-development governance model is explained with respect to the substantive

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3 D Kuwali "Is accountable governance a solution to African problems?" (2 September 2022), Raoul Wallenberg Institute, available at: <https://rwi.lu.se/blog/is-accountable-governance-a-solution-to-african-problems/> (last accessed 25 September 2023).

4 Ngang *The Right to Development*, above at note 1 at 266–67; Ngang "Systems problem", above at note 1 at 365; Ngang "Towards a right-to-development governance", above at note 1 at 115.

5 DN Schiff "Socio-legal theory: Social structure and law" (1976) 39/3 *The Modern Law Review* 287 at 287.

6 Ngang *The Right to Development*, above at note 1 at 68–80.

contents of the entitlement to development as a human right, entailing a re-conceptualization of how to process development on the continent.

## Governance and development

Governance and development are conceived here as having an interconnected and mutually reinforcing nature, the analysis of which I use as an anchor to illustrate how both concepts ought to be explored constructively to shape development thinking and thus accelerate transformation of the systems that impede advancement beyond the marginal standards of living across the African continent. For Mohammed Islam, governance is principally concerned with the management of the processes for development; he makes reference to a rights-based approach to governance and development, which, he says, has the advantage of shifting the focus from government to the people and accordingly produces desirable development outcomes.[7] This implies that if development is to be achieved in Africa, governance must be set right, targeted and attuned to accomplishing the development purpose and to produce an operational model without which the continent may remain impoverished and underdeveloped. Various development plans have been experimented with in Africa, yet because they lacked an operational model to drive the plans to full realization, the outcomes have been disappointing.

The Lagos Plan of Action, Africa's pioneering agenda for development for the 20-year period between 1980 and 2000, took account of the imperative to map out and vigorously pursue a home-grown strategy for development, presumably because such a strategy would be tailored to respond adequately to the persistent challenges that compromise aspirations for improved livelihoods and better living standards on the continent.[8] Following unsuccessful implementation of the Lagos Plan of Action, the New Partnership for Africa's Development (NEPAD) was introduced in 2000, which unfortunately also failed to materialize. NEPAD was succeeded by Agenda 2063 in 2013, a 50-year development plan with the intention to forge an African model of development and transformation, even without concretely defining what that model is and what its operationalization entails.[9] The supposed African model for development and transformation referred to in the Agenda 2063 document does not actually exist, which provides a reason for a closer review of the foundational concepts of development and governance that are frequently used in describing the situation in Africa, even though loosely and generically.

## Development

Development is an appealing but vague and indeterminate concept whose actual meaning is subject to varied interpretations that are susceptible to constant alteration according to the context in which it applies, what is perceived as the goal to be accomplished and the continually shifting exigencies that shape its direction at any particular time. In over three decades following the United Nations Development Programme (UNDP) *Human Development Report 1990* and other seminal publications like Sen's *Development as Freedom*, alternative perspectives in conceptualizing development have gained currency, beyond the understanding of it as exclusively focused on economic growth and the expansion of the market economy.[10] This narrow perception has evolved into contemporary

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7    MS Islam "Governance and development" in A Farazmand (ed) *Global Encyclopedia of Public Administration, Public Policy, and Governance* (2018, Springer).

8    Organisation of African Unity "Lagos plan of action for the economic development of Africa 1980–2000", adopted at the 2nd Extraordinary Session of the Assembly of the Heads of State and Government of the OAU in Lagos, Nigeria from 28–29 April 1980, at preamble, para 14(ii); available at: <https://www.tralac.org/documents/resources/african-union/1630-lagos-plan-of-action-for-the-economic-development-of-africa-1980-2000/file.html> (last accessed 26 July 2024).

9    African Union Commission "Agenda 2063: The Africa we want", African Union, Addis Ababa, paras 66(d) and 74(e); available at: <https://au.int/en/Agenda2063/popular_version> (last accessed 26 July 2024).

10   United Nations Development Programme *Human Development Report 1990* (1990, Oxford University Press); A Sen *Development as Freedom* (1999, Oxford University Press).

understandings of development as having a broader focus, covering not only the economic but also the social, cultural, political, environmental and human dimensions. Understood as such, it can be ascertained that development does not respond to any universal definition, and nor is such a definition desirable. Development can thus correctly be delineated as multidimensional in nature, having different connotations in different contexts that determine the means for and approaches to processing aspirations for improved well-being and better standards of living, which vary considerably across Africa. It is, however, worth pointing out that while development generally does not subscribe to any uniform definition, it basically implies a process of change from a pre-existing situation to a better one, which is defined by the choice or nature of change that is envisaged. Change is never uniform, however, which means that development cannot be pinned down to any one-size-fits-all yardstick.

As convoluted as the indeterminate concept of development may seem to be, I contend that whatever form, dimension or direction development takes, be it economic growth, technological advancement or infrastructural development, among others, it ultimately aims at one purpose, which is to contribute to well-being and better quality of life for humans. By implication, without the need to make conditions favourable for a human to live well and enjoy better standards of living, there will not be any form of development taking place. Development thus concretely embodies the diverse processes of seeking to achieve improved human well-being – necessary as an end goal – to raise quality of life, guarantee security of livelihood and create enabling conditions that allow for expanded choices and equitable access to opportunities that culminate in the enjoyment of a better, decent standard of living in greater freedom.[11]

From a human development point of view, Kamal Malhotra notes that "[d]evelopment must be focused on people", for the reason that they "are the real wealth of nations, and the main goal of development is to create an enabling environment for people to enjoy long, healthy, creative lives".[12] The purpose of development becomes even clearer with increasing consensus on its contemporary definition, particularly when gleaned from the human development or human rights angle, and more so from the perspective of the right to development as a comprehensive process intended primarily to achieve progressive improvement in human well-being.[13] The African Charter on Human and Peoples' Rights gives an indicative normative prescription of what constitutes development and, indeed, also how development should be processed across the continent. This is found in a portion of the preamble and related provisions of the Charter, as follows:

"*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; …
*Article 1*: The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them. …

