

# Implementing Agenda 2030 for Sustainable Development in Africa

## Is It Time to Shift the Paradigm on Law and Development?

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### Abstract

*This article discusses the relevance of Law and Development theories to the successful implementation or attainment of goals set out in Agenda 2030 in Africa. It zeros in on Sustainable Development Goal 16 and the role of rule of law to development. This article focuses on the work of the Law and Development movement and highlights the contribution of Prof. Robert Seidman to law and development for decades in newly independent African states. It examines the application of the Institutional Legislative Theory and Methodology, including the strengths and flaws, and makes recommendations on relevant lessons for rule of law practitioners, especially in terms of developing institutions and legal frameworks, promoting law and development research and building capacity through legal education. While this article does not provide recommendations on the best law and development model or theory, it raises some pertinent issues and makes practical recommendations on the way forward in the short to medium term.*

**Keywords:** Agenda 2030, Law and Development, Sustainable Development Goals, Rule of Law, Professor Robert Seidman, Institutional Legislative Theory and Methodology, Goal 16, Jurisprudence of Development.

### A Introduction

The intersection between law and development remains a topical matter in the international discourse on attainment of sustainable development, most especially through regional and global efforts. The adoption of the Millennium Development Goals (MDGs) in 2000 saw an increase in implementation plans for the eight goals, with a focus on sub-Saharan Africa as the epicentre of the crisis in development.<sup>1</sup> Subsequent assessments by the global community on the performance of states resulted in deep analysis.<sup>2</sup> Discussions regarding the relevance of

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1 See Millennium Project at <[www.unmillenniumproject.org/goals](http://www.unmillenniumproject.org/goals)> (accessed 17 January 2017).

2 African Development Bank et al.; Achieving the Millennium Development Goals in Africa Progress, Prospects, and Policy Implications-Global Poverty Report 2002. <[www.cpahq.org/cpahq/cpadocs/Achieving%20the%20MDGs%20in%20Africa.pdf](http://www.cpahq.org/cpahq/cpadocs/Achieving%20the%20MDGs%20in%20Africa.pdf)> (accessed 17 January 2017).

rule of law culminated in the inclusion of Sustainable Development Goal (SDG) 16 on peaceful and just societies in the 2030 Agenda for Sustainable Development (2030 Agenda) adopted in 2015.

Prior to this, under the leadership of the United Nations Development Programme (UNDP), the global community debated the evidence base for the relationship between the rule of law and development,<sup>3</sup> lessons from rule of law development programming and the experience of the MDGs, and options for how the rule of law might be incorporated into the post-2015 development agenda.<sup>4</sup> UN member states noted,

the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law.<sup>5</sup>

The inclusion of the rule of law as a substantive goal<sup>6</sup> renders it an enabler for the realization of SDGs 1-15, a development end in itself (SDG 16) and rule of law actors as partners in development under SDG 17.<sup>7</sup>

More rule of law reform programmes will be launched, especially in developing countries, African countries, Small Island Developing States and landlocked

- 3 See A. Perry-Kessaris, 'The Relationship between Legal Systems and Economic Development: Integrating Economic and Cultural Approaches', *Journal of Law and Society*, 2002, Vol. 29, No. 2, pp. 282-307. Also see E. Browne, 'Evidence on "Rule of Law" Aid Initiatives (GSDRC Helpdesk Research Report 1008)', University of Birmingham. <<http://reliefweb.int/sites/reliefweb.int/files/resources/HDQ1008.pdf>> (accessed 17 January 2017).
- 4 L.-A. Berg & D. Desai, 'Background Paper: Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda' <[www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global%20Dialogue%20Background%20Paper%20-%20Rule%20of%20Law%20and%20Sustainable%20Development....pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global%20Dialogue%20Background%20Paper%20-%20Rule%20of%20Law%20and%20Sustainable%20Development....pdf)> (accessed 17 January 2017).
- 5 United Nations, Declaration of the High-level Meeting of the 67th Session of the General Assembly on the rule of law at the national and international levels. <<https://www.un.org/ruleoflaw/blog/document/declaration-of-the-high-level-meeting-of-the-67th-session-of-the-general-assembly-on-the-rule-of-law-at-the-national-and-international-levels/>> (accessed 17 January 2017).
- 6 See M. Stephenson, 'Rule of Law as a Goal of Development Policy', <[www.kathrynpieplow.pwrfaculty.org/wp-content/uploads/2011/01/CO-SCT-rule-of-law.pdf](http://www.kathrynpieplow.pwrfaculty.org/wp-content/uploads/2011/01/CO-SCT-rule-of-law.pdf)> (accessed 17 January 2017).
- 7 International Development Law Organisation (ILDO), 'Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda', <[www.idlo.int/publications/doing-justicesustainable-development](http://www.idlo.int/publications/doing-justicesustainable-development)> (accessed 17 January 2017).

countries,<sup>8</sup> making it even more critical to have right approaches and models of law and development in place. African governments recognize that effective, accountable and inclusive justice institutions are essential for sustainable development as elucidated in SDG 16 of the UN Agenda 2030 as well as Aspiration 3 and Goal 11 and 12 of the African Union Agenda 2063 on the importance of the rule of law and access to justice.<sup>9</sup>

While the role of rule of law is clear,<sup>10</sup> a discussion of law and development models/theories, adequate in enabling sustainable development and managing rule of law programming, remains outstanding given the past experience with the application of different development models/theories in Africa. The ideology of Western interventions in implementing rule of law reforms, including the so-called 'Washington Consensus,' has been criticized<sup>11</sup> for viewing law through a very narrow lens.<sup>12</sup>

It is essential to reflect on Law and Development theories,<sup>13</sup> to borrow the positive aspects of all models past and present and propose a way forward. The Law and Development discourse is about Africa by default, owing to the problem of persistent underdevelopment confronting the continent.<sup>14</sup>

SDG 16 underscores the legal dimension of development, laying strong emphasis on access to justice, the quality and inclusivity of institutions, and the

