

**HUMAN RIGHTS MONITORING IN AFRICA: THE AFRICAN PEER
REVIEW MECHANISM AND THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS**

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
APRM	African Peer Review Mechanism
AU	African Union
G8	Group of eight of the richest countries of the world
HSGIC	Heads of State and Government Implementation Committee
NEPAD	New Partnership for Africa's Development
NGO	Non Governmental Organisations
OAU	Organisation for African Unity
OECD	Organisation of Economic Cooperation and Development
UNESCO	United Nations Education Sciences and Cultural Organisation

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CHAPTER 1

INTRODUCTION

1.1 Background

Over the years many Africa countries have experienced massive human rights violations. The need to promote and protect human rights in Africa led to the adoption of the African Charter on Human and Peoples' Rights (ACHPR) by the Organisation of African Unity (OAU) in 1981.¹ The ACHPR created the African Commission on Human and People's Rights (African Commission) as a quasi-judicial body and mandated it with the responsibility of protecting and promoting human and peoples' rights in Africa. Since the creation of the African Commission, Africa has witnessed the creation of several other mechanisms which have been tasked with monitoring the implementation of human rights in Africa. These include the Experts Committee on the Rights of the Child set up in terms of the African Charter on the Rights and Welfare of the Child, and the African Court on Human and Peoples' Rights.²

In the period 2000-2002, Africa witnessed the transition of the OAU into the African Union (AU). The transition brought with it new hopes and ideas regarding the welfare of the continent in general. Some of the key innovations that were introduced in the wave of the continental transformation were the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). The APRM became one of the mechanisms whose mandate among others is human rights monitoring in Africa.

1.2 Problem statement

NEPAD is an AU mandated programme whose main focus is to address key social, economic and political issues for the African continent.³ Within the NEPAD programme and vision is the APRM, which has been described as a system of self-assessment, constructive peer dialogue, persuasion, and sharing of experience among member states of the African Union.⁴ The APRM is the execution mechanism for NEPAD whose mandate is to monitor the performance of states in different programme areas including human rights. The mandate on human rights monitoring falls within the political governance component of the NEPAD Declaration on

¹ The ACHPR come into force in 1986.

² The Protocol establishing the African Court on Human Rights was adopted in 1998.

³ African Union, Background on the New Partnership For Africa's Development <<http://www.au2002.gov.za/docs/background/nepad.htm>> (accessed on 5 March 2003)

⁴ Communiqué, 6th NEPAD HSIC held in March 2002 <<http://www.dfa.gov.za.docs/nepad>> (accessed on 13 March 2003)

Democracy, Political, Economic and Corporate Governance (NEPAD Declaration).⁵ The APRM has been introduced with a human rights monitoring component in a context where there already exist a number of other human rights mechanisms and institutions such as the African Commission. The proposed processes of the APRM in monitoring human rights in some ways resemble those of the African Commission while at the same time there are major differences between these mechanisms. For example while the African Commission is a quasi-judicial body, which engages in legal processes, the APRM is a political process where heads of state are among the main actors.

Some analysts have expressed the view that the creation of the APRM as a political process adds a vital component to the human rights monitoring in Africa which since the creation of the African Commission has remained purely legal and thus had limited success in ensuring human rights protection in Africa.⁶ While some have shared their doubt over the added value and role of the APRM in human rights monitoring, others have hailed it for providing a forum where heads of state will make political commitments for the protection of human rights. In this regard, the aim of this study is to analyse the role that the APRM will play in human rights monitoring in Africa. This analysis is done in relation to the work that is being done by the African Commission and the challenges that it has confronted over the years. In analysing the role of the APRM in human rights monitoring, this study unpacks the concept of peer review and analyse its practical implementation in Africa especially in the field of human rights. This study also explores the implications on human rights protection and promotion of the co-existence of the African Commission and the APRM.

1.3 Hypothesis

The co-existence of the APRM and the African Commission can facilitate more effective protection and promotion of human rights in Africa

1.4 Research questions

In addressing the issues raised in the hypothesis and the problem statement, this study provides responses to the following key questions:

⁵ The APRM Declaration on Democracy, Political, Economic and Corporate Governance
<<http://www.avmedia.at/nepad/indexgbhtml>> (accessed on 13 March 2003)

⁶ E Baimu 'Human rights mechanisms and structures under NEPAD and the African Union: Emerging trends towards proliferation and duplication' August 2002 Occasional Paper 15, Centre for Human Rights, University of Pretoria 13

- 1 What is the role and mandate of the APRM in human rights monitoring?
- 2 Does the existence of the APRM enhance efforts towards effective protection and promotion of human rights in Africa?
- 3 How can Africa ensure the complementarity of the work of the African Commission and the APRM in order to enhance their efficiency in human rights monitoring?
- 4 Are there areas of overlap or duplication in the work of these mechanisms?

1.5 Significance of study

The analysis of the role of the APRM in human rights monitoring is a significant exercise in that it provides an opportunity to understand the efforts that are being made by the African leaders to work towards protection and promotion of human rights in Africa. Further, this study is significant in that it analyses the existing mechanisms in the form of the African Commission together with the recent innovations in an effort to facilitate human rights protection. There is need to strategically locate the role that APRM plays in human rights monitoring and ensure that it compliments the work of existing mechanisms. It is important that there is no duplication of activities and ensure the efficiency of the human rights protection mechanisms in Africa.

There have been concerns that any work by the APRM in relation to human rights monitoring may draw more attention and resources than the African Commission. It is the aim of this study to try and address this concern and illustrate the importance and continued relevance of the African Commission. This study is therefore significant in that it analyses these issues and brings up any challenges and recommendations when the APRM is still in its infancy.

