CHAPTER 5 NEPAD AND THE RIGHT TO DEVELOPMENT

5.1 Introduction

The vital question in this chapter is: To what extent can NEPAD/APRM enhance the realisation of the RTD? Or, to what extent does NEPAD embrace a human rights approach to development?

Having established that the RTD is a human right in Africa through the previous chapter, this chapter investigates to what extent the right can become a reality through NEPAD/APRM. To achieve its goals, from a human rights perspective, the chapter will assess to what extent NEPAD upheld or are informed by elements of the RTD. In other words, can NEPAD be the roadmap to the realisation of the RTD in Africa?

To answer this question, the chapter will firstly examine to what extent the NEPAD Programme are human rights-based; secondly it will look at the NEPAD legal status and analyse its impact on the achievement of the RTD; thirdly it will proceed to look at the right to participation (vital for the realisation of the RTD) in NEPAD and have a look at NEPAD prospectivelly, fourthly it will focus on the role of financial constraints on NEPAD human rights mandate and finally, it will provide some concluding remarks.

5.2 NEPAD and the holistic realisation of human rights

At the outset of this section, it is important to keep in mind that the holistic realisation of human rights is the substance of the RTD. The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance'[981] clearly observes that NEPAD was established to

> [e]radicate poverty and to place our countries, individually and collectively, on a path of sustainable growth and development and at the same time, to participate actively in the world economy and body politic on equal footing. We reaffirm this as our most pressing duty.[982]

According to article 31 of the 1969 Vienna Convention on the Law of Treaties, (general rule of interpretation) 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.[983] In other words, it is important to consider the context and the purpose of the agreement. From this stand point, though NEPAD is not a treaty, this study will borrow from the rule mentioned above; put differently, the study will consider NEPAD in the light of its context and purpose. In fact, NEPAD was born in a context of abject poverty in Africa and its purpose is to fight poverty. Its aim is to ensure a better life or human dignity. In its paragraph 5, the document emphasises that the abolition of poverty and the nurturing of socio-economic development should be addressed urgently. According to these provisions, NEPAD's aim is to achieve the RTD in Africa. This interpretation is linked to NEPAD context and purpose. In reality, to meet its objectives, people's rights to participation must be protected; the realisation of socio-economic rights, environmental concerns as well as freedoms should be in the agenda. Sengupta argues that a development programme associated with the RTD should strive 'to remove capability poverty in addition to income poverty through the expansion of

[981] Assembly of Heads of State and Government, 38th Ordinary Session of the OAU, 8 July 2002, Durban South Africa, NEPAD Declaration on Democracy, Political, Economic and Corporate Governance AHG/235 (XXXVIII) Annex I. For more insights on this instrument, see K R Hope 'Practitioner perspective – towards good governance and sustainable development: the African Peer Review Mechanism' (2005) 2 (18) *Governance: An International Journal of Policy, Administration, and Institutions* 288.

[982] Assembly of Heads of State and Government, 38th Ordinary Session of the OAU, Preamble, para 2 & 5.

[983] Art 31(1).

education and training, health and nutrition'[984] such as found in the NEPAD Programme. Indeed, the NEPAD strategy is to increase human capability (freedoms) through education programmes such as e-school projects (right to education) provide better health care (right to health) and nutrition (right to food) through programmes such as NEPAD Comprehensive Africa Agriculture Development Programme (CAADP). It caters for income poverty reduction through a broad creation of employment (right to employment) through its infrastructural and other projects, as well as its policy to increase the gross national product. In fact, it is 'a holistic, comprehensive and integrated strategic framework for the socio-economic development of Africa'.[985] Mangu argues that the advent of the AU and NEPAD provides the needed structure for respect of human rights in the African continent;[986] and has actually transformed 'the human rights landscape in Africa'.[987]

The other criterion of a RTD development programme met by the African institution is its ability to highlight the obligations of all the different agents, from the state authorities, governments, the multinational companies, the multilateral agencies and the international community.[988] In fact, the 'P' in NEPAD, calls for a partnership between African leaders and their people and between Africa and the international community at large in order to realise the RTD.

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[984] A Sengupta 'Implementing the right to development' 8, available at http://www.hsph.harvard.edu/fxbcenter/Implementing%20the%20RTD.pdf (accessed 22 May 2008).

[985] African Development Bank Group "building today, a better tomorrow" at http:// www.afdb.org/portal/page?_pageid=473,970224&_dad=portal&_schema=PORTAL (accessed 21 October 2006).

[986] Mangu (2005) 408.

[987] Mangu (2005) 408.

[988] The NEPAD strategy clearly highlights the role and obligations of all the stakeholders, eg: in matters of economic and corporate governance are the responsibility of an African Task Force of Ministries of Finance and Central Bank to review governance practice and make recommendations. For more, see the NEPAD document (2001) 22 – 50 where sectorial priorities objectives and action to realise the priorities are defined.

Nevertheless, as will be shown later in this study, the 'P' is nowhere to be found in NEPAD activity.

In terms of article 3(h) of the AU treaty,[989] the AU has the obligation to promote and protect human rights (including the RTD) as provided for by the ACHPR. NEPAD, the development hand of the AU is also relevant in achieving human rights and the RTD in particular in Africa. It addresses human rights when acknowledging their fundamental place in any development endeavour[990] and claiming that the aim of the democracy and political governance initiative is to foster respect for human rights.[991]

However, it can be argued that mentioning human rights is not enough. NEPAD does nothing for the RTD. Following this logic, Mathews observes that the RTD 'had been neatly excised from the key sections in the NEPAD Declaration of Democracy, Political, Economic and Corporate Governance' and maintains that this excision is due to the fact that the language of the RTD does not gel well with NEPAD's main donors.[992]

Nonetheless, these arguments could be refuted because in stressing their 'new political will',[993] African leaders noted that the context of

> [t]he new phase of globalisation coincided with … the emergence of new concepts of security and self-interest, which encompass the right to development and the eradication of poverty. Democracy and state

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[989] Art 3(h) of the AU Constitutive Act states that:

> 'The objectives of the Union shall be to…
> (h) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.'

[990] NEPAD 2001, para 43, 49, 71 & 79.

[991] NEPAD 2001, para 80.

[992] S Mathews 'The right to development, global partnership and peer partner review'; Submission to the Task Force on the Right to Development, January 26- 27 2007.

[993] NEPAD 2001, part III.

> legitimacy have been redefined to include accountable government, a culture of human rights and popular participation as central elements.[994]

In other words, African leaders came out strongly to ensure human rights in general and the RTD in particular. To achieve their goal, they identified democracy, state legitimacy, accountable government, culture of human rights and popular participation as key prerequisites.

Furthermore, from Sen's perspective, realising the RTD not only implies a holistic course of action for the protection of all human rights,[995] but also implies economic growth made of growth of resources, such as GDP and advancement in technology and institutions[996] as highlighted by the NEPAD programme. In this respect, Rukato argues that[997]

> [o]ne of the objectives of the NEPAD Programme is the protection of democracy and human rights. The Democracy and Political Initiative of NEPAD is aimed at contributing to the enhancement of political and administrative frameworks in line with the internationally accepted standards and principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law.

However, it could be wrong to rely only on NEPAD's goal of eradicating poverty to claim that the institution is about achieving the RTD. Though NEPAD refers to human rights here and there, it does not use a human right perspective in addressing its development targets. In this respect, Manby correctly observed that NEPAD should have defined 'the objectives of development in terms of legally enforceable entitlements',[998] which would have empowered

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[994] NEPAD 2001, para 43.

[995] A *Sen Development as freedoms* (1999).

[996] Sengupta 'Implementing the right to development' 17, available at http://www.hsph.harvard.edu/fxbcenter/Implementing%20the%20RTD.pdf (accessed 22 May 2008).

[997] Rukato (2010) 51.

[998] Manby (2004) 1002.

human rights advocates to claim people's right not to be poor;[999] since it is necessary to set up appropriate mechanisms to claim the RTD. From an RTD approach, it is important to redesign a NEPAD where socio-economic rights are not addressed as mere access to services, but as human rights, as entitlement or claimable rights.[1000]

Nevertheless, viewing the RTD only in terms of legally enforceable entitlement or justiciable human rights may be misleading. In fact, this stresses the questions of the existence, justiciability and feasibility of the right. In other words, the RTD is not justiciable and feasible because NEPAD did not provide a legal mechanism to claim individual and peoples' rights.

This thesis contends that although the rule of law is necessary to enforce human rights, it is not the only mean. Social and political agitations can give birth to appropriate legislations and raise awareness on the issues in order to change the conditions. Supposing that there is no law or legislation involved, this study posits that social and political pressure, naming, awareness raising and disgracing are other ways to compel violators of human rights to stop their evil deeds and protect human dignity.

As mentioned earlier, the power of popular insurrection was seen in Ukraine in 2006 and in 2008 in Thailand, in Tunisia and Egypt in 2011 where the population peacefully change their governments without any legal process. Therefore, if the NEPAD lacks the capacity to establish a legal system to protect the RTD, it does not affect the nature of the right which is inherent to all human beings.

The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance [1001] is unambiguous. In this document, African leaders clearly committed themselves to ensuring peace and security, putting an end to unconstitutional change of government, promoting

[999] Manby (2004) 1002.

[1000] E Baimu (2002) 310.

[1001] Assembly of Heads of State and Government, 38th Ordinary Session of the OAU, 8 July 2002, Durban South Africa; AHG/235 (XXXVIII) Annex I.

human rights, respecting the rule of law and good governance.[1002] In details, amongst others, African leaders pledge to comply with the ACHPR,[1003] the 1990 African Charter for Popular Participation in Development[1004] (right to participation), the African Charter on the Rights and Welfare of the Child[1005] that provides for the RTD of the child,[1006] the Protocol on the establishment of the African Court on Human and Peoples' Rights,[1007] the 1999 (Grand Bay Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights,[1008] the Framework for an OAU Response to Unconstitutional Changes Government[1009] and the AU Constitutive Act.[1010]

It could even be argued that from the moment NEPAD pledged to support the ACHPR including the African Commission as well as the African Court of Human Peoples' Rights, there was no need to create parallel legal systems to protect the RTD which would have resulted in several overlaps and wastage of human and financial resources.

There is a need to establish and strengthen the link between the African Commission, the African Court on Human and Peoples' Rights and the APRM. Though the latter is voluntarily acceded to, it had been established to compel African leaders to respect their commitments.

[1002] AHG/235 (XXXVIII) Annex I, para 3 and AU Constitutive Act: Preamble, para 10; art 3 (h) & (g); 4 (m), (c), (L) (N) & (p).

[1003] AHG/235 (XXXVIII) Annex I, para 3 (b).

[1004] AHG/235 (XXXVIII) Annex I, para 3 (c).

[1005] AHG/235 (XXXVIII) Annex I, para 3 (c).

[1006] Art 5.

[1007] AHG/235 (XXXVIII) Annex I, para 3 (h).

[1008] AHG/235 (XXXVIII) Annex I, para 3 (i).

[1009] AHG/235 (XXXVIII) Annex I, para 3 (j); also OAU 2000 Summit in Lomé, Togo.

[1010] AHG/235 (XXXVIII) Annex I, para 3 (l)

Against this view, Donnelly rejects the RTD because of its non justiciability[1011] and the same criticism applies to human rights in NEPAD.[1012] Nonetheless, this thesis argues that human rights are grounded in human dignity and not in a court of law.

Why hide behind the non justiciability of the rights through NEPAD to claim its inability to enhance the RTD? As Johnson correctly puts it, how justiciable are the ESCR?[1013] Is there any international court to sue states that do not comply with the provision of the ICESCR or the ICCPR? For instance, according to the ICESCR, education should be free. However, various African countries are still charging school fees, even though the matter can be addressed through the UN Committee on ESCR. Indeed, if the value of human rights is found only in their justiciability, then there is a real 'need for a world court of human rights' to use the words of Manfred Nowak the former UN Special Rapporteur on torture.[1014]

At national level, the provisions pertaining to socio-economic rights are very often located in general principles of states' policy and are therefore not justiciable. This does not make socio-economic rights less human rights. Consequently, the non justiciability of the RTD through NEPAD should not wipe out NEPAD's capacity to improve the enjoyment of the right, though as mentioned earlier NEPAD will gain in linking the African Commission and the African Court on Human and Peoples' Rights with its APRM process.

Now, shifting the attention to the APRM, it can be argued that NEPAD is mostly about a holistic realisation of human rights. APRM puts weight on reviewing policies and programmes of rule of law, corruption, poverty alleviation, literacy, health, corporate governance laws which are all secure in the RTD concept. In fact, out of nine APRM objectives under the commitment of democracy and political governance, five focus directly

[1011] Donnelly (1985) 485.

[1012] Manby (2004) 1002.

[1013] In discussion with Johnson at the UN High Commission for Human Rights in Pretoria office, 4 May 2009.

[1014] M Nowak 'The need for a world court of human rights' (2007) 7 *Human Rights Law Review* 251.

on human rights realisation. They are the promotion of constitutional democracy, including periodic political competition and opportunity for choice, the rule of law and the inclusion of a Bill of Rights in a supreme constitution;[1015] the promotion and protection of economic, social, cultural, civil and political rights enshrined in the African and international human rights instruments;[1016] the promotion and protection of the rights of women,[1017] of children and young persons,[1018] and of vulnerable groups including displaced persons and refugees which is the ninth objective. From this stand point, among other things, the APRM always calls upon participating states to promote human rights at national level[1019] and ratify international human rights instruments and comply with their monitoring mechanisms at regional and global levels. This led Mangu to argue that 'in order to achieve NEPAD's objectives which all revolve around the protection and promotion of human and peoples' rights in Africa',[1020] African leaders established the APRM. In fact, if development, good governance and human rights had been achieved in Africa, the launching of NEPAD would not have been necessary.[1021]

On the contrary, Akokpari argues that the lack of linkages between NEPAD and the earlier African development plans (Lagos Plan of Action, the African Alternative to Structural Adjustment is problematic) hinders NEPAD's ability to protect human rights.[1022] This thesis disagrees on the ground that the advent of the AU definitely brought more emphasis on

[1015] Objective 2.

[1016] Objective 3.

[1017] Objective 7.

[1018] Objective 8.

[1019] Country Review Report, Benin, 58.

[1020] Mangu (2005) 391.

[1021] Mangu (2007) 397.

[1022] Akokpari (2004) 6.

protecting human rights in Africa, and the programme which preceded NEPAD were all under the OAU when African human record was not of good quality.

However, an analysis of some of the APRM objectives discloses that NEPAD is not serious about protecting human rights. For instance, objective 7 on women's rights protection which is also recorded in the NEPAD 2001 paragraph 49(7) and 67(2) in terms of

> [p]romoting the role of women in social and economic development by reinforcing their capacity in the domain of education and training; by developing revenue-generating activities through facilitating accesses to credit; and by assuring their participation in the political and economic life of African countries

and to 'promote the role of women in all activities'. This seems to be simple statements on paper. Apart from developing gender tools and materials, handbooks and background documents on gender for NEPAD personnel and establishing a Gender Task Force with the mandate to assist in gender mainstreaming,[1023] NEPAD does not draw from any existing instrument protecting women's rights such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [1024] or the Convention on the Political Rights of Women,[1025] or the Convention on consent to marriage[1026] or others.