- 8 See K.E. Davis & M.J. Trebilcock, 'The Relationship Between Law and Development: Optimists versus Skeptics' *American Journal of Comparative Law*, Vol. 56, No. 4, 2008. T. Krever, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model', <[www.harvardilj.org/wp-content/uploads/2011/02/HILJ\\_52-1\\_Krever.pdf](http://www.harvardilj.org/wp-content/uploads/2011/02/HILJ_52-1_Krever.pdf)> and S.J. Toope, 'Legal and Judicial Reform through Development Assistance: Some Lessons', <<http://lawjournal.mcgill.ca/userfiles/other/695917-Toope.pdf>> (accessed 17 January 2017).
- 9 ILDO, 'Dispensing Justice: Building Effective, Accountable and Inclusive Institutions', Background Paper – Achieving the 2030 Agenda and Agenda 2063: The Rule of Law as a Driver of Africa's Sustainable Development, <[www.idlo.int/sites/default/files/pdfs/events/Africa-RuleofLaw-for-Background-paper-economy.pdf](http://www.idlo.int/sites/default/files/pdfs/events/Africa-RuleofLaw-for-Background-paper-economy.pdf)> (accessed 17 January 2017).
- 10 See T. Ginsbur, 'Does Law Matter for Economic Development? Evidence from East Asia', <<http://home.uchicago.edu/~tginsbur/pdf/articles/DoesLawMatterForEconomicDevelopment.pdf>> (accessed 17 January 2017).
- 11 See T. Mkandawire, 'Thinking About the Developmental States in Africa,' *Cambridge Journal of Economics*, 2001, p. 3. Also see T. Mkandawire & C. Soludo (Eds.), *Our Continent, Our Future African Perspectives on Structural Adjustment*, CODESRIA, 1999. <<http://idl-bnc.idrc.ca/dspace/bitstream/10625/25742/8/IDL-25742.pdf>> (accessed 17 January 2017) and Perry-Kessaris.
- 12 W. Meier, 'Results-Based Management: Towards a Common Understanding among Development Cooperation Agencies', <[www.managingfordevelopmentresults.org/documents/results-basedmanagementdiscussionpaper.pdf](http://www.managingfordevelopmentresults.org/documents/results-basedmanagementdiscussionpaper.pdf)> (accessed 17 January 2017).
- 13 See D. Trubek, 'The "Rule of Law" in Development Assistance: Past, Present, and Future', in Y. Matsuura (Ed.), *The Role of Law in Development Past, Present and Future*, Nagoya, Nagoya University CALE Books; D. Kennedy, 'Law and Development: Facing Complexities in the 21st Century', <[www.law.harvard.edu/faculty/dkennedy/publications/development.pdf](http://www.law.harvard.edu/faculty/dkennedy/publications/development.pdf)> (accessed 17 January 2017), A. Arraya, 'Interplay between Institutions and Rule of Law to Engender Development', <[www.luc.edu/media/lucedu/prolaw/documents/pdfs/5studentjournalaraya.pdf](http://www.luc.edu/media/lucedu/prolaw/documents/pdfs/5studentjournalaraya.pdf)> (accessed 17 January 2017).
- 14 M.A. Baderin, 'Law and Development in Africa: Towards a New Approach', 2010, <[https://www.researchgate.net/publication/256086798\\_Law\\_and\\_Development\\_in\\_Africa\\_Towards\\_a\\_New\\_Approach](https://www.researchgate.net/publication/256086798_Law_and_Development_in_Africa_Towards_a_New_Approach)> (accessed 17 January 2017).

necessity of a legal identity for all<sup>15</sup> rather than merely its economic one thus the importance in understanding law and development and clearly establishing the models that can successfully bring about the full attainment of SDG 16. Recognizing rule of law as the underlying philosophy of the entire Agenda makes the legal discourse of law and development even more relevant.<sup>16</sup> The success of SDG 16 will be gauged on the measurement of performance as targets are met yet rule of law is difficult to measure.<sup>17</sup>

## B Context

This article seeks to stimulate discussion on law and development methodology/theories, with emphasis on the modernization theory and the work of Professor Robert Seidman, in light of the adoption of SDG 16 from a rule of law programme practitioner's perspective, with a focus on Commonwealth member countries in Africa, which remains outstanding. It does not seek to address all unanswered questions about the role of rule of law in development or even attempt to answer the question as to which model or theory of law and development best serves Africa today. The primary hypotheses are that:

- i The proponents of the original law and development movement gave up prematurely.
- ii The earlier discourse on the law and development theories, including that propagated by Prof Seidman, made some positive and relevant contributions that rule of law practitioners in developing countries can apply in the design, development and execution of their programmes.
- iii A functional law and development formulation for developing countries, most especially in Africa, needs to draw positive elements from each of the law and development theories, while developing a model that suits the inclusive participation of African countries in the successful attainment of the SDGs.

## C Rule of Law and Development in Africa

Despite the critical role of rule of law in promoting socio-economic development in Africa, law is often ignored, poorly understood, narrowly construed or taken

15 Sustainable Development Knowledge Platform; SDG 16, <<https://sustainabledevelopment.un.org/sdg16>> (accessed 17 January 2017).

16 ILDO, '2030 Agenda: Making the Rule of Law the Bedrock of Development', <[www.idlo.int/news/highlights/2030-agenda-making-rule-law-bedrock-development](http://www.idlo.int/news/highlights/2030-agenda-making-rule-law-bedrock-development)> (accessed 17 January 2017).

17 See T. Ringer, 'Development, Reform, and the Rule of Law: Some Prescriptions for a Common Understanding of the "Rule of Law and Its Place in Development Theory and Practice"', *Yale Human Rights and Development Journal*, Vol. 10, No. 1, Article 5. <<http://digitalcommons.law.yale.edu/yhrdlj/vol10/iss1/5>> (accessed 17 January 2017).

for granted by many involved with development analysis, planning and administration, with the result that it becomes an impediment to progress.<sup>18</sup>

Rule of law supports development by providing a structure of governance and a chain of command, characterized by control of executive power; providing for a truly independent judiciary that can enforce contracts effectively,<sup>19</sup> legislative processes and eases doing business,<sup>20</sup> addresses crime<sup>21</sup> and streamlines legal pluralism, among others.<sup>22</sup>

From the academic and theoretical perspective, a clear linkage between law and development has been established; noting that rule of law is central to any civilization as it provides a *modus operandi* and infuses predictability into social and individual behaviors.<sup>23</sup>

While the role of law in development<sup>24</sup> is apparent enough, the lack of its 'conscious use' has undermined its possible instrumentality in the developmental process of most African states.<sup>25</sup> Development in African countries is hindered by chaotic legal systems, since which constitute a mixture of English, French and African laws, written in English or French, resulting in failure by the masses to understand the law.<sup>26</sup> Also, the law has not been successfully combined with other means to effect desirable development.<sup>27</sup>

18 R. Meagher & D. Silverstein (Eds), *Law and Social Change*, <<http://14.139.60.114:8080/jspui/bitstream/123456789/721/6/Law%20and%20Social%20Change.pdf>> (accessed 17 January 2017).

19 K. Chiu & R. Chen, "The Rule of Law in Africa: Enforcing Governance or Scaring Off Foreign Investors?", <<https://www.ensafrica.com/news/The-rule-of-law-in-Africa-enforcing-governance-or-scaring-off-foreign-investors?id=2123>> (accessed 17 January 2017).