1.6 Literature review

The majority of the literature on the APRM has focused on the peer review in relation to the broader areas of democracy, political, corporate and economic governance. There is limited but significant work that has been done on the human rights mandate of the APRM. This includes published and unpublished work of Baimu⁷ whose analysis highlights the need to strengthen human rights monitoring mechanisms in Africa. Other important available literature has been produced by Cilliers of the Institute of Security Studies.⁸ He argues that the APRM is the most innovative programme of NEPAD and is a way of making African leaders comply with their international commitments generally including those on protection and promotions of human rights. Documents on the APRM that relate to the conduct of the process of peer

⁷ An example is his article entitled 'Human rights in NEPAD and its implications for the African human rights system' 2002 2 *African Human Rights Law Journal* 301

⁸ Documents are available at <<http://www.iss.co.za>> (accessed 18 March 2003)

review have been produced by the NEPAD secretariat. These documents provide factual information on the processes.

Using the available literature, this study's contribution is to provide a comprehensive analysis of the contribution that APRM will make in human rights monitoring. In addition, this study locates the APRM within the broad African human rights protection system and more specifically in relation to the African Commission. The study interrogates the new mechanism and new aspects it introduces into the system of human rights monitoring in Africa.

Several writers have carried out thorough analysis of the work of the African Commission. This research uses the critique that has been done in understanding the work of the African Commission as human rights monitoring institution. The study uses literature by writers on the African Commission such as Murray⁹, Nmehielle¹⁰ and Heyns¹¹.

1.7 Research Methodology

1.7.1 Primary sources

The research uses primary sources of data on the APRM. This includes the African Peer Review Base Document and the Memorandum of Understanding. An interview was held with a member of the NEPAD secretariat working on the practical aspects of operationalising the process of peer review. Further interviews were held with identified experts and representatives from NGOs who have been analysing the mandate of the APRM on human rights.

1.7.2 Secondary sources

The bulk of the research is based on published and unpublished written materials on the topic. Most of the literature is found in books, journal articles and the World Wide Web.

1.8 Limitations of the study

The main limitation of the study is that the APRM is a process which is yet to be implemented. By the time of conclusion of this study, the process of peer review was about to start in the first two countries, South Africa and Ghana. Thus some of the conclusions that this study makes are based on the theoretical standing of the process as contained in the documents that have been drafted by the NEPAD secretariat and adopted by the African Heads of States

⁹ Evans M, T Ige & R Murray, 'The reporting mechanism on the African Charter' In M Evans & R. Murray (eds) 2002 *The African Charter on human and people's rights: The system in practice 1986-2000* 41

¹⁰ V, Nmehielle *The African Human Rights system; Its laws, practice and institutions* (2001) 185

¹¹ C Heyns (ed) *Human Rights In Africa Law Series* 1996-1999 Kluwer Law International

and Governments. However, in order to bring a practical aspect to the analysis of the peer review, the study will draw some insights from the practical experience of other organisations in implementing peer review processes. The main example in this regard is the Organisation of Economic Cooperation and Development (OECD).

Another limitation of the study is the scarcity of literature on peer review in general and more specifically on political processes. While the information from the OECD provided useful insights, not much would be learnt on peer review that involves human rights.

1.9 Structure of the study

- Chapter 1 Introduction: This chapter states the research questions/ hypothesis, objectives of the study, relevance of study and literature review. It also looks at the scope and limitations of the study.
- Chapter 2 This chapter gives background information to the concept of peer review, how it is used in ensuring compliance with set standards by states and organisations. An analysis of the use of peer review by other international organisations is done. Further it gives an analysis of the APRM with a specific focus on its human rights monitoring role.
- Chapter 3 This chapter provides a brief background of the African Commission, its mandate and the challenges confronting it in its work. Thereafter there is an analysis of the challenges of the APRM in human rights monitoring and protection. Furthermore, the chapter critically analyses and evaluates peer review and its application in human rights monitoring in Africa. This chapter also highlights the similarities, overlaps and differences in the work and mandate of the APRM and the African Commission.
- Chapter 4 This chapter is the concluding chapter, which also provides recommendations for enhancing the efficiency and the co-operation of the APRM and the African Commission.

CHAPTER TWO

THE CONCEPT OF PEER REVIEW AND THE PROCESSES UNDER THE APRM

2.1 Introduction

Peer review is a relatively new concept to the African Union (AU) and more so in the field of political governance and human rights monitoring. Although new to the AU, peer review was developed in the 1960s and has been adopted and used by organisations such as the Organisation of Economic Cooperation and Development (OECD), the International Monetary Fund and the World Trade Organisation.¹ Peer review has been used as a mechanism for quality control and improvement of standards and practices by these organisations. As a consequence of the fact that this is the first time that Africa as a continent is going to engage in such a process, it is important to have an understanding of the concept of peer review before discussing the details of how the mechanism will work in relation to human rights monitoring in Africa. In an endeavour to understand the concept of peer review, this study draws on the experiences of international organisations that have used this mechanism. In doing so the main point of reference is the OECD which is an intergovernmental body made up of states from the developed world, especially Europe.² Thereafter this chapter proceeds to analyse the debate on whether peer review as a concept is suited for political review and consequently human rights monitoring in Africa.

2.2 Understanding the concept of peer review

2.2.1 Definition of peer review

Several organisations including the OECD have made attempts to define the concept of peer review. Although there is not one concrete definition, there are a few acceptable ones. According to an OECD document,³

Peer review can be described as the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles. The examination is conducted on a

¹ F Pagani, 'Peer Review: A tool for global cooperation and change. An analysis of an OECD Working Method' <<http://www.oecdobserver.org/news/fullstory>> (accessed on 4 May 2003). See paragraph 2.2.6 below for a detailed discussion of peer review in the OECD

² As above

³ As above

non-adversarial basis, and it relies heavily on mutual trust among the States involved in the review, as well as their shared confidence in the process.⁴

On the other hand, Hope⁵ states that,

Peer review refers to the systematic examination and assessment of the performance of a country by other countries (peers), by designated institutions, or by a combination of the two.

The conceptualisation of the APRM falls squarely within the above definitions of peer review.⁶ Through reciprocal evaluation, states engage in a process of mutual accountability amongst themselves as peers. Peer review can be conducted on a wide range of issues including economics, health, education and environment. However no organisation has ever engaged in political peer review.⁷

There are certain issues raised in the definitions above that require further discussion, as they are critical in informing peer review in Africa. Firstly, peer review has the ultimate goal of helping reviewed states improve on their conduct and policies. The same applies for the APRM which aims at assisting states through both technical and financial support to improve on their performance in whatever area of governance that will be reviewed.⁸ Secondly, peer review raises the issue of sharing and adoption of best practices by states. Thus peer review becomes a learning process for states in whatever area of review. Amongst the areas of concern for the APRM are human rights, which fall under the rubric of political governance. As shall be noted later it is important to see how far African leaders will be able, through this mechanism, to learn from one another in the field of human rights given the human rights violations in most states both in the past and present.

