

A HUMAN RIGHTS-BASED APPROACH TO SUSTAINABLE DEVELOPMENT IN AFRICA POST-COVID-19

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SUMMARY

The worst global disaster of the twenty-first century so far, COVID-19, has caused major disruption to people's lives and livelihoods and exposed inequalities within and among countries. Developing countries, particularly in Africa, have been hardest hit as they have had to face unprecedented challenges, with potentially extreme economic, social and sustainable development consequences. Existing challenges were worsened by COVID-19 with significant implications not only for sustainable development, but also for human rights. This article first discusses the relationship between human rights and sustainable development. The discussion then turns to the impact of COVID-19 on sustainable development with a focus on specific and relevant Sustainable Development Goals (SDGs), and on the protection and enjoyment of human rights in Africa. The article concludes by recommending a human rights-based approach as a clear and compelling direction to sustainable development in Africa in the aftermath of the devastating and unprecedented COVID-19 pandemic.

1 INTRODUCTION

There is no denying that the COVID-19 pandemic has to date been the worst global disaster of the twenty-first century. According to the 2021 Sustainable Development Goals Report,¹ COVID-19 has caused major disruption to people's lives and livelihoods. The report referred to it as

“a crisis of monumental proportions, with catastrophic effects on people's lives and livelihoods and on efforts to realize the 2030 Agenda for Sustainable Development.”²

There is also no denying that the pandemic exposed and intensified inequalities within and among countries.³ Developing countries were hardest

¹ United Nations *The Sustainable Development Goals Report 2021* <https://unstats.un.org/sdgs/report/2021/> (accessed 2023-01-20).

² UN *Sustainable Development Goals Report 2021* <https://unstats.un.org/sdgs/report/2021/> 3.

³ *Ibid.*

hit. They had to face unprecedented health and economic challenges, with potentially extreme economic, social and sustainable development consequences.⁴ This was all the more so in African countries where pre-existing social and economic challenges were already more prominent than in European, American and Asian countries. Such challenges were worsened by COVID-19, with significant implications, not only for sustainable development but also for human rights.

It is common knowledge that COVID-19 was first reported in Wuhan, China, at the end of 2019. It then spread rapidly across the world, leaving untold devastation in its wake. In Africa, the first reported case of the disease was noted in Egypt on 14 February 2020.⁵ Globally, the disease was declared a pandemic by the World Health Organization (WHO) on 5 March 2020.⁶ The pandemic first peaked in many countries between March and August 2020, petering off between September and November 2020. However, it showed a sudden resurgence in what was labelled the second wave from December 2020. A few months later, many countries experienced a third wave that peaked between April and August 2021.⁷ Several countries have experienced four, five or even six waves of the pandemic.

Since the discovery and approval of several vaccines in early 2021, however, the numbers of infected people began to decrease worldwide – more so in well-resourced developed countries than in poor under-resourced countries, particularly in Africa where the vaccine uptake was generally low. Indeed, in early 2022, owing to the introduction of vaccines, the COVID-19 pandemic began to show a decline worldwide. In June 2022, it was predicted that

“COVID-19 deaths in the African region are expected to decline by almost 94% in 2022, compared with 2021 which was the pandemic’s most lethal year.”⁸

By that time (mid-2022), more than 564 million people had been infected worldwide and more than 6.3 million had died.⁹ In Africa, during the same period, more than 8.7 million cumulative cases had been recorded with about 173 000 deaths.¹⁰ As of January 2023, statistics placed total infection

⁴ See OECD “Developing Countries and Development Co-Operation: What Is at Stake?” (28 April 2020) <https://www.oecd.org/coronavirus/policy-responses/developing-countries-and-development-co-operation-what-is-at-stake-50e97915/> (accessed 2023-08-24).

⁵ Haileamlak “COVID-19 Pandemic Status in Africa” 2020 30(5) *Ethiopian Journal of Health Sciences* 643.

⁶ Cucinotta and Vanelli “WHO Declares COVID-19 a Pandemic” 2020 91(1) *Acta Biomedica* 157.

⁷ See Chutel “Covid-19: Third Wave ‘Raging At Full Force’ as Africa Reaches Record Peak in Deaths – WHO” *News24* (6 August 2021) <https://www.news24.com/news24/africa/news/covid-19-third-wave-raging-at-full-force-as-africa-reaches-record-peak-in-deaths-who-20210806> (accessed 2023-08-24).

⁸ WHO “COVID-19 Deaths in African Region to Fall by Nearly 94% in 2022: WHO Analysis” (June 2022) <https://www.afro.who.int/news/covid-19-deaths-african-region-fall-nearly-94-2022-who-analysis> (accessed 2023-01-23).

⁹ WHO “WHO Coronavirus (COVID-19) Dashboard” (2022) <https://covid19.who.int/> (accessed 2023-01-23).

¹⁰ WHO Regional Office for Africa “Coronavirus (COVID-19)” (2022) <https://www.afro.who.int/health-topics/coronavirus-covid-19> (accessed 2023-01-23).

at just over 660 million people worldwide with about 6.7 million deaths.¹¹ Africa's infection tally had risen to just over 8.9 million cases with over 174 000 deaths.

Despite the discovery and widespread use of vaccines leading to a decline in COVID-19 deaths and infections, the pandemic is far from over. Recent developments in China have clearly indicated that the pandemic is alive and well and retains the potential of spreading fast across the globe again as a result of fast-mutating variants of the virus.¹² That is why the WHO "has yet to declare an end to the COVID public health emergency introduced in January 2020."¹³

Whether the pandemic re-emerges strongly or not, however, damage has already been done. As is discussed below, the pandemic has had a dramatic and devastating impact on all facets of human life across the globe. It has presented unprecedented challenges to public health systems, social and economic activities, food systems and people's livelihoods all over the world. In so doing, it has had a negative impact on sustainable development, not only in Africa, but also in many other parts of the world, and has had a concomitant negative impact on the protection and enjoyment of human rights.