20 K.W. Dam, 'Legal Institutions, Legal Origins, and Governance' (John M. Olin Program in Law and Economics Working Paper No. 303, 2006, <[http://chicagounbound.uchicago.edu/law\\_and\\_economics/304/](http://chicagounbound.uchicago.edu/law_and_economics/304/)> (accessed 17 January 2017).

21 United Nations Office on Drugs and Crime; *Crime and Development in Africa*, <[https://www.unodc.org/pdf/African\\_report.pdf](https://www.unodc.org/pdf/African_report.pdf)> (accessed 17 January 2017).

22 World Bank Group, "The World Bank Doing Business 2016 Report", <[www.doingbusiness.org/reports/global-reports/doing-business-2016](http://www.doingbusiness.org/reports/global-reports/doing-business-2016)> (accessed 17 January 2017).

23 K. Gadio; "The Role of Law in Development for the African Continent from a Development Agency Perspective", Proceedings of Harvard African Law and Development Conference 16-18 April 2010, <[www.afdb.org/en/news-and-events/article/the-role-of-law-in-development-for-the-african-continent-from-a-development-agency-perspective-6590/](http://www.afdb.org/en/news-and-events/article/the-role-of-law-in-development-for-the-african-continent-from-a-development-agency-perspective-6590/)> (accessed 17 January 2017).

24 See J. Goldston, 'Why Development Needs the Rule of Law April 4, 2013', <<https://www.opensocietyfoundations.org/voices/why-development-needs-rule-law>>, (accessed 17 January 2017).

25 See Baderin, 2010.

26 I. Ayua, 'Law and Development in Africa,' *International Journal on World Peace*, Vol. 3, No. 1, 1986, pp. 71-81, <[https://www.jstor.org/stable/20750989?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/20750989?seq=1#page_scan_tab_contents)> (accessed 17 January 2017).

27 Ayua, 2017.

## D SDG 16 Laid Bare

SDG 16 seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.<sup>28</sup> It is premised in the notion that peace, stability, human rights and effective governance based on the rule of law are important elements of and conduits for sustainable development. For SDG 16, 12 targets and 22 indicators have been identified, with Target 16.3 (promote the rule of law at the national and international levels and ensure equal access to justice for all) as the most pertinent to the law and development discourse.

Evaluation of gains made in the area of rule of law will focus on measuring the indicators against the targets, which is dependent upon the application of credible law and development methodology at all levels of rule of law interventions; supported by appropriate project design, monitoring and evaluation.<sup>29</sup>

Some of the challenges that bedevil law reform interventions include: unavoidable clash of values/beliefs/cultural practices, foreign policy considerations, economic interests; mismatch between what is needed and is being offered in terms of development aid; competition between donors/development partners; conflicting legal orders/systems<sup>30</sup> and the fact that very few studies trace the process of an intervention in the area of law reform from its inception to implementation, all of which must be addressed.

## E Law and Development Theories and Their Relevance to Agenda 2030

Law and development models/theories are relevant to the successful attainment of all SDGs that depend on policy and legal frameworks for implementation. The majority of African states apply the principle of separation of powers so the law remains relevant as a tool for effecting social change and the engine that drives policy implementation and holistic development. Accordingly, a better and conscious understanding of the nature of law, the way it operates in a society, and its relation to social change is mandatory for legislators, judicial officers, policy makers, development practitioners and reformers.

Scholarly interest in the relationship between law and development in the European context was expressed by eighteenth, nineteenth and early twentieth century scholars such as Montesquieu, Maine and Weber<sup>31</sup> and also during colo-

28 United Nations, 'Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (E/CN.3/2016/2/Rev.1) 21/25', <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> (accessed 17 January 2017).

29 E. Baviera, 'A Closer Look at the Rule of Law', <[www.lawanddevelopment.org/articles/ruleoflawpaper.html](http://www.lawanddevelopment.org/articles/ruleoflawpaper.html)> (accessed 17 January 2017).

30 C. Boulanger, 'Law and Development as Practice and as Theory – From Self-estrangement to Alienation?', <<https://barblog.hypotheses.org/832>> (accessed 17 January 2017).

31 Davis & Trebilcock, 2008.

nialism. The contribution of legal scholars from Africa, such as Shivji,<sup>32</sup> Ojwang,<sup>33</sup> Ghai,<sup>34</sup> Nabudere<sup>35</sup> and Kanywanyi<sup>36</sup> concerning the role that law might play in their respective countries' social and economic development is noted, although as Scott Newton observes, these voices are often ignored in Western academic discourse<sup>37</sup> and have not been acknowledged as a contribution to African jurisprudence – which is also ignored at a wider level.<sup>38</sup> The salient points, benefits and limitations of the respective law and development theories, namely, the modernization, dependency and the Neo-Institutional Economics (Washington Consensus) theories are critical to advising on the best options.

The input of African jurists is not found in leading publications produced in the West but largely in scholarly articles that have not been consolidated to make a stronger case for Afrocentric law and development methodology. Previous and current attempts to implement law reform projects in the developing world have been premised in mostly flawed assumptions such as; law does not exist in developing countries or is very underdeveloped; law is essentially the same everywhere (or it would be once countries modernize); institutions that do well in one country will function equally well in all other countries; simply enacting legislation or creating an institution will solve the problem of implementing development programmes; law consists of a series of rules that are interpreted in a fairly static way; and law is a logical, self-contained, autonomous system.<sup>39</sup>

A new approach would call for deeper reflection in all aspects of project management. The questions and the theoretical framework should focus on the appropriate types of legal reforms and the mechanisms for successful and sustainable delivery of proposed reforms. The input of the legal academy is critical at this juncture and is imperative for the successful attainment of all the targets

- 32 I. Shivji, 'The Rule of Law and Ujamaa in the Ideological Formation of Tanzania', <<http://sls.sagepub.com/content/4/2/147.extract>> (accessed 17 January 2017).
- 33 J.B. Ojwang, 'Laying a Basis for Rights: Towards a Jurisprudence of Development', <[www.uonbi.ac.ke/sites/default/files/ojwang.pdf](http://www.uonbi.ac.ke/sites/default/files/ojwang.pdf)> (accessed 17 January 2017).
- 34 Y. Ghai, 'Law, Development and African Scholarship', *Modern Law Review*, Vol. 50, No. 6, Version of Record online: 18 Jan 2011 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1987.tb01737.x/pdf>> (accessed 17 January 2017).
- 35 D. Nabudere, 'Law, The Social Sciences and the Crisis of Relevance-A Personal Account', Nairobi, Heinrich Böll Foundation 2001, <[https://ke.boell.org/sites/default/files/social\\_scientistsdaninabudere\\_publication.pdf](https://ke.boell.org/sites/default/files/social_scientistsdaninabudere_publication.pdf)> (accessed 17 January 2017).
- 36 See J. Kanywanyi, 'Tanzanian Legislative and Legal System: An Outline', Seminar at the University of Bergen, 13th October 1989. Also see M. Mamdani, 'Between the Public Intellectual and the Scholar: Decolonization and Some Post-independence Initiatives in African Higher Education', *Inter-Asia Cultural Studies*, 2016, Vol. 17, No. 1.
- 37 See S. Newton, 'The Dialectics of Law and Development' in D.M. Trubek & A. Santos (Eds.), *The New Law and Economic Development: A Critical Appraisal*, 2006, Cambridge University Press, pp. 174-202. <<http://iglp.law.harvard.edu/uncategorized/dr-scott-newton-newton-scott-2006-the-dialectics-of-law-and-development-in-trubek-d-m-and-santos-a-eds-the-new-law-and-economic-development-a-critical-appraisal-cambridge-univ/>> (accessed 17 January 2017).
- 38 See W. Idowu, 'Against the Skeptical Argument and the Absence Thesis: African Jurisprudence and the Challenge of Positivist Historiography', *The Journal of Philosophy, Science & Law*, Vol. 6, 2006, pp. 34-49.
- 39 Meagher & Silverstein, 2017.

