



PART II

CASE STUDIES

Introduction

The following chapters discuss the first reviews country by country setting out findings in the country review reports and actions in the Programme of Action (POA), in the context of what international and national human rights monitoring bodies and civil society organisations have had to say about the human rights situation in the country. The progress reports of the reviewed countries and other material are used to see to what extent human rights relevant commitments in the POA have actually been realised.

For each case study the introduction presents national plans of action which are of relevance to a discussion of the APRM, in particular poverty reduction strategies. Thereafter an overview of the adherence of the country to international human rights treaties and cooperation with international monitoring bodies is discussed with a focus on to what extent the APRM considered this issue. The outcome of interaction with the monitoring bodies, for example concluding observations of treaty monitoring bodies, are further considered under the headings of specific human rights issues set out in the order in which they are treated in the African Charter on Human and Peoples' Rights, the main African human rights treaty which has been ratified by all the member states of the African Union.¹

¹ For a human rights analysis of these country review reports following the structure of the Questionnaire see M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75.

CHAPTER 6

GHANA

6.1 Introduction

The Ghana self-assessment was conducted between May 2004 and March 2005. The country review mission took place in April 2005. A final POA was submitted in May 2005 ahead of the presentation of the report to the APRM Forum in June the same year.² The country review report has been translated into 'easy to read English' as well as six major local languages.³ Ghana has submitted annual reports on progress on implementation of the POA.⁴ Monitoring of implementation of the POA remains in the hand of the Governing Council which is assisted by the technical research institutes which contributed to the self-assessment and district oversight committees.⁵

6.2 Linkages with other national plans

Ghana adopted an interim poverty reduction strategy paper in June 2000 and a poverty reduction strategy paper (GPRS I) in March 2003.⁶ The Growth and Poverty

² African Peer Review Mechanism, Country Review Report of the Republic of Ghana, June 2005, available at www.nepad.org/2005/files/aprm.php, (hereafter CRR Ghana). The same report but with slightly different pagination has been posted on other web sites including the government of Ghana. References to the Ghana report is therefore given to chapters/paragraph numbers, which seemingly are the same in all versions.

³ Budget statement and economic policy for 2009, available at www.mofep.gov.gh/budget2009.cfm (accessed 7 July 2009) para 888. (Hereafter Budget 2009)

⁴ National African Peer Review Mechanism – Governing Council, Implementation of the national Programme of Action – Annual progress report 2006, January 2007 (hereafter Ghana APRM progress report 2006); National African Peer Review Mechanism – Governing Council, 2007 Annual progress report – Progress in implementation of the national Programme of Action, December 2007 (hereafter Ghana APRM progress report 2007). On file with author. It has not been possible to obtain a copy of the annual progress report for 2008 presented to the APRM Forum in January 2009.

⁵ Budget 2009 paras 883, 889, 890.

⁶ Ghana Poverty Reduction Strategy 2003-2005 – An agenda for growth and prosperity, volume I: Analysis and policy statement, 19 February 2003, available at www.imf.org/external/pubs/ft/scr/2003/cr0356.pdf (accessed 19 June 2008).

Reduction Strategy (GPRS II) (2006-2009) was adopted in November 2005.⁷ GPRS II calls for ‘a holistic and participatory approach’ to monitoring and evaluation ‘including consultative mechanisms such as the APRM’.⁸ The National Development Planning Commission publishes annual progress reports on the implementation of GPRS II.⁹ The policy formulations of GPRS II and the APRM POA are generally in line with each other and GPRS II makes cross references to APRM objectives.¹⁰ To the extent that there are different policy prescriptions in areas of relevance for human rights, these will be discussed below.

Ghana does not have a national action plan for human rights.

6.3 Financing

The cost for implementing the APRM POA (2005-2008) is set at US\$ 5.5 billion, of which \$ 2.4 billion is for corporate governance and \$ 2.85 billion is for socio-economic development. The 2007 progress report indicates that US \$ 433 million was released from the national budget for APRM related activities in 2006 and US \$ 751 million in 2007.¹¹ The discrepancies between the different governance areas are much smaller in these actual disbursements than in the POA. US\$ 163.5 million was provisionally released in 2006 and 2007 for activities related to democracy and political governance, US\$ 355 million for economic governance, US \$ 367.4 million for corporate governance and US\$ 462.2 million for socio-economic development.

⁷ Growth and Poverty Reduction Strategy (GPRS II) (2006-2009), November 2005 available at www.imf.org/external/pubs/ft/scr/2006/cr06225.pdf (accessed 13 June 2008) (hereafter GPRS II).

⁸ GPRS II xxix, 72.

⁹ So far two implementation reports on GPRS II has been published: National Development Planning Commission, The implementation of the Growth and Poverty Reduction Strategy (GPRS II) 2006-2009, 2006 Annual Progress Report, 31 March 2007, available at www.ndpc.gov.gh/pdf/Annual_Progress_Report_2006.pdf (accessed 13 June 2008), National Development Planning Commission, The implementation of the Growth and Poverty Reduction Strategy (GPRS II) 2006-2009, 2007 Annual Progress Report, 8 May 2008, www.ndpc.gov.gh/GPRS/Final%202007%20APR.pdf (accessed 23 June 2009).

¹⁰ On the integration of the POA and GPRS II see ‘The African Peer Review Mechanism process in Ghana’, presentation by Dr Francis Appiah, Executive Secretary, NAPRMGC, 29 June 2007, available at www.polity.org.za (accessed 13 June 2008).

¹¹ Ghana APRM progress report 2007 17.

While the largest portion of the funds released is allocated to socio-economic development the disbursements for 2006-2007 come to only 16% of the US\$ 2.85 billion required for 2005-2008 according to the APRM POA. On the other hand the disbursements in 2006 and 2007 for democracy and political governance, and economic governance exceed the projected costs in the APRM POA for 2005-2008. The implementation matrix at the end of the progress report does not provide information on what has been spent on the individual action points.

The total cost for implementing GPRS II is set at US\$ 8.06 billion. US\$ 6.27 billion is budgeted through the MTEF (2006-2009).¹² A separate document sets out the details about the projected costs per objective.¹³ GPRS II rather than the POA forms the basis for support by donors.¹⁴ However, some donors have made reference to the APRM when pledging to support Ghana.¹⁵ Some donor funding take the form of budget support.¹⁶

The 2008 budget of Ghana projected expenditure of GHS 7 billion (US\$ 7.3 billion). The outcome was more than GHS 9 billion.¹⁷ Domestic revenue in 2008 was GHS 4.8 billion (budget 4.76 billion).¹⁸ Project and programme grants from donors were GHS 820.8 million (budgeted GHS 853.4 million) and loans GHS 668.2 million (budget GHS 621.5 million).¹⁹ In June 2009, the World Bank committed to support Ghana with a US\$ 535 million concessionary loan, part of a three-year support totaling US\$ 1.2 billion.²⁰

¹² GPRS II 75.

¹³ Growth and Poverty Reduction Strategy (GPRS II) Costing Framework (2006-2009), volume II, November 2005, appendix 3.

¹⁴ See eg World Bank, International Development Association Country Assistance Strategy for Ghana FY08-11, 31 May 2007.

¹⁵ See eg 'Germany pledges more dev't support to Ghana', *GNA*, 28 August 2008, news.myjoyonline.com/politics/200808/19889.asp (accessed 23 June 2009).

¹⁶ Z Musah 'World Bank supports www.modernghana.com/news/170186/1/world-bank-supports-ghanas-budget.html Ghana's buget', *ISD*, 16 June 2008, (accessed 23 June 2009).

¹⁷ Budget 2009 para 71.

¹⁸ Budget 2009 para 57.

¹⁹ Budget 2009 paras 67-68. On ODA to Ghana see www.oecd.org/dataoecd/21/40/1881076.gif (accessed 7 July 2009).

²⁰ '\$535m credit for Ghana', *GBC*, 2 July 2009, gbcghana.com/news/26789detail.html (accessed 3 July 2009).

The figures above illustrate Ghana's reliance on foreign aid. When the APRM Forum in January 2009 considered Ghana's progress report for 2008 it was agreed that the country's dependence on foreign aid should be investigated further.²¹ However, it is clear that such dependency might be difficult to get out of, in particular given the current economic situation. In his 2009 budget statement the Minister of Finance noted that:²²

Weak demand for exports and weak commodity prices imply less export revenue. In addition, expected shortfalls in remittances, a slowdown in donor support and private capital inflows as a result of the global recession are all likely to have negative impact on the Ghanaian economy in general and on public finances in particular.

6.4 Adherence to international human rights standards and cooperation with international monitoring bodies

Ratification of international human rights instruments

The Ghana APRM report in its summary of the self-assessment notes a number of UN conventions of relevance to the protection of human rights which have not been ratified by Ghana.²³ However, the recommendations in the country review report only refer to the need for Ghana to adopt a 'binding time-frame' to ratify a number of AU instruments which according to the report has not been ratified by Ghana.²⁴

²¹ Communiqué issued at the end of the tenth summit of the Committee of Heads of State and Government participating in the African Peer Review Mechanism (APRM Forum), 31 January 2009, Addis Ababa, Ethiopia, para 21.

²² Budget 2009 para 36.

²³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. CRR Ghana ch 2 para 11.

²⁴ African Charter on the Rights and Welfare of the Child, Amendments to the Constitutive Act of the AU, AU Convention on Preventing and Combating Corruption, AU Non-Aggression and Common Defence Pact, Protocol to the African Charter on Human and Peoples' Rights on the

The POA includes a commitment to ratify the AU instruments listed in the recommendations by 2007.²⁵ Of the listed instruments the African Charter on the Rights and Welfare of the Child was ratified by Ghana in 2005. Ghana's progress report for 2007 notes that four of the remaining seven instruments included in the recommendations and POA had been ratified by the end of 2007: the amendments to the AU Constitutive Act, the Defence Pact, the Women's Protocol and the Corruption Convention. The Protocol on the African Human Rights Court should not have been included in the country review report as an un-ratified instrument as it was ratified in August 2004. The progress report continues this mistake by listing the Protocol as not having been ratified by the end of 2007.²⁶

In its progress reports, the Governing Council should also consider conventions that have been adopted after the review process but which are of relevance to the improvement of governance and advocate for their ratification. These include the African Youth Charter and the AU Charter on Democracy, Elections and Governance. However, the main problem with regard to follow-up is that non-ratified UN instruments were not included in the recommendations in the country review report, with the exception of the optional protocols to the CRC which were dealt with under the issue of children's rights.²⁷ None of the un-ratified UN instruments were taken up in the POA and consequently not considered in the progress reports. The Second Optional Protocol to ICCPR, dealing with the abolition of the death penalty, was not even mentioned in the country review report despite the Commission on Human Rights and Administrative Justice (CHRAJ) calling for its ratification in its

Establishment of an African Court on Human and Peoples' Rights, Protocol on the African Court of Justice, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Protocol to the OAU Convention on the Prevention and Combating of Terrorism. CRR Ghana ch 2 para 13.

²⁵ CRR Ghana 158.

²⁶ Ghana APRM progress report 2007 24. The mistakes with regard to the status of international treaties are not only evident in the APRM process. Several mistakes are also evident in Ghana's report to the UN UPR. See National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council resolution 5/1, Ghana, A/HRC/WG.6/2/GHA/1, 8 April 2008, 7. (Hereafter National report)

²⁷ CRR Ghana ch 2 para 105.

2005 Annual Report.²⁸ None of the optional protocols to CEDAW, CAT and CRC had been ratified by July 2009 despite the signature of Ghana to all the protocols indicating its intention to ratify, with the signature of the CEDAW optional protocol dating back to 2000. CHRAJ again called for the ratification of these instruments in its submission to the 2008 Universal Periodic Review of Ghana.²⁹

The country review report takes note that Ghana has not ratified ILO Convention 138 on minimum age, which is one of the eight fundamental ILO Conventions.³⁰ The Convention had not been ratified by July 2009.

State reporting

The recommendations in the country review report call on Ghana to 'clear outstanding arrears' with respect to reporting obligations under human rights treaties.³¹ The POA indicates that this should be done by 2007.³² The 2007 Ghana progress report makes no mention of actions taken to improve state reporting. A survey of available information indicates that the problem with late or no reporting remains. Ghana had by July 2009 not submitted state reports as required under the ICESCR, ICCPR, CAT and CMW. A consolidated report on CERD was submitted in June 2002 and considered by the Committee in March 2003. A consolidated report on CEDAW was submitted in 2005 and examined by the Committee in August 2006. Its second report on the CRC due in 1997 was submitted in March 2004 and considered by the Committee in January 2006. Ghana has submitted two reports to the African Commission, the latest in March 2000 which was considered in April 2001.

²⁸ Commission on Human Rights and Administrative Justice, Annual report 2005 (hereafter CHRAJ annual report 2005) 92.

²⁹ Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, Ghana, A/HRC/WG.6/2/GHA/3, 25 March 2008, para 1. (Hereafter UPR summary)

³⁰ CRR Ghana ch 4 para 14;
webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?Lang=EN (accessed 14 July 2008).

³¹ CRR Ghana ch 2 para 13.

³² CRR Ghana 158.

Other cooperation with international human rights bodies

Ghana has issued a standing invitation to UN special procedures. So far the only visit to Ghana by a UN special procedure was the mission by the Special Rapporteur on violence against women in July 2007.³³ Ghana was considered by the Universal Periodic Review of the UN Human Rights Council in May 2008.³⁴

6.5 Compliance with substantive human rights norms

Equality and non-discrimination

The APRM country review report notes with regard to gender discrimination that '[i]t must be emphasised that there is no lack of political will to address this problem, and the Constitution clearly commits the country to the elimination of gender discrimination.'³⁵ However, it must be noted that the provision on equality and freedom from discrimination in the Ghana Constitution allows Parliament to adopt discriminatory laws in the field of personal law.³⁶ The African Commission noted in its 2001 concluding observations on the Ghana periodic report:³⁷

Article 270 of the Ghanaian Constitution which guarantees and insulates the institution of traditional village authorities from any control, is tantamount to institutionalizing the practices of banning pregnant teenagers and people suspected of witchcraft, and as such the government of Ghana should endeavour to abolish this harmful practice. This article should be amended to enable government to address this issue and eradicate this obnoxious practice.

³³ Y Ertürk 'Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum – Mission to Ghana', A/HRC/7/6/Add.3, 21 February 2008.

³⁴ The Ghana state report to the UPR uses the APRM country review report as support for a number of statements, see National report, fn 2, 7 and 8.

³⁵ CRR Ghana ch 6 para 7.

³⁶ Constitution of Ghana (1992) s 17.

³⁷ Concluding observations on the periodic report of Ghana (2001), reprinted in Heyns & Killander (2007) 171.

While not discussing the constitutional provisions the country review report discussed the issue of chieftaincy extensively and recommended that the government should 'review the institution of chieftaincy to make it more responsive to the needs and demands of the rapidly changing Ghanaian society, and to the aspirations of people across the gender divide.'³⁸ This recommendation is not taken up in the POA. However, the 2007 progress report notes that:

A Ministry of Chieftaincy and Cultural Affairs has been established to deal with chieftaincy issues. In addition, a Royal College is to be established to train chiefs and potential chiefs in socio-economic development and conflict prevention and resolution issues. The import is to make chieftaincy more responsive to the developmental concerns of the constituents.³⁹

The progress report also notes that some stakeholders, in particular queen mothers, have argued that the Chieftaincy Act should be amended to allow women in the Houses of Chiefs.⁴⁰ A pilot project is currently underway to codify customary law in relation to land and family.⁴¹ This project follows the finding in the progress report that the National House of Chiefs has not fulfilled its role in codifying customary law in a way that would abolish harmful traditional practices.⁴²

Harmful traditional practices with a gender element in Ghana include the servitude of girls in traditional temples (*trokosi*), persecution of alleged witches and female genital mutilation (FGM). The self-assessment report notes that the Commission on Human Rights and Administrative Justice has taken action to address violations arising from traditional practices such as *trokosi*, female circumcision and 'penal colonies for alleged witches'.⁴³ Despite a law outlawing the practice in 1998 no one has ever been prosecuted for *trokosi*.⁴⁴ It is debatable whether criminal prohibition is effective

³⁸ CRR Ghana ch 2 para 26.

³⁹ Ghana APRM progress report 2007 27. See also 150.

⁴⁰ Ghana APRM progress report 2007 27.

⁴¹ Budget 2009 para 937.

⁴² Ghana APRM progress report 2007 51. See also Ertürk (2008).

⁴³ CRR Ghana ch 2 para 43. The term 'penal colony' is arguably not a correct description see Ertürk (2008) who compares the camps to shelters for abused women.

⁴⁴ UPR summary para 21.

to deter the practice and it has been argued that the 1998 law might have had a counter-productive effect on initiatives to curb *trokosi* through cultural-sensitive education and assistance.⁴⁵ The POA to some extent recognises this dilemma in that in addition to the 'enforcement of existing legislation it provides for awareness campaigns to secure the release and rehabilitate victims of 'ritual servitude' and '[d]ecline abuses against witches'.⁴⁶ The 2007 progress report notes that witch camps have been 'depopulated' and that the incidence of 'customary servitude' (*trokosi*) has declined after 'intense educational and advocacy campaigns'.⁴⁷ However, a detailed analysis of the issue by the UN Special Rapporteur on violence against women shows that much remains to be done to eradicate these practices.⁴⁸

A Domestic Violence Act was adopted in 2007.⁴⁹ This follows recommendations in the country review report,⁵⁰ which were included in the POA.⁵¹ A number of measures have been taken to make the Domestic Violence Act effective.⁵² One controversial issue with regard to the Act was the issue of marital rape. The CEDAW Committee in 2006 called for the repeal of section 42(g) of the Criminal Code which provides that a husband cannot be prosecuted for the rape of his wife.⁵³ The Ghana progress report notes that the Domestic Violence Bill included a prohibition on marital rape, but that this provision was removed in the Act due to public pressure.⁵⁴

The country review report notes that there 'are no specific laws in Ghana on the political rights and participation of women, although Article 9 of the African Charter's protocol obliges State parties to ensure equal participation of women in political life

⁴⁵ RK Ameh 'Reconciling human rights and traditional practices: The anti-trokosi campaign in Ghana' (2004) 19 *Canadian Journal of Law and Society* 51-72.

⁴⁶ CRR Ghana 163. See also GPRS II.

⁴⁷ Ghana APRM progress report 2007 34, 160.