Thirdly, peer review can only be conducted under non-adversarial conditions. This is a key aspect of the definition especially in relation to peer review that involves states and deals with sensitive issues such as political governance. Under any regional or international grouping the language of heads of States and Government has always been diplomatic with a lot of

⁴ Besides peer review that can be conducted by and amongst states, this can be done by regional and international organisations. Further professional bodies such as in the legal and medical field can also conduct peer review processes. Like with states, this peer review is aimed at improving performance and standards in a particular profession. For the scientific community, peer review is a quality control mechanism.

⁵ K, Hope 'The African Peer review Mechanism. The ECA View' <<http://www.dse/de/ef/nepad/hope/htm>> (accessed on 30 July 2003).

⁶ The African Peer Review Mechanism is discussed in detail below.

⁷ Pagani (n 1 above)

⁸ Paragraphs 3 and 24 APRM Base Document <<http://www.nepad.org>> (accessed on 6 May 2003)

persuasion aimed at getting states to act and comply with certain standards and conditions especially in the area of human rights. Unlike judicial proceedings peer review processes do not end up in binding decisions of the participating states.⁹ As a result it is critical that states which subject themselves to peer review should have the political will to implement recommendations made by their peers. This aspect raises a critical question regarding whether African leaders will display political will for the promotion and protection of human rights in their countries. Failure to do this will make the peer review mechanism a paper tiger on the continent.

A fourth aspect centres on the development of criteria, standards and indicators, which will guide the process. Because peer review is about improving standards and complying with certain codes, indicators and benchmarks have to be set against which states have to be measured in their performance in subject areas such as human rights. However, the challenge lies in developing and agreeing on these indicators. Like in any other international negotiations, this process has to be carefully carried out so that states are comfortable with the final benchmarks so as to ensure that states do not refrain from being part of the process for fear of failing to meet required standards. The challenge does not end with the development of the indicators and benchmarks but to get states to appreciate and comply with the standards. With regard to human rights, state parties in Africa have been used to the processes of negotiating standards and have often been quick to sign and ratify documents containing these standards.¹⁰ Even with these instruments the challenge that remains is how to get states to comply with the standards set therein.

Other than the process of having individual participants review each other, peer review can be done by independent bodies which conduct research on the subject matter under scrutiny.¹¹ In such instances the independent body carries out the reviews based on the criteria and standards which the participants would have agreed upon.

2.2.2 Purpose of peer review

In light of the undertaking by the African Union to do peer review on a number of programme areas including human rights, one needs to analyse the purpose of peer review.

a) The most important function of peer review is to monitor and enhance compliance by countries with internationally agreed policies, standards, and principles. Because this is done

⁹ Pagan (n 1 above)

¹⁰ For example, all members of the AU have ratified the African Charter on Human and Peoples' Rights (1981) as well as other international instruments such as the Convention on the Rights of the Child (1989)

¹¹ L Noah 'Peer Review and Regulatory Reform' (2000) 30 *Environmental Law Reporter* 10606

among peers, the process unlike traditional legal enforcement mechanism relies on exerting soft pressure on states to comply with agreed standards. The process produces non-coercive final reports and recommendations. Examination by peers and recommendations for compliance, which are made, have to take into account a country's policy objectives as well as its performance in the historical and political context. In order to improve on performance and standards in the area being monitored, peer review has to be conducted on a regular basis.¹²

b) Peer review is a mutual learning process that provides an opportunity for states to exchange best practices. The process often serves as an important capacity building instrument not only for the country under review, but also for other countries participating in the process as peer examiners.¹³

c) Peer review is characterised by exchange of information by states and it provides an opportunity to engage in policy dialogue. As noted by Pagani, such dialogue can be the basis for further co-operation through, for example, the adoption of new policy guidelines, recommendations or even the negotiation of legal undertakings.¹⁴

d) Peer review processes are also about transparency as reviewed states get the chance to present and clarify national rules, policies, practices and procedures and explain their rationale.¹⁵

2.2.3 Peer review and peer pressure

One of the objects of peer review is to get member states to exert peer pressure on each other in order to improve on standards. The 'magic' in peer reviews lie in the ability and capacity of peers to exert this pressure on each other. Pressure can be exerted through recommendations which can take a formal or an informal nature. Ways of applying pressure includes making comparisons between states or ranking them in terms of performance. It is doubtful whether African states would want to be compared or ranked as this may produce a sense of competition and can deter some from participating in the process. More so, the diversity and differences in the economic, political and social situations of the African countries will make it unfair to conduct comparisons and rank the states. This aspect of diversity is very critical especially in relation to a peer review process that will also focus on human rights such as the APRM. On the one hand, economic diversity should not be used as a basis for

¹² Pagani (n 1 above)

¹³ As above

¹⁴ As above

¹⁵ H, Nottage 'Peer review: Merits and Approaches in Trade and competition context'
<<http://www.oecd.org/daf>> (accessed on 9 October 2003)

condemning poor countries which cannot genuinely afford to fully implement certain programmes but on the other hand, it should not be used as an for non-performance by states. Under the European Commission there is a system called ‘naming and shaming’ technique, which singles out poor performers.¹⁶ Such a system is useful, appropriate and produces positive results only when the rules of the game are clear and the countries accept them. In terms of the OECD peer review processes, pressure can be exerted on states through public opinion and this works best where media closely follows and reports on the process and the outcomes.¹⁷