defined under SDG 16, especially Target 16.3, which will depend on legal frameworks and increased capacity of legal practitioners,<sup>40</sup> *inter alia*.

## F The Modernization Theory and the Law and Development Movement

The law and development movement adopted a practical approach as development practitioners, spearheaded by the United States Agency for International Development, the Ford Foundation,<sup>41</sup> and other private American donors, engaged and deployed professors from leading American law schools<sup>42</sup> to help foster development in developing countries through law.<sup>43</sup>

The work of the 'law and development' movement was premised in four essential elements, namely,

- a Rationalization, as based upon the familiar dichotomies found in the social theories of Marx, Durkheim, Weber, Tonnies and Parsons, involving the shift from the particular to universal, from ascription to achievement, and from affective neutrality – all of which purportedly accompanied the functional differentiation of society.
- b Emphasis on national integration or nation-building, particularly important in view of the instability that threatened developing countries.
- c Democratization, which emphasized pluralism, competitiveness and accountability.
- d Mobilization or participation, to be accomplished through education, with an aim towards the expansion of the populace actively involved in the political arena.<sup>44</sup>

Additionally, the law and development movement made the following assumptions:

- a law is central to the development process;

40 IDLO, 'Doing Justice to Sustainable Development,' <[www.idlo.int/publications/doing-justice-sustainable-development](http://www.idlo.int/publications/doing-justice-sustainable-development)> (accessed 17 January 2017).

41 J.K. Krishnan, 'Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977', *American Journal of Legal History*, Vol. 52, 2012, p. 262; Indiana Legal Studies Research Paper No. 220. Available at SSRN: <<https://ssrn.com/abstract=1908969>> (accessed 17 January 2017).

42 See D.M. Trubek & M. Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development', *Wisconsin Law Review*, 1974, pp. 1062-1101.

43 D. Mbirizi, 'Some Aspects of Makerere's Legal Education in Development', *Third World Legal Studies*, Vol. 5, Article 7, 1986. <<http://scholar.valpo.edu/twls/vol5/iss1/7>> (accessed 17 January 2017). B. Tamanaha, 'The Primacy of Society and the Failures of Law and Development', <[www.lawschool.cornell.edu/research/ILJ/upload/Tamanaha-final.pdf](http://www.lawschool.cornell.edu/research/ILJ/upload/Tamanaha-final.pdf)> (accessed 17 January 2017).

44 C. Hoogenboom, 'Development Law and Modernisation: The Legal Imperialism Debate', <<https://www.linkedin.com/pulse/20140713020943-69689542-development-law-and-modernisation-the-legal-imperialism-debate>> (accessed 17 January 2017).



- b law was an instrument that could be used to reform society and lawyers and judges could serve as social engineers;<sup>45</sup>
- c law reform could lead social change;
- d law itself was an engine of change; and
- e educating the Bench and Bar in developing countries would advance reform efforts.<sup>46</sup>

Contemporary law and development models based on the modernization theory have been categorized into three 'process'-oriented approaches to law and development each defined by the stage in the process and extent to which inputs from the society in question are introduced into the law and development model, namely, the 'Core Conception – Liberal Legalism' school, the 'Middle-Level Hypotheses' school and the 'Culture-Specific' school.<sup>47</sup>

## G Prof Robert Seidman's Theory on Law and Development

Prof Seidman was one of the leading proponents of the 'Middle-Level Hypotheses' school. In his view, once the society has been studied, rules can be formulated and sanctions (positive or negative) devised, which will be effective in bringing about the desired changes.<sup>48</sup> Seidman sought to establish a planned society by defining societal problems and addressing them through the quick application of law. Law, a set of state-made rules enforced by sanctions, was the quick means for achieving social change. Seidman and colleagues incrementally contributed to the body of knowledge and introduced tools, a review of which can assist in providing options on how best the rule of law can be used to meet the targets set for the SDGs.<sup>49</sup>

Seidman's approach was to consider:

- a The subject matter (developing states) in terms that might serve their 'purposes' of addressing 'poverty and vulnerability'.
- b The 'problems' that law and development had to solve did not fall within the legal order, but revolved around 'social difficulties' created by poverty and vulnerability of individuals and communities.
- c How the law can address 'problems' that do not arise from its own discipline.

45 See J.H. Merryman, 'Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement', *The American Journal of Comparative Law*, Vol. 25, 1977, pp. 457-483 for contrary views.

46 See E.M. Burg, 'Law and Development: A Review of the Literature and a Critique of "Scholars in Self-Estrangement"', *American Journal of Comparative Law*, Vol. 25, 1977, pp. 492-530.

47 Meagher & Silverstein, 2017.

48 See a list of Seidman's publications at <<https://open.bu.edu/handle/2144/19008>> (accessed 17 January 2017).

49 M.O. Chibundu, 'Law in Development: On Tapping, Gourding, and Serving Palm-Wine', *Case Western Reserve Journal of International Law*, Vol. 29, 1997, p. 167, <<http://scholarlycommons.law.case.edu/jil/vol29/iss2/1>> (accessed 17 January 2017).

- d Poverty and vulnerability in Africa as a result of ‘a set of institutions inherited<sup>50</sup> from the colonial era’ and the answer therefore lay in ‘massive institutional change’, using the law to redefine the rules.<sup>51</sup>

Seidman argued that social problems arose ‘because of the activity or behaviours of people (key role occupants)’ and that law and development was therefore to study how and why people acted as they did in the face of rules that prescribed their behaviours, and attempt to alter the problematic behaviours through the intervention of lawmakers and legislative drafters.

