

**GOVERNANCE ASSESSMENT, A TOOL FOR HUMAN RIGHTS  
PROMOTION: A CRITICAL LOOK AT THE AFRICAN PEER  
REVIEW MECHANISM**

Submitted in partial fulfillment of the requirements of the Degree  
LLM (Human Rights and Democratization in Africa)

By

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## **DEDICATION**

*I dedicate this work to my father and mother whose love and trust I value; and to my friend Simon Tiemtoré, by whom I come to discover the Centre for Human Rights and this Master's Programme.*

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## LIST OF ABBREVIATIONS

ACHPR:	African Charter on Human and Peoples' Rights
ADB:	African Development Bank
AHRLJ:	African Human Rights Law Journal
AHSG:	African Heads of State of Government
AHSI:	African Human Security Institution
AI:	Amnesty International
AMU:	Arab Maghreb Union
APFO:	African Peace Forum
APR:	African Peer Review
APRM:	African Peer Review Mechanism
ASDR:	African Security Dialogue and Research
AU:	African Union
CBOs:	Community Based Organisations
CEDAW:	Convention on the Elimination of all kinds of Discriminations Against Women
CESCR:	Committee on economic, Social and Cultural Rights
CSOs:	Civil Society Organisations
CSSDCA:	Conference on Security, Stability, Development and Cooperation in Africa
EAC:	East African Community
ECCAS:	Economic Community of Central African States
ECOSOC:	Economic, Social and Cultural Council
ECOWAS:	Economic community of West African States
EU:	European Union
G8:	Group of 8
HGS:	Heads of State and Government
HSGIC:	Heads of State and Government Implementation Committee
HSIC:	Heads of State Implementation Committee
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights

IHRDA:	Institute of Human Rights and Development in Africa
IJLI:	International journal of Legal Information
IMF:	International Monetary Fund
ISS:	Institute for Security Studies
MAP:	Millennium Africa recovery Plan
MDGs:	Millennium Development Goals
MOU:	Memorandum Of Understanding
NAI:	New African Initiative
NEPAD:	New Partnership for Africa's Development
NGO:	Non Governmental Organisations
NHRIs:	National Human Rights Institutions
OAU:	Organisation for African Unity
OECD:	Organisation of Economic Cooperation and Development
OHCHR:	Office of the United Nations' High Commissioner for Human Rights
PRM:	Peer Review Mechanism
RECs:	Regional Economic Communities
SADC:	Southern Africa Development Community
SAHRIT:	Southern Africa Human Rights Trust
SAIIA:	South African Institute of International Affairs
SAPs:	Structural Adjustments Programmes
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
UNECA:	United Nations, Economic Commission for Africa
WAEMU:	West African Economic and Monetary Union
WANEP:	West African Network on Peace building



## CHAPTER 1

### INTRODUCTION

#### 1.1 Background

At the beginning of the new millennium, African Leaders are engaged in the promotion of continental development, both politically and socio-economically. For the continent to meet the challenges of the 21<sup>st</sup> century, new programmes have been or are being implemented. The former Organisation of African Unity (OAU) has been turned into the Africa Union (AU). At the same time, the New Partnership for Africa's Development (NEPAD) has been launched as the continent's socio-economic development programme.<sup>1</sup> The aims of this programme are to address the key social, economic and political priorities of the continent. Also, African Leaders have acknowledged that NEPAD will not eradicate poverty or place their countries on a path of sustainable growth and development unless they commit themselves to 'ensuring stability, peace and security, promoting closer economic integration, ending unconstitutional changes of government, supporting human rights, and upholding the rule of law and good governance.'<sup>2</sup>

They translated such acknowledgement into a declaration known as the Declaration on Democracy, Political, Economic and Corporate Governance (Durban Declaration).<sup>3</sup> This Declaration aims at contributing to 'strengthen the political, economic and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights, and promotion of the rule of law.'

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<sup>1</sup> NEPAD Document, Para 1. Also see T Mbeki, 'Critics ill-informed about NEPAD peer review', *ANC Today*, Volume 2, No 45, 8-14 November 2002.

<sup>2</sup> Para 10 Preamble to African Union Constitutive Act at <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 25 October 2004).

<sup>3</sup> The Declaration on Democracy, Political, Economic and Corporate Governance was adopted at the AU Durban Summit in July 2002. See Chapter 2 in this paper.

Furthermore, the African Peer Review Mechanism (APRM)<sup>4</sup> has been proposed as a key element of the NEPAD. The APRM is said to be the most remarkable innovation in the AU and the NEPAD framework designed to promote good governance and human rights. Its central purpose is to ensure the compliance of African states with the standards and practices of governance contained in the Durban Declaration. Although the APRM has been welcomed by a large number of development actors, there are also some doubts as to this mechanism working in the context of Africa. One of the main reasons for such reservations is that peer review on political governance has never been tested elsewhere before

## **1.2 Statement of the problem**

The APRM goal in having States review and assess the performances of other states is to induce the reviewed states to improve their policy making, adopt best practices and comply with established and agreed standards in the field of human rights as well as in many other fields, and thereby promote these rights and improve governance. In those states, the APRM is thus intended to be a good tool for ensuring change and fostering compliance with human rights instruments by African states. However, participation in the APRM is voluntary, and failure to accede to it does not incur punitive sanctions. As with other peer reviews, the APRM is non-adversarial and does not imply any binding decision as an outcome of the process.<sup>5</sup> Therefore, the success of the APRM in Africa depends on whether or not African heads of state will use it, and how inclusive it will be.

The key question this paper seeks to address is: What is the value-added by APRM in the promotion of human rights in Africa?

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<sup>4</sup> The APRM was adopted together with the Durban Declaration at the Durban Summit.

<sup>5</sup> K R Hope, 'The African Peer Review (APR) Mechanism, The ECA View', UN Economic Commission for Africa, Addis Ababa, <<http://www.dse.de/ef/nepad/hope.htm>> (Accessed on 13 September 2004).

### 1.3 Objectives of the study

The study has three main objectives:

- Firstly, it aims to call attention to a ‘dimension often forgotten of good governance,’<sup>6</sup> namely, the evaluation of public action. ‘Public action’ is the *lieu par excellence* where governance is exercised. Thus, its evaluation is an important ingredient of democratic action as it invites the authorities, directly or indirectly, ‘to measure the concrete effects of a given policy in relation to the objectives assigned to it, and to take the appropriate corrective measures.’<sup>7</sup>
- Secondly, the paper is a contribution to the ongoing debate on human rights within the NEPAD framework, specially the usefulness of the APRM. In that, it seeks to explore the substance and the potential of the APRM for protecting and promoting human rights in Africa.
- Thirdly, the study will make some recommendations as to how the APRM should be conducted, in order for it to be an effective tool that promotes human rights.

### 1.4 Significance of the study

The existence of the APRM is something new and, as an African initiative, is to be welcomed. As other institutions interested in evaluating democratic governance, the APRM has also its own tools, procedures and indicators. However, from a human rights perspective and for the purpose of giving it legitimacy, the process needs to be more open and inclusive, and sources of information more diversified in order to reach the wider population.

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<sup>6</sup> A Bernard, ‘Quelque réflexions fondées sur l’expérience de la Fédération Internationale des Droits de l’Homme,’ in Symposium sur l’accès aux financements internationaux prévu les 5 et 7 mai 2004 a Paris, Table ronde préparatoire n°3, La bonne gouvernance : objet et condition du financement du développement, tenue a Paris, les 20 et 21 novembre 2003.

<sup>7</sup> As above.

The main argument will be that the APRM as a mechanism for public action assessment is vital for the promotion of democratic governance and human rights. However, to really promote human rights and legitimate democratic development, the process needs to be more population-centric (than state-centric); the mechanism should provide for more strictness in the treatment of the results of the review.

### **1.5 Hypothesis**

Whatever they are, tools for development can be said to bring about change only when their impacts are subjected to a rigorous and objective evaluation. Assessing public policies can promote human rights. The APRM is regularly criticized as heads of state instrument to legitimize their peers, and that it has not been inclusive in its conception; however, it has the potential to add value to human rights promotion and protection.

### **1.6 Brief literature survey**

Despite its recentness, a lot has been written about NEPAD and its peer review mechanism. The various AU official instruments form a large part of these documentations; the most relevant of these are the African Union Constitutive Act. The New Partnership for Africa's Development (NEPAD) general and specific documents, the APRM Base Document, and the Durban Declaration. Also important are the different reports, declarations and communiqués issued by the NEPAD Heads of States Implementation Committee (HSIC) and other APRM organs such as the Panel of Eminent Persons. The study will first focus on these official documents.

General articles and papers questioning the peer review mechanism or assessing and measuring public policies have also been published. In this

regard, Jakkie Cilliers<sup>8</sup> from the Institute for Security studies, Fabrizi Pagani,<sup>9</sup> and Bruce Baker<sup>10</sup> amongst others, have made great contributions. In response to the question '*Can we measure democracy, good governance and political and social rights, and if yes, what are we really measuring?*' Georges Nzongola-Ntalaja,<sup>11</sup> while acknowledging that the various indicators included in Human Development Rate do provide a way of gauging democratic development in Africa, says it is better to test such development from the perceptions of the people of Africa themselves. Gordon Crawford<sup>12</sup> examines the rhetoric on promoting human rights and democracy in third countries that emanates from various institutional levels of the European Union (EU), including those responsible for development co-operation, and questions how the EU's practice in this field can best be evaluated. The paper advocates a participatory approach, focusing on assessing external support for democratisation from the perspective of national actors, both governmental and non-governmental.

If the literature on the topic seems abundant, very little has been said on how peer reviews and especially the APRM should be conducted in order to effectively promote and protect human rights. This paper aims to contribute to this aspect of the discussion.

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<sup>8</sup> J Cilliers, 'Peace and security through good governance, a guide to the NEPAD African Peer Review Mechanism', Institute for Security Studies, ISS Paper 70, April 2003, <<http://www.iss.co.za/>> (accessed on 16 August 2004).

<sup>9</sup> F Pagani, 'Peer review: A Tool for Co-operation and Change, An analysis of an OECD Working Method' OECD SG/LEG (2002) 1, Unclassified <<http://www.oecd.org/dataoecd/33/16/1955285.pdf>> (Accessed on 16 October 2004).

<sup>10</sup> B Baker, 'The quality of African democracy: why and how it should be measured', in *Journal of Contemporary African studies*, 17, 2, 1999, pp 273 – 285.

<sup>11</sup> G Nzongolo-Ntalaja, Democracy indicators in Africa. Remarks for presentation at the Africa Regional Launch of the UNDP *Human Development Report 2002: Deepening Democracy in a Fragmented World*, Dar-Es-Salaam, Tanzania, 11-12 October 2002.

<sup>12</sup> G Crawford, 'Evaluating EU promotion of human rights, democracy and good governance: towards a participatory approach', Working Paper No.22 of the European Development Policy Study Group of the Development Studies Association. <<http://www.edpsg.org/index.pl>> (accessed on 16 October 2004).

## **1.7 Methodology proposed**

In the perspective of the conduct of the present study, at least three stages will be necessary. First, I will be examining the methodological framework of the APRM as the NEPAD's tool to assess states' compliance with human rights standards and governance in Africa, in order to have a clear understanding of its objectives, principles, organs, tools and procedures. Secondly, the assignment will be to investigate and critically question the APRM from a human rights perspective. This task will consist of evaluating the APRM in its substance and potential in terms of protection and promotion of human rights. Finally, attempts will be made to address the limitations and shortcomings regarding the promotion of human rights, and integrate a 'civil dimension' in the process of evaluating the NEPAD programmes. Here, references will be made to the role of some non-governmental organizations (NGOs).

## **1.8 Limitation of proposed study**

Basically, the purpose of this study is to argue that because the evaluation of public policies is an important component for ensuring human rights, the use of the APRM should be enhanced to promote the rights of the people of Africa. Therefore, the scope of this enterprise will be limited to the African Peer Review Mechanism. While the study will consider the four objectives that the Durban Declaration pursues, particular attention will be given to the human rights aspects; the democracy and political review will be central. Equally, focus will be put on the promotional role of the APRM.

## **1.9 Structure and contents of the study**

The study is structured into five chapters. This first chapter serves as an introduction and has described the context of this paper by giving the background and general structure of the paper. Chapter two will briefly define the notion of peer review, highlighting the founding context and the process of the APRM itself. This summary is necessary for a proper understanding of the

paper. Chapter three will endeavor to point out the human rights aspects in the APRM, that is, the substance and potential of the mechanism for human rights protection and promotion, including references to international human rights instruments. Chapter four is a proposal for giving the APRM mechanism the best prospect for success; this will include adopting a 'population - based approach', meaning that the citizens are central part and owners of the process of the evaluation of government policies. Such ownership should produce a more realistic evaluation of the outcomes of public policies. Finally, Chapter five will conclude this study by providing some recommendations as to how to ensure that APRM is a tool that guarantees human rights.

## CHAPTER 2

### HISTORY AND PRESENT STATUS OF THE AFRICAN PEER REVIEW MECHANISM

Though new in the African context, the peer review practice has been used elsewhere before. The APRM has been proposed in the aftermath of the NEPAD; thus, understanding this African approach requires looking at its founding context, the implementation organs, and the process it proposes to follow. But first, it is important to recall the concept of peer review.