In the same vein, the protection of women's rights in the NEPAD framework is too vague because it does not address women's daily problems such as domestic violence, rapes and others, and as correctly observed by Manby 'the protection of women's rights by NEPAD is not matched with a pledge to provide effective remedies to address their plight'.[1027] The same criticism applies for the protection of child rights where neither the 1989 Convention on the

[1023] Rukato (2010) 102.

[1024] Adopted in 1979 and entered in to force in 1971.

[1025] 193 UNTS 135, adopted 20 December 1952, entered into force 7 July 1954.

[1026] ILO Convention no 100, 165 UNTS 303, adopted 29 June 1951, entered into force 11 August 1954.

[1027] Manby (2004) 1005.

Right of the Child (CRC) nor the African Children Charter is drawn to ensure child rights. In the same perspective, whereas objective number nine of the APRM refers to the plight of refugees and displaced persons, there are no practical legal mechanisms to cope with the issue. Even the 1969 OAU Convention Governing Specifics Aspects of Refugees Problems in Africa is not used as a source of inspiration to tackle the question.[1028] As a result, Africa has been struggling with refugees' problems for years.[1029]

In order to improve its human rights mandate, NEPAD shall draw from existing human rights instruments and not keep its office as an economic entity only. Using a human rights approach to its activities with lawyers' input can only enhance its chances to achieve the RTD.

Nevertheless, the economic governance and management commitment promotes macro economic policies that support sustainable development,[1030] sound public finance management,[1031] anticorruption and money laundering mechanisms and policies.[1032] In general, all APRM commitments are aimed at the betterment of human lives.

However, the APRM is voluntarily acceded to, has no sanctions and relies merely on peer pressure. Only unclear 'appropriate measures'[1033] can be taken against states that refuse to comply with the recommendations of the mechanism. These measures are vague and

[1028] Manby (2004) 1005.

[1029] According to the UN in 2002, more than half of the world's 25 millions displaced persons were in Africa (Norwegian Refugee Council Global IDP Project, Internally Displaced People: A Global survey, 2002); also in 2004, the UN High Commissioner for Refugees observed that 30% of the total refugee community was in Africa (UNHCR, 2003 Global Refugees Trends (15 June 2004); 2008 Global Refugees Trends indicates 2.1 million refugees in Africa.

[1030] Objective1.

[1031] Objective 3.

[1032] Objective 4.

[1033] APRM Base document, para 24.

imprecise. As Rukato questioned, what happens after the review?[1034] There is no follow up mechanism; every one goes home and the report is not brought back in the NEPAD process.[1035] In the same perspective, the whole review process is undermined when the so-called 'appropriate measures' to be taken against disobedient states are to be addressed. A NEPAD official observed: [1036]

> A weakness with the current review process is that it does not prescribe sanctions or penalties and as such it runs the risk of being ineffective. Unless there are penalties or sanctions, the review will become a sham and attempts at achieving sustainable development through the adoption of best practices will fail.

Interestingly, African countries join international agreements and accept to report to the UN treaty bodies, and accept to be monitored without conditions. They comply with self-assessment requirements from these treaty bodies without problems. However, when it comes to Africa, the mechanism is voluntary, which shows that African countries apply a double standard with the rule of law. They have no problem ratifying binding instruments at international level, but in their own continent, the design a weak process with a voluntary accession which gives no real incentive to comply with the rule of law.

Furthermore, the APRM governance standards do not really make a difference. Under these governance instruments, the APRM lists numerous standards, codes and declarations that should be used to measure good governance on the continent. These standards include African instruments, binding (the AU Constitutive Act, the ACHPR and others) and non binding (several resolutions and declarations of the OAU and AU); it also contains a variety of non binding instruments originating from the ILO, IMF and commonwealth for example. In addition, all the UN conventions, declarations, resolutions and conference reports are included.

[1034] H Rukato presentation of *Future of Africa prospects - for democracy and development under NEPAD* (before its publication) at the University of Pretoria, 4 June 2009.

[1035] Rukato (2009) and (2010) 98.

[1036] Z Kebonang & C M Fombad (2006) 'The African Peer Review Mechanism: Challenges and prospects' in *AU, NEPAD and the APRM: Democratisation Efforts Explored* 51.

Putting together almost all existing instruments under the label of 'APRM Governance Standards'[1037] cannot compel countries to uphold good governance principles and cannot be an appropriate instrument to measure compliance with good governance. In fact, they comply with those that are binding on them, hence the need to separate binding from non-binding instruments. In fact, mixing these two sets of instruments weakens the role of binding ones in attempting to ensure good governance.

Moreover, it does not help to have a shopping list of instruments that ends up providing a way out for human rights violators who can always find a way to comply with few reports of international conferences.

Prospectively the AU should reduce the APRM Governance standards, and tailor them within the confines of the four APRM thematic areas. Special attention should be given to binding instruments. This will ease the measurement of compliance with the APRM which relies on peer pressure only.

Nonetheless, the peer pressure is not ineffective. In fact, the mechanism is known as 'peer review', this justifies the fact that leaders are in the front seat where they can talk to their peers following the African traditional society's practice according to which leaders used to consult members of their age groups to solve a problem.[1038] Nevertheless, this argument does not negate the fact that the credibility and efficiency of the process could have been strengthened by real sanctions against 'stubborn' states.

In spite of the soft nature of APRM instruments, to ensure that APRM's purpose is achieved, participating states adopt appropriate laws, policies and standards as well as building the necessary human and institutional capacity. They have also committed themselves to adopt

[1037] See SAIIA 'APRM governance standards' (2008)

[1038] M Hansugule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 4, paper prepared for the Office of the Special Adviser on Africa (on file with author).

specific objectives, standards, criteria and indicators for assessing and monitoring progress in key areas regularly in accordance with the APRM Base Document and the Declaration on Democracy, Political, Economic and Corporate Governance. This involves a responsibility to submit to periodic reviews and be guided by agreed parameters.

Whatever APRM shortcomings are, it is important to keep in mind that the APRM is unique in the sense that nowhere in the world do states come together to criticise each other to learn and record best practices. Even if its implementation has challenges, it should be promoted and encouraged with a view of enhancing the prospects of the RTD in the continent.

5.3 NEPAD's legal status and the RTD

The section assesses NEPAD legal's status and its impact on the realisation of the RTD. It stresses the need to clarify NEPAD legal personality if the institution is to make a difference in achieving the RTD.

After its adoption in Lusaka, Zambia at the 37th Session of the Assembly of the Heads of State and Government of the OAU in July 2001, NEPAD became the economic programme of the AU. Its adoption by the AU was followed by its international recognition as Africa's official development plan through the resolutions of the United Nations General Assembly.[1039] These regional and international recognitions do not transform NEPAD into a binding instrument. NEPAD is not a treaty or a convention with binding obligations. As a result, countries make political commitments that they comply with as they please. More importantly, NEPAD has no legal status and until recently could not be taken to court and is still represented in its transactions by the Development Bank of Southern Africa.

This is not the best approach to use in working towards the implementation of human rights and more importantly in the implementation of the RTD. Moreover, all African countries members of the AU are automatically member of NEPAD unlike being participant to the APRM where a country willing to participate should sign the MOU which is unfortunately another 'soft' or non binding instrument as will be shown below.

[1039] UN General Assembly Declaration A/RES/57/2 & Resolution on NEPAD, A/RES/57/7.

To strengthen the continental plan, accession to NEPAD and even the AU should not be automatic for all African countries. Accession should be subject to respect for human rights. In this regard, Africa should emulate the European practice in which no European state has joined the European Union without first being a member of the Council of Europe, whose accession is conditioned among other things by the obligation of the candidate to 'have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.[1040] From this standpoint, the AU treaty should also have a provision for the expulsion of the AU member states that do not respect human rights and other AU rules after accessing the Union.

However, given that this solution is not practical as Africa cannot start readmitting members, one of the best approaches would be as mentioned earlier to strengthen NEPAD/APRM by linking it to the African Commission and the African Court on Human and Peoples' Rights. A good integration of NEPAD/APRM in the African human rights system will enhance its ability to realise human rights, even though the system itself is far from being perfect.

Currently, non compliance with the NEPAD agreement has no legal effect, hence the correctness of the argument that 'NEPAD strategy moves away from the traditional hard law binds of treaties encapsulated in regional economic communities and other economic initiatives, towards a soft law mechanism'.[1041] Such an approach does not enhance the realisation of human rights on the continent. For example, the implementation of the right to education through the NEPAD's e- school project[1042] is hampered by the fact that NEPAD is not a treaty. The implementation of the project in question implies inserting cables under the

[1040] European Commission enlargement–Accession criteria available at http://ec.europa.eu/enlargement/enlargement/_process/accession_process/criteria/index_xternal_en.htm (accessed 26 September 2008).

[1041] R Ngamau 'The role of NEPAD in African economic regulation and integration' (2004) 10 *Summer Law & Business Review of the Americas* 520.

[1042] The NEPAD e-school Project was set up in 2003 at the Africa Economic Summit in Durban, South Africa 2003. It aims is to involve young Africans (from primary and secondary school) to the global information society and knowledge economy through the internet for example.

ground in African countries. In some countries, such cables are not allowed because monuments and precious places might be destroyed. In this regard, Shetty of Advance Micro Devices in charge of setting up e-schools on the continent complained that implementers of the project do not find enough space to establish computer labs.[1043] Similarly, Van Jaarsveld of Oracle also in charge of setting up e-schools, echoes his frustration in these terms: 'it is also a big challenge convincing some governments of the viability of this project'.[1044] If countries sign a binding instrument to access the NEPAD, they cannot refuse to accept cables or other projects in their countries.

However, the project had already been implemented in 120 schools in 16 African countries which are: Algeria, Burkina Faso, Cameroon, Egypt, Gabon, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa and Uganda.[1045] Nevertheless, a better legal framework will accelerate the realisation of such projects and enhance the achievement of the rights to education and others.

The integration of NEPAD in the AU is also linked to the legal status of the plan. Article 9 of the Declaration on the New Common Initiative (MAP and OMEGA Plan) underlines the adoption of the Strategic Policy Framework of the New African Initiative as well as its Programme of Action by African leaders.[1046] Accordingly, the NEPAD Heads of State and Government Implementing Committee (HSGIC) at its 8th session held in Maputo, Mozambique on 9 July 2003 recommended the adoption of its decision calling for the integration of NEPAD in the AU. This call was answered at the AU 2nd ordinary session held in July 2003 in Maputo where the AU Summit called for NEPAD to be fully integrated into

[1043] NEPAD's e-learning project faces major obstacles at http://www.cipaco.org/spip.php?article1353 1 (accessed 16 April 2008).

[1044] NEPAD's e-learning project faces major obstacles at http://www.cipaco.org/spip.php?article1353 1 (accessed 16 April 2008).

[1045] NEPAD Progress Report prepared by the AU/NEPAD Secretariat for the 4th meeting of the African Partnership Forum, 5 Abuja, Nigeria, 9-10 April 2005.

[1046] Declaration on the New Common Initiative (MAP and OMEGA). AHG/XXXVII).

the structures and processes of the Union by July 2006.[1047] At its 7th ordinary session held in Banjul, the Gambia from 1 to 2 July 2006, the AU Assembly extended the deadline for the integration to January 2007.[1048]

At the 18th NEPAD HSGIC in Algiers Brainstorming Summit on 21 March 2007,[1049] it was decided among other things to transform the NEPAD into the NEPAD Planning and Coordinating Authority and to determine its structure and profile. This decision was adopted by the 10th AU Assembly in Addis Ababa in January/February 2008[1050] which committed itself to proceed with the integration of NEPAD without delay. This led to the creation of the NEPAD Coordinating Unit (the Unit). The Unit was inaugurated at the AU Commission (AUC) in Addis Ababa on 10 June 2008 by its Chairperson, Jean Ping.[1051] Among its functions, the Unit worked for and obtained the conclusion of the AU Commission/South African host agreement for South Africa to host the NEPAD Secretariat.[1052] This was done in compliance with the decision of NEPAD HSGIC at its 8th session held in Maputo on 9 July 2003 which decided to mandate the Chairperson of the AU to

[1047] Assembly of the African Union 2nd Ordinary Session, 10-12 July 2003, Assembly /AU/Decl.8 (II) available at www.africa-union.org (accessed 7 February 2008).

[1048] '7th Ordinary Session of the AU Assembly held in Banjul' *AUC NEWS*, 11 July 2006, 4 available at www.africa-union.org (accessed 7 February 2008).

[1049] HSGIC Meeting and Brainstorming on NEPAD, 21 March 2007, Algiers, Algeria. This summit recommended 13 points on which the integration process should rely. Among others, the transformation of the NEPAD Secretariat into a NEPAD Planning and Coordinating Authority and the creation of the Coordination Unit was recommended.

[1050] Assembly/AU/10(X).

[1051] 19th Summit of the NEPAD Heads of State & Government Implementation Committee (HSGIC) 29 June 2008, Sharm-El- Sheikh, Egypt; HSGIC/19/ANN-AGN/3 'Expanded annotated agenda'.

[1052] '7th Ordinary Session of the AU Assembly held in Banjul' *AUC NEWS*, 11 July 2006, 4 available at www.africa-union.org (accessed 7 February 2008).

> [e]nter into a temporary host agreement with the Government of the Republic of South Africa with a view to providing the NEPAD Secretariat with a legal status of an AU office operating outside the African Union Headquarters for a transitional period of three years as from July 2003, or until such time the relevant structure of the African Union are fully operational, which ever comes first.[1053]

Though the host agreement was signed and the NEPAD Secretariat operates (now legally) from Midrand, South Africa, it is noteworthy that NEPAD is still represented in its transaction by the Development Bank of Southern Africa.

Prior to the latest integration move, the relationship between the AU and NEPAD seems to be rather competitive with the NEPAD's HSIC more inclined to market the 'NEPAD brand' in front of donors. In this regard, in July 2003, the former Nigerian President, Obasandjo acting as the Chairperson of the HSIC left the AU summit to meet with President Bush who decided to visit four African countries right in the middle of the summit. In the same perspective, Rukato correctly observes that former President Hosni Moubarak of Egypt did not always attend NEPAD Summits, when they were not held in his country.[1054]

There is an urgent need to finalise the harmonisation of the role of various AU bodies with the NEPAD. In compliance with article 3(f) of the AU treaty, a protocol relating to the establishment of the Peace and Security Council (PSC Protocol) of the AU was adopted.[1055] The Peace and Security Council objective is to promote peace, security and stability in Africa in order to guarantee the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable development.[1056] These objectives are similar to what NEPAD aims to achieve.

[1053] The Draft Communiqué issued at the end of the 8th Summit of HSGIC of NEPAD in Maputo, Mozambique, 09 July 2003 (on file with author).

[1054] Rukato's presentation (2009).

[1055] The PSC Protocol was adopted in Durban, South Africa, 9 July 2002 and entered into force on 26 December 2003.

[1056] PSC Protocol, art 3 (a).

Most importantly, the PSC Protocol of the AU, just like the APRM[1057] has its 'Panel of the Wise' (POW) made of five highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace, security and development in Africa and are selected by the Chairperson of the AUC after consultation with the member states concerned.[1058] The POW is the equivalent of the APRM's Panel of Eminent persons.

