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Ghana Developing Through Law

by

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*"**The disintegration** of the **colonial empires brought about a strange and incongruous convergence of aspirations. The leaders** of the **independence movements were eager to transform their devastated countries into modern nation-states, while the 'masses', who had often** paid for **their victories with their blood, were hoping to liberate** themselves from **both the old and the new forms** of subjugation. **As to** the former **colonial masters, they were seeking a new system of domination, in the hope that it would allow them to maintain their presence in the ex-colonies, in order to continue to exploit their natural resources, as well as to use them as markets for their expanding economies or as bases for their geopolitical ambitions. The myth of development emerged as an ideal construct to meet the hopes** of the **three categories of actors."***

Majid** Rahnema, "**Introduction" in Majid** Rahnema (ed) **The Post-Development Reader (Zed Books, London &** New Jersey, **1997).

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INTRODUCTION

The quotation above conveys a clear message. For the leaders, the led and all interveners in the African continent, the motto since "independence" has been "Development". Thus, Africa has been a site for developmental experimentalism in the last half century. No ideology or developmental theory or practice has escaped deployment in Africa. Communism, Socialism, Mixed Economy and Capitalism and their relevant developmental theories and practices have had their turn on the dancing floor: The Economic Recovery Programmes, Structural Adjustment Programmes, Poverty Reduction Strategies, Debt Relief Movements, Highly Indebted Poor Country Initiatives, and the New Partnership for African Development are the latest practices. The development ideologies, theories, paradigms, strategies, therapies and prescriptions for resolving Africa's development crises are as varied as they are complex and dogmatic.'

Yet poverty reigns supreme: millions die of easily and cheaply preventable and curable diseases, many are dying of hunger, millions of children are out of school, slums abound, and unemployment and crime are rife.? The shear variety of the developmental theories and practices, their antagonism and dogmatism, the easiness of the solutions they prescribe and the failure of these solutions when actually operationalised, have left development theorists and practitioners very disillusioned. Many wonder aloud if Africa is not a lost continent.

In this paper, I take cognisance of all the broader issues that are Africa's developmental problematique, but consciously descend from "the global and continental" to "the national" and from "meta-issues of Africa Development" to "making social progress in Ghana". In this way I hope to isolate for discussion at a very practical level, a number of issues that hinder our social progress. It may be argued that it is practically impossible to make "social progress in Ghana" without addressing issues of global power-play and the diminutive role of Africa in the scheme of affairs. Yet, it may be counter-argued that an examination and appreciation of the micro-issues of development that is temporarily divorced from the meta-issues is valuable in and of itself. This way, the exact contours of the micro-issues and the precise points of interconnectivity with the macro-issues of development may be isolated for analysis and redress.

From a fairly long list of core-issues, I have isolated for discussion the following:

1. **Limited appreciation of the process of development.**
2. **The central role of law in development.**
3. **Limited Options and technologies for dealing with discrimination on gender, ethnic and other grounds.**
4. **Sub-optimal appreciation and enforcement of constitutional (and other legal) principles.**
5. **Human Righ ts and the development problematic.**

I have, in my selection of issues, betrayed my faith in the law as an instrument for development and my bias for a rights-based approach to development that is strategic-ally operationalized.

J For a good salad of development theories and practices, including some examples from Africa, see James Cypher and James Deitz, The Process of Economic Development (Routlege, J997)

2Jim Yang Kim et al (eds), Dying For Growth, Global Inequity and the Health of the Poor (Common Courage Press, 2000), passim. See particularly Chapter 5 on Africa.

THE PROCESS OF DEVELOPMENT

Ghana, like many other countries, has chosen to make social progress through the instrumentation of policies and laws that are executed by the executive. The process of development then follows, more or less, the following phases:

1. *Information* on a developmental Issue;
2. Generation of *knowledge* from the available information;
3. Derivation of *policies* from the knowledge produced;
4. *Contestation* over the integrity of the information, knowledge and policies;
5. Generation of *Laws* to express policies as the enforceable will of the sovereign;
6. *Implementation* of the law.
7. Continuous *Monitoring and Evaluation* of information, knowledge, policies, laws, and Monitoring and Evaluation mechanisms as a basis for revisions.