#### 2.1 The Concept of 'Peer Review'

Peer review generally implies seeking the point of view of one's colleagues. Fabrizio Pagani gives a very clear definition of peer review. Peer review he said, 'can be described as the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy-making, adopt best practices, and comply with established standards and principles.'<sup>13</sup> Usually, a peer review is conducted by the peers (the other states) or by designated institutions, or a combination of the two.<sup>14</sup> Key features of peer reviews are that they are non-adversarial, rely on the trust that exists between reviewed and reviewers and shared confidence that the actors have in the process, and are undertaken on a regular basis.<sup>15</sup>

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<sup>13</sup> Pagani, n 9 above.

<sup>14</sup> Hope, n 5 above.

<sup>15</sup> As above.



There are many types of 'peer review.' The best known are the academic peer reviews,<sup>16</sup> the OECD reviews<sup>17</sup> and the peer review in other international organisations, especially the (International Monetary Fund) IMF Country Surveillance mechanism.<sup>18</sup> Peer reviews can be based on a subject area (e.g. health, environment, education, governance) or thematically (e.g. adult learning) but always according to agreed standards and criteria.<sup>19</sup> One notion that is linked to peer review is that of peer pressure. It is assumed that 'the effectiveness of peer review relies on the influence and persuasion exercised by the peers during the process.'<sup>20</sup> Such influence can take the form of dialogues, creating public awareness, using the 'name and shame' technique (ranking among countries for example), etc, with the intent to impact positively on the national policies. Usually, the involvement of the public and the media make peer pressure more successful.

The APRM is modelled upon these functioning examples of peer reviews, but has its singularity due to its context and scope.

## **2.2 Founding and context of the APRM**

This section will be recalling the origin of the idea of the APRM and its evolution through the different practical arrangements.

### **2.2.1 The nurturing of the idea**

To understand the origin and evolution of the APRM, one needs to look at both the vision and the institutional framework of the AU. Africa's new vision of development is embodied in the Constitutive Act (the Act) of the African

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<sup>16</sup> For peer review in publishing in scholarly journals, see R. Kanbur, 'The African Peer Review Mechanism (APRM): An Assessment of concept and Design', January 2004, <<http://www.people.cornell.edu/pages/sk145>> (Acceded on 13 September 2004).

<sup>17</sup> The OECD is the pioneer in experiencing peer review; see Pagani, n 9 above 7.

<sup>18</sup> Pagani, n 9 above 6.

<sup>19</sup> As above.

<sup>20</sup> As above.

Union; this Act is the foundation of any initiative regarding the political and socio-economic recovery of the continent and spells out the objectives and principles for Africa's renewal.<sup>21</sup> The NEPAD is the programme of action for pursuing the socio-economic objectives of the Act. The background of NEPAD can be summarized as follows: In the year 2000, immediately following the United Nations' Millennium Summit held in September in New York, Presidents Thabo Mbeki of South Africa, Olusegun Obasanjo of Nigeria and Abdelaziz Bouteflika of Algeria launched the *Millennium African Recovery Program* (MAP). The MAP was perceived as a kind of 'Marshall Plan' for African reconstruction and development. In January 2001, Abdoulaye Wade the newly elected President of Senegal came up with his OMEGA Plan pursuing the same objectives. In March of the same year at the Sirte (Libya) OAU Summit, African Leaders decided to merge the MAP and OMEGA plans that resulted in the New African Initiative (NAI) as named by the OAU Summit in Lusaka (Zambia) four months later. In October 2001 at a meeting in Abuja, the name of the NAI was finally changed into New Partnership for African Development (NEPAD), and in 2002 at the first Summit of the African Union, NEPAD was declared a programme of the AU.<sup>22</sup>

In the same line, the APRM was conceived as a mechanism and an instrument that will ensure that the principles, objectives and priorities of the Constitutive Act are incorporated and enforced through the socio-economic developments programmes of the individual countries and regions.<sup>23</sup> For cohesion of the vision, the NEPAD's APRM organs are not that different from those of the AU.

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<sup>21</sup> Statement on the evolution and purpose of the APRM, presented at the inaugural workshop of the Panel of Eminent Persons by Professor Wiseman Nkuhlu, Chairperson of the NEPAD steering Committee, Cape Town, 25 -27 July 2003.

<sup>22</sup> For further reading on the historical background of NEPAD, see G. Nzongolo-Ntalaja, 'The African Union, Talking Notes for the SUM and SAIH Seminar', University of Oslo, Oslo, 11 February 2003. See also E. Baimu, Human Rights in NEPAD and its implications for the African Human Rights system, *African Human Rights Law Journal* (2002) 2.

<sup>23</sup> n 9 above.

Going back to the context of launching the APRM, it is necessary to look at its own background. The APRM is a mechanism under NEPAD, drawn from the Durban Declaration. The document was developed by the Economic Community for Africa (ECA)<sup>24</sup> at the request of the NEPAD's HSIC. Therefore the Durban Declaration is the founding document of the APRM.

The Durban Declaration was a commitment to democracy and good governance by the participating states.<sup>25</sup> The Declaration is a step toward addressing the 'most urgent of the grave challenges that Africa faces'<sup>26</sup>; to that end, they have agreed to work together, 'in policy and action', to:

- Promote democracy and good political governance
- Promote economic and corporate governance
- Foster socio-economic development
- Implement the African peer review mechanism.<sup>27</sup>

The Durban Declaration was inspired by successive decisions taken by the former OAU Summits, which aimed at 'ensuring stability, peace and security, promoting closer economic integration, ending unconstitutional changes of government, supporting human rights and upholding the rule of law and good governance.'<sup>28</sup> The participating states also reaffirmed 'full and continuing

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<sup>24</sup> Established in 1958, ECA is one of five regional commissions under the administrative direction of United Nations Headquarters. As the regional arm of the UN in Africa, it is mandated to support the economic and social development of its 53 member States, foster regional integration, and promote international cooperation for Africa's development. It reports to the UN Economic and Social Council (ECOSOC). See <[http://www.uneca.org/about\\_eca/](http://www.uneca.org/about_eca/) > (accessed on 3 September 2003).

<sup>25</sup> Although every individual state is de facto a member of the AU except Morocco, membership in NEPAD is not automatic. One needs to accede to NEPAD as stated in its Documents

<sup>26</sup> Durban Declaration, Para 5.

<sup>27</sup> As above, Para 6.

<sup>28</sup> The instruments referred to and mentioned in the Declaration are: the Lagos Plan of Action, and the Final Act of Lagos (1980); the African (Banjul) Charter on Human and Peoples' Rights (1981); the African Charter for Popular Participation in Development (1990); the Declaration

commitment to the other international obligations and undertakings into which they entered in the context of the United Nations (UN).<sup>29</sup> They went on to specify particularly the UN Charter of 1945, the Universal Declaration of Human Rights of 1948 and its related Conventions (ICCPR and its optional Protocols, ICESCR,...), citing specially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration.

In order to promote adherence to and fulfilment of these commitments contained in the Durban Declaration, the APRM was initiated. In the terms of the Declaration, the APRM is both an objective and a mechanism. As an objective, it is one of the four domains where policy and action should be undertaken to address African challenges, the most urgent being the eradication of poverty and the fostering of socio-economic development, in particular, through democracy and good governance.<sup>30</sup> As a mechanism, the APRM spells out the institutions and process that will guide the peer review.<sup>31</sup>

But the Durban Declaration did not appear overnight; it was the result of a process began at the NEPAD HSIC meeting in Abuja in October 2001. It was agreed at that meeting that ‘... African leaders should set up parameters for Good Governance to guide their activities at both the political and economic

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on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World (1990); and the African Charter on the Rights and Welfare of the Child (1990); the Abuja Treaty establishing the African Economic Community (1991); the 1993 Cairo Declaration Establishing the Mechanism for Conflict Prevention, Management and Resolution; the Protocol on the Establishment of an African Court on Human and Peoples’ Rights (1998); the 1999 Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights; the Framework for an OAU Response to Unconstitutional Changes of Government (adopted at the 2000 OAU Summit in Lomé, Togo, and based on the earlier decision of the 1999 Algiers OAU Summit); and the Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration (2000); and the Constitutive Act of the African Union (2000).

<sup>29</sup> n 26 above, Para 4.

<sup>30</sup> n 26 above, Para 5.

<sup>31</sup> n 26 above, Para 28.

levels. In this regard, it decided that, at its next meeting, it would consider and adopt an appropriate peer review mechanism and a code of conduct.<sup>32</sup> At its second meeting in Abuja, March 2002, the HSIC effectively adopted the APRM, although the document was not immediately publicised.<sup>33</sup> At the Rome meeting in June 2002, the HSIC approved a Declaration on democracy, political, economic and corporate governance<sup>34</sup> that was submitted together with the APRM to the first ordinary Summit of the AU in July 2002, Durban, South Africa.

In the AU Organisational framework, the Summit (Assembly of all the Heads of State of the AU) is the highest decision making body of the Union. The AU Summit is also the NEPAD Governing Body. It is that body that adopted the Durban Declaration together with the APRM as a voluntary mechanism open to all member states of the Union; the Summit has also encouraged member states to sign up to the Durban Declaration and accede to the APRM. Yet practical arrangements were needed to be made for the process to start.

### **2.2.2 The practical arrangements**

After its adoption, the HSIC continued to work out the APRM practical aspect such as the elements of measurement, the personnel that will conduct the process and the location for the APRM Secretariat and other similar details. From August to October 2002, workshops were held to build and develop the indicators and benchmarks for the review. Institutions like the ECA, the African Development Bank (ADB) and the NEPAD Secretariat, have contributed intensively to the development of the APRM guidelines and

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<sup>32</sup> See the Communiqué issued at the end of the first meeting of the HSIC, Abuja, Nigeria, 23 October 2001.

<sup>33</sup> J Cilliers, 'NEPAD's Peer Review Mechanism', Institute for Security Studies, ISS Paper 64, November 2002, <<http://www.iss.co.za/Pubs/Papers/64/Paper64.html>> (accessed on 16 August 2004).

<sup>34</sup>The Declaration is available on the internet at <<http://www.nepad.org/Doc004.pdf>> (accessed on July 19 2004).

framework. Finally, the HSIC meeting in Abuja, November 2002 finalised the modalities around the Peer Review Mechanism.<sup>35</sup>

The adoption of the APRM was a difficult task politically. As Professor Wiseman Nkuhlu the chairperson of the NEPAD's Secretariat pointed out, 'all the personal representatives showed understanding of the need to do something new to enhance the credibility of policy reforms, as well as to give strong signal that it was not going to be business as usual, but were reluctant to commit their countries to processes that appear to be radical....'<sup>36</sup> These discussions led to emphasizing the voluntary nature of the process. Further debates have taken place that sometimes scratched the credibility of the process. Mainly two points were of concern. The first raised the role of the UNECA in the peer review process. While South Africa's original intention was to use the UNECA Governance Project as the basis of the entire APRM,<sup>37</sup> Nigeria's position was that the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)<sup>38</sup> Unit within the AU Commission should coordinate all aspects of the peer review.<sup>39</sup> Nigeria is reported to have argued that the UNECA was non-African and inappropriate since it represents the

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<sup>35</sup> See Para 13 of the Communiqué issued at the end of the Fifth summit of the Heads of State and Government Implementation committee (HSIC) of the New Partnership for Africa's Development, Abuja, Sunday, 03 November 2002.

<sup>36</sup> n 9 above.

<sup>37</sup> See the Communiqué issued at the end of the 3<sup>rd</sup> HSIC meeting in Rome, June 2002.

<sup>38</sup> The idea of CSSDA started in 1991 when Presidents Yoweri Museveni of Uganda (then Chairman of the OAU), and Olusegun Obasanjo of Nigeria, invited the African Heads of States to attend a meeting on Security, Stability, Development and Cooperation in Kampala. This meeting agreed on a unified strategy for development linking the issues of security, stability, development and cooperation in a comprehensive and integrated fashion recognising that one flows into the other and that it is impossible to tackle any without concern for another. This meeting resulted in the Kampala Document, which traces several decisions of the OAU regarding the continent development and proposed a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). Finally, the 36<sup>th</sup> OAU Summit in Lomé in 2000 adopted the Solemn Declaration on the CSSDCA and its Declaration. For a view on the background of CSSDCA, visit

<<http://www.au2002.gov.za/docs/background/cssdca.htm>> (Accessed on 16 October 2004).

<sup>39</sup> Kanbur, n 16 above.

interests of the international financial institutions such as the World Bank and the International Monetary Fund.<sup>40</sup> But in the end, the two leaders of the NEPAD came to a compromise and harmonized their views.<sup>41</sup>

The second point, connected to the first, was whether or not review of political governance should be conducted under the APRM or under other organs of the AU. Many African governments were reluctant to submit their political performances to an independent review. To clarify the intention, South African authorities declared publicly that the APRM 'will not review political governance of African countries, as this [is] the task of African Union watchdog institutions....'<sup>42</sup> Such statements from the South African Deputy Foreign Minister Aziz Pahad, confirmed by President Mbeki, 'astonished, shocked, confused and dismayed the international community.'<sup>43</sup> Reacting to that, the Canadian trade minister warned that G8 financial support for Africa was conditional on political peer review under NEPAD.<sup>44</sup>

The fundamental transformations of African institutions that are taking place are about creating the right conditions for political stability and sustainable socio-economic development, starting with the transformation of the OAU to AU. At the same time, the NEPAD strategic framework was developed and adopted by the AU as an integrated socio-economic development framework for Africa. To promote an effective implementation of this development framework, the NEPAD Leaders initiated the APRM as an African self-monitoring instrument.

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<sup>40</sup> The discussion around the ownership of the APRM will come later in this paper when we will evaluate the process.

<sup>41</sup> The compromise was the rationalisation of two processes of peer review: the one of the AU under the CSSDCA and that of NEPAD under APRM.