⁴⁸ Ertürk (2008) paras 42-50.

⁴⁹ Ghana APRM progress report 2007 50.

⁵⁰ CRR Ghana 40, 126.

⁵¹ CRR Ghana 168. See also GPRS II 136.

⁵² Budget 2009 paras 752, 772,

⁵³ CEDAW concluding comments: Ghana para 24.

⁵⁴ Ghana APRM progress report 2007 50. See also Ertürk (2008). In its report to the UPR, CHRAJ calls for the amendment of certain provisions of the Domestic Violence Act. However, it does not specify which provisions it has in mind.

through affirmative action and enabling legislation.⁵⁵ The country review mission is seemingly ahead of its time when it bases the obligation to adopt legislation based on a Protocol that was only ratified by Ghana in 2007.

As noted in the country review report the problem is often not so much with policy as with implementation. The report states that the goals of the Affirmative Action Policy of 1998 have not been realised.⁵⁶ There is no explanation in the report as to why the 1998 policy did not succeed. The Panel calls on Ghana to adopt a 40% quota for women in public offices.⁵⁷ This was the same goal that was set in the 1998 Policy.⁵⁸ The Policy further provided that 50% of government appointees to District Assemblies should be women.⁵⁹

Discrimination is rampant in the work place. The recommendations in the country review report calls on the government, the private sector and 'other relevant entities to '[a]ddress stereotyping of women and gender discrimination in the workplace'.⁶⁰ The government is called upon to 'promote affirmative action ... in public institutions and in the organised private sector' and establish benchmarks of progress in achieving gender equality and to sanction institutions which do not fulfil the benchmarks in time'.⁶¹ While there is recognition that affirmative action is called for also in the private sector, there is no call for specific measures with regard to women in the informal sector, as called for by the CEDAW Committee,⁶² with the exception of adolescent domestic workers.⁶³

⁵⁵ CRR Ghana para 87.

⁵⁶ CRR Ghana chapter 2 para 42. See also POA under objective 3.

⁵⁷ CRR Ghana chapter 2 para 96. Para 42 provides for an affirmative action policy in the 'decentralised system of governance' with quotas and time frames but does not recommend which quota to target.

⁵⁸ CRR Ghana para 37.

⁵⁹ CRR Ghana para 89. Cf 125 para 78: 30%.

⁶⁰ CRR Ghana 97. Cf CEDAW concluding comments: Ghana.

⁶¹ CRR Ghana 126 para 80.

⁶² CEDAW concluding comments: Ghana para 30.

⁶³ CRR Ghana 170.

The POA includes monitoring, evaluation and review of the Affirmative Action Policy and the creation of schemes to increase participation of women in public life.⁶⁴ It further provides that policies should be developed to make it easier for women to participate in politics.⁶⁵ GPRS II simply calls for the progressive implementation of affirmative action for women to enhance their access ‘to economic resources and promote women in public life’.⁶⁶

The CEDAW Committee noted in its concluding observations the lack of gender specific statistical data.⁶⁷ The POA provides for more resources to the Ghana Statistical Service to provide gender disaggregated data.⁶⁸ GPRS II provides a number of actions to improve statistical information.⁶⁹ Accurate statistics is important to make another goal of GPRS II possible, namely that gender analysis should inform the budget.⁷⁰

There are a number of issues with regard to gender discrimination that have been raised by human rights monitors but which are not reflected in the country review report, POA or GPRS II. For example, the CEDAW Committee notes that the prohibition of discrimination in the Ghanaian Constitution is not consistent with CEDAW.⁷¹ The CEDAW Committee and the Special Rapporteur call for the establishment of more shelters for victims of violence.⁷² The CEDAW Committee urged Ghana to amend provisions in the Constitution and the Citizenship Act which makes it more difficult for spouses of Ghanaian women than spouse of Ghanaian men to become Ghanaian citizens.⁷³

⁶⁴ CRR Ghana 163.

⁶⁵ CRR Ghana 169.

⁶⁶ GPRS II 142.

⁶⁷ CEDAW concluding comments: Ghana para 37.

⁶⁸ CRR Ghana 215.

⁶⁹ GPRS II 146-147.

⁷⁰ GPRS II 142.

⁷¹ Paras 13-14.

⁷² According to the UN Special Rapporteur on violence against women there was only one shelter in the whole country at the time of her visit in July 2007, Ertürk (2008).

⁷³ Paras 25-26.

In addition to gender inequality there is major inequality between different regions in Ghana. In particular the northern part of the country has been neglected.

Life

Ghana is on track to achieve many of the MDG targets. While the country is yet to achieve sufficient reduction in child mortality to meet the MDG target, UNICEF has indicated that ‘determinants’ of child mortality are improving, for example reduction of malnutrition and treatment of malaria.⁷⁴ There are no current statistics on maternal mortality rates, but UNICEF notes that there is ‘a common view among government and development partners that accelerated efforts are required to ensure progress, particularly through investments in skilled birth attendance and emergency obstetric care.’⁷⁵ The APRM self-assessment notes the challenge of meeting the MDG goals with regard to child and maternal mortality,⁷⁶ but no solutions are proposed in the report or in the POA. However, there are actions in the POA with regard to factors which increase child mortality such as malaria.⁷⁷ The issue of child and maternal mortality is also insufficiently dealt with in GPRS II.

There have been allegations of violations of small scale mining operators, *galamsey*, by private security companies, working for multinational mining companies, assisted by state security forces.⁷⁸ Extra-judicial killings are alleged to have taken place and many people have lost their livelihoods. This problem has increased in recent years and while it is not dealt with in the country review report, the 2007 progress report gives ample coverage to allegations of the Wassa Association of Communities Affected by Mining (WACAM).⁷⁹

⁷⁴ UNICEF UPR para 3.

⁷⁵ UNICEF UPR para 5.

⁷⁶ CRR Ghana 116 para 41.

⁷⁷ CRR Ghana 262.

⁷⁸ UPR summary paras 12-13.

⁷⁹ Ghana APRM progress report 2007 114-115.

Slavery and forced labour

Some forms of slavery and forced labour are a result of harmful traditional practices, such as *trokosi*. This practice has been discussed above as it has a clear gender dimension. Poverty forms the basis of much other exploitation in the form of forced labour and trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol) has not been ratified by Ghana, despite a recommendation to this effect in the country review report,⁸⁰ and in the concluding observations of the CRC Committee in 2006.⁸¹ The POA calls for the adoption of the Human Trafficking Bill.⁸² A Human Trafficking Act was enacted in 2005.⁸³ A National Plan of Action on Human Trafficking was adopted in December 2007.⁸⁴ The POA treats the issue of child trafficking together with child labour and provide for 'Equipping Security agencies and civil society groups to promote enforcement and compliance'.⁸⁵ GPRS II calls for the establishment of 'anti-trafficking clubs in schools in sending areas', public education and reduction of poverty to stem trafficking.⁸⁶ The APRM 2007 progress report notes the impact of initiatives with regard to child trafficking.⁸⁷

Torture and cruel, inhuman or degrading treatment or punishment

Police brutality has been noted as a significant problem in Ghana.⁸⁸ The 2005 Annual Report of CHRAJ notes a number of problems with regard to detention including overcrowding, in particular in remand prisons,⁸⁹ inadequate food and poor medical

⁸⁰ CRR Ghana 42.

⁸¹ Concluding observations off the Committee on the Rights of the Child, CRC/C/GHA/CO/2, para 70.

⁸² CRR Ghana 168.

⁸³ Ghana APRM progress report 2007 35.

⁸⁴ UPR compilation para 10.

⁸⁵ CRR Ghana 163.

⁸⁶ GPRS II 120, 136, 137.

⁸⁷ Ghana APRM progress report 2007 35.

⁸⁸ UPR summary para 19.

⁸⁹ CHRAJ also noted serious overcrowding at the Accra Psychiatric Hospital, CHRAJ annual report 2005 89.

care.⁹⁰ CHRAJ has called for 'periodic visits to police cells and prisons, particularly remand prisons, by cross-sections of the legislature and the judiciary as a demonstration of their commitment to uphold the fundamental human rights of all'.⁹¹ The issue is not dealt with in the country review report. GPRS II only provides for the establishment of programmes to rehabilitate and reform prisoners.⁹²

Personal liberty and security

The focus in POA and GPRS II is on institutional capacity to ensure crime prevention. This is important, in particular in a situation where vigilante justice has been growing as a response to the perceived inefficiency of the police and the court system.⁹³

The right to personal liberty and security is violated not only by vigilantes but also by the police. In its 2005 Annual Report CHRAJ expressed concern over detention of criminal suspects in inadequate police cells beyond 48 hours.⁹⁴ Illegal detention also takes place outside the criminal justice system. In the same report CHRAJ noted allegations of detention in the hospital of patients which could not pay their hospital bills. Issues concerning illegal detention are not addressed in the APRM report.

Access to justice and fair trial

Two main factors contribute to the lack of access to justice: The high costs of legal advice and representation and the lack of easily accessible courts in many areas of the country.⁹⁵ The Ghana self-assessment notes that access to justice is effectively denied a large portion of the population because of poverty.⁹⁶ The Panel recommends that Ghana creates new courts of appeal to ease congestion and take

⁹⁰ CHRAJ annual report 2005 91.

⁹¹ CHRAJ annual report 2005 92.

⁹² GPRS II 138.

⁹³ IRIN 'Ghana: Vigilante groups fill security vacuum', 23 June 2008, www.irinnews.org/Report.aspx?ReportId=78878 (accessed 18 July 2008).

⁹⁴ CHRAJ annual report 2005 89.

⁹⁵ UPR summary paras 22,

⁹⁶ CRR Ghana chapter 2 para 31.

measures to reduce the back log of cases.⁹⁷ The POA provides for '[i]ncreased capacity of legal sector to provide affordable and speedy access to justice'. Proposed actions include court modernisation, more resources to legal aid, review of 'existing costs, rules and procedures', all to be achieved by 2005.⁹⁸ The 2007 APRM progress report indicates that district courts have been refurbished, high courts computerised and alternative dispute resolution promoted.⁹⁹ The report further notes that almost half of the respondents in a survey felt that access to justice had improved over the last years.¹⁰⁰

Freedom of expression and information

The right to information is guaranteed in article 21(1)(f) of the Constitution. A right to information bill was drafted in 2002 but has not yet been passed by Parliament.¹⁰¹ The recommendations in the country review report includes that the bill should be passed as soon as possible.¹⁰² The POA sets 2006 as the deadline for passing the bill under two headings,¹⁰³ and 2007 in another.¹⁰⁴ The need to enact the bill is noted in the 2007 APRM progress report, but no reference is made to that the deadlines set out in the POA had by then already passed.¹⁰⁵ However, the Whistleblower's Protection Act has been passed into law as called for in the country review report.¹⁰⁶

Political participation

The country review report notes that while consultations take place, recommendations are often ignored.¹⁰⁷ The 2007 progress report states that

⁹⁷ CRR Ghana chapter 2 para 64.

⁹⁸ CRR Ghana 161.

⁹⁹ Ghana APRM progress report 2007 157.

¹⁰⁰ Ghana APRM progress report 2007 30.

¹⁰¹ UPR summary para 2.

¹⁰² CRR Ghana 75, 92.

¹⁰³ CRR Ghana 207.

¹⁰⁴ CRR Ghana 167, 251 See also GPRS II 141.

¹⁰⁵ Ghana APRM progress report 2007 48, 122.

¹⁰⁶ Ghana APRM progress report 2007 48.

¹⁰⁷ CRR Ghana ch 5 para 82.

[s]takeholders welcome the increasing role that civil society play in the formulation of national policies – budget process, privatization of state resources, land issues, etc.¹⁰⁸ Consultation takes place through *inter alia* National Economic Dialogue, the Institute of Democratic Governance (IDEG) workshops for civil society input into the budget, and National Development Planning Commission’s consultations on the GPRS.¹⁰⁹

With regard to elections ethnic voting pattern is seen as a problem. The report also notes a lack of democratic decision making within political parties.¹¹⁰

Property

The country review report calls on Ghana to implement proposals for a comprehensive land law ‘bearing in mind the needs of vulnerable groups, especially women’.¹¹¹ The 2007 progress report notes that a draft National Land Use Plan to demarcate disputed land has been developed and is undergoing stakeholder validation.¹¹² Initiatives to make land registration easier have also been implemented and draft legislation on land administration has been submitted to cabinet.¹¹³

Work

According to the self-assessment ‘relevant stakeholders feel that policy-making for ... employment creation is receiving sufficient attention and making good progress.’¹¹⁴ An important factor noted in the country review report is that labour statistics are lacking.¹¹⁵ The report states that employees are poorly protected in particular in smaller enterprises and in the informal sector and that low wages in the public sector

¹⁰⁸ Ghana APRM progress report 2007 65.

¹⁰⁹ Ghana APRM progress report 2007 65.

¹¹⁰ CRR Ghana para 39.

¹¹¹ CRR Ghana ch 2 para 26.

¹¹² Ghana APRM progress report 2007 24.

¹¹³ Ghana APRM progress report 2007 25.

¹¹⁴ CRR Ghana ch 3 para 27.

¹¹⁵ CRR Ghana ch 3 para 63. However, see the statistics in ch 5 paras 10-11.

leads to poor morale affecting service delivery.¹¹⁶ The report in particular notes youth unemployment as a matter of concern.¹¹⁷ The POA sets out that private sector development which would lead to increased employment should be encouraged through macroeconomic reforms, reduction of costs of doing business (including tax incentives) and improved infrastructure.¹¹⁸ No mention is made of the issue of youth employment in the POA. However, a National Youth Employment Programme was launched in October 2006.¹¹⁹ By August 2007, over 100 000 youth had benefited from employment through the programme.¹²⁰

The ILO criticised GPRS I for a lack of focus on employment creation and the informal economy:¹²¹

Despite the inclusion of an employment chapter, there is no focus on employment targets. Moreover, the strategy takes a fairly narrow and sectoral view of employment, seeing job creation in agriculture and industry as a by-product of economic growth. Employment is not consistently considered as a means to improve access to income and lower poverty rates. In particular, there is not enough attention given to the growth and employment potential of the informal economy. As a result, the constraints and obstacles faced by people in informal employment are not addressed.

According to the ILO, GPRS II, adopted in November 2005, addressed most of the concerns.¹²²

¹¹⁶ CRR Ghana ch 4 para 60.

¹¹⁷ CRR Ghana ch 6 para 14.

¹¹⁸ CRR Ghana 256.

¹¹⁹ www.ghanaweb.com/GhanaHomePage/NewsArchive/photo.day.php?ID=111576

¹²⁰ Ghana APRM progress report 2007 131, 151.

¹²¹ ILO, Decent Work Pilot Programme, country brief: Ghana, May 2006, 5, www.ilo.org/public/english/bureau/dwpp/download/ghana/countrybriefgh.pdf (accessed 29 May 2008).

¹²² www.ilo.org/public/english/bureau/dwpp/countries/ghana/index.htm (accessed 29 May 2008).

Health

In its annual report for 2005, CHRAJ called on the government 'to take immediate and decisive measures to address the brain drain in the health sector and improve the conditions of service of health personnel. The Commission again urged the government to accelerate the implementation of the National Health Insurance Scheme and the National Ambulance Service.'¹²³ It called on the management of health institutions to promote the Patients Charter which was developed by CHRAJ and the Ghana Medical and Dental Council in 2003.¹²⁴

The Ghana self-assessment noted that the right to health in the Constitution has been 'concretely manifested' through the National Health Insurance Scheme which was established in 2003.¹²⁵ However, the report noted that 'the health system continues to suffer from an exodus of health personnel.'¹²⁶ The recommendations in the country review report include the provision of incentives for health professionals to work in disadvantaged areas of the country.¹²⁷ US\$ 400 000 is the estimated budget in the POA to provide for incentives to health professionals to keep them in the country.¹²⁸ The POA also includes initiatives to reverse the spread of HIV and AIDS and combating malaria and other communicable diseases.¹²⁹

The 2007 progress report takes note of the incentives introduced to keep health professionals in the country and to have them work in disadvantaged areas of the country. 75% of survey respondents think that access to health services have improved. Initiatives not included in the POA include increased training of health workers with almost four times as many health workers trained in 2007 as compared

¹²³ CHRAJ annual report 2005 57.

¹²⁴ CHRAJ annual report 2005 88.

¹²⁵ CRR Ghana 27.

¹²⁶ CRR Ghana 108.

¹²⁷ CRR Ghana 120.

¹²⁸ CRR Ghana 262.

¹²⁹ CRR Ghana 262.

to 2003.¹³⁰ The progress report further notes initiatives undertaken with regard to HIV and AIDS, malaria, TB, and guinea worm.¹³¹

Water and sanitation

The POA includes activities with regard to 'maintenance and rehabilitation of existing pipe network and treatment plants'.¹³² In addition US\$ 12 million is allocated in the POA to extend water supply and US\$ 3 million for improved sanitation.¹³³ A number of projects to improve water supply are listed in the 2007 progress report.¹³⁴ An increased number of people had also access to adequate sanitation facilities.¹³⁵ A National Water Policy has been submitted to cabinet.

A five-year Urban Water Supply Project was initiated in January 2005 assisted by a US\$ 103 million loan. The loan was conditioned on the privatisation of the previously state-owned Ghana Water Company.¹³⁶

Education

The CHRAJ annual report for 2005 noted that:¹³⁷

Universal basic education will only be achieved if schooling is made genuinely free and accessible not only in terms of basic user fees but also in respect of parent-teacher association (PTA) fees, extra tuition fees, exam fees, transportation to and from school and other related costs which are likely to restrict access, particularly for poorer communities.

¹³⁰ Ghana APRM progress report 2007 135.

¹³¹ Ghana APRM progress report 2007 136-138.

¹³² CRR Ghana 234.

¹³³ CRR Ghana 264.

¹³⁴ Ghana APRM progress report 2007 99-100.

¹³⁵ Ghana APRM progress report 2007 140.

¹³⁶ IRIN 'Ghana: Privatisation brings new investment to water company', 13 January 2005, www.irinnews.org/report.aspx?reportid=52668 (accessed 18 July 2008).

¹³⁷ CHRAJ annual report 2005 88.