Let us examine one "hypothetical'? example ofthe process of development. There are several complaints to legal aid clinics, law enforcement agencies, and various other counselling and dispute resolution centres relating to domestic violence. This is *information.* The Gender and Human Rights Documentation Centre+ does research on the phenomenon and produces a report on violence against women and children in Ghana. This is *knowledge.* The Ministry of Women's Affairs then sponsors a Domestic Violence Bill as a policy measure for addressing the problem of domestic violence. Once the draft bill is ready, vigorous debates begin on the content of the draft bill. This is *contestation.* These debates continue until the bill is passed by parliament and becomes *law.* The law is then *implemented.* From *monitoring and evaluating* the implementation of the law, the law may be amended or ultimately repealed.

The process of development outlined above is simple indeed. Yet there are problems with it. First, we have not completely realised nor accepted that we have chosen this particular method for making social progress in Ghana. The result is that we take the various stages for granted and approach them with too little seriousness. It is therefore possible for laws with wide ranging developmental implications, to be engineered by a very small segment of our society with limited or no input from other interest groups. This can be done by targeting any of the first five stages of the development process. In this way, one can produce outcomes at that stage that will influence the overall developmental output. An institution may produce a research report or a consultancy report and market it as the full compliment of the knowledge that is necessary for policy change through law. Another may target the process of developing policies out of the knowledge so generated. Yet another may constrict the phase of contestation over the information, knowledge and policies that are produced, and thereby allow a single perspective to reign as the Gospel truth. Other interests may target the process in Parliament of transforming policies into law by limiting input and virtually pushing the law swiftly through parliament. This is what happens when a bill is treated as an urgent bill under article 106 of the 1992 Constitution and passed by Parliament as such.

The interventions such as are mentioned above represent at best, terrorist attacks on Ghana's policy space. The high propensity for this to happen is fuelled by one factor: our inattention to the process of development that we have chosen to follow, the various stages that

31n a sense this example is not completely hypothetical because the history of the Domestic Violence Bill is very similar to the account 1 am about to give, save that the bill is not yet law.

4This centre actually exists and carried out research into domestic violence. See Dorcas Coker Appiah and Kathy Cusack, (eds) Breaking the Silence and Challenging the Myths o(Violence Against Women and Children in Ghana: Report ora National Study on Violence(Gender Studies and Human Rights Documentation Center, 1999)

attend that process and the ease with which the stages may be hijacked.

In many developed countries, universities and other higher institutes of learning and research gather information and produce and contest the knowledge that is used to generate policies and laws for development. Congressional committees in the United States depend heavily on research reports and testimony of academics and researchers. And there is ample evidence that successive Ghanaian governments have poached a lot of their advisers and ministers from such institutions in Ghana. For a long time we have trusted that these resources, coming from publicly funded universities, with ample research resources, will produce information and knowledge and assist in policy development that forwards the national agenda. Things have changed. Today, the synthesised knowledge that we depend on for policies is mostly imported or produced in Ghana by Non-Governmental Organisations, for profit and not for profit alike, that are funded externally. Indeed, most academics and researchers in the public Universities now work for these new knowledge and policy generating institutions. In the circumstances, there is no guarantee that the policy space ofthe country will not be hijacked.

Centrality of Law in Development

The second broad issue I will like to consider is our limited appreciation of the centrality of law in development. There are three simple but often unappreciated facts about law. First, the nation-state, (all encompassing, and a veritable octopus in its reach and power), has become a quite immutable framework for the organization of people, the generation and distribution of resources and the management of conflict. For this purpose, States have found no better instrument other than law, however structured and wherever contained. Thus, the instrument for the creation and ordering of individual and institutional relationships, the generation and distribution of resources, and the management of conflicts arising from these, has always been and continues to be the law.