<sup>42</sup> D Venter, 'Democracy, Governance and Leadership, Towards an African Renewal', Africa Consultancy & Research, Pretoria, South Africa, 30 October 2003. See <<http://www.isupportafrica.com/nepad/index.htm>> accessed on 29 July 2004). Venter is reporting these statements from Pretoria News, 29 October 2003.

<sup>43</sup> As above.

<sup>44</sup> As above.

The APRM aims ‘to ensure that the policies and practices of participating states conform to the mutually agreed values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance.’ Its primary purpose is ‘to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration.’<sup>45</sup> The NEPAD together with its APRM appears to be the ‘most talked about regional agenda in the world.’<sup>46</sup> The APRM mechanism created hope among Africans and the international community. The instrument is there, now how is it supposed to work and how it has been working so far? These questions are answered through an examination of the organisational framework and established process.

### 2.3 The APRM Organs<sup>47</sup>

The APRM organs are in place and the mechanism is being tested on the ground; many countries have adopted the Durban Declaration and in some of them, reviews are taking place.

**The AU Summit:** Since APRM is a mechanism under NEPAD, and NEPAD itself is a Programme of the AU, the activities undertaken by APRM are ultimately reported to the AU Summit which is the supreme body of the process.

**The APR Forum** gathers all the member states of the AU who have voluntarily acceded to the APRM<sup>48</sup> and is the highest decision-making

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<sup>45</sup> Para 10 of the AU Declaration on the implementation of the New Partnership for Africa’s Development (NEPAD), Assembly/AU/Decl.8 (II).

<sup>46</sup> Para 5 of the Durban Declaration.

<sup>47</sup> The information on the organs and process are extensively taken from African Peer Review Mechanism Organisation and Process Document, (*Nepad/Hgsic-3-2003/Aprm/Guideline/O&P 9 March 2003*).

<sup>48</sup> African Peer Review Mechanism Organisation and Process, (*Nepad/Hgsic-3-2003/Aprm/Guideline/O&P 9 March 2003*), Para 2.1



authority in the APRM<sup>49</sup>. It oversees the process and exercises constructive peer dialogue and persuasion to make the APRM effective, credible and acceptable<sup>50</sup>. Its practical mandate<sup>51</sup> comprises, among other things, appointing the APR Panel, considering the country review report submitted by the APR Panel, referring it to the AU Summit and publicising it, building constructive peer dialogue and using persuasion to bring the reviewed countries to make changes. At the time of the writing of this paper, 23 countries<sup>52</sup> have acceded to the APRM and are de facto members of its Forum.

**The APR Panel** is composed of five to seven persons<sup>53</sup> appointed by the APRM Forum to serve up to four or five years<sup>54</sup>. The Eminent Persons who compose the Panel are selected and appointed on the basis of their 'outstanding track records in contributing to the development of Africa and their personal integrity, merit and capacities'; they must be Africans who have 'distinguished themselves in careers that are [sic] relevant to the work of the APRM.' The Panel must reflect regional balance, gender equity and cultural diversity<sup>55</sup>.

On the basis of these requirements, the following persons were appointed to compose the Panel: Ms. Marie-Angelique Savané from Senegal, Professor Adebayo Adedeji from Nigeria, Ambassador Bethuel Kiplagat from Kenya, Dr. Graca Machel from Mozambique, Mr. Mourad Medelci from Algeria, Dr.

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<sup>49</sup> As above, Para 1.1 b.

<sup>50</sup> As above.

<sup>51</sup> n 48 above, Para 2.2.

<sup>52</sup> Algeria, Burkina Faso, Republic of Congo, Ethiopia, Ghana, Kenya, Cameroon, Gabon, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Uganda, Egypt, Benin, Malawi, Lesotho, Tanzania, Angola and Sierra Leona.

<sup>53</sup> n 48 above, Para 3.3.

<sup>54</sup> According to Para 3.4 of the African Peer Review Mechanism Organisation And Processes (Nepad/Hgsic-3-2003/Aprm/Guideline/O&P 9 March 2003), only the Chairperson of the APRM Panel (who may serve on a full time salaried basis), will serve for a period up to five years, while the other Eminent persons will serve for a period up to four years on a part-time basis.

<sup>55</sup> n 48 above, Para 3.6.

Dorothy Njeuma from Cameroon and Dr. Chris Stals from South Africa. Ms. Marie-Angelique Savané is the Chairperson, with Ambassador Bethuel Kiplagat as Vice Chairperson.

The Panel has already started working. Its inaugural workshop that was held in Cape Town, 25-27 July 2003, opened a series of other meetings. The Panel at the beginning worked to address important questions as how to structure and direct the reviews in a manner that would insure a meaningful positive impact on governance. Now the Panel is at the phase of visiting the first candidate countries for a fact-finding mission. Ghana, Mauritius, Rwanda and Kenya were the pioneers; these countries were visited for support missions.

**The APR Secretariat** is designed to provide the 'secretarial, technical, coordinating and administrative support services for APRM.' Its tasks are to undertake and manage the technical work that underpins the peer review process; it must also conform to the principles of the APRM.<sup>56</sup> The Secretariat, located within the NEPAD Secretariat in Midrand, South Africa, is functional and is led by Professor Wiseman Nkuhlu.

**The APR Country Team** is a group of experts appointed to visit a country, review progress with the country's Programme of Action and produce the APRM Report on the country.<sup>57</sup> A Country Team is proposed by the Secretariat and approved by the Panel. So far Country Teams have been effectively constituted (and have worked) for the countries that received support missions; Ghana, Mauritius, Rwanda and Kenya.

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<sup>56</sup> n 48 above, Para 4.1.

<sup>57</sup> Cilliers, n 7 above.

## 2.4 The APRM process

The APRM Base Document,<sup>58</sup> the Durban Declaration,<sup>59</sup> and the four documents issued at the March 2003 HSIC meeting in Abuja<sup>60</sup> govern the functioning of the APRM; the documents describe the different stages of review and determine the APRM organs. For reviews to start, African countries need to adopt the Durban Declaration and accede to the APRM. Any AU member state wishing to participate in the APRM must notify the NEPAD HSIC. At the point of formally acceding to the peer review process, each State should clearly define a time-bound Programme of Action for implementing the Declaration on Democracy, Political, Economic and Corporate Governance, including periodic reviews.<sup>61</sup>

Once a country satisfies these procedural requirements, the APR Secretariat will arrange a mission to the country to negotiate the exact terms of the Memorandum Of Understanding (MOU) on Technical Assessment and Country Review Visit.<sup>62</sup> The signature of the MOU sets the APR process in motion. The Base Review<sup>63</sup> process consists of five stages.

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<sup>58</sup> AHG/235 (XXXVIII), Annex 2.

<sup>59</sup> AHG/235 (XXXVIII), Annex 1.

<sup>60</sup> Memorandum Of Understanding On The African Peer Review Mechanism, (Nepad/Hsgic/03-2003/Aprm/Mou 09 March 2003); African Peer Review Mechanism Organisation And Processes (Nepad/Hsgic-3-2003/Aprm/Guideline/O&P 9 March 2003); Objectives, Standards, Criteria And Indicators For The African Peer Review Mechanism (Nepad/Hsgic/03-003/Aprm/Guideline/Osci); Outline Of The Memorandum Of Understanding On Technical Assessments And The Country Review Visit (*Nepad/Hsgic-03-2003/Aprm/Guideline/Outline 9 March 2003*).

<sup>61</sup> Para 13 of the APRM Base Document.

<sup>62</sup> The signature of the MOU must follow the Outline set by the NEPAD HSIC (*Nepad/Hsgic-03-2003/Aprm/Guideline/Outline 9 March 2003*).

<sup>63</sup> As stated in Para 14 of the APRM Base Document, four types of reviews are envisaged for those countries that join the APRM: The first country review is the base review that is carried out within eighteen months of a country becoming a member of the APRM process; Then there is a periodic review that takes place every two to four years; In addition to these, a member country can, for its own reasons, ask for a review that is not part of the periodically mandated reviews; and early signs of impending political or economic crisis in a member

## **First stage: Background research and plan of action**

Stage one involves a study of the political, economic and corporate governance and development environment in the country to be reviewed; this study is based principally on background documentation prepared by the APR Secretariat and material provided by national, sub-regional, regional and international institutions.<sup>64</sup> At that level, the task consists of collecting information on the country<sup>65</sup> and analyzing this information in accordance with the APRM objectives, standards, criteria and indicators.

The findings from the study (the background document<sup>66</sup>) are used to reinforce the country programme of action, drafted by the reviewed country, and point out the main challenges facing the country in terms of APRM area of review. This first stage ends when the APR Panel approves the working plan and the composition of APR Team that will conduct the review in the country.

## **Second stage: Country visit**

The APR Team composed to conduct the review goes on site to assess the reality on the ground with the background findings. Following the MOU, the

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country would also be sufficient cause for instituting a review. Such a review can be called for by participating Heads of State and Government in a spirit of helpfulness to the Government concerned.

<sup>64</sup> Para 18 of the APRM Base Document.

<sup>65</sup> Including official government documents, reports to treaty and other bodies, recent self assessments and reviews done by standard issuing bodies, and reports by other recognised international bodies.

<sup>66</sup> The Background Document is shared with the APRM partners including the country under review who will in return submit to the APR Secretariat a plan of action (in line with Para 13 of the APRM Base Document) stating how it intends to improve the governance issues outlined the Background Document.

Team will consult and interact with national stakeholders.<sup>67</sup> The Team takes these opportunities to brief them on the APRM spirit, processes and guiding principles, to discuss and improve the country programme of action aiming to address the challenges identified in stage one.

### **Third stage: APRM recommendations**

On the basis on the background document and the findings during the country visit, the APR Team prepares a report. The report makes recommendations that are comprehensive enough to improve, accelerate and resource the country programme of action. These recommendations are first discussed with the Government to test the accuracy of the Team findings and for the country authorities to react as to their plans to address the identified shortcomings.

### **Fourth stage: Discussion of the Team recommendations within APRM Organs**

The APR Secretariat submits the Team report to the Panel of Eminent Persons for review. Afterwards, it is also submitted to the APR Forum for consideration and action to take in accordance with its mandate. To end stage four, the chairperson of the APR Forum communicates the decisions of the Forum to the Head of state or government of the country under review.

### **Final stage: Publication of the APRM report**

The fifth stage involves the publication of the APRM report and the decisions taken by the Forum. The publication consists in tabling formally and publicly the report and the decisions accompanying it in key regional and sub-regional

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<sup>67</sup> Stakeholders include media, academia, trade unions, non-governmental organisations (NGOs), community-based organisations (CBOs)), rural communities and representatives of international organizations. See Para 19 of the APRM Base Document.

structures.<sup>68</sup> A follow-up programme is then proposed and the APR Secretariat monitors the country progress in the implementation of the recommendations and the Forum decisions.<sup>69</sup> By this time six months will have passed since the initial stage ended.

## **2.5 Procedural achievements so far**

So far NEPAD, the most talked about regional agenda and its APRM is growing. The institutional framework is there and the process is evolving on the ground. Yet some scepticisms are also echoed as the APRM has not been advancing according to the expectations it has created. For example, speaking ahead of the 14th Africa summit of the World Economic Forum held in Maputo May 2004, Eskom chairman Reuel Khoza said that business 'experienced a sense of frustration that the process was progressing so slowly' and that he would be happy if the 'mechanism was much more robust.'<sup>70</sup>

The communiqué issued at the end of the tenth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD in Maputo, Sunday 23rd May 2004, agreed with this vision. Paragraph 9 of this Communiqué reads: 'The meeting noted that there has been a delay in the commencement of the APRM reviews.' The meeting was informed that the APR Panel has spent the last eight months reviewing the relevant documents and finalising its preparations. The Panel has already begun to review countries, Ghana being the first.<sup>71</sup> The Communiqué went further to say that

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<sup>68</sup> n 48 above, Para 7.17; this paragraph enumerates the Summit of the African Union, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the Peace and Security Council and the Economic, Social and Cultural Council (ECOSOC) of the African Union, as well as the Regional Economic Community of the region of which the country reviewed is a member, as structures where the report can be tabled.

<sup>69</sup> n 48 above, Para 7.19.

<sup>70</sup> Q Wray, 'Businesss wants Africa peer review system to develop teeth', <<http://www.busrep.co.za/index.php?fArticleId=2095244>> (accessed on 17 June 2004).

<sup>71</sup> Ghana was visited from 24-29 May 2004 by a support mission of the APRM.

'The HSGIC mandated the Steering Committee to work with the APR Panel to speed up the reviews, and report back to the next HSGIC meeting on how to fast-track the implementation of the APRM. The meeting noted the importance of insuring that the APRM is implemented to demonstrate Africa's commitment to its own ideals.'

As of the writing of this paper, 23 countries have signed up to the APRM. The countries taking part in the APRM process are those who have acceded to the mechanism and are members of the APRM Forum. As of 16 October 2004, these countries are: Algeria, Burkina Faso, Republic of Congo, Ethiopia, Ghana, Kenya, Cameroon, Gabon, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Uganda, Egypt, Benin, Malawi, Lesotho, Tanzania, Angola and Sierra Leona. Among the 23 countries, Ghana, Rwanda, Mauritius<sup>72</sup> and Kenya<sup>73</sup> have received support mission visits from the APRM.

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<sup>72</sup> APRM country support Mission to Ghana, Rwanda and Mauritius, 28<sup>th</sup> – 30<sup>th</sup> June 2004 <<http://www.nepad.org/documents/152.pdf>>.