Nonetheless, though the new NEPAD structure is yet to be approved by the AU, there is hope because the recent inauguration of the unit represents

> [t]he effective take – off of the integration process and the continuing close collaboration between the AU Commission and the NEPAD Secretariat in advancing the overall objectives of integration and contributing to better management of Africa's development process.[1059]

In fact, the integration of NEPAD in the AU has known positive progress and it would not be wrong to argue that NEPAD is now integrated in the AU. In this respect, the NEPAD Secretariat has been transformed into the NEPAD Planning and Coordinating Agency (NEPAD Agency);[1060] the 21st NEPAD Heads of State and Government Implementation Committee Meeting,[1061] worked on 'the adoption by the NEPAD Secretariat of AU policies and procedures in finance, administration, human resource (HR) management, auditing, legal, protocol and procurement'.[1062] In the same vein, to address overlaps and repetition of tasks

[1057] See APRM 2008 Annual Report, 2.

[1058] PSC Protocol, art 11 (2).

[1059] *Nepad Dialogue* 1, issue 239 - 21 August, 2008.

[1060] T Pampalone 'The new NEPAD' *Mail & Guardian*, 19 March 2010 ; also *NEPAD Dialogue* April 2010, Issue 265 available at http://www.nepad.org/newsletter/NEPAD%20Dialogue,%20issue%20265/index.html (accessed 29 May 2010).

[1061] Held in Sirte, Libya, on June 30, 2009.

[1062] J Ping 'Opening remarks at the 22nd NEPAD Head of State and Government Implementation Committee' 4 Addis Ababa, Ethiopia, 30 January 2010, available at www.africa-union.org.

between NEPAD and the AU, the continental body worked to harmonise the work plan of the AUC and the NEPAD Secretariat, to clarify the role of each body and to advance joint collaboration.[1063] In this perspective, new developments occurred with the creation of the NEPAD Agency that comes with a new structure, operating model and financing:[1064]

The major features of the AU/NEPAD governance structure comprise the African Union Assembly of Heads of State and Government, the NEPAD Heads of State and Government Orientation Committee and a Steering Committee.

In terms of operation model, the NEPAD Agency has adopted a strategic direction based on six thematic areas:

- agriculture and food security
- climate change and natural resource management
- regional integration and infrastructure
- human development
- economic and corporate governance
- crosscutting issues of gender, capacity development and information communications technology

In terms of financing, the Agency is financed through the statutory budgets of the AU, voluntary contributions from AU member states and from development partners and the private sector.[1065]

As far as the APRM is concerned, several changes are taking place. For instance, the Base document, the continental Questionnaire, the method of undertaking country self-assessment and peer review are currently revised. However, except the draft revised continental

[1063] Ping 'Opening remarks at the 22nd NEPAD Head of State and Government Implementation Committee' 4 Addis Ababa, Ethiopia, 30 January 2010, available at www.africa-union.org.

[1064] See www.nepad.org (accessed 26 December 2010).

[1065] See www.nepad.org (accessed 26 December 2010).

Questionnaire,[1066] these documents are not yet in the public domain as they are still to be finalised and those that are finalised are not yet validated by stakeholders and approved by the APR panel.[1067] This shows that the APRM does not ensure people's right to participation. We would have expected the APRM Secretariat to put all draft documents on their website, to publicise them and request views and opinions before finalising the documents. Such an approach will bring a sense of legitimacy and ownership of the process on the continent.

It is however, hoped that the integration of NEPAD/APRM in the AU will successfully address the following problems: Established under article 5(h) of the AU Constitutive Act, the Economic Social and cultural Council (ECOSOCC) is an advisory body of the AU.[1068] Amongst its duties, it must ensure good governance, the rule of law, democracy and human rights with special attention to gender equality.[1069] In addition, the ECOSOCC should ensure the participation of the African society in African business. This brief description of the ECOSOCC's activities is far from being different from the APRM's agenda. In the same perspective, like the APRM, the Pan-African Parliament is also called upon to promote good governance on the continent.[1070] This lack of harmonisation of the AU bodies with NEPAD leads to a repetition of tasks, creates confusion and unnecessary expenses. As mentioned earlier, identifying these overlaps and delineating specifics duties as done through the integration process will go a long way in making the continental body efficient.

To achieve the harmonisation, the Unit is a bridge between the AUC and the NEPAD Secretariat. Furthermore, several working visits have been undertaken recently by AUC

[1066] 2011 Draft Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism available at www.nepad.org/aprm (accessed 10 March 2011).

[1067] On 5 January 2010, the researcher went to the APRM Secretariat in Midrand, South Africa where he received the information during a meeting with an official. This was also confirmed by Prof Hansungule who is a consultant at APRM.

[1068] AU Constitutive Act, art 22.

[1069] ECOSOCC Statutes, art 2 (5) & 7 (5).

[1070] See art 3 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, adopted by the 5th Extra-Ordinary OAU Assembly session in Sirte, Libya on 2 March 2001.

personnel in finance, procurement, administration and human resource, legal, protocol, internal audit and management information systems to evaluate the NEPAD Secretariat's needs as they relate to their incorporation into AU procedures.[1071] It could therefore be argued that the long awaited NEPAD/AU integration is a reality now.

However, to what extent is this integration welcomed? Looking at it from Mutua's perspective who saw the complementary mandate of the African Court of Human and Peoples' Rights and the African Commission as a good thing for the realisation of justice on the continent,[1072] it could be argued that spreading the responsibility of ensuring good governance and respect for human rights to various AU bodies is conducive to the establishment and promotion of good governance. In fact, it could be argued that for NEPAD to be successful, it is important to expand its independence from the AU because it runs the risk of being swallowed by the AU's heavy bureaucracy. In addition, it will be easy to monitor its progress and achievements. Donors, civil society organisations and all stakeholders will be able to keep track on what is going on by looking at the APRM and other reports. In the same vein, it could also be argued that the AU is too political to be linked directly to NEPAD; foreign institutions and governments play an important role in NEPAD and the AU does not have room for alien bodies. NEPAD could grow into a monster for the AU. By the look of its reports, NEPAD had already achieved a lot. Why change something which had operated well, even without defining its goals as entitlement?

From a legal standpoint, is amending article 5[1073] of the AU treaty to include NEPAD an option? Yes, it is an option as article 5(2) of the AU treaty empowers the AU 'Assembly to

[1071] J Ping 'Opening remarks at the 22nd NEPAD Head of State and Government Implementation Committee' 4 Addis Ababa, Ethiopia, 30 January 2010 available at www.africa-union.org.

[1072] M Mutua 'The African human rights court: A two-legged stool?'(1999) 21 *Human Rights Quarterly* 343.

[1073] Art 5 of the AU Constitutive Act reads:

' Organs of the Union:

1. The organs of the Union shall be:

(a) The Assembly of the Union;

(b) The Executive Council;

(c) The Pan-African Parliament;

(d) The Court of Justice;

establish other organs'. Nevertheless, perhaps NEPAD should not be included in the AU because it needs some leverage of independence to be efficient in ensuring the realisation of the RTD.

However, 'the standing alone policy' of NEPAD was not conducive to realisation of the RTD. Conscious of the importance of the full integration of NEPAD in the AU, the Pan-African Parliament, concerned with the inadequate coordination and possible overlapping between the activities and mandates of the AU organs and NEPAD, recommended as follows:

> The AU should urgently implement the AU Summit Decision of 2003, taken in Maputo (Maputo Decision), in relation to the integration of NEPAD into AU processes; and strengthen the NEPAD Secretariat to ensure that, it is fully capacitated to play its role within the provisions of the Maputo Decision.[1074]

Yes, it was difficult, but it has happened now. In fact, it was a process which developed from 2001 at the 37th OAU Summit in Zambia, the 2003 AU summit which highlighted the need for a full integration, the 18th HSGIC (in Algiers) and the 10th AU Summit of January/February 2008 which saw the real 'historic moment'[1075] when the integration process took off through the establishment of the Unit. So far, there have been several things to show. For example, the AUC and the NEPAD Secretariat embarked on their First Work Programme Harmonisation Session on 3 November 2009, with the participation of Commissioners, NEPAD Chief Executive Officer, Directors and sectoral Heads;[1076] in addition, the 2010

(e) The Commission;

(f) The Permanent Representatives Committee;

(g) The Specialized Technical Committees;

(h) The Economic, Social and Cultural Council;

(i) The Financial Institutions;

2. Other organs that the Assembly may decide to establish'.

[1074] Pan-African Parliament, Recommendation No PAP-REC. 003/2006, para 1 as adopted on 12 May 2006.

[1075] The Chairman of the AU Commission qualified the inauguration of the Unit as 'historic moment'; *NEPAD Dialogue* 2, Issue 229, 2008.

[1076] Ping 'Opening remarks at the 22nd NEPAD Head of State and Government Implementation Committee' 5 Addis Ababa, Ethiopia, 30 January 2010 available at www.africa-union.org.

budget of the NEPAD was presented to the AUC and was incorporated in the overall budget of the AU.[1077] These realisations are expected to enhance NEPAD capacity to realise human rights and the RTD in particular.

However, though the integration is now a reality, many challenges remain to be addressed. For instance, there is a strong need to ensure 'the institutionalisation of a coordinated approach and regularised feedback between the various departments, divisions and sections of the AUC and the NEPAD Secretariat in their operational and programmatic functions'.[1078] In addition, ensuring the capacity of the Unit as to fulfill its mandate and the availability of necessary funds to the integration process are other serious challenges.[1079]

On the APRM's side, a look at the APRM legal status reveals that the APRM Base Document,[1080] the Memorandum of Understanding[1081] (MOU) and other decisions of the HSGIC are from a soft law register and cannot be binding on state parties that need a legal push to comply with their human rights mandate. In fact, the MOU is weaker than the APRM base document. According to the APRM Base Document,

> [t]he mandate of the A PRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.[1082]

[1077] Ping (2010) 5.

[1078] Ping (2010) 6.

[1079] Ping (2010) 6.

[1080] The Base document was approved at the July 2002 OAU Durban summit in the 'Durban Declaration on Democracy, Political Economic and Corporate Governance'; See NEPAD Declaration on Democracy, Political, Economic and Corporate Governance AHG/235 (XXXVIII) Annex I, 1.

[1081] The MOU was adopted at the 6th HSGIC meeting held on March 2003 in Abuja, Nigeria.

[1082] APRM Base Document para 2.

Meanwhile, the MOU says the following about the mandate:

> The mandate of the APRM is to encourage participating state in ensuring that the policies and practice of participating states conforms to the agreed political, economic and corporate governance values, codes and standards, and achieve mutually agreed objectives in socio-economic development contained in the Declaration on Democracy, Political, Economic and Corporate Governance.[1083]

The APRM Base document asks participating states to 'ensure' that principles and policies are respected, whereas the MOU asks them only to 'encourage' participating state to respect APRM policies. Furthermore, the weakness of the MOU is highlighted by the fact that there is no sanction if a participating state does not abide by the rules, while the APRM Base document guarantees the respect of rules by threatening stubborn participating states with 'appropriate measures'[1084] In fact, the weakness of the APRM legal framework led Hansungule to argue that

> [n]otwithstanding the clear and express desire from the Base Document, the APRM cannot per se force a participating country to comply with its commitments or promises under any of the instruments using law. For instance, failure by a participating State to move from Support Mission to self-assessment stage has no legal consequences. APRM cannot insist on compliance or threaten legal measures upon a deviant state. Yet, APRM documentation uses legal terminologies like 'acceding to the Memorandum of Understanding', etc. In fact not being a treaty this constitutes inappropriate use of language.[1085]

However, the APRM MOU reads: 'All procedures to be adopted under the APRM shall be consistent with the decisions and procedures of the African Union.'[1086] In other words, the APRM's 'hardness' is borrowed from its association with the AU. The other use of hard law or treaty language appears in the APRM instrument when the MOU underlines 'Member states of the African Union wishing to accede to the [APRM] shall sign the MOU'.[1087] The

[1083] MOU para 6.

[1084] APRM Base Document, para 24.

[1085] Hansungule (2008) 8.

[1086] MOU para 27.

[1087] MOU para 30; also NEPAD/APRM/panel13/Guidelines/11-2003/Doc-8.

verb 'accede' should be highlighted here, because it is generally used when referring to treaties or binding instruments.

Nevertheless, the use of hard law language in a soft instrument does not change it into a hard one. However, the finalisation of the integration of NEPAD in the AU will boost the legality of the APRM. In this regard, the 2008 AU Summit in Egypt 'decides that the APRM structures, namely the APRM Forum, the APRM Panel and the APRM Secretariat shall be part of the processes and structure of the African Union'.[1088] It also called upon the AU Commission to negotiate and conclude a host agreement, with the Government of South Africa, for the APRM with a view to facilitating the discharge of its mandate'.[1089] These linkages between the AU and the APRM will definitely strengthen the legal force and legal *persona* of the APRM. This will go a long way in keeping African leaders on their toes in implementing the RTD as well as other human rights.

In sum, the recent integration of the AU has clarified clarify and strengthened the legal status of NEPAD. This is it a good move to enhance the prospects for the RTD in Africa.

5.4 NEPAD and the right to participation

The previous chapters[1090] identified the right to participation as one of the cornerstones of the RTD. In this regard, African states recognise that[1091]

> [n]ations cannot be built without the popular support and full participation of the people, nor can the economic crisis be resolved and the human and economic conditions improved without the full and effective contribution, creativity and popular enthusiasm of the vast majority of the people. After all, it is to the people that the very benefits of development should and must accrue.

[1088] Assembly/AU/Dec.198 (XI) 'Decision of the African Peer Review Mechanism' para 6.

[1089] Assembly/AU/Dec.198 (XI) 'Decision of the African Peer Review Mechanism' para 7.

[1090] Chapter 3 & 4.

[1091] The African Charter for Popular Participation in Development and Transformation, part 1, para 3.

In other words, there is no development without popular participation. This section examines the extent to which the right to participation is implemented in the NEPAD programme. To achieve its aim, the section will look at the birth certificate of NEPAD to assess to what extent African folks participated to the establishment of the plan before examining to what extent its operationalisation is participatory.

5.4.1 The birth of NEPAD - OMEGA/MAP: An impossible compromise

As mentioned in chapter two,[1092] the MAP was designed by former President of South Africa Mebeki. His mandate originated from the 1999 OAU Extraordinary Summit in Sirte, Libya where he and Bouteflika of Algeria were mandated to deal with African creditors to obtain the total cancellation of Africa's external debts. In the same vein, the South Summit of the Non Aligned Movement and the G77 which was held in Havana, Cuba in April 2000, mandated Presidents Mbeki and Obasanjo (former President of Nigeria) to discuss debt cancellation of developing countries with the G8, the World Bank and the IMF.[1093] The same mandate was reiterated to Mbeki, Obasanjo and Bouteflika at the 2000 OAU Summit in Togo.

The OMEGA Plan was Senegalese President Abdoulaye Wade's plan to free Africa from poverty. It was Wade's personal initiative and he clearly said: 'I didn't wait to be called on by Africa to study this [plan].'[1094] Answering the question whether there was no risk of duplication between OMEGA and MAP, he clarifies further: [1095]

[1092] Section 2.4.

