

CHAPTER 8 CONCLUSIONS AND RECOMMENDATIONS

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8.1 Introduction

This research set out to examine the prospects for the realisation of the RTD in Africa under NEPAD. This could not be achieved in a straightforward manner. Therefore, in order to provide an answer, it was necessary to understand several other factors framed around the following questions:

- What is the nature of the RTD?
- What is its place in the African human rights system?
- To what extent is NEPAD informed by human rights? To what extent could it improve the prospects for the RTD?
- To what extent is the NEPAD plan integrated into national development plans of African states?
- Is NEPAD capable of setting up the new global partnership needed for the realisation of the RTD?
- What measures should be taken to enhance NEPAD's capacity to deliver the RTD in Africa?

The aim of this chapter is to present the findings of the research and provide recommendations.

8.2 Summary of findings

At the onset of the research, the study clarifies the rationale of looking at a primarily economic institution from a human rights approach. It locates NEPAD within the 'AU based human rights based system'. Not only is the AU human rights mandate described, but an

analysis of NEPAD framework documents confirms that NEPAD covers all the AU objectives including its human rights mandate.

In setting the stage for the discussion, the research proceeded to explain the main concepts and terminologies used in the study, to call for the use of human rights to realise the RTD with emphasis in using the concept human dignity as the benchmark. The research also demonstrated that in its early days, the claim for the RTD was based on the request for the establishment of a NIEO by developing countries; then the claim evolved to be linked to the effects of the World Bank, IMF sponsored SAPs as well as the WTO unfair trade rules which impoverished Africa. Finally, the claim for the RTD was based on the request for global justice and fairness in the distribution of world's resources.

In terms, of theory, the research also found out that the RTD is grounded in the cosmopolitanism philosophy which sees the world as a global village where based on their humanity, all human beings are equal. It identified the utilitarianism, rights based cosmopolitanism and obligation based cosmopolitanism as theory through which global justice can be achieved. It however, presented the critique of cosmopolitanism which revolves around the nationalism, liberalism and individualism theories that maintains that the individual is paramount and advocates for the right to property.

Focusing on NEPAD, the research located the African institution in the context of development policies which preceded it advent, the context of widespread poverty in Africa before concluding that the defining moment for its adoption was the poverty crisis caused by the neoliberal SAPs in Africa. The research provided several other findings; on the nature of the right:

First, the study shows that the RTD is inalienable, is a multifaceted human right which comprises civil and political as well as socio-economic and cultural rights. It underlines the vital place of the right to participation, to self-determination and stresses the principle of universality, interdependency and indivisibility of human rights elements of the RTD.

Second, the research demonstrates that the RTD is very contentious in the academic arenas as well as at the UN level. In the academic arenas, the contentions are visible through the debate

on the law of development as well on the nature of the RTD *per se*. At the UN level, on the other hand, the controversy on the right is characterised by its politicisation, the reflection of such politicisation on the voting pattern of UN resolutions on the right and the adoptions of different approaches to the right by various international organisations. In fact, developing countries always vote for the RTD while most developed ones led by the US stand against the right. International organisations have different and unpredictable approaches.

Third, while focusing on the implementation of the right, the research attempted to identify the duty bearers as well as the beneficiaries of the RTD. At national level, the state is the duty bearer, whereas at the international level, the international community has the responsibility to ensure the realisation of the RTD. This point is one source of a broad controversy on the right because there is no international binding instrument on the RTD. More importantly, IFIs are not parties to international agreements between states, hence the difficulty of holding them accountable for the realisation of the right. Nonetheless proponents of the right rely on article 55 and 56 of the UN Charter among others to claim the right from the international community.

As far as the right holders are concerned, the study shows that individual as well as peoples are the beneficiaries of the right. More importantly, it demonstrates that the state is also a right holder of the right when it claims it from the international community on behalf of its citizens.

The second question the research had to deal with was to identify the place of the RTD in the African human rights system. The research demonstrates that the RTD is well secured in the African human rights architecture. From the ACHPR (article 22), it flows in other African instruments cascading to national laws. In fact, the RTD is enshrined in the ACHPR, in the Protocol on the Right of Women in Africa, the African Children Charter and in 1993 SADC treaty. In addition, the thesis underlines the important place of the RTD in Cameroonian, Ugandan, Malawian and Ethiopian Constitutions before showing that the right is yet to be implemented in these countries.

