

CHAPTER 1

INTRODUCTION

1.1 Background and problem statement

In the first year of the new millennium, the leaders of the world set out a number of development goals to be achieved by 2015.¹ These have become known as the Millennium Development Goals (MDGs). The MDGs have been summarised as follows by the United Nations Development Programme (UNDP):²

- 1) Eradicate extreme poverty and hunger
- 2) Achieve universal primary education
- 3) Promote gender equality and empower women
- 4) Reduce child mortality
- 5) Improve maternal health
- 6) Combat HIV/AIDS, malaria and other diseases
- 7) Ensure environmental sustainability
- 8) Develop a global partnership for development

In the Millennium Declaration the world leaders also agreed on ‘certain fundamental values’ to be applied within and among states: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.³ In the Declaration these values are couched in the language of rights and duties. There is thus a clear global commitment for human rights which accompanies

¹ United Nations Millennium Declaration, General Assembly resolution 55/2 of 8 September 2000.

² www.undp.org/mdg/basics.shtml (accessed 19 December 2008). The eight MDGs are subdivided into 21 ‘quantifiable targets’ measured by 60 indicators. On the implementation of the MDGs see United Nations *The Millennium Development Goals report 2008* (2008).

³ United Nations Millennium Declaration, para 6.

the commitment to achieve the developmental goals set out above, which could equally well have been couched in the language of human rights.⁴

Statistics indicate that African countries have made some progress in meeting the MDGs. However, most countries will fail to achieve the goals by 2015.⁵ Currently almost 30% of African children under five suffer from malnutrition.⁶ Just over 60% of children finish primary school. The child mortality rate is 163 per 1000. The HIV prevalence rate is 5.8%. Maternal mortality rate is 919 per 100,000 live births. Only 44% of births are attended by skilled health staff. These are averages and there is obviously much difference between countries and within countries. Rural areas often have the worst conditions. Though the figures represent some improvement compared to the situation a decade earlier, Africa still scores worst of all regions, except on births attended by skilled health staff. Progress in implementing MDG 8, a global partnership for development, has also been limited.⁷

Statistics such as those above help to illustrate the scope of the problem. It must, however, be noted that statistics from Africa often are unreliable or even non-existent.⁸ For example the World Development Report 2008 provides statistics on the population below the national and international poverty lines. Of 37 African countries surveyed there was no information at all for four countries,⁹ no information on population below national poverty lines for another five

⁴ Cf the Vienna Declaration and Programme of Action of the World Conference on Human Rights, Vienna, 14-25 June 1993.

⁵ United Nations (2008).

⁶ The statistics which follows are averages from sub-Saharan African states and thus do not include Algeria, Egypt, Libya, Morocco and Tunisia. Statistics from World Bank *World development report 2008* (2007) 339.

⁷ See eg B Manby 'Application of the criteria for periodic evaluation of global development partnerships, as defined in Millennium Development goal 8, from the right to development perspective: Further analysis of the African Peer Review Mechanism and the ECA/OECD-DAC Mutual Review of Development Effectiveness in the context of NEPAD', report to the Working Group on the Right to Development, UN Doc A/HRC/8/WG.2/TF/CRP.5, 28 December 2007.

⁸ C Clapham *Africa and the international system – The politics of state survival* (1996) 163.

⁹ Angola, Republic of Congo (Congo-Brazzaville), Democratic Republic of the Congo (Congo-Kinshasa) and Sudan.

countries¹⁰ and no information on population below international poverty lines for another five countries.¹¹

An often used measurement of development is Gross National Income (GNI) per capita. This is despite the fact that it is widely recognised that GNI does not give the full picture. The UNDP has thus developed the Human Development Index (HDI), a composite index composed of GNI per capita, life expectancy at birth and level of education. States are divided into high, medium and low human development. All 26 states in the world with low human development are in sub-Saharan Africa. Of the 75 states with high human development, only three are in Africa.¹² The fact that a country like Libya is included on the list of countries with high human development illustrates that respect for civil and political rights is not considered in the HDI.