Seidman analysed the impact of the blanket application of received law in the former British colonial Empire, including in Africa (uniform statutes and interpretation),<sup>52</sup> for ease of imperial administration and the resultant legal systems, which were maladjusted to deal with the needs of the society, post-independence.<sup>53</sup> According to Seidman, the legal system in African states was largely fashioned on colonial ideology (the ‘plantation economy’ model), received laws<sup>54</sup> and the practice of Western-educated legal professionals trained to deliver ‘English’ forms of justice.<sup>55</sup> Seidman observed:

In sum, whatever may have been the ‘democratic’ component of English law, was explicitly excised during the its transportation overseas. The reasons are apparent. In East and West Africa, the imperatives of Empire as perceived by the colonial rulers required authoritarian government in order to maintain the control of a ‘few dominant civilised men’ over ‘a great multitude of the semi-barbarous’ (natives).<sup>56</sup>

Furthermore, local legislation passed by the Legislative Councils in the British colonies introduced laws, designed to promote the interests of the empire by providing labour and dictating the production of raw materials. It is still obvious that the colonial legal system was not designed to promote socio-economic development or foreign direct investment but to guarantee law and order to suit the colonial governments.

50 S.F. Joireman, ‘Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy’, Political Science Faculty Publications. Paper 113, 2001. <<http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1116&context=polisci-faculty-publications>> (accessed 17 January 2017).

51 Nabudere, 2017.

52 *Trimble vs. Hill* (1879) 5 App Cas 342, “... it is of the uttermost importance that all parts of the empire where English law prevails, the interpretation of law by the Courts should be nearly as possible the same.” Also see *Cassell & Co Ltd v. Broome* (1972) AC 1027 and *Wright v. Wright* (1978) 77 CLR 191.

53 Nabudere, 2017.

54 Joireman, 2001.

55 R. Seidman, ‘The Reception of Colonial Law in Africa Revisited’, *Eastern African Law Review*, No. 1-2, 1969, p. 69.

56 Seidman, 1969. Also see D.V. Williams, ‘State Coercion against Peasant Farmers: The Tanzanian Case’, *Journal of Legal Pluralism*, Vol. 20, 1982, pp. 95-127.

Sir Winston Churchill's plea in the quest to keep the British Indian Empire is evidence of the underpinnings of the policy that designated the colonies as property from which Britain extracted resources – 'the great inheritance that centuries have gathered'<sup>57</sup> and without which Britain would be impoverished. Upon obtaining independence, the institutions responsible for rule of law continued to consider their central function as that of maintaining law and order. The institutions of governance were not redesigned to address the goals and aspirations of the peoples of the newly independent states. English law was applied without consideration of its suitability to local conditions.<sup>58</sup>

Seidman considered the institutions inherited by post-independence states in Africa too flawed to provide development and advocated for use of the legal framework to correct the ill-designed law-making process as the starting point. In collaboration with his spouse, Prof. Ann Seidman and others, Seidman developed the Institutional Legislative Theory and Methodology (ILTAM), which applied ROCCIPI as a tool aimed to identify social problems, distinguish between causes and conditions, and to determine who – whether role occupant (or stakeholder) or implementing agency – is responsible for what problematic behaviour.<sup>59</sup> Prof. Seidman's theory discounted the approaches of ends-means, incrementalism, pluralism, criminalization and copying law, often used by policy makers in addressing social problems. The basic premise of ILTAM was that, a society or country's institutions consist of repetitive patterns of social behaviours and, in order to change an institution, one must change the social behaviours. Seidman's approach aimed at guiding the systematic evolution of institutions. Applying ILTAM, development planners are expected to analyse a specific country in order to address the identified social problem, taking into account specific restraints and resources, external factors, that influence people's behaviour, in order to provide a means for identifying and organizing the causes of problematic social behaviour, namely, 'Why people behave as they do in the face of a law', which illustrates how law-making institutions, role occupants or stakeholders, and implementing agencies interact in order to explain the behaviour.<sup>60</sup>

## H ILTAM and the ROCCIPI Problem-Solving Tool

Through ILTAM, one analyses and explains the problem, develops hypotheses based on the causes of the problem, proposes solutions based on these hypotheses, and creates a system to monitor and evaluate the chosen policy in order to establish the correct hypotheses (and why) and to modify the policy accordingly.

57 W. Churchill, Speech in British Parliament, <[www.ukpol.co.uk/2015/11/26/winston-churchill-1931-duty-in-india-speech/](http://www.ukpol.co.uk/2015/11/26/winston-churchill-1931-duty-in-india-speech/)> (accessed 17 January 2017).

58 L.C.B. Gower, *Independent Africa*, Cambridge, MA: Harvard University Press.

59 A. Seidman & R.B. Seidman, 'ILTAM: Drafting Evidence-Based Legislation for Democratic Social Change', <[www.bu.edu/law/journals-archive/bulr/volume89n2/documents/seidman\\_000.pdf](http://www.bu.edu/law/journals-archive/bulr/volume89n2/documents/seidman_000.pdf)> (accessed 17 January 2017).

60 A. Seidman, R. Seidman, & N. Abeysekere, *Legislative Drafting for Democratic Social Change - A Manual for Drafters* (Kluwer, 2000).

ILTAM applies the ROCCIPI problem-solving tool or agenda, which is an acronym for Rules, Opportunity, Capacity, Communication, Interest, Process and Ideology. ROCCIPI is an acronym for the seven categories or factors that provide explanations for problematic behaviour. The seven factors are further divided into two subcategories – Rule, Opportunity, Capacity, Communication and Process are objective factors, and Interest and Ideology are subjective factors.

The ROCCIPI tool explains, in detail, the repetitive problematic behaviour of a role occupant in order to better understand the behaviour. After identifying the social problem, the role occupant (or stakeholder), and possible implementing agencies, the tool allows the development planner or policy analyst to address explanations for the causes of problematic social behaviour by utilizing each of the ROCCIPI factors to better assess and understand social problems. Each factor focuses on one aspect of behaviour and asks questions that will lead to a better understanding of the problem and more meaningful policy responses.<sup>61</sup> When an explanation for the problematic behaviour is found, a legislative drafter or policy maker is in position to provide more appropriate solutions to the problem, leading to evidence-based policy and legislative interventions.

The benefits of ILTAM and evidence-based legislative drafting to Africa and other developing countries are numerous. ILTAM encourages a 360-degree examination of the institutional framework and the behaviours of role occupants, allowing in-depth analysis of institutional framework relevant to law making and governance, and enables reflective learning and programme management. It encourages more thought-out policy interventions and increased involvement of the legislative drafter, law and policy makers in the development process.

Like any other methodology, the theory is considered to have some flaws.