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11 International Covenant on Economic, Social and Cultural Rights, resolution adopted by the UN General Assembly, 16 December 1966, 2200A (xxi), 999 unts 171, UN doc A/6316, art 12; Universal Declaration of Human Rights, resolution adopted by the UN General Assembly, 10 December 1948, 217 A(iii), preamble, para 5, arts 22 and 25; Charter of the United Nations, adopted at the UN Conference on International Organizations, 26 June 1945, came into force on 24 October 1945, preamble.
12 K Malhotra "The purpose of development" (2004) 26/1 *Michigan Journal of International Law* 13 at 13–14; see also UNDP *Human Development Report*, above at note 10.
13 A Sengupta "Human right to development" (2004) 32/2 *Oxford Development Studies* 179 at 180–83; see also Declaration on the Right to Development, resolution adopted by the UN General Assembly, 4 December 1986, UN doc A/RES/41/128, art 2(3).

*Article 22*: 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."[14]

Conceived as a human right, as it reads from the above excerpts, and in effect as a rights-based approach, development for Africa is ascertained as revolving more around the socio-economic and cultural dimensions.[15] By stipulating in the preamble that particular attention should be given to the right to development, with emphasis on the satisfaction of economic, social and cultural entitlements as a guarantee for the enjoyment of civil and political rights, the drafters of the Charter supposedly intended for the socio-economic and cultural dimensions of development to be prioritized over other considerations. One may argue, on the contrary, in favour of prioritizing political development and putting in place a functional democratic dispensation as a means of guaranteeing socio-economic and cultural development. Such an argument is untenable on the grounds that political development has, since independence, been extensively pursued across Africa but unfortunately has not translated into better standards of living on the continent, and is unlikely to. Part of the explanation for this is that development in Africa is largely still dependent on volatile foreign financing mechanisms, which more often than not are defined by donor conditions that oblige recipient state governments to focus on political reforms, with an emphasis on the rule of law, democratization of the electoral processes and good governance, hence directing the focus of development onto the performance of government and the capacity of state institutions much more than on the socio-economic and cultural components that matter most for the well-being of the people.[16]

The justification for prioritizing socio-economic and cultural development, necessitating greater focus on rights in those areas, draws from the fact that it relates directly to the well-being of the person, whereas political development, which envisages a focus on civil and political rights, has more to do with how people relate to the state and how they function in society. The ordering of rights in this manner in the preamble to the African Charter is of relative importance, given that because domestic resources for development may not always be readily available, it may be necessary to have recourse to a progressive realization as a means of ensuring that the most inevitable aspects of development are given priority. Dambisa Moyo puts it this way: "In the early stages of development it matters little to a starving African family whether they can vote or not. Later, they may care, but first of all they need food for today, and the tomorrow to come, and that requires an economy that is growing."[17] The argument here does not imply shelving political development but, on a scale of preference, the enjoyment of political development should be contingent on a vigorous pursuit of socio-economic and cultural development. It requires that development practice be conceived and defined in accurate terms as aiming first and foremost for equipping and empowering the peoples of Africa with the capabilities to assert socio-economic and cultural self-determination.

The African Charter enshrines in its article 1 the obligation imposed on governments – on the basis of their undertakings under the Charter, which, with the exception of Morocco, they have all ratified and are accordingly bound to comply with – to not only recognize the rights enshrined therein, but essentially also to take the relevant measures to ensure their full realization.

14  African Charter on Human and Peoples' Rights, adopted in Nairobi, Kenya, 27 June 1981, OAU doc cab/leg/67/3 Rev 5 (1981).

15  SP Marks "The human rights framework for development: Seven approaches" in A Sengupta, A Negi and M Basu (eds) *Reflections on the Right to Development* (2005, Sage Publications) at 23 and 36.

16  R Hofmeier "Political conditions attached to development aid for Africa" (1991) 26/3 *Intereconomics* 122 at 122–27; J Makuwira "Governing the ungovernable: Donor agencies and the politics of development in Africa" (2017) 9/5 *African Journal of Public Affairs* 23 at 25–30.

17  D Moyo *Dead Aid: Why Aid Is Not Working and How There Is Another Way for Africa* (2009, Allen Lane) at 44.

Article 22 provides clarity on the substantive contents of what development entails, comprising the economic, social and cultural components and by nature as a collective right that is guaranteed to be exercised and enjoyed by all the peoples of Africa. The Afrocentric idea that all peoples are entitled to development as a matter of human rights is articulated in soft language in the Sustainable Development Goals principle that "no one will be left behind" in the development process.[18] It entails leading from behind and taking along the impoverished, the vulnerable and the disadvantaged through the processes for development, ensuring that they share equitably in the benefits accruing therefrom. This, in reality, is how development should be conceived and pursued in Africa. Development is by no means self-actualizing and hence cannot by itself become reality unless supported by a governance mechanism that ensures that desirable outcomes are pursued. In accordance with articles 1 and 22(2) of the African Charter, state governments are charged with the primary duty to create the enabling environment so that the right to development can be actualized, which in effect has implications on how governance for the continent ought to be conceived.

### Governance

Although subject to varied definitions according to the context and the entity to which it applies, governance is a concept that cuts across different sectors of society and is "closely linked to the exercise of power and related decision-making processes involving different state and non-state actors in the provision of public goods and services".[19] It embodies the complex interactions between the systems, processes, norms and values that leverage the dynamics of power and the exercise of authority in guaranteeing transparency, inclusivity, participation, accountability and responsiveness to societal exigencies. The World Bank defines governance as "the manner in which power is exercised in the management of a country's economic and social resources for development".[20] It denotes governmental action, which is predetermined by the form of political regime, the processes by which authority is exercised and the capacity to conceptualize and coordinate implementation of laws, policies and regulations in the discharge of the governmental function of creating an enabling environment for development.[21] Governance is in effect an operational mechanism for shaping the agenda for development and therefore is determined by the capacity of government to effectively formulate and implement sound policy choices and ensure respect for citizens' rights and by the state of the institutions that govern economic and social interactions in a democratic manner.[22]

Democratic governance, for instance, defined as "a system of government where institutions function according to democratic processes and norms, both internally and in their interaction with other institutions", is leveraged by the objective to ensure that democracy works.[23] The democratic governance apparatus is thus designed to respond to the specific exigencies for democracy. There is also the good governance concept crafted by the World Bank, which has been religiously embraced by African governments as a model for redressing Africa's development woes. Good governance presupposes, by inference, the fixing of bad governance – or "poor development

18 Transforming Our World: The 2030 Agenda for Sustainable Development, resolution adopted by the UN General Assembly, 27 September 2015, UN doc A/RES/70/1, para 4.