Composite indexes like the HDI can be misleading, for example by not providing any disaggregated data, but illustrate one of the central problems that the African continent is facing: the denial of socio-economic rights. There are many explanations for this situation, both external and internal. Many African leaders focus their rhetoric on external causes of poverty and lack of development. However, there is increased recognition in Africa of the importance of improved domestic governance. It is assumed in this study that accountable governments free of repression and corruption are more responsive to the needs of their people.¹³

Government corruption limits the resources available for poverty reduction. Only three African countries surveyed in Transparency International's corruption

¹⁰ Central African Republic, Côte d'Ivoire, Namibia, South Africa and Swaziland.

¹¹ Chad, Eritrea, Guinea, Togo and Uganda. Information from World Bank (2007) 336-337.

¹² Seychelles, Libya and Mauritius. hdr.undp.org/en/statistics/ (accessed 20 August 2009).

¹³ Cf R Alence 'Political institutions and developmental governance in sub-Saharan Africa' (2004) 42(2) *Journal of Modern African Studies* 163-187.

perception index 2008 scored over 5 on a scale where 10 is clean and 0 is highly corrupt.¹⁴

Freedom of expression is vital in fighting corruption as well as being an important human right in its own right. Namibia is in position 23 and Ghana and Mali shares position 31 on Reporters without Borders' Press Freedom Index 2008. Many African countries fare less well with Eritrea being the worst press freedom offender in the world in 2008.¹⁵

The measurement of good governance is no exact science. The methodology of surveys and indexes such as those above can be challenged. However, together with country specific analyses they provide some insight into the extent of the African drama.

Bad governance is generally seen as one of the factors which have contributed to the perilous world most Africans are facing. It is a world of poverty and for many a world of early death. In many countries it is also a world of repression. During the cold war African leaders could get away with ignoring the welfare of their subjects. Today the situation is different and good governance has become the paradigm subscribed to by both donors and by African leaders. Within the broader good governance framework, human rights have over the last decades developed into an ethical *lingua franca*.¹⁶ Though rhetoric and action do not always go hand in hand, institutional frameworks, at both the domestic and international level, have been established to ensure accountability and respect for human rights.

¹⁴ Botswana, Mauritius and Cape Verde. Transparency International 'Corruption perceptions index 2008' (2008).

www.transparency.org/policy_research/surveys_indices/cpi/2008 (accessed 21 October 2008).

¹⁵ Reporters without Borders 'Press Freedom Index 2008' www.rsf.org/en-classement794-2008.html (accessed 25 June 2009).

¹⁶ J Tasioulas 'The moral reality of human rights' in Thomas Pogge (ed) *Freedom from poverty as a human rights* (2007) 75.

The extent to which the various institutional frameworks contribute to the realisation of human rights varies. Each initiative must be evaluated on its own merits. It is equally important to consider how different mechanisms, local, national, sub-regional, regional, global, non-governmental, governmental and inter-governmental, can work together. It should also be noted that many initiatives that do not focus exclusively on human rights may have an important role to play.

Through the African Peer Review Mechanism (APRM), the African Union has established a system for assessment of governance in participating countries and for the development of programmes of action to address identified shortcomings. The APRM was developed under the auspices of the New Partnership for Africa's Development (NEPAD), the development arm of the African Union (AU) which replaced the Organization of African Unity (OAU) in 2002.

The APRM is a voluntary, 'soft' mechanism of supervision which combines self-assessment with regional monitoring. The APRM takes a holistic approach to governance monitoring. Its mandate covers four fields: democracy and political governance, economic governance, corporate governance and socio-economic development.¹⁷ It has been argued that the importance of the APRM lies in the fact that it 'holds the potential truly to set NEPAD apart from its predecessors'.¹⁸ This is because previous development plans are said to have suffered from a lack of monitoring.