This article first discusses the relationship between human rights and sustainable development. The discussion then turns to the impact of COVID-19 on sustainable development with a focus on specific and relevant Sustainable Development Goals (SDGs), particularly on the African continent. The article then discusses the negative impact of the COVID-19 pandemic on the protection and enjoyment of human rights in Africa. The article concludes with a call for a human rights-based approach as the most appropriate framework to sustainable development in Africa in the aftermath of the devastating and unprecedented COVID-19 pandemic.

2 THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT

The 1993 Vienna Declaration and Programme of Action¹⁴ clearly recognised the interdependence and mutually reinforcing relationship between democracy, development and respect for human rights. The 1998 United Nations Development Programme (UNDP) Policy Document on Integrating Human Rights With Sustainable Development¹⁵ also emphasised the link between human rights and development and concluded that

¹¹ WHO <https://covid19.who.int/>.

¹² See VOA "China's COVID-19 Surge Raises Odds of New Coronavirus Mutation" *Associated Press* (25 December 2022) <https://www.voanews.com/a/china-s-covid-19-surge-raises-odds-of-new-coronavirus-mutation-6890874.html> (accessed 2023-08-24).

¹³ Cershberg "How Covid Will Continue to Disrupt Global Healthcare in 2023" *Government Health Policy*, *Reuters* (7 December 2022) <https://www.reuters.com/business/healthcare-pharmaceuticals/emerging-covid-pandemic-again-2022-12-07/> (accessed 2023-01-23).

¹⁴ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23 <https://www.refworld.org/docid/3ae6b39ec.html> (accessed 2023-01-24).

¹⁵ UNDP "Integrating Human Rights With Sustainable Human Development" (1998) <http://www.undp-aci.org/publications/other/undp/hr/hr-susdev98e.pdf> (accessed 2023-01-24).

“human rights and sustainable development are inextricably linked, complementary and multidimensional.”¹⁶

Furthermore, the 2030 Agenda for Sustainable Development¹⁷ states:

“the achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities.”¹⁸

Human rights are usually defined as

“rights we have simply because we exist as human beings – they ... are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.”¹⁹

Sustainable development, on the other hand, has been broadly defined as

“development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.”²⁰

According to the UN Office of the High Commissioner for Human Rights (OHCHR),

“human rights create conditions essential for sustainable development [because] ... civil, cultural, economic, political and social rights and the right to development build on each other and advance together.”²¹

The relationship between human rights and sustainable development has to be seen first in the context of development generally, an issue about which much has been written. As the author has explained elsewhere,

“the golden thread in the literature is the interdependence and mutually-reinforcing nature of the concepts of human rights and development.”²²

Put differently, it is not possible to achieve one without achieving the other to a reasonable extent. In fact, one could argue that one of the standards for measuring development should be the realisation of human rights.

It should be remembered that the formal recognition of the relationship between human rights and development occurred in 1986 when the United Nations (UN) adopted the Declaration of the Right to Development.²³ Article 1 of this Declaration explicitly acknowledges this relationship:

¹⁶ UNDP <http://www.undp-aci.org/publications/other/undp/hr/hr-susdev98e.pdf> 8.

¹⁷ UN General Assembly *Transforming Our World: The 2030 Agenda for Sustainable Development* (21 October 2015) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2023-08-24).

¹⁸ UNGA *Transforming Our World* par 20.

¹⁹ United Nations “What are Human Rights?” <https://www.ohchr.org/en/what-are-human-rights> (accessed 2024-04-04).

²⁰ United Nations “Report of the World Commission on Environment and Development: Our Common Future” (The Brundtland Report) (1987) <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> (accessed 2023-08-24).

²¹ OHCHR “Advancing Sustainable Development Through Human Rights” (2017) <https://bangkok.ohchr.org/development/#top> (accessed 2023-01-25).

²² Mubangizi “A Human Rights-Based Approach to Development in Africa: Opportunities and Challenges” 2014 39(1) *Journal of Social Sciences* 69.

²³ Resolution adopted by the UN General Assembly (4 December 1986) A/RES/41/128.

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Since the adoption of the United Nations Declaration on the Right to Development, numerous developments and changes in thinking have taken place. In the African context specifically, it is noteworthy to acknowledge that the African Charter on Human and Peoples’ Rights (African Charter)²⁴ stands as the only regional and continental human rights instrument that recognises the right to development. According to article 22 of the African Charter:

- “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.”

What this implies is that, not only is development a human right, but

“the full attainment of human rights requires the support of economic, social and cultural development. It also implies that such development is the basis for the realization of all human rights.”²⁵

The relationship between human rights and sustainable development is also well captured by the Netherlands Council on International Affairs. In its Advisory Report 110,²⁶ the Council argues that sustainable development and human rights are two sides of the same coin.²⁷ The report explains: “The point of departure is that they both seek the same goal: the realisation of human dignity.” It further states:

“In essence, national and international efforts to promote sustainable development and human rights serve the same purpose: the opportunity for all people to lead and shape their lives with dignity and in solidarity with others.”²⁸

The relationship between human rights and sustainable development can also be seen in the context of specific human rights and specific sustainable development goals (SDGs). There are certain rights that have to be realised for certain SDGs to be attained. For example, the right to an adequate standard of living is linked to SDG 1, which seeks to end poverty in all its forms everywhere.²⁹ The right to sufficient food is linked to SDG 2, which seeks to end hunger and achieve food security.³⁰ Similarly, the right to life,

²⁴ Organization of African Unity (OAU) CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982). Adopted: 27/06/1981; EIF: 21/10/1986.

²⁵ Mubangizi 2014 *Journal of Social Sciences* 69.

²⁶ Netherlands Advisory Council on International Affairs (AIV) “Sustainable Development Goals and Human Rights an Indivisible Bond, No. 110 of 2019” (2019) <https://www.asser.nl/media/5625/advisory-report-110.pdf> (accessed 2023-01-26).