The theory also ignored rules not formally enacted by the state such as customary law and usages which were not subjected to the formal law-making process and ignored the reality of legal pluralism in post-independence Africa. The debate as to whether homogenous and 'primitive' societies had laws and legal systems prevalent in the 1940s onwards and the existence of parallel institutions of governance and rule-setting outside the state, for example traditional/cultural leaders, could have been influential factors. The theory implied that society was at the same level of development and properly drafted laws would address the needs of the poor,<sup>62</sup> ignoring the replacement of the colonial administration by the local political elite who took control of the resources thus maintaining a class-nature in post-colonial Africa.

Seidman focussed on the law and envisaged the state implementing the law so as to effect the social change critical to development. However, beyond the law and the state, the legal academy, traditional/cultural institutions, tools of governance and others would affect the development of institutions and society. Law

61 See Seidman et al, 2000.

62 L.M. Friedman, 'The Legal System: A Social Science Perspective', 1975, p. 178, <<https://www.russellsage.org/publications/legal-system>> (accessed 17 January 2017).

was just one of many tools of directed/controlled social engineering or transformation, aside from education, religion and outreach through mass media.<sup>63</sup>

A number of wrong assumptions were made, which meant that approaches to programme management entirely based on this model/theory would be limited in success. Only some aspects of the American model were transferable to 'Third World' country situations and assumptions that local law hinders development and that modern, Western law is a prerequisite for development were flawed.<sup>64</sup>

## I Relevance of Law and Development Theories to Attaining SDG 16 in Africa

The theories or models propounded in the past have been deemed limited. Limitations aside, law and development theories remain relevant to Africa, and specifically to the meaningful and successful attainment of the targets prescribed under SDG 16. Lessons have been learnt from past experience to confirm that no singular model can capture the unique local complexities of societal development processes, which are also affected by regional and global factors.

The question is whether the refinement of rule of law and law and development theories and policies has impacted or can impact on the design and delivery of programmes. A challenge remains to ensure that the existing theories/models do not singularly influence the design and implementation of new rule of law interventions.<sup>65</sup>

Since the mid-1970s to date, scholars have stated that the Law and Development field is 'in crisis'.<sup>66</sup> Baderin aptly captures the current status of law and development in Africa.<sup>67</sup> Remarkably, an African jurisprudence of development has not developed sufficiently to guide the practice of law in Africa. Bearing this in mind, it is worth noting that the proponents of law and development were quick to give up and the critics were quick to dismiss the contribution made by law to development.<sup>68</sup> Experience has shown that legal and judicial reform is a

63 See L.W. Potts, 'Law as a Tool of Social Engineering: The Case of the Republic of South Africa,' *Boston College International and Comparative Law Review*, Vol. 5, 1982, p. 1, <<http://lawdigitalcommons.bc.edu/iclr/vol5/iss1/2>> (accessed 17 January 2017). Harshagrawal; 'Law as an Instrument of Social Engineering', <[www.slideshare.net/Harshagrawal1996/law-as-an-instrument-of-social-engineering](http://www.slideshare.net/Harshagrawal1996/law-as-an-instrument-of-social-engineering)> (accessed 17 January 2017). K. Makkar, 'Law as a Tool for Social Engineering in India', <<http://manupatra.com/roundup/331/Articles/law%20as%20tool.pdf>> (accessed 17 January 2017).

64 See T. Franck, 'The New Development: Can American Law and Legal Institutions Help Developing Countries?', *Wisconsin Law Review*, Vol. 767, pp. 767-801, 1972.

65 A.S. Asongu, 'Law, Economic Growth and Human Development: Evidence from Africa', 8 October 2011. African Governance and Development Institute WP/11/010. <<https://ssrn.com/abstract=2493140>> or <<http://dx.doi.org/10.2139/ssrn.2493140>> (accessed 17 January 2017).

66 Trubek & Galanter, 1974. *Also see* Hoogenboom, 2017.

67 See Baderin, 2010. *Also see* UNDP, 'Rethinking the Role of Law and Justice in Africa's Development', <[www.undp.org/content/undp/en/home/librarypage/democratic-governance/access\\_to\\_justiceandruleoflaw/rethinking-the-role-of-law-and-justice-in-africa-s-development.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/rethinking-the-role-of-law-and-justice-in-africa-s-development.html)> (accessed 17 December 2017).

68 Tamanaha, 1986.

gradual, long-term undertaking that requires patience, governmental commitment and significant outlays of financial resources as well as behavioural changes and adjustments in societal norms. The evolution of legal theories, just like development, goes through stages and does so incrementally. It is legitimate to take into account the influence of the politics of post-colonialism, the Cold War and the post-Cold War world order, including a shift in global governance brought about by increased participation of states in regional integration and globalization initiatives, which changed the way of doing things, including international development assistance.

Law reform projects initiated 25-30 years ago are slowly bearing fruit, which is evidence that it takes a longer time frame to produce a more positive view of the law and development movement.<sup>69</sup>

Rule of law reform projects cannot realistically be subjected to the same test of deliverables and quick gains that works for projects in which deliverables are tangible, for example, road construction projects. Rule of law reforms take place incrementally, yet project time lines in models that advocate for Results Based Management do not cater for such aspirations. This is determined by the funding mechanism and further exacerbated by the lack of follow-up in evaluation and lessons learnt. Evaluation of gains, in the long term, needs to focus on the unique nature of rule of law deliverables. Apparently, a reflective phase is not built into rule of law projects, which would allow for review of lessons learnt and for project redesign for future projects. Lessons learnt from past projects have to be considered, right from project design, through delivery, monitoring and evaluation. The International Association of Women Judges' (IAWJ) project on the jurisprudence of equality and programmes run by other actors in the rule of law arena have made significant inroads in addressing critical issues.<sup>70</sup> However, interventions to address violence against women and girls, which require cultural transformation, remain rampant for the same reasons that cultural or legal evolution take time. In summary, law reform should be viewed as a process; a work in progress that encapsulates legal and socio-economic linkages, customary and enacted law interactions and legal-administrative linkages<sup>71</sup> as well as a tectonic shift in attitudes.

The importance of identification of a theoretical foundation for the new approach to Law and Development in Africa envisaged by the proponents of Agenda 2030 cannot be overemphasized. Legislation as the crucial source of law in development, because 'it is the most innovative, dynamic and perhaps the fastest form of law-making',<sup>72</sup> is a testament of the relevance of Seidman's theory on the regulation of social change by policy implementation through law with the higher objective of facilitating holistic development in terms of economic, human, environmental and/or social progress.

69 M. McClymont & S. Golub (Eds.), 'Many Roads to Justice-the Law-Related Work of Ford Foundation Grantees Around the World', 2000, <<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ManyRoadstoJustice.pdf>> (accessed 17 December 2017).