[1093] Report of the Chair on the activities of the Non Aligned Movement, Ministerial meeting, Millennium Assembly, New York, September 2000; also Statement delivered by Ambassador Aluko-Olokun, Member of NEPAD Steering Committee and former personal representative of Obasanjo on NEPAD, on behalf of the NEPAD Steering Committee and Secretariat at the opening ceremony of the meeting of experts on debt sustainability held in Dakar, Senegal, 17 November 2003.

[1094] Interview published by All Africa Global Media (all Africa.com) 8 February 2001, with Senegal`s President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

[1095] Interview published by All Africa Global Media (all Africa.com) 8 February 2001, with Senegal`s President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

> The difference is that they, Mr Mbeki, Mr Obasanjo and Mr Bouteflika have been mandated by Africa (by the organization of African Unity and the G15) to make contacts and talk with the G7/8 group of countries about debt problems. And they've talked about a plan for Africa. But they were the advocates of PLANS for Africa. We gave them the mandate. But as an individual and an economist, I have proposed ONE plan for Africa.

As will be discussed below, Wade's rhetoric on 'PLANS and ONE plan for Africa' hides enormous discrepancies and controversies on OMEGA and MAP. However, these days, it is common knowledge that the two plans were merged and gave birth to the NAI which also gave birth to NEPAD. Nonetheless, is the merger of two very different ideologies possible? The question is to investigate whether the background of NEPAD is not a roadblock to its ability to realise the RTD. The answer to this question will reveal to what extent NEPAD can contribute to the eradication of poverty known as the RTD in the human rights discourse.

The OMEGA Plan focuses on economic development with a target of realising 7% growth. Its priorities are investing in education, health care, infrastructure and agriculture. OMEGA is specific with proposed solutions to its realisation. For example, it proposes the establishment of five private universities sponsored by renowned tertiary institutions from the West to enhance education in Africa.

Contrary to the MAP, it does not address governance and democracy. MAP has a more holistic approach with special emphasis on:

- peace building, good governance, democracy
- investment in people
- diversification of Africa's production and export
- investment in ICT and other infrastructure
- development of financing mechanisms

In fact, MAP had respect for human rights and the rule of law in mind, hence its emphasis on good governance and human rights.

The other striking differences between MAP and Omega lie in the funding process. While MAP advocates for aid and private capital flow and debt reduction,[1096] OMEGA believes that

[1096] MAP para V (86), (87) & (96).

the traditional structure of aid and lending should be changed.[1097] This means, according to OMEGA the cost of investment should be evaluated in US dollar and submitted to donors[1098] and will be complemented by domestic input. Consequently, OMEGA advocates the establishment of a single international authority in charge of the execution of the plan and management of resources.[1099] In addition, it says a Board of Directors made of debtors and creditors representatives should be part of the management structure.[1100] Wade believes that Africa should be given long-term concessional loans to be paid back after 50 years.[1101] It is submitted here that OMEGA does not have any intention to integrate the plan in the AU, because creditors have no seat in the AU. This is basically a sort of 'Marshal Plan'. Though Wade argues the contrary,[1102] it is submitted that his plan to gather funds to build the continent has some similarities with the Marshal Plan to rebuild Europe; the only difference being that Europe was devastated by a war and Africa is devastated by poverty. OMEGA focuses on economic growth and believes that the growth is going to 'trickle down' to the poor. Wade wants to keep the plan at subregional and regional level, though his plan has a section on national needs assessment, but which should be determined from a subregional stand point.[1103] In fact, he stated in various interviews in 2001: 'The originality of the

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[1097] OMEGA Plan, chap 1, para 87.

[1098] OMEGA Plan, chap 2, para 6.

[1099] OMEGA Plan, chap 5, para 2.

[1100] OMEGA Plan, chap 5, para 3.

[1101] A Wade 'Omega Plan for Africa: An African strategy for globalisation' 12 (4) *The African Economist* 36; also E Harsch 'Africa preparing its own recovery plans – Leaders aim for new drive to combat continent's poverty, global marginalisation' in *Africa Recovery* at http://www.un.org/ecosocdev/geninfo/afrec/vol15no1/151gov1.htm (accessed 26 July 2008).

[1102] L Villalon 'An interview with President Abdoulaye Wade of Senegal' on 29 April 2001, at http://kasc.ku.edu/~kasc/resources/newsletters/2001_spring/8/index.shtml (accessed 5 July 2008).

[1103] OMEGA Plan, chap 2, para 2.1.

OMEGA plan is to think in regional and continental terms';[1104] 'it is the continental vision and not individuals countries'.[1105]

In contrast, MAP stands for an African leadership of the plan, made of African Heads of State and Government with binding decisions on participating countries,[1106] thus giving some space for the integration of the plan in the AU and the incorporation of the plan in national development policies. This seems to be an area of impossible compromise between OMEGA and MAP. This impossible compromise weakens NEPAD which symbolises the Wade/Mbeki ideological conflict. This also fuels concerns on NEPAD's legitimacy especially when Mbeki states: 'participation [in NEPAD] will be opened to all African countries prepared and ready to commit to the underlying principles guiding the initiative… Countries that are not ready will be welcome to joint later'.[1107] The former Nigerian President's (Obasanjo) statement that NEPAD will be 'a plan by Africa for the People of Africa'[1108] ignores the fact that there was no referendum to consult Africans.[1109]

Again, in contrast to OMEGA, MAP suggests the establishment of a 'binding commitment by the developed countries and multilateral institutions to an agreed set of obligations with accompanying milestones and timeframes'.[1110]

[1104] Villalon (2001).

[1105] Interview published by All Africa Global Media (all Africa.com) on February 8 2001, with Senegal`s President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

[1106] MAP para V (104) & (104.1).

[1107] Briefing by President Thabo Mbeki at the World Economic Forum Meeting: Millennium Africa Renaissance Programme – Implementation Issues, 28 January 2001.

[1108] E Harsch 'Africa preparing its own recovery plans – Leaders aim for new drive to combat continent's poverty, global marginalisation' in *Africa Recovery* at http://www.un.org/ecosocdev/geninfo/afrec/vol15no1/151gov1.htm (accessed 26 July 2008).

[1109] More discussion on the legitimacy of NEPAD is provided in chapter 3 of this thesis.

[1110] MAP para V (102.2).

The OMEGA was a precise economic plan underpinned by education, health care, infrastructure and agriculture and was to be achieved in 15 years which became the NEPAD time frame. Again, this is in contrast with MAP which stands for a broader development approach. It can be argued that the realisation of the RTD should not be submitted to a time frame, it should be integrated in the way of life, be institutionalised or else it will not be sustainable. Nevertheless, a timeframe is fundamental in giving directions and providing a comprehensive vision for the realisation of a project.

Notwithstanding their differences, both programmes catered for Africa's development with special emphasises on the African ownership of development projects (through African leaders), though there was no referendum to mandate African leaders. The advent of the NAI symbolised the compromise which is now known as NEPAD.

Nonetheless, was this compromise possible? It seems that though the two plans had fundamental differences, there were merged to respond to demands of African Ministers who wanted to avoid the diffusion of energies and resources through two separate initiatives.[1111] It is also argued that the fusion of the two plans was based on 'the need to avoid confusing Africa's partners, diffusing the focus, eroding capacity, splitting resources and undermining the credibility of the plans'.[1112] Thus, it could also be argued that the fusion of the two plans was not informed by their synergies.

From a different perspective, it could be argued that MAP and OMEGA were never merged. In Davos, Switzerland where Mbeki, Obasanjo and Wade were on the same platform to unveil

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[1111] This request was made in Algiers on 8 – 10 May 2001 when African Finance, Development and Planning Ministers met to discuss the two plans.

[1112] E Baimu 'Human rights mechanisms and structures under NEPAD and the African Union: emerging trends towards proliferation and duplication' 2; Occasional paper No 15, Centre for Human Rights, University of Pretoria, August 2002 available at http://www.chr.up.ac.za/centre_publications/occ_papers/occ15.html (accessed 20 July 2007).

a plan for Africa, Wade was not aware that his peers had a plan in their pocket. He thought they came to listen to his plan, hence his comment:[1113]

> To be honest, I didn't know that they (Mbeki and Obasanjo) were going to talk about a plan for Africa. It was right there in Davos that I found out about it. But I spoke and they both said, indeed, what President Wade has said fits perfectly with our plan for Africa.

Against this view, it can be argued that the fusion of the two plans followed the Davos meeting. Nevertheless, such an argument does not stand, because of the continuous rifts between NEPAD's architects with Wade arguing that NEPAD had achieved nothing while his peers disagree,[1114] Wade trying to keep the policy at subregional and regional level whereas the other founders stand for the integration of NEPAD at national level. This ideological battle was further illustrated by the very remarkable absence of Mbeki, Obasanjo (the chair of the Meeting), Bouteflika (Algeria) and Moubarack (Egypt the other NEPAD's founder) at the 2002 NEPAD meeting in Dakar, Senegal. All of them claimed to have other commitments.[1115]

However, from 2002 to 2008, much water ran under the bridge, hence Mbeki and other influential NEPAD leaders were present at the April 2008 NEPAD meeting in Senegal. Unfortunately, the Summit was not a success, and the headline was: 'African leaders fail to make a breakthrough on NEPAD'.[1116]

[1113] Interview published by All Africa Global Media (all Africa.com) on February 8 2001, with Senegal`s President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

[1114] 'Is NEPAD nothing but a talk shop?' *African business* available at http://findarticles.com/p/articles/mi_qa5327/is_20051/ai_n21365124 (accessed 25 July 2008).

[1115] O Quist-Arcton 'Mbeki, Obasanjo, Bouteflika, Absent from NEPAD Meeting in Senegal' *All Africa.com* available at http://allafrica.com/stories/printable/200204150989.html (accessed 25 July 2008).

[1116] D Flynn 'African leaders fail to make a breakthrough on NEPAD' *Reuters*, available at http://www.reuters.com/articlesPrint?articlesid=USL15142193 (accessed 25 July 2008).

The noise and disagreement on the nature of the African development plan shows that African peoples had no say or were not consulted prior to its establishment. The confusion is incredible and affects the poverty eradication mechanisms at national level.[1117] Wade once said if the NEPAD plan does not incorporate his views, he was going to stand by them.[1118] It is not about Mbeki or Wade or anybody's views, but about the welfare of African people. African leaders must get their act together, clear up the confusion and allow the RTD to become a reality on the continent. They should eliminate the impression that NEPAD objective is to create an 'enriched elite'[1119] and not to empower African people. Nonetheless, African leaders broadly agree that the third challenge of NEPAD is [1120]

> [s]peeding up the integration of NEPAD plans into national development programmes in agriculture, health, education and skills development, water and sanitation, science and technology and SMME development. Unless this happens, African countries will not be in a position to achieve the Millennium Development Goals or their sustainable development.

However, the controversy is far from being over. President Wade unveiled the initiative by Senegal on the revitalisation of NEPAD, at the 15 April 2008 HSGIC Meeting in Dakar. In his speech, Wade ignored the conclusions of the 21 March 2007 Algiers Brain Storming Meeting adopted at the 10th AU Summit in January 2008, in Addis Ababa which said that implementation should be through:

a) Countries
b) Regional Economic Communities (REC's)
c) Development institution
d) Bilateral and multilateral organisation.

[1117] The national policies makers wondered whether national development policies should be informed by the NEPAD framework or not.

[1118] Interview published by All Africa Global Media (all Africa.com) on February 8 2001, with Senegal's President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

[1119] Manby (2004) 1002.

[1120] 'Facing the Challenge' *NEPAD Dialogue* 7 issue No 17, 7.

Wade said NEPAD should function at intra-regional level, inter-regional and continental levels, but did not mention country level and other institutions, ignoring the view of other leaders.[1121]

Notwithstanding the Algiers HSGIC Meeting and the 10th AU Summit conclusion underlining that NEPAD is part of the AU, hence the need for a rapid integration through the work of the NEPAD Secretary and the AU Commission, Wade's initiative for the revitalisation plan did not involve the AU. According to Wade's revitalisation plan, the new NEPAD management configuration will change. The HSGIC will be replaced by 'the Committee of Heads of State for the Design, Supervision, and Coordination of NEPAD'.[1122] To describe this Committee *verbatim*, it

> [w]ould function as an apex Steering Committee or Boards of Directors. The Presidency/Chairmanship, who would from indications in the Senegalese document, be assumed by President Wade, would be assisted by 4 Vice Chairs and 6 Heads of state regionally selected who would oversee the sectors. Also proposed was an interim arrangement which would have the ten sectors [of the NEPAD project] been overseen in respective clusters by the leaders of the following countries, Nigeria, Senegal, South Africa, Algeria, Uganda and Ethiopia. The chair will be assisted by a light Secretariat, while the Vice Chairs will also, each, have supporting technical/administrative Office. The Steering Committee will, on its part, transform into a Sherpa Committee of Assistant to the Presidents.[1123]

Where is the AU in this revitalisation plan? Perhaps Wade has personal ambitions. Why should he be the president of the NEPAD management structure without elections where African people can exercise their right to participation? The striking thing here is that, there is no reference to AU, no reference to taking the plan to country level and it seems NEPAD

[1121] HSGIC/19/NEPAD-REW/5, 19th Summit of the NEPAD Heads of States & Government 29 June 2008, Sharm-El-Sheikh, Egypt; Report of the NEPAD Review Summit, 2. Dakar, Senegal, 15 April 2008.

[1122] HSGIC/19/NEPAD-REW/5, 19th Summit of the NEPAD Heads of States & Government 29 June 2008, Sharm-El-Sheikh, Egypt; Report of the NEPAD Review Summit, 2. Dakar, Senegal, 15 April 2008.

[1123] HSGIC/19/NEPAD-REW/5, 19th Summit of the NEPAD Heads of States &Government 29 June 2008, Sharm-El-Sheikh, Egypt; Report of the NEPAD Review Summit, 2. Dakar, Senegal, 15 April 2008.

should belong to a club (Nigeria, Senegal, South Africa, Algeria, Uganda and Ethiopia) in charge of its implementation. Wade simply ignored the 2007 Algiers and 2008 Addis Ababa conclusions stating that 'NEPAD is a Program of AU which constitutes a philosophical framework, a vision and mission for Africa [and that] NEPAD is therefore, not an implementing institution'.[1124] More importantly, in response to Wade's proposal to revitalise the NEPAD, the Dakar 2008 HSGIC Summit stated: [1125]

> The Heads of State came up with the Algiers Decisions, to ensure coherence between the work of the NEPAD Secretariat, and that of the AU Commission. These decisions are already being implemented, for example, the recruitment of the NEPAD CEO is on course [before the appointment of the current CEO Dr Ibrahim Assane Mayaki]. It would therefore not be helpful to the ongoing integration process and momentum to come up with a new initiative that tends to create parallel process and structure.

Though the Summit also promised to submit Wade's proposals on NEPAD institutional arrangements, to the AU/NEPAD Coordinating Committee for its consideration,[1126] it was almost impossible to stop the running machine which reached the 'historic moment'[1127] with the inauguration of the Unit almost two months later (on 10 June 2008). Though the Unit is already at work and NEPAD integrated in the AU, it could be argued that the ideological rifts which hindered NEPAD's progress are yet to be forgotten. As mentioned earlier, Wade once said, if the NEPAD plan does not incorporate his views, he was going to stand by them.[1128]

[1124] Conclusions & Recommendations of the HSGIC Meeting and Brainstorming on NEPAD, para 4; Algiers 21 March 2007; adopted by the 10th AU Summit in Addis Ababa (January 2008).