¹⁷ Declaration on Democracy, Political, Economic and Corporate Governance (Governance Declaration).

¹⁸ A De Waal 'What's new in the "New Partnership for Africa's Development"?' (2002) 78(3) *International Affairs* 463-75 471.

1.2 Objective of the study and research questions

The objective of the study is to assess, in the broader context of human rights monitoring, the role of the APRM in contributing to the realisation of human rights in Africa.

The main research question of the study is: What role can the APRM play in inducing compliance with international human rights norms in Africa?

A number of other questions will be addressed in an effort to develop an answer to the main research question:

- Why was the APRM established?
- What role do human rights play in the mandate of the APRM?
- To what extent is a human rights-based approach followed in the implementation of the APRM?
- How does the APRM compare to other methods of international monitoring used to induce compliance with international human rights norms?
- To what extent has human rights been considered in the reviews of the first countries to go through the process namely Ghana, Rwanda and Kenya?

1.3 Terminology

Human rights

This thesis adopts the meaning of human rights as expressed in the main regional human rights treaty, the African Charter on Human and Peoples' Rights (African Charter)¹⁹ further developed in other African treaties and through the

¹⁹ Adopted 27 June 1981, entered into force 21 October 1986, 1520 UNTS 363.

practice of the African Commission on Human and Peoples' Rights (African Commission). The African Charter constitutes a good basis for measuring human rights in Africa since it has been ratified by all the members of the African Union.²⁰ The Charter provides that international human rights law shall be used to interpret its provisions.²¹

Compliance

A lexical definition of compliance is 'acting according to certain accepted standards'.²² In the context of human rights these accepted standards are set out in domestic constitutions (and legislation) and in international treaties and declarations. The way role players have to act in order not to violate these rights depends on the type of norm and the position actors themselves hold in the system. The focus of this thesis is on measures to ensure that the main role player, the state, acts in a way that respects, fulfils and protects human rights.

1.4 Literature review

The APRM has generated much interest. Numerous papers on the APRM framework have been published. Many articles, in particular in the first years after the adoption of the APRM, tend to be very similar in content. They mainly repeat what is said in the primary documents relating to the process.²³ Much

²⁰ Morocco withdrew from the OAU in 1984 and has not ratified the African Charter.

²¹ Arts 60 & 61.

²² WordReference.com.

²³ UNECA 'The African Peer Review Mechanism – Process and procedures' (2002) 11(4) *African Security Review*; DA Bekoe 'Creating a reliable African Peer Review Mechanism' (2003) 1(4) *Chimera – The Creation of Imagination* 2-9; J Cilliers 'Peace and security through good governance: A guide to the NEPAD African Peer Review Mechanism' /SS *Occasional Paper* 70, April 2003; VO Nmehielle 'The African Peer Review Mechanism under the African Union and its initiative: The New Partnership for Africa's Development' (2004) 98 *American Society of International Law Proceedings* 240; H Heubaum 'Making the African Peer Review Mechanism (APRM) work – A rough road ahead for NEPAD's key component', German Institute for International and Security Affairs, working paper FG 6, 2005/05, December 2005.

was written just after the mechanism was adopted and when there was still considerable confusion as to how the APRM would evolve, for example in relation to whether it should cover political governance or not.²⁴ Some of the members of the Panel of Eminent Persons, which oversees the implementation of the APRM process, have shared their views.²⁵ Some articles acknowledged the limitations of an early evaluation of the process.²⁶ Many shorter articles limited to factual updates on the process have been published.²⁷ There are also studies on how the APRM compares to other peer review processes.²⁸

The first monograph on the APRM, *The African Peer Review Mechanism – Lessons from the pioneers* brings together the insights that the South African Institute of International Affairs (SAIIA) has accumulated through active engagement with the APRM process since its inception.²⁹ The focus of this book is on procedural aspects, in particular how to strengthen public participation in the APRM process. SAIIA has also published a number of other papers focusing on in particular procedural aspects and best practices in organising the reviews.³⁰

²⁴ J Cilliers 'NEPAD's Peer Review Mechanism', ISS Occasional Paper 64, November 2002; M Mathoho 'An African Peer Review Mechanism: A panacea for Africa's governance challenges?' Centre for Policy Studies, policy brief 29, August 2003.