²⁷ Netherlands AIV <https://www.asser.nl/media/5625/advisory-report-110.pdf> 15.

²⁸ Netherlands AIV <https://www.asser.nl/media/5625/advisory-report-110.pdf> 17.

²⁹ See Goal No 1 of the Sustainable Development Goals (UNGA *Transforming Our World*).

³⁰ Goal No 2 of the Sustainable Development Goals (UNGA *Transforming Our World*).

the right to health and the right to enjoy the benefits of scientific progress and its application are all linked to SDG 3, which seeks to ensure healthy lives and promote well-being for all.³¹

The rights to education, rights of persons with disabilities, equal rights of women and girls in the field of education, and the right to work (including technical and vocational training) all relate to SDG 4, which seeks to “ensure inclusive and quality education for all and promote lifelong learning”.³² Similarly, the elimination of all forms of discrimination against women and violence against women and girls, speaks to SDG 5, which seeks to “achieve gender equality and empower all women and girls”.³³ SDG 6, which seeks to “ensure access to water and sanitation for all” relates directly to the right to safe drinking water and sanitation and the right to health.³⁴ The list goes on and on. The length and depth of this article are not suited to a detailed discussion of every SDG and corresponding human right. It suffices to say that for the attainment and realisation of every SDG, there are corresponding human rights that have to be protected in order to be enjoyed. It is in that context and against that background that the impact that COVID-19 has had on sustainable development on the one hand, and on human rights (specifically in Africa) on the other, has to be understood.

3 IMPACT OF COVID-19 ON SUSTAINABLE DEVELOPMENT

Much has been said and written about the impact of COVID-19 on development generally and on sustainable development in particular. All commentators are in agreement that the pandemic has had a negative effect on achieving the SDGs and generally reversed most of the progress that had been made.³⁵ Both the 2021 and 2022 Sustainable Development Goals Reports³⁶ highlighted and revealed the devastating impacts of the COVID-19 crisis on implementation of the SDGs. The 2021 Sustainable Development Goals Report illustrated how COVID-19 caused a major disruption to people’s lives and livelihoods. Commenting on the report, the United Nations Department of Economic and Social Affairs (DESA) stated:

“While progress to achieve the SDGs had been slow even before the pandemic struck, an additional 119–124 million people were pushed back into

³¹ Goal No 3 of the Sustainable Development Goals (UNGA *Transforming Our World*).

³² Goal No 4 of the Sustainable Development Goals (UNGA *Transforming Our World*).

³³ Goal No 5 of the Sustainable Development Goals (UNGA *Transforming Our World*).

³⁴ Goal No 6 of the Sustainable Development Goals (UNGA *Transforming Our World*).

³⁵ See for e.g., Yuan, Wang, Gao, Wang, Liu, Fang and Gao “Progress Towards the Sustainable Development Goals Has Been Slowed by Indirect Effects of the COVID-19 Pandemic” 2023 184(4) *Communications, Earth & Environment* 1–13. See also Elavarasan, Pugazhendhi, Shafiullah, Kumar, Arif, Jamal, Chopra and Dyduch “Impacts of COVID-19 on Sustainable Development Goals and Effective Approaches to Manoeuvre Them in the Post-Pandemic Environment” 2022 29 *Environmental Science and Pollution Research* 33957–33987; and Martin-Blanco “The Impact of COVID-19 on the Sustainable Development Goals: Achievements and Expectations” 2022 19(23) *Int J Environ Res Public Health* 16266.

³⁶ UN Sustainable Goals Report 2021 <https://unstats.un.org/sdgs/report/2021/> (accessed 2023-08-25) and UN Sustainable Goals Report 2022 <https://unstats.un.org/sdgs/report/2022/> (accessed 2023-08-25).

poverty in 2020. An equivalent of 255 million full-time jobs were lost, and the number of people suffering from hunger, which was already climbing before the pandemic, may have increased by 83–132 million.”³⁷

There are a number of other key facts and figures highlighted in the 2021 report. Chief among these is that “the global extreme poverty rate rose for the first time since 1998, from 8.4% in 2019 to 9.5% in 2020.”³⁸ As has been mentioned earlier and is further explained later, this has direct implications for SDG 1, which calls for the eradication of poverty in all its forms by 2030. Also highlighted in the report is the fact that “the pandemic halted or reversed progress in health and poses major threats beyond the disease itself.”³⁹ The implications for SDG 3, which deals with ensuring healthy lives and promoting well-being for all, are pretty obvious. The report further pointed out that

“the COVID-19 pandemic adversely affected progress towards gender equality, violence against women and girls intensified and women suffered a disproportionate share of job losses and increased care work at home.”⁴⁰

This impacts SDG 5, which calls for the achievement of gender equality and empowerment of all women and girls. Furthermore, according to the report, “millions of people are without electricity and one third of the global population lack clean cooking fuels and technologies.”⁴¹ This mainly impacts SDG 7, which calls for access to affordable and clean energy for all.

Although the 2021 Sustainable Development Goals Report acknowledged that economic recovery was under way (at the time), led by China and the United States, it also pointed out that “for many other countries, economic growth is not expected to return to pre-pandemic levels until 2022 or 2023.”⁴² Similarly, the report conceded that whereas

“net official development assistance increased in 2020 to a total of \$161 billion, this still falls well short of what is needed to respond to the COVID-19 crisis and to meet the long-established target of 0.7% of GNI.”⁴³

Finally, the report indicated that while 132 countries and territories reported that they were implementing a national statistical plan in 2020, only 84 of those countries had plans that were fully funded.⁴⁴ Moreover, only four out of

³⁷ See United Nations Department of Economic and Social Affairs (DESA) “Sustainable Development Report Shows Devastating Impact of COVID, Ahead of ‘Critical’ New Phase” (July 2021) <https://www.un.org/africarenewal/news/sustainable-development-report-shows-devastating-impact-covid-ahead-%E2%80%98critical%E2%80%99-new-phase> (accessed 2023-01-26).