[1125] HSGIC/19/NEPAD-REW/5, 19th Summit of the NEPAD Heads of States &Government 29 June 2008, Sharm-El-Sheikh, Egypt; Report of the NEPAD Review Summit, 3. Dakar, Senegal, 15 April 2008.

[1126]HSGIC/19/NEPAD-REW/5, 19th Summit of the NEPAD Heads of States &Government 29 June 2008 , Sharm-El-Sheikh, Egypt; Report of the NEPAD review summit, 4. Dakar, Senegal, 15 April 2008.

[1127] At the inauguration of the UNIT in charge of finilising NEPAD's integration the AU, Jean Ping the Chairman described the event as 'a historic moment'.

[1128] Interview published by All Africa Global Media (all Africa.com) on February 8 2001, with Senegal`s President Abdoulaye Wade available at http://www.intllnet.org/news/2001/02/13/2507-1.html (accessed 21 July 2008).

What is next? How does he stand by his views in front of the AU? Hopefully, he will simply stand with his peers at the AU in support of the plan.

Perhaps Wade should reconsider his views because he was not mandated to establish an African plan. In any case, African leaders should always look for an appropriate compromise and constantly keep in mind that Africans' welfare is paramount. The departure of Mbeki or any other NEPAD founder or African leader should not affect the sustainability of the plan.

Interestingly, it is clear that in the early days of NEPAD, African people were not involved in the process; their rights to participation were not a matter of concern, and hence the lack of human rights based approach to the continental development agenda. Appiagyei-Atua correctly argues that 'African leaders have failed to articulate an effective concept of right that positively linked human rights to development in relation to [African people] culture and history'.[1129]

In summary, the differences between the two plans are so pronounced that fusing them was going to be counter-productive on the implementation field. In spite of few successes, it is important to note that until NEPAD architects share the same ideology and speak the same language, the victory against poverty might remain a dream. In fact, the description of the birth of NEPAD above clearly shows that prior to the advent of NEPAD, African folks were not informed, they were not consulted and they did not participate in the establishment of the African plan aimed to address their concerns including their RTD. Having exposed the lack of participation of Africans in the early days of NEPAD, the next section will assess the involvement of the people after the establishment stage.

5.4.2 NEPAD/APRM and civil society participation

The previous section shows that neither MAP nor OMEGA involved the civil society in its establishment. The right to participation in the establishment of NEPAD could have been ensured by the organisation of a referendum on its establishment. Unfortunately, the people of Africa were left out. Sharing this view, a commentator argues that while the NEPAD document calls for the participation of the people in development, the process through which

[1129] K Appiagyei-Atua (2006) 548.

the document itself was drawn excluded the people.[1130] However, it is instructive to note that the organisation of a referendum was going to be almost impossible or unachievable because of the distinctive features of each African country as well as the financial and other logistical implications of a continental referendum.

Nevertheless, discussing the NEPAD at Parliamentary level in each African country, in various African villages as well as in the African Parliament was going to be a good step towards involving Africans in the whole process. This view derives from the fact that parliaments are representative of the people, especially in democratic states. NEPAD's architects are convinced that African leaders derive their mandate from their people and can act on their behalf. This is evidenced by paragraph 47 of the NEPAD document which reads:

> We believe that while African leaders derive their mandates from their people, it is their role to articulate these plans [as contained in the NEPAD] and lead the processes of implementation on behalf of their peoples.

This argument is too general because all African states are not democratic, or rather all African leaders are not democratically elected. Therefore, claiming that the NEPAD 'is based on the agenda set by the African peoples through their own initiatives and their own volition, to shape their own destiny' as paragraph 48 of the NEPAD document states is very controversial. This is evidenced by the rejection of NEPAD by the African Civil Society Declaration on NEPAD in these terms: 'We do not accept NEPAD!! Africa is not for Sale.'[1131]

NEPAD's architects preach people's participation through Paragraph 56 of the NEPAD when it reads:

[1130] Baimu (2002) 308.

[1131] The African Civil Society Declaration on NEPAD 'we do not accept NEPAD!! Africa is not for sale!!' The African Civil Society Declaration is available at http://www.ifg.org/wssd/acsnepad_decl.htm> (accessed 13 January 2005).

> We are, therefore, asking the African peoples to take up the challenge of mobility in support of the implementation of this initiative by setting up, at all levels, structures for organization, mobilization and action.

This paragraph seems to be unrealistic. The state is the main duty bearer of human rights. Therefore, it should set up structures and initiatives to ensure that people take part in national and regional affairs and not call upon the populace to 'set up structures for organisation and action'. Some scholars believe that the founders of NEPAD did not have Africa's interest at heart.[1132] They argue that Wade and Mbeki came with new development paradigms because the previous ones came from Africa experts and not Heads of state.[1133] In an interview, Wade points out that this time around, the plan was drafted by the decision makers,[1134] hence the criticism according to which NEPAD has a top-down approach policy. The African Civil Society Declaration on NEPAD states that the NEPAD is

> [a] top-down programme driven by African elites and drawn up with corporate forces and institutional instruments of globalisation, rather than being based on African experiences, knowledge and demands. A legitimate African programme has to start from the people and be owned by the people.[1135]

From this standpoint, the African Civil Society Declaration on NEPAD makes a good point. NEPAD has to start from the people and be owned by the people. During his field trip for this

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[1132] M Kankwenda, 'Forty years of development illusions: revisiting development policies and practices in Africa'; B omonide 'Mobilisation for the implementation of alternative development paradigms in 21st Century Africa; S.O Tomori and O.W. Tomori 'Revisiting the African alternative framework to structural adjustment programmes for socio-economic recovery and transformation (AAF-SAP) in contemporary Nigeria; O. Ajakaiye 'The centrality of planning to alternative development paradigms in Africa' ; H A. Sunmonu ' Implementation of Africa's development paradigms: solutions to Africa's socio-economic problems; E. Onubogu 'Modernisation, globalistion and Africa's political economy: the Case of Nigeria', all in Omonide *et al* (2004).

[1133] Onimode *et al* (2004) 237.

[1134] A Wade 'Africa, an outcast or a partner?' (2002) 6 *African Geopolitics* 49.

[1135] African Civil Society Declaration on NEPAD, preamble, para 3. http://www.ifg.org/wssd/acsnepad_decl.htm> (accessed 13 January 2005).

study, the author encountered abject lack of co-operation and was even chased away from various NEPAD founders' countries embassies in Pretoria and Ottawa. This sad situation yielded some reflections: Who wrote the NEPAD programme? Do the officials at the embassies know about NEPAD? If so, why were they so reluctant to discuss with the researcher?[1136] If the receptionist or clerk or secretary were not willing to provide assistance to researchers, how did they get their jobs? Who appointed them and why? Are they accountable? What about people's right to information which goes hand in hand with the right to participation? All these questions raise serious development concerns and highlight the disconnection between the leadership and the people. If the RTD is to be realised through NEPAD, future researchers should not encounter such roadblocks.

Under former President Mbeki, in some circles NEPAD was not perceived as a human rights machine, but as a tool for South Africa's imperialism in Africa.[1137] This view was sustained during the 2008 Alternatives Day by Scroeder of Khanya College in South Africa.[1138] According to Scroeder, the South African Government practiced neo-liberal policies at home and uses NEPAD to expand such policies on the continent.[1139] In other words, he views NEPAD as a South African tool to dominate the continent.

Echoing Landsberg's view,[1140] this writer stood against such arguments and maintained that the thesis of NEPAD being instrument of South Africa and other founding countries *diktat* fails because the plan was well received throughout the continent. Africa's regional and

[1136] The author and his friend Donald Rukare (also a Phd candidate) encountered the difficulties at various embassies in Pretoria from 10 to 15 May 2009.

[1137] R Naidoo 'The New Partnership for African Development (NEPAD): Where to from here?' in NALEDI (2000) 3.

[1138] Khanya College is a South African organisation standing against neo-liberalism.

[1139] I Scroeder 'Immigration to build solidarity' Axis 3, 2008 Alternatives Days at St Alphonse de Rodriguez, Montreal, Canada, 23 August 2008.

[1140] C Landsberg 'NEPAD: What is it? What is missing? Paper written for NALEDI in *building alternatives to neo-liberal globalisation:The Challenges facing NEPAD*"(2004*)* 9

subregional bodies embrace and support the programme. In addition, because NEPAD recognised the need for partnership between African states, this author echoed Landsberg who maintains that NEPAD does not belong to South Africa or any other country, but to Africa.[1141] Echoing the view of Hope, this writer also argued that Africa's leaders find themselves in a 'damned if they do, damned if they don't' position.[1142] They were damned for not demonstrating leadership to solve Africa's development problems and then, having done that by launching the NEPAD, they were damned for not consulting others to demonstrate their leadership.

This thesis does not find NEPAD irrelevant, but it is of the view that NEPAD should do more for the realisation of the RTD by implementing a rights based approach to development. It should be aknowledege that NEPAD brought back the question of Africa's development on the table.

However, to clarify the question of NEPAD being an instrument of few countries dominance on the continent, an African Opinion Leader Survey on NEPAD and AU was realised in 2002[1143] in seven African countries (South Africa, Nigeria, Senegal, Algeria, Kenya, Uganda and Zimbabwe); South Africa, Nigeria, Senegal and Algeria were chosen because they were amongst NEPAD founders while the Kenya, Uganda and Zimbabwe were chosen randomly.

Respondents were asked to indicate the extent to which they agreed with the statement that 'NEPAD does not embody the economic aspirations of all Africans'. Most respondents in South Africa, Nigeria and Kenya believe that NEPAD embodies the economic aspirations of all Africans while in Algeria, Zimbabwe, Uganda and Senegal, the majority of elites believe

[1141] Landsberg (2004) 9.

[1142] K R Hope 'Practitioner perspective –towards good governance and sustainable development: the African Peer Review Mechanism' (2005) 18(2) *Governance: An International Journal of Policy, Administration, and Institutions* 288.

[1143]'The African Opinion Leader Survey on NEPAD and AU (2002); Preliminary Report presented by the Centre for International and Comparative Politics in co-operation with Konrad-Adenauer-Stiftung.

the contrary, in so doing expressing reservation in the ability of the NEPAD guidelines to tackle the economic needs of the African population in general.[1144]

Questioning the elitist or top-down approach character of NEPAD, the African Opinion Leader Survey on NEPAD and AU mentioned above[1145] asked respondents to indicate on a scale of 1 (strongly agree) to 5 (strongly disagree) the extent to which they agreed with the statement that "only the ruling elite is actively engaged in promoting NEPAD'. The majority of respondents in all countries except Zimbabwe believe that NEPAD is largely an elite-driven process. Uganda with 2.20 displayed the strongest level of agreement, followed by Nigeria with 2.20, Senegal with 2.44, South Africa with 2.57, Kenya with 2.60 and Zimbabwe displayed the highest level of confidence in NEPAD's inclusiveness. From this standpoint, the civil society is excluded and does not participate. Such perceptions of NEPAD need serious improvement in order to provide room for human rights realisation.

Nevertheless, in order to democratise NEPAD and bring it to the man on the street, Nigeria, Senegal, Algeria and South Africa have launched a number of outreach programs, though the latter have only conveyed the general outlines of the plan and have not vigorously engaged civil society participation.[1146] In fact, the statistics remain shocking because only 14% of the elite interviewees were aware of NEPAD's existence, while 80% of respondents have no knowledge of NEPAD at all in the selected countries.[1147] It is important to note that in this context, the elite interviewees were persons who hold authoritative positions in powerful public and private organisations and influential movements and who are therefore able to affect strategic decisions regularly. The ignorance of NEPAD by the elite or the 'powerful' demonstrates that the man on the street or the peasant has no say on the whole process. Due to

[1144] The African Opinion Leader Survey on NEPAD and AU (2002).

[1145] The African Opinion Leader Survey on NEPAD and AU (2002).

[1146] The African Opinion Leader Survey on NEPAD and AU (2002).

[1147] The African Opinion Leader Survey on NEPAD and AU (2002).

the lack of participation of African populace, it is argued that the NEPAD is externally-driven[1148] and therefore meaningless for Africans.

However, the 2002 Survey referred to above reveals the contrary. The respondents were asked to identify from a list what they considered as five most desirable benefits of NEPAD and classified them per priority. The list was made of: African unification; the eradication of poverty; stronger democratic governance; improved infrastructure, the restoration of Africa's dignity; political stability; improved health care; increased foreign direct investment (FDI); improved social welfare; better education for all; jobs for all; food for all; and reawakening of African cultural traditions.

[1148] J Akokpari 'Policing and preventing human rights abuses in Africa: the OAU, the AU & the NEPAD Peer Review' (2004) 32 *International Journal of Legal Information* 466.

The following table summarises the perceived benefits of NEPAD by Africans

Table: Perceived benefits of NEPAD

Rank	South Africa	Nigeria	Senegal	Algeria	Kenya	Uganda	Zimbabwe
1	Eradication of poverty (38.2%)	Eradication of poverty (25.5%)	African unification (26.3%)	Eradication of poverty (27.5%)	Eradication of poverty (30.0%)	Eradication of poverty (34%)	Stronger democratic governance (24.3%)
2	Stronger democratic governance (15.9%)	African unification (20.8%)	Improved infrastructure (19.4%)	Political stability (18.3%)	African unification (15.0%)	African unification (15.5%)	Eradication of poverty (22.1%)
3	African unification (10.8%)	Political stability (13.1%)	Eradication of poverty (14.2%)	Stronger democratic governance (12.7%)	Political stability (9.2%)	Stronger democratic governance (12.5%)	African unification (14.3%)
4	Increased FDI (6.4%)	Stronger democratic governance (10%)	Stronger democratic governance (12.7%)	African unification (10.0%)	Stronger democratic governance (8.3%)	Political stability (8.2%)	Increased FDI (11.4%)
5	Jobs for all (3.9%)	Restoration of African dignity (7.7%)	Increased FDI (7.5%)	Improved infrastructure (5.8%)	Improved infrastructure (5.8%)	Improved infrastructure (7.2%)	Political stability (10.0%)

Source: The African Opinion Leader Survey on NEPAD and AU-2002, Centre for International and Comparative Politics in co-operation with Konrad-Adenauer-Stiftung.

An analysis of the table above shows that Africa needs NEPAD to eradicate poverty, to be unified and implement stronger democratic governance. It can therefore be argued that Africans believe that NEPAD plays a vital role in the achievement of their RTD. The majority of elite respondents in Algeria (27.5%), Kenya (30%), Uganda (34%) South Africa (38.2%) and Nigeria (28.5%) considered the eradication of poverty as the desirable profit of NEPAD. In this regard, NEPAD appears to be a vital instrument to realise the RTD in Africa, because if poverty is beaten, Africa will be developed and its people will be on the right track towards the achievement of their RTD. More importantly, the mere fact that Africans believe in NEPAD is a good step in legitimising the plan, because accepting and owning the plan will increase its chances of success.