2.2.4 Benchmarking and indicators for peer review

In peer review processes, the performance of the reviewed state can be assessed against principles, criteria and standards which widely differ in character and scope. It has been noted that peer review is effective if it is done based on both qualitative and quantitative performance indicators.¹⁸ States are thus bound to act and perform in accordance with agreed standards, although the reality may indicates otherwise. Sometimes the use of indicators and benchmarks is coupled with the use of a scoring board where states are allocated scores at each review process. The main purpose is to see whether there is progress being made. At the subsequent reviews it is often the practice to refer to the conclusions adopted in the previous review of the country. The recommendations and the outstanding issues noted in the earlier report are an important part of the measures against which to assess the progress of the country. In the case of human rights monitoring under the APRM, indicators have been developed based on internationally recognised norms and more specifically the African Charter on Human and Peoples’ Rights.¹⁹

2.2.5 Preconditions for effective peer review

Of particular importance in peer reviews is the creation of an environment that will enable the conducting of useful reviews. From the experience of the OECD, there are certain preconditions for the carrying out of effective peer reviews. These have to be created in Africa in order to give credibility to the process especially in light of the lack of confidence that Africans have in their leaders as human rights protectors and promoters. The preconditions include,

¹⁶ Pagani (n 1 above)

¹⁷ As above

¹⁸ As above

¹⁹ For the human rights indicators see, Objectives, Standards, Criteria and Indicators for the APRM, NEPAD/HSGIC-03-2003/APRM/GUIDELINE/OSCI (hereinafter referred to as APRM Objectives and Indicators Document)

- a) An agreement among the participating countries on the standards or criteria against which to evaluate their performance. A strong common understanding on these will prevent uncertainty or backtracking during the process.
- b) Adequate levels of commitment by the participating countries in terms of both human and financial resources. The APRM is going to be funded by the participating states.²⁰ Participating countries must not only give adequate financial resources but they must also be fully engaged in the process at different times as examiners, as active members of the collective body, and as subjects of the examination.²¹
- c) There is need for mutual trust among the member states. While the peer review process itself can contribute to confidence building, a large degree of trust and value sharing among the participants should be present from the beginning to facilitate the disclosure of data, information and documentation which are essential to the process.²²
- d) The credibility of the peer review process is essential to its effectiveness.²³ There is a strong linkage between the credibility of the process and its capacity to influence change. As they review each other with the help of other relevant bodies states must be objective, fair and consistent. The same applies to the secretariat and other bodies, such as the Panel of experts under the APRM. The reviewed state must not unduly influence the final outcome. However, at the same time, the involvement of the reviewed state in the process and its ownership of the outcome of the peer review is the best guarantee that it will ultimately endorse the final report and implement its recommendations.²⁴

2.2.6 The example of the OECD peer review process

The OECD is a grouping of 30 member states that was formed in 1960.²⁵ Initially, membership was exclusive to European states but now some Asian, North and South American states have joined in. None of the African states is a member. In recent years, the OECD has moved beyond a focus on its member countries to offer its analytical expertise and accumulated experience to developing and emerging market economies. With the birth of NEPAD and the APRM, the OECD has forged a working partnership with the AU.²⁶

²⁰ Paragraph 27 APRM Base Document. Also paragraph 20 of the Memorandum of Understanding on the APRM

²¹ Pagani (n 1 above)

²² As above

²³ A, Ouedraogo 'A new Dawn for Africa. Who is supporting the new Partnership for Africa's Development' <<http://www.dse.de/ef/nepad/rep.htm>> (accessed on 31 July 2003)

²⁴ Hope (n 5 above)

²⁵ Detailed information on the OECD is available at <<http://www.oecd.org>> (accessed on 10 June 2003)

²⁶ As above

The OECD countries share a common vision and commitment to democratic government and the market economy. Consequently, the OECD runs a significant number of programmes which include, macroeconomics, trade, education, development, science and technology.²⁷ One of the objectives of the OECD is to foster good governance in these and other areas of member state programmes. In order to meet this objective, the OECD carries out country reviews and makes relevant policy recommendations. In this regard, peer review is at the heart of its processes and plays a critical role of getting states to engage in open dialogue on issues of concern and learn best practices from each other. Basically the OECD provides a setting for reflection and discussion, based on policy research and analysis, that helps governments shape policy and this leads to a formal agreement among member governments to be acted upon at the domestic level.²⁸ Pagani noted that there is no other international organisation in which the practice of peer review has been so extensively developed as in the OECD.²⁹ The process of developing peer review to its current credible status has been facilitated by the homogeneous membership and the high degree of trust shared among the member countries. One of the outcomes of the processes of peer review and sharing of experiences has been that the OECD develops legally binding treaties for its members to deal with important issues.

2.2.6.1 Programme areas subject to peer review under the OECD

Unlike the APRM, the OECD has not delved into the arena of political review and human rights monitoring as one of the programmes to fall under peer review.³⁰ Its focus has been on matters with a purely economic and development orientation. The OECD engages in environmental performance reviews, reviews on development cooperation assistance policies and programmes. Education, labour standards, trade, financial and fiscal issues are also subject to reviews. In these programme areas, the OECD works in partnership with international bodies such as International Labour Organisation, Food Agricultural Organisation, the World Bank and UNESCO.

In its reviews, the OECD's main focus is to give recommendations that can facilitate states to improve performance. Further policy recommendations have to be sharply focused, clearly articulated and constructive. All subsequent reviews should explicitly follow up on recommendations made in the previous review. Each programme area has its set period and frequency of conducting reviews as well as set structures which conduct the reviews. For

²⁷ See note 25 above

²⁸ As above

²⁹ Pagani (n 1 above)

³⁰ Pagani (n 1 above)

example, in economic reviews, the OECD secretariat does the initial survey of the country being reviewed and compiles a report.³¹ The highest decision making body is the Economic and Development Review Committee which is made up of representatives of OECD states and are tasked to carry out the reviews, make recommendations and apply peer pressure where necessary. Reviews are done every twelve to eighteen months.³²