The right to free and compulsory basic education is guaranteed in the Ghanaian constitution. However, the Panel notes that ‘several stakeholders across the country in the regions visited complained about the high cost of education, including basic education, which renders education unavailable to many.’¹³⁸ Concern about deteriorating quality was also raised.¹³⁹ The report further takes note of the sharp increase in public expenditure on education in recent years, but states that ‘although many schools have been built in the last few years, this development has not been matched by the recruitment of sufficient numbers of teachers.’¹⁴⁰ It is unlikely that Ghana will meet the MDG on education.¹⁴¹ The report makes reference to the 1995-2005 strategic plan for Free Compulsory Universal Basic Education, but does not evaluate why it has not achieved its goal.¹⁴² The Panel recommended the government to ‘[a]dopt a policy designed to enforce the international law of free and compulsory basic education.’¹⁴³ The POA sets out actions costing US\$ 82 million for the period 2005-2015 in order to achieve ‘progress towards full enrolment’. The problem with quality of education is addressed in the POA by providing for the training of more teachers and higher teacher wages.¹⁴⁴

The 2007 progress report notes that ‘[p]rimary school enrolment has increased from 2.5 million pupils in 2001/02 to almost 3.4 million in 2006/07 registering an increase of 35 percent.’¹⁴⁵ Almost half a million school children benefit from the school feeding programme.¹⁴⁶ However, it has been estimated that 1 357 000 Ghanaian children did not attend school at the end of 2006.¹⁴⁷

¹³⁸ CRR Ghana ch 5 para 53.

¹³⁹ As above.

¹⁴⁰ CRR Ghana ch 5 paras 8-9.

¹⁴¹ CRR Ghana ch 5 para 41. For a more comprehensive analysis of Ghana’s efforts to meet the MDG education goal see UNICEF ‘Achieving universal primary education in Ghana by 2015: A reality or a dream?’, working papers, June 2007.

¹⁴² CRR Ghana ch 5 para 51.

¹⁴³ CRR Ghana ch 5 para 54.

¹⁴⁴ By 2006 teachers should be paid at least US\$ 2 per day. CRR Ghana ch 5 236.

¹⁴⁵ Ghana APRM progress report 2007 52

¹⁴⁶ Ghana APRM progress report 2007 52. Note should be taken of the allegations of corruption and mismanagement with regard to the school feeding programme, see UPR summary para 40.

¹⁴⁷ UPR summary para 40.

Housing

The POA includes provisions for 'Review of Housing policy to benefit the poor, public private partnership to provide affordable housing'. The estimated budget is set at US\$ 180 million. In addition the POA lists measures to increase access to finance.¹⁴⁸ The 2007 progress report notes the construction of close to 3000 flats and the dissatisfaction of people surveyed with access to housing and the quality of rental housing available.¹⁴⁹ There is no examination of whether the newly constructed flats are affordable for the poor and how the number of flats constructed relates to any goal set by the government. There is no reference in the progress report to the need of a review of the housing policy.¹⁵⁰ There is no national evictions policy in Ghana and hundreds of Ghanaians have been displaced through forced evictions.¹⁵¹ This issue is not dealt with in the country review report.

6.6 Protection of vulnerable groups

The Ghana self-assessment defines vulnerable groups as 'ethnic minorities, refugees, migrant workers, the aged, disabled persons, people with HIV/Aids and children orphaned by HIV/Aids.'¹⁵² The Panel recommends that the international community should assist Ghana in dealing with the refugee situation. It further recommends Ghana to review capacities to cater for internally displaced persons (IDPs). Both recommendations seem a bit out of place as they are not based on any analysis in the report.¹⁵³ As a result, they are disregarded in the POA, which instead provides for measures to ensure access to public facilities for the disabled, revision of the pension scheme, provision of a national policy on the aged and a review of the Ghana Refugee Board.

¹⁴⁸ CRR Ghana 266.

¹⁴⁹ Ghana APRM progress report 2007 142-143.

¹⁵⁰ FIAN has indicated that such a review has been initiated, see UPR summary para 38.

¹⁵¹ UPR summary para 32.

¹⁵² CRR Ghana para 106.

¹⁵³ On the response of UNHCR to the situation for refugees in Ghana see UNHCR *Global report* 2005 221-226. Ghana hosts more than 50 000 refugees, mainly from Liberia, 222.

The rights of children are treated separately in the APRM framework from other vulnerable groups. CHRAJ noticed in its Annual Report for 2005 that many complaints to the Commission are family related and that there should be 'intense public education on children'[s] rights, parental responsibility and the Children's Act targeted at parents'.¹⁵⁴ This need is not reflected in the APRM report or POA.

An action plan to assist street children and vulnerable youth has been developed in accordance with the POA.¹⁵⁵ The 2007 follow up report notes one measure taken to solve the problem of street children, the National Youth Employment Programme (NYEP). However, NYEP can only employ youth over 15 years old.

6.7 Compliance with peoples' rights

The right to self-determination and development

The Special Rapporteur on violence against women stated in her report to the Human Rights Council after her mission to Ghana in July 2007:

High levels of poverty and the external debt burden limit the Government's margin of operation to prioritize the allocation of sufficient resources for universal basic education, gender parity in education and the economic and social development of marginalized regions and districts. The international community has a responsibility to support the Government's efforts to promote gender equality and eliminate violence against women through targeted funding and technical cooperation, further debt relief and, perhaps most importantly, fairer terms of trade.

The APRM process does not address issues of unfair trade. Regional integration is the only trade related concern explicitly addressed. The 2007 progress report takes note of the interim Economic Partnership Agreement (EPA) with the European Union

¹⁵⁴ CHRAJ annual report 2005 68. 55.4% of the cases received by CHRAJ in 2005 dealt with children's rights, 75.

¹⁵⁵ CRR Ghana 162, Ghana APRM progress report 2007 53.

which was concluded in December 2007. According to the EPA, Ghana will have to dismantle its tariffs on 80% of its imports from the EU over a 15-year period.¹⁵⁶ The advantages and disadvantages of the EPA are not discussed in the progress report.

Environment

With regard to the rights of persons living in mining communities CHRAJ noticed in its 2005 Annual Report that:¹⁵⁷

Article 21(k) of the 1992 Constitution imposes a duty on the government and every Ghanaian to protect and safeguard the environment. The Commission was distressed by reports of activities that deprive communities of their livelihood, pollute water bodies and the environment, and disrupt the way of life of persons in those communities. The Commission earnestly appeals to the appropriate regulatory authorities to take the necessary action to address the problems posed by mining and protect the rights of the people living in those communities. The Commission will be happy to assist in finding appropriate solutions to the problem.

The issue is not addressed in the country review report and GPRS II only calls for the vague strategy of harmonisation of 'the relationship between the mining companies and mining communities'.¹⁵⁸

6.8 Human rights education

The country review report notes that human rights features in the training of security services.¹⁵⁹ However, as it is clearly not sufficient the country review report recommends the government to '[f]acilitate reforms in the police and other security services, so as to position them more clearly with regard to complying with basic

¹⁵⁶ Ghana APRM progress report 2007 60.

¹⁵⁷ CHRAJ annual report 89-90.

¹⁵⁸ GPRS II 92.

¹⁵⁹ CRR Ghana para 41.

commitments on human rights.¹⁶⁰ This vague recommendation is not taken up in the POA. Both the POA and GPRS II focuses on increased institutional capacity.¹⁶¹ GPRS II provides for 'public education and dissemination of information on rights', but not specifically targeted to the police and security services.¹⁶²

6.9 Domestic institutions for the protection of human rights

The National Commission for Civic Education and the Commission on Human Rights and Administrative Justice (CHRAJ) in Ghana are identified as best practices by the Panel.¹⁶³ However, the Ghana self-assessment notes that the decisions of CHRAJ have not always been respected by the government.¹⁶⁴

The country review report recommends increased budgetary allocations to 'institutions dealing with the protection of women's rights.'¹⁶⁵ The POA provides for funding to women's NGOs.¹⁶⁶ GPRS II goes further and provides for increased budget for 'women empowerment' and strengthening of institutions including the establishment of Women and Juvenile Units at all police stations.¹⁶⁷ The 2007 APRM progress report notes that the 'Police Service's Domestic Violence and Victim Support Unit (DOVVSU) ... is beset with staffing, logistical and financial constraints.'¹⁶⁸

¹⁶⁰ CRR Ghana 29.

¹⁶¹ CRR Ghana 162, GPRS II 138.

¹⁶² GPRS II 137.

¹⁶³ CRR Ghana ch 2, box 2.3.

¹⁶⁴ CRR Ghana para 36.

¹⁶⁵ CRR Ghana 40.

¹⁶⁶ CRR Ghana 160.

¹⁶⁷ GPRS II 114, 142, 143.

¹⁶⁸ Ghana APRM progress report 2007 31.

With regard to children's rights the country review report recommends that the Ghana National Commission on Children is given more autonomy and that budgetary allocation to institutions dealing with children's rights are increased.¹⁶⁹

Concerns are expressed in Ghana report about the institutional capacity of the Ghanaian electoral commission.¹⁷⁰ These concerns are not reflected in the recommendations of the Panel or in the POA.

The summary of the self-assessment in the country review report notes the 'human, institutional and resource problems' of the Environmental Protection Agency (EPA).¹⁷¹ However, there are no recommendations with regard to the EPA which is also not mentioned in the POA. GPRS II notes the '[w]eak institutional capacities for environmental management at all levels', but does not include anything about measures to strengthen institutional capacity in the proposed strategies to address the situation.¹⁷²

6.10 Concluding remarks

Ghana is one of the countries which has displayed the clearest commitment to the APRM. The Ghana report has relatively good correlation between recommendations in the report and action points in the POA. A positive aspect of the implementation reports is how they bring out concerns which have emerged since the country review report and POA was concluded. There is also a clear link between the APRM process and GPRS II. Ghana displays a clear commitment to follow-up as evidenced by the elaborate implementation reports.

This chapter has illustrated that problems and possible solutions to human rights issues in Ghana raised in the APRM process have been raised previously by a

¹⁶⁹ CRR Ghana chapter 2 para 105.

¹⁷⁰ CRR Ghana ch 2 para 34. The recommendations and POA in this context only deal with support to governance institutions with regard to civic education.

¹⁷¹ CRR Ghana 95.

¹⁷² CRR Ghana 92.

number of actors. The APRM provided an opportunity to move from talk to action through the POA. However, a number of human rights issues and governance deficiencies which have received ample attention by other actors were not discussed at all in the APRM process. It should be noted that some of these issues have subsequently found their way into the APRM progress reports.

The POA ostensibly has the potential of setting the APRM apart from other governance monitoring by providing for time-bound action points linked to the findings of the report. However, from the progress reports produced by the Governing Council it is clear that not enough progress has been made in implementing the POA. A number of factors may have contributed to this situation. First, the often vague provisions of the POA make effective monitoring of implementation difficult. Second, the lack of prioritisation in the POA and the lack of distinction between projects which will be funded through the national budget and those requiring external funding, makes it difficult for the POA to feed into the budget process.

CHAPTER 7

RWANDA

7.1 Introduction

The Rwanda self-assessment was conducted between January 2004 and March 2005 and the country review mission visited the country in April 2005. The country review report was discussed at the APRM Forum in January 2006. The Rwanda report is the shortest of the country review reports which have been concluded so far.¹

In this chapter a variety of sources are used to illustrate the human rights challenges which Rwanda faces including state reports to the African Commission, the Human Rights Committee and the CEDAW Committee and issues raised by these monitoring bodies.² The reports of the National Human Rights Commission are also considered.³ The performance analysis will look at the implementation of human rights relevant provisions of the POA and of recommendations or comments raised in the country review report. Rwanda has submitted three APRM implementation reports.⁴

¹ African Peer Review Mechanism, Country Review Report of the Republic of Rwanda, June 2006 (hereafter CRR Rwanda). Though it is dated June 2006, it was written directly after the country review mission in April 2005. The report is 131 pages long, with a 40-page government response and a 30-page POA. This version of the report was replaced with a new version which included some changes to the appendixes in September 2006. However, the substance of the report remained the same.

² For an analysis of the political situation in the country at the time of the review mission see F Reyntjens 'Rwanda, ten years on: From genocide to dictatorship' (2004) 103 *African Affairs* 177-210.

³ The Rwanda Commission for Human Rights *Annual report for the year 2002*, March 2003; National Commission for Human Rights *Annual report for 2005*, May 2006; National Commission for Human Rights *Annual report 2006*, September 2007; National Commission for Human Rights *Annual report for 2007*, March 2008.

⁴ Rwanda's APR Programme of Action (PoA) implementation, progress report (June-December 2006) & Annex I: Rwanda's implementation status of the APRM Programme of Action (PoA); APRM Annual Progress Report Series on Implementation of the National Programmes of Action (NPoA) – Republic of Rwanda 2007). It has not been possible to obtain the latest progress report presented to the APRM Forum in January 2009.

7.2 Linkages with other national plans

Rwanda adopted a development framework, Vision 2020, in 2000. This was followed by a poverty reduction strategy paper for the period 2002 to 2005 setting out concrete action points. The Economic Development and Poverty Reduction Strategy (EDPRS) 2008-2012 is Rwanda's second development plan based on the PRSP process.⁵ Note should also be taken of the United Nations Development Assistance Framework (UNDAF) 2008-2012 which has been developed jointly by the UN and the Rwandan authorities.⁶ The only reference to the APRM in any of these two documents is a reference in the EDPRS to a finding in the APRM country review report that though a regulatory framework for corporate governance exists in Rwanda, this is not being enforced.⁷ UNDAF makes no reference whatsoever to the APRM.

EDPRS includes three 'flagship' programmes: 'Sustainable Growth for Jobs and Exports' focusing on infrastructure investment, 'Vision 2020 *Umurenge*' aims at 'releasing the productive capacity of the poor in rural areas through a combination of public works, promotion of cooperatives, credit packages and direct support.'⁸ The third 'flagship' focuses on governance including anti-corruption efforts.

In Rwanda's 2007 state report to the Human Rights Committee the EDPRS is described as being

⁵ Economic Development and Poverty Reduction Strategy 2008-2012, September 2007, www.imf.org/external/pubs/ft/scr/2008/cr0890.pdf (accessed 19 May 2008) (hereafter EDPRS).

⁶ The UN High Commissioner for Human Rights deployed a human rights advisor to Rwanda in October 2007 with a mandate to integrate human rights in the EDPRS and UNDAF and to assist the government with regard to reporting to treaty bodies. www.ohchr.org/EN/Countries/AfricaRegion/Pages/RWIndex.aspx (accessed 19 May 2008).

⁷ EDPRS 4.182.

⁸ EDPRS xi.

geared towards the achievement of high levels of economic growth, together with measures to increase revenue from farming and agricultural production and to diversify the economy, facilitate privatization, support private enterprise and encourage the establishment of cooperatives and other institutions to improve the economy of Rwanda.⁹

It is thus clear that human rights are not a focus of the EDPRS.

7.3 Financing

The cost to implement the Rwandan POA is set at US\$ 95 million, compared to US\$ 5 billion for Ghana and US\$ 5.3 billion for Kenya.¹⁰ Even considering the much smaller size of the Rwandan economy,¹¹ it is likely that the sum is inadequate to cover even the governance deficiencies recognised in the POA. Indeed, much of the POA deals with developing policies in various fields and to a large extent does not cover implementation costs. In contrast the 'public share' of the cost to implement the EDPRS 2008-2012 is set at 3 434 billion Rwandan francs (RWF) corresponding to almost US\$ 6.5 billion.¹² More than half of the Rwandan budget is financed via external grants and loans.¹³

As will be illustrated below the low financial requirement to implement the Rwandan POA as compared to the EDPRS is linked to the fact that many of the issues covered in the country review report were not addressed in the POA.

⁹ Third periodic report of Rwanda, UN Doc CCPR/C/RWA/3, 27 November 2007, para 132.

¹⁰ M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75 70.

¹¹ GNI 2004 (US\$ billions) according to World Bank *World Development Report 2006 – Equity and development* (2005): Ghana 8.1, Kenya 15, Rwanda 1.9.

¹² EDPRS 133. The country review report states that the yearly government revenues is US\$ 365.9 million and expenditures US\$ 402.9 million. By 2007 government revenues was estimated at US\$ 801.8 million and expenditures to US\$ 878.3 million. Measures to fill the finance gap are discussed in the EDPRS.

¹³ See Revised finance law, revenues, fiscal year 2007, www.minecofin.gov.rw/en/inno-download_file.php?fileId=74 (accessed 7 July 2009).

The discussion below will therefore include consideration as to whether human rights relevant issues that were left out of the POA were included in the EDPRS.

7.4 Adherence to international human rights standards and cooperation with international monitoring bodies

Ratification of international human rights instruments

The country review report notes the ‘tardiness’ in acceding to international treaties and in reporting on implementation.¹⁴ A number of treaties are listed as not having been ratified by Rwanda.¹⁵ Rather than recommending the ratification of the un-ratified UN instruments, the recommendations call for harmonising domestic laws with international commitments and the establishment of an ‘inter-ministerial structure to coordinate actions to enhance the rights of its citizens’.¹⁶

There is no mention in the country review report of the fact that Rwanda at the time of the review had not ratified the Convention against Torture or its Optional Protocol. Rwanda has also not ratified the Convention on Migrant Workers. The National Commission for Human Rights has repeatedly called for the ratification of outstanding conventions.¹⁷ In its annual report for 2007 the Commission noted that the government had taken steps to ratify some conventions and remove reservations to others in line with its earlier recommendations.¹⁸

¹⁴ CRR Rwanda para 80.

¹⁵ Optional Protocol to ICCPR, Second Optional Protocol to ICCPR, Optional Protocol to CEDAW, Statute of the International Criminal Court. CRR Rwanda paras 81-82.

¹⁶ CRR Rwanda para 84.

¹⁷ National Commission for Human Rights (2006) 29; National Commission for Human Rights (2007) 39. These calls followed after the mandate of the Commission was expanded at the end of 2002 to include ‘sensitizing the government institutions as regards ratification of International Conventions relating to human rights’. See Law 04/99 of 12/03/1999 establishing the National Human Rights Commission (og 6 of 15/03/1999) modified and completed by law 37/2002 of 31/12/2002 (og special of 16/01/2003).

¹⁸ National Commission for Human Rights (Rwanda) (2008) 35-37.

Rwanda ratified CAT and the second optional protocol to the ICCPR in December 2008.