Though the South African Constitution does not expressly provide for the RTD, South Africa provides examples of good practice (through a strong separation of power, a strong civil society and the justiciability of socio-economic rights) on how to implement the right.

Still in assessing the importance of the RTD in the African human rights system, the study observes that the right is part and parcel of the African Commission jurisprudence. In, this regard, the *Bakweri* case, the *Democratic Republic of Congo* case (*Democratic Republic of the Congo v Burundi, Rwanda, and Uganda*) and more importantly the *Endorois* case are the communications in which the African Commission had to decide on the right. In the *Endorois* or the landmark case on the RTD, the African Commission highlighted the multifaceted character of the right which entails a holistic approach for its realisation.

In sum, the study is of the view that the RTD has an important place in the African human rights system. Adding to the place of NEPAD in the African human rights system, this finding sets the stage to examine the prospects for the achievement of the RTD.

The third question on the table was examining whether NEPAD is informed by human rights and to what extent it could improve the prospects for the RTD.

The thesis demonstrates that NEPAD objectives and purposes are to enhance the human welfare which is also the objective of the RTD. However, NEPAD's plan to foster the provision of goods and services are not defined in terms of legal entitlements with legal mechanisms to claim such rights. However, the thesis warns about confusing legal rights to human rights and contends that the non justiciability of a right does not negate its value. Hence, the conclusion that NEPAD is informed by human rights and could therefore improve the prospects for the realisation of the RTD.

However, after observing that NEPAD aims to realise human rights and the RTD, the chapter deplores the lack of participation of African people in the early days and during the implementation of NEPAD and shows that these shortcomings are serious roadblocks for NEPAD's ability to realise the RTD. Further, the non binding feature of the plan did not improve the prospects for the RTD, though the now finalised integration of NEPAD in the AU is expected to remedy several problems including its lack of legitimacy.

The thesis also shows that financial constraints affecting NEPAD activities and the wasteful spending by African leaders do not increase its ability to realise the RTD. The thesis is of the view that though NEPAD aims at realising the RTD, few challenges need to be addressed urgently: African leaders have to ensure popular participation or transfer ownership of the plan to African people, strengthen its legitimacy by finalising its integration in the AU and decrease wasteful spending to commit more money to the continental programme.

The fourth interrogation was to assess to what extent NEPAD is integrated into national frameworks for the realisation of empowering rights such as the right of vulnerable groups to be protected and the right participation. The thesis examines these rights in Cameroon and South Africa. The latter is a NEPAD founder with an advanced Constitution in terms of human rights protection, while the author is familiar with the former's legal system which provides for the RTD.

As far as the integration of vulnerable groups in the economy is concerned, Cameroon through the national subprogramme to integrate vulnerable groups in the economy and South Africa through the NGP strive to ensure a better life for the beneficiaries. Notwithstanding few problems such as the lack of education of the beneficiaries in Cameroon and the controversy on the newly established NGP in South Africa, the initiatives have the potential to create employments and transform the countries into welfare states where vulnerable groups are given a voice and trained to be fully integrated in the economy and the running of the countries. This is not only in line with MGDs, but also with NEPAD's standards on poverty eradication. On this point, NEPAD enhances the prospects for the RTD in Cameroon and South Africa.

In terms of the right to participation, the research found that the institutionalisation of the right to participation through direct and indirect participation (referendum and elections respectively) as well as regional decentralisation in Cameroon does not do enough to ensure the effective participation of Cameroonian in the affairs of their land. This is due to the fact that the central authority is too powerful; the President of the Republic is the only person who can instigate a referendum and more importantly the institution in charge of organising and ensuring free and fair elections is far from being independent.

As far the right to participation through regional decentralisation is concerned, the implementation of this right is held back by the heavy power of the central authority on the regional council, the lack of constitutional provisions sharing power between the central power and the local authorities who have no genuine power, apart from the one allocated to them by the central authority. Furthermore, the President of the Republic has the power to appoint delegates to lead a city council with ‘special status’, which should normally be headed by an elected official. Despite the Cameroonian move towards been peer reviewed, the country does not integrate NEPAD’s standards on the right to participation in its national plan.