2.3 The African Peer Review Mechanism

2.3.1 An overview of the APRM

The NEPAD is an AU mandated programme whose main focus is to address key social, economic and political issues for the African continent.³³ The African Peer Review Mechanism (APRM) which has been defined as a system of self-assessment, constructive peer dialogue, persuasion, and sharing of experience among member states comes out of NEPAD.³⁴ It is thus the execution mechanism for NEPAD whose mandate is to monitor the performance of states in different programme areas in accordance with the agreed upon standards.³⁵ The programme areas can broadly be categorised as corporate, political and economic governance. The APRM has been described as the most innovative aspect of NEPAD.³⁶ The mechanism has rightly been described so because it brings for the first time to the continent a comprehensive process where leaders are supposed to openly review each other's conduct in issues of governance and learn from each other. The idea of a peer review mechanism was first discussed at the first meeting of the NEPAD Heads of State and Government Implementation Committee (HSGIC) in October 2001.³⁷ The mechanism was formerly adopted at the second meeting of HSGIC in 2002.³⁸ Since then the idea has taken shape and evolved to becoming one of the major preoccupations of the NEPAD secretariat and the HSGIC. The APRM is an instrument which member states of the AU can voluntarily accede to.³⁹

³¹ Nottage (n 15 above)

³² As above

³³ 'African Union, Background on the New Partnership For Africa's Development' <<http://www.au2002.gov.za/docs/background/nepad.htm>> (accessed on 5 March 2003).

³⁴ Communiqué, 6th NEPAD HSGIC held in March 2003 <<http://www.dfa.gov.za/docs/nepad>> (accessed on 26 April 2003)

³⁵ Paragraph 2 APRM Base Document.

³⁶ J Cilliers 'NEPAD'S Peer Review Mechanism' *Occasional Paper No 64 –November 2002* <<http://www.iss.co.za>> (accessed on 13 March 2003).

³⁷ As above

³⁸ Communiqué issued at the end of the 2nd NEPAD HSIC meeting held in 2002 <<http://www.nepad.org/Doc006>> (accessed on 18 February 2003).

³⁹ Para 9 of Communiqué issued at the end of the third meeting of the HSIC in Rome, Italy 11 June 2002 <<http://www.nepad.org/Doc006>> (accessed on 18 March 2003).

One of the purposes of the APRM is fostering the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration.⁴⁰ Like the process under the OECD, the APRM intends to create a platform for the sharing of experiences and reinforcing successful and best practices by member states. It will further facilitate the identification of insufficiencies among states and assessing the needs for capacity building. In this regard, it has been stated that the APRM represents an ambitious attempt by African countries to get themselves out of the cycle of poverty and instability by taking responsibility for the maintenance of proper state behaviour especially in relation to the issues of governance.⁴¹

One of the important operative documents for the APRM is the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, (NEPAD Declaration)⁴² which sets forth the programme areas which will fall under peer review by states. One of them is human rights which falls under political governance programme. Thus the APRM is intended to monitor the human rights performance of states among other issues. The review processes shall be done in line with the criteria and indicators that were developed and agreed upon by the states.⁴³ Human rights indicators developed shall be used by states as the basis to measure their performance and progress on human rights. The APRM is open to all AU members that subscribe to the values, codes and standards set out in the NEPAD Declaration.⁴⁴

2.3.2 Inclusion of political governance and human rights in the APRM

When the idea of peer review was introduced and debated in the AU, a contentious issue arose on whether the process should include all the NEPAD programme areas as defined and contained in the NEPAD Declaration including political review. President Thabo Mbeki of South Africa made a statement to the effect that APRM would be confined to economic and corporate review at the exclusion of political governance.⁴⁵ Commentators saw this statement and decision to exclude political governance from peer review, as a deathblow to NEPAD's vision of ensuring that there is a holistic approach to Africa's economic and developmental problems.⁴⁶

⁴⁰ Paragraph 3 APRM Base Document

⁴¹ Cilliers (n 36 above)

⁴² See <<http://www.avmedia.at/cgi-script/csuploadnepad/declaration>> (accessed on 21 June 2003).

⁴³ J Adisa, 'Making the mechanism work, A view from the African Union' <<http://www.iss.co.za/pubs/reports/2002Q4.pdf>> (accessed on 20 June 2003).

⁴⁴ Paragraph 1 APRM Base Document.

⁴⁵ Katzenellenbogen 'NEPAD vision a victim to African Realpolitik' *Business Day* 31 October 2002.

⁴⁶ As above.

In his statement, President Mbeki further pointed out that Africa already had adequate mechanisms better suited to monitor and deal with political processes.⁴⁷ With regard to human rights, he made reference to the African Commission on Human and Peoples' Rights, the soon to be established African Court on Human and Peoples' Rights and the newly established Experts Committee on the Rights and Welfare of the Child as sufficient mechanisms to conduct human rights monitoring in Africa.⁴⁸ He stated that other AU mechanisms such as the Pan African Parliament would deal with the political issues of the continent. According to Mbeki, the peer review mechanism arose in the context of NEPAD and would have to review "matters that have to do with the economy", including financial management and budget policy.⁴⁹

In reaction to these statements, political commentators were quick to point out that the African leaders were retreating from the principles of NEPAD which acknowledge the centrality of good political governance and human rights to the efforts of building a better Africa.⁵⁰ Others saw it as an attempt by the leaders to shield themselves from comprehensive political scrutiny. On the one hand, others acknowledged that the inclusion of political peer review would be the most challenging component of APRM and that understandably so, President Mbeki's statements could have been informed by the experiences of the OECD.⁵¹

In line with President Mbeki's statements, Cilliers argued that from its documents, the AU never intended states to review each other's political performance but rather such reviews should be done by pan African bodies such as the African Commission.⁵² These arguments point towards other forms of monitoring and not peer review. The idea of peer review is to get states to be involved in political processes of examining each other in various programme areas. Although these monitoring bodies have a significant role to play in some stages of peer review process, they cannot come in to substitute the role that is played by the forum of states peer reviewing each other.