³⁸ UN Sustainable Development Goals Report 2021 26.

³⁹ UN Sustainable Development Goals Report 2021 30.

⁴⁰ UN Sustainable Development Goals Report 2021 36.

⁴¹ UN Sustainable Development Goals Report 2021 40.

⁴² UN Sustainable Development Goals Report 2021 42.

⁴³ UN Department of Economic and Social Affairs (DESA) “Sustainable Development Report Shows Devastating Impact of COVID, Ahead of ‘Critical’ New Phase” *Africa Renewal* (6 July 2021) <https://www.un.org/africarenewal/news/sustainable-development-report-shows-devastating-impact-covid-ahead-%E2%80%98critical%E2%80%99-new-phase> (accessed 2024-04-04).

⁴⁴ UN Sustainable Development Goals Report 2021 61.

the 46 less developed countries (LDCs) reported having fully funded national statistical plans.⁴⁵

The 2022 Sustainable Development Goals Report painted an even gloomier picture. It illustrated how

“cascading and interlinked crises are putting the 2030 Agenda for Sustainable Development in grave danger, along with humanity’s very own survival.”⁴⁶

The Report highlighted how

“the severity and magnitude of the confluence of crises, dominated by COVID-19, climate change, and conflicts, are creating spin-off impacts on food and nutrition, health, education, the environment, and peace and security, and affecting all the Sustainable Development Goals (SDGs).”⁴⁷

The Report further detailed:

“the reversal of years of progress in eradicating poverty and hunger, improving health and education, providing basic services, and much more.”⁴⁸

Similar to the 2021 Sustainable Development Goals Report, some of the other key facts and figures highlighted in the 2022 report have a direct bearing on several SDGs. Included among these, and impacting SDG 1, is the fact that

“many millions more people are now living in extreme poverty and suffering from increased hunger compared to pre-pandemic levels.”⁴⁹

Impacting SDG 2 was the fact that

“about one in ten people were suffering from hunger worldwide, with 161 million additional people having slid into chronic hunger in 2020 alone.”⁵⁰

In relation to SDG 3, the 2022 report further warned that

“the COVID-19 pandemic was threatening decades of progress in global health, decreasing global life expectancy and basic immunization coverage and increasing prevalence of anxiety and depression and deaths from tuberculosis and malaria.”⁵¹

Regarding the implications of COVID-19 for SDG 5, the report pointed out that the general global employment losses in 2020 and 2021 affected women disproportionately, with many increasingly burdened with unpaid care work, and increasingly affected by intensified domestic violence.⁵² Other relevant facts highlighted in the report include the realisation that

⁴⁵ *Ibid.*

⁴⁶ See UN “The Sustainable Development Goals Report 2022” (Introductory Summary) (2022) <https://unstats.un.org/sdgs/report/2022/> (accessed 2023-01-29).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ UN Sustainable Development Goals Report 2022 2.

⁵⁰ See IISD “SDGs Report 2022 Delivers ‘Reality Check’ on Reversal of Progress” *SDG Knowledge Hub* (13 July 2022) <https://sdg.iisd.org/news/sdgs-report-2022-delivers-reality-check-on-reversal-of-progress/> (accessed 2023-01-29).

⁵¹ *Ibid.*

⁵² *Ibid.*

“the COVID-19 pandemic had caused the first rise in between-country income inequality in a generation [and that] net official direct assistance (ODA) reached a new high of USD 177.6 billion, largely due to COVID-19-related aid, but ODA for SDG data declined by more than 18% (2020).”⁵³

It is clear from the 2021 and 2022 Sustainable Development Goals Reports that COVID-19 brought about a level of economic turmoil that was as unprecedented as it was unpredictable. Many countries had to go into lockdowns, thereby not only slowing down their economies but ultimately also “paralysing a considerable part of the world economy”.⁵⁴ As pointed out in the foregoing discussion, this

“slowdown of the world economy had a direct impact on the SDGs, with a severe increase in poverty levels, unemployment, health risks and a huge uncertainty of the effects on the environmental aspects of the global goals.”⁵⁵

Whereas COVID-19 had a negative impact on sustainable development across the globe, such impact was more significant in low income countries in Africa, Asia and South America. The negative impact of COVID-19 on sustainable development in Africa can be seen and assessed in terms of specific SDGs. For example, regarding SDG 1, there is no doubt that COVID-19 led to increased poverty aggravated by economic lockdowns and job losses. It has also led to increases in relative and absolute poverty and pushed more people into extreme poverty.⁵⁶ According to Yongyi Min,

“although the number of poor [people] was already projected to increase in 2020 and 2021, the COVID-19 pandemic is estimated to double the already deteriorating rate and will push an additional 30 million people into extreme poverty in the region.”⁵⁷

Insofar as SDG 2 is concerned, it has been argued that a reduction in global food supplies and trade owing to the pandemic resulted in food insecurity and hunger in Africa. This led to an increase in the number of people suffering from hunger and food insecurity. For example, in 2020, one in five people was facing hunger in Africa. This translated into about 46 million more people when compared with 2019.⁵⁸

In Africa, there is probably no SDG that has been more negatively impacted by the COVID-19 pandemic than SDG 3, which seeks to ensure healthy lives and promote well-being for all. Such impact was characterised by, *inter alia*, higher disease incidence and mortality from COVID-19 and other causes, overloaded hospital systems, increases in mental health cases

⁵³ *Ibid.*

⁵⁴ Da Cruz and De Almeida “The Impact of COVID-19 on the Sustainable Development Agenda: A Business Opportunity to Reframe Success” (2020) <https://intra.clsbe.lisboa.ucp.pt/research-note-the-impact-of-covid-19-on-the-sustainable-development-agenda-a-business-opportunity-to-reframe-the-future-> (accessed 2023-08-25).