70 IAWJ, 'Judicial Training Programs: The Jurisprudence of Equality Programs', <[www.iawj.org/JEP.html](http://www.iawj.org/JEP.html)> (accessed 17 January 2017).

71 Meagher & Silverstein, 2017.

72 T.M. Ocran, *Law in Aid of Development*, Tema: Ghana Publishing Corporation; 1978, p. 17.

For Africa and most, if not all the developing countries, there is not enough time to wait for the much-needed development of models/theories for law and development. Current rule of law initiatives must use what is available – the positive attributes of current models and theories to the extent of their relevance – while seeking to develop more Afro-centric and locally relevant models.<sup>73</sup> Developed countries have been urged to reflect upon their own legal practice so that their experience becomes truly relevant to the recipient countries.<sup>74</sup> Leading scholars on the continent have called on Africa learning from the past, and seizing the opportunity to formulate a vision for self-development and self-determination, taking ownership and responsibility for the continent's development.<sup>75</sup> Where outstanding research publications on Africa's development have not addressed the methodology through which rule of law reform programmes are to be delivered, it is time for the legal academy in Africa to rise up to the challenge. Existing works of scholars should be consolidated and where possible, consensus built with rule of law practitioners on what works for Africa and how.<sup>76</sup> In the meantime, the positive attributes of the law and development methodologies/theories should be harnessed, to inform approaches and strategies to meeting the targets identified under SDG 16.

The contribution of rule of law to development can no longer be driven by wrong assumptions in terms of substantive and procedural law and approaches to project implementation. Application of ILTAM and other intrusive methodologies would rule out direct transplantation of a different system of laws to developing countries. In addressing behaviours of role occupants, rule of law actors will have to adjust their lenses to view development holistically as growth or improvement in all aspects such as gender, income, education, health, human rights, rule of law indicators, inter alia. Judicial systems and indeed legal systems will have to be socially sensitive and equipped to efficiently and justly serve local communities: an approach that engenders the confidence required for both domestic and global transactions.<sup>77</sup>

The legal academy in Africa needs to evaluate these theoretical issues in a timely manner and devise strategies of developing a home-grown Afrocentric model(s) that is context-specific and promotes local ownership: addresses the definition, impact, future role of law and development; and ways in which development planners and practitioners can prioritize reforms or predict the effects of various measures. The model(s) must cater for a participatory approach in the target country; address the phenomenon of the plurilegal system by including customary law;<sup>78</sup> identify mechanisms for consistently conducting empirical studies to connect law reform with development; and document and confirm the

73 *Also see* Arraya, 2017.

74 Y. Matsuura (Ed.), *The Role of Law in Development Past, Present and Future*, Nagoya, Nagoya University CALE Books.

75 Nabudere, 2017.

76 *See* Ghai, 2011.

77 Gadio, 2017.

78 P. Onyango, 'African Customary Law System', <[www.academia.edu/10451696/AFRICAN\\_CUSTOMARY\\_LAW\\_SYSTEM](http://www.academia.edu/10451696/AFRICAN_CUSTOMARY_LAW_SYSTEM)> (accessed 17 January 2017).

cumulative and gradual evolution of the jurisprudence of development. Research into current legal regimes, their effectiveness, existing institutional frameworks for rule of law and development is required to make this work.<sup>79</sup> One such example addresses the relevance of the Rule of Law Orthodoxy in Africa.<sup>80</sup>

Within and beyond Africa, law and development scholars need to devise theoretical frameworks so as to have standards through which to prioritize reforms or predict the effects of interventions and provide ideological support to answer questions arising on the role of law and the formal legal system in development, the relationship between law and politics, and the relationships among democracy, authoritarianism and development.<sup>81</sup>

The model is expected to take cognizance of unique aspects of Africa's legal systems, including legal pluralism, and address incompatibility, thereby domesticating rule of law interventions. It will serve development planners well to identify and recognize local rule-setting measures and systems, including customary law and traditional justice institutional frameworks and include them in the development process.<sup>82</sup>

Embracing legal pluralism and maximizing its benefits by integrating them into a single coherent hybrid system that offers consistency, equity, effectiveness through interconnections between government regulatory agencies and courts to limit exploitation of inconsistencies will address some of the current challenges.<sup>83</sup>

Prof. Seidman opined that teaching law and development required teaching law students both theoretical and practical ways on how to achieve these objectives in actual conditions of development.<sup>84</sup> Regarding legal education, the curriculum and syllabi need to be revisited to inculcate law and development as it applies to developing economies and the requirements of Agenda 2030 and encourage development and Afrocentric home-grown law and development scholarship at all levels, including in Continuous Legal Education. Lessons should be drawn from the example of the University of Dar Es Salaam, which in the 1970s introduced and delivered a new course, 'East African Society and Economic problems', to expose law students to such broader issues in their first year of legal studies and give them the requisite political orientation and general theoretical foundations from which the socio-economic content of the more technical legal and semi-legal subjects could be grasped.<sup>85</sup>

79 Joireman, 2001.

80 P. Ntephe, *Does Africa Need Another Kind of Law? Alterity and the Rule of Law in Sub-Saharan Africa* (PhD Thesis, SOAS, University of London), 2012.

81 See S. Lowenstein, *Lawyers, Legal Education, and Development: An Examination of the Process of Reform in Chile*, New York: International Legal Center, 1970 and J. Faundez, *Good Governance and Law: Legal and Institutional Reform in Developing Countries*, New York: St. Martin's Press, 1996.

82 See Arraya, 2017.

83 S. Kaplan, 'Strengthening the Rule of Law in Developing Countries', <[www.fragilestates.org/2012/06/17/rule-of-law-developing-countries/](http://www.fragilestates.org/2012/06/17/rule-of-law-developing-countries/)> (accessed 17 January 2017).

84 Nabudere, 2017.

85 Nabudere, 2017.



At institutional level in-country, the Bangalore Principles,<sup>86</sup> recognizing that competence and diligence are prerequisites to the due performance of judicial office, adequately provide for the responsibility of judicial officers to take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to them. The Commonwealth (Latimer House) Principles<sup>87</sup> recommend that courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training; and that an independent, organized legal profession is an essential component in the protection of the rule of law, which are critical in developing competence among local legal practitioners.

The active participation of legal practitioners in promoting development and exercising leadership in changing social norms should be fostered and sustained. Initiatives such as the direct involvement of judicial officers in the East African region in developing a ground-breaking judicial bench book<sup>88</sup> and the law societies' outreach and awareness raising activities are critical to strengthening national institutions and developing legal frameworks under SDG 16.