²⁵ C Stals 'The African Peer Review Mechanism as an integral part of the New Partnership for Africa's Development' (2004) 4 *African Human Rights Law Journal* 130-138; M Savané 'The African Peer Review Mechanism' *New Agenda*, issue 17, first quarter 2005.

²⁶ J Akokpari 'NEPAD's African Peer Review Mechanism (PRM): Prospects and challenges for implementation' (2003), www.ossrea.net/publications/newsletter/oct03/article11.htm.

²⁷ A Kajee 'NEPAD's APRM: A progress report – practical limitations and challenges' in *SA Yearbook of International Affairs 2003/04* (2004).

²⁸ R Kanbur (2004) 'The African Peer Review Mechanism (APRM): An assessment of concept and design' www.arts.cornell.edu/poverty/kanbur/APRM.pdf (accessed 2 April 2007); Z Kebonang 'African Peer Review Mechanism: An assessment' (2005) 61(2) *India quarterly* 138.

²⁹ R Herbert & S Gruzd *The African Peer Review Mechanism – Lessons from the pioneers* (2008).

³⁰ South African Institute of International Affairs 'APRM lessons learned', Report of the SAIIA conference for civil society, practitioners and researchers held at the Avianto Conference Centre, Muldersdrift, Johannesburg, 12-13 September 2006; South African

Much emphasis has been placed on civil society participation in the APRM process.³¹ General evaluations of the reviews that have been conducted have been limited in scope, focusing on specific governance areas as set out in the APRM framework, in particular political governance,³² or focused on procedural aspects of the reviews.³³ Country-specific evaluations of the reviews in Ghana,³⁴ Rwanda,³⁵ Kenya,³⁶ Nigeria,³⁷ Benin,³⁸ Mauritius,³⁹ South Africa,⁴⁰

Institute of International Affairs *Planning an effective peer review – A guidebook for national focal points* (2007).

- ³¹ L Verwey 'Nepad and civil society participation in the APRM' IDASA occasional paper (2004); O Déme *Between hope and scepticism – Civil society and the African Peer Review Mechanism* (2005); UNECA 'Strategies for promoting effective stakeholder participation in the African Peer Review Mechanism', Third meeting of the Committee on Human Development and Civil Society, 4-6 May 2005, Addis Ababa, Ethiopia.
- ³² DG Anglin 'The African peer review of political governance: Precedents, problematics & prospects' in M Ndulo (ed) *Democratic reform in Africa: Its impact on governance & poverty alleviation* (2006); CM Fombad, Z Kebonang & H Melber AU, *NEPAD and the APRM: Democratisation efforts explored* (2006); AMB Mangu 'Assessing the effectiveness of the African Peer Review Mechanism and its impact on the promotion of democracy and good political governance' (2007) 7 *African Human Rights Law Journal* 354-388; AB Chikwanha 'The APRM – A case study in democratic institution building?' ISS Paper 151, October 2007.
- ³³ G Masterson 'An analysis of the implementation of the African Peer Review Mechanism in Ghana, Kenya and Mauritius' EISA occasional paper number 29, February 2005; 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. For more general evaluations of the process see R Mukamunana & JO Kuye 'Revisiting the African Peer Review Mechanism: The case for leadership and good governance in Africa' (2005) 40 *Journal of Public Administration* 590-604, R Mukamunana 'Challenges of the New Partnership for Africa's Development (NEPAD): a case analysis of the African Peer Review Mechanism (APRM)', unpublished PhD thesis, University of Pretoria (2006); WM Makgalancheche 'The African Peer Review Mechanism (APRM) and the African Union (AU): The case for leadership and governance perspectives in African public services', unpublished PhD thesis, University of Pretoria (2006).
- ³⁴ A Bing-Pappoe 'Ghana and the APRM: A critical assessment' Afrimap (2007), EA Opoku *Effective stakeholder participation in the APRM process for the promotion of democratic governance: A case study of Ghana* (2006).
- ³⁵ F Rutazana 'Evaluation du processus du Mécanisme Africain de Révision par les Pairs au Rwanda (MAEP)' Présentation à la rencontre de Banjul du 26 au 28 juin 2006 ; LDGL 'Critical review of the African Peer Review Mechanism process in Rwanda' (2007).
- ³⁶ SO Akoth 'The APRM process in Kenya – A pathway to a new state?' (2007).
- ³⁷ LA Jinadu 'The African peer review process in Nigeria' (2008).
- ³⁸ G Badet 'Benin and the African Peer Review Mechanism: Consolidating democratic achievements' (2008).
- ³⁹ S Bunwaree 'The African Peer Review Mechanism in Mauritius – Lessons from phase 1' (2007).