However, the legitimacy of the plan is hindered by Wade messages. He strongly criticised NEPAD claiming that accomplishments are 'slow to materialise' due to wastage of 'time and money' and also due to lack of appropriate administration.[1149] In addition, he complained about the 'English takeover'[1150] of the plan by English speaking countries. Most importantly, he claimed that the 'true conception of the project'[1151] is not worth wasting time for. To make himself clear, he said at a press conference in October 2007 in Dakar: [1152]

> NEPAD has failed. Unfortunately we have not understood the true concept of NEPAD. My brother Meles, [Ethiopian Prime Minister] who heads the project does not understand the whole idea, so are his other collaborators. Instead we have beaten about the bush and wasted too much time.

In spite of former President Mbeki and other founders' disagreement with Wade's statements, the latter further raise questions on the legitimacy of NEPAD and underlines that the right to participation of Africans is not respected in the whole NEPAD processes. In fact, African leaders should take the advice of Professor Adebayo seriously. He said that Africa needs a[1153]

> [n]ew African transformation ethic based on a human-centered development paradigm which puts the people at the centre of the development process, on the driving seat as it were and is predilected, above all, on the rational proposition that development has to be engineered and sustained by the people themselves through their full and active participation. In other words, the new African transformation ethics rest on the firm belief that development should not be undertaken on behalf of a people; rather, that it should be the organic outcome of a society's value system, its perception, its concerns and its endeavours.

[1149] Statement of A Wade at the occasion of the Johannesburg HSIC Summit in 2004 as quoted by O Deme 'between hope and scepticism: Civil society and the African Peer Review Mechanism' *Insights* (2005) 7 available at http://idl-bnc.idrc.ca/dspace/bitstream/10625/27418/1/121268_e.pdf (accessed 8 January 2011).

[1150] Statement of A Wade at the occasion of the Johannesburg HSIC Summit in 2004 as quoted by Deme (2005) 7.

[1151] Statement of A Wade at the occasion of the Johannesburg HSIC Summit in 2004 as quoted by Deme (2005) .8

[1152] A Wade 'NEPAD has failed' *Daily Observer* 4 October 2007 at http://observer.gm/africa/senegal/dakar/news/topic/president/rss (accessed 15 April 2008).

[1153] A Adedeji *Preparing Africa for the Twenty-first Century: Agenda for the 1990s ECA* (1991) 49.

In other words, plans such as NEPAD should belong to the people and not individuals. In the same line of thought, this research claims that development goals should have a human rights flavour emanation from the communities. Nvertheless, the insertion of NEPAD in the AU goes a long way in ensuring its legitimacy, credibility and sustainability.

The good news is that, as observed in the table above, Africans view NEPAD as a framework to address their concerns. Thus, the NEPAD has become a common feature in the lives of Africans and it has been generally accepted as an institution that is arguably responsive to African problems, though it should be stressed that the euphoria which followed NEPAD adoption nine years ago is not longer visible. What about participation in the APRM?

The right to participation through the APRM process

In assessing the right to participation of African people in the APRM process, the upcoming sub-sections focus *inter alia* on the APRM forum, the Panel of Eminent Persons and the APRM national institutions such as the national focal points and the national government council because these institutions provide frameworks through which participation can be assessed. In addition, the Programme of Action (POA) and APRM Questionnaire will also be looked at to the extent they enhance participation and the APRM in general.

The right to participation through the APRM Forum

Made of participating Heads of state and government, the APRM Forum is the highest decision making body of the APRM. It supervises 'the APRM organisation and processes, for mutual learning and capacity building, and for exercising the constructive peer dialogue and persuasion required to make the APRM effective, credible, and acceptable'.[1154] To what extent is the APRM Forum participatory? Are African Heads of state and government experts on democracy, political, economic, and corporate governance issues that underpin the mechanism?

[1154] NEPAD/HGSIC-3-2003//APRM Guideline/O&P, 1-2 & 9.

The quality of a seating Head of state should not be enough to qualify people to the membership of the APRM Forum. Many African leaders are not always democratically elected or experts in issues that matter to the review. Therefore, not only should the APRM Forum be assisted with experts, it should provide for civil society participation and be more inclusive. Keeping the review at the Heads of state and governments' desks, far away from the reviewed country and away from the civil society casts serious doubts not only on the value of the APRM Forum, but on the value of APRM all together. A SADC leader slammed the APRM Forum by underlining the complicity between African leaders. He said: [1155]

> African leaders are renowned for their group solidarity. They will stick to their own even in the face of human rights violations, economic mismanagement, corruption and poor leadership. One only has to look at how they embraced the 2002 Zimbabwe elections results as legitimate when clearly they were not. Unless you have the World Bank/IMF, the European Union and the United States as part of the African Peer Review Mechanism, none of the African leaders can exert any meaningful pressure on the other because they do not have the moral, political or economic leverage to do so. Unless you carry a stick, African leaders will not listen to you.

It is unrealistic to expect the EU, US and the IFIs to be part of the process as they are not African, though the comment is more linked to the lack of accountability of African leaders. This state of affairs corroborates the ineffectiveness of the APRM by emphasising that African leaders stand together to protect each other's 'dirty habits', hence the comment that they 'do not criticise each other for the same reason that people in glass houses avoid throwing stones'.[1156] This view is sustained by Omonide *et al* when they argue that Africans are very jealous of their sovereignty and the heads of state have the tendency to come together like trade union leaders.[1157] Manby of Afrimap reported the comments of a journalist who as a

[1155] Kebonang & Fombad (2006) 51.

[1156] P Mistry (chairman of the Oxford International Group) 'Why sub-Saharan Africa is not developing" at http://zoopeo6.v.severlocity.net/hj3/sections/africa/African%20Development.pdf 6 (accessed 20 Jan 2007).

[1157] Omonide *et al* (2004) 246.

member of Kenya's National NEPAD Secretariat attended the APRM Forum meeting during the review of Kenya report. The journalist said: [1158]

> I counted the number of leaders who spoke after President Kibaki [of Kenya] had responded to Dr Machel [who led the Kenya review process]. They were from Ghana, Ethiopia, South Africa, Rwanda, and Nigeria. Not one posed a question to Mr Kibaki.
>
> They all praised the report and commended Kenya for being candid, thorough and open. They pledged to support Kenya in seeking solutions to its constitution review and diversity problems.
> When it was all over, presidents Obasandjo and Mbeki and Prime Minister Meles Zenawi of Ethiopia expressed relief and promised to go on with the process, after realizing that it was not life-and-death situation.

It is about time that the forum opens its doors to the media, churches and other members of civil society to ensure full participation to the process. Notwithstanding its logistic cost, the review should not be done away from the people, but should be broadcasted on national radios and televisions where people can call in and have a say. Again, applying regional and international of human rights monitoring should be the rule.

Nevertheless, the proceedings described above do not provide enough reasons to throw the whole process in the dustbin, hence the correctness of the view that 'the lack of proper consultation with some interested parties does not necessarily render the content of the outcome document as irrelevant'.[1159] Efforts should be made to better the mechanism from a human rights perspectives.

In this respect, as correctly recommended by Hansungule, there is a need to establish at continental level a 'Conference of stakeholders which will include National Focal Points, the APRM Panel, the APRM Secretariat, National Government Councils partners and other

[1158] B Manby 'Was the APRM process in Kenya a waste of time? Lessons that should be learnt for the future, in *Open Society institute Africa Governance Monitoring &Advocacy Project, AfriMap,* 3 available at http://www.afrimap.org (accessed 11 July 2008); also J Okungu, 'Kenya passed 'ordeal' with flying colours' *The Nation,* 14 July 2006.

[1159] Hope (2005) 18.

members of the civil society under the chairmanship of the APRM Forum.[1160] This will provide a platform outside the 'Peer Review Submit' to address hindrances to the operationalisation of the process. Finally, the APRM should be reviewed in compliance with the APRM Base Document[1161] that provides for the review once every five years.

The APRM Panel of eminent persons and the right to participation

The APRM Based Document explicitly requires that the operations of the APRM be ran and managed by a Panel of between 5 and 7 eminent persons[1162] (the APR Panel). The members of the APR Panel must have African professional experience relevant to the work of APRM[1163] and must be well known for their ethical stature and demonstrated commitment to the ideals of pan-Africanism.[1164] Candidates for selection will be chosen by participating countries and appointed by the APR Forum for 4 years and will retire by rotation. [1165] In addition, the Heads of state and government will make sure that the Panel has proficiency in the areas of political governance, macro-economic management, public financial management and corporate governance. The composition of the APR Panel will also reveal wide regional equilibrium, gender equity and cultural diversity.

The Panel of Eminent Persons mandated for the country review mission is to be revisited. Members of this institution should include qualified peoples who are given the job not only because of their integrity, (as it is currently the case) but also because of their competence and expertise in matter of governance and human rights. Currently, the Panel of Eminent Persons looks like a 'club of supporters' or friends of African leaders. It is important to remove this

[1160] Hansungule (2010) 18.

[1161] Paragraph 28.

[1162] APRM Base Document, para 6.

[1163] APRM Base Document, para 6.

[1164] APRM Base Document, para 6.

[1165] APRM Base Document, para 8.

perception by advertising the position and selecting the best candidates objectively. This will go a long way in upgrading the process and will open the door not only for popular participation but also for a better human rights monitoring.

Furthermore, to ensure the integrity of the APRM Panel, there is a need to operationalise paragraph 10 of the APRM Base Document that provides for adoption of a 'charter for the panel'. This action will help in defining and clarifying the borders between the APRM Panel and the APRM secretariat.[1166] In fact, the Base Document should clearly prescribe the mandate of both institutions even if they have to collaborate. To strengthen this separation of power, a Code of Conduct (comprising enforceable disciplinary sanctions) for APRM panels should be adopted to ensure that the panel respects its Charter and the separation of powers.[1167]

Similarly there is a need to comply with the Base Document[1168]which limits the mandate of the members of the Panel to 4 years. Hansungule correctly observes that 'the term was not followed during the term of the first panel'.[1169] These measures will enhance the right to participation in the APRM which will be improved.

The APRM national focal point and the right to participation

The National Focal Point is the station connecting the APRM process from the continental to national level, thus the work of the focal point should be 'inclusive, integrated and coordinated with existing policy decision and medium-term planning processes'.[1170] The Country Guidelines[1171] recommend that the Focal Point be established at a high level of

[1166] M Hansungule 'Legal opinion on the draft operating procedure of the APRM' (2010) 10 (unpublished paper, on file with author).

[1167] Hansungule (2010) 14.

[1168] Para 8

[1169] Hansungule (2010)10.

[1170] 2006 APRM Annual Report, 1.

[1171] NEPAD/HGSIC-3-2003//APRM Guideline/O&P.

government who reports directly to the Head of state and with access to all national stakeholders.[1172] It should be inclusive and independent.

However, as noticed in various countries reviewed,[1173] currently the National Focal Point is entrusted to the executive power, who appoints the personnel of the structure. Questions about the integrity and independence of the institution might affect the process at national level. This was observed in a critical assessment of the APRM in Rwanda when the NGO known as *League des Droits de la Personne dans la regions des Grands Lacs* (LDGL) revealed that the location of the National Focal Point at the Presidency of the Republic affected the objectivity of the process,[1174] hence the recommendation of the Executive Secretary of the United Nations Economic Commission for Africa (UNECA) stating that the structures of the APRM 'would work better and its credibility guaranteed if it were independent and not attached to political pressure of government'.[1175] Indeed, confining the National Focal Point to a ministry is not recommended because the government can change and the person responsible of the Focal Point who is the first resource on APRM might just disappear from the scene. Furthermore, in many African countries the government and the opposition do not see 'eye to eye' and how can the National Focal Point be representative of all stakeholders if its existence depends on the executive will? The National Focal Point should be reviewed and its independence enhanced. This will ensure the participation of all stakeholders and improve the prospect for the RTD.

The National Commission and the right to participation

[1172] Communiqué of the 1st Summit of Heads of State and Government in the APRM (APR Forum), Kigali, Rwanda, 13 February 2004.

[1173] Ghana, Rwanda, South Africa and Kenya to list some of them.

[1174] LDGL'Critical review of the African Peer Review Mechanism process in Rwanda'7 at http://www.afrimap.org/english/images/report/APRM Rwanda ENG.pdf (accessed 25 August 2008).

[1175] A Janneh, Executive Secretary, UNECA, 'Independence of APRM needed for good governance in Africa', Abuja, Nigeria, 29 October 2006 available at http://www.africanmonitor.org/node/62 (accessed 10 July 2008).

Like the National Focal Point, the National Commission also known as National Governing Council was established by the First Summit of Participating Heads of State and Government in the APRM in Kigali, Rwanda on 13 February 2004. The National Commission should be made of citizens who command the respect of the general public, be autonomous from the government and inclusive of all stakeholders. It caters for policy direction to the implementation of the APRM.[1176]

However, similar to the National Focal Point, its main challenge is to be independent from the executive power. In South Africa, for instance, the process was characterised by the abundance of Governments' Cabinet Ministers sitting in the Governing Council which ended up giving some space to civil society members only after being pressurised to do so. [1177] This situation actually triggered discontent in the South African Parliament that tried to establish its own parallel APRM structure before reaching an agreement with the executive power.[1178] In fact, in South Africa, it was noted that NGOs and community-based organisations were not satisfied with the control of the process, though they had ten of the 15 seats on the panel overseeing the process. The main concern was about the power of the government in writing the final report.[1179]

Nevertheless, South Africa produced many good practices including the establishment of the Provincial Governing Councils, the invitation of research institutions as partners and

[1176] A Janneh, Executive Secretary, UNECA, 'Independence of APRM needed for good governance in Africa', 1-2, Abuja Nigeria, 29 October 2006 available at http://www.africanmonitor.org/node/62 (accessed 10 July 2008).

[1177] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 16, paper prepared for the Office of the Special Adviser on Africa (on file with author).

[1178] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 17, paper prepared for the Office of the Special Adviser on Africa (on file with author).

[1179] Kebonang & Fombad (2006) 49.

shortening of the Questionnaire[1180] and its translation in various languages which were novel on the table[1181] and allowed people from the street to be informed and aired their view on the process.

Government interference was also observed in Rwanda where one of the arguments for the absence of civil society members in the process was that 'most of them perished during genocide'.[1182] The lack of technical capacity and the difficulties in accessing information also stood on the way of a better mechanism in Rwanda,[1183] though there were also positive comments on the participatory nature of the process.[1184]

Nevertheless, it is instructive to note that many workshops involving few civil society members lasted 3 hours or a day at most, thus they did not have enough experience and time to make a real impact on the process.[1185] This was not a meaningful participation. In this respect, 'it was noted for example that the Rwanda APR Technical Team had already

[1180] The questionnaire is the document that outlines the methodological guidelines for the review process. It assists the country to be reviewed to conduct its self-assessment which is the base to formulate its preliminary Programme of Action (POA).

[1181] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 27-28, paper prepared for the Office of the Special Adviser on Africa (on file with author).

[1182] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 18, paper prepared for the Office of the Special Adviser on Africa (on file with author).

[1183] LDGL 'Critical review of the African Peer Review Mechanism process in Rwanda'iv at http://www.afrimap.org/english/images/report/APRM Rwanda ENG.pdf (accessed 25 August 2008).