Rwanda has ratified virtually all the relevant African Union conventions, though the country review report incorrectly claims that Rwanda had at the time of the review not ratified the African Charter on the Rights and Welfare of the Child.¹⁹

State reporting

The POA provides for the establishment of 'a department in the Ministry of Foreign Affairs to report regularly on treaty provisions implementation'.²⁰ The time frame for this initiative is 2005-2006. The 2007 implementation report notes that this has not been 'fully achieved'.²¹ The group consisting of representatives of relevant ministries and the National Commission for Human Rights was established in late 2007, though it has seemingly not improved the reporting record.²² The most recent state reports, to the CEDAW Committee and the Human Rights Committee, were submitted before the establishment of this group. It is noticeable that the report to the Human Rights Committee followed a few months after the Committee had issued a 'list of issues to be taken up in the absence of the third regular report of the Republic of Rwanda, expected on 10 April 1992'.²³ It must be noted that large portions of the state reports focus on

¹⁹ The Charter was ratified by Rwanda in May 2001.

²⁰ CRR Rwanda 175.

²¹ Annual Progress Report 2007 14. The report notes that reporting falls under the legal advisor of the Ministry of Foreign Affairs 'who does not have supporting staff due to the Public Sector Reforms which have left fewer employees'.

²² Rwanda submitted its 4th, 5th and 6th combined report to the CEDAW Committee in 2006 and its third periodic report under the ICCPR due in 1992 in July 2007. The CRC Committee considered Rwanda's report, submitted in 2002, in 2004. Rwanda has not submitted a report to the CESCRC Committee since 1987 and to the CERD Committee since 1999.

²³ CCPR/C/RWA/Q/3, 22 November 2006. It must be noted that the state report fails to address most of the issues raised in the list of issues.

restating constitutional and legislative provisions rather than looking at actual implementation.²⁴

Rwanda has submitted state reports to the African Commission quite regularly. The latest report covers 2002 to 2004 and is dated March 2005. However it was only submitted to the Commission in August 2007 and was considered by the Commission in November of the same year.²⁵ Rwanda has submitted its initial report under the AU Solemn Declaration on Gender Equality.

Other cooperation with international human rights bodies

A Special Rapporteur on the situation of human rights in Rwanda was established by the UN Commission on Human Rights following the genocide in 1994. The name of the procedure was changed in 1997 to Special Representative. The mandate of the Special Representative was to

make recommendations on how to improve the human rights situation in Rwanda, to facilitate the creation and effective functioning of an independent national human rights commission in Rwanda, and further to make recommendations on situations in which technical assistance to the Government of Rwanda in the field of human rights may be appropriate.²⁶

²⁴ The state report on CEDAW (2007) is the most elaborate, but it can be seen from the list of issues (2007) that the information provided is not adequate. The state report to the African Commission (2005) is somewhat better at providing information on actual implementation with regard to socio-economic rights than with regard to civil and political rights. However, as noted the report was submitted more than two years after it was prepared thus providing outdated information.

²⁵ Concluding observations and recommendations on the eighth periodic report of the Republic of Rwanda (2002-2004) adopted at the 42nd ordinary session of the ACHPR held from 14 November to 28 November 2007, Brazzaville, Republic of Congo (on file with author). (Hereafter Concluding observations 2007). I have not been able to obtain the concluding observations on the state report of Rwanda considered in 2004.

²⁶ Commission on Human Rights resolution 1997/66, Situation of human rights in Rwanda, para 20.

The Special Representative visited Rwanda regularly until the mandate was ended in April 2001.²⁷ The latest visit by a thematic UN special procedure to Rwanda was the visit by the Special Rapporteur on violence against women, who visited the country in 1997.²⁸ Rwanda has not extended a standing invitation to UN special procedures to visit the country.²⁹ Rwanda will be considered by the Universal Periodic Review in 2011.

7.5 Compliance with substantive human rights norms

Equality and non-discrimination

The African Commission in its concluding observations on Rwanda's 2007 state report notes that 'the Report provides only a general description of the legislation and/or policy put in place' to protect women's rights.³⁰ The CEDAW Committee in its 2008 list of issues following Rwanda's state report called for more 'statistical data disaggregated by sex'.³¹

The APRM country review report notes that the country has made great strides with regard to gender equality. That women have 49% of the seats in the Rwandan Chamber of Deputies is noted as a best practice.³² It is also

²⁷ UN Commission on Human Rights resolution 2001/23, Situation of human rights in Rwanda, para 5. For a list of the reports of the Special Rapporteur, the Special Representative and the OHCHR field operation see M Killander 'Introduction to the United Nations and human rights in Africa' in C Heyns (ed) *Human rights law in Africa* (2004) 45.

²⁸ R Coomaraswamy 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum – Report of the mission to Rwanda on the issues of violence against women in situations of armed conflict' E/CN.4/1998/54/Add.1, 4 Feb 1998.

²⁹ Standing invitations, updated May 2009, www2.ohchr.org/english/bodies/chr/special/invitations.htm, (accessed 8 July 2009).

³⁰ Concluding observations (2007) para 23.

³¹ Committee on the Elimination of Discrimination against Women, List of issues and questions with regard to the consideration of periodic reports – Rwanda, CEDAW/C/RWA/Q/6, 12 August 2008, para 3.

³² Following the September 2008 parliamentary elections the percentage of women parliamentarians is now even higher at over 56%, see UNIFEM Australia 'Rwandan

noteworthy that following the local elections in early 2006, more than 40% of politicians at the local level are women.³³

The country review report notes that there is still societal discrimination against women and despite the efforts already undertaken much remains to be done to address the situation.³⁴ However, the Panel does not expand on what should be done and its recommendations are limited to capacity building for parliamentarians. However, not even this recommendation is reflected in the POA.³⁵ The Rwandan government has indicated that discriminatory legislation is currently being reviewed.³⁶

Both the African Commission and the CEDAW Committee have highlighted the lack of information from the government on measures taken to combat violence against women.³⁷ The CEDAW Committee also notes the lack of information on measures taken against trafficking and prostitution.³⁸ Rwanda's state report on implementation of the ICCPR notes that a special unit dealing with domestic violence has been established within the Rwandan police and that police and prosecutors have been trained.³⁹

women secure 56% of parliamentary seats in historic election result', www.unifem.org.au/node/200 (accessed 10 October 2008).

³³ C Umutoni 'Background paper – "Walking the talk", 22-23 February 2007, Rwandan women parliamentarians host an international conference on "Gender, nation building: the role of Parliaments"', www.undp.org.rw/Women_Conf_22-23_02_2007.html (accessed 10 October 2008). Despite this the African Commission criticizes Rwanda for low representation of women at the local level. Concluding observations (2007) para 25. This should be seen in the context of the outdated figures given in the state report (2005) 40.

³⁴ CRR Rwanda para 140.

³⁵ It later been taken up in the UNDP/DFID governance project, see below.

³⁶ CEDAW state report (2007) para 88.

³⁷ Concluding observations (2007) paras 23, 31(k); CEDAW list of issues (2008) paras 9-11. See also ICCPR list of issues (2006) para 5. The 2005 state report to the African Commission states that 'an intensive campaign against sexual violence on women ... is underway' but gives no details. State report (2005) 40.

³⁸ List of issues (2007) para 12. On trafficking see also ICCPR list of issues (2006) para 7.

³⁹ ICCPR state report (2007) para 162.

Rwanda's 2007 report on implementation of CEDAW illustrates the lack of employment opportunities for women.⁴⁰ The EDPRS sets out that measures will be taken to 'widen the occupational choices facing women and to eliminate gender-based wage discrimination.'⁴¹

Life

The country review report notes that Rwanda has one of the highest maternal mortality rates in the world.⁴² Despite this recognition, the problem of extremely high child and maternal mortality is not addressed in the recommendations in the report. The POA provides for substantial resources to be set aside for access to obstetric services to decrease the maternal mortality rate.⁴³ The 2007 progress report notes that child and maternal mortality rates improved from 2000 to 2005, but that there are still major discrepancies between rural and urban areas.⁴⁴ A number of interventions to further reduce maternal mortality rates are provided in the EDPRS.⁴⁵

At the time that the country review was conducted there were around 600 prisoners on death row in Rwanda. However, the country review report only addresses the death penalty with regard to children without providing any examples that Rwanda had applied the death penalty to this group.⁴⁶ The subsequent abolition of the death penalty in Rwanda in July 2007 should be seen as a stepping stone to secure the extradition of genocide suspects to Rwanda.⁴⁷

⁴⁰ CEDAW state report (2007) paras 188-189.

⁴¹ EDPRS para 4.178.

⁴² CRR Rwanda para 394. See also CEDAW list of issues (2007) para 27.

⁴³ CRR Rwanda 204.

⁴⁴ Annual progress report 2007 38-39. See also EDPRS para 2.33.

⁴⁵ EDPRS para Para 4.209

⁴⁶ CRR Rwanda paras 81, 145.

⁴⁷ See eg Rwanda's ICCPR state report (2007) para 177.

Recently there have been reports of killings of detainees by the police, in particular in areas which have seen increased attacks against genocide survivors in connection with *gacaca* proceedings.⁴⁸ According to the government cases of alleged forced disappearances and extra-judicial killings are investigated and the responsible persons tried and convicted. However, no information on such trials has been provided by the government.⁴⁹

Slavery and forced labour

According to the country review report everyone in the country participate in *umuganda*, 'public projects on a voluntary basis' every last Saturday of the month.⁵⁰ The report notes that people 'may be stopped by police and questioned as to why they are not ... involved in Umuganda'.⁵¹ This raises the question whether this practice is really voluntary.⁵² However, there is no indication that international human rights monitoring bodies have considered the practice to fall outside the exception for 'normal civil obligations' as provided in article 8(3)(c)(iv) of the ICCPR. The EDPRS envisages that participation in *umuganda* should increase.⁵³

Torture and cruel, inhuman or degrading treatment or punishment

Rwanda's 2007 state report on implementation of the ICCPR lists a number of statutory provisions prohibiting torture and excluding evidence obtained through torture.⁵⁴ However, no information is provided on the practical implementation of these provisions, except for training aimed at the prevention of torture has been

⁴⁸ Human Rights Watch (2007).

⁴⁹ Rwanda's ICCPR state report (2007) para 178.

⁵⁰ CRR Rwanda para 431.

⁵¹ CRR Rwanda para 431.

⁵² ILO Committee of Experts on the Application of Conventions and Recommendations, Abolition of Forced Labour Convention, 1957 (No 105), 1999/70th session.

⁵³ EDPRS para 3.49.

⁵⁴ ICCPR state report (2007) paras 188-190.

held for police officers, prosecutors, doctors and in schools.⁵⁵ Torture and other forms of ill-treatment have been reported by the National Commission for Human Rights and other sources, but the issue is not brought up in the country review report.

The country review report does not mention anything about overcrowding and the dismal conditions in Rwandan prisons and other detention centres which has been identified as a problem by various human rights monitoring bodies including the African Commission.⁵⁶ However, there have been some efforts to address the problem of overcrowding such as the introduction of community service as an alternative to custodial sentences.⁵⁷

Article 26 of Act 38/2006 sets out what conditions of detention are acceptable in Rwanda. It is clear that these requirements have not been implemented.⁵⁸ This has even been recognised by the state. Despite language such as ‘inalienable right’ in the article, the 2007 state report on the implementation of the ICCPR notes that the ‘high standards [of article 26] are sometimes beyond the country’s capacity to meet’ but that they ‘constitute a goal to be attained in the shortest possible time.’⁵⁹ The state thus argues for progressive realisation of rights which under both national and international law should be implemented without delay.

Personal liberty and security

In its annual report for 2002 the National Human Rights Commission called on the government to find ‘a solution to the big problem of illegal arrests and detentions ...’.⁶⁰ The National Commission has also in later reports highlighted

⁵⁵ ICCPR state report (2007) para 191.

⁵⁶ Concluding observations (2007) para 22, 31(h).

⁵⁷ ICCPR state report (2007) para 59.

⁵⁸ ICCPR list of issues (2006) para 10.

⁵⁹ ICCPR state report (2007) para 226.

⁶⁰ Rwanda Commission for Human Rights (2003) 88.

cases of pro-longed detention in police cells, detention without warrants, illegal detention by *gacaca* courts and detention after expiry of sentence.⁶¹ The 2007 state report on the implementation of the ICCPR only sets out the legislative provisions aimed at protecting this right without addressing the problem of non-implementation,⁶² even stating that '[f]aced with the risk of sanctions for unlawful detention, the judicial and prison authorities make sure that no one remains in detention for even a day longer than the legally prescribed term.'⁶³ In its list of issues the UN Human Rights Committee takes note of allegations put forward by the National Human Rights Commission with regard to illegal and secret detention centres.⁶⁴

Access to justice and fair trial

The main focus in the country review report is on *gacaca* 'as the most important vehicle for access to justice'.⁶⁵ This might be true in the context of justice in the aftermath of the genocide, but access to justice is much broader than this. Surprisingly, the only recommendation by the Panel relates to the *gacaca* system. Many observers, including the authors of the country review report, have criticised aspects of the *gacaca* system for restricting the right to a fair trial, for example by not allowing legal representation and the lack of training of *gacaca* prosecutors and judges.⁶⁶ There are also serious concerns with regard to fair trial in the ordinary justice system.⁶⁷

⁶¹ National Commission for Human Rights (2006) 29-38; National Commission for Human Rights (2007) 43-58. See also ICCPR list of issues (2006) para 12.

⁶² ICCPR state report (2007) para 206.

⁶³ ICCPR state report (2007) para 210.

⁶⁴ ICCPR list of issues (2006) para 8.

⁶⁵ CRR Rwanda para 116. The *gacaca* tribunals, which have been set up to speed up the genocide trials, are based on a traditional dispute settlement mechanism.

⁶⁶ Concluding observations (2007) paras 19-21. The Commission goes as far as calling for legal aid for those tried by the *gacaca* courts, para 31(d). See also ICCPR list of issues (2006) para 13.

⁶⁷ Human Rights Watch *Law and reality - Progress in judicial reform in Rwanda* (2008).

The independence of the judiciary is an important component of the right to a fair trial. The country review report notes that the ‘fusion of powers’ in the executive in Rwanda is seen as a ‘recipe for danger’.⁶⁸ The Panel makes several recommendations with the view of ensuring the independence of the judiciary and strengthening the Bar Association.⁶⁹ None of these recommendations are reflected in the POA. However, the Rwandan government was not satisfied with simply ignoring the recommendations. In addition to comments in its written response to the country review report,⁷⁰ President Kagame also criticised the ‘misrepresentation’ at the Forum leading the Panel to attach an appendix to the country review report where it noted that the arguments of the government ‘were well-received’ and that ‘the Rwandan system of judicial appointments was comparable to that of many countries’.⁷¹ However, this neglects the factual dominance of the President over the Senate.⁷² The EDPRS takes the independence of the judiciary as a given.

The POA focuses on training for judges and lawyers and the 2007 progress report sets out what percentage of judges and members of the bar have attended various training courses and study tours. The progress report also notes the increased enrollment of law students at the universities.⁷³ What the training has covered and whether the training has targeted the *gacaca* system is not clear.

⁶⁸ CRR Rwanda para 119.

⁶⁹ CRR Rwanda para 121.

⁷⁰ CRR Rwanda 136.

⁷¹ Appendix II ‘Comments from APRM Panel after submission of reports to APR Forum’.

⁷² E Jordaan ‘Grist for the sceptic’s mill: Rwanda and the African Peer Review Mechanism’ (2007) 25:3 *Journal of Contemporary African Studies* 331-353 347.

⁷³ Annual progress report 2007 17.

Freedom of conscience and religion

The Human Rights Committee notes in its 2006 list of issues reports that some Jehovah's Witnesses have allegedly been ill-treated when they have refused to participate in local armed security patrols.⁷⁴

Freedom of expression and information

With regard to the right to freedom of information the country review report recommends the government to 'strengthen the right of access by citizens to administrative documents and information'.⁷⁵ This recommendation is not reflected in the POA.

The abuses of press freedom in Rwanda are well-documented.⁷⁶ The situation for press freedom was critical when the country review report was drafted in 2005 and has, at least according to some observers, continued to deteriorate since then.⁷⁷ The executive summary of the country review report notes that 'Rwanda is making progress with freedom of expression'.⁷⁸ However, elsewhere in the report it is noted that 'effective structures allowing for the peaceful expression of dissent and competitive ideas ... are lacking'.⁷⁹ A new Press Law was adopted in 2003 and a High Council of the Press (HCP) established. The country review report notes that it 'was not possible to confirm whether freedom of expression is being promoted or undermined by the regulatory regime

⁷⁴ ICCPR list of issues (2006) para 14.

⁷⁵ CRR Rwanda para 135.

⁷⁶ See eg the annual reports of Reporters without Borders (RSF), www.rsf.org. ICCPR list of issues (2006) para 15.

⁷⁷ The press freedom index of Rwanda dropped from 38 in 2005 when the country was ranked 122nd in the RSF's World Press Freedom Index to 58,88 in 2007 when the country was ranked 147th just ahead of Saudi Arabia and Zimbabwe. The index improved slightly to 50 in 2008 which placed Rwanda on place 145 of 173 states on the index.

⁷⁸ CRR Rwanda para 9.

⁷⁹ CRR Rwanda para 76. The same ambivalent attitude to the situation is visible in the concluding observations of the African Commission on Rwanda's 2007 state report, see paras 12, 27 and 31(m). On the legislative framework see ICCPR state report (2007) paras 250-261.

supervised by the HCP'.⁸⁰ Consequently there is no recommendation with regard to freedom of expression in the country review report.

A law on 'sectarianism' was adopted in 2001.⁸¹ Sectarianism is defined as 'the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination ...'.⁸² The official reason for this legislation is that 'divisionism' could lead to a new genocide and that the focus should therefore be on consensus.⁸³ However, there are many examples on how the law on sectarianism and similar legislation has been used to suppress legitimate dissent.⁸⁴

Freedom of association and assembly

The country review report notes that 'while the Rwanda Constitution guarantees freedom to form, join and belong to political parties, it simultaneously undermines that freedom by attaching onerous conditions, such as political parties not being able to operate at the grassroots below the provincial levels.'⁸⁵ It finds that '[p]olitical parties may be *de jure* authorised but *de facto* impossible to realise and operate freely'.⁸⁶ Surprisingly, these strong words on political participation are not reflected in the recommendations of the Panel.

⁸⁰ CRR Rwanda para 113.

⁸¹ Law 47/2001 of 18/12/2001 instituting punishment for offences of discrimination and sectarianism, available at www.grandslacs.net/doc/4040.pdf (accessed 10 October 2008).