and Uganda⁴¹ have also mainly focused on procedural aspects. The substantive outcomes of specific reviews have received less attention.⁴² Human rights have been considered in some evaluations but generally not by placing the APRM in the context of the existing human rights monitoring framework applicable to the African continent.⁴³

The main pillars of the African human rights system, the African Commission and the African Court on Human and Peoples' Rights, have received much scholarly attention.⁴⁴ However, the system is made up of much more than these institutions.⁴⁵ Indeed as Lloyd and Murray stated in 2004: 'The arrangements [of the African Union] for dealing with human rights are clearly in a state of considerable confusion and flux'.⁴⁶ In addition to African institutions the human rights system applicable to Africa include how the global human rights system,

⁴⁰ B Boyle 'Making the news: Why the African Peer Review Mechanism didn't' SAIIA occasional paper number 12, September 2008; N Hutchings *et al* 'Assessing South Africa's APRM: An NGO perspective' SAIIA occasional paper number 3, June 2008.

⁴¹ JN Odoi 'Civil society participation in Uganda's APRM process' SAIIA occasional paper number 2, June 2008.

⁴² Though see E Jordaan 'Inadequately self-critical: Rwanda's self-assessment for the African Peer Review Mechanism' (2006) 105 *African Affairs* 333-351; E Jordaan 'Grist for the sceptic's mill: Rwanda and the African Peer Review Mechanism' (2007) 25(3) *Journal of Contemporary African Studies* 331-353; B Manby 'Was the APRM process in Kenya a waste of time? Lessons that should be learned for the future' AfriMap, April 2008.

⁴³ 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* 461-473; B Manby 'The African Union, NEPAD, and human rights: The missing agenda' (2004) 26 *Human Rights Quarterly* 983-1027; S Gumede 'The NEPAD and human rights' (2006) 22 *South African Journal on Human Rights* 144-171; K Hofseth Hovland 'Africanising accountability? The African Peer Review Mechanism in a human rights perspective', unpublished MPhil thesis, University of Oslo (2006); M Hansungule 'Malawi and the African Peer Review Mechanism' (2008) 2 *Malawi Law Journal* 3-28. However, see E Baimu 'Human rights in NEPAD and its implications for the African human rights system' (2002) 2 *African Human Rights Law Journal* 301-319, FIDH *A human rights approach to the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM)* (2004); F Viljoen *International human rights law in Africa* (2007); M Killander 'The African Peer Review Mechanism and Human Rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75.

⁴⁴ See selected bibliography in C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2007) 362-363.

⁴⁵ See eg Viljoen (2007).