19 UNDP "Governance", available at: <https://www.undp.org/sites/g/files/zskgke326/files/publications/PDNA_Governance_FINAL.pdf> (last accessed 20 September 2023).

20 World Bank *Governance and Development* (1992, World Bank) at 3.

21 Id at 58, endnote 1.

22 ER Aiyede "Governance and politics of public policy in Africa" in ER Aiyede and B Muganda (eds) *Public Policy and Research in Africa* (2014, Palgrave Macmillan) 87 at 91.

23 OSCE Office for Democratic Institutions and Human Rights "Democratic governance: Organization for Security and Cooperation in Europe", available at: <https://www.osce.org/odihr/democratic-governance> (last accessed 20 September 2023).

management", in the World Bank's wording, which has to do with "weak institutions, lack of an adequate legal framework, weak financial accounting and auditing systems, damaging discretionary interventions, uncertain and variable policy frameworks, and closed decision-making, which increases risk of corruption and waste".[24] The prerogatives for development determine what form of governance is relevant for any society. As the UNDP points out, "[t]he challenge for all societies is to create a system of governance that promotes, supports and sustains human development – especially for the poorest and most marginal".[25]

While good governance sounds appropriate and has been advanced as such, I contend that it might only apply selectively, as a building block to redress some of the bad-governance deficits that are characteristic of governmental actions in Africa, as in terms of relevance and suitability, it does not have the potential to drive development on the continent sensibly. This is because the core development problem that the peoples of Africa are confronted with is not necessarily bad governance or poor development management but rather the fact that they are denied opportunities for development, in contravention of the right to development they are legitimately entitled to. If governance is understood as the manner in which power is exercised in the management of a country's resources for development, and the issue at stake in Africa is people being deprived of their entitlement to development, then any governance model that is not tailored to remedy the core question of this right is unsuitable. The situational realities and their attendant exigencies, aspirations and priorities, as well as the legal framework in Africa, entail governance being crafted in such a manner that it responds adequately to development, and with policy certainty, as a matter of human right.

For Kuwali, accountable governance should be the solution to African problems. He defines it as entailing "respect for the rule of law where the exercise of authority is subject to accountability, just law, open government, and accessible and impartial justice".[26] It is "built on a foundation of rule of law[,] particularly accountability and transparency[,] combating corruption, empowered civil societies including citizen participation in governance, an enabling legal and judicial framework, and an efficient private sector".[27] He adds that accountable governance promotes transparency, respect for and fairness in the application of the law, participation in decision-making, legal certainty and the avoidance of arbitrariness, and curbs corruption; he further explains that accountable governance is an enabler for socio-economic development in Africa in the sense that it can provide the opportunity to optimize economic efficiency, guarantee protection to marginalized and vulnerable groups and, importantly, also ensure equitable distribution of welfare benefits, achievable through responsible leadership, participatory citizenship and free, fair and just political representation.[28]

While Kuwali is right in his conceptualization of accountable governance as a relevant model, which can indeed contribute to resolving many of the peripheral issues impacting development in Africa, he overlooks the core issue of entitlement to development as a human right which the peoples of Africa are denied. I argue in this regard that in conceiving governance for Africa, as long as the question of the right to development that is promised to all the peoples across the continent is not particularly addressed, the core problems, including extreme levels of poverty, low standards of living and insecure livelihoods, will persist.

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24  World Bank *Governance and Development*, above at note 20 at 4.
25  UNDP "Governance for sustainable human development" (UNDP governance policy paper, 2006), available at: <http://www.undp-aciac.org/publications/other/undp/governance/undppolicydoc97-e.pdf> (last accessed 20 September 2023) at 11.
26  Kuwali "Is accountable governance", above at note 3.
27  Ibid.
28  Ibid.

## The context for development in Africa

Africa has not only had a chequered and disrupted history, regressing from being the birthplace of civilization and succumbing to over 500 years of slavery and over a century of colonialism, apartheid and now neocolonialism, but the conflicted context where its development is envisaged to take place remains, I contend, extremely complex, volatile and characterized by incomprehensible contradictions. These include it being the richest continent in terms of natural resource endowments but the least developed region in the world owing to the problems of development financing, debt entrapment, governance crises, recurrent conflicts and extensive human rights violations. These circumstances have, over the centuries, held down the peoples of Africa, far below the thresholds of acceptable standards of life with dignity; this idea permeates the spirit of international law that is anchored on the promise "to promote social progress and better standards of life in larger freedom" for everyone.[29] This has not taken place in Africa. Noting that the 2063 agenda for development in Africa demonstrates a strong inclination towards transformation and African peoples' participation in the process, I posit that to promote social progress and better standards of life, in larger freedom, the context necessitates a dedicated focus on development from a human rights point of view.[30]

## The need for a rights-based operational model

It is generally acknowledged that if development is to be achieved in Africa, a home-grown model is needed to drive the processes for transformation.[31] With respect to the prescription in the African Charter on how development should be processed by state parties, coupled with the increasing shift towards rights-based approaches to development, it is my recommendation that the model for Africa must be based in human rights.[32] In this instance, the right-to-development governance model is presented as most contextually suitable. The right to development is enshrined in the African Charter, to the effect that the peoples of Africa are legally entitled to economic, social and cultural development with due regard to their freedom and identity and equal enjoyment of common heritage.[33] The three principal components highlighted imply in principle that, if the right to development is achieved, well-being, which encompasses aspirations for improved livelihoods and better standards of living, would be attained within the economic, social and cultural domains. When that happens, as explained in the preamble to the African Charter, the context would then be set for the exercise and enjoyment of civil liberties and political freedoms.