In contrast, South Africa has a strong Independent Electoral Commission, a decentralisation with equitable sharing of resources between local governments, a constitutional provision catering for the sharing of power between the central authority and the local government. In addition, the country enacted policies to transfer power to the masses and more importantly a strong judiciary which is constantly at work to guarantee the right to participation. At local level, national programme such as the establishment of ward Committee, *imbizo* and *Batho Pele* transfers the power to the grass roots. All these initiatives integrate the NEPAD’s standards on the right to participation in the national framework and enhance the prospects for the realisation of the RTD in South Africa.

Having observed that international co-operation and partnership were vital for the realisation of the RTD, the final question addressed in the thesis was to examine to what extent the NEPAD strategy to set up a new global partnership could be conducive to the realisation of the RTD.

After highlighting that the concept of partnership entails the principle of equality, common interest and equal sharing of benefits between the parties, the study looks at the partnership between NEPAD and the G8, focuses on the role of NEPAD in the WTO, looks at its place in ACP Agreement and analysed its inputs in the EPAs. The study demonstrates that in all these partnership agreements, NEPAD is way behind its target of establishing a true partnership between Africa and the rest of the world. It seems to be the weakest link in all these partnerships endeavours. Indeed, in its relation with the G8 and in the WTO in general and in

the TRPIS and AoA agreements specifically, it does not make a significant impact; the same observation is made in the development of the ACP Agreement to the EPAs where NEPAD shines by its absence. Truly, an examination of the weight of NEPAD in these partnerships reveals that the plan of setting up a new global partnership conducive to the realisation of the RTD is the most complex task on NEPAD's desk and this does not in anyway increase the prospects for the realisation of the RTD in Africa.

Overall, the prospects for the realisation of the RTD under NEPAD as it stands are very thin. While waiting to see what its integration into the AU will do in terms of human rights realisation and the RTD in particular, it is submitted that NEPAD is not doomed. The following recommendations may assist NEPAD in successfully discharging its human rights mandate and enhance the prospects for the RTD.

8.3 Recommendations

To enhance the prospects of the RTD through NEPAD, much needs to be done:

Since NEPAD is now part of the AU, there is a need to harmonise other AU institutions with NEPAD to avoid overlaps and unnecessary wastages of human, financial and other resources.

As for the ideological battle (MAP/OMEGA) affecting the nature, legitimacy and effectiveness of NEPAD, African leaders must get their act together, make the necessary compromise, clear up the confusion on the nature of NEPAD, reassure African people, bring back the euphoria that was visible in NEPAD's early days and always view African's welfare as paramount. This will go a long way in addressing the lack of participation which does not enhance the prospects of the RTD under the institution.

In enhancing the right to participation, Cameroon should establish a genuine independent electoral commission and reduce the omnipotence of the central authority in its decentralisation policies. Broadly, NEPAD should be infused in national development policies. It should establish and strengthen mechanisms to domesticate its plan and standards in African states. In doing so, the momentum on NEPAD should be kept alive, national goals should encompass NEPAD objectives and standards addressed through discussions between

governments and NEPAD representatives. The recognition of NEPAD in national development plans will go a long way in legitimising NEPAD and improving the chances of the RTD.

NEPAD should remedy its legitimacy problem by enhancing civil society participation in order to realise the African dream of post colonial era which is freedom from poverty, self-reliance, self-sustainment, holistic human development and the democratisation of the development process. This can be done through a bottom up approach implying the involvement of the civil society including churches, private sector, opposition parties, syndicates, human rights movements and traditional leaders who all have important contributions in ensuring the RTD. This could be done simply by seeking others views on NEPAD draft documents before their final adoption. Consulting on these drafts documents through NEPAD website enhance the legitimacy as well as the ownership of the process.