⁴⁶ A Lloyd & R Murray 'Institutions with responsibility for human rights protection under the African Union' (2004) 48 *Journal of African Law* 165 184.

under the auspices of the United Nations (UN), has interacted with Africa.⁴⁷ Arrangements which are not explicitly focused on human rights, but have the promotion and protection of human rights included in the objectives of the organ should be considered in any examination of regional human rights promotion and protection. The Pan-African Parliament, the Peace and Security Council and the APRM are examples of such institutional arrangements. The contribution of such institutions to human rights has not been sufficiently explored. This thesis tries to fill this gap with regard to the APRM.

1.5 Methodology

This thesis can be said to deal with the impact of law on politics. While the study aims at using an analytical approach wherever possible, descriptive sections are necessary to provide essential information to inform the analysis. In addition to descriptive and analytical approaches, the study takes a comparative approach in analysing how the experiences of different types of monitoring mechanisms can help to understand the functioning of a newly established mechanism.

The research makes use of both primary and secondary material. The APRM framework documents, which include the Memorandum of Understanding; the Declaration on Democracy, Political, Economic and Corporate Governance; the APRM Base Document; Objectives, Standards, Criteria and Indicators for the APRM (OSCI) and the Questionnaire, are analysed with focus on their relevance for human rights.

The APRM process is examined through analysing country review reports and a survey of the extensive literature on the topic. Interviews have been used to fill some gaps in the literature. However, it should be noted that it has not been possible to secure interviews with all relevant stakeholders.

⁴⁷ See eg Viljoen (2007).

International human rights monitoring methods and their impact are examined mainly through analysis of the literature. The case studies make use of primary sources such as findings of national and international human rights bodies, poverty reduction strategy papers, country review reports and implementation reports.

1.6 Structure of the study

This chapter gives a background to the study. It further identifies the issues that will be addressed and identifies where the thesis fits into previous work done in the field.

Chapters two to eight are divided into two parts. Part 1 of the thesis consists of four chapters which set out the mandate and procedures of the APRM and how it relates to other forms of compliance monitoring, in particular with regard to human rights.

Chapters 2 and 3 address the question what the APRM is meant to achieve. Chapter 2 situates the discussion in the context of the many failed plans that have been devised to ensure development in Africa. Chapter 3 gives a historical background to the development of the APRM and further discusses how the APRM framework documents deal with human rights.

Chapter 4 sets out the APRM structures and investigates how these have gone about implementing the mandate. The focus is on popular participation, transparency and accountability in the process, as necessary components of a rights-based approach.

Chapter 5 discusses the APRM in the context of the question why states commit to international human rights treaties. It further discusses theories of compliance with international law and analyses international human rights

monitoring mechanisms and considers whether the inclusion of respect for human rights in the APRM mandate constitutes unnecessary proliferation.

Part 2 of the thesis provides analysis in the form of case studies of how human rights feature in the first APRM reviews. Chapters 6, 7 and 8, which deal with Ghana, Rwanda and Kenya, investigate whether the APRM reports and Programmes of Action (POAs) address the relevant issues to improve the enjoyment of human rights, what action has been taken to implement the POAs, and measures taken to improve the human rights situation which are not reflected in the country review reports or POAs. The chapters also discuss issues around financing of the implementation of the POA and its integration with other development frameworks.

Chapter 9 sets out the conclusions and recommendations of the study.

1.7 Limitations

The thesis represents a snap shot of how the process works at this early stage of its development. The APRM has been established recently and only a few country review reports have been published so far. The material available is adequate to illustrate how the APRM process functions. This will be contrasted against the experience with various types of human rights monitoring which has existed for much longer.⁴⁸

Ghana, Rwanda and Kenya have been chosen for the case studies on the basis that they were the first countries reviewed and there is thus more information available on the impact of the reviews of these countries than those who have been reviewed at a later stage. It has unfortunately not been possible to conduct field research in Ghana, Rwanda and Kenya. Field research might

⁴⁸ To analyse an institution in the early stages of its development is quite common. An example in the African human rights context are the numerous articles written on the African Court on Human and Peoples' Rights before it was established.

have added some insights. However, the nature of the study is such that it has been deemed sufficient to conduct it mainly through desk research.