Islam observes that a rights-based approach to governance and development has enormous advantages, including, for the most part, the fact that it diverts focus from government to the people

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29  UN Charter, above at 11, preamble.

30  African Union Commission "Agenda 2063", above at note 9, paras 66(e) and 72(d).

31  Organisation of African Unity "Lagos plan of action", above at note 8, para 14(2); Ngang *The Right to Development*, above at note 1 at 266; African Union Commission "Agenda 2063", above at note 9, para 74(h).

32  African Charter, above at note 14, preamble, para 8, read together with art 22. See for example M Broberg and S Hans-Otto "Strengths and weaknesses in a human rights-based approach to international development: An analysis of a rights-based approach to development assistance based on practical experiences" (2018) 22/5 *International Journal of Human Rights* 664; A Cornwall and C Nyamu-Musembi "Putting the 'rights-based approach' to development into perspective" (2004) 25/8 *Third World Quarterly* 1415; Pact and USAID Center of Excellence on Democracy "Human rights, and governance. Applying rights-based approaches: A practical how-to note on integrating principles of empowerment into almost any development activity" (2018) Washington DC, available at: <https://www.usaid.gov/sites/default/files/2022-05/hrsm_rights_based_approach_guide_final_jan_2019.pdf> (last accessed 27 July 2024); European Network of National Human Rights Institutions "Human rights-based approach", available at: <https://ennhri.org/about-nhris/human-rights-based-approach/> (last accessed 9 September 2023); Swedish International Development Cooperation Agency "Human rights based approach" (2 September 2022), available at: <https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach> (last accessed 9 September 2022).

33  African Charter, above at note 14, art 22(1).

and accordingly guarantees a decent standard of living as a matter of legal entitlement.[34] In the Declaration on the Right to Development, it is clearly stipulated that "[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development".[35] To ensure that development is delivered in this manner requires that the mechanism of governance be set right and is crafted to be transformative in conforming with human rights standards. Transformative governance would in this instance mean governance that inspires strategic foresight, responds to converging (internal and external) pressures and the dynamics of change, is coupled with the capacity for innovation, is attuned to continually shifting contemporary exigencies and is targeted at producing transformative outcomes. It requires a principled commitment to transformation across all sectors of African society and a broader, inclusive and responsive approach to stakeholder expectations, as well as, most crucially, to the strategic aspirations for development that are outlined in the Agenda 2063 framework instrument.[36]

This is particularly relevant in the sense that governance in Africa has mostly, and even unreasonably, been directed more towards political development at the cost of socio-economic and cultural development. Arjun Sengupta defines the right to development as an all-encompassing process that can be claimed as a right in satisfaction of the test for making such a claim, which in turn imposes an obligation for the fulfilment of that claim, in essence making the entire process one that must be "rights-based" in terms of obliging compliance and consistency with human rights standards.[37] If development is conceived in this light, and by virtue of article 22 of the African Charter as a collective entitlement guaranteed to the peoples of Africa, it means that to be suitable, the governance mechanism that may be envisaged to transform the development landscape on the continent, such that it produces the ultimate outcomes of improved well-being and better standards of living, must as a matter of necessity be based in human rights, as Sengupta opines. The questions then are, what is contained in the proposed right-to-development governance model, and how is it intended to be actualized?

## Theorizing right-to-development governance

Right-to-development governance is defined as an integrated rights-based model that allows for popular participation in development processes, liberty of action in advancing productive capabilities for the sustainable management of Africa's common heritage, and the propagation of the African identity and value systems within a legal framework that guarantees genuine accountability and equitable redistribution for improved well-being.[38] It is, of course, reasonable from a pragmatic point of view that existing systems and practices ought to provide the basis for formulating theory on how things work in resolving actual problems in the real world.[39] Where, however, there are no existing systems or practices from which theory can be formulated, pragmatic reasoning necessitates abstracting theory from what obtains and then theorizing a model that can suitably apply. The proposed right-to-development governance model is conceptualized from this starting point, with the aim of illustrating how the mechanisms for development ought to be set in motion for actualizing the right to development in Africa. This is extremely important, because part of the controversy that

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34  Islam "Governance and development", above at note 7.

35  Declaration on the Right to Development, above at note 13, art 2(1); T Kunanayakam "Report of the Working Group on the Right to Development on its fourteenth session", Human Rights Council, A/HRC/24/37 2013.

36  African Union Commission "Agenda 2063", above at note 9.

37  Sengupta "Human right", above at note 13 at 180–81.

38  Ngang The Right to Development, above at note 1 at 266–67; Ngang "Systems problem", above at note 1 at 365; Ngang "Towards a right-to-development governance", above at note 1 at 115.

39  See for example LM Kelly and M Cordeiro "Three principles of pragmatism for research on organizational processes" (2020) 13/2 Methodological Innovations 1 at 3–4; J Friedrichs and F Kratochwil "On acting and knowing: How pragmatism can advance international relations research and methodology" (2009) 63/4 International Organization 701; D Morgan "Pragmatism as a paradigm for social research" (2014) 28/8 Qualitative Inquiry 1045 at 1045.

has hampered implementation of the right to development feeds from the argument that its contents and specific dimensions are unclear.[40] Deriving from the normative formulation of the right to development and from conceptual clarity on what development and governance mean for Africa and what they are envisaged as, the right-to-development governance model should be understood as embodying and entailing a nuanced blend of capitalist, socialist and culturalist thinking. It cannot be one form or the other, but must be a balanced combination of a three-dimensional pattern of thinking on how to conceptualize and process development for the African continent.