The second obvious, but often unappreciated, fact about law is this: everything that is done within a state is required, permitted, condoned, discouraged, or not permitted by some law or other. In other words, we often look to the law for the legitimacy or otherwise of our actions and inactions. The payment of taxes is *required* by the law; demonstrations are *permitted* by the law (there were times in this country when we needed permits to go on demonstration); adultery is *condoned* by the law (it is not a crime in Ghana); prostitution is *discouraged* by the law (although prostitution is not illegal, living off the earnings of a prostitute is illegal and what better way to discourage a practice than this); and murder is *not permitted* by the law. Everything from worshipping God (there are laws that regulate worshipping centres and institutions, and there was a time in Ghana when certain churches were banned from operating) to the tiny ant (there are laws that regulate animals and wildlife) are affected in some way by the law.

Lastly, law is found at all levels of governance and social life and is more diverse in its sources than is often appreciated. In Ghana for example, the list of the key sources oflaw that I have been able to draw looks like this:

1. The Constitution;
2. Laws enactments by parliament or other legislative body such as a military council;
3. Subsidiary legislation which compnses:
    a. Constitutional Instruments
    b. Legislative Instruments
    c. Executive Instruments
    d. Statutory Instruments of a Judicial Character
    e. ByeLaws
    f. Statutes
    g. Notices
    h. Administrative Instructions
4. Judge made law/Case Law (Common Law and Equity);
5. Customary Law;
6. Writings of Jurists and Publicists.

Part of our tragedy is that we have a state that arrogates to itself the exclusive power to make this broad range of laws to govern every matter and every process in the country. Yet the state, by itself, is neither capacitated nor intelligent enough to gather and synthesise information into knowledge for the purpose of making policies and laws. This means that policies and laws are in fact made by agencies external to the legitimate policymakers and lawmakers. It is this state of affairs that allows for easy terrorist action in the policy space of the country.

Dealing with Discrimination

Another arena in our national life where we have spent scant resources is discrimination-broadly defined. From discrimination based on race and ethnicity, through that based on income levels and relative status in society, to gender and disability-based discrimination. On discrimination based on relative income levels, I have personally realized that it is cheaper to drive a very beautiful car in Ghana. This is because the amount of time one wastes from being pulled over by the police because he or she is driving an average or below average car (and the fine or bribe one might have to pay for failing on one of the seventy-seven or so checks on the car) could, over the course of a year, amount to the top-up amount for buying an above average car.

Other forms of discrimination are rife in this country. Gender-based discrimination is common. Women are still being told in various police stations that they do not qualify to sign bail bonds. Moslem marriages are required to be register within one week of celebration; secular marriages, by which we often mean Christian marriages, are required to be registered within one month. Several Ghanaians who stay in Moslem communities called *Zongos* are regarded by some government agencies such as state hospitals are non-Ghanaians and are not granted state health subsidies when they go to the hospital. At the hospitals, the notation "NG" for "Non-Ghanaian" is put on their hospital cards. This serves as notice to all health officials they will encounter at the hospital to charge them fees as if they were non-Ghanaians. Admissions to public universities are not based purely on merit, but also on a range of other factors including whether or not you have a relative or friend who is, to use one of the sanitized terms, a "friend of the University". And we all know that our political parties are still ethnically based and that party affiliation is a crucial factor in the award of state contracts.> leading to a particularly dangerous form of discrimination that combines ethnicity with party affiliation.