The inclusion of political governance was not only of concern to those within the continent. To Africa's development partners such as the G8 group of countries,⁵³ issues of political

⁴⁷ 'Pahad is Right Over Peer Review Mechanism: Mbeki' *South African Press Association* 30 October 2002

⁴⁸ As above

⁴⁹ As above

⁵⁰ As above

⁵¹ J, Stremlau, 'Nepad's Peer Review Still 'Work in Progress' *Business Day* 4 November 2002

⁵² J, Cilliers 'Peace and Security through good governance A guide to the African Peer Review Mechanism' Occasional paper 70 <<http://www.iss.co.za/AF/RegOrg/nepad/index.htm>> (accessed on 5 May 2003)

⁵³ G8 group of countries include Canada, Britain and USA.

accountability and good governance logically lie at the core of Africa's inability to develop.⁵⁴ The Prime Minister of Canada is reported to have warned President Mbeki of the danger of the exclusion of political review from APRM.⁵⁵ Thus for the partners it was vital for political governance, human rights and democracy to be part of the APR processes. Commenting on the inclusion of political governance in the APRM, Cilliers noted that 'without making political governance the core focus of NEPAD, the Partnership is unlikely to make an impact on the continent.'⁵⁶

However, the NEPAD chairperson and subsequently the HSGIC clarified the situation and stated that the APRM would be a comprehensive process dealing with political, corporate and economic governance.⁵⁷ This discussion came to a close with the clear indication from the NEPAD documents that the political governance shall be part of the APRM. Further, the HSGIC at its sixth meeting in March 2003 adopted objectives, criteria and indicators for review of human rights performance by states.⁵⁸ Further still, the Memorandum of Understanding of the APRM states that the primary purpose of the African Peer Review Mechanism is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, and sustainable development.⁵⁹

Pagani expressed admiration for Africa's decision to make political review a legitimate part of the APRM.⁶⁰ However, he was quick to point out that the diversity of the continent posed the greatest challenge for engagement in this kind of review. That debate having settled it is now clear that the APRM will include political review. Now the focus is what value will political review of human rights add to the already existing human rights monitoring mechanisms on the continent?

2.3.3 Participation in the APRM

In order for member states of the AU to participate in the APRM and have their human rights performance under scrutiny, they need to follow certain processes which have been put in place by the HSGIC. Firstly, member states have to adopt the NEPAD Declaration. The NEPAD Declaration lays down the objectives of NEPAD regarding political, economic, corporate and political governance. It further has values, codes and standards to which states

⁵⁴ Cilliers (n 52 above)

⁵⁵ As above

⁵⁶ As above

⁵⁷ See paragraph 13 of the Communiqué issued at the end of the 5th meeting of HSGIC November 2002

⁵⁸ See Communiqué issued at the end of the 6th HSGIC meeting March 2003

⁵⁹ Para 8 APRM Base Document

⁶⁰ Stremlau (n 51above)

must conform. Thereafter, member states are required to voluntarily accede to the APRM process.⁶¹ The fact that accession to the process is voluntary has been criticised as having taken away the essence of state accountability that NEPAD is seeking to introduce in Africa. It has been observed that by not making the process compulsory for all states the APRM's ability to influence change and processes in Africa is grossly limited.⁶² Finally, before carrying out the reviews, states have to sign a Memorandum of Understanding, which have the finer details of how to go about the process.

2.3.4 Types of reviews under the APRM

In order to be able to appreciate and fully understand the role if any that the APRM is going to play in human rights monitoring and promotion in Africa, it is imperative to understand how the process is going to be carried out and how different it is from those of the African Commission. Firstly, the APRM has elaborate processes and there are different types of reviews. There are four types of peer review processes under the APRM. After acceding to the process, member states are expected to submit themselves to a base review within 18 months.⁶³ This will take place within the country under review and the main aim is to establish basic information and the starting point for the holding of subsequent review processes. The second type of review will be the regular periodic review that will take place in each country after every two to four years.⁶⁴ Like the first one this review is mandatory. In the third place is a new innovative process where the state can on its own initiative request for review.⁶⁵ This review is not mandatory. The final review can take place in a country at the request of other member states.⁶⁶ This review will be done in case of early signs of impending political or economic crisis.⁶⁷ States requesting such a review of the other have to show sufficient cause for the review. Within the spirit of the APRM, the aim of this fourth category of review is for states to be able to help each other and avert any impending crisis.

2.3.5 Stages of the Reviews

The reviews will thus be done in five stages as laid out in the APRM Organisation and Processes Document and Base Document. The first stage involves the study and analysis of the political, economic and corporate governance issues in a country under review.⁶⁸ This is

⁶¹ Paragraph 7 APRM Memorandum of Understanding

⁶² Kadalie 'NEPAD's Peer Review System Needs to Be Given Real Teeth' *Business Day* September 20, 2002

⁶³ Paragraphs 13 and 14 APRM Base Document

⁶⁴ Paragraph 14 APRM Base Document

⁶⁵ As above

⁶⁶ As above

⁶⁷ As above

⁶⁸ Paragraph 7.5 APRM Organisation and Processes Document

done by the APRM Country Review Teams which will be appointed for that purpose. National, regional and international institutions will provide information that will be in the background document. It is envisaged that there will be extensive involvement of non-governmental bodies and institutions. Based on the background report, the secretariat of the APRM is expected to tease out problematic areas and challenges that will have been observed in the areas under review. On the basis of this report, the country under review will draw up a plan of action and a schedule for improving on issues identified in the study.

The second stage of the base review entails discussions between the APR team and stakeholders to work and seek solutions and consensus on problematic areas identified in the background report.⁶⁹ Stakeholders include both governmental and non-governmental institutions. The main focus of the Country Review Visit will be on identifying whether the country's draft Programme of Action is adequate to address the assessed challenges and, if not, how the country can best be assisted in strengthening its final draft Programme of Action and its capacities to implement it.⁷⁰

After the visit, the country team produces a report with recommendations aimed at improving and accelerating the programme of action for the specific country. In addition the programme of action is supposed to have time bound targets.⁷¹ This report has to be discussed by the state concerned and the country team.

At the fourth stage the APR Secretariat will present the country team report to the Panel of Eminent Persons (APR Panel) and then finally to the APRM Forum (APR Forum), which is made up of the heads of state taking part in the peer review.⁷² The forum is the highest decision making body for the APRM process.