### Nominal capitalism

Sengupta has advanced the argument that development does not exclusively imply economic growth, and hence contemporary narratives have progressively shifted towards human rights-based approaches to conceptualizing development.[41] Refuting the economic growth angle does not imply that its contribution to development is immaterial; both tangible and intangible things that are necessary for guaranteeing better standards of living and improved well-being, such as healthcare, education, water and food security, housing and social security, among others, demand the mobilization of extensive financial and material resources. There is no doubt that, as Udombana affirms, economic growth is an inevitable prerequisite for development.[42] The sustainable mobilization of these resources can only be accomplished through heavy and reliable financing of long-term, gainful investments in the economy. Economic growth is accordingly even more crucial for the attainment of the ultimate development goal to ameliorate living standards, not as an end in itself but as a means to securing well-being. The processes for economic growth must, as a matter of necessity, comply with human rights standards, and economic operations must be conducted in a manner that is rights-based.[43]

Sengupta further points out that if the composite entitlements that make up the right to development are to be realized in their entirety and in a sustainable manner, economic growth is imperative, necessitating the relaxation of possible resource constraints, without which the right to development would be confined to the realization of just some of its components.[44] Economic growth in most societies has largely been driven by classical forms of capitalism, which entails massive private accumulation of wealth. While many of the leading economies around the world have been greatly instrumentalized by capitalism, North admits that capitalism has not worked for Africa.[45] The NEPAD Declaration highlighted the fact that Africa's setbacks are, among other things, characterized by "a weak capitalist class, resulting in a weakening of the accumulation process", and accordingly flagged the need for "capital accumulation" as a means of eradicating poverty and sustaining development on the continent.[46] Africa's 2063 framework mechanism for development equally outlines, under paragraph 72(d), recourse to capital accumulation, to be generated from the natural resources the continent is endowed with, to meet the ambitious aspirations contained therein. It is envisaged that by 2063, Africa will have transformed into a prosperous continent, boasting a vibrant economy with the capacity to deliver on the promise of shared prosperity and equality of opportunities for all.[47] This would, however, not be achieved through classical forms of capitalism that sanction the concentration of wealth and ownership of the means of production and distribution in the hands of a few individuals.

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40  Oduwole "International law", above at note 1 at 5.
41  Sengupta "Human right", above at note 13 at 184–85.
42  Udombana "The third world", above at note 1 at 756.
43  Sengupta "Human right", above at note 13 at 184–85.
44  Id at 185.
45  DC North "Capitalism and economic growth" in V Nee and R Swedburg (eds) *The Economic Sociology of Capitalism* (2005, Princeton University Press) 41 at 41–42.
46  NEPAD Declaration, adopted at the 37th Session of the Assembly of Head of States and Government in Lusaka, Zambia, October 2001, paras 20–22.
47  African Union Commission "Agenda 2063", above at note 9, Aspiration 1 (paras 9–18).

To be able to remedy the situation in Africa, where a huge proportion of the population is severely economically disadvantaged and vulnerable, attention should be directed at conceptualizing the form of capitalism that is contextually relevant. To this end, the emphasis should be on the pursuit of nominal capitalism, which is defined here to mean a form of capitalism that responds to contemporary conceptions of development as a human right and allows for the orienting of economic growth towards creating public wealth that will extensively benefit excluded demographics, rather than private accumulation of wealth that tends to uplift just a few. Nominal capitalism as a vehicle for economic growth in Africa is achievable through equitable (re)distributive measures that do not perpetuate impoverishment and inequality, and hence also do not limit entitlement to the collective enjoyment of development gains. Article 21 of the African Charter grants that the continent's wealth and natural resources be utilized or disposed of for the exclusive interest of the African people. Together with the provision on the right to development, nominal capitalism envisages a central role for African state governments in not only establishing the rules, but importantly also regulating the functioning of the market economy. Eggerston notes that "without the institutions and supportive framework of the state to create and enforce the rules, [and] to establish law and order, … production and investment will be deterred and development hindered".[48]

If Africa is to become an economic force worth reckoning with, it needs self-sufficient strategies for generating development financing to support home-grown entrepreneurial capacity. Unfortunately, priority has been directed more towards dependency on overseas development assistance, foreign direct investment and other unsustainable sources of development financing, which Moyo argues strongly against, describing them as the "silent killer" that has instead stalled development on the continent.[49] Because development in Africa ought to be rights-based by default, article 22(2) of the African Charter obligates state parties to create the requisite policy-enabling environment with appropriate regulatory mechanisms to ensure that the peoples of Africa are sufficiently empowered with the productive capabilities (technical know-how) and the economic capacity (capital wealth) to be able to practically drive the processes for economic growth across the continent. This necessitates maintaining a discrete balance between the pursuit of economic growth and human rights exigencies, so that the minimum threshold for collective well-being is attained and sustained, and where this threshold represents the standard for gauging the right to development, to which the peoples of Africa are legitimately entitled.[50]

### Communitarian socialism

When it comes to actualizing the right to development in Africa, just as African governments direct much energy and attention to economic development, the African Charter obligates that the same amount of energy and attention be given to the dimension of social development (and, of course, also that of cultural development, discussed below). Given the working definition of development provided earlier, it is even more important that in contributing to human well-being and better living standards, social development is not overlooked, because it is within the context of the social dimension that well-being and living standards manifest practically and can most appropriately be measured. When a society is impoverished and underdeveloped, when human rights are contravened and social injustices (disadvantage, marginalization, exclusion and inequalities) abound, as is the case in most of Africa, the adverse effects manifest and are directly perceived in the lives and livelihoods of the people, necessitating an emphasis on social development as it is embodied in the concept of the human right to development. To achieve poverty eradication, social development entails investing in advancing productive capabilities, eliminating systemic barriers and equalizing

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48  See T Eggerston *Economic Behavior and Institutions* (1990, Cambridge University Press), cited in World Bank *Governance and Development*, above at note 20 at 6.
49  Moyo *Dead Aid*, above at note 17 at 29–68.
50  Ngang "Systems problem", above at note 1 at 390.

opportunities for every individual to attain their full potential; this progress may only be experienced in regard to the collective well-being of every individual.[51]