<sup>73</sup> The African Peer Review Mechanism (APRM) support Mission to Kenya, 26<sup>th</sup> – 27<sup>th</sup> July 2004, <<http://www.nepad.org/documents/154.pdf>>.

## CHAPTER 3

### APRM AND HUMAN RIGHTS: UNFOLDING THE HUMAN RIGHTS FILES

The human rights mandate of the APRM is to be found in the NEPAD Document. In its paragraph 79 entitled 'Democracy and political governance' (considered to be the NEPAD human rights component), it reaffirms that 'development is impossible in the absence of true democracy, respect for human rights, peace and good governance' and that 'with the New Partnership for Africa's Development, Africa undertakes to respect the global standards of democracy...' The Democracy and Political governance Initiative aims at 'strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law.'<sup>74</sup>

This undertaking (initiative) was given a concrete expression through the Durban Declaration, which is a basis of the APRM. As noted early, the Durban Declaration itself is rooted in commitments to peace and good governance that African states have made before, and contained in various instruments (charters, decisions, declarations or other plans of action).<sup>75</sup> Accordingly, the human rights provisions considered under the peer review process are to be found in these various instruments. The Durban Declaration also referred to African states' international obligations in the context of the United Nations.<sup>76</sup> Therefore, unfolding the human rights files under the APRM requires a survey of the commitments made by African states to it, the extent to which reference

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<sup>74</sup> NEPAD Document, Para 80.

<sup>75</sup> Durban Declaration, Para 4.

<sup>76</sup> As above.



is made to international human rights instruments, and the substance and potential of such commitments to further human rights through the APRM.

### **3.1 Human rights commitments under the APRM**

The human rights commitments that the APRM is going to monitor are those endorsed by the AU member states in various instruments and recalled in the preamble of the Durban Declaration.

It has been argued that the NEPAD human rights approach was Eurocentric by placing the human rights issues under the democracy and political governance initiative, and that it lays emphasis on civil and political rights, while failing to mention socio-economic rights.<sup>77</sup> Against such view, it can be submitted that the NEPAD APRM, despite the prominent place given to democracy (civil and political rights), generally covers all human rights; the democracy and political governance initiative and the economic governance initiative 'share key features and must be implemented together in Africa's endeavour to development and poverty eradication.'<sup>78</sup> Therefore, APRM deals with both civil and political rights and socio-economic rights.

#### **3.1.1 Civil and political rights**

A great deal of the human rights instruments that compose the NEPAD democracy and political governance agenda are about civil and political rights; that may justify (but insufficiently) the position taken by some scholars.<sup>79</sup> Through these various instruments, African states have reaffirmed their commitments to human rights and agreed to abide by the global concept of

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<sup>77</sup> E Baimu, 'Human rights in NEPAD and its implications for the African human rights system' *African Human Rights Law Journal*, vol.2 No 2 (2002) 301.

<sup>78</sup> n 74 above.

<sup>79</sup> n 77 above.

democracy.<sup>80</sup> Most of these commitments are related to democratic constitutions providing for a comprehensive bill of rights, political pluralism, free, open and regular elections, open, inclusive and accountable government watched by a vibrant and responsible civil society.

To create a climate friendly to human rights and civil liberties, African heads of state agreed not to recognize any unconstitutional change of government.<sup>81</sup> It is clearly stated in the AU Act (article 30) that 'governments that come to power through unconstitutional means will not be allowed to participate in the activities of the Africa Union.' The Lomé Declaration on OAU response to unconstitutional changes of governments in 2000 designates as unconstitutional change of government: military coups d'état against a democratically elected government, intervention by mercenaries to replace a democratically elected government, replacement of a democratically elected government by armed dissident groups and rebel movements and the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.<sup>82</sup>

The idea beyond such a commitment is that only constitutional regimes can entitle individuals to a set of rights and freedoms free from any kind of discrimination, respectful of every life, dignity, liberty and personal integrity. But also constitutional regimes suppose the existence of a constitution adopted in accordance with the basic principles of constitutionalism<sup>83</sup> that guarantees comprehensive mechanisms for citizens to freely participate in the

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<sup>80</sup> J Cilliers and K Sturman, 'Commitments by African Heads of state to peace, democracy, human rights and associated issues' Institute for Security Studies, ISS Paper 58, July 2002, <<http://www.iss.co.za/Pubs/Papers/58/Paper58.html>> (accessed on 16 September 2004).

<sup>81</sup> As above.

<sup>82</sup> See the AU Constitutive Act, Art 3(g), Art 4(m), Art 4(n). Also see the Lomé Declaration on the framework for an OAU response to unconstitutional changes in government.

<sup>83</sup> C Napier, 'Constitutional democracy in Africa' in *Conflict trends* 1, 2003, ACCORD. Also see A Garané, 'Constitutions et constitutionnalisme' in Les actes du Séminaire organisé par le Centre pour la gouvernance démocratique sur *Dix ans de constitutionnalisme au Burkina Faso : vers la consolidation de la gouvernance démocratique ?*, Ouagadougou les 29 et 30 octobre 2001.

government of their country.<sup>84</sup> Citizens' participation has been extended to the continental level with the establishment of the Pan-African Parliament<sup>85</sup> to allow African people's participation in Africa's affairs. The human rights commitments that the APRM intends to monitor (the Durban Declaration, the AU and the various NEPAD documents) comprises also the rights of specific groups such as women,<sup>86</sup> children<sup>87</sup> and refugees,<sup>88</sup> or particular matters such as fair trial,<sup>89</sup> imprisonment,<sup>90</sup> extra-judicial killings,<sup>91</sup> terrorism,<sup>92</sup> security and peacekeeping.<sup>93</sup> The basis of all these commitments is the African Charter of Human and People's Rights known as the Banjul Charter. Indeed, all the human rights - based instruments refer to it. Many additional protocols have been added the Banjul Charter to enable it to face the new challenges of the present time. In fact, the Charter was adopted under the now defunct OAU at

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<sup>84</sup> See the AU Executive Council Decision on the establishment of election monitoring Unit in Africa, Durban 2002 at [http://www.africanunion.org/Official\\_documents/Decisions\\_Declarations/durban%202002/ExCoun%202002%20Durban%20bis%20687.pdf](http://www.africanunion.org/Official_documents/Decisions_Declarations/durban%202002/ExCoun%202002%20Durban%20bis%20687.pdf) (accessed on 25 October 2004).

<sup>85</sup> Article 17 of the AU Act.

<sup>86</sup> Protocol to the African Charter on Human and People's Rights on the rights of women in Africa (Maputo, 11 July 2003).

<sup>87</sup> African Charter on the rights and welfare of the Child in Africa.

<sup>88</sup> Convention governing the Specific Aspects of Refugee Problems in Africa, adopted 10 September 1969, Addis Ababa, entered into force 20 June 1974.

<sup>89</sup> The African Commission of Human and People's Rights has adopted a Resolution on the right to fair trial and legal assistance; this Resolution come together with the Dakar Declaration and recommendations on fair trial (1999); there is also a Special Rapporteur on Prisons under the African Commission.

<sup>90</sup> There is the ACHPR Resolution on Prisons in Africa (1995) and the Kampala Declaration on Prison conditions in Africa (1996). There is also a Special Rapporteur on Prisons and conditions of detention in Africa.

<sup>91</sup> Pursuant to the Rwandan genocide in 1994, it was created the post of Special Rapporteur on Extra judicial killings and summary executions (1995) under the ACHPR.

<sup>92</sup> OAU Convention on preventing and combating terrorism (1999).

<sup>93</sup> Many decisions and declarations have been taken in this regard, including the CSSDCA Solemn Declaration (AHSG, 2000) and its other decisions, Resolutions on conflicts in Africa, Resolutions on Mercenaries, etc.

a period where human rights were not a priority in the continent's agenda.<sup>94</sup> Subsequently, issues like women, children or participation were dealt with to a lesser extent in the Charter. Therefore, there is a comprehensive civil and political rights agenda that the APRM is going to monitor the application of and determine whether African states are complying or not with the commitments they have made.

### 3.1.2 Socio-economic rights

Because human rights are indivisible and are inter-related, one may presume that socio-economic rights are de facto comprised in the above description. Notwithstanding, because NEPAD is essentially about socio-economic development, it is therefore important to assess the extent to which it could promote socio-economic rights that African states are often shy to ensure.

The NEPAD Documents set the ground for economic social and cultural rights. Rooted in the United Nations' Millennium Development Goals (MDGs), the new partnership goals *inter alia* are

[to] reduce the proportion of people living in extreme poverty by half between 1990 and 2015; to enroll all children of school age in primary schools by 2015; to make progress towards gender equality and empowerment of women by eliminating gender disparities in the enrolment in primary and secondary education by 2005; to reduce infant and child mortality ratios by two-thirds between 1990 and 2015; to reduce maternal mortality ratios by three-quarters between 1990 and 2015; to provide access for all who need reproductive health services by 2015; to implement national strategies for sustainable development by 2005, so as to reverse the loss of environmental resources by 2015.<sup>95</sup>

The outcomes of such undertakings will be among other things, economic growth, development, increased employment, and reduction in poverty and

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<sup>94</sup> For a discussion on the evolution of the African human rights context, see C Heyns, 'African human rights system: in need of reform?' *African Human Rights Law Journal* vol. 1 No 2 (2001).

<sup>95</sup> n 74 above, Para 68.

inequality.<sup>96</sup> The commitments of African states to economic, social and cultural rights are more emphasized in the NEPAD corporate and economic governance initiative. They thereby recall the major role of the state in promoting economic development and implementing poverty reduction programmes and the need to enhance their economic and public financial management.<sup>97</sup> The socio-economic issues targeted in this initiative are important for the achievement of sustainable development in the 21<sup>st</sup> century.

More detailed, the NEPAD sectoral priorities aim at addressing African particular socio-economic needs. Issues like transport, infrastructure, water and sanitation, education gap, health, energy, information and communication technologies, agriculture, culture, services, etc. are dealt with in a comprehensive manner. Clear objectives are set as to what should be achieved in these sectors and actions are identified to reach these objectives. Also, the other human rights documents referred to by the Durban Declaration comprise instruments that deal particularly or generally with socio-economic rights. The ACHPR, the Lagos Plan of Action and the Final Act of Lagos, the Abuja Treaty establishing the African Economic Community, the Grand Bay Declaration and Plan of Action, the Dakar Declaration on the AIDS Epidemic in Africa, the African Charter on the Rights and welfare on the Child, the Convention preventing and combating corruption, etc. - all have clear socio-economic sound provisions.

There are signs that NEPAD puts human rights at the centre of democratic governance and the rule of law but also its endeavour to create 'enabling environments for socio-economic development and the attainment and maintenance of peace and security', are human rights oriented programmes. The commitments made to foster favourable environments for sustainable development and the sectoral priorities addressing health, education, transport, water and sanitation, agriculture, poverty reduction, cover the scope of socio-economic rights. The APRM then appears to be a watchdog of the

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<sup>96</sup> As above, Para 69.

<sup>97</sup> n 74 above, Para 86.

development projects, to ensure that they are human rights friendly; it will scrutinise these promises made by states, with the goal to assess how their realisations are improving the population socio-economic conditions on the ground. The socio-economic positive impact of these commitments will be measured, both at the policy-making level and at the level of the outcomes of such policies. The APRM Panel has listed a number of indicators and built a questionnaire to that end.<sup>98</sup>

### **3.2 Reference to international human rights instruments**

Both the AU Constitutive Act and the NEPAD Document together with the Durban Declaration make express references to international human rights instruments. The latter makes direct reference the Charter of the UN, the Universal Declaration on Human Rights, the ICCPR and the ICESCR. Special mention was made of the CEDAW and the Beijing Declaration.<sup>99</sup> It was said that these international instruments were 'of particular significance'<sup>100</sup> in the context of the Durban Declaration.

The reference to these high level international documents confirms that the APRM should use internationally recognized standards as its benchmarks; this means that a state's commitments to democracy and the rule of law should be measured *inter alia*, through its compliance with the UDHR, the ICCPR, the ICESCR and other international human rights instruments.<sup>101</sup> Therefore, it is important that the APRM be guided by internationally agreed best practices in governance and development.<sup>102</sup> In addition to that, it should

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<sup>98</sup> Objectives, Standards, Criteria and Indicators for the APRM.

<sup>99</sup> n 27 above.

<sup>100</sup> As above.

<sup>101</sup> N Hicks, Lawyers Committee for Human Rights,

<[http://www.humanrightsfirst.org/defenders/hrd\\_zimbabwe/nepad\\_let111302.pdf](http://www.humanrightsfirst.org/defenders/hrd_zimbabwe/nepad_let111302.pdf)>, (accessed on 15 September 2004).

<sup>102</sup> Nkuhlu, n 21 above.

'seek to learn experience from the other developing countries' but not impose any development approaches.<sup>103</sup>

### **3.3 APRM substance and potential for human rights**

The opportunities that APRM presents for human rights are two fold: procedural and substantive.