⁸² Article 1.

⁸³ CRR para 76.

⁸⁴ See eg Human Rights Watch (2008) 34-43.

⁸⁵ CRR Rwanda para 103.

⁸⁶ CRR Rwanda para 106.

Though not included in the POA the issue of political participation is considered in the 2007 progress report which notes that political parties are now allowed to operate at the district, sector, cell and village levels.⁸⁷

Freedom of movement

The resettlement of rural population in organised village settlements, called *imidugudu*, after the genocide in 1994 has been criticised for coercing people to move to the new village sites from their traditional scattered homesteads.⁸⁸ The Rwandan government implemented the policy to 'facilitate rapid social economic development and to save land for production.'⁸⁹ The country review report notes that the 'communal setting was working well and addressed adequately the constraint to basic utilities.'⁹⁰ The EDPRS provides that 5 700 new *imidugudu* sites will be constructed. Inhabitants in seven districts 'with the worst living conditions' will thus be relocated to 'better houses endowed with basic services.'⁹¹ It is estimated that by 2020 70% of the population should be living in *imidugudu* and 30% in urban areas.⁹² There is no provision in the EDPRS stating that relocation of the rural population to *imidugudu* should be voluntary.

⁸⁷ Annual progress report 2007 7 citing Law No 119/2007 of 4 May 2007, organic law modifying and completing organic law No 16/2003 of 27 June 2003 governing political organizations and politicians.

⁸⁸ Human Rights Watch *Uprooting the rural poor in Rwanda* (2001); UN Commission on Human Rights resolution 2000/21, Situation of human rights in Rwanda, para 16.

[www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.21.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2000.21.En?Opendocument)

⁸⁹ CRR Rwanda 171.

⁹⁰ CRR Rwanda para 415.

⁹¹ EDPRS para 3.29.

⁹² EDPRS para 4.49.

Political participation

Many observers criticised the 2003 presidential and parliamentary elections in particular because of intimidation and violence in the period leading up to the elections.⁹³ The AU observer team was not critical but it should be noted that the team arrived in the country less than a week before the presidential election.⁹⁴ Meierhenrich concludes an analysis of the elections and the international response to them: 'the establishment of democratic procedures produced remarkably little democratic substance in terms of participation and contestation' and 'paved the way for constitutional dictatorship.' He criticised international organisations for failing 'to appreciate the difference between electoral outcomes and democratic outcomes.'⁹⁵

The country review report on the other hand congratulates the government on its 'dogged determination to build new institutions and reform old ones in order to secure a democratic and peaceful future' culminating in the elections of 2003.⁹⁶ The recommendations in the country review report deals with capacity building for the Electoral Commission. The Panel further recommends that the 'method of voting in local elections in which voters line up behind their candidates should be changed'.⁹⁷ These recommendations are not reflected in the POA.

⁹³ Rwanda – Election présidentielle 25 août 2003, élections législatives 29 et 30 septembre, 2 octobre 2003, Mission d'observation électorale de l'Union Européenne, rapport final, ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/rwanda/moe_ue_final_2003.pdf (accessed 28 May 2008); I Samset & O Dalby *Rwanda: Presidential and parliamentary elections 2003*, Nordem report 12/2003, www.humanrights.uio.no/forskning/publ/nr/2003/12.pdf (accessed 28 May 2008).

⁹⁴ Statement by the African Union Observer/Monitoring Team issued on 27 August 2003 by the AU Observer team in Kigali, Rwanda, available at www.dutchmills.nl/rwanda-golf/welcome/html/body_selection_13-18.html (accessed 28 May 2008).

⁹⁵ J Meierhenrich 'Presidential and parliamentary elections in Rwanda, 2003' (2006) 25(3) *Electoral Studies* 627-634.

⁹⁶ CRR Rwanda para 74.

⁹⁷ CRR Rwanda para 107. Cell and sector elections used the line up method in 1999 while the elections of district councillors in March 2001 was conducted by secret ballot. See M Moussalli 'Observations and recommendations concerning recent human rights

Property

The Rwandan self-assessment identifies land as a 'very serious source of conflict'.⁹⁸ The recommendations by the Panel to the Rwandan government include maintaining 'its impetus to ensure that access to basic amenities is not restricted to the urban areas' and 'continue to research alternative means of livelihood to alleviate the land issue'.⁹⁹ Among the actions taken by the authorities is the decentralisation of land registration and efforts to redistribute 'unutilized large farm land'.¹⁰⁰ An act on land tenure was adopted in 2005.¹⁰¹

Work

Most Rwandans live in the countryside and are dependent on land for their livelihood. The country review report notes the need for a 'clear land and population policy' including the creation of more 'off-farm employment'.¹⁰² The report notes that the Rwandan government 'is trying to promote economic and social rights by creating public works to encourage employment'.¹⁰³ According to the country review report 13 micro finance institutions have been established which will help to create employment in small-scale enterprises. The POA includes the development of a national policy on employment and a micro finance policy by 2006.¹⁰⁴ Such policies were adopted in September 2006.¹⁰⁵

developments in Rwanda of the Special Representative of the Commission on Human Rights, Michel Moussalli, following his visits to Rwanda in October and February/March 2001', UN Doc E/CN.4/2001/45/Add.1, 21 March 2001, para 20. Law 02/2006 of 25/01/2006 instituting the organization of elections of leaders of local administrative entities provides for secret ballot with regard to elections of district councillors. Elections at village, cell and sector levels are governed by Presidential Order. According to Human Rights Watch line up was used in the 2006 elections for 'the lowest administrative levels', see Human Rights Watch *World report 2007* (2007).

⁹⁸ CRR Rwanda para 88.

⁹⁹ CRR Rwanda para 422

¹⁰⁰ Annual progress report 2007 46.

¹⁰¹ Organic Act 08/2005 of 14 July 2005 on land tenure.

¹⁰² CRR para 438.

¹⁰³ CRR paras 7, 108. On community based public works see EDPRS para 4.103.

¹⁰⁴ CRR para 181.

The country review team argued for further privatisation of state owned enterprises.¹⁰⁶

To date, the Secretariat has already sold 39 companies in various sectors: agriculture and agro-industry; hotels and tourism; industry; mining; energy; service; and the financial sector (banking and insurance). The CRM believes that the Government needs to regulate the utility sectors, but gradually withdraw from the actual management of these services.

The country review report notes that the Privatisation Secretariat considers the rights of workers in its discussions with potential investors. The POA provides for continued privatisation, but also, importantly, for a survey on the impact of privatisation.¹⁰⁷ The 2007 progress report indicates that the government is well under way with this strategy of government divestment.¹⁰⁸

Health

The country review report notes that the latest statistics indicate an increase in the number of physicians and nurses.¹⁰⁹ A community based health insurance scheme has been established.¹¹⁰ There are plans to set the membership fee at 1000 Rwanda francs (US\$ 2) nationally.¹¹¹ This was endorsed by the Panel.¹¹² While increased enrolment in the scheme is beneficial, the report does not address those who cannot afford the membership fee. The fact that a number of

¹⁰⁵ Annual progress report 2007 24, 25.

¹⁰⁶ CRR Rwanda para 272.

¹⁰⁷ CRR Rwanda 188, 203.

¹⁰⁸ Annual progress report 2007 33, 34.

¹⁰⁹ CRR Rwanda para 109.

¹¹⁰ CRR Rwanda paras 394, 397.

¹¹¹ CRR Rwanda para 397.

¹¹² CRR Rwanda para 410.

procedures are not covered by the scheme is only mentioned in passing.¹¹³ The percentage of the population covered by the insurance scheme increased from 43% in 2005 to 70% in 2006.¹¹⁴ The Panel finds the decentralisation efforts with regard to health care to be a best practice.¹¹⁵ Despite this there is no improvement in outcome indicators such as child and maternal mortality and malaria and HIV prevalence.¹¹⁶

With regard to HIV and AIDS, both the African Commission and the CEDAW Committee has noted the need for anti-retroviral treatment.¹¹⁷ The country review report notes that Rwanda is receiving significant international assistance to the health sector including the provision of anti-retroviral treatment.¹¹⁸ However, the Panel recommends that more resources should be committed to constructing 'antiretroviral centres' in rural areas.¹¹⁹ This is not reflected in the POA. However, the EDPRS includes efforts to address HIV and AIDS, including the provision of anti-retroviral treatment.¹²⁰ There were 173 health centres distributing anti-retrovirals in October 2007, up from 129 in 2006.¹²¹

With regard to reproductive health, the CEDAW Committee has raised concern with regard to the availability and affordability of contraceptives.¹²² The state report to CEDAW notes that religion also plays a role in the limited use of

¹¹³ CRR Rwanda para 397.

¹¹⁴ Annual progress report 2007 24.

¹¹⁵ CRR Rwanda para 110.

¹¹⁶ CRR Rwanda para 112.

¹¹⁷ Concluding observations (2007) para 26, 31(I); CEDAW list of issues (2008) para 28.

¹¹⁸ CRR Rwanda para 398.

¹¹⁹ CRR Rwanda para 410.

¹²⁰ EDPRS para 3.34.

¹²¹ National Commission for Human Rights (2008) 19.

¹²² CEDAW list of issues (2008) para 29.

contraceptives.¹²³ The POA provides for a family planning campaign in line with the Panel's recommendation at efforts to decrease population growth.¹²⁴

Water and sanitation

According to a survey Rwandans rank access to safe water as more important than access to roads, health facilities, education and electricity.¹²⁵ The country review report notes that a law on water management has been adopted and that a sanitation policy is being developed.¹²⁶ The report also notes that social spending has increased from 2003 to 2005 including an increase in spending on water and sanitation in the national budget from 0.8% to 2.4%.¹²⁷ In 2001 it was estimated that 60% of those living in rural areas and 40% of those living in urban areas did not have access to safe drinking water.¹²⁸ By 2006 the situation had improved somewhat with one-third of Rwandans not having access to safe drinking water.¹²⁹ The country review reports note that access to safe water was one of the reasons behind the *imidugudu* policy discussed above.¹³⁰ The POA only included the formulation of a policy on water utilisation.¹³¹ The EDPRS goes much further in its efforts to ensure access to safe water and sanitation.¹³²

¹²³ CEDAW state report para 204.

¹²⁴ CRR Rwanda para 204.

¹²⁵ EDPRS para 2.42.

¹²⁶ CRR Rwanda para 369.

¹²⁷ CRR Rwanda para 372.

¹²⁸ CRR Rwanda para 411.

¹²⁹ African Development Bank & OECD *African economic outlook* (2008) 534. However note that EDPRS states that there was no improvement in access to safe water (64%) between 2000 and 2005, para 2.42.

¹³⁰ CRR Rwanda para 415.

¹³¹ CRR Rwanda 200.

¹³² EDPRS paras 3.39 & 3.40, 4.199-4.202.

Education

The Panel recommends the building of more schools to increase enrolment, without discussing the need to increase the number of teachers. Enrolment in primary schools has improved significantly and, according to the 2007 progress report, Rwanda is on track to achieve the MDG goal of universal primary education for all by 2015.¹³³ However, increased enrolment has led to a pupils per teacher ratio of 74 in 2007,¹³⁴ despite the 2007 progress report noting that the number of qualified primary school teachers rose by 40% between 2002 and 2007.

The progress report does not consider that international human rights instruments talk of *free* primary education. The most expensive item for Rwandan primary school pupils is school uniforms. The cost for secondary education is much higher and only 10% of children enrol for secondary education.¹³⁵ The CEDAW Committee has noted the high female illiteracy rate and high drop out rate of girls in schools.¹³⁶

Housing

The APRM self-assessment notes that 'the effects of genocide have caused massive destruction of shelter'.¹³⁷ The response has been to provide 'space for the construction of cheaper houses'.¹³⁸ The POA provides for a review of the 'policy on *imidugudu* to incorporate new shelter designs to cater for basic shelter needs of the population and their socio-economic activities with specific

¹³³ Annual progress report 2007 39.

¹³⁴ National Commission for Human Rights (2008) 20.

¹³⁵ African Development Bank & OECD (2008) 534.

¹³⁶ CEDAW list of issues (2008) paras 15-17. In contrast the African Commission talks of the 'commendable high levels of education of the girl child', concluding observations (2007) para 31(i).

¹³⁷ CRR Rwanda para 414.

¹³⁸ CRR Rwanda para 108.

emphasis on assisting vulnerable groups'.¹³⁹ As noted above the *imidugudu* policy is further endorsed in the EDPRS which also provides that 10 000 hectares of land should be provided with services for housing.¹⁴⁰

Lack of electricity is seen as 'a hindrance to business development'. In its response to the country review report the government notes that it has 'embarked on an ambitious programme aimed at alleviating electricity shortage'.¹⁴¹ There is no reference to electricity in the POA. However, the 2007 progress report notes progress with regard to increase of electricity generation.¹⁴² The report does not deal with the non-availability of electricity for the majority of the population.

7.6 Protection of vulnerable groups

Children

In its concluding observations on the implementation of the Convention of the Rights of the Child, the CRC Committee calls for the adoption of a 'comprehensive children's code'.¹⁴³ The Committee further expresses concern over lack of resources for the implementation of children's rights and the lack of disaggregated data. The Committee gives extensive recommendations to the government including calls for legislation prohibiting corporal punishment and campaigns against child abuse. The Committee notes that one-third of Rwandan children are orphans and call for support to these children and the development of alternative forms of care. Many orphans have ended up as street children. The number of street children has according to the country

¹³⁹ CRR Rwanda 202.

¹⁴⁰ EDPRS para 3.29.

¹⁴¹ CRR Rwanda 167.

¹⁴² Annual progress report 2007 26.

¹⁴³ CRC concluding observations para 6.

review report dropped significantly by providing housing under the *imidugudu* scheme.¹⁴⁴ Child labour remains a problem in Rwanda despite legislative and educational efforts.¹⁴⁵

The Panel's recommendations with regard to children's rights in the country review report are not very clear and seemingly do not draw at all on the concluding observations of the CRC Committee, adopted in July 2004 and thus available at the time of the country review mission. A provision on reintegration of children is possibly referring to former child soldiers. The Panel further recommends that Rwanda '[w]ithdraws reservation on compulsory education and criminalises the act of not sending children to schools.'¹⁴⁶ It is not clear which reservation is referred to and it is questionable whether criminalisation is a good way to increase school attendance. The POA provides for a study to review the rights of children and youth and the enactment of laws and establishment of institutions to 'ensure children's rights and welfare'.

Other vulnerable groups

The Panel recommends Rwanda to 'step up efforts to provide education, health and housing for displaced persons and/or refugees' and to initiate an 'in-depth dialogue with the Batwa'.¹⁴⁷ The contention of the Panel that the authorities aim for the assimilation of the Batwa minority, was strongly contested by the government in its response to the report.

¹⁴⁴ CRR Rwanda para 147.

¹⁴⁵ See the example on children employed on a tea plantation in National Commission for Human Rights (2006) 55-56. On efforts to eradicate child labour see ICCPR state report para 200.

¹⁴⁶ CRR Rwanda para 149.

¹⁴⁷ CRR Rwanda para 156. The situation of the Batwa is also discussed by the African Commission in its concluding observations on Rwanda's 2007 state report. Paras 16-18, 31(e)-(g). For the view of the government see eg state report to the African Commission (2005) 42.

The focus of the EDPRS with regard to vulnerable groups is on orphaned and vulnerable children and on people living with HIV.¹⁴⁸ Vulnerable children are held to include ‘the extreme poor, orphans, refugees, returnees, and the physically and mentally disabled.’¹⁴⁹ As could be expected there is no mention of the Batwa minority in the EDPRS.

7.7 Compliance with peoples’ rights

Self-determination

Rwanda’s state report to the African Commission, dated 2005, notes that Rwanda ‘advocates the self-determination of neighboring peoples’.¹⁵⁰ This statement is difficult to reconcile with the activities of Rwandan forces in the DRC as documented by among others the African Commission and the UN.¹⁵¹ The country review report illustrates state responsibility for acts abroad in discussing the issue of plunder of natural resources in the DRC and recommends that the authorities ‘clarify, in the most transparent way, the conduct of Rwandan troops and security operatives in the DRC to bring satisfactory closure to this matter together with the UN and the DRC.’¹⁵²

Development

The 2007 progress report notes that the external debt of Rwanda dropped from 65.3% of GDP in 2005 to 13.9% in 2006 due to debt relief.¹⁵³ Less debt service means increased resources available to realise the right to development. As

¹⁴⁸ EDPRS para 4.226.

¹⁴⁹ EDPRS para 4.45.

¹⁵⁰ 47.

¹⁵¹ *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003).

¹⁵² CRR Rwanda para 214. See also para 134.

¹⁵³ Annual progress report 2007 30.

noted above the EDPRS rather than the POA will be used by Rwanda to guide its development efforts.

Peace and security

An important aspect of ensuring peace and stability is how to handle atrocities of the past. The Rwandan report commended the establishment of a National Unity and Reconciliation Commission and the establishment of *gacaca* courts to try alleged participants in the 1994 genocide.¹⁵⁴

7.8 Human rights education

The African Commission has called on Rwanda to provide education on human rights to the legal profession and members of the *gacaca* courts.¹⁵⁵ The annual reports of the National Human Rights Commission illustrates that it has been quite active in its education efforts.

7.9 Domestic institutions for the protection of human rights

The National Human Rights Commission was established by law 4/99 of 12 March 1999.¹⁵⁶ Its mandate was expanded by law 37/2002 of 31 December 2002.¹⁵⁷ The mandate of the National Commission for Human Rights, as it is now known, which includes the consideration of complaints of human rights violations, is to some extent duplicated by the Office of the Ombudsman.¹⁵⁸ Two

¹⁵⁴ CRR Rwanda para 95.

¹⁵⁵ Concluding observations (2007) para 31(b) & (c).

¹⁵⁶ Law establishing the National Human Rights Commission reprinted in C Heyns (ed) *Human rights law in Africa* (2004) 1428-1430.

¹⁵⁷ National Commission for Human Rights (Rwanda) (2006) 7. The revised law is available at amategeko.net

¹⁵⁸ On complaints statistics see the annual reports of the ombudsman cited in the ICCPR state report (2007) para 229.

institutions are provided for in the Constitution specifically to deal with the rights of women: the Gender Monitoring Office and the National Council of Women.¹⁵⁹ There is also a Ministry of Gender and Promotion of Women.¹⁶⁰

The POA does not reflect the recommendations to provide increased capacity for the Electoral Commission, the judiciary, the civil service, the ombudsman and female parliamentarians. However, in 2007 the Rwandan government together with UNDP and DFID¹⁶¹ launched a US\$ 10 million programme for the period 2007 to 2010 to strengthen good governance through institutional support to the Office of the Ombudsman, the National Human Rights Commission, the National Unity and Reconciliation Commission, the National Electoral Commission and the High Council of the Press.¹⁶² The report setting out the UNDP/DFID project clearly links it to the APRM country review report.