Poverty remains the most daunting of the challenges that expose Africa to unremitting underdevelopment and which, as indicated above, can most appropriately be redressed through a social-development approach. Acknowledging that it is the primary, though not exclusive, duty of the state to define the context and set the pace for development, governance ought to factor in what it requires to give effect to the social-development component of the right to development. Socialist thinking comes in handy in this instance as reasonably applicable in redirecting focus in Africa towards collective ownership of the processes for development, based on a new frame of thinking that takes proportional considerations for socio-economic and cultural as well as political development into account. The idea of a human right to development was born from revolutionary socialism, which gained leverage from the imperative to be liberated from the development injustices that buttressed imperialist domination.[52] Although the right to development has evolved in its normative formulation in various legal instruments, it is still largely shaped by socialist thinking that envisages equality of opportunities for development, active participation in and contribution to development, redistributive justice and collective, egalitarian benefit-sharing of development gains.

Scholarship has increasingly drifted towards recognition of the right to development not only as a rights-based approach but also as a development paradigm for the contemporary world.[53] It implies a tacit acceptance of the element of socialism embedded in the formulation of the right to development as a determinant for bettering standards of living in Africa, where life is characterized by deplorable incongruities. The disparate situation is what it is, not because it is comfortable for the peoples of Africa to endure poverty and hardship but because, as I have argued in another article, the systems in place disallow the right to development and thus make it complex and difficult to overcome the challenges.[54]

Socialist thinking aligns with universal human rights standards where the right to development provides assurance that all the peoples of Africa are entitled to equal and expanded opportunities for improved and sustained livelihoods. The framing of the right to development as a socialist paradigm underscores the aspiration of all peoples globally to be free from want, to crave for social progress and to be able to enjoy the highest attainable standard of living in larger freedom. It cannot be that the peoples of Africa otherwise submit to a lesser standard that limits and deprives them of the opportunities for development that are available and accessible to other peoples. Socialism demands people-centredness as a defining parameter in conceptualizing development, and in essence obligates state governments to establish the right-to-development standard and, accordingly, to formulate governance policies and put in place operating systems that support minimum thresholds for collective well-being, which the peoples of Africa may not fall beneath.[55]

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51  See Economic and Social Inclusion Corporation of New Brunswick, Canada "What is social development?", available at: <https://www2.gnb.ca/content/gnb/en/departments/esic/overview/content/what_is_social_development.html> (last accessed 21 September 2023).

52  Ngang *The Right to Development*, above at note 1 at 29–47; K Manzo "Africa in the rise of rights-based development" (2003) 34/4 *Geoforum* 437 at 439; K M'baye "Le droit au développement comme un droit de l'homme: Leçon inaugural de la troisième session d'enseignement de l'Institut International des Droits de l'Homme" (1972) 5/1 *Revue des Droits de l'Homme* 504.

53  Marks "The human rights framework", above at note 15 at 23; Ibhawoh "The right to development", above at note 1 at 103; Kanade *The Multilateral Trading System*, above at note 1 at 195–230; Nagan "The right to development", above at note 1 at 30; Ngang "Differentiated responsibilities", above at note 1 at 278–79; Udombana "The third world", above at note 1 at 762; UN Human Rights *Realizing the Right*, above at note 1 at 495. The right to development has also been unanimously recognized in many instruments of international human rights law, among others, as an inalienable human right of the same status as every other right.

54  Ngang "Systems problem", above at note 1.

55  Id at 390–93.

The kind of socialism that is envisaged in this context is one that I define as communitarian socialism, which is rooted in how the right to development is formulated in the African Charter. It derives from the understanding that the resources needed for development belong to the community and should be owned communally, and ought to be utilized judiciously to the benefit of the entire community. This is superseded by the reasoning that a person is the product of and is moulded by the community, and therefore their development can only be measured in regard to the development of the broader community.[56] It is with respect to such a thought pattern that the drafters of the African Charter conceptualized the right to development as entitling all the peoples of Africa to the collective ownership and equal enjoyment of the African common heritage (commonwealth), which ought to be perceived as a communal asset and a material source of sustenance for the attainment of collective well-being. It is for this reason, according to the social contract doctrine, that governments exist – for their peoples – and therefore the system of governance and the manner in which they govern ought to be shaped by the spirit of communitarian socialism that is embedded in the right to development. In the absence of a governance model that embodies the spirit of communitarian socialism, the processes for development are not guaranteed to translate into better living standards for the peoples of Africa, as has been the case.

### Contemporary culturalism

Deriving from the word culture, which basically denotes the communitarian ways of life that people identify with, the term contemporary culturalism describes the shared aspirations of different peoples around the world to promote and protect the norms, ideals, beliefs, lifestyle patterns, virtues and value systems that define them as a people and by which they are distinguished from other peoples. During ancient times, culturalism manifested as "civilizations", characterized by groundbreaking discoveries, inventions, construction and the obsession for expansion through conquest whereby Africa was overrun by multiple invaders and the ancient civilizations across the continent were dismantled. Pierre Pascallon notes that development is strongly influenced by culture in the sense that "culture implies development just as development implies culture".[57] In Africa, development is unfortunately driven by the many foreign cultures that have permeated life on the continent and, to a very limited extent, by African culture.