Finally in the fifth stage, the report of the country is tabled before key regional and sub regional bodies such as the African Union.⁷³

2.3.6 Human rights standards and indicators under the APRM

At its meeting in March 2003 in Abuja, Nigeria, the HSGIC approved the standards and indicators that will be in human rights peer reviews.⁷⁴ The APRM will use the standards and

⁶⁹ Paragraph 7.7 APRM Organisation and Processes Document

⁷⁰ Paragraph 6.8 APRM Organisation and Process Document

⁷¹ Paragraph 7.12 APRM Organisation and Processes Document

⁷² Paragraph 7.15 APRM Organisation and Processes Document

⁷³ Paragraph 7.17 APRM Organisation and Processes Document

⁷⁴ Objectives, Standards, Criteria and Indicators for the APRM Document (APRM Objectives and

indicators to mark the progress that states will be making in human rights protection and promotion.⁷⁵ The APRM borrows the idea of indicators from international organisations and more specifically the OECD. The indicators and benchmarks developed for the APRM are based on already established human rights and other standards. Emphasis is given to the African inspired standards. The most important standard for Africa is the ACHPR. However besides the ACHPR, the indicators are also based on the Grand Bay (Mauritius) Declaration and Plan of Action for the Protection and Promotion of Human Rights. The standards also go beyond African instruments to include important international treaties such as the Convention on the Elimination of all Forms of Discrimination Against Women, the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights.⁷⁶ The indicators developed along these standards are clearly qualitative as they seek to measure the basic implementation of the rights and the improvements that will be experienced by the people living in the countries under review. Most of the indicative criteria focus on the effective implementation of human rights standards by member states of the AU.

The criteria and indicators developed for the APRM are very broad as they encompass not just the content of substantive rights but extends to interrogate state action in implementing their obligations. Some of the issues to be assessed include the level of ratification and accession to relevant human rights standards by the state.⁷⁷ In addition, the mechanism will review the practical steps taken by states including budgetary commitments towards ensuring the fulfilment of rights in Africa. Of concern to the peer review will be other implementing bodies such as the courts, the electoral commissions and national human rights institutions.⁷⁸ In order to ensure that these bodies discharge their mandate well, peer review will analyse the independence as well as the resourcing practice of states of such bodies.

Besides monitoring the implementation of the three generations of human rights standards, the APRM shall also focus on closely related and relevant issues such as the upholding of the rule of law, the holding of regular, free and fair elections, the creation of national human rights institutions and the promotion of the existence of a vibrant civil society. These aspects are closely related to the fulfilment and enjoyment of rights in any country. Criteria and indicators were also developed to measure the independence of the media and the effective functioning of parliament as an important state organ with a role to play in ensuring recognition, fulfilment and respect of human rights.

indicators Document)

⁷⁵ Paragraph 1.8 APRM Objectives and Indicators Document

⁷⁶ Paragraphs 2.9.1, 2.10.1 APRM Objectives and Indicators Document

⁷⁷ See for example paragraph 2.9.2 APRM Objectives and Indicators Document

⁷⁸ Paragraphs 2.4 and 2.5 APRM Objectives and Indicators Document

Considering the aforementioned, the question that comes to mind is what value do indicators add to the APRM human rights monitoring process? In essence, there are no new ideas or rights that the APRM is bringing onto the continent. However, the indicators give guidance and focus to the review process and further they are critical for benchmarking. Since the objective of the APRM is to assess compliance, indicators facilitate in measuring whether or not states are abiding with standards.

2.4 Key implementation bodies of the APRM

2.4.1 The role of the Panel of Eminent Persons

Since one of the aims of this paper is to ascertain the role that the APRM will play in human rights monitoring in Africa, an analysis of some of the critical bodies that the mechanism will use in the fulfilment of its mandate is required. One of these is the APR Panel, which is an independent body made up of between 5 to 7 eminent persons and its members are appointed by the APR Forum.⁷⁹ The Panel has numerous tasks set out in the APRM Organisation and Processes Document. Among them is overseeing the review process with a view to ensuring that the process is independent, professional, and credible.⁸⁰ It also appoints the APR country review teams and recommends appropriate African institutions or individuals to conduct technical assessments. In addition, it meets when required to review and make objective assessments and recommendations on the country review reports submitted to it by the APR Secretariat and forward the recommendations to the APR Forum.

2.4.2 The role of the Committee of Participating Heads of State and Government (APR Forum)

The APR Forum is made up of all the heads of state of the participating countries. It is the highest decision making body for the APRM. The APR Forum is tasked with the ultimate responsibility of overseeing the APRM's organisation and processes, for mutual learning and capacity building, and for applying the peer pressure required to make the APRM effective, credible, and acceptable.⁸¹ In addition, the APR Forum appoints the APR Panel. It is further tasked with the responsibility of dealing with the country review reports submitted to it by the APR Panel as well as communicating the recommendations and decisions of the APR Forum to the Head of State of the country that would have undergone peer review. It is the duty of the APR Forum to exert peer pressure (through constructive dialogue, offering assistance or applying appropriate measures) to effect changes in country practice where recommended. In

⁷⁹ Paragraph 6 APRM Base Document

⁸⁰ Paragraph 3.1 APRM Organisation and Processes Document

⁸¹ Paragraph 2.2 APRM Organisation and Processes Document

light of the principles of NEPAD, The APR Forum will persuade development partners to support the recommendations approved by the APR Forum by providing technical and financial assistance to the reviewed country. Finally, the APR Forum transmits the APRM reports to the appropriate African Union (AU) structures. In the case of political reviews, which include human rights, the APR Forum will be obliged to pass the reports to the African Commission and other relevant bodies.⁸²

2.4.3 The role of other bodies

The other bodies which participate in the APRM are

- The APRM Secretariat that provides secretarial, technical and administrative support to the APRM.⁸³
- Country Review Teams, which are responsible for reviewing progress made using the country action plans. The team produces the reports.⁸⁴
- Relevant institutions and non-governmental organisations will be invited to give technical assistance in the review process.

2.5 Conclusion

From the above, it is apparent that the APRM has got the relevant and basic structures and intention to facilitate the discharge of its mandate. The experience of the OECD provides a valuable guide and learning point. However, some of the issues raised in the concept of peer review and how it has to be carried out need further analysis especially with regard to the practical issues and challenges that face Africa. Further, there is need to transfer the theoretical issues on peer review into the realities of Africa and measure how far this mechanism will assist in the protection and monitoring of human rights in Africa.