As noted above the lack of data has been raised by many monitoring bodies. To improve the availability of reliable data a National Institute of Statistics was established in 2005.¹⁶³

7.10 Concluding remarks

The POA is only 30 pages and is not adequately linked to the findings in the country review report, in particular with regard to democracy and political governance. While it is clear that many recommendations could have been more clearly formulated, the main problem is seemingly a lack of political will on the part of the Rwandan government to take on recommendations of the

¹⁵⁹ ACHPR state report (2005) 20-21; CEDAW state report (2007) 8, 28-30.

¹⁶⁰ CEDAW state report (2007) 7-8, 23-26.

¹⁶¹ Department for International Development (UK).

¹⁶² Government of Rwanda & United Nations Development Programme (UNDP) & Department for International Development (DFID) *Rwanda: "Programme for strengthening good governance"* www.undp.org.rw/PRODOC_GOV1_.pdf (accessed 27 May 2008).

¹⁶³ Annual progress report 2007 24.

country review report dealing with human rights, in particular civil and political rights. It follows that the Rwandan POA is clearly inadequate. Indeed, the EDPRS is to some extent stronger on human rights, probably as a result of donor influence.

Increased institutional capacity is identified throughout the country review report as necessary to improve governance. Jordaan is of the view that the focus on lack of capacity is a way to avoid apportioning blame. He argues that this 'is particularly cowardly with regard to the violation of political rights and freedoms, for these abuses, as violations of so-called negative rights, already imply "capacity" and an identifiable perpetrator or unjust law.'¹⁶⁴ However, as noted above the country review report does draw attention to some of the abuses of the Rwandan state in relation to political rights etc. To take this stand is important. However, it is clear that the APRM can only play a very limited role in effectuating change with regard to issues which the government for what ever reason considers should not fall within the purview of the review process.

¹⁶⁴ Jordaan (2007) 340.

CHAPTER 8

KENYA

8.1 Introduction

The Kenya self-assessment was conducted between July 2004 and August 2005. A country review mission visited Kenya in October 2005, followed by a follow-up mission in April 2006. The POA was finalised in June 2006 ahead of the consideration of the report by the APRM Forum.¹

8.2 Linkages with other national plans

The introduction to the Kenyan POA states:²

The development of ... the POA has taken into account existing Government programme frameworks and sectoral plans. However, the views articulated by stakeholders during the APRM process have remained paramount; and are the basis of the objectives, activities and priorities in the POA.

An interim Poverty Reduction Strategy Paper was adopted in 2001. It was followed by the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007). Follow up to these strategies have been weak.³ The State of Human Rights Report 2003-2004 of the Kenya National Commission on Human Rights to some extent evaluated implementation at the early stages, but

¹ *Country review report of the Republic of Kenya*, May 2006, 323. (Hereafter CRR Kenya). See also R Herbert & S Gruzd *The African Peer Review Mechanism – Lessons from the pioneers* (2008) 204.

² CRR Kenya 323.

³ 'Kenya: Vision 2030 silent on land' *Business Daily*, 11 June 2008. See however, annual progress reports prepared by the Ministry of Planning and National Development.

later annual reports of the Commission does not follow this approach.⁴ The new development plan *Vision 2030* was launched in June 2008. The first Medium Term Plan covers 2008-2012.⁵

The Kenya National Commission on Human Rights and the Ministry of Justice and Constitutional Affairs have been in the process of developing a National Policy and Action Plan (NPAP) on Human Rights for several years.⁶ At the time of writing the NPAP had not yet been adopted. The need for a national action plan for human rights is not mentioned in the APRM country review report.

8.3 Financing

The cost to implement the POA is US\$ 5.3 billion, of which close to 9 million for democracy and political governance, 45 million for economic governance, 4.9 billion for corporate governance and 387 million for socio-economic development. However, it must be noted that corporate governance includes many interventions that would be more logically placed under other governance areas. The highest projected expenditure in the POA is an estimated US\$ 2 billion (150 billion Kenyan shillings) to improve the road network.⁷ The 2007 progress report notes that the road budget for the fiscal year 2007/2008 has increased from KShs 42.5 billion to KShs 62.1 billion.⁸ It was further increased

⁴ Kenya National Commission on Human Rights *The state of human rights report 2003-2004* (2005). Kenya National Commission on Human Rights *Annual report and accounts 2004/2005* (2006), Kenya National Commission on Human Rights *Annual report 2005/6* (2007).

⁵ 'State launches Vision 2030' *Business Daily*, 10 June 2008. It has not been possible for the author to obtain the Medium Term Plan 2008-2012.

⁶ Kenya National Commission on Human Rights 2004/2005 18; Kenya National Commission on Human Rights 2005/6 40.

⁷ CRR Kenya 371.

⁸ Kenya annual progress report on the implementation of the African Peer Review Mechanism (APRM) national Programme of Action, June 2006-June 2007, 50. (Hereafter Annual progress report 2007).

to KShs 65 billion (US\$ 1 billion) in the 2008/2009 budget.⁹ The focus on road construction is not only a result of the need for improved infrastructure, but also used as a means of reducing unemployment.

According to Kenya's budget for 2008/2009 the government has secured financing from donors for development expenditure to the amount of KShs 33.8 billion (US\$ 536 million) in grants and KShs 47.4 billion (US\$ 752 million) in loans.¹⁰ This can be compared with the 2006 medium-term budget strategy paper which projected an external financing need in the form of project support of US\$ 559 million in grants and US\$ 611 million in loans for the 2008/2009 budget.¹¹ The total expenditure under the 2008/2009 budget is KShs 693.6 billion (US\$ 11 billion) of which KShs 196.2 billion (US\$ 3.1 billion) in development expenditure.¹²

8.4 Adherence to international human rights standards and cooperation with international monitoring bodies

Ratification of international human rights instruments

The country review report lists a number of treaties as not having been ratified by Kenya.¹³ The report calls on the government to ratify 'the outstanding international instruments'.¹⁴ The response of the government notes that it will

⁹ Budget speech for the fiscal year 2008/2009, by Hon Amos Kimunya, EGH, MP, Minister for Finance, 12 June 2008, para 28. (Hereafter Budget speech).

¹⁰ Budget speech para 88.

¹¹ Ministry of Finance, The medium-term budget strategy paper 2006/07-2008/09, May 2006, annex 6.

¹² Budget speech para 78.

¹³ Optional Protocol to CAT, Convention on the Political Rights of Women, Convention on Migrant Workers, Protocol on the Rights of Women in Africa, AU Convention on Preventing and Combating Corruption, AU Peace and Security Protocol. The inclusion of the Geneva Convention IV and the AU Peace and Security Council Protocol on this list is incorrect as these treaties had been ratified by Kenya at the time of the review.

¹⁴ CRR Kenya 61.

'consider signing and ratification of these protocols wherever relevant and applicable'.¹⁵ The POA sets out that 'all relevant standards and codes' should be ratified by 2010.¹⁶ The June 2007 implementation report states that none of the instruments listed as not ratified in the country review report had been acceded to by the time the report was compiled.¹⁷ The implementation report notes that the State Law Office is going to establish a database over ratified treaties.

The country review report further recommends that Kenya ratify ILO Convention 87 related to the Freedom of Association.¹⁸ ILO Convention 87 is one of eight 'fundamental conventions' of the ILO which has been ratified by almost all ILO member states.¹⁹ In its response the Kenyan government notes that it will 'study' the convention before deciding on whether to ratify it.²⁰

State reporting

The country review report notes that the mission was 'unable to verify Kenya's adherence to reporting timelines'.²¹ It is unclear why the mission did not use the information on reporting that is publicly available on the websites of the UN High Commissioner and the African Commission. In its response to the country review report, dated June 2006, the Kenyan government notes that it 'is committed to fulfilling all reporting obligations and is up to date in reporting' with regard to CRC, CEDAW, CAT, ICCPR and ICESCR.²² Kenya submitted its second report to the Human Rights Committee, due in 1986, in September

¹⁵ CRR Kenya 256.

¹⁶ CRR Kenya 324.

¹⁷ However, it should be noted that this is not correct as the AU Convention on Preventing and Combating Corruption was ratified by Kenya in February 2007.

¹⁸ CRR Kenya 161. See also ICESCR list of issues (2007) para 17.

¹⁹ webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?Lang=EN (accessed 3 July 2009).

²⁰ CRR Kenya 285.

²¹ CRR Kenya 61.

²² CRR Kenya 257.

2004,²³ its second periodic report to the Committee on the Rights of the Child in September 2005,²⁴ and its fifth and sixth combined reports to the CEDAW Committee in March 2006.²⁵ Kenya submitted its initial report to the Committee on Economic, Social and Cultural Rights in September 2006,²⁶ and its first report to the Committee against Torture only in June 2007,²⁷ one year after stating that it was up to date with reporting under the treaty. The government response to the APRM country review report does not mention CERD, which was ratified by Kenya in September 2001. No state report has been submitted to the CERD Committee.

Kenya submitted its first state report to the African Commission in September 2006, more than 14 years after ratifying the African Charter. The report was considered by the Commission in May 2007.²⁸ Kenya has also submitted a state report to the Committee monitoring compliance with the African Charter on the Rights and Welfare of the Child.²⁹

It is clear that Kenya's reporting record has improved significantly in the last few years. The Kenya National Commission on Human Rights has contributed to this positive development by

capacity building training on treaty provisions and reporting guidelines;
participation in writing reports; review, critique and validation of the draft reports;

²³ CCPR/C/KEN/2004/2. The report was considered in March 2005. The government was asked to provide additional information by March 2006, which was provided in June 2006, CCPR/C/KEN/CO/2/Add.1. The third periodic report was due in April 2008.

²⁴ CRC/C/KEN/2. Considered by the Committee in January 2007.

²⁵ CEDAW/C/KEN/5-6. Considered by the Committee in July 2007.

²⁶ E/C.12/KEN/1. Considered by the Committee in November 2008.

²⁷ CAT/C/KEN/1. Due in March 1998. Considered by the Committee in November 2008.

²⁸ Concluding observations of the African Commission on Human and Peoples' Rights on the initial report of the Republic of Kenya adopted at its 41st ordinary session held in Accra, Ghana from 16-30 May 2007.

²⁹ Kenya National Commission on Human Rights 2005/6 48.

participation during the consideration of reports by the Committees; and follow up on the implementation of the treaty body recommendations by Government.³⁰

The CEDAW Committee notes in its 2007 concluding comments on Kenya's state report that it 'appreciates the fact that the Government has held workshops with a range of governmental bodies and non-governmental organisations on the implementation of the concluding comments subsequent to the consideration of Kenya's combined third and fourth periodic report in 2003'.³¹ However it is clear that most of the recommendations in the 2003 concluding comments were not implemented and was therefore repeated in the 2007 concluding comments.³²

Other cooperation with international human rights bodies

The Special Rapporteur on the sale of children, child prostitution and child pornography visited Kenya in 1997 and the Special Rapporteur on torture in 1999. More recent visits were undertaken in February 2004 (Special Rapporteur on housing), December 2006 (Special Rapporteur on indigenous people), March 2008 (Representative of the Secretary General on Internally Displaced Persons) and February 2009 (Special Rapporteur on extrajudicial, summary or arbitrary executions).³³ Kenya is scheduled to be reviewed by the Universal Periodic Review in 2010.

³⁰ Kenya National Commission on Human Rights 2005/6 47.

³¹ CEDAW concluding comments (2007) para 4.

³² The same applies to the concluding observations of the Committee on the Rights of the Child, see concluding observations (2007) para 6.

³³ www2.ohchr.org/english/bodies/chr/special/countryvisitsf-m.htm (accessed 9 July 2009).

8.5 Compliance with substantive human rights norms

Equality and non-discrimination

The country review report found that the Economic Recovery Strategy 'is not very explicit on the goal of reducing inequalities between men and women and empowering women.'³⁴ Other challenges include customary law preventing women to inherit land,³⁵ low enrolment figures for girls in particular in North-Eastern Province and higher infection rates of HIV among women than men.³⁶ Positive aspects include increased budget allocation for gender mainstreaming and improved gender-disaggregated statistical data.³⁷

The country review report includes a call on Parliament to pass the Affirmative Action Bill, the Gender and Development Bill, the Equality Bill and the Domestic Violence Bill.³⁸ Already in its 2003 concluding comments the CEDAW Committee called for the speedy enactment of the two latter bills.³⁹ In its response to the country review report the government notes that the Affirmative Action Bill and the Equality Bill 'are being addressed within the context of a new constitutional dispensation'.⁴⁰ However, the POA provides for the adoption of all the bills listed above.⁴¹ The POA also provides that inheritance laws should be

³⁴ CRR Kenya 235.

³⁵ CEDAW concluding comments (2007) paras 41-42.

³⁶ CEDAW concluding comments (2007) paras 39-40.

³⁷ CRR Kenya 235-236. The CEDAW Committee on the other hand has expressed concern with regard to the lack of data in particular with regard to employment. See CEDAW concluding comments (2007) para 35.

³⁸ CRR Kenya 237.

³⁹ CEDAW concluding comments para 208. The CEDAW Committee noted that the Domestic Violence (Family Protection) Bill, the Matrimonial Property Bill and the Equal Opportunity Bill ... has been under preparation in different forms since 1999. Para 17.

⁴⁰ CRR Kenya 320. On legal reform of family law in Kenya see generally N Baraza 'Family law reforms in Kenya: An overview', presentation at Heinrich Böll Foundation's Gender Forum in Nairobi, 30 April 2009, www.hbfha.com/downloads/Nancy_Baraza_-_Family_Law_Reforms_in_Kenya.pdf (accessed 6 July 2009).

⁴¹ CRR Kenya 396-397. It is unclear what bill the 'Gender and Development Bill' refers to. The National Commission on Gender and Development Bill was enacted in 2003 and the

amended to provide for equality between men and women.⁴² According to the 2007 progress report a Family Protection Bill that would regulate inheritance is being drafted.⁴³ The POA also provides for civic education on women's rights to be conducted from 2006 to 2008.⁴⁴

Domestic violence has been highlighted as a concern by among others the CEDAW Committee.⁴⁵ Adoption of the Domestic Violence Bill is provided for in the POA.⁴⁶ The time frame for this and other measures to prevent violence against women is 2006-2008. The 2007 APRM progress report gives at hand that the Domestic Violence Bill and the Equality Bill have been enacted,⁴⁷ but this is not the case. A Sexual Offences Act was adopted in 2006.

The CEDAW Committee has called for measures to ensure the eradication of female genital mutilation (FGM) in both its 2003 and 2007 concluding comments.⁴⁸ The Panel's recommendations with regard to FGM focus on enforcement of the law prohibiting FGM and make no mention of other necessary efforts such as education.⁴⁹ The POA include measures against FGM under measures to protect the rights of children.⁵⁰

While it makes no reference to the concluding comments of the CEDAW Committee, the recommendations in the country review report includes a call on

Commission was established in 2005. The country review report also notes that a National Policy on Gender and Development has been adopted.

⁴² CRR Kenya 335. See also CEDAW concluding comments (2003) paras 208 & 224.

⁴³ Annual progress report (2007) 8.

⁴⁴ CRR Kenya 335.

⁴⁵ CEDAW concluding comments (2003) paras 211-212; CEDAW concluding comments (2007) paras 23-24. See also UN Human Rights Committee (2005) para 11, ICESCR list of issues (2007) para 22; ACHPR concluding observations (2007) para 17.

⁴⁶ CRR Kenya 335.

⁴⁷ Annual progress report (2007) 76.

⁴⁸ CEDAW concluding comments (2003) para 214; CEDAW concluding comments (2007) para 24. See also UN Human Rights Committee (2005) para 12.

⁴⁹ CRR 107. See also the government's response, 273.

⁵⁰ CRR 336.

the government and civil society organisations to 'initiate a dialogue with the different communities in Kenya on harmful cultural practices and outlaw all forms of discrimination in respect of the CEDAW Convention'.⁵¹ In its 2007 concluding comments on Kenya's state report under CEDAW, the CEDAW Committee called on the state to 'put in place without delay a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women'.⁵² The Committee includes polygamy and bride price among the traditional practices which should be addressed 'vigourously'. Polygamy and bride price is not even mentioned as a concern in the same Committee's 2003 concluding comments on Kenya's previous state report and are also not addressed in the country review report.⁵³ The UN Human Rights Committee has urged Kenya to repeal article 162 of the Penal Code which criminalises homosexuality.⁵⁴

The CEDAW Committee has called for affirmative action to increase the number of women in decision-making positions.⁵⁵ According to the country review report women held 8.3% of the seats in Parliament in 2006.⁵⁶ In August 2007 the CEDAW Committee noted that only 4.8% of members of Parliament were women.⁵⁷ The 2007 APRM progress report stated that at least 30% of MPs should be women after the elections in December 2007.⁵⁸ However the elections only marginally improved the situation and as of July 2009, 22 of the

⁵¹ CRR 237. In its 2007 concluding comments the CEDAW Committee notes the process to adopt a new constitution but calls on the state to adopt an adequate definition of discrimination in the constitution or other legislation and immediately amend provisions of the Constitution which allows discriminatory legislation. CEDAW concluding comments (2007) paras 12-14.

⁵² CEDAW concluding comments (2007) paras 22, 43 & 44.

⁵³ With regard to traditional practices the 2003 concluding comments single out inheritance, ownership of land and 'stereotypical attitudes'. CEDAW concluding comments (2003) paras 208 & 223.

⁵⁴ Human Rights Committee concluding observations (2007) para 27.

⁵⁵ CEDAW concluding comments (2003) para 216; CEDAW concluding comments (2007) paras 27-28.

⁵⁶ CRR 249.

⁵⁷ CEDAW concluding comments (2007) para 27.

⁵⁸ Annual progress report (2007) 27.