Contemporary culturalism requires Africa to resuscitate its unique customs, traditions and value systems, and it is the processes of self-actualization wherein all the peoples across the continent can flourish and exert subtle dominance over other cultures. This can more accurately be explained with Florian Znaniecki's conceptualization of culturalism and his argument in favour of it, which entails attributing relevance to culture as a cornerstone for development and human functioning.[58] Znaniecki defines culture as a "mass of habits and traditions that man is absolutely unable to perceive or to conceive [by] any other nature than the one he sees through the prisms of culture".[59] According to Dirk Baecker, culture is a "memory and control device of society", which means that what a society is and how it operates is determined by culture.[60] As a political ideology, as Eriksen and Stjernfelt point out, culture delineates the manner in which a society processes and directs thought patterns and the perception of things.[61] Otite and Ogionwo see culture as "the complex whole of man's acquisition of knowledge, morals, beliefs, arts, customs and technology, which

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56  Ngang "Complexity in balancing the pursuit of FDI", above at note 1 at 271.
57  P Pascallon "The cultural dimension of development" (1986) 21/1 *Intereconomics* 38 at 38.
58  F Znaniecki *Cultural Reality* (1919, University of Chicago) at 16; see also E Halas *Towards the World Culture Society: Florian Znaniecki's Culturalism* (2010, Peter Lang) at 21.
59  Ibid.
60  D Baecker "The meaning of culture" (1997) 51/1 *Thesis Eleven* 37 at 37.
61  JM Eriksen and F Stjernfelt "Culturalism: Culture as political ideology" (2009) *Eurozine*, available at: <https://www.eurozine.com/culturalism-culture-as-political-ideology/> (last accessed 9 September 2023).

are shared and transmitted from generation to generation".[62] For Clifford Sibani, "culture is the entity that incorporates the totality and is synonymous with the people's way of life, transmitted from age to age, generation to generation".[63]

Znaniecki's culturalistic conviction holds that the whole world, without exception, is infused with culture; he is emphatic that "[t]here is no way out of culture".[64] The thesis of culturalism, according to Eriksen and Stjernfelt, "maintains that cultures have a claim to special rights and protections".[65] It comes through as self-evidently true in the African human rights system, where culture is guaranteed extensive legal recognition and protection in legally binding instruments. The African Charter, for instance, besides formulating the right to development as incorporating an entitlement to cultural development, also enshrines in article 17(2) and (3) the right to freely participate in the cultural life of the community and, accordingly, obliges African state governments to promote and protect the cultural norms and values recognized by every community. There is in addition an entire Charter for African Cultural Renaissance dedicated to the recognition and protection of African cultures and cultural heritage.[66] This Charter recognizes that "culture is a factor of social progress and a driving force for innovation [development]"; consequently, it sets out the "integrat[ion of] cultural objectives in development strategies" as one of the principal objectives for realization.[67] The Constitutive Act of the African Union obligates member states to "[p]romote sustainable development at the economic, social and cultural levels".[68]

As a practical illustration, in Chinese philosophy and development practice, culture is, among other components, deeply embedded in the perception and conceptualization of the right to development, through which the country has had an immeasurable impact across the world. As stipulated in its White Paper on the Right to Development, by committing to promoting cultural progress, the Chinese government undertakes to build a cultural system that allows for "cultural productivity, so as to create equal opportunity for all citizens to enjoy benefits of cultural development and to have access to cultural development opportunities, and ensure realization of their right to cultural development".[69] Thus, for China, the right to development (for which it holds a record of achievement) necessitates a policy framework that focuses not only on boosting the economy, advancing political development and harnessing social welfare, but essentially also promoting cultural progress. It basically implies doing development the Chinese way, with results that have been phenomenal in terms of poverty eradication and improved standards of living for the Chinese, who, decades ago, were among the poorest in the world.[70]

In Africa, the obligation to promote culture is a legal prescription that obligates state governments to create the enabling environment that incorporates cultural development. The emphasis on culture necessitates a governance mechanism that clearly integrates culturalism as integral to the processes of development aimed at bettering living standards across the continent. Culture is invariably connected to the identity of the peoples of Africa and therefore inevitable for

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62  A Otite and P Ogionwo *Problems of Culture in Africa* (2016, Opex) at 86.

63  CM Sibani *Fundamentals of Religion and Culture in African Society* (2014, Frankpana) at 107.

64  Znaniecki *Cultural Reality*, above at note 58 at 16.

65  Eriksen and Stjernfelt, above at note 61 at 1.

66  Charter for African Cultural Renaissance, adopted at the sixth ordinary session of the Assembly of the African Union in Khartoum, Sudan, 24 January 2006. It replaced the Cultural Charter for Africa and entered into force as an instrument of law with binding effect on state parties in October 2020.

67  Id, arts 8 and 3(g).

68  Constitutive Act of the African Union, adopted in Lomé, Togo, 11 July 2000, entered into force on 26 May 2001.

69  The State Council Information Office of the People's Republic of China "The right to development: China's philosophy, practice and contribution", available at: <http://english.www.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm> (last accessed 29 February 2024).

70  World Bank "Lifting 800 million people out of poverty: New report looks at lessons from China's experience", available at: <https://www.worldbank.org/en/news/press-release/2022/04/01/lifting-800-million-people-out-of-poverty-new-report-looks-at-lessons-from-china-s-experience> (last accessed 28 February 2024).

development programming on the most part, because development can only be understood from the subjective, culturally informed viewpoint of the peoples for whom it ought to add value. In this way, enjoyment of the right to development entails investing in cultures, and their attendant value systems, that define who the peoples of Africa are and their communal perceptions of livelihood and well-being. Znaniecki opines that the world (or Africa, in this context) as it is perceived has been the subject of cultural evolution and therefore that the true nature of the person, as they are perceived objectively, is equally a product of cultural evolution.[71]

Cultures are by implication not static; they evolve continually, which means that for the cultural dimension of the right to development to be achieved, and hence add value to well-being and better standards of living, the theory of culturalism supports eliminating regressive aspects of culture, including, for example, norms and practices that discriminate against and / or dispossess African women and girls of equality of opportunities and the potential to contribute to development.[72] Culturalism envisages that those aspects of life and livelihood that are unique to Africa, including lifestyle patterns and survival skills, time-honoured traditional institutions, norms and practices, spirituality and belief systems, and other inherited attributes and ancestral possessions, worded in the African Charter as a "common heritage", ought to be perceived as valuable assets to be enjoyed equally for the realization of the right to development.[73] Culture, as an aspect of development, is instrumental in cultivating the identity consciousness that differentiates Africa, Africanness and African peoples, who will forever remain a product of the evolving cultures across the continent.