#### **3.3.1 Procedural promises**

It has been regularly argued that the institution of a peer review mechanism is the most remarkable innovation in the AU framework designed to promote good governance and human rights.<sup>104</sup> Assessing the performances of a state against agreed democratic standards is itself fostering better practices in the field of human rights. In the past, many programmes in Africa have failed to be properly implemented because of lack of monitoring mechanisms; the institution of APRM intends to correct this mistake. The idea beyond the mechanism is that the potential peer criticism and pressure will serve to stimulate the undertaking of reforms in countries concerned. Also it is believed that African Leaders will be more eager to accept recommendations from their peers than from international creditors who often engage in a punitive approach.<sup>105</sup> In addition, the APRM gives the opportunity to African countries to assess themselves. Each participating country to the APR process will first evaluate its own application of the Durban Declaration and propose a plan of action to address eventual shortcomings. And the Panel will base its work on

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<sup>103</sup> It should be recalled that NEPAD is a response to the failure of development plans imposed on Africa in the past by international bodies, namely the SAPs. This is what Wiseman Nkuhlu mentioned when he said that the APRM Panel 'must bear in mind that the imposition of development approaches that are based on classical economic theory which takes no account of the state of under development of markets in Africa, has not worked.' As above.

<sup>104</sup> J Akokpari, 'Policing and prevention human rights abuses in Africa: the OAU, the AU and the NEPAD peer review', *International Journal of Legal Information*, Summer 2004.

<sup>105</sup> As above.

this governmental plan of action that it will amend and reinforce. It is likely that states will be willing to address their own weaknesses, revealed as a result of a rigorous self-assessment.

According to the types of reviews under the APRM, 'early signs of impending political or economic crisis in a member country could be sufficient for instituting a review.'<sup>106</sup> Such initiative should come from the APR Forum. The potential of the above provision is that it provides for a kind of humanitarian intervention when human rights are endangered in a certain country. This may be a way of circumventing the principle of non-interference in a state's internal affairs to which African states have always attached a great deal of importance.

Also, its process-oriented nature (follow up to ensure compliance) distinguishes it from previous similar initiatives; an equally probable good stipulation is the requirement to draw a time-binding programme of action to address eventual shortcoming of the reviews. The possibility that exists to allow civil society intervention and adopt a rights-based approach<sup>107</sup> supports the hopes that APRM has created. Furthermore, a good potential of the APRM is that it has a large support in terms of political will from African Leaders and the international community. Illustrative of that is the Canadian government giving USD 700,000 to support the APRM 'for improved governance on the continent.'<sup>108</sup>

### **3.3.2 Substantial promises**

The APRM is there to monitor progress in the field of human rights, with the aim to assess the extent to which the participating states are complying with their commitments in the field. The process has defined a comprehensive set of objectives, standards, criteria and indicators in this regard. The human

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<sup>106</sup> n 58 above.

<sup>107</sup> See recommendations in Section 5.1.1, Chapter 5 of this paper.

<sup>108</sup> I Adoba, 'Canada commits \$.7 m to African Review Mechanism' *Ghananews, This Day*, 8 October 2004 at <<http://www.nepad.org/en.html>> (accessed on 8 October 2004).



rights' potential of such benchmarks is that the APRM will not only be looking at existence of policies and institutions in place, but also their comprehensiveness and their performance in terms of their outcomes. The APRM will be testing states' commitment to democracy and human rights with reference to African international human rights instruments including ICCPR and the ICESCR. These instruments create binding obligations for states to promote and protect human rights; the peer review mechanism sets the ground for better conditions for states' respecting these obligations.

More generally, the APRM process contains in itself the seeds for a human rights compliance future in Africa. The benchmarks that will be used to assess states' commitments are substantially based on human rights.<sup>109</sup> For example, upholding internationally agreed standards for free and fair elections is a positive and effective way to prevent lasting conflicts on the continent and to promote the citizens' right to participation in their national governments and in the affairs of continent.<sup>110</sup> Combating corruption will allow more resources to be used for socio-economic rights. So far, the APRM itself is human rights sensitive; the gender sensitive composition of the Panel<sup>111</sup> has the objective of promoting gender equality on the continent. All this potential of the mechanism has created a lot of hopes amongst development actors, including human rights activists.

The APRM is the result of the Africans drawing experience from their past mistakes in implementing development programmes. It is nurtured and groomed by various human rights' instruments both at the African and international level. African Leaders now want to be guided by objective standards which they have committed themselves to and have shown political will. These standards are human rights based, irrespective of whether civil and political or socio-economic, negative or positive, justiciable or not. Even though not a legally binding tool, the APRM carries a potential that could

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<sup>109</sup> See annex to this paper.

<sup>110</sup> Article 4 (c) of the AU constitutive Act.

<sup>111</sup> The APRM Panel of Eminent Persons is composed by 3 women and 4 men and the Chairperson is a woman.

contribute in a significant manner to the strengthening of the human rights system on the continent.

## CHAPTER 4

### APRM PROMOTING HUMAN RIGHTS: ENSURING THE SUCCESS OF THE MECHANISM

In the previous chapter, it has been argued that the APRM has a huge potential for promoting human rights. Still, for such potential to successfully fill the hopes it has raised, it is important that the mechanism be conducted in line with the standard requirements of a peer review. Furthermore, in the African context, APRM improving human rights records will largely depend on its openness and inclusiveness of civil society and its building closed partnerships with existing human rights monitoring bodies.

#### 4.1. Alignment on the peer review requirements

For a peer review to succeed, there are some requirements it should meet. Ravi Kanbur,<sup>112</sup> in his deriving lessons from functioning peer review mechanisms, has identified three criteria determining their successes and failures. These criteria are competence, independence and competition; they will be explained and commented on below. In addition to these three criteria, the APRM should also work out the question of political will and increase confidence from the participating actors.

##### 4.1.1. Core requirements

The competence criteria, said Kanbur, is an essential one. It requires that the staff conducting the reviews have high technical skills; also the mechanism should not embrace a 'very wide range of issues' at the same time, which will have the effect of weakening the outcomes. The criteria of competence in existing peer reviews are met as follows: the academic one 'relies on the

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<sup>112</sup> n 16 above.

authority and reputation of journal referees and editors'; the OECD reviews rely on its very skilled secretariat and the IMF reviews are criticized when they deviate from the IMF 'basic competence in macroeconomics.' The APRM in its turn relies on a Panel composed of very skilled and experienced persons. An even-present danger is that the Panel, although supported by the Secretariat, is asked to do too much. For instance, the APRM indicators<sup>113</sup> reflect the many things the Panel is asked to do. Handling such a variety of tasks as described in these indicators requires very different competences, so that although the particular human resources needed may be available within the Panel and the Secretariat, the many tasks required within a limited time will put great pressure on these resources. This could hamper the competence of the mechanism.

A peer review should be free from influence of any sort; its credibility and integrity depend on that. In academic reviews, the independence of the process is assured by 'the anonymity and the professional stature of the reviewers and editors.' The OECD peer reviews have two phases: the first one consisting in fact-finding and analysis is independent from any external intervention, while the second phase where the conclusions are discussed and negotiated is more political. But still, the first stage guarantees the independence of the technical review. Independence under IMF reviews is an issue that is often questioned by less developed countries and their civil society organisations (CSOs). Nonetheless, the IMF claims independence 'from the interests of its major stakeholders.' The independence of the APRM is supposedly assured by the stature and quality of the Panel of Eminent Persons. These Eminent Persons are Africans who have 'distinguished themselves in careers that are relevance to the work of the APRM' and who have shown 'outstanding track records in contributing to the development of Africa and their personal integrity, merit and capacities.'<sup>114</sup> One may fear that the appointment of the members of the Panel by the APRM Forum itself composed of heads of state, may hinder their independence. In fact, while

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<sup>113</sup> n 109 above.

<sup>114</sup> n 50 above.

waiting for the outcomes of the first reviews, many observers of the process for the moment give the benefit of the doubt to the Panel.

So far the Panel members have demonstrated high independence. For example, Chris Stals, the South African member of the Panel, talking about the establishment of 'focal points' of the APRM in participating countries, expressed reservations about the suggestion that a country president should become a focal point, or locating such a point within some state institutions that have no direct concerns with the work of the APRM.<sup>115</sup> Here Stals was referring to South Africa's considering the location of their focal point at the Foreign Affairs department. His argument was that the APRM should remain 'independent, free of political influence from African Leaders': 'our [the Panel] loyalty ... is not to an individual country or region. We are seven people from the African continent that must do an objective, independent assessment of policies that countries follow in the implementation of NEPAD ideals.' He added that the Panel wants to remain independent and that independence ends when the politicians take over: 'Our independence ends when we have finalised our reports and we sit back and say we have nothing to do with it anymore, we have given it to the right body.... We don't get involved in the political debates and arguments.'<sup>116</sup> This recalls the independence issue under the OECD peer review system.

Externally, there seems to be an acknowledgement of the independence of the mechanism. For example, talking about the low level of signatories to the APRM, Shadrack Gutto argued that 'many countries have snubbed the peer review mechanism because they were unwilling to submit themselves to an independent and objective process.'<sup>117</sup>

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<sup>115</sup>M Sebelebele, 'Stals, APRM Team Ready to Begin Reviewing African Countries', *AllAfrica, BuaNews*, March 4, 2004, <<http://www.nepad.org/en.html>> (accessed on 2 August 2004).

<sup>116</sup> As above.

<sup>117</sup>Economic Editor, 'Manuel Slams Peer-Review Dodgers', *AllAfrica, Business Day*, September 15, 2004, <[http://www.nepad.org/news\\_d.html](http://www.nepad.org/news_d.html)> (accessed on 25 September 2004).

The competition criteria imply that for a peer review to produce its best, it has to be part of a wide range of assessments. In the academic reviews, authors rejected from one journal can present their papers to many other journals. In the OECD context, peer reviews allow rich dialogues and debates on ongoing policies in the reviewed countries. With the IMF, reviews also lead to dialogues and debates, except in developing countries where the needs of loans and subsidies from the institution prevent these states from arguing against it.

There is a ground for competition in the African context. There are several mechanisms monitoring Africans' states compliance with human rights, both at international and regional levels. The state that has been reviewed by the APRM may refute its findings and support its contestations with the findings of the African Commission or a UN body for example. On the other hand, many international NGOs conduct research and publish reports on the human rights situation in almost every country in Africa. They are usually helped by domestic NGOs. Such reports or assessments can be used to compare and balance the APRM findings.

#### **4.1.2. Other requirements**

Although the APRM, as conceived and as it is working so far, seems to meet the above three criteria, it also needs to perform other requirements. Its successful implementation relies on the good will of heads of state and their genuine confidence in the process. To that end, though value-sharing is a vital element, mutual trust and high level of commitment are of equal importance.

The effectiveness of peer review on human rights standards supposes that all the actors in the process have a common understanding of these standards and what they imply. It is necessary that the participating countries know what they are adhering to. Such a strong common understanding and informed adherence should 'prevent uncertainty or backtracking during the process.'<sup>118</sup>

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<sup>118</sup> Pagini, n 12 above.

The APRM is based on the provisions embodied in the Durban Declaration. The central question is to what extent African states share the value of democracy and are ready to observe and defend it? It is a fact that African countries are experiencing democracy at very different levels. Furthermore, some of them act in a manner that contradicts democratic principles. Democratic deficit is rampant in most African countries, Egypt, Libya, Togo and Zimbabwe being some examples. This explains why at the beginning there was a strong debate as to whether political review should be part of the APRM mandate. A question that ought to be asked is what the notion of 'peer' refers to in the APRM context. Are African heads of states peers just because they are 'heads of states' or are they peers by virtue of their common commitment to democracy and human rights? The APRM being open to all African countries on a voluntary basis, even the poorest performers in democracy can be part of the mechanism without truly sharing the values of democracy. This will be a problem that, if not dealt with carefully, will hinder the effectiveness of the peer reviews. Because peer review of human rights cannot work in countries where there is no real commitment to these rights, it may be important to begin by fostering democratic standards in such societies.<sup>119</sup>

A peer review works when there is a commitment of all the interested partners to make it work; it requires commitments in terms of political will, human and financial resources. Till now, it seems that the APRM is 'the affair' of South Africa and Nigeria, and to the greater extent, it is the 'business' of the five Leaders who brought NEPAD into existence. As the UN General Secretary said, 'President Thabo Mbeki of South Africa and Leaders of Nigeria, Senegal, Algeria and Egypt are the major proponents of NEPAD and its peer review mechanism.'<sup>120</sup> The insufficient involvement of some states and at the same time the very strong commitment of other states can bias the functioning of the APRM. Some commentators have argued that 'South Africa

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<sup>119</sup> See next chapter on recommendations.

<sup>120</sup> I Dzamara, 'Annan Says Nepad's Peer Review Ups Aids Inflows', *AllAfrica, Zimbabwe Independent*, September 24, 2004, <[http://www.nepad.org/news\\_gh.html](http://www.nepad.org/news_gh.html)> (accessed on 28 September 2004).

and Nigeria who are the key driving forces behind the project and are bearing the greatest financial burden, will have disproportionately stronger voices...<sup>121</sup>

Equally important is the question of trust. Trust among the actors will inter alia 'facilitate the disclosure of data, information and documentation which are essential to the process.'<sup>122</sup> Since the beginning of NEPAD some African heads of state stand aside from the process. Yaya Jamey the president of Gambia is an example. The little enthusiasm in joining the APRM that some see as a fear of exposing one's human rights record to independent scrutiny,<sup>123</sup> may also be interpreted as a lack of confidence in the process. Some Politicians go on to state publicly their lack of trust in the process. Botswana, which is often cited as an example of governance in Africa and 'has nothing to fear from being scrutinised,'<sup>124</sup> has not joined the peer review process. It has been reported that the Government of Botswana has said in a newspaper that it has not joined the APRM because 'the country feels it has already opened its economy to enough international scrutiny, while the political review process will be too difficult to implement because the issues are not quantitative.'<sup>125</sup> One could legitimately believe that what Botswana has stated openly is what other states that have joined the APRM believe. They may have joined the mechanism for political or international diplomacy purposes, without any real trust that it will work. That could hamper the success of the APRM.