⁸² Paragraph 2.2(e) APRM Organisation and Processes Document

⁸³ Paragraph 4.2 APRM Organisation and Processes Document

⁸⁴ Paragraph 5 APRM Organisation and Processes Document

CHAPTER THREE

THE APRM IN RELATION TO THE AFRICAN COMMISSION AND ITS FEASIBILITY AS A HUMAN RIGHTS MONITORING MECHANISM

3.1 Introduction

In order to evaluate the role of the APRM in human rights monitoring in Africa, one needs to have an understanding of the existing operating mechanisms. The APRM has been introduced within the context of other mechanisms which were also set up by the African heads of states. Of these mechanisms, the African Commission on Human and Peoples' Rights (African Commission) is the oldest after having come into operation in 1987.¹ Other than the African Commission, Africa has other mechanisms which are yet to become fully operational. These are the Experts Committee on the Rights of the Child² established in terms of the African Charter on the Rights of the Child and the African Court on Human and Peoples' Rights.³ This chapter shall focus on the APRM in relation to the African Commission as the main and oldest human rights monitoring body in

3.2 The African Commission on Human and Peoples' rights

3.2.1 An overview

The African Commission was established in terms of article 30 of the African Charter on Human and Peoples' Rights (ACHPR).⁴ The ACHPR is the most comprehensive human rights treaty on the continent recognising a wide range of human and peoples' rights ranging from civil and political to economic, social, cultural and group rights. The African Commission is therefore the main human rights monitoring body in Africa. The mandate of the African Commission is the protection and promotion of human and peoples' rights in Africa.⁵ The African Commission was tasked to carry out activities aimed at fulfilling this mandate. Under the promotional aspect of the mandate, the African Commission undertakes education and sensitisation campaigns on the rights enshrined in the ACHPR.⁶ The African Commission also engages in educational processes of making itself and its work known to people in different

¹ For a detailed discussion on the work of the African Commission see M Evans & R. Murray (eds) *The African Charter on human and people's rights: The system in practice 1986-2000* 2002

² The African Charter on the Rights and Welfare of the Child came into force in 1999 and the Experts Committee was constituted in 2002.

³ The Protocol establishing the African Court on Human and Peoples' Rights was adopted by the OAU in 1998 and will come into force after 15 ratifications by member states of the AU.

⁴ The African Charter was adopted in 1981 by the OAU and came into force in 1986

⁵ Article 30 African Charter on Human and Peoples' Rights.

⁶ Article 45 African Charter on Human and Peoples' Rights.

parts of Africa. In doing so, the African Commission carries out promotional visits to different countries. The promotional activities are aimed at encouraging people to use the ACHPR as part of their broad strategies of ensuring the protection of human rights in Africa. In terms of article 45(1)(a) of the African Charter, the African Commission is further mandated to carry out research, documentation, and dissemination of information through workshops and seminars. The African Commission has the duty to interpret the African Charter at the request of a state party, any institution of the OAU (now AU), or any African institution recognised by the AU.⁷

Under the protective mandate, the African Commission has two main tasks. The first is receiving as well as considering communications alleging human rights violations from state parties and individuals.⁸ The African Commission has issued numerous decisions on human rights abuses and almost all the cases were filed by individuals against state parties to the ACHPR.⁹ The African Commission has received praises for its innovative and progressive interpretation of the ACHPR when it considers communications.¹⁰

The second task under the protective mandate is to receive state reports on the implementation of the ACHPR. This is done in terms of article 62 which requires all state parties to submit reports every two years. This procedure affords state parties the opportunity to engage a process of introspection and reviewing of their own human rights performance. On the other hand the African Commission does the inspection when it analyses state reports to access levels of compliance with the provisions of the ACHPR.¹¹ During the presentation of the state reports, the African Commission engages in constructive dialogue with state representatives regarding weak points and any failure to perform in terms of their obligations under the African Charter. Of late, the African Commission has started the practice of issuing concluding observations at the end of the examination of state reports.¹² These observations are meant to provide states with guidance on the implementation of the rights in the ACHPR.

In terms of its Rules of Procedure,¹³ the African Commission has the authority to engage any other activities necessary to facilitate the discharging of its obligations under the ACHPR. In

⁷ Article 45(3) African Charter on Human and Peoples' Rights

⁸ Article 47 and 55 African Charter on Human and Peoples' Rights

⁹ For decisions of the African Commission, see Institute for Human Rights and Development '*Compilation of decisions of the African Commission on Human and Peoples' Rights* (2002)

¹⁰ See for example the case of the case of *Serac vs Nigeria* Communication 156/96 where the African Commission interpreted the African Charter to the effect that it protected the rights to housing, clean water and food.

¹¹ M Evans, T Ige & R Murray, 'The reporting mechanism on the African Charter' In M Evans & R. Murray (eds) (2002) *The African Charter on human and people's rights: The system in practice 1986-2000* 41

¹² As above

¹³ Rule 87(1)

pursuance of this, the African Commission introduced the system of appointing special rapporteurs to investigate certain thematic areas of human rights.¹⁴ To date the African Commission has appointed special rapporteurs on the rights of women, prison conditions and conditions of detention in Africa and extra judicial executions.¹⁵ In addition to their other duties, each Commissioner is allocated countries, which become their direct responsibility for promoting the work of the African Commission. The African Commission has forged a good working relationship with NGO in and outside of Africa¹⁶ and it produces a report of its activities.

3.2.2 Some challenges confronting the African Commission

To facilitate an adequate assessment and analysis of the role the APRM plays human rights monitoring in Africa, this study looks at the challenges and problems that the African Commission has been experiencing and further assesses the complementarity role that the APRM can potentially play.

One of the criticisms raised against the African Commission is the lack of independence of some of the Commissioners.¹⁷ So far most of those appointed by state parties to be Commissioners have been government employees serving in different capacities such as ambassadors or attorney generals.¹⁸