⁵⁵ *Ibid.*

⁵⁶ Olaomo, Folarin, Obisesan and Olayide “Impacts of COVID-19 on Sustainable Development in Africa” 2021 11(1) *African Journal of Sustainable Development* 143.

⁵⁷ Min “How COVID-19 Has Impacted the SDGs in Africa” *Africa Renewal* (18 July 2021) <https://www.un.org/africarenewal/magazine/august-2021/how-covid-19-has-impacted-sdgs-africa> (accessed 2023-01-30).

⁵⁸ *Ibid.*

as a result of the pandemic and injuries from domestic violence as a result of the lockdowns.

Also seriously affected by the pandemic was SDG 4, which deals with education and lifelong learning. School closures and the economic downturn caused by COVID-19 affected not only human capital development, but also resulted in millions of children in Africa falling below the minimum reading proficiency threshold, increasing the share of students falling behind to 85 per cent in 2020 alone.⁵⁹ Similarly, the achievement of gender equality and empowerment of all women and girls advocated by SDG 5 has been negatively impacted by the pandemic. According to Yongyi Min,

“violence against women and girls has intensified; child marriage is expected to increase; and women have suffered a disproportionate share of job losses and increased care work at home.”⁶⁰

Other SDGs have equally and similarly been negatively impacted by the COVID-19 pandemic in various ways. Further examples of this impact include limited access to clean water (impact on SDG 6), an increase in the number of people without electricity (impact on SDG 7), an increase in urban poverty, exposure to high vulnerability and ineffective waste management (impact on SDG 8) and a lack of focus on mitigating climate action (impact on SDG 13).

It ought to be mentioned that in the specific context of Africa, a number of factors combined to compound the impact of the pandemic described above. These included, but were not limited to, poor health facilities, pre-existing socio-economic challenges, poverty, low levels of testing, poor communication, poor infrastructure, poor governance, ongoing civil strife in many areas and low levels of education. These are the very same factors that negatively affect the enjoyment and realisation of human rights in Africa. It is for this reason that we turn to the relationship between the pandemic and the protection of human rights in Africa.

4 COVID-19 PANDEMIC AND THE PROTECTION OF HUMAN RIGHTS IN AFRICA

Although there are several treaties and instruments that protect and promote human rights on the African continent, the primary African regional human rights mechanism revolves around the African Charter on Human and Peoples' Rights. The African Charter recognises all categories of human rights, including civil and political rights, as well as socio-economic and cultural rights.

Civil and political rights generally include rights to equality, human dignity, life, privacy, access to information and access to courts. They also include freedom of expression, freedom and security of the person, freedom from slavery and freedom of association. The rights of accused, arrested and detained persons also fall in this category. So too do political rights, such as the right to vote and the right to form or belong to a political party. All these

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

rights are contained in the African Charter.⁶¹ It is not an exaggeration to say that during the COVID-19 pandemic, most civil and political rights of people in African countries, like everywhere else, were adversely affected.

Lockdowns, by their nature, restrict movement and physical interaction. This has a significant effect on several rights, including freedom of movement and freedom of association. There is no doubt that freedom of movement and association were severely affected by COVID-19 restrictions. Also negatively affected were the rights to life, privacy, human dignity, freedom and security, and access to information. For example, according to the Chairperson of the African Commission on Human and Peoples' Rights:

"Apart from the rise in acts of discrimination, xenophobia, misinformation and hate speech, Statements presented during the 66th ordinary session of the Commission show an increased concentration of power in the hands of the executive; undue restrictions on civil and political rights, including freedom of the press and media, which are essential for access to public health information; and the abuse of the pandemic emergency to target opposition leaders, journalists and human rights defenders."⁶²

Socio-economic and cultural rights were also negatively impacted by the COVID-19 pandemic. Included among the relevant socio-economic rights are property rights and rights relating to housing, health care, food, water, social security and education. Insofar as housing is concerned, it is important to note that in 2000, an estimated

"51 million people lived in informal dwellings in Southern Africa's cities and towns. By 2018 the number had grown to 87 million."⁶³

Most of these settlements lack basic amenities, such as clean running water, electricity and sanitation. It is also important to note that people who live in these informal settlements are typically poor and lack access to basic sanitation and adequate water supply. As a result, during COVID-19 lockdowns and restrictions, those people found it difficult to practise social distancing and to maintain adequate standards of hygiene in crowded surroundings.⁶⁴ In fact,

"the so-called non-pharmaceutical strategies of physical distancing, washing hands with soap and water, and self-isolation, required access to basic but essential services such as adequate clean water."⁶⁵

Article 16 of the African Charter provides for the right to enjoy the best attainable state of physical and mental health and enjoins States Parties to

⁶¹ Art 2–13 of the African Charter.

⁶² See Dersso "The Impact of COVID-19 on Human and Peoples' Rights in Africa" *ACCORD* (9 September 2020) <https://www.accord.org.za/analysis/the-impact-of-covid-19-on-human-and-peoples-rights-in-africa/> (accessed 2023-02-10).

⁶³ Le Roux and Napier "Southern Africa Must Embrace Informality in Its Towns and Cities" *ISS Today* (13 April 2022).

⁶⁴ Mubangizi "Poor Lives Matter: COVID-19 and the Plight of Vulnerable Groups With Specific Reference to Poverty and Inequality in South Africa" 2021 65(S2) *Journal of African Law* 246.

⁶⁵ *Ibid.*

“take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”⁶⁶

The constitutions of several African countries provide for the right of access to health care services, sufficient food and water, and social security.⁶⁷ This is a critical provision relating to health generally and to COVID-19, particularly on the African continent where poverty and hunger are predominant. As the author has argued elsewhere:

“Poor health perpetuates poverty and poverty exacerbates poor health. The same applies to food. Poor people are unable to access sufficient nutritious food. This affects their health.”⁶⁸

Social security is not any different. In Africa, where levels of unemployment and poverty are very high, protecting the right to social security is particularly important.