[1184] LDGL 'Critical review of the African Peer Review Mechanism process in Rwanda' iv at http://www.afrimap.org/english/images/report/APRM Rwanda ENG.pdf (accessed 25 August 2008) 10.

[1185] LDGL 'Critical review of the African Peer Review Mechanism process in Rwanda' iv at http://www.afrimap.org/english/images/report/APRM Rwanda ENG.pdf (accessed 25 August 2008) 11.

answered the APR Questionnaire incorporating predominantly opinions and figures, without the crucial input of other stakeholders capable of guaranteeing overall national ownership'.[1186]

However, the process yielded positive results such as the establishment of the Unity and Reconciliation Commission and the *Gacaca* courts[1187] aiming to accelerate national reconciliation after the genocide.[1188] It also enhanced the dialogue between the states and non state actors. In addition, democratic institutions such as the adoption of a new Constitution (through a referendum) characterised by the setting up of an independent judiciary, a Human Rights Commission as well as an Ombudsman was established[1189] and this was a step in the right direction in ensuring people's participation as well as a better implementation of the RTD in Rwanda.

In Ghana, the concern was the same as in South Africa. Though the peer review was opened and dominated by civil society bodies, the final report was mostly written by the government. Moreover, despite the protest from civil society organisations, the government appointed civil society representatives without consultation or participation of the two major confederations of non-governmental organisation.[1190] Furthermore, many members of the civil society had no understanding of the process and those who had some knowledge of the process received the

[1186] Draft report of the APRM technical support mission, 'Report of the APRM Panel on the country review of the Republic of Rwanda'.

[1187] The *Gacaca* court is traditional system of justice established in Rwanda in the wake of the 1994 genocide. In this court, hearings are held outdoors with the participation of the community at large. Such court became necessary when the regular Rwandan Courts were overwhelmed by the volume of case after the genocide.

[1188] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation'24, paper prepared for the Office of the Special Adviser on Africa (on file with author)

[1189] Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' 23-24, paper prepared for the Office of the Special Adviser on Africa (on file with author).

[1190] R Herbert 'The survival of NEPAD and the African Peer Review Mechanism: a critical analysis' (2004) 11 *South African Journal of International Affairs* 18.

discussion documents only at meetings and could not make a significant input,[1191] hence the comments that 'there was no mechanism for those involved to satisfy themselves that their comments on what became the final draft of the country self-assessment report and programme of action – to all intents and purposes the heart of the country's peer review process – had been taken in to account'[1192] and that the 'Governing Council, which quite rightly is the central organiser, is felt not to have left enough space for others to make meaningful input'.[1193] All these shortcomings are due to the lack of a proper legal mechanism charaterised by transparency, respect for rule law. There is a need to have a human rights-informed review process.

Another area of concern was the Questionnaire which had only 'modest resemblance' to the expert recommendations because all the requests pertaining to political rights, balance of power, corruption, freedom of associations, the power of parliament to compel testimony and financial accountability from the executive and the right to opposition to access media were removed from the agenda and replaced with things that were not addressed by the experts.[1194]

Nevertheless, amongst other things, the process had the merit to mobilise various stakeholders including chiefs, to consolidate and enhance democratic values.[1195]

It also emerged that during the country support mission in Kenya many stakeholders had no clue of the process or their role in it,[1196] and did not have enough resources to prepare thoughtful scrutiny of governance.[1197]

[1191] Kebonang & Fombad (2006) 51.

[1192] A Bing-Pappoe 'Ghana and the APRM: A critical assessment' 8, June 2007 available at http://www.afrimap.org/english/images/report/AfriMAP_APRM_Ghana_EN.pdf (accessed 8 August 2008).

[1193] A Bing-Pappoe (2007).

[1194] Herbert (2004) 16.

[1195] A Bing-Pappoe (2007).

[1196] The APRM Support Mission to Kenya, 26-27 July 2004, Communiqué http://www.nepad.org/2005/files/aprm.php (accessed 12 December 2006).

However, as pointed out by the Kenyan Governing Council, the APRM was not useless in Kenya. On the contrary, it produced many good things including an adequate environment for political dialogue with religious groups, NGOs and media ready to debate. In this regards, it was argued that 'the process yielded in some respects, the most comprehensive documentation to date of the political, social, cultural and economic situation in Kenya. The APRM process has helped give ordinary Kenyans some voice to their concerns'.[1198] It also led to the adoption and ratification of various codes of corporate governance and socio-economic development,[1199] though the process was tarnished by the inappropriate dismissal of three council members by the Minister in charge of NEPAD Kenya.[1200] This action illustrated the negative views on the transparency of the process as well as the independence of the National Governing Council which did very little to ensure a meaningful popular participation.

In general, though NEPAD is now recognised as the voice of African development, a lot more efforts need to be undertaken to ensure the participation of African people in its processes. In moving towards the right path, it is important to open the APR Forum to the civil society including churches, NGOs, media and political parties from the opposition in the reviewed country; the national focal point and the national governing council should be independent and aimed at ensuring a broader participation of the public. It is noteworthy that shortcomings described earlier do not call for the dissolution of the APRM which is actually the best flower in NEPAD's garden or the 'jewel in NEPAD's crown',[1201] but rather a call for its correction and improvement in order to enhance the prospects of the RTD under NEPAD.

[1197] Herbert (2004) 18.

[1198] S O Akoth 'The APRM process in Kenya – A pathway to a new state?' March 2007, 2 available at http://www.afrimap.org/e nglish/images/report/APRM_kenya_EN.pdf (accessed 10 August 2008).

[1199] 2006 APRM Kenya Report; also Hansungule, 25.

[1200] S O Akoth (2007) 2.

[1201] African Peer Review Mechanism, Country Review Report of the Republic of Kenya 29 (2006), *available at* http://www.nepad.org/2005/files/aprm/APRMKenyareport.pdf (accessed on 13 January 2008).

The Programme of Action and the right to participation

The Programme of Action (POA) is the fruit of the country self- assessment which allows the country to look at itself in a mirror in order to ascertain progress and identify gaps. The guidelines on how to address important issues related to the APRM four thematic areas are recorded in the country POA. To use Hansungule's words, it is

> [t]he key input delivered by the country into the peer review, and it, therefore, serves to present and clarify the country's priorities; the activities undertaken to prepare and participate in the APRM; the nature of the national consultations; as well as to explicitly explain the responsibilities of various stakeholders in government, civil society and the private sector in implementing the Programme.[1202]

Accordingly, it should be participatory and transparent as all stakeholders will have an important role to play in its implementation.

One of the difficulties with the POA is that countries are still struggling to find a way to align such a programme with their initial development plans; some are yet to understand if there is a need to a different plan to accommodate the POA.[1203] It was reported[1204] that, Rwanda's POA was basically feeling up the gaps in the existing national programmes. This may not be the solution as it is not sure the previous national plan was in line with APRM thematic areas. As a result people's right to participation in the adoption of the POA becomes questionable.

There is a need to improve the design and implementation of the POA; to domesticate it or infuse it in national development Programme with special attention to people's input. In fact, the POA should content precises stages and deadlines on how the country plans to comply with African Peer Review standards and codes.

[1202] Hansungule, 38.

[1203] Hansungule, 40.

[1204] Hansungule 40.

The other problem linked to the POA is that the process is not always representative of the country review report. This casts a doubt on how representative if the POA. Prospectively, the APRM shall ensure greater transparency and more importantly make sure that there is synergy between the Country Review Report and the POA. This will go a long way in ensuring the implementation of the POA which is often neglected after the whole process.[1205]

The APRM Questionnaire and the right to participation

The Questionnaire was compiled to have a consistent review mechanism throughout the continent. It is set in four thematic areas: democracy and political governance, economic governance and management, corporate governance, and socio-economic development. The Questionnaire should be commanded as it offers the grounds on which to assess the country's compliance with good governance. However, there is a need to strengthen it by addressing its weaknesses (that reduce people's participation) which include its length, the lack of harmony in the use of similar concepts, the complexity of the language used; the multifaceted aspect of some thematic areas, the repetitiveness of some questions, the broadness of the questions and the lack of a specific focus on NEPAD

The length

The Questionnaire is too long (88 pages) and cumbersome making the whole process difficult to follow. This shortcoming is replicated in 2011 Draft Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism[1206] which is actually 90 pages. Such an approach reduces the practicality of consultations and discussions as these will need a broader scope, more time, and a much extended scope to get all the stakeholders to participate effectively.

[1205] Rukato (2010) 98.

[1206] 2011 Draft Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism available at www.nepad.org/aprm (accessed 10 March 2011).

There is a need to shorten the Questionnaire by replacing the four thematic areas with simple and more convenient clusters of governance related subjects. This will enhance the practicality of research related to the Questionnaire.[1207]

The complexity of the language used

To enhance participation, **t**here is a need to render the Questionnaire accessible to ordinary folks as well as experts. The current Questionnaire contents several technical and complex languages. For example: Objective 1, Question 4 of the economic governance thematic area asks 'What has your country done to increase domestic resource mobilisation including public and private savings, capital formation and reduce capital flight?' The first indicator calls upon the respondents to highlight measures taken to 'deepen financial intermediation'. Unless one is a good expert in economy, he would not have a clue of 'deepen financial intermediation'. The Questionnaire should be comprehensible to all,[1208] hence the need to have an explanatory paragraph for complex questions.

The Draft Revised Country Self-Assessment Questionnaire should be commanded for simplifying the language used in the economic section. Removing the concept of financial intermediation was long overdue and this was done in the Draft Revised Country Self-Assessment Questionnaire and should be confirmed in the final document.

In improving the indicators on the question 'what sectoral economic policies has your country developed and implemented to promote economic growth and sustainable development?' [1209], the respondents could also be asked to describe policies targeting the balance of interests between environmental and economic sustainability.

[1207] R Herbert and S Gruzd *The African Peer Review Mechanism Lessons from the Pioneers* (2008) 40.

[1208] Ross and Gruz p 143.

[1209] Question 3 objective 1 of the current questionnaire.

The question itself had been improved in 2011 Draft Revised Country Self-Assessment Questionnaire which adds time limitation (5-10 years) for policy evaluation and effectiveness.[1210]

Lack of harmony in the use of similar concepts

For instance, the socio-economic section of the Questionnaire uses the notions of 'socio-economic development', 'social development and poverty eradication[1211] in the same sentence. This is confusing and cannot assist in providing an appropriate response to the question.[1212]

However, the Draft Revised Country Self-Assessment Questionnaire attempts to harmonise the concept and used the notion of 'broad based sustainable socio economic development'[1213] which is clearer and should be incorporated in the future Questionnaire to enhance the right to participation.

The multifaceted aspect of some thematic areas

The other reason to amend the Questionnaire is the multifaceted character of some thematic areas. For example, the economic governance section focuses on trade, monetary and macro-economic policy-making, fiscal management and oversight processes, anti-corruption efforts, and anti-money laundering systems. This is too broad for one thematic area because several members of civil society have no clue of these issues and even a research institution in charge of this thematic area may lack appropriate expertise for all these issues.[1214]

In the draft Revised Country Self-Assessment questionnaire, the same broadness appears in the document and should be corrected.

[1210] 2011 The Draft Revised Country Self-Assessment Questionnaire, chapter 4 'economic and governance and management' , question 2, p 28

[1211] Objective 2 of the section allocated to socio - economic development.

[1212] Herbert and S Gruzd (2008) 43.

[1213] Draft Revised Country Self-Assessment Questionnaire, chap 6, p 69; also objective 1, p 75.

[1214] Herbert and Gruzd (2008) 39.

The repetitiveness of some questions

The Questionnaire endeavors to merge cross-cutting material into each of the thematic focus. Though this seems to highlight the preeminence of the issues raised, it makes the reports repetitive and boring as the same questions appears under the four focus areas. This was highlighted by the Sixth Africa Governance Forum in these terms:

> The Questionnaire appears to be repetitive especially on cross-cutting issues, thus making the Country Self-Assessment Review tedious and difficult to follow and digest. This has implications for the Country Review Team (CRT) Report as well as the final Panel Report.[1215]

The handling of corruption by the Questionnaire is well illustrative of this repetitiveness. Whereas corruption in political and business spheres are similar and are investigated and prosecuted by the same body (the judiciary), the Questionnaire differentiates corruption in the political and business sector.[1216] To avoid such repetitive Questionnaire, one approach could be to have a table encompassing all cross-cutting issues.[1217]

In the Draft Revised Country Self-Assessment Questionnaire, objective 6 dealing with the promotion and protection of the rights of women in the democracy and good political governance[1218] is sound and correct. However several aspects of women's rights reappear in chapter 6 dealing with broad-based sustainable socio-economic development, in its objective 4.

Since the four thematic areas are very complementary, it could be necessary to assemble related issues. For example on a theme 'human rights', questions related to women's rights,

[1215] United Nations Development Programme (UNDP), 'Implementing the African Peer Review Mechanism: Challenges and Opportunities, Report of the Sixth Africa Governance Forum (AGF-VI)', Kigali, Rwanda, 9–11 May 2006, report produced 20 June 2006, p.24.

[1216] Herbert and Gruzd (2008) 39.

[1217] Herbert and Gruzd (2008) 39.

[1218] Chap 3

children rights, indigenous people rights and disability rights could be addressed. This will facilitate the work of specialised working group on specific questions.[1219]

This approach could assist in addressing vulnerable groups' rights which are not adequately addressed in the Questionnaire. For instance, precise indicators on the right of people with disability are needed. Here, affirmative action, how inclusive are policies on access to civil and political and socio economic rights, accessibility of information through Braille, sign language interpreter and other tools as required by specific disabilities. This shortcoming is also characteristic of the Draft Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism.

Review some indicators that are not reflexive of the reality in countries. For example, Democracy theme Objective 3, Question 1 which focuses on measures that have been put in place in view of protecting economic socio cultural and civil and political rights, there is a need to include the presence of a justiciable bill of rights in the Constitution with clear remedies for human rights violation. In the same vein, on question three focusing on 'what sectoral or macroeconomic policies has your country developed and implemented to promote economic growth and sustainable development?' one possible additional indicator could have been 'give measures targeting the balance of interests between environmental and economic development'. These two suggestions could be considered during the adoption on final Questionnaire.

Similarly, under the same objective 3, Question 2, addressing access to justice, indicators include the description of measures taken to provide (training, monitoring, evaluation, adjustment)'. This indicator may not reflect the reality as training provided may not lead to access to justice.[1220] In fact, this controversial provision had been removed from the Draft Revised Country Self-Assessment Questionnaire and shall not be included in the future Questionnaire.

[1219] Herbert and S Gruzd (2008) 40.

[1220] Herbert and Gruzd (2008) 42.

Under the same question, another possible indicator could be to provide evidence that all accused persons are trialed in a language of their choice.