Ifwe look to the law as the instrument for resolving conflicts, as we noted above, then the law should have a role to play in dismantling the broad range of discriminatory practices that are a bane in Ghana today. Yet, we have not been able to use the broad array of possibilities in the arena of administrative regulation to deal with this problem. Wonderful opportunities for doing this exist within a number of national social : programmes. Examples are the District Assemblies Common Fund Scheme where at least five per cent of national revenue is constitutionally required to be disbursed to District Assemblies according to a formular proposed by the executive and approved by Parliament. Others are the Ghana Education Trust Fund and the National Health Insurance Funds. The last two are funds established from taxation for the educational and health sectors. The challenge is this: how do we use these national programmes to deal with the problem of discrimination in Ghana? Can we use the law to develop innovative technologies for dismantling discriminatory practices in the three key areas of local governance, education and health? A repertoire of well developed and articulated rules for managing the process of operationalizing these national programmes if targeted at identifying and redressing the exact causes and manifestations of various discriminatory practices will do us a lot of good. There are lessons, positive and negative, to be learned from

5 Examples exist, but are best left unstated.

the legislative technologies that are used to deal with discrimination of all forms in the United States, South Africa and perhaps Zimbabwe. I am confident that what is lacking in the processes for dismantling discrimination in the United States is not the absence of rules but political will. It follows that learning from the legislative architecture for dismantling discrimination in that country is useful but not enough. What we need to add to that architecture is content that automatically generates the political will to follow through on the non-discrimination agenda. This sounds rather simple and straight forward, but is it? The evidence from the operationalization of our national Constitution, as I try to show in the next section, appears to tell a different story.

Enforcement of Constitutional Principles.

The Ghanaian Constitution of 1992 is a beautiful document. It is rumoured that when the Sierra Leoneans sought to enact a constitution for themselves in the 1990s, they simply came for a copy of the Ghana Constitution and wherever they saw "Ghana", they put "Sierra Leon". Were we to effectively enforce our Constitution, we will make significant social progress. The Constitution sets national standards for a broad range of issues and provides that a standard so set is "the Standard" against which everything else will be measured.> Thus, everything else is subject to pruning, even to the finish, by the Constitution. The Constitution further provides essential guarantees for the protection of the interests of citizens in conflict with the law. [7] And this within a framework of general human rights guarantees that are the envy of several citizens in other countries! and which are stated to be expandable beyond the list contained in the Constitution," and directly enforceable by a court designated by the Constitution for the purpose.

The Constitution also regulates powerful organs of state, including the myriad of administrative institutions that the citizen must deal with on a day to day basis.t? and provides mechanisms for regulating discretionary powers granted to officials of state.'! Public servants are also protected from victimization, discrimination and punishment without just cause?

These are all great laws. Yet it takes three years, and a costly and painstaking journey through the three highest courts of Ghana for a plain and simple constitutional principle to be reestablished and fully operationalised in order to vindicate the rights of thirteen kids who were capriciously punished by a state institution for no just cause.P In this case, thirteen students of a Senior Secondary School (SSS) in Ghana had their SSS results cancelled by the West African Examinations Council (WAEC) unilaterally and for no just cause. This case revealed how little our Constitutional principles have been internalized by us. It took several sittings of the High Court for the court to agree that the provisions of the Constitution related to the enforcement of fundamental human rights could be invoked in that court. The judgment of the High Court (vindicating the rights of the kids) was reversed by the Court of Appeal. According to that court, no fundamental human right had been violated by the WAEC! Their decision was overturned by the Supreme Court and the fundamental human rights of all Ghanaians to be governed by administrative institutions that are not capricious and that act reasonably, as contained in article 23 of the Constitution was affirmed. Also affirmed, eleven years after they were constitutionally prescribed, was the right to invoke the jurisdiction of the High Court by a motion for the purpose of redressing rights abuses.