224 members of Parliament were women.⁵⁹ The POA provides for the development of an affirmative action policy, though it is not made clear what areas it will cover.⁶⁰ A presidential notice was issued in 2006 to the effect that women should constitute at least 30% of new recruits to the public service.⁶¹

Regional inequality was indicated as a serious source of conflict in the country review report. Weak security in the North Eastern Province has led to the creation of militias and traffic in arms across the border with Somalia.⁶² The Panel called for affirmative action programmes for the North Eastern Province and other disadvantaged areas. The POA include measures to ensure balanced regional resource allocations.⁶³

Life

The CEDAW Committee has expressed concern over high maternal and infant mortality.⁶⁴ The POA provides for increase of budgetary allocation to health as a means of decreasing mortality rates, but provides no details.⁶⁵ The 2007 progress report notes health initiatives such a distribution of mosquito nets to pregnant women and children under five, immunisations and increase in the number of health facilities.⁶⁶

The respect for civil and political rights is highlighted as a best practice in the country review report: 'Political and civil rights are exercised with a considerable degree of freedom'.⁶⁷ This assertion goes contrary to the UN Human Rights

⁵⁹ IPU Parline database www.ipu.org/parline-e/reports/2167_A.htm (accessed 5 July 2009).

⁶⁰ CRR Kenya 336.

⁶¹ Annual progress report (2007) 27.

⁶² CRR Kenya 64.

⁶³ CRR Kenya 326.

⁶⁴ CEDAW concluding comments (2007) para 37.

⁶⁵ CRR Kenya 341. It is noteworthy that this initiative is not costed in the POA.

⁶⁶ Annual progress report (2007) 70.

⁶⁷ CRR Kenya 82.

Committee, which has noted many deficiencies with regard to Kenya's implementation of the ICCPR, for example impunity of law enforcement officers for extrajudicial killings.⁶⁸ The country review report recommends the Kenya National Human Rights Commission to 'check human rights transgressions of law enforcement officers' and sensitise citizens about their right to seek redress. It also requested law enforcement agencies to train their staff in human rights.⁶⁹ The 2007 progress report notes that a human rights code of conduct for law enforcement has been developed and that training efforts are ongoing.⁷⁰

Though no execution has been carried out in Kenya since 1988, the UN Human Rights Committee has raised concern about the death penalty, in particular that it is applicable to crimes not considered to be the 'most serious' in terms of article 6 of the ICCPR.⁷¹ The African Commission on Human and Peoples' Rights has recommended that Kenya should abolish the death penalty.⁷²

Slavery and forced labour

Trafficking has been highlighted as a concern by both the UN Human Rights Committee and the CEDAW Committee.⁷³ The country review report notes that:⁷⁴

According to the ILO, the Government of Kenya has not fully complied with the minimum standards for the elimination of trafficking. Kenya is thus currently classified as Tier 2 Watch List because the absolute number of trafficking victims is significant and there are no clear evidence of efforts to combat trafficking in persons.

⁶⁸ ICCPR concluding observations para 16

⁶⁹ CRR Kenya report 67.

⁷⁰ Annual progress report (2007) 18-19.

⁷¹ ICCPR concluding observations (2005) para 13.

⁷² ACHPR concluding observations (2007) para 26(i).

⁷³ ICCPR concluding observations (2005) para 25; CEDAW concluding comments (2007) paras 29-30.

⁷⁴ CRR Kenya 108-109. See also 218.

The country review report discusses the problem of trafficking in the context of children's rights, thus leaving out other categories of victims of trafficking. The recommendations of the Panel calls for a national action plan against child trafficking and child labour.⁷⁵ The government in its response notes that it is in the process of developing a bill to deal with child trafficking and child labour.⁷⁶ The POA includes the development of a National Plan of Action to combat violations of children's rights, without specifically mentioning trafficking.⁷⁷

Torture and cruel, inhuman or degrading treatment or punishment

Torture in police custody has been highlighted as a problem by among others the UN Human Rights Committee.⁷⁸ The Kenyan National Commission on Human Rights has expressed concern over impunity for torture.⁷⁹ This is not discussed in the APRM country review report. However, the Panel recommends the ratification of the Optional Protocol to the Convention against Torture, which provides for a system of visits to detention centres to prevent torture and other ill-treatment.⁸⁰ In its response to this recommendation the government states that the reasons that it has not ratified the Optional Protocol is that it 'outlaws capital sentence', something that is not discussed at all in the CAT Optional Protocol but in the second Optional Protocol to the ICCPR.⁸¹ The UN Human Rights Committee has also expressed its concern about overcrowding in prisons and inadequate conditions of detention.⁸² The 2007 progress report takes note of the fact that OPCAT has not been ratified.⁸³

⁷⁵ CRR Kenya 110.

⁷⁶ CRR Kenya 274.

⁷⁷ CRR Kenya 336.

⁷⁸ CRR Kenya para 18.

⁷⁹ Shadow report to CAT (2008) para 10.

⁸⁰ See also submission of Kenya National Commission on Human Rights to the CAT Committee (2008) para 5.

⁸¹ CRR 256.

⁸² ICCPR concluding observations (2005) para 19.

⁸³ Annual progress report (2007) 11.

The UN Human Rights Committee has expressed concern over overcrowding in Kenyan prisons and its consequences for conditions of detention.⁸⁴ The issue is not discussed in the country review report. However, the 2007 progress report notes that overcrowding in Kenyan prisons is being addressed through presidential pardons and non-custodial sentences.⁸⁵

Personal liberty and security

The country review report notes that crime rose by 51% between 1994 and 2000.⁸⁶ The Governance, Justice, Law & Order Sector (GJLOS) Reform Programme includes crime prevention.⁸⁷ The POA provides for the introduction of community policing.⁸⁸ Efforts to address crime, including community policing, are summarised in the 2007 progress report.⁸⁹

Access to justice and fair trial and independence of the judiciary

The UN Human Rights Committee has urged that all detainees should have the right to be brought promptly before a judge and have access to legal representation 'during the initial stages of detention'.⁹⁰ The Committee calls for legal aid 'where the interests of justice so require'.⁹¹ Legal aid is not mentioned in the country review report. However, the POA provides for the development of 'policy and institutional framework' for legal aid 'to the poor, marginalized and

⁸⁴ ICCPR concluding observations (2005) para 19.

⁸⁵ Annual progress report (2007) 19, 20.

⁸⁶ CRR Kenya 46.

⁸⁷ CRR Kenya 173.

⁸⁸ CRR Kenya 378.

⁸⁹ Annual progress report (2007) 13.

⁹⁰ ICCPR concluding observations (2005) para 15.

⁹¹ ICCPR concluding observations (2005) para 21.

the vulnerable.⁹² The 2007 progress report notes that a National Legal Aid Scheme has been developed and is being implemented at six pilot sites.⁹³

The UN Human Rights Committee has expressed concern over lack of access to judicial remedies and ‘the frequent failure’ of enforcement of judgments.⁹⁴ The country review report notes that the independence of the judiciary is insufficiently safe guarded and that the executive sometimes refuses to implement court orders further eroding the confidence of the public in the rule of law. The Panel recommends performance based contracts to improve efficiency and accountability.⁹⁵ Other than this there are no recommendations of the Panel with regard to judicial independence despite the glaring problems raised in the report.⁹⁶ The POA sets aside US \$ 300 000 to address the backlog of court cases, but does not set out how the money will be used.⁹⁷ A number of initiatives to reform the administration of justice are set out in the 2007 progress report.⁹⁸

Freedom of expression and information

The country review report found that some mass media are ‘dedicated to rousing ethnic hostilities’.⁹⁹ The Panel recommended that media regulating bodies be empowered to ‘sanction irresponsible media organizations and professionals’.¹⁰⁰ The preparation of an Act to this effect was included in the POA.¹⁰¹ This clearly constitutes a double-edged sword as if not carefully crafted

⁹² CRR Kenya 329.

⁹³ Annual progress report (2007) 19.

⁹⁴ ICCPR concluding observations (2005) para 9.

⁹⁵ CRR Kenya 91.

⁹⁶ See also ICCPR concluding observations (2005) para 20 with regard to slow administration of justice and judicial corruption.

⁹⁷ CRR Kenya 331.

⁹⁸ Annual progress report (2007) 20-21.

⁹⁹ CRR Kenya 66.

¹⁰⁰ CRR Kenya 67.

¹⁰¹ CRR Kenya 326.

such powers could be used to curb legitimate criticism. The 2007 progress report notes that a Media Bill is before Parliament and that a freedom to information policy has been drafted.¹⁰²

Freedom of association and assembly

The 2003-2004 report of the Kenya National Commission on Human Rights notes that in several instances meetings organised by political parties or civil society organisations were prevented from taking place.¹⁰³ The Commission urged the government and the police to interpret the Public Order Act from a human rights perspective which would include that 'the Police must always aim to ensure that public meetings have adequate security but not merely stop a meeting on grounds of insecurity.'¹⁰⁴ However, in the country review report violation of the freedom of assembly is only mentioned as an example of rights violated by the previous regime.¹⁰⁵

The country review report notes that 'political parties are regional, ethnic based and poorly institutionalized.'¹⁰⁶ The regulatory framework for registration of political parties did not discourage this and the Panel therefore recommended the speedy adoption of the Political Parties Bill.¹⁰⁷ The Political Parties Act finally came into effect in October 2007.¹⁰⁸ Section 14 of the new act prohibits ethnic or religious based parties.

¹⁰² Annual Progress Report (2007) 59.

¹⁰³ Kenya National Commission on Human Rights 2003-2004 28.

¹⁰⁴ Kenya National Commission on Human Rights 2003-2004 36.

¹⁰⁵ CRR Kenya 58. See also ICCPR concluding observations (2005) para 23.

¹⁰⁶ CRR Kenya 69.

¹⁰⁷ See also recommendations in Kenya National Commission on Human Rights 2003-2004.

¹⁰⁸ 'Kenya: Kibaki: Speech on the dissolution of the ninth Parliament (22/10/2007), www.polity.org.za/article.php?a_id=119741 (accessed 6 March 2008); Political Parties Act, No 10 of 2007, www.kenyalaw.org

Political participation

The country review report notes that the electoral system suffers from the big difference in constituency size and the unclear criteria on creation of new constituencies.¹⁰⁹ The report also notes the ‘enormous powers’ of the Minister for Local Government over the composition of local councils.¹¹⁰

Property

The country review report notes that the government should ‘adopt and implement redistribution and reallocation policies to enforce equitable access to, and use of land.’¹¹¹ According to the 2007 progress report a national land policy has been adopted.¹¹²

Work

The UN Committee on Economic, Social and Cultural Rights has expressed concern with regard to the minimum wage and the lack of labour inspections. The Committee has also expressed concern with regard to the working conditions in export processing zones (EPZs).¹¹³ The country review report notes the non-compliance with labour laws in particular in EPZs.¹¹⁴ The recommendations of the Panel include that the Ministry of Labour should ‘investigate the infringement of labour laws in EPZs and severely punish all breaches of human rights by these entities.’¹¹⁵ The POA provides for capacity

¹⁰⁹ CRR Kenya 71.

¹¹⁰ CRR Kenya 74.

¹¹¹ CRR Kenya 66-67.

¹¹² Annual progress report (2007) 77; However see CEDAW concluding comments (2007) para 41.

¹¹³ ICESCR list of issues (2007) paras 13-15.

¹¹⁴ CRR Kenya 185.

¹¹⁵ CRR Kenya 191-192.

building of the Ministry of Labour and Human Resources Development and for the enforcement of labour laws in EPZs.¹¹⁶ In the 2007 progress report, EPZs are only discussed in the context of export incentive schemes in the context of the negotiation of an Economic Partnership Agreement with the European Union.¹¹⁷ However, the report takes note of training of labour officers and inspectors to improve compliance with labour laws in general.¹¹⁸

To facilitate economic activity is important as it leads to job creation through both employment and opportunities for self-employment.¹¹⁹ However, there will always be people who have no means to sustain themselves. The recommendation in the country review report to '[d]evelop a comprehensive legal framework of social protection' is therefore important.¹²⁰ However, this is not taken up in the POA.

Health

The UN Human Rights Committee has expressed its concern over the high number of deaths caused by AIDS and called for equal access to treatment.¹²¹ The country review report notes that AIDS has caused more than 1.5 million deaths in Kenya since the 1980's and left 1 million children as orphans.¹²² The report considers the reduction of the HIV prevalence rate from 13% to 7% as a best practice.¹²³ The Panel recommends the adoption of the HIV/AIDS

¹¹⁶ CRR Kenya 380.

¹¹⁷ Annual progress report (2007) 44.

¹¹⁸ Annual progress report (2007) 56.

¹¹⁹ See for example the interpretation of the right to work in the African Commission's Declaration on Economic, Social and Cultural Rights in Africa para 6: 'The right to work in article 15 of the Charter entails among other things ... [c]onducive investment environment for the private sector to participate in creating gainful work'. Reprinted in C Heyns & M Killander (2007) 315-322.

¹²⁰ CRR Kenya 180.

¹²¹ ICCPR concluding observations (2005) para 15.

¹²² CRR Kenya 18.

¹²³ CRR Kenya 227. On efforts to combat the pandemic see also 210-211.

Prevention and Control Bill and a universal health care plan.¹²⁴ With regard to corporate governance the Panel recommends to educate employers and employees on the consequences of the HIV/AIDS pandemic.¹²⁵ The HIV/AIDS Prevent and Control Act was adopted in 2006. However, the 2007 progress report does not take note of this fact and the concerns expressed by the Kenyan National Commission on Human Rights that the Act has not been given a commencement date and that no regulations to make it operational has been adopted.¹²⁶ With regard to a universal health care plan the 2007 progress report notes that discussions are underway between the Ministry of Health and the Ministry of Finance on how to finance and implement such a plan.¹²⁷

With regard to sexual and reproductive rights, the CEDAW Committee has called for improved sex education, in particular to adolescent girls and boys, and improved access to contraceptives and safe abortion.¹²⁸ It should be noted that abortion is illegal in Kenya except when the mother's life is in danger.¹²⁹ The UN Human Rights Committee has linked high maternal mortality to unsafe abortion and called for review of the abortion laws.¹³⁰ The country review report notes increased use of contraceptives as one of the outcomes of successful family planning campaigns in the past.¹³¹ However, the report provides no recommendations for the future.

¹²⁴ CRR Kenya 84.

¹²⁵ CRR 183.

¹²⁶ 'KNCHR wants HIV/AIDS Prevention & Control Act 2006 given Commencement Date' www.knchr.org/index.php?option=com_content&task=view&id=96&Itemid=1 (accessed 23 October 2008).

¹²⁷ Annual progress report (2007) 19.

¹²⁸ CEDAW concluding comments (2007) para 38.

¹²⁹ CEDAW state report para 179.

¹³⁰ ICCPR concluding observations (2005) para 14. See also ICESCR list of issues (2007) para 40.

¹³¹ CRR Kenya 223.

Water and sanitation

In its list of issues the UN Committee on Economic, Social and Cultural Rights requests information on ‘measures taken to ensure affordable access to adequate water and sanitation’ in light of the 2002 Water Act and ‘the recent privatization of water services’.¹³² Access to water is not much discussed in the country review report, but features extensively in the government’s response to the recommendation of the Panel to ‘work towards the achievement of the MDGs’.¹³³ The POA notes that privatisation ‘is expected to improve accessibility to water’.¹³⁴ The 2007 progress report notes significant increased budgetary allocation to the water sector, but does not assess whether the assumption in the POA that privatisation will lead to better access to water has proven correct.¹³⁵ Sanitation is not discussed in the country review report but the 2007 progress report notes that a number of ‘sanitation schemes’ were rehabilitated.¹³⁶

Education

Free universal primary education, introduced in Kenya in 2003, is seen by the Panel as a best practice.¹³⁷ The country review report notes that the increased number of pupils means calls for increased investment in education including the training of teachers.¹³⁸ The Panel recommends the government to ‘[c]omprehensively address the issue of deteriorating standards in the education system by recruiting more teachers to reduce the high learner/teacher ratios, and improve the necessary infrastructure.’¹³⁹ 15.45 billion Kenyan shillings (US\$

¹³² ICESCR list of issues (2007) para 33.

¹³³ CRR Kenya 316.

¹³⁴ CRR Kenya 373, 395.

¹³⁵ Annual progress report (2007) 52, 74.

¹³⁶ Annual progress report (2007) 75.

¹³⁷ CRR Kenya 222.

¹³⁸ CRR Kenya 80-81. On efforts by the government see CRR Kenya 220-222.

¹³⁹ CRR Kenya 228. Response of government: 314.

206 million) is provided in the POA to improve the education sector from 2005 to 2010.¹⁴⁰

The CEDAW Committee has expressed concern over the different quality of education between urban and rural areas and the lower enrollment of girls and women in secondary school and university.¹⁴¹ This concern is recognised in the country review report and by the government.¹⁴² The recommendations of the Panel include that '[l]ocal authorities be required to identify all the girls in their localities and distribute school bursaries to girls on an equal basis as boys.'¹⁴³ The POA provides for scholarships for secondary school and university targeted at girls.¹⁴⁴ The 2007 progress report provides an extensive discussion of the efforts to improve education and a summary of responses of stakeholders.¹⁴⁵

Housing

The UN Human Rights Committee has expressed its concern about forcible evictions and called on the government to 'develop transparent policies and procedures for dealing with evictions' which should include consultation and resettlement arrangements.¹⁴⁶ The UN Committee on Economic, Social and Cultural Rights in its list of issues requested information on evictions and how slum upgrading projects were implemented.¹⁴⁷ The African Commission has noted that '[s]hanties are often demolished by the city council without notice'.¹⁴⁸ The country review report notes that the self-assessment identified land evictions as a problem area. However, this problem is not further discussed in

¹⁴⁰ CRR Kenya 390-391, see also 344.

¹⁴¹ CEDAW concluding comments (2007) para 33. See also ICESCR list of issues (2007) para 46.

¹⁴² CRR Kenya 103, 110, 235, 236.

¹⁴³ CRR Kenya 107. Response of government: 273.

¹⁴⁴ CRR Kenya 397.

¹⁴⁵ Annual progress report (2007) 66-69.

¹⁴⁶ ICCPR concluding observations (2005) para 22.

¹⁴⁷ ICESCR list of issues (2007) paras 34 & 35.