The future of APRM then depends on how the process follows the requirements that rest on internationally experienced, and also how it

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<sup>121</sup> Akokpari, n 99 above.

<sup>122</sup> Pagini, n 12 above.

<sup>123</sup> n 115 above.

<sup>124</sup> R Munisamy, 'Reality dawns: it's NEPAD or nothing'

<[www.suntimes.co.za/2003/06/15/insight/in02.asp](http://www.suntimes.co.za/2003/06/15/insight/in02.asp)> (accessed on 25 September 2004).

<sup>125</sup> DITSHWANELO – The Botswana Centre for Human Rights, 'Botswana Does Not Join African Peer Review Mechanism, Press Statement on the New Partnership for African Development' <[http://www.ditshwanelo.org/bw/index/Current\\_Issues/Regional\\_Collaboration/NEPAD%20Press%20Statement%20-%2012%20December%202002.htm](http://www.ditshwanelo.org/bw/index/Current_Issues/Regional_Collaboration/NEPAD%20Press%20Statement%20-%2012%20December%202002.htm)> (accessed on 25 September 2004).



manages to increase trust among its main actors, gain their commitment and promote democracy as a shared value. This could be a way of securing its success.

#### **4.2. Comprehensive inclusion of civil society organisations in the process**

A major criticism of NEPAD is that it did not allow African people, through the various CSOs to participate in its conception, and therefore that it is top-down.<sup>126</sup> This is a serious issue the APRM should address in order to reconcile NEPAD and the African populations, whose well-being it seeks to improve. A way of doing so is to give a strong voice to CSOs by allowing them to participate truly in the process. It is also vital that the process give a place to alternative views such as shadow reports, in which NGOs usually perform.

##### **4.2.1. Allowing CSOs involvement**

There are two aspects in drawing CSOs' into the APRM process: a formal involvement with formalized physical participation and a people-based approach to the process that fosters appropriation of the values by the people of Africa and encouraging human rights values to take roots within the populations.

###### **4.2.1.1 Formal participation**

It has been argued that NEPAD, from which the APRM comes from, is elitist in its inception and development, and 'based on the interest of privileged minorities on the continent.'<sup>127</sup> This was perceived as a 'lack of recognition for African civil society.'<sup>128</sup> Unless civil society is included in the process of peer

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<sup>126</sup> IDASA, 'The role of civil society in the African Union and NEPAD: strategies for civil society's involvement in national debates and processes', June 2003, Workshop report.

<sup>127</sup> As above.

<sup>128</sup> Amnesty International USA, 'Civil Society, Democracy, Human Rights and NEPAD: The Missing Links', An Advocacy paper before US House of Representative Africa Subcommittee.

review, it will be seen as a means for governments to legitimise themselves; they have a key role to play, such as ensuring a broader participation of various stakeholders. CSOs in Africa have been keen in keeping governments accountable for their policies regarding key issues such as health or socio-economic development. Very illustrative are the legal fights conducted by the Treatment Action Campaign in South Africa and<sup>129</sup> the SERAC before the African Commission,<sup>130</sup> to ensure that government policies are implemented in a comprehensive manner.

Such inclusion of CSOs should occur both at the African and national levels. At the continental level, it would be good to have some CSO representatives in the APRM Organs. At the national level, the process should rely on CSOs. If it is difficult at this stage of APRM development to advocate CSOs representation in its organs, such representation can occur at the national level where there is the most important work to do. Representation of citizens based organisations is vital in ensuring impartiality, inclusiveness, effectiveness and efficiency of the reviews. It is also important in terms of ownership and in response to the criticism that APRM serves non-African interests.

So far, among the countries under review, Ghana has shown openness to the CSOs. By putting in place the requisite national structures for the APRM,

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<sup>129</sup> *Minister of Health and others v Treatment Action Campaign and others 1 2002 (5) SA 703 (CC)*. The TAC Case involved a civil society organisation taking the government to court to enforce the right of women to receive medication that prevents mother to child transmission of HIV. The South African government had decided not to provide Nevirapine, an antiretroviral, to pregnant mothers in public hospitals and the TAC argued that this policy was in breach of the Constitutional protection of the right to health. The TAC action was successful and the government was ordered to put in place a scheme to reduce mother to child transmission of HIV.

<sup>130</sup> *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAC) v Nigeria Communication 155/96* decided at the African Commission's Ordinary Session held from 1 to 27 October 2001 (Annex), two NGOs successfully took Nigeria complaining about environmental degradation in Ogoniland and the government was ordered to take remedial action.

Ghana has, among other things, commissioned four independent, non-governmental technical advisory bodies to assist with the assessment process in the respective thematic areas of democracy and political governance, good macro-economic management, corporate governance and socio-economic development.<sup>131</sup> In its preparedness for the APRM process, Ghana set up a National APRM Governing Council. This Council has engaged four lead technical institutions, all from the civil society, to assist in the country's self-assessment. These four citizen-oriented CSOs will each lead one of the four thematic domains that the review will cover as follows:

- Centre for Democratic Development, for Democracy and Good Political Governance;
- Centre for Policy Economic Analysis, for Economic Governance and Management;
- Private Enterprise Foundation for Corporate Governance;
- Institute for Statistical, Social, and Economic Research, for Socio-Economic Development.

As a condition of its success, APRM should emphasise creating strategies to involve as members of much civil society's as it can. This should be a policy for purposes of legitimacy, ownership and coherence. The end should not be a numerical presence of CSOs but a way of fostering social appropriation and control over the process. The APRM needs to be rooted in the life of the Africans it aims to benefit.

#### **4.2.1.2. Rooting the process within the people**

One important (if not *the* most important) element of governance is the notion of legitimacy. When assessing democratic standards in a country, the APRM should question the legitimacy of the institutions, of the representatives, of the laws and regulations. The idea behind that is that without legitimacy, any

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<sup>131</sup> 'Mission visits Ghana as Peer review process gets under way', <<http://isa-africa.com/english/nepad/news210604.htm>> (accessed on 2 October 2004).

system of governance is artificial and disconnected from the sociological and political realities that it pretends to regulate.<sup>132</sup> Therefore, the APRM should be questioning whether the system of governance is adapted to the situation of the country, and if the citizens understand and adhere to it. The genuine responses to such interrogations should come from the populations themselves. Consequently, to come out with the realistic situation of a country in accordance with the APRM guidelines, there is a need to enter into dialogues with the grassroots people.

The challenge of such endeavour is to make the process known by the African people. It has been established that very few Africans, including persons of high rank such as members of parliament, know something about NEPAD.<sup>133</sup> Ms Ama Benyiwa-Doe, a member of the Ghanaian Parliament reportedly admitted that she and many of her colleagues in the law-making body knew nothing about NEPAD.<sup>134</sup> This is also the case even in the five NEPAD leading countries. A survey on the African opinion leaders about NEPAD and AU revealed that a great number of African elite,<sup>135</sup> including in the five NEPAD-driving countries (South Africa, Nigeria, Senegal, Algeria and Egypt) have a dearth of knowledge about it.<sup>136</sup> This lack of knowledge on

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<sup>132</sup> Réseau Gouvernance en Afrique, Dialogues sur la décentralisation et l'intégration régionale, 'Vers une Charte Africaine pour une gouvernance légitime, Cahiers de propositions, version provisoire' 2003.

<sup>133</sup> J Akokpari, 'NEPAD's African Peer Review Mechanism (PRM): Prospects and challenges for implementation' <<http://www.ossrea.net/publications/newsletter/oct03/article11.htm>> (accessed on 3 October 2004).

<sup>134</sup> As above.

<sup>135</sup> 'Elite' here should be understood in the sense of Higley as comprising of 'those persons who hold authoritative positions in powerful public and private organizations and influential movements and who are therefore able to affect strategic decisions regularly.' See J Higley, *et al* (1976) *Elite Structure and Ideology*, New York: Columbia University Press.

<sup>136</sup> Centre for International and Comparative politics – Konrad Adenauer Stiftung, 'The African Opinion Leader Survey on NEPAD and AU – 2002, Preliminary Report, at <[http://www.sarpn.org.za/documents/d0000358/P347\\_NEPAD\\_Survey.pdf](http://www.sarpn.org.za/documents/d0000358/P347_NEPAD_Survey.pdf)> (accessed on 3 October 2004).

NEPAD will result in a lack of knowledge about the APRM.<sup>137</sup> It is thus legitimate for one to wonder how many Africans at the grassroots level know and understand the APRM and the values it is disseminating. This makes it necessary and important that emphasis be put on the promotional and informative mandate of the APRM. If the reviews want to come out with the very realistic features of a country's compliance with the Durban Declaration, there is a need to talk to the populations whose situations the declaration seeks to improve. The grassroots level is one that feels first hand the effect of poverty; that makes it the most pertinent place to measure the effect of poverty reduction policies. On the other hand, to get more informed evaluations, the people should have a clear understanding of the objectives, principles and values of the APRM. Therefore, it is vital for APRM to be a tool that promotes dialogue between the states and their populations, and here is where the CSOs should play an important role.

CSOs can play an important role in rooting the APRM in the population in two regards. Firstly, CSOs could help popularising the process for the African people by disseminating relevant information. That would result in having the citizens of Africa understand the concept and value of the peer review, ensuring broad and informed participation of the people, and finally, an equally realistic measurement of the outcomes of governmental policies intended to implement the Durban Declaration. Secondly, CSOs could play the role of watchdogs in the process by inciting the adoption of required measures, upholding transparency in the implementation of such measures, and gathering reliable information as inputs in the review process. Information dissemination and monitoring the adoption and implementation of policies in line with the NEPAD objectives could be a great contribution to the APRM from civil society through its different components.

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<sup>137</sup>Akokpari, n 19 above.

#### 4.2.2. Allowing shadow reports

It has been argued above that one requirement of a peer review was the competition between several sources or views,<sup>138</sup> meaning the availability of other assessment processes. The CSOs could offer such a variety of views through their own and independent assessments of how states comply with the agreed standards. Ravi Kanbur rightly saw such a role of the CSOS when he said that ‘the success of the APRM depends on the seeds of its assessments of a country falling on the fertile soil of a vibrant civil society dialogue in that country.’<sup>139</sup>

These alternative reports could serve two purposes. They could be a counter-analysis of the APRM official report, and/or furnish an accurate database to be used in the APRM process. As a challenge for the official report, the CSOs’ reports could fill the gaps left by the state-based mechanism; moreover, it could be a critique to the APRM process itself aiming at correcting and improving it. Serving as an accurate database for the official process could amend the biases that could vitiate a state-centred approach. The APRM being a mechanism set by states to assess states compliance with agreed norms, there may be some doubts about the reliability of the information given by governmental agencies, as states are not always eager to reveal their weaknesses. Another view from independent bodies could, therefore, be very helpful in that regard.

The fulfilment of this role requires the gathering of two conditions by the civil society: competence and resources. To be able to compile knowledgeable and comprehensive reports assessing the human rights commitments undertaken by states, there should be a competent civil society, able to ‘understand and respond to the APRM assessments’ requirements.’<sup>140</sup> This calls for a comprehensive programme of public education about NEPAD and

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<sup>138</sup> See above section 4.1 of the present chapter.

<sup>139</sup> Kanbur, n 16 above.

<sup>140</sup> As above.

its subsequent projects. So, prior to the country visits, the APRM should make sure that there is a clear and common understanding of its objectives by the key stakeholders, specially the civil society. This would prepare the ground for the country consultations during which the Review Team will interact with national stakeholders, including CSOs. Once CSOs have appropriated the objectives of the process, they can then use this knowledge to inform their own assessments and educate the population as argued above.<sup>141</sup> Also compiling reports requires material and financial resources on the part of CSOs who want to pursue such an undertaking. But they do not always have such resources. For the success and the seriousness of the APRM, CSOs should be adequately resourced to play their role in the process efficiently. To that end, some have proposed that, 'as part of the APRM process, NEPAD should set aside significant resources to allow civil society in the reviewed country to do assessments of its own, and to critique the APRM assessment.'<sup>142</sup>

In line with the wish to see CSOs involved in producing alternative reports to those of the APRM, some of them have so far taken the lead. The African Human Security Initiative (AHSI),<sup>143</sup> a network of seven African NGOs, has come with a comprehensive study in eight NEPAD countries that have signed up to the APRM.<sup>144</sup> The aim of the initiative was to 'monitor progress in the field of human rights in order to determine whether the states reviewed have taken concrete steps to domesticate the relevant standards to which they have committed themselves, to determine the level of actual enjoyment of these human rights commitments within the national sphere, and to provide

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<sup>141</sup> See section 4. 2.1.2 in the present chapter.

<sup>142</sup> Kanbur, n 16 above.

<sup>143</sup> The AHSI partners on this project are the South African Institute for International Affairs (SAIIA), the Institute for Human Rights and Development in Africa (IHRDA), the Southern Africa Human Rights Trust (SAHRIT), the West African Network for Peace (WANEP), the African Security Dialogue and Research (ASDR), the African Peace Forum (APFO) and the Institute for Security Studies (ISS).

<sup>144</sup> These Eight countries are Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda.

specific information on the legal and de facto situation in the countries concerned.<sup>145</sup> This study, according to its authors, was inspired by a wish to contribute to the ambitions of NEPAD and the APRM. The study actually is a 'shadow report' of how the 'key commitments that African leaders have entered into at the level of OAU/AU heads of states meetings and summits' have been implemented in practice.<sup>146</sup> This shadow report from the AHSI sets the tone for similar reports in keeping the APRM objective and realistic, and for the APRM relying on CSOs to advocate change.