Disregard for our constitutional and other legal principles can indeed have debilitating effects on our institutions. To take another example, article 14 of the constitution provides

6 Article 1 *of the Constitution.*
7 Article 19 *of the Constitution.*
8 Chapter 5 *of the Constitution.*
9 Article 33(5).
10 Article 23 *of the Constitution.*
11 Article 296 *of the Constitution.*
12 Article 191 *of the Constitution.*
13See Awuniv. West African Examinations Council [2003-2004] 1 *SCCLR*

that any person who has been detained and has not been tried within a reasonable time shall be granted bail. Research conducted in Ghanaian prisons by the Legal Resources Centre, a non governmental organisation, in *2002/3* revealed that about 35% of respondents were not granted bail because they have been charged with offences for which the Criminal Code stipulates that bail should be denied. Yet the Constitution, the supreme law of Ghana, provides that anyone who is detained for whatever reason for an unreasonable length of-time must be granted bail. The inability of judges to completely intemalise article 14 of the constitution has led to an insistence on the old law and a consequential congestion of our prisons. About 10% of the respondents in this survey had been granted bail but could not meet bail conditions. Most of this category were required to produce and deposit with the police, title deeds to some property as security for bail. Given that the most prevalent forms of crime are economic crimes (particularly petty stealing), one wonders whether these accused persons would have stolen if they had landed property to their names or had good friends with such means ready to risk their property for their sake. To insist that they produce such title deeds as a condition for bail is another way of saying that they should rot in prison. It is perhaps appropriate, on this anti-human rights note, to discuss the last issue: human rights and the development problematique.

Human Rights and the Development Problematique

The constitutional experts who drafted the proposals for the 1992 Constitution underlined the importance of human rights in the constitution. It is not surprising that the Preamble to the Constitution clearly states the Human Rights Character of the Constitution: "We the People of Ghana, in exercise of our natural and inalienable right to establish a framework of government. .. and in solemn declaration and affirmation of our commitment to ... the protection and preservation of Fundamental Human Rights and Freedoms ... do hereby enact and give to ourselves this constitution". It is clear. One of the core reasons why we have enactment our 1992 Constitution is the promotion, protection and fulfilment of Human Rights. And there is more. It appears that the constitution then proceeds to make Human Rights the core reason. The longest chapters in the constitution are on human rights. Chapter one runs for two pages, Chapter two another two pages. Chapters three and four run for three one quarter and one and a half pages respectively. Chapter five on human rights runs for twenty-three pages. No other chapter of the constitution is this long and that detailed. Further, the Constitution establishes a mechanism for quick redress of rights violations and goes on to designate a particular court for the redress of such violations. The intention is clear. Human Rights is the fulcrum around which our developmental process is to revolve.

F or a long time we have refused as a nation to acknowledge that this country has chosen a Rights-Based Approach (RBA) to development. But acknowledge this we must. The record is that we have in our Constitution an RBA to Development. Anyone who wishes to quarrel with this has only two options: amend the constitution (which is no mean task since the relevant provisions are entrenched provisions and require stringent processes including a national referendum to amend) or emigrate from Ghana.

We need to get true to ourselves and our constitution and do an RBA to development-the whole package. We do not need to spend our energies debating whether or not Ghana has chosen a RBA to development. That was decided many many years ago. The United States, for example, has not adopt a RBA to development. Its official position is that "[states ... have no obligation to provide guarantees for implementation of any purported 'right to development'"14 Not so for Ghana. It now behoves us to spend time to strategically design a process for deploying a BRA to development that will get us out of our developmental mess.

14 United States Government in a Statement at the U'N. Commission on Human Rights, 59"' *Sess., Comment on the Working Group on the Right to Development (Feb. 10,2003). Quotedfrom Stephen P Marks, "The Human Right to Development: Between Rhetoric and Reality ", vol.* 17 *Harvard Human Rights Journal* 13 7.

Our current process of using the Participation Industry and Gender as proxies for Human Rights is woefully inadequate and even dangerous. A 2005 study on human rights and development'> concluded that the participation industry is used as a proxy for human rights and actually represents "doing participation" as opposed to being participatory". The study also concluded that there is a huge focus on gender in development programming to the neglect of other bases of discrimination. Even more worrying was the finding that there is little understanding of human rights issues among development planners and implementers in government, although civil society groups, who run less expansive development programmes had very sophisticated understandings of rights and the RBA to development.