¹⁴⁸ ACHPR concluding observations (2007) para 18.

the report.¹⁴⁹ The Panel recommends the government ‘to develop a comprehensive strategy, involving all stakeholders, to deal with the problem of housing shortage, particularly in the urban areas. It is strongly advised that government, in collaboration with UNHABITAT, intensify the slum upgrading and low cost housing initiative.’¹⁵⁰ The POA provides 225 million Kenyan shillings (US\$ 3 million) for slum upgrading and building of low cost houses for the period 2006-2015.¹⁵¹

8.6 Protection of vulnerable groups

Children

Under Kenyan law the age of legal responsibility is eight years. The UN Human Rights Committee has declared this to be a violation of article 24 of the ICCPR.¹⁵² The concluding observations of the Human Rights Committee welcomed the prohibition of all forms of corporal punishment of children and called for an information campaign to ensure the effective implementation of the ban.¹⁵³ These issues are not discussed in the APRM country review report.

Child labour is a serious problem in Kenya and the APRM Panel recommends the government to develop a time-bound national action plan to address the issue.¹⁵⁴ The POA takes a wider approach and provides for an action plan to combat violations of children’s rights.¹⁵⁵ The POA also includes measures against early marriages.¹⁵⁶ However, as noted by the Committee on the Rights

¹⁴⁹ CRR Kenya 78.

¹⁵⁰ CRR Kenya 234. Response of government: 311, 319.

¹⁵¹ CRR Kenya 389. On implementation see Annual progress report (2007) 63-64.

¹⁵² ICCPR concluding observations (2005) para 24.

¹⁵³ Para 6. See also CRC concluding observations (2007) paras 34-35.

¹⁵⁴ Cf the recommendation in ICCPR concluding observations (2005) para 26.

¹⁵⁵ CRR Kenya 336.

¹⁵⁶ CRC concluding observations (2007).

of the Child a national action plan has not been adopted.¹⁵⁷ The Committee on the Rights of the Child has further recommended that special attention to children's rights should be had in budget allocation.¹⁵⁸

Refugees

The Committee on Economic, Social and Cultural rights has expressed concern with regard to the treatment of refugees.¹⁵⁹ In contrast the country review report commends Kenya for its hospitality to refugees.¹⁶⁰ However, some problems are noted and the Panel recommends Kenya to 'enact and implement a clear policy on refugees and internally displaced persons'.¹⁶¹ In its response the government notes that a refugee department has been established within the Ministry of Immigration and a refugees' bill has been drafted.¹⁶² In line with a recommendation of the Panel the POA includes the streamlining of immigration screening procedures.¹⁶³ The 2007 progress report notes that a Refugees Act was promulgated at the end of 2006.¹⁶⁴

8.7 Compliance with peoples' rights

Peace

The country review report notes that 'there are usually episodes of violence throughout the country during elections', mainly due to politics in Kenya being

¹⁵⁷ CRC concluding observations (2007) paras 10-11.

¹⁵⁸ CRC concluding observations (2007) para 15.

¹⁵⁹ ICESCR list of issues (2007) para 6.

¹⁶⁰ CRR Kenya 26.

¹⁶¹ CRR Kenya 116.

¹⁶² CRR Kenya 275.

¹⁶³ CRR Kenya 330.

¹⁶⁴ Annual progress report (2007) 29.

built on ethnicity.¹⁶⁵ Following the recommendation of the Panel the POA includes that government and political parties should develop conflict resolution mechanisms.¹⁶⁶ The violence following the December 2007 elections erased the notion of Kenya as a ‘haven of peace for the region’.¹⁶⁷

Development

The UN Committee on Economic, Social and Cultural Rights in its list of issues on Kenya’s state report under the ICESCR requested information on consultation, human rights impact assessment and consideration of vulnerable groups with regards to the negotiation of international agreements such as Economic Partnership Agreement with the EU and the COMESA investment agreement.¹⁶⁸ This issue is not discussed in the country review report.

8.8 Human rights education

The country review report calls on the Kenyan National Commission on Human Rights and civil society organisations to conduct civic education with a view to ‘inculcating stakeholder consciousness and responsibility.’¹⁶⁹ The 2007 progress report notes that the government is working closely with the Commission in ‘developing materials for information and education campaigns to increase capacity of CSO’s in civic education, monitoring and reporting human rights.’¹⁷⁰ The report also notes that training manuals for provincial administration has been revised to reflect human rights.¹⁷¹

¹⁶⁵ CRR Kenya 69.

¹⁶⁶ CRR Kenya 66, 325.

¹⁶⁷ The Panel identified Kenya as ‘an island and haven of peace for the region’ as a best practice in the report written in May 2006. CRR Kenya 63.

¹⁶⁸ ICESCR list of issues (2007) para 4.

¹⁶⁹ CRRKenya 62.

¹⁷⁰ Annual progress report (2007) 18.

¹⁷¹ Annual progress report (2007) 18.

8.9 Domestic institutions for the protection of human rights

The Kenya National Commission on Human Rights was established in 2003. The Commission in September 2008 submitted a shadow report with regard to Kenya's state report under the Convention against Torture.¹⁷² The Commission noted that government agencies, specifically the police, some times prevented its work, including visits to detention centres.¹⁷³ That the Commission does not receive adequate resources has been noted by a number of observers.¹⁷⁴

The CEDAW Committee in its 2003 concluding comments called on the government to 'clearly define the mandate and responsibilities of the different mechanisms related to the advancement of women and gender equality and allocate sufficient budgetary resources to them.'¹⁷⁵ This concern is reiterated in the same committee's 2007 concluding comments.¹⁷⁶

8.10 Concluding remarks

The Kenyan POA to a large extent responds to recommendations of the Panel. It is therefore unfortunate that the country review mission has not made more use of findings of international human rights monitoring bodies, or even national human rights observers which should clearly have been consulted in the process. Fortunately the process has been inclusive enough to anyway raise many pertinent human rights issues which have found their way into the

¹⁷² www2.ohchr.org/english/bodies/cat/docs/ngos/KNCHR.pdf

¹⁷³ Shadow report para 9.

¹⁷⁴ CRC concluding observations (2007) paras 12-13.

¹⁷⁵ CEDAW concluding comments (2003) para 226.

¹⁷⁶ CEDAW concluding comments (2007) paras 19 & 20.

recommendations of the Panel. The 2007 progress report follows the structure of the POA, but more efforts should be made to ensure accuracy in the information provided. It would also be valuable for the progress report to react to new developments that might affect the realisation of the objectives set out in the Questionnaire.

CHAPTER 9

CONCLUSION AND RECOMMENDATIONS

9.1 Summary of findings

As illustrated in chapter 2, in the early 1990's African leaders started to recognise that the promotion and protection of human rights form an important stepping stone to development. This acknowledgement of the importance of human rights took place at the same time as African leaders publicly conceded that the problems facing their countries were not only caused by an unfair world order but that improved domestic governance had an important role to play. Evidently, the international donor community played a role in this change of rhetoric.

In 2001, the New Partnership for Africa's Development (NEPAD) was adopted as Africa's new development framework. A comparison with earlier initiatives makes it clear that there is not much new in the policy prescriptions of NEPAD. It is instead in the framework to implement the vision underlying NEPAD that one can see the biggest change from the past. The African Peer Review Mechanism (APRM) was established to foster compliance with the Governance Declaration and all underlying international instruments, including in the field of human rights. This marks a step away from the largely rhetorical focus on human rights in the NEPAD Declaration.

As discussed in chapter 3, the Governance Declaration recognises the intrinsic value of human rights, but does not discuss socio-economic rights except as developmental goals. The focus on civil and political rights is somewhat surprising considering the rhetorical emphasis often given to socio-economic rights by African leaders.

The APRM Questionnaire plays an important role in framing the issues in the self-assessment, country review report and Programme of Action (POA). However, some important human rights issues such as freedom of the media and impunity are not dealt with at all in the Questionnaire. Despite the focus on aggregated outcomes with regard to socio-economic development, some of the indicators under this governance area illustrate recognition of human rights principles such as accountability and non-discrimination.

Chapter 4 examines whether the APRM is in itself a rights-based process. The chapter thus considers the extent to which the APRM lives up to the requirements of participation, accountability and transparency.

Many of the countries which have gone through the APRM process so far have in various ways made genuine stakeholder participation difficult. In some countries the whole process has been fully controlled by government. The country review mission is a tool of accountability as it aims at ensuring that the various views which have emerged as part of the national APRM process are indeed reflected in the self-assessment and that the POA, though a consensus document, reflects the findings of the self-assessment.

The recommendations in the country review report are not legally binding. However, even if they are not reflected in the final POA they can play a role by providing further argument in the domestic debate, including in the APRM follow-up process, and by being taken up by donors and other international stakeholders. The recommendations should also form the basis for the discussion in the Forum, though, as noted in chapter 4, the Forum discussion has so far not been very substantive.

Despite the importance of transparency for good governance, the APRM process is not very transparent. The completed self-assessments have not been published

and in most cases are not even shared with stakeholders. This situation constitutes a serious hindrance to the development of an adequate POA and for the effectiveness of the whole APRM process.

At the time of writing only 29 out of 53 AU member states have signed up for the APRM. Chapter 5 illustrates that reasons for not signing the MOU include among others authoritarian rule, not seeing any benefit of the process and the cost involved. It is also noteworthy that the leaders of some of the countries which have been reviewed have expressed shock over criticism in the country review report. This experience, together with a lack of donors willing to fund the process, may explain why the APRM process has failed to take off in some states which lack democratic credentials.

There are many different theories of why states comply with international law and in particular human rights. The philosophy behind the APRM is closest to the managerial school of compliance theory which argues that compliance is achieved through dialogue and capacity building. It may be impossible to prove this or other theories of compliance, as causality between action and result is inherently difficult to establish.

The advantages and disadvantages of various methods of international monitoring, as compared to the APRM, are discussed in chapter 5. As a human rights monitoring mechanism, state reporting often suffers from lack of reliable information. Review meetings are brief and take place far from the country under review. On the other hand it could be argued that the extensive experience and knowledge of human rights treaty monitoring bodies places them in a better position to evaluate human rights compliance than the APRM.

Arguably the most useful working method of special rapporteurs, working groups and inquiry procedures is the on-site visit. Thematic visits are limited in scope but

could play a major role in building pressure both domestically and internationally with regard to the issue under consideration. The APRM country review visit is an important means of verification but as the APRM covers many different areas there is a risk that important issues are not being sufficiently covered. On the other hand the holistic approach of the APRM arguably makes the necessity of prioritisation between competing demands more evident.

The newly established Universal Periodic Review (UPR) of the UN Human Rights Council is an example of the use of peer review for human rights. The UPR constitutes a potentially important complement to other UN mechanisms, such as state reporting, complaints procedures and special procedures. However, the UPR lacks the time bound, specific targets of the APRM POA. It is also noticeable that while the UPR provides for stakeholder submissions the process provides no space for engagement between various actors within the country as is the case with the APRM.

From the above overview it is clear that the APRM, in the human rights context, should be seen as a complement to the many mechanisms for the realisation of human rights that exist at the national, regional and global level.

A number of factors play a potential role with regard to the effectiveness of the APRM. The legal framework of the APRM is weak as it is established under a Memorandum of Understanding rather than a binding treaty. The country review reports make recommendations, not legally binding findings, to inform the POA. However, there is no indication that the legal framework of the APRM would affect the possibility of the recommendations in the report and the undertakings in the POA to induce compliance with human rights.

The expertise and independence of a monitoring body affects its effectiveness. In the APRM expertise is needed in many areas to identify shortcomings in the self-

assessment and POA. One important aspect is to ensure that human rights concerns are sufficiently addressed. The Panel has so far had a balanced composition which should be able to adequately reflect on human rights issues in conjunction with consultants and partner institutions. With regard to independence the close association of some Panel members with government does not seem to have influenced the content of the first country review reports.

It is important for the Panel to consider the quality of its recommendations. The recommendations should be clearly linked to analysis in the report and primarily set out concrete activities which state institutions should undertake to realise the APRM objectives. In the context of human rights it is thus clear that the main potential of the APRM lies in being used as a pro-active, preventative tool which programmatically addresses 'positive' rights through a participative process with rights-based resource allocations in the POA.

Peer pressure between states is exercised bilaterally and in international organisations, both in formal and informal settings. Formal peer pressure with regard to human rights has been as woefully absent in the AU as in its predecessor the OAU despite the commitment in the AU Constitutive Act to the promotion and protection of human rights. It is clear that the APRM Forum is not being used to its full potential. This will not change until there is a genuine commitment to human rights in the member states. Constructive criticism must replace the current non-interference attitude reflected by African leaders both in the APRM Forum and in the UPR. Public pressure is even more important than peer pressure, but can only play its full role if basic human rights, both socio-economic and civil and political, are respected. It follows that the APRM is likely to have its biggest impact in states with an active civil society and a government open to debate.

Sanctions can play a role in promoting compliance. Sanctions must be targeted and limited, as comprehensive economic sanctions could in themselves constitute

violations of human rights. However, it is unlikely that the APRM Forum would ever take steps to impose sanctions based on non-implementation of recommendations in the country review reports or commitments in the POA. More likely is the withdrawal of aid as a sanction by donors. Such sanctions should be used with caution both because of its potential effect on the enjoyment of human rights and because donor conditionality could pose a threat to domestic accountability. With regard to capacity building a country may be in need of technical expertise from abroad but the government should determine itself when, why and how such expertise should be used. The APRM provides a framework to identify such needs.

There is much monitoring taking place with regard to the different issues covered in the APRM, both at the national and international level. The case studies on Ghana, Rwanda and Kenya in chapters 6 to 8 therefore examine human rights concerns which have been raised by national and international actors and to what extent these concerns have been reflected in the country review reports, the POA and implementation reports. The case studies illustrate that almost all the human rights issues that make their way into the country review report and the POA have been raised before by various actors. The importance of the APRM lies in the POA which provides a new platform on which to move from talk to action. The implementation reports provide a further step towards accountability.

The case studies also illustrate that many relevant issues are not included in the POA or even in the recommendations of the country review report. The Questionnaire does not seem to have much influence on this situation as some issues that are not dealt with in the Questionnaire are adequately dealt with in the country review reports.

The case studies also illustrated the linkages between the APRM and other development plans, in particular poverty reduction strategy papers. Ideally the APRM process should merge with the national planning process to create an

African alternative to the current poverty reduction strategies over which the IMF and the World Bank have significant influence. At least the outcomes of the APRM process should feed into the drafting of other development plans as illustrated by the Ghanaian experience.

9.2 Conclusion and recommendations

It is now clear that 2015 will come and go without the Millennium Development Goals (MDGs) being realised in most African states. Part of the explanation for this failure is a society which both domestically and internationally favours the rich. Rich nations are pitched against poor nations; rich elites in poor nations are pitched against the poor masses. Without a change in the rules of the playing field the situation of the poor is unlikely to improve.

The APRM constitutes one way of seeking to improve the situation for Africa's poor and pursuing the realisation of the MDGs and human rights. But the APRM can only play this role if the requisite political will is there. Political will must in this context first and foremost come from the government of the countries which have agreed to be reviewed. They must create a participative, transparent process for conducting the self-assessment and developing the POA.

All residents of a country have an interest in the governance of the state in which they live and the APRM provides a framework for engagement with state representatives on governance issues. In this way democracy becomes more than only a question of regular elections. This is in particular important in a continent such as Africa where elections are often decided on other grounds than policy.

Engagement with civil society organisations (CSOs) provides the easiest means through which to ensure participation in analysing the problems facing a country

and come up with solutions. However, this does not decrease the importance of allowing everyone who considers they can make a contribution to make their voice heard. Creating awareness is important, but the cost and benefit of various interventions must be carefully considered. Much data is being collected by various actors and when reliable data is readily available there is no need for the APRM to collect it on its own. The focus should be on the APRM as a complement to the myriad of existing procedures.

The government should be open to constructive criticism from the Panel and the country review team and where applicable clearly set out why a particular recommendation would not be reflected in the final POA. The government should facilitate the establishment of structures to ensure the effective implementation of the POA which should include its integration into the national budget. The POA should clearly indicate when action points need extra funding and the outcome of the APRM process should always be considered by those, for example donors, who want to engage the reviewed country on specific governance issues. The APRM Panel and Forum must be frank in its criticism when they see that a country does not fulfill these requirements.

This study has shown that the APRM can play a complementary role to global, regional and national institutional human rights monitoring. However, more needs to be done to secure its potential contribution to the realisation of human rights on the continent. Efforts should be undertaken to integrate findings and recommendations emanating from national and international human rights monitoring in the self-assessment and the country review report. Similarly, when evaluating state reports from countries that have been reviewed by the APRM, the monitoring bodies should take note of the relevant findings in the country review reports and the POAs.

Co-operation between the APRM structures and the African Commission on Human and Peoples' Rights (African Commission) within the current framework is necessary, but not sufficient to make both institutions more efficient in the promotion and protection of human rights. African human rights instruments should form the basis of human rights related parts of the review and inform the development of the questions in a revised Questionnaire in a clearer way. The African Commission, the African Committee on the Rights and Welfare of the Child and other relevant organs should be closely involved in the development of these questions. Indicators should focus on what the government is willing and able to do. It is thus important to see both what has been achieved and what steps are being taken to improve the situation. In interpreting human rights the APRM Panel should follow the lead of the African Commission and other treaty monitoring bodies.

As the Questionnaire is already overly long it may alternatively be suggested that instead of listing numerous questions and indicators with regard to human rights, the Questionnaire could incorporate state reporting guidelines by reference. The state report, compiled in a participatory process, would thus form part of the self-assessment on which the POA would be based. This way the two processes could reinforce each other. The rapporteur on a state report to the African Commission would participate in the APRM country review mission and provide input into the drafting of the country review report. The state report and human rights aspects of the country review report and the POA would be considered by the full Commission in the procedure for examining state reports. Following this process, the Commission would then issue concluding observations setting out any recommendations or comments on issues that it thinks have not been adequately addressed. The concluding observations would be posted on the internet and sent to the government under review, NGOs, national structures responsible for monitoring implementation of the POA, the APRM Secretariat in South Africa and other relevant stakeholders thus feeding into the on-going review process and

domestic debate. As the African Charter requires a state to submit a state report every second year, reports which are submitted between APRM cycles could be seen as implementation reports.

The APRM requires the state to launch a participatory process with the aim of establishing a national consensus on how to redress governance deficiencies. Human rights have a role to play with regard to the APRM process itself and in identifying and addressing governance shortcomings. The specific, costed and time-bound commitments in the POA are unique to the APRM. If these commitments are developed through a rights-based approach and their implementation adequately monitored the APRM could play an important role in inducing compliance with human rights.