Article 17 of the African Charter provides for the right to education. This right has to be seen in the context of huge disparities that characterise many school systems in African countries. These disparities were further exposed by COVID-19. The closing of schools and other educational institutions was “one of the measures taken to stop the spread of the virus”. In that regard,

“a research study conducted by Human Rights Watch between April and August 2020 showed that ... the closure of schools ‘exacerbated previously existing inequalities, and that children who were already most at risk of being excluded from a quality education have been most affected.’”⁶⁹

During the lockdown, many educational institutions adopted e-learning strategies and shifted their instruction and learning to online platforms. Many children and students from disadvantaged families lacked access to technology, data, electricity and Internet connectivity, which prevented them from engaging in remote learning. Those pupils who were already disadvantaged and vulnerable were negatively affected.⁷⁰

A discussion on the impact of Covid-19 on the protection of human rights in Africa would be incomplete without specific reference to the rights of women. There is no doubt, for example, that the pandemic exacerbated inequality between men and women. In Africa, as in many other parts of the world, women continue to be stereotyped as primary care givers responsible for childcare and domestic work that is unpaid. Studies have shown that

“during lockdown, mothers were spending less time on paid work and more time on household responsibilities while their time doing paid work ... was more likely to be interrupted with household responsibilities.”⁷¹

⁶⁶ Art 16 of the African Charter.

⁶⁷ For e.g., s 27 of the Constitution (South Africa).

⁶⁸ Mubangizi 2021 *Journal of African Law* 246.

⁶⁹ Mubangizi 2021 *Journal of African Law* 247. See also Human Rights Watch “Impact of Covid-19 on Children’s Education in Africa” 35th Ordinary Session (August 2020) <https://www.hrw.org/news/2020/08/26/impact-covid-19-childrens-education-africa> (accessed 2023-02-15).

⁷⁰ Mubangizi 2021 *Journal of African Law* 247.

⁷¹ Campbell, Fredman and Reeves “Palliation or Protection: How Should the Right to Equality Inform the Government’s Response to Covid-19?” 2020 20(4) *International Journal of Discrimination and the Law* 186.

Mention was made earlier of the significant effect of lockdowns on several rights, including freedom of movement and freedom of association. It could be argued that COVID-19 regulations affected freedom of movement and association for women more severely than for men.⁷² Moreover, social-distancing measures also had serious consequences for women.⁷³ These consequences were particularly felt by rural women, when compared to their urban counterparts and men. According to one study:

“[M]ajor effects of COVID-19 on rural women resulted from social distancing measures, where the loss of community meant that there were less opportunities for the meeting of supportive groups in safe spaces such as at churches or markets.”⁷⁴

The impact of COVID-19 on the rights of women should also be seen in the context of their participation and contribution to economic growth, their access to health care and the impact of gender-based violence. Insofar as participation in the economy is concerned, statistics show that 74 per cent of women in Africa are engaged in the informal economy sector.⁷⁵ Women are also overrepresented in the service, tourism and hospitality industry, and in the subsistence farming sector,⁷⁶ which are all areas that were strongly impacted by the COVID-19 responses, such as lockdowns. This impact is not only on women’s economic rights but also on sustainable development.

Insofar as women’s rights of access to health care is concerned, it has been argued that during the pandemic, many of Africa’s already weak health systems placed their focus on preventing the spread of COVID-19 and prioritised

“COVID-19 patients resulting in limitations on other critical services including those that only women need including antenatal care for pregnant women.”⁷⁷

Moreover, owing to the restrictions imposed by the COVID-19 regulations, women were unable to access health clinics for their sexual and reproductive health care services. This amounted to an infringement on their right to freedom and security of the person and on their right to bodily and psychological integrity.

Much has been written and said about the rise of gender-based violence during the COVID-19 pandemic, particularly in African countries.⁷⁸ All

⁷² See United Nations “Policy Brief: The Impact of COVID-19 on Women” (9 April 2020) <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf> (accessed 2023-08-25).

⁷³ Parry and Gordon “The Shadow Pandemic: Inequitable Gendered Impacts of COVID-19 in South Africa” 2021 28 *Feminist Frontiers* 801.

⁷⁴ *Ibid.*

⁷⁵ See UN Women “Women in Informal Economy” (2016) <https://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy> (accessed 2023-02-20)

⁷⁶ OHCHR “COVID-19 and Women’s Rights: Possible Actions” (2020) https://www.ohchr.org/sites/default/files/Documents/Events/COVID-19_and_Women_Rights_7_Possible_Actions.pdf (accessed 2023-02-20).

⁷⁷ *Ibid.*

⁷⁸ See for e.g., Mittal and Singh “Gender-Based Violence During COVID-19 Pandemic: A Mini-Review” 2020 1(4) *Frontiers in Global Women’s Health* 1–7; Roy, Bukuluki, Casey, John,

commentators are in agreement that gender-based violence increased exponentially during the pandemic. According to the African Union Commission (AUC), UN Women, the OHCHR and the United Nations Population Fund (UNFPA), ministries responsible for gender across the East African region reported a 48 per cent increase in gender-based violence cases reported to the police or through gender-based violence (GBV) toll-free lines.⁷⁹ Similar increases were reported in other regions of Africa with Southern Africa reporting a 37 per cent increase during the 2020 level 5 lockdown.⁸⁰ According to Charlotte Roy *et al*,

“the COVID-19 pandemic had especially severe consequences for women in structurally excluded groups, such as sex workers, women with disabilities, refugees, women in rural areas and women with diverse sexual orientation.”⁸¹

According to Leburu-Masigoa and Phuti Kgadima:

“COVID-19 has heightened pre-existing risks of GBV against women and girls, affecting their social, economic, educational development and threaten their sexual reproductive health.”⁸²

It is therefore not difficult to see how GBV is not only a violation of women’s human rights but also how it has had implications for sustainable development, particularly in Africa. It is also not difficult to see how COVID-19 has had a negative impact on human rights generally and concomitantly on sustainable development. It is for that reason that a human rights-based approach to sustainable development in Africa post-COVID-19 is suggested.