Overall, it is incumbent to inculcate a development-oriented approach to law, with hands-on involvement of rule of law and development practitioners from developing countries. Training and building capacity for rule of law practitioners, in which skills to learn about society are developed, a variety of research methodologies for conceptualizing problems, simple models of analysis of decision-making institutions, as well as economic concepts are inculcated, will assist the development-conscious rule of law practitioner make better decisions and enable legal professionals to practice law with development in mind and help address the flawed policy approaches inherited from the colonial times and maintained to date.<sup>89</sup>

The increasing number of institutions of higher education worldwide offering courses and the increasing investment in the area by academia and development partners is evidence of the recognition of the crucial nexus between law and development. These synergies or opportunities should be exploited. Research at the University of Vienna focusses on the colonial concept of development and the emerging sustainable development discourse.<sup>90</sup>

86 UNODC Bangalore Principles, <[www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)> (accessed 17 January 2017).

87 The Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government.

88 Commonwealth Secretariat, Commonwealth Judicial Bench Book on violence against women and girls in East Africa, July 2016.

89 Also see L.M. Hagar, 'Development Law Capacity Building: Training Lawyers for Development', *International Sustainable Development Law*, Vol. II, pp. 258-276.

90 <[www.univie.ac.at/colonial-development/seiten/projekt.html-colonial-concept-of-development](http://www.univie.ac.at/colonial-development/seiten/projekt.html-colonial-concept-of-development)>. Also see <<http://www.lawanddevelopment.net/about.php>>, <http://www.edolad.eu> and <https://www.soas.ac.uk/courseunits/15PLAC160.html> for the multi-disciplinary approach of the Law and Development Institute; European Joint Doctorate in Law and Development (EDOLAD) Law and Development in Africa at School of Oriental and African Studies, University of London.

Innovative research into law in development is taking place. The development research fraternity regularly convenes regional and international conferences to address outstanding issues due to unanswered questions related to the critical set of challenges for the SDGs as normative goals, to bridging global goals and visions and local practices through globalization,<sup>91</sup> realities and conditions and the processes through which development is implemented and embedded in concrete settings for outcomes.<sup>92</sup> Law and development should remain a distinct area of research and as evolutionary in nature as the concepts of development and sustainable development. The legal academy has to play a conscious role in developing theories and models for promoting legal reform in developing countries with clarity on how to navigate the murky waters to address issues like: whether law is an important factor in determining social or economic outcomes in developing societies given the existence of informal methods of social control; whether there are insurmountable economic, political or culture obstacles to effective legal reform; as well as, assuming effective legal reform is feasible, the types of reforms are conducive to development and the types of actors needed to implement them.<sup>93</sup> The Jurisprudence of Development should not remain scattered. The research harnessed from all education and research initiatives should be consolidated and applied to guide law and development methodology that meets Africa's needs.

In the area of substantive and procedural laws, development planners should address development holistically in social, economic and environmental aspects in addition to civil and political rights.<sup>94</sup>

SDGs' achievements will require and result in situating SDGs within the national policy, legal and institutional framework with necessary adjustments; building capacity and holding states accountable; and above all, promotion of SDG literacy for all rule of law practitioners, which is a fundamental requirement for the process to succeed. Achieving the targets of SDG 16 and the whole of Agenda 2030 requires active presence and conscious involvement or participation of rule of law and development practitioners. The current activities of the International Parliamentary Union, involving members of parliament in developing strategies for the implementation of SDGs, will lend support to the national discussion on implementation and building consensus on national and regional priorities.<sup>95</sup>

91 C. Boulanger, 'Ensuring Global Models Fit the Local Context, and Meet Actual Local Needs'.

92 M. Cashmore, 'Development Research Conference Theme: Global Visions and Local Practices – Development Research in a Post-2015 World, Stockholm, August 22-24, 2016'. <<http://matthewcashmore.net/uncategorized/development-research-conference-august-22-24-2016-stockholm/>> (accessed 17 January 2017).

93 T. Carothers, 'Promoting The Rule of Law Abroad – The Problem of Knowledge', Rule of Law Series Democracy and Rule of Law Project Number 34 January 2003.

94 See J. Hewko, <<http://carnegieendowment.org/2002/04/15/foreign-direct-investment-does-rule-of-law-matter-pub-952>> (accessed 17 January 2017).

95 IPU, 'Regional Seminar on the Sustainable Development Goals for the Parliaments of Sub-Saharan Africa', <[www.ipu.org/splz-e/kampala17.htm](http://www.ipu.org/splz-e/kampala17.htm)> (accessed 17 January 2017).

The three branches of government in each country need to get directly and consciously involved in the implementation of SDG 16 on the parameters defined in the Commonwealth (Latimer House) guidelines on the relationship between policy makers, legislators and judicial officers, along with participation of non-governmental actors.

Rule of law institutions and actors are key to the partnerships envisaged by SDG 17.<sup>96</sup> A process that promotes collaborative partnerships with research bodies, academia, and others is advantageous.<sup>97</sup> The minds of all practitioners, policy makers, academicians, programme developers and financiers involved in the law and development arena have to meet, leading to increased understanding of the nature of law and the contribution to social change and build consensus to ensure that the momentum built at the adoption of the SDGs, including Goal 16, is not lost.

## J Conclusion

Fifty-three years after Prof Robert Seidman commenced his career in law and development work, a number of issues, including definition perception of law and development as a distinct field of legal discourse remain outstanding. While law and development theory remains a work in progress, ILTAM's ROCCIPI remains relevant to the law and development process and should easily be applied to rule of law projects that have been criticized for not being fit for purpose. The contributions made by Prof Seidman and others remain significant and lessons learnt, if harnessed, will help shape relevant models and theories on which attaining targets set for SDG 16 should be approached. Seidman's contribution to the jurisprudence of development since 1962 remains relevant regardless of the model applied because of the relevance of rules and the institutional framework to the regulation of society and implementation of development policies. Good practices and solutions adopted from other jurisdictions, including model laws and legal transplants are likely to work better following the application of ILTAM, when the appropriate adjustments are made for 'best fit'.

Law and development philosophy has to be reworked, not only to emphasize the use of law as a tool of social change, public order and justice,<sup>98</sup> but also to foster development. Successful attainment of SDG 16 will demand further development of legal frameworks; research or detailed examination of the society 'as is'.<sup>99</sup> Addressing changes in social behaviour. Patience is required to permit the natural evolution of the jurisprudence of development and to adequately focus on the nexus between the law and development. New evidence-based thinking in development that addresses these challenges while capitalizing on the opportunities is a must. A solid knowledge-driven approach to development policy-making based locally defined needs and on empirical evidence of what works, is a necessity.

96 See Arraya, 2017.

97 See Toope, 2017.

98 See Baderin, 2010.

99 Chibundu, 1997.

Adoption of Agenda 2030 makes it pertinent for legal scholars from Africa to vigorously continue efforts to shape the law and development paradigm. These efforts should evaluate and strengthen the philosophy, model and evidence base to support interventions by governments and development practitioners.