The 2063 agenda for development endorses as one of its seven cardinal aspirations the eventual creation of an "Africa with a strong cultural identity, common heritage, shared values and ethics".[74] Development in Africa is accordingly only conceivable with reference to who the African peoples are with respect to their cultural originalities and the communitarian values that define their functioning and flourishing as a collective. The right to development is formulated in this regard as an entitlement guaranteed to *all* the peoples of Africa to actualize their economic, social and cultural development; cultural development is read as inseparable from economic and social development. As Sengupta argues, a violation of one of these components would imply a violation of the right to development.[75] The emphasis on *all peoples* includes in particular local and indigenous communities across Africa, with a deep-seated attachment to their cultures. These communities have in most instances been detached from their cultures and excluded from decision-making processes on issues that affect them, as illustrated in the *Endorois* and *Ogiek* cases, in relation to which the African Commission and the African Court respectively found violations of the right to development.[76] The rulings in both these cases reiterate the assurance that the right to development cannot be substituted with or subsumed into the government's prerogatives for development, which in most cases only promote economic growth.[77]

Culturalism suggests a rethinking of the inclination to conceptualize development outside the peripheries of the cultures that give substance to livelihood for the peoples of Africa and their expectations and exigencies for well-being. African cultures have from time immemorial been stereotyped and portrayed in a negative light, with words such as savage, primitive, backward, uncivilized, outdated and anti-modern.[78] Contemporary culturalism offers to the peoples of Africa the opportunity

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71  Znaniecki *Cultural Reality*, above at note 58 at 19.
72  GE Idang "African culture and values" (2015) 16/2 *Phronimon* 97 at 101–102.
73  As stated in art 22(1) of the African Charter, the realization of the right to development is contingent in part on the "equal enjoyment of the common heritage".
74  African Union Commission "Agenda 2063", above at note 9, Aspiration 5.
75  Sengupta "Human right", above at note 13 at 183.
76  *Endorois*, above at note 1; *Ogiek*, above at note 1.
77  Ngang *The Right to Development*, above at note 1 at 240.
78  J Poncian "The persistence of western negative perceptions about Africa: Factoring in the role of Africans" (2015) 7/3 *Journal of African Studies and Development* 72 at 73–74; IA Ndiayea and B Ndiayea (2014) "Sociocultural stereotypes

to rescue their rapidly disappearing cultures from extinction and showcase the values that those cultures represent. Along this line of reasoning, Sibani posits the need for cultural restoration, essentially because "a people without a culture are [sic] a people without an identity".[79] Contemporary culturalism entails ascribing value to cultures in terms of how various African cultures could gainfully be explored for greater collective benefit and the advancement of local and indigenous communities. It allows excluded communities across Africa, whose patterns of living are deeply entrenched in their cultures, to freely and actively participate in and take ownership of their own development by, for example, advancing the industry of cultural tourism as a major contributor to economic growth at the grassroots and community level.

## Conclusion

In response to deficits in the understanding of the right to development and the dilemma of its implementation in Africa, and drawing from the premise that Africa's development setbacks are to a large extent a result of the lack of an operational model, this article has aimed to elucidate right-to-development governance as a contextually suitable model with the transformative potential to redress the challenges in developing a sustainable livelihood that the peoples of Africa are confronted with. To sustain the argument that the context in Africa necessitates recourse to a rights-based model for development, the concepts of governance and development have been explored to illustrate how the complex and multifaceted challenges that are reflected in the lived experiences of the peoples of Africa are not only a development but also a governance problem, requiring a combination of development and governance solutions. The argument is then advanced in favour of right-to-development governance, the conceptualization of which entails a nuanced blend of nominal capitalism, communitarian socialism and contemporary culturalism.

Africa is accustomed to making impressive development agendas, which unfortunately have not always been successful, for reasons that are attributable to the lack of a compelling obligation to take human rights-based approaches to development seriously. As to its operationalization, the right-to-development governance model entails a pragmatic policy framework at the continental level and, most importantly, at the domestic level, where implementation ought to take practical effect. The policy framework should, by emphasizing a preference for the right to development as the relevant rights-based approach suited to Africa, put the peoples of the continent at the core of the processes for development and as the entitled primary beneficiaries of the gains which obtain from it. In this way, governance across Africa would have to be redefined and directed towards ensuring that management of the processes for socio-economic and cultural development is purpose-driven and aimed at actualizing the right to development as a legitimate collective entitlement that envisages better living standards for all peoples. The proposed right-to-development governance as a development model for Africa is justified by the fact that previous development frameworks have mostly been subject to implementation through economic growth approaches that have failed to improve standards of living on the continent.

For an appreciation of the argument in this article in favour of the right-to-development governance model as one that has the potential to set Africa on a trajectory for transformation, it is essential to conclude by addressing two interconnected concerns: why is the proposed model conceptualized as a human right, and why is it lodged within the framework of the law? As it was noted earlier that the enquiry in this article primarily involves a socio-legal analysis to

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in media and intercultural communication (Africa in the Polish media)" (2014) 154 *Procedia: Social and Behavioral Sciences* 72 at 72–76; G Pwiti and W Ndoro "The legacy of colonialism: Perceptions of the cultural heritage in Southern Africa, with special reference to Zimbabwe" (1999) 16/3 *The African Archaeological Review* 143 at 143–44.

79  CM Sibani "Impact of western culture on traditional African society: Problems and prospects" (2018) 10/1 *International Journal of Religion and Human Relations* 56 at 70.

demonstrate how the law impacts social phenomena, I suggest that to fix the development problem in Africa, the model to drive the processes for transformation ought to be based in human rights. There is increasing acknowledgement both in scholarship and jurisprudence that development is indeed a claimable human right enforceable by law. The law provides assurance that when development, as a human right, is denied and / or contravened, it can and indeed ought to be claimed as a matter of legitimate entitlement. It accordingly defines how governance ought to be conceived and pursued for the purpose of standardizing the threshold for collective well-being and better living conditions to which the peoples of Africa are by law entitled.

**Competing interests.**  None