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The Rights-based Approach to Development

There is limited clarity of what RBA is, how it may be done, and how it may be assessed. One authority has identified seven ways of doing RBA.16 But we are not left without any guidance on what RBA is. There is broad consensus on the basic tenets of a RBA approach. And in any case, RBA is not the only concept that defies a precise definition. The most illuminating of the definitions I have found says:

> "A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed towards promoting and protecting human rights. A human based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development.
>
> The norms and standards are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountability, empowerment and participation. A rights based approach to development includes:
>
> - Express linkage to rights
> - Accountability
> - Empowerment
> - Participation
> - N on-discrimination and attention to vulnerable groups"!"

From this and other definitions, it is fairly easy to identify the core content of a RBA to development. A peculiar human rights understanding of poverty and development; empowerment; information; consultation; participation; equality and non-discrimination; local ownership; accountability; progressive realization, indicators and benchmarks; linking policy makers to the grassroots.'! The United Nations High Commissioner for Human Rights has also identified the following guidelines for doing development a la human rights:

- Identification of the poor.
- Using the human rights framework.
- Equality and non-discrimination.
- Participation and empowerment.
- Progressive Realization of Human Rights.
- Monitoring and Accountability.

Due to the absence of sufficient clarity around the concept of the RBA to development, it

15 Raymond Atuguba and William Kofi Ahadzie, Making ***Human*** *Progress.Poverty, Development, Rights-Ghana country study. Paper Prepared/or the International Council on Human Rights Policy, Geneva, 2005.*

16 Marks, S. *P. 2003. The Human Rights Framework/or Development: Seven Approaches, Working Paper No.* 18. *Francois-Xavier Bagnoud Center/or Health and Human Rights, Harvard University, 2003.*

I7Source: The Right To Water, (WHO, 2003) P. 10, available at http://www.llnhchr.chldevelopmentlapproaches-04.html, visited on July 10,2005.

18See also Human Rights and Poverty Reduction: A Conceptual Framework, OHCHR 2004 pp. 13-31/orm which most 0/ these elements are drawn.

is necessary to state in detail the nature of RBA. Key to the RBA to development are the concepts of rights-bearers and duty-bearers. Citizens are often tagged rights-bearers and governments duty-bearers. Governments are then called upon to respect, protect and fulfil the broad range of rights that citizens possess. RBA involves people claiming their rights and entitlements as contradistinguished from being passive recipients of governmental largesse. It is, therefore, a framework for recasting the basis of the relationship between the Government and the citizenry. In this, the RBA to development uses the language ofhuman rights to legitimize claims of the citizenry for the provision of political, economic and social goods as rights holders. This has the effect of shifting the burden to government to justify failures as duty bearers.

At another level, the RBA to development is an approach that enables the citizenry (including poor/other marginalized groups) to participate in both envisioning and shaping outcomes on matters that concern them. It has the potential to expand the space for the inclusion of the poor in setting and modulating political, economic and social agendas. It follows, therefore, that the RBA to development can render the State's planning, financial and budgetary system liable to higher accountability by the citizenry. Such a process necessarily transforms the power relations between the government and the citizenry, leading to greater empowerment of the latter.

Finally, the RBA to development is an approach that can serve as a powerful rallying influence for building viable social movements to address specific and systemic obstacles to the realization of human rights and development. Human Rights is generally the language of the oppressed and the marginalised. That language and the moral backing it possesses often serves as a rallying influence for mobilising groups of people to action for the transformation of their lives. Although governments are uncomfortable about this, a RBA to development necessarily involves a great deal of activism. Flowing from the above, and in practical terms, the RBA to development involves the following sets of interventions, activities and processes:

- Conscientization, sensitization, awareness raising, education;
- Capacity building;
- Participatory problem analysis;
- Mobilizing/Organizing people for action;
- Working With Social Movements;
- Advocacy, Lobbying, Campaigning, Litigation, Activism;
- Research, Documentation, Sharing
- Addressing Immediate Needs;
- Monitoring and Evaluation using rights standards.