5 GOING FORWARD: A HUMAN RIGHTS-BASED APPROACH

A human rights-based approach is not a new idea. It is a concept that has gained credence and application over the last 20 years or so. Because of its varied application, it has also been variously defined and described. One such description is by the Scottish Human Rights Commission:

“A human rights-based approach is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights ... It is about ensuring that both the standards and the principles of

Mabhena, Mwangi, McGovern “Impact of COVID-19 on Gender-Based Violence Prevention and Response Services in Kenya, Uganda, Nigeria, and South Africa: A Cross-Sectional Survey” 2022 2(7) *Frontiers in Global Women’s Health* 1–9; and Dlamini “Gender-Based Violence, Twin Pandemic to COVID-19” 2021 47(4–5) *Critical Sociology* 583–590.

⁷⁹ AUC, UN Women, OHCHR and UNFPA “Gender Based Violence in Africa During the COVID-19 Pandemic” (2020) <https://africa.unwomen.org/en/digital-library/publications/2020/12/gbv-in-africa-during-covid-19-pandemic> (accessed 2023-02-22).

⁸⁰ *Ibid.*

⁸¹ Roy *et al* 2022 *Frontiers in Global Women’s Health* 1–9.

⁸² Leburu-Masigo and Kgadima “Gender-Based Violence During the COVID-19 Pandemic in South Africa: Guidelines for Social Work Practice” 2020 18(4) *Gender & Behaviour* 16622.

human rights are integrated into policymaking as well as the day to day running of organisations.”⁸³

The UN Sustainable Development Group sees a human rights-based approach in the context of development, and defines it as:

“[a] conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.”⁸⁴

This definition resonates with the human rights-based approach’s application to sustainable development, particularly post COVID-19. In that regard, the UN envisages that under a human rights-based approach,

“the plans, policies and processes of development [should be] anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political and social rights, and the right to development.”⁸⁵

One rationale given by the UN for a human rights-based approach is that it “leads to better and more sustainable human development outcomes”.⁸⁶

A key benefit of a human rights-based approach is that it encourages and empowers citizens to demand their rights. This highlights the importance of civil society whose role in sustainable development cannot be overstated.⁸⁷ It has been argued that civil society, for example, plays the important role of “localising” SDGs.⁸⁸ This “localisation” has been defined as:

“the process of defining, implementing and monitoring strategies at the local level for achieving global, national and subnational sustainable development targets. It involves various concrete mechanisms, tools, innovations, platforms and processes to effectively translate the development agenda into results at the local level.”⁸⁹

Although this definition of localisation makes no mention of civil society, it is generally understood that localisation should include civil society. What this means, therefore, is that civil society plays an important role in the local

⁸³ SHRC “What is a Human Rights Based Approach?” (undated) <http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> (accessed 2023-02-25).

⁸⁴ UN Sustainable Development Group “Human Based-Approach” (undated) <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> (accessed 2023-02-27).

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Mubangizi “A Human Rights-Based Approach to Fighting Corruption in Uganda and South Africa: Shared Perspectives and Comparative Lessons” 2020 24 *Law Democracy and Development* 242.

⁸⁸ United Nations “Localizing the Post-2015 Development Agenda: Dialogues on Implementation” (2015) https://www.uclg.org/sites/default/files/dialogues_on_localizing_the_post-2015_development_agenda.pdf (accessed 2023-02-27).

⁸⁹ United Nations Development Group “Localizing the Post-2015 Development Agenda” https://www.uclg.org/sites/default/files/dialogues_on_localizing_the_post-2015_development_agenda.pdf (accessed 2024-04-04).

implementation of the SDGs and in monitoring progress at the local level. This should be seen in the context of the role of civil society in the promotion and protection of human rights. That role was articulated by the UN Secretary-General as follows:

“Civil society organizations link governments and people. They are a vital voice for human rights. When civil society is muzzled, we lose an essential forum for dialogue – and we lose the lifeblood of democracy. That is why I advocate at every possible opportunity for the protection and expansion of civic space.”⁹⁰

According to the Danish Institute for Human Rights:

“[A] human rights-based approach to sustainable development fundamentally shifts the primary objective of development from charity to the duty to respect, preserve, and fulfil human rights.”⁹¹

It achieves this by integrating human rights rules and values into each and every aspect of development.⁹² This contributes to the sustainability of development work by empowering individuals, especially the most marginalised, to engage in policy making and holding duty holders accountable.⁹³ Indeed, the human rights-based approach focuses on those who are most marginalised, excluded or discriminated against⁹⁴ – which makes it appropriate for sustainable development.

It is also important to note that

“a human rights-based approach is underpinned by five key human rights principles, namely, participation; accountability and transparency; non-discrimination and equality; empowerment of rights holders; and legality.”⁹⁵

The principle of participation requires that all individuals have the opportunity to participate in decision-making processes that result in decisions affecting their rights.⁹⁶ Similarly, the principle of accountability requires that authorities be held accountable if they fail to fulfil their responsibilities to the people. When human rights violations occur, there should be adequate and effective remedies to address the violations and hold the perpetrators accountable.⁹⁷

In the context of sustainable development and COVID-19, the principle of equality and non-discrimination is of particular importance. All forms of

⁹⁰ United Nations, António Guterres, Secretary-General’s opening remarks at Town Hall Meeting with Women’s Civil Society at the Commission on the Status of Women (16 March 2022) <https://www.un.org/sg/en/content/sg/speeches/2022-03-16/remarks-town-hall-meeting-womens-civil-society-the-commission-status-of-women> (accessed 2023-02-27).

⁹¹ Danish Institute for Human Rights “Human Rights-Based Approach” (undated) <https://www.humanrights.dk/our-work/human-rights-based-approach> (accessed 2023-08-25).

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ United Nations Population Fund “The Human Rights-Based Approach” (November 2014) <https://www.unfpa.org/human-rights-based-approach> (accessed 2023-03-01).