Allowing and resourcing the production of shadow reports will prevent the APRM being the 'only game in the city' and consequently strengthen its credibility. Maybe this could satisfy the argument that NEPAD should include members of the civil society in the APRM, and that it should support Civil society setting up their own system to monitor NEPAD.<sup>147</sup> Nonetheless, APRM success will also depend on its coherent relationship with existing human rights monitoring institutions.

#### **4.3. Establishing coherence with existing human rights monitoring bodies**

A major criticism made of the NEPAD approach to human rights is that, apart from addressing human rights issues as a matter of course, it also failed to take into account in a pertinent manner, the existing structures that would have helped in defining its human rights strategy and facilitating its implementation and progress.<sup>148</sup> If that is a fact to be acknowledged in NEPAD conception, such shortcomings should be addressed at the implementation phase. To that end and for the success of the APRM, it is

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<sup>145</sup> G Cherubin-Doumbia, 'African Commitments to Human Rights: A review of eight NEPAD countries' AHSI paper 2, July 2004, <<http://www.africanreview.org/>> (accessed on 12 September 2004).

<sup>146</sup> As above.

<sup>147</sup> Baimu, n 22 above.

<sup>148</sup> As above.



important that intelligible links be established as the process grows, with interested institutions at the domestic, African and international levels.

#### **4.3.1 at the domestic level**

Human rights violations always occur on the territory of a state (Guantanamo and Palestine being exceptions) and the first level to seek remedies for such violations is the domestic level. Every country has its institutional framework for human rights promotion and protection. This comprises an independent and human rights sensitised judiciary and the other institutions aimed at controlling the legality of state action, such as the State General Inspectors, the Public Protector or the Office of the Ombusman. National human rights NGOs also play a watchdog role in this regard; some focus on special issues like corruption, gender equality, democracy, etc. All these structures can assist the APRM to document and analyse a country situation.

Furthermore, national human rights institutions (NHRIs) will undoubtedly be of particular importance as their tasks are 'to nurture, foster and protect a culture of human rights.'<sup>149</sup> Indeed, NHRIs are established 'to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly.'<sup>150</sup> Depending on the countries, some NHRIs engage in litigation, mediation, public awareness raising and holding governments accountable for their human rights commitments. Such institutions should be used by APRM as partners or allies to effectively access human rights at the national level. But to play such a role, these institutions should be set up and function according to the 'Principles relating to the status of national institutions' adopted in the UN

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<sup>149</sup> B Ramcharan, 'Address to the high level workshop session of the African Peer Review Panel', Cape Town, South Africa, 25 July 2003.

<sup>150</sup> Amnesty international, 'National Human Rights Institutions, Amnesty International's recommendations for effective promotion and protection of human rights', AI INDEX: IOR 40/007/2001, 1 October 2001.

Commission on Human Rights Resolution 1992/54, known as 'the Paris Principles'.<sup>151</sup>

#### **4.3.2 At the African level**

The APRM is not the first African protecting human rights enforcement mechanism; it has been introduced within the context of other mechanisms which were also set up by the African heads of states.<sup>152</sup> The African Commission on Human and Peoples' Rights (the African Commission), the Experts Committee on the Rights of the Child, the African Court on Human and Peoples' Rights are some examples. Amongst these, the African Commission is the most effective so far.

The non-involvement of the AU institutions dealing with human rights issues, especially the African Commission, in the drafting of the NEPAD has been largely criticised as a major error. This is a fact. But now that the NEPAD and precisely the APRM is being implemented, the major challenge should be to build a smart partnership with the African Commission and the other AU bodies monitoring human rights on the continent. The periodic reports that states file before the Commission should be used by the APRM; similarly, the findings and reports from the Commission's Special Rapporteurs should be of a great help to the APRM. The Recommendations made by the Commission to the states could be added in the Panel's recommendations. The two mechanisms could usefully complement each other; the Commission could use the independence of the Panel to confirm its authority and dismiss the

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<sup>151</sup> The 'Paris Principles' are guidelines that should be followed in the establishment of NHRIs. These guidelines, adopted by the General Assembly Resolution 48/134 of 20 December 1993, address the issues of independence, membership, mandate and powers, general recommendations on and methodologies of investigation, human rights education, visits to places of detention, publicity, accessibility and budget.

<sup>152</sup> R M Mkanje, 'Human Rights Monitoring in Africa: The African Peer Review Mechanism and The African Commission on Human and Peoples' Rights', Dissertation submitted in partial fulfilment of the requirements for the Master of Laws (LLM) in Human Rights and Democratisation in Africa, University of Pretoria, October 2003.

charge of lack of independence of which it is regularly accused, while its two decades of experience should be helpful to the APRM.

If it is obvious that the APRM will operate in close relationship with the review mechanism under the CSSDCA, it is also important that the reviewers use the reports and findings of private institutions working on the issue of human rights in Africa as much as possible. Amongst the organisations that produce good data on human rights are Amnesty International, Human Rights Watch, Transparency International, International IDEA, the Freedom House. Consultations should also be held with the various African Regional Economic institutions such as the Economic Community of West African States (ECOWAS), the West African Economic and Monetary Union (WAEMU), the Southern African Development Community (SADC), the Economic Community of Central African States (ECCAS), the East African Community (EAC), and the Arab Maghreb Union (AMU). Welcoming information from a wide range of sources is important for the APRM to be really open and participatory.

#### **4.3.3 At the UN level**

The NEPAD and its APRM are African programmes, conceived and lead by Africans; but as Ramcharan said, 'The United Nations is of Africa as Africa is of the United Nations.'<sup>153</sup> The APRM, in implementing its reviews will be using international instruments on human rights that are monitored by the UN treaty bodies. It is therefore of paramount important that synergies be created between the APRM and these UN bodies; the Office of the High Commissioner on Human Rights (OHCHR) is an obvious partner. NEPAD being after all an economic programme, the series of general comments developed by the UN Committee on Economic, Social and Cultural Rights could be of constructive inspiration.<sup>154</sup> Equally beneficial could be the findings

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<sup>153</sup> n 35 above.

<sup>154</sup> As above.

and recommendations of the Special Rapporteurs on the rights to food, education, health, shelter, poverty reduction, etc.

## CHAPTER 5

### RECOMMENDATORY CONCLUSIONS

The mandate assigned to the APRM is to ensure that the policies and practices of participating states comply with the democratic, political, economic and corporate governance principles and standards agreed on in the Durban Declaration. This objective of the APRM has made it the most innovative aspect of the NEPAD under which it is established. NEPAD itself, together with the AU Constitutive Act, extend and deepen Africa's commitments to democracy, human rights, sustainable development and peace and security with greater determination.<sup>155</sup> Although this is not the first time that development programmes are launched in Africa and for Africa,<sup>156</sup> the new projects are taking place in a different environment. There is a clearly demonstrated political will from African leaders who took the initiatives themselves; these initiatives are widely welcomed by African people and the international community, especially the G8 and the UN. Most notably, drawing lessons from the past failures of development programmes, African states have agreed through the adoption of the APRM to monitor and help each other in compliance with good governance, sound economic policy and social investment.<sup>157</sup>

In this paper, it has been argued that this self-monitoring instrument (the APRM), despite the criticisms levelled against it, could be a very useful tool for human rights promotion and protection in Africa because it has the potential to actually produce change. Some of the weaknesses often highlighted are linked to NEPAD and other concern the functioning of APRM directly. NEPAD is often criticised to be top-down in its inception and not to

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<sup>155</sup> As above

<sup>156</sup> In the past Africa has had the SAPs and the Poverty Reduction Strategy Papers (PRSP).

<sup>157</sup> D A. Bekoe, 'NEPAD and Its Achilles Heels' *Alternatives: Turkish Journal of International Relations*, Vol.1, No4, Winter 2002.

have involved the ACHPR; the exclusion of the civil society is also cited. Other gaps are the low level of knowledge of NEPAD amongst Africans, and the lack of specific details on the promotion, protection and enforcement of fundamental human rights.<sup>158</sup> As to the APRM itself, the main criticisms are that it is voluntary without any binding effect attached to the Panel findings. It has also been argued that the APRM does not deal exclusively with human rights and that African heads of state will not criticise their peers. Some even regard the APRM as a way of legitimising western conditionality of good governance and free market-based economic policies.<sup>159</sup> Notwithstanding, as argued earlier in this paper, the APRM has a significant potential in promoting human rights. The political will and international acknowledgment are there; the existence of the APRM per se as a 'process-oriented mechanism' of follow up will ensure greater compliance from the states. The independence of the Panel, the requirement to draw up a time bound programme of action to address possible shortcomings revealed by the reviews, the possibility of interventionist or crisis reviews and the opportunities available for civil society involvement (that will guarantee broad participation, ownership and reliability) are some of the positive elements of the APRM. To ensure its own success, the APRM needs to minimise the weaknesses and make best use of the areas where it has value-added. While elsewhere recommendations for APRM success have been made regarding the rationalisation of its relationships with other AU human rights mechanisms, the suggestions made in this paper rather insist on the necessity to widen and promote people's participation to the process. Other endeavours would be to apply a human rights approach to development. Subsequently, the following recommendations should be of great help; they are divided into main recommendations and other recommendations.

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<sup>158</sup> n 47 above.

<sup>159</sup> I Zirimwabagabo, 'NEPAD's Peer Review Mechanism – 'Our brother's keeper'' at <<http://www.scienceinAfrica.co.za/2002/august/aprm.htm>> (accessed on 17 June 2004).

## **5.1 Main recommendations**

The APRM is intended to measure how best African countries comply with political and economic governance standards, ultimately aimed at reducing poverty and ensuring socio-economic development of the people. It will achieve this ultimate goal if it focuses the people and adopts a right to development approach.

### **5.1.1 Focus on people's participation**

The greatest challenge and condition for the APRM being a tool that promotes human rights resides in its being known, appropriated and used by the African people. It has been argued in chapter 4 above that the realistic results of policies and practices called for by the Durban Declaration should be [measured] at the level of the African people directly. Therefore, there should be people's ownership of NEPAD and APRM at the grassroots level. It is clear that if the APRM is in fact politically and diplomatically accepted, it is not yet known and understood by the people of Africa (including some leaders at decision-making levels). The necessity to 'promote popular participation of Africa's people in the process of government and development' has been clearly identified by the continent's leaders<sup>160</sup> and set as a goal in the AU Constitutive Act.<sup>161</sup> To properly examine and assess the performances of states in applying the Durban Declaration, there is a need to talk to the African people themselves. For them to respond in an informed way, they need to be aware of what are NEPAD and its APRM. Such participation requires educating the citizens so that they can take an active part in controlling public affairs.

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<sup>160</sup> The Declaration issued at the Assembly of HSG of the OAU on the political and socio-economic situation in Africa and the fundamental changes taking place in the world (Addis Ababa, July 1990) stated that '...popular-based political processes would ensure the involvement of all, including , in particular women and youth in the development efforts. We accordingly recommit ourselves to the further democratisation of our societies and the consolidation of democratic institutions in our countries...'

<sup>161</sup> AU Constitutive Act, Art. 3 (g).

Mobilizing citizens for public participation is a matter of civic education; education in democracy and human rights is needed at all levels to create awareness. Africa needs a new generation of citizens to accompany the innovations that are taking place in Africa. The classic citizenships where individuals exercise their citizenship by paying taxes and voting should be replaced by new citizenships where people take responsibilities and have a say in the decisions affecting their lives.<sup>162</sup> A new kind of citizenship should be invented in Africa.

Mobilization is a step to citizen's control on public affairs. Only motivated and well informed citizens can hold the government accountable for its commitments to the agreed democracy and human rights standards. Watchfulness and public vigilance by CSOs, critiques and protests from the citizens can keep the authorities on the right way, i.e. to comply with their commitments. But controlling, reacting, criticizing and assessing public action requires educated and informed citizens who see themselves as partners having common responsibilities.<sup>163</sup> This is again a matter of civic education.

Governments cannot achieve legitimacy and efficiency by ignoring the aspirations of the people.<sup>164</sup> This is true on both political grounds (democracy) and in the implementation of public policy (services delivery, socio-economic development). Therefore, the extent to which public action meets the needs of the people indicates better states' compliance with their human rights commitments.

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<sup>162</sup> G Hermet, 'Le passage à la démocratie', La bibliothèque du citoyen, Presses de sciences po, mars 1996.

<sup>163</sup> P Braud, 'Manuel de sociologie politique', 4<sup>e</sup> édition, Paris, LGDJ, 1998.

<sup>164</sup> Dialogues sur la gouvernance en Afrique: décentralisation et intégration régionale, 'Vers une Charte africaine pour une gouvernance légitime, introduction aux cahiers de propositions', Ouagadougou, Août 2003.



### 5.1.2 Adopt a human rights-based approach to development

The very purpose of all the changes taking place in Africa now is to bring about development. Development and human rights are not separate spheres; on the contrary, development is part for human rights.<sup>165</sup> Further, the human person is very central in the right to development. But very often, development programmes lack human rights dimensions. NEPAD has been reproached its inconsistencies in human rights. It has been claimed that ‘there is nothing in the NEPAD document about integrating human rights in the development programme.’<sup>166</sup> This is a serious accusation that is unfortunately true. The NEPAD Document needs to be amended with specific references to the indispensability of human rights in development. This will make the continent’s development programme more comprehensive, inclusive, effective, equitable and meaningful.