F or evidence that an intervention, activity or process is RBA positive, we look to see if the strategy is founded on a heightened awareness and consciousness of rights and how they may be claimed; and whether people assume some responsibility by insisting on compliance through a process of dialogue, advocacy, activism etc aimed at claiming rights.

In practice, RBA turns out to be multidisciplinary, since the range 'of rights issues cut across disciplines. The inundation of the field of right by lawyers must, therefore, be seriously reconsidered. Whilst strict legalese is useful in the ultimate process of enforcing rights in the courts, we must remember that RBA involves many more interventions, activities and processes than the mostly narrow conception of lawyers will allow for. Thus, any RBA strategy must take cognizance of the multi-disciplinary nature of doing RBA, bringing together the benefit of diverse disciplines and experiences into a robust and integrated whole.

Finally, a very smart way of doing RBA is to engage the government and other development practitioners at the nerve centre of development: national and local development plans budgets, and expenditure processes. Ensuring that these are RBA positive, in content and in process, is to practically ensure that development is delivered with a RBA. There already exist guidelines for RBA to budget analysis as an advocacy and mobilizing tool [19]

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19See jor example, http://www.iie.org/Website/CustomPages/ACFE8.pdj

RBA Fears

The discussion of RBA in the last few pages are glorifying indeed of the concept, and deceptively so. For there are many many challenges that adherents to the approach (theoreticians and practitioners alike) face. I have already noted the difficulties with defining the RBA to development and the precise elements that constitute the approach. This translates into a limited understanding of government officials and even civil society operatives on how to do the RBA to development. In the worse case scenario, they simply carry wrong impressions and understandings of the concept and then tend to dislike it.

A related challenge is that there is limited dialogue between development practitioners and rights practitioners. Yet, a synergy is needed between the two groups if a RBA to development is ever to work. The two groups often trade insults and hardly listen to each other. The latter accuse the former of dolling out booty in an unsustainable and top-down fashion and the former accuse the latter of being unable to define and clarify the framework they propose for development and to point to tools and processes that can be used to e val u ate an RBA to development. These quarrels translate to the local level where projects are implemented by development practitioners according to a basic needs framework and by RBA practitioners according to a rights framework. This completely distorts the synergy that should exist between development and human rights.

Again, it is generally acknowledged that pursuing a RBA to development has serious cost implications for governments which can be debilitating indeed. This is because every need and want may be framed in rights terms and a demand made on governments to provide them.

Dzodzi Tsikata-? has recently catalogued some other challenges of the RBA to development. I will conclude this paper by enumerating these challenges and providing some responses.

RBA Hopes

Tsikata notes, as already stated that there are potentially not one, but many RBAs to development. She rightly states that this points to certain differences in approach to linking human rights and development. Whilst this concern it legitimate we need to be constantly reminded that the RBA to development is at least agreed on what it is not and has a very clear fulcrum around which all else revolves-human rights. This concern is therefore less real than it appears on paper. A more difficult challenge is clarifying the processes for measuring progress in a RBA to development. Yet significant strides are being made in this direction. A simple search on the internet will reveal a range of resources, of varying integrity and usefulness, for tracking and measuring RBAs.