The broadness of the questions in the Questionnaire is problematic

Currently some questions have too many notions and this does not make it easily researchable. Under objective 4 of the section focusing on democracy, the first question reads: 'What are the constitutional and legislative provisions establishing the separation and balance of powers among the Executive, the Legislature and the Judiciary branches of government?' Such a question can be divided into two with the first one focusing on the separation of power between the executive and the legislative and the second one on the balance of power between executive and the judiciary. The concept of 'balance of power' can be removed from the question as it is already included in the concept of 'separation of powers'. This approach had been adopted by the Draft Revised Country Self-Assessment Questionnaire.[1221]

The criticism attached to the broadness of the question is also applicable to the broadness of some indicators. For example, the first question 'What are the main categories of commercial enterprise and what is their role in the economy?' under the corporate governance section, has too many indicators to be researchable. It requires a great knowledge of almost all the economy of the country and this is not conducive to an efficient participation in terms of time and expertise. Some of these indicators could be the focus of the Country Review Team and research institute.[1222] This approach is also adopted by the Draft Revised Country Self-Assessment Questionnaire, though it could be argued that the length of indicators is linked to the need to explain the content of indicators.

The lack of focus on NEPAD

The Questionnaire does not investigate to what extent NEPAD reaches the grassroots in the countries. In other words, how NEPAD programme is implemented at the country level. This

[1221] Chap 3, objective 2, question 1.

[1222] Ross and Gruzd (2008) 45.

has been however corrected in the Draft Revised Country Self-Assessment Questionnaire [1223] and should be adopted in the final Questionnaire.

As mentioned earlier, the Questionnaire is useful in involving people in the process. However, some revisions are needed and countries should be encouraged to contextualise the Questionnaire to their realities.

Having assessed, the right to participation in NEPAD/APRM, the next session will examine how financial constraints can impact the achievement of the RTD.

5.5 NEPAD, financial constraints and the RTD

The aim of this section is to assess the impact of financial constraints on NEPAD's ability to realise the RTD in Africa. Realising the RTD entails several actions in an interrelated manner which leads to the betterment of human condition. Marks states the following:

> It is not enough to consider that the allocation of resources for affordable housing is a contribution to the right to shelter; the planner must ask what the plan will do for the residents' enjoyment of the right to health, food, education, information, work and effective remedies, to mention only the most obvious ones.[1224]

In other words, realising the RTD implies an effective process comprising appropriate planning to yield positive outcomes or enjoyment of human rights. For this to happen, 'one must take account of the interconnectedness and seamlessness of the rights',[1225] elements of the RTD. Therefore, achieving the RTD in Africa needs more than just political will; it needs more than the mere 'determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world'.[1226] In other words, the

[1223] Chap 6, objective 1, question 3.
[1224] S Marks 'The human rights approach to development: seven approaches in Sengupta, Negi & Basu (eds) *Reflections on the right to development* (2005) 27.

[1225] Okafor (2008) 55.

[1226] NEPAD 2001, para 1.

RTD requires political will, appropriate planning and a lot of money. NEPAD itself is the living testimony of the political will of African leaders; the planning, even if it needs improvement, is there through the NEPAD document as well as the Declaration of Democracy, Political, Economic and Corporate Governance.

Nonetheless, the implementation of NEPAD's programme and the achievement of 7% annual growth requires an estimated USD $64 billion every year.[1227] Is this money available? This is the one million dollar question.

In order to have the necessary funds, NEPAD believes in the effective utilisation of Africa's resources, rationalising government spending, encouraging domestic savings and harmonising the taxation system with a view to encourage investors to support its agenda[1228] and facilitates it self-reliance. Furthermore, NEPAD's architects advise African countries to diversify and increase the quality of their export base products and unite in order to counter any competition on the international market,[1229] to increase their manufacturing capacity[1230] which will definitely yield financial results. In furthering its objective at regional level, the NEPAD Business Group was created to raise money and give room for businesses' participation in financing NEPAD.[1231] The (ADB) had been a pillar in financing NEPAD. From 2002 to 2005, 'the ADB has financed sixteen projects, worth about US$ 692.1 million and raised around US$ 1.6 billion.[1232]

[1227] NEPAD 2001, para 144.

[1228] NEPAD, para 145.

[1229] NEPAD, para 168.

[1230] NEPAD, para 155 & 170.

[1231] F G Mucavele 'NEPAD Progress Report-towards development' 4, para 7; 8 February 2006 (on file with author).

[1232] Mucavele (2006) 6, para 12.

Unfortunately, the money raised through the methods described above is not enough; hence the NEPAD programme relies mostly on external funding.[1233] This is evidenced by the fact that the World Bank provided Institutional Development Fund grants to support NEPAD Secretariat's activities such as a grant in 2004 worth US $348, 000 to finance Public Expenditure Tracking in Agriculture, provided a grant in 2003 worth US $500,000 to finance the 'strengthening implementation of NEPAD agenda in West Africa'.[1234] The World Bank also assists NEPAD with loans. Example, from 2001 to 2005 the World Bank approved 11 regional projects (three in the financial sector, one for trade facilitation, three on HIV and AIDS, three in the power sector) for an amount totalling US $ 555 million in International Development Assistance credits.[1235] Apart from the World Bank, NEPAD is financed by other donors including the European Union (EU), the IMF and United State Agency for International Development (USAID) the United Nations Industrial Development Organisation, the UNDP[1236] and many others.

The future of NEPAD looks uncertain because its existence seems to depend on external funding. Analysing the financing of NEPAD, the former NEPAD CEO, Nkuhlu, argues that 'the greatest threat is the increasing dependence on funding by development partners and UN agencies. Financial support by African countries has declined in the last two years'[1237] and this can only lower the prospect of the RTD under the African institution.

[1233] E Harsch 'NEPAD stimulates debate on development, democracy and global ties' (2003) 16 (4) *Africa Recovery* 7.

[1234] L K-van Niekerk and Houdart 'NEPAD' 4 at http://www.un.org/afica/osaa/nepad.html (accessed 16 September 2007).

[1235] L K-van Niekerk and Houdart 'NEPAD' 4 at http://www.un.org/afica/osaa/nepad.html (accessed 16 September 2007).

[1236] 2006 UN Report 'The contribution of the private sector to the implementation of the NEPAD' 6.

[1237] W L Nkuhlu 'The Partnership for Africa's Development (NEPAD): beyond the establishment stage' 15, paper presented at the University of Pretoria, South Africa on 8 November 2007 (on file with author).

However, in its briefing to the UN on 17 October 2007, Mucavele former NEPAD CEO who took over from Nkuhlu and has been replaced at the 20th HSGIC Summit on 3 January 2009 by Dr Ibrahim Assane Mayaki, observed that the African continent had invested 67 billion dollars in priority of NEPAD, more than half of which came from contribution from African governments.[1238] He nevertheless pointed out that this was not enough to meet NEPAD's target.

The Cape Town based newspaper; *The Cape Argus*, portrayed a tearful former President Mbeki calling upon the G8 to 'follow through on their promises of support for Africa's socio-economic rescue plan, NEPAD'.[1239] In the same light, Dr Jean Ping, Chairperson of the AU Commission, recently expressed his frustration linked to donors' refusal to respect their pledge towards NEPAD and called upon them to respect their pledges.[1240] Indeed, depending on aid to realise a plan is a risky business because the sustainability of the plan is not guaranteed. Therefore, to be able to realise the African dream of post colonial era which is freedom from poverty, self-reliance, self-sustainment and holistic human development, NEPAD should start looking inwards for funding.

From the APRM perspective, paragraph 12 of the Guidelines for countries to prepare for and to participate in the APRM clearly reads: [1241]

> National ownership and leadership by the participating country are essential factor underpinning the effectiveness of such a process. This includes leadership in ensuring consistency with existing national efforts, like the Poverty Reduction Strategy Papers (PRSP) processes, other national poverty reduction strategies, Medium Term expenditure Framework (MTEF), National Human Rights Action Plans, Millennium Development Goal (MDG) strategies, ongoing institutional reforms, and other relevant governance and socio-economic development strategies, programmes and projects. It also includes

[1238] F Mucavele 'Briefing on the progress in the implementation of NEPAD', 4 on 17 October 2007, Conference Room-6, United Nations.

[1239] 'Mbeki urges G8 to follow up on NEPAD promises' *The Cape Argus*, 2 June 2008, edition 1, 12.

[1240] Address by Dr Jean Ping, Chairperson of the AU Commission at the opening of the 13th Ordinary Session of the AU Executive Council, 6; 27 June 2008, Sharm El Sheikh, Egypt.

[1241] NEPAD/APRM/panel13/Guidelines/11-2003/Doc-8.

> efforts by the participating country to address capacity constraints in an integrated manner within all of these activities, as well as facilitating and coordinating the alignment of international support behind the National Programme of Action that participating countries are expected to develop and implement.

In other words, to be part of the APRM process, a country must own and lead the process, be ready to establish a synergy between its development programmes and the NEPAD's, and implement them through its Programme of Action (POA).[1242] This undertaking needs financial resources. To ensure a smooth Peer Review, it has been agreed that states participating in the APRM should bear the cost of the review,[1243] and contribute $100 000 annually for the running of the secretariat which has no budget on its own. Nevertheless, can APRM participant countries pay the bills? The reality is that African countries are bogged down by a heavy debt load and are even unable to pay their membership dues to the AU and its predecessor OAU. This sad situation led Libya in 1999 and Nigeria in 2005 to pay others countries contribution in running the AU as well as the APRM Secretariat.[1244]

Though Rwanda contributed US $100 000, the bulk of the money needed to review Rwanda came from donors with a contribution of US $500 000 from the UNDP, US $540 000 from the British Department for International Development (DFID), US $60 000 and US$21 000 from UNIFEM.[1245] This strong reliance on external founding seems to threaten the sustainability of the process and cast serious doubt on NEPAD ability to achieve the enjoyment of the RTD.

Nevertheless, it is important to keep in mind that as from 31 December 2006, the APRM was primary funded by participating African countries. The total input from these countries was

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[1242] The POA is the national plan of action that builds on existing policies, programmes and projects and the recommendation of review.

[1243] APRM Base Document, para 27.

[1244] N Udombana 'a harmony or a cacophony? The music of integration in the African treaty and the New Partnership for Africa's Development' (2002) 13 *Indiana International and Comparative Law Review* 233.

[1245] LDGL 'Critical review of the African Peer Review Mechanism process in Rwanda' 7, at http://www.afrimap.org/english/images/report/APRM Rwanda ENG.pdf (accessed 25 August 2008).

US $48, 8 millions, representing 62 % of the total contribution since the establishment of the APRM.[1246] Bilateral and multilateral donors are credited with the remaining 38%.[1247] Nonetheless, it could be argued that 38% of external funding remains high, because without such a contribution, the institution will not function effectively and efficiently.

African leaders should take serious actions in reversing the trend. One way of doing so is to stop wasteful spending on presidential jets,[1248] presidents' holidays' cost,[1249] and reducing ministers' luxury vehicles costs.[1250] This will assist them in saving some money to be allocated to AU, NEPAD and APRM activities.[1251]

[1246] Mucavele briefing on the progress in the implementation of NEPAD' (2007) 5.

[1247] Mucavele (2007) 5.

[1248] M Nalugo 'President Yoweri Museveni has summoned MPs on the Presidential Affairs committee to brief them about his urgent need for a brand new Gulf Stream 5 (G5) presidential jet' *The Monitor* (Kampala), 7 December 2007 http://www.friendsforpeaceinafrica.org/index.php?option=com_content&task=view&id=186&Itemid=110 (accessed 25 December 2009).

[1249] On 28 August 2009, it was reported that for his last Holiday at La Baule France, President's Biya (of Cameroon) and his friends used 43 bedrooms for a total amount of 42 000 Euros per day. Biya's holiday was more expensive than Sarkozy's, Obama's and former President Bush's put together; see 43 chambres et 42 000 par jour pour les vacances de Paul Biya (mis à jour) at http://fr.news.yahoo.com/69/20090828/twl-43-chambres-et-42-000-par-jour-pour-b11dcaf.html?printer=1 (accessed 29 August 2009).

[1250] In South Africa, *News 24.com reported* that the water and environmental affairs department had bought a R900 000 BMW for Deputy Minister Rejoice Mabudafhasi. In the same report, it was observed that the police department had splurged out R235 000 on luxury hotel accommodations for Minister Nathi Mthethwa. Economic Development Member of the Executive Council Mike Mabuyakhulu had used his own car for government business, and claimed a total of R383 618.07 for four months travel expenses. A BMW 7 Series was bought for Minister in the Presidency Trevor Manuel at a cost of R1.2m and included R100 000 in "unnecessary accessories". Another reply to a parliamentary question revealed that Deputy Police Minister Fikile Mbalula had spent R1.6m on two new ministerial vehicles, including R83 879 on extras.

[1251] 'Wasteful spending hits 318 m' *news24.com* at http://www.news24.com/Content/SiteElements/HomePage/NewsYouShouldKNow/1163/b37154c8433a4073adf344a519bec1a0/16-10-2009-02-46/Wasteful_spending_hits_R318m (accessed 25 December 2009).

Overall, the lack of funding constitutes a serious hindrance to NEPAD's capacity to realise the RTD in Africa. Financial constraints amongst other factors, plays an important role on the current lack of euphoria on NEPAD activities. Such lack of euphoria and enthusiasm on the continental plan cannot enhance the prospects for the RTD in Africa. African leaders should strive to bring back the euphoria that accompanied the plan in its early days. This will definitely help in raising more money within Africa and abroad in order to enhance the chances of the RTD on the continent.

5.6 Concluding remarks

The aim of this chapter was to assess to what extent the NEPAD is informed by human rights; to what extent it mainstreams human rights in development in order to achieve the RTD.

The chapter shows that NEPAD addresses basic needs through the fight against poverty, through the provision of services. Based on the purpose and objectives of NEPAD, the chapter argues that the continental programme is informed by human rights. However, in terms of NEPAD framework, nothing is done to oblige the duty bearers to comply with their commitments or to empower the poor to claim these rights framed in terms of services. This state of affairs is noticeable through the soft nature of NEPAD or its lack of accountability, though it is also observed that the non-justiciability of a right does not negate its value.

After observing that NEPAD aims to realise human rights and the RTD, the chapter shows that the lack of participation of African people in the early days and during the implementation of NEPAD does not enhance the possibility of the realisation of the RTD, since the beneficiaries of the plan have no say. In addition, the soft nature of the plan did not improve the prospects for the RTD, though the ongoing integration of NEPAD in the AU is expected to remedy several problems including its lack of legitimacy.

The chapter also calls on the AU to reduce the size of the APRM governance standards and avoid mixing binding and non binding instruments to avoid weakening the binding ones. It

also calls for the reform of various NEPAD/APRM institutions and calls for a POA which reflects the country self-assessment and the country review report. In addition, it calls for the implementation of the APRM Based Document that provides for the review of the APRM every five years. It also prescribes reforms related to the APR Forum, Panel and National Focal Points and also proposes the adoption 'the Charter of the Panel, the Code of conduct of the Panel as well as the establishment of an APRM 'Conference of stakeholders' to strengthen the process.

In addition, referring to the Questionnaire, the chapter emphasises the need to reduce the length, to harmonise the use of similar concepts, simplify the language used; to address the multifaceted aspect of some thematic areas, and avoid the repetitiveness of some questionnaires, and the lack of a specific focus on NEPAD.

The chapter also demonstrates that the NEPAD's lack of financial resources as well as wasteful spending by African leaders hinder its ability to realise the RTD.

Overall, though NEPAD aims at realising the RTD, this will not happen if African leaders do not ensure popular participation in and ownership of the plan as well as reduce wasteful spending to forward some money in NEPAD activities to ensure the organisation's self-reliance.