In its attempt to establish a new global partnership, NEPAD should always be involved in international negotiations and make sure that Africa's development contracts and agreements are informed by international human rights law and the RTD criteria in particular. NEPAD should keep calling for global responsibility for human rights from Pogge's perspective which highlights the obligation of the affluent not to harm the poor. It should emphasise that wealthy countries and global institutions have not only the obligation conduct, but also the obligation of result in ensuring the realisation of human rights in Africa. It should also emphasise the need to establish an independent body (with binding decisions) in charge of monitoring the partnership between itself and its partners. This will be a good move in ensuring global governance which is needed for a victory in the battle against poverty and the improvement of the prospects of the RTD in Africa.

In terms of looking inwards, NEPAD member states should speak with 'one voice' and present the AU/NEPAD's position at international level. Using this approach, NEPAD should engage with the international community at large and the WTO in particular to get concessions that consider poor countries specific needs. In such concessions, Africa should be given preferential treatments and this will be an important step in humanising trade.

As far as the APRM is concerned, the fourth stage of the review or peer review phase should not happen in secrecy; it should be done in the country under review and opened to Civil Society Organisations (CSOs). In the same line of thought, the APRM Forum made of Heads of State and Government of participant countries (in charge of the fourth stage) needs to be revised. Members of this forum are not experts in governance issues, hence the need to include experts on governance and give room to civil society participation. These measures will go a long way in improving the legitimacy, credibility and efficiency of the process as well as improving the prospects for the RTD in Africa.

The Panel of Eminent Persons in charge of country review mission should be also revised. Members of this institution should include qualified people who are admitted in the structure not only because of their integrity, but also because of their competence. More importantly there is a need to adopt the ‘Charter of the Panel’ which will clarify the mandate of the Secretariat and the Panel. Furthermore 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. In addition, there is a need to limit the mandate of the members of the Panel to four years as stipulated by the APRM Base Document.

As far the Questionnaire is concerned, there is a need to reduce its length, harmonise the use of similar concepts, simplify the language used; correct the multifaceted and repetitiveness of some questions and give a specific focus to NEPAD.

In strengthening the process, at continental level, it is necessary to create a ‘Conference of stakeholders’ which will include National Focal Points, the APRM Panel, the APRM Secretariat, National Government Councils partners and other members of the civil society under the chairmanship of the APRM Forum. This will provide a stage outside ‘Peer Review Summit’ to address hindrances to the operationalisation of the process.

Furthermore, the APRM should be reviewed in compliance with the APRM Base Document that provides for the review every five years.

Weaknesses of the Questionnaire which include its length, the lack of harmony in the use of similar concept, the complexity of the language used; the multifaceted aspect of some

thematic areas, the repetitiveness of some questionnaires, the broadness of the questions and the lack of a specific focus on NEPAD should be corrected.

Still in terms of strengthening the process, though Mauritania had been excluded from the APRM because of the *coup d'Etat* which yielded an unconstitutional change of government, APRM's efficiency is hindered by the lack of sanctions on 'bad' states. To address this problem, it is imperative to involve the African Commission in the APRM process. Involving this body in country review missions and consideration of the country reports will enhance the quality of the process because of its expertise in human rights issues. More importantly, involving the African Commission can be instrumental in ensuring that participant states to the review process comply with the provisions of the ACHPR and especially article 22 which provides for the RTD. There is also a need to trim down APRM governance standards by avoiding mixing binding and non binding human rights instruments because this approach weakens the binding ones.

As far as the POA is concerned, it should be a true reflexion of a participatory and transparent country self-assessment. It should have clear deadlines and defined plan and budget for its realisation.

From a national standpoint, it is observed that the APRM National Focal Points belong to the executive power in the country under review. It is imperative to ensure the independence of the National Focal Points and the National Commissions by opening their doors to various CSOs including NGOs, churches and political parties from the opposition in the country under review. Not only should these organisations participate to the process, they should be trained to have an impact on the design and implementation of the POA. To use Matlosa's words:

There should be a shadow process by CSOs [civil society organization] so that if they cannot participate in the formal process, they have their own process to keep it honest. As civil society, agencies must interrogate peer review, conduct research and share information with others.¹⁶³⁹

¹⁶³⁹ K Matlosa 'How should civil society respond to peer review?' (2003) *Africa Electronic Journal of Governance and Innovation* 13.

Though this thesis is not the solution to achieving the RTD in Africa, the author hopes that it might lead to further thoughts and reflections on how to use continental institutions as tools to better human lives.