She has other concerns. "In any case, within the RBA framework, economic liberalisation is not up for discussion and whatever human rights are on the table have to be realised within its framework." This is another genuine concern, more so when liberalism as deployed in the form of Structural Adjustment Programmes is blamed for a lot of economic and social rights abuses in Ghana. Yet we are aware that the fonn of liberalism that was deployed in much of Africa is a crude variant that did not make use of a broad range of exceptions in liberal discourse. Since it is pretty difficult in today's global economy to completely throw out liberalism without an economic war against you (ask President Robert Mugabe of Zimbabwe), it will be more strategic to design an RBA to development that operates within the broad exceptions that liberalism itself recognises, except of course, when it is pushed-down the throats of a poor struggling third world country, with at most three months of import cover and that is starring suppliantly at the World Bank and the IMF for its next tranche offunding.

20 Dzodzi Tsikata, The Rights-BasedApproach to Development: Potentialfor Change or More of the Same? Paper Presented at the institute of Economic Affairs, Accra, September, 2005. The quotations from this point onwards are taken from this paper.

The next concern she has is that "[g]iven the history of donor fadism, it is anyone's guess how long it will take for a new development approach to take over the "holy grail" status of the RBAs", especially "because of the continuing confusion about what the RBAs are and are not, and the fact that what is being claimed for them have been advocated within the development circles for decades." I have already tried to address aspects of the latter part of this concern. I will add here that the RBA to development, as distinguished from "the Right to Development" has not been around for long. True, the former takes inspiration from the latter, but they are certainly not the same. Whilst the "right to development" movement started in the 1970s with calls for a New International Economic Order, culminating in the Declaration of the Right to Development in 1986, the RBA to development, as articulated in this paper is of very recent birth. It was only in 1998, that the UN Secretary-General launched the new rights based approach to development Given the moral worth and the stable and enduring character of the concept of human rights, (since it became a core part of the international development lexicon from 1948), it is my belief that an approach to development that is based on it cannot easily be shaken off. It is therefore unlikely that a new development approach will arise to replace it before this new century is over, unless it arises from the phoenix of the RBA.

Another concern about the RBA to development is the role of the nation state in its implementation. The nation state has a huge role as the primary duty-bearer. Sometimes it is spoken of as the only duty bearer. "Given the dismantling and disabling of the state under structural adjustment, the proactive role being given to the state under the RBAs is unrealistic". As Tsikata rightly notes, the site of development policy making has changed from the state to the international arena. The logical thing to do, (and this is completely consistent with anRBA to development) is to equally focus theRBA to development on national governments and international actors, private and public alike, who are more central to policy decisions than internal actors. Developing countries will be kidding themselves if they adopted a RBA to development that focuses heavily on the frail and bankrupt states to bear all the duties that duty bearers must assume under an RBA to development

Tsikata also points out that "powerful players within the economic policy establishment have adopted the RBAs and are pushing it within various constituencies" so that "a programme touted as ensuring grassroots participation is being imposed top down on governments, civil society organisations and communities in much the same way as the results based management approach (RBM) was." The hard truth is that the global political economy does not recognise an approach to development that is not sanctioned by these power and money brokers. **In** the final analysis, an approach to development needs financial backing to implement As long as we look to them for forty per cent or more of our national budget, we will look to them for the green light to implement an approach to development. The singular advantage in this case is that the power and money brokers have for the first time agreed on an approach to development that is consistent with our own aspirations as a nation. It is difficult to loose out in this scenario, unless we take a stance that is not proactive enough. We have travelled this road before. This is what Tsikata refers to when she writes: "If we accept the argument that gender mainstreaming initiatives have not been successful because of inadequate analytical skills, lack of political commitment and inadequate funding and a lack of focus on the ends of gender mainstreaming ... how far does the RBA address these problems?". Once broad agreement has been reached on the approach, it behoves on us to capture, define, redefine, synthesize, operationalize, monitor and evaluate, and then bombard the world with experiences, learning, and tools for doing an RBA to development that meets our national interest My guess is that we will be looking to the power and money brokers to do this for us and as long as the ball is in that part of the playing field, we can never be sure what monster the RBA to development will be nurtured into and let loose onus.

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