⁹⁵ See European Network of National Human Rights Institutions (ENNHRI) “Human Rights-Based Approach” (undated) <https://ennhri.org/about-nhris/human-rights-based-approach/> (accessed 2023-03-01).

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

discrimination against individuals or communities on the basis of their association with COVID-19 must be prohibited and avoided.⁹⁸ The same holds true for discrimination based on any form of vulnerability, including age, gender, ethnicity or socioeconomic status. Measures to address the effects of COVID-19 on sustainable development should consider the likelihood of increased discrimination against certain groups.

Another essential principle in the context of sustainable development and COVID-19 is empowerment. The disparate impact of COVID-19 on different communities must be evaluated and addressed. To empower these communities, equitable access to health care and other resources to address the effects of COVID-19, including financial and other forms of assistance, should be made available.⁹⁹

All of these principles should be bolstered by the principle of legality, which stipulates that all interventions, guidelines and measures to address the effects of COVID-19 must be consistent with the legal rights established by international and domestic law.¹⁰⁰ Importantly, the underlying human rights principle is that addressing the effects of COVID-19 should be viewed as a human rights obligation.

These are the very same principles that have in recent years become universal features of programmes of international development organisations, particularly in Africa. Such international development organisations include the United Nations (UN), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS. They also include the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the Food and Agriculture Organization (FAO), and the World Food Programme (WFP), among others. Indeed, there appears to be growing consensus among these and other organisations about incorporating these principles into all aspects of development programmes.¹⁰¹

From the foregoing discussion, it can be argued that certain key considerations should be taken into account in applying a human rights-based approach to sustainable development in Africa post-COVID-19. First, the 2030 Agenda for Sustainable Development and Africa's own Agenda 2063¹⁰² should be used as the blueprints for achieving sustainable recovery after the pandemic. These agendas share common goals, such as poverty eradication, sustainable economic growth, and social development. The two agendas recognise the importance of collaboration and alignment in achieving their respective objectives. African countries often aim to

⁹⁸ ENNHRI <https://ennhri.org/about-nhris/human-rights-based-approach/>. See also Mubangizi 2021 *Journal of African Law* 253.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ See Carothers and Brechenmacher "Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?" (2014) *Carnegie Endowment for International Peace Publications Department* https://carnegieendowment.org/files/new_development_consensus.pdf (accessed 2023-08-25).

¹⁰² African Union *Agenda 2063: The Africa We Want* (2015). Adopted 31/01/2015.

harmonise the implementation of both agendas, leveraging global partnerships and regional initiatives to drive sustainable development across the continent. Secondly, all African countries should have developed national COVID-19 recovery plans to help them accelerate their progress in achieving sustainable development, which is firmly anchored in human rights. Thirdly, African leaders should realise that human rights obligations of their countries have not been changed or lessened by the pandemic. Instead, they should realise that respect for human rights is fundamental to the success of the post-COVID-19 recovery.

These recommendations are grounded in various principles and perspectives, each of which contributes to the overall goal of achieving sustainable recovery after the pandemic while upholding human rights. Applying the 2030 Agenda for Sustainable Development and Africa's Agenda 2063 provides a unified framework that makes it easier to mobilise resources and coordinate efforts for post-pandemic recovery. Both agendas encompass a wide range of interconnected goals, including poverty eradication, gender equality, environmental sustainability, and more. By aligning recovery efforts with these comprehensive goals, countries can ensure that their strategies address multiple dimensions of development simultaneously. Developing national COVID-19 recovery plans allows countries to tailor their strategies to their unique circumstances, taking into account their specific development challenges, resources and priorities. National recovery plans provide a structured framework for coordinating efforts across various sectors and stakeholders. This coordination is essential for maximising the impact of recovery initiatives, and to avoid duplication of efforts. Regarding human rights obligations, there is no doubt that recovery firmly anchored in human rights principles is more likely to be sustainable in the long term. When people's rights are protected, they are more likely to participate in and support recovery efforts, leading to greater ownership and success of these initiatives.

At the 8th session of the African Regional Forum on Sustainable Development (ARFSD), held in Kigali in March 2022, several African leaders expressed their determination to build forward better from the pandemic.¹⁰³ With the theme "Building forward better: A green, inclusive and resilient Africa poised to achieve the 2030 Agenda and Agenda 2063", the three-day conference focused on rebuilding Africa's economies after the COVID-19 pandemic, while advancing the implementation of SDGs and Africa Agenda 2063.¹⁰⁴ Unfortunately, the conference failed to place human rights at the heart of recovery efforts and to adopt a human rights-based approach to the post-COVID-19 recovery programmes – a lost opportunity.

¹⁰³ See ECA "Unlocking Financing to Build Forward Better From the COVID-19 Crisis and Accelerate Delivery of Sustainable Development in Africa" *Eighth Session of the Africa Regional Forum on Sustainable Development (2022)* <https://www.uneca.org/events/technology%2C-climate-change-and-natural-resource-management/eighth-session-of-the-africa> (accessed 2023-08-25).

¹⁰⁴ *Ibid.*

6 CONCLUSION

The COVID-19 pandemic has affected and changed the world in many ways. It has thrust many countries into social, political, economic and health care crises. It has also had significant negative implications for sustainable development – and all the more so in African and other less developed economies where pre-existing social and economic challenges were already prominent. The impact of the pandemic on human rights was similarly, and equally, significant. It is for that reason that this article first discusses the relationship between human rights and sustainable development. The article also discusses the impact of COVID-19 on sustainable development and on the protection of human rights, before arguing for a human rights-based approach to sustainable development, particularly in the African context. Several reasons for, and advantages of, a human rights-based approach are presented, including the key principles underpinning it and the key considerations that should be taken into account in applying it. It is concluded that the human rights-based approach can offer a clear and compelling direction to sustainable development in Africa in the aftermath of the devastating and unprecedented COVID-19 pandemic.