The primary objective of a rights-based approach is to ensure equity and a decent standard of life for all persons.<sup>167</sup> A rights-based approach means to use ‘the language of rights to name and understand certain practices’<sup>168</sup> and policies. For example, female circumcision in rights-based language will become a violation of the right to preserve one’s body and sexuality.<sup>169</sup> Such an approach advises that all the human rights implications of a policy be carefully analysed before the decision is made. A rights-based approach facilitates the implementation and the testing of government policies against these rights. When these policies do not exist, it helps using these rights to force the government to adopt and implement effective policies.<sup>170</sup> The

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<sup>165</sup> J D Taillant, ‘A Rights-Based Approach to Development’, Presentation to the World Social Forum Seminar on Globalisation and Human Dignity, March 2002, Porto Alegre, <<http://www.cedha.org.ar/docs/doc78.htm>> (Accessed on 13 October 2004).

<sup>166</sup> Baimu, n 22 above.

<sup>167</sup> Pagani, n 9 above.

<sup>168</sup> C Kisoona, M et al ‘Whose right?’, *AIDS Review* (2002), Centre for the Study of AIDS, University of Pretoria.

<sup>169</sup> As above.

<sup>170</sup> As above.

Committee on Economic, Social and Cultural Rights (CESCR) has made very good analyses of the human rights-based approach to development.<sup>171</sup> It recognises that there are core obligations that all developmental policies should be designed to respect, and that poverty reduction strategies could be more effective, inclusive, equitable and meaningful if they are based on international human rights.<sup>172</sup>

NEPAD and its APRM have been drafted in a policy-based approach instead. For the implementation of the Durban Declaration, governments have been given the discretion to determine the content of the policies, the time-frames for their implementation and the resources to be allocated in the conduct of such policies. Therefore, the APRM will be assessing how best this discretion has been exercised. But it has been posited that ‘there is no mechanism to ensure that the exercise of that discretion is free from prejudice and bias, and that it is the best that governments can do.’<sup>173</sup> Of course public decisions are taken on the basis of priority-setting and pressure or influences from organised social groups. But what is the rationale for a decision to build a hospital as opposed to paving streets? A decision may objectively address a social need. Nevertheless, as Taillant put it, what is missing is the roadmap to help make such a decision. A human rights-based approach could provide that guidance and framework.<sup>174</sup>

Taking a human rights-based approach in the assessment of state’s policies and actions through the APRM will reveal [more realistically] the extent to

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<sup>171</sup> ‘Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights’, Statement adopted by the Committee on Economic, Social and Cultural Rights on 4 May 2001 at its twenty-fifth session 23 April – 11 May 2001, <<http://www.unhchr.ch/tbs/doc.nsf/0/518e88bfb89822c9c1256a4e004df048?Opendocument>> (accessed on 15 October 2004).

<sup>172</sup> As above.

<sup>173</sup> As above.

<sup>174</sup> Taillant, n 165 above.

which human rights are promoted and protected, as agreed in the Durban Declaration.

## **5.2 Other recommendations**

The second category of recommendations concerns the relations that the APRM should have with the other African human rights mechanisms and the voluntary basis of the process.

### **5.2.1 Build coherent links with existing mechanisms**

This recommendation has been made several times by NEPAD's critics. Baimu, for example, wondered at the APRM 'development in isolation from the human rights mechanisms developed under the OAU/AU should be a source of concern.'<sup>175</sup> The concern here is the overlapping between the APRM and the other human rights promotion mechanisms, especially the African Commission on Human and People's Rights and the Pan-African Parliament who also have the mandate for promoting human rights. In that sense, NEPAD's new vision of human rights embodied in the APRM should be implemented in close partnership with the existing mechanisms. Some have proposed that a dual system be established like the one under the UN human rights system.<sup>176</sup> While this idea can be supported, it is also not absolutely necessary. The most beneficial action would be that these mechanisms operate in close relationship applying the principle of subsidiarity, this meaning that each entity will focus on the aspect where its action has the greatest impact compared to the others. For example, the African Commission's decisions and recommendations lack real enforcement and follow up mechanisms, which are available under the APRM.

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<sup>175</sup> Baimu, n 21 above.

<sup>176</sup> As above.

The partnerships should also be extended to domestic mechanisms with particular attention to the NHRIs. Because they operate at a pertinent level, such institutions properly resourced and their personnel trained in terms of their capacity to effectively enforce human rights. The APRM should analyse the possibility of providing such capacities to NHRIs, and urge participating states to create them where they do not exist.

Along with the process being implemented, APRM should be creative in filling the gaps left at the inception of NEPAD.

### **5.2.2 Add mandatory elements to the voluntary nature of the mechanism**

The APRM lacks compulsory elements at two levels: at the accession and enforcement regimes. Membership in the APRM is purely voluntary and there are no punitive sanctions in the event of poor or non-compliance with the established principles and standards.<sup>177</sup> Notwithstanding the indivisibility and complementarity of human rights, some rights are so fundamental that adherence to them should be mandatory; because issues like the rule of law, justice or preventing conflicts are so essential in Africa's development, the APRM should be applied to all the AU state members, and not leave that to the discretion of a government. Making the APRM a voluntarily acceded mechanism will also let aside gross human rights violations, because those states who submit themselves to peer review are not always the ones who need those reviews.

On the other hand, using 'constructive dialogue' or the 'name and shame' system to enforce the recommendations of the Panel is likely to not be very successful. Including punitive provisions for non-compliance identified by the reviews may 'increase the peer review significance.'<sup>178</sup> Though African heads of state do not have much power over their peers, suspending them from the

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<sup>177</sup> Akokpari, n 99 above.

<sup>178</sup> Bekoe, n 157 above.

AU bodies could be a starting point. More, compliance with core human rights obligations could be a conditionality for aid as far as the assessment process is fair, competent and free from any manipulation, and as far as such conditionality is designed to improve the situation of those victims of human rights abuses.<sup>179</sup>

Human rights law enforcement in Africa requires a combination of both voluntary and mandatory elements. One would agree with Kagoro that certain values in human rights are so 'fundamental that adherence to them should be made mandatory and failure to do so should be censured through a clear programme of sanctions.'<sup>180</sup>

**Word count: 17 977**

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<sup>179</sup> Bernard, n 6 above.

<sup>180</sup> B Kagoro, 'Can apples be reaped from a thorn tree? A case analysis of the Zimbabwean Crisis and the NEPAD's Peer Review Mechanism', A paper presented to the Southern Africa Research Poverty Network (SARPN) and Center for Civil Society workshop on 'Engaging NEPAD: government and civil society speak to one another', 4<sup>th</sup> July 2002, University of Natal, Durban.

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## **ANNEX: APRM Indicators**

### **1. Democracy and Political Governance**

- 1.1 Level of ratification and accession to relevant African and international instruments for conflict prevention, management and resolution
- 1.2 Existence and effectiveness of early warning capacity
- 1.3 Existence of institutions to manage, prevent or resolve conflicts
- 1.4 Level and trends of drug trafficking
- 1.5 Adequacy of express provisions in the constitution
- 1.6 Effectiveness of democracy and law enforcement institutions
- 1.7 Independence and effectiveness of Electoral Commission to ensure fair and free elections.
- 1.8 Adequacy of legal framework for free association and formation of nongovernmental organizations and unions.
- 1.9 Effectiveness of independent media in informing the public and providing freedom of expression.
- 1.10 Public perceptions of and the degree of satisfaction with democracy and political governance.
- 1.11 Congruence of the national Constitution with the Constitutive Act of the African Union
- 1.12 Effectiveness of institutions and processes for implementation, oversight and public awareness of human rights principles and the country's obligations therein
- 1.13 Regularity and quality of country reporting to treaty bodies
- 1.14 Adequacy of budgetary provisions and effectiveness of interdepartmental committees to give effect to the country's international obligations
- 1.15 The overall state of these rights in the country
- 1.16 Security of tenure of the judiciary and its access to resources

- 1.17 An effectively independent judicial services commission to ensure professionalism and integrity with responsibility for the appointment of judges
- 1.18 Inter-party committees within Parliament exercising effective oversight functions over various areas of public interest
- 1.19 Overall assessment of the state of governance in these areas
- 1.20 Mandated reports by the Executive branch of Government to the Country
- 1.21 Provision for public hearings to which public officials can be called to account
- 1.22 A constitutionally mandated public service commission that is effectively structured and resourced
- 1.23 A legal instrument embodying a code of conduct for public office holders
- 1.24 Results of overall assessments or citizen charter reports
- 1.25 Constitutional provision for fighting corruption and effectiveness of institutions carrying out the mandate
- 1.26 Accessibility of the proceedings of Parliament and the reports of its various committees to the public
- 1.27 Requirements for periodic public declaration of assets by public office bearers and senior public officials
- 1.28 Results of overall assessment of corruption in the country
- 1.29 Accession and ratification of the relevant African and international instruments on the rights of women and girls
- 1.30 Effectiveness of constitutional provisions and laws, and institutions protecting and promoting the rights of women
- 1.31 Consequential steps taken to ensure full and meaningful participation of women in all aspects of national life, particularly in political and economic domains
- 1.32 Results of overall assessment of status of women
- 1.33 Effectiveness of constitutional provisions and institutions to advance the rights of the child and young persons

- 1.34 Accession to and ratification of the relevant international instruments on the rights of the child and young persons, and the measures taken to implement them
- 1.35 Consequential steps taken to ensure the realization of the rights of children and young persons
- 1.36 Results of overall assessment of status of children and youth in the country
- 1.37 Adequacy of constitutional provisions on promotion and protection of vulnerable groups and legal and regulatory steps to enforce them
- 1.38 Accession to and ratification of the relevant international instruments on the rights of vulnerable groups, including internally displaced persons and refugees, and the measures taken to implement them
- 1.39 Consequential steps taken to ensure the realization of the rights of vulnerable groups
- 1.40 Enactment and enforcement of legislation to stop human trafficking
- 1.41 Results of overall assessment of status of vulnerable groups

## **2 Economic Governance and Management**

- 2.1 Measures of sound macroeconomic management (deficit to GDP and its sustainability, Revenue to GDP, inflation rate, debt to GDP and its sustainability, and share of deficit financed by Central Bank)
- 2.2 Positive impacts on socio-economic development, including rate of unemployment or job creation in both formal and informal sectors
- 2.3 Autonomy and effectiveness of the national auditing body
- 2.4 Credible and reliable Budget Process
- 2.5 Preparation and publication of interim financial reports
- 2.6 Demonstrable autonomy of the Central Bank
- 2.7 Enactment and enforcement of effective competition regulation
- 2.8 Medium-term-expenditure framework or other domestic medium-term planning instruments or other predictable planning framework
- 2.9 Results of overall assessment of adherence to the above mentioned standards and codes and steps taken to address shortfall and capacity gaps

- 2.10 Ratification and implementation of International codes and the Africa Union anti-corruption code
- 2.11 Enactment and enforcement of effective anti-corruption and anti money laundering laws
- 2.12 Effectiveness of institutions and programmes e.g. Public Protector, Prosecutor-General
- 2.13 Results of overall assessment of the prevalence of corruption and money-laundering in the country
- 2.14 Country's social and sectoral policies are coherent with and supportive of regional economic integration objectives
- 2.15 Implementation of MOUs and other regional economic agreements and treaties

### **3 Corporate Governance**

- 3.1 Effective regulation of accounting and auditing professions
- 3.2 Effectiveness of legal framework and enabling environment
- 3.3 Effectiveness of protection of property rights and creditors' rights
- 3.4 Timeliness and effectiveness of resolving corporate disputes
- 3.5 Effectiveness of private sector regulation
- 3.6 Cooperativeness of employer-employee relations and positive assessments of labour unions
- 3.7 Results of overall assessment of corporate integrity
- 3.8 Level and application of international codes and standards
- 3.9 Level of compliance to reporting and disclosure requirements covering capital markets, state-owned enterprises and agencies, banking, insurance and financial sector, etc
- 3.10 Existence of effective Environmental Impact Assessment (EIA) programme

### **4. Socio-Economic Development**

- 4.1 Alignment to NEPAD principles and priorities
- 4.2 Level of food security
- 4.3 Contribution of high value-addition industries (e.g. Manufacturing) to the GDP and exports



- 4.4 The Millennium Development Goals (MDGs) indicators
- 4.5 The WSSD indicators
- 4.6 The Human Development Index
- 4.7 Efforts dedicated to poverty eradication
- 4.8 Extent to which small, medium and micro enterprises (SMME's) are promoted and developed
- 4.9 Percentage of GDP spent by the country on scientific and technological research and development
- 4.10 Extent and promotion of integration of production structures, and physical and institutional infrastructure
- 4.11 Existence and the extent of implementing planned capacity building programmes for the public sector
- 4.12 Population living under the poverty line
- 4.13 Gini coefficient
- 4.14 Indicators in National Social Development statistics and reports
- 4.15 Indicators in National HIV/AIDS and health reports
- 4.16 Indicators in National MDG report
- 4.17 Indicators in other relevant National reports
- 4.18 Percentage of budget allocated to components of social development and the effectiveness of the delivery
- 4.19 Percentage of population with affordable access to water, sanitation, energy, finance (including micro-finance), market and ICT
- 4.20 Official government policy documents and actions specifying programmes undertaken and implemented
- 4.21 Results of overall assessment of progress
- 4.22 Effectiveness constitutional, legal, policy and budgetary provisions for gender equality
- 4.23 Gender segregated statistics in official government reports permitting assessment of gender equality in all spheres of life
- 4.24 Extent to which rural communities are empowered to manage their own development
- 4.25 Measures of budgetary and fiscal decentralization
- 4.26 Adequacy and effectiveness of participatory practice in the country
- 4.27 Availability of micro-credit to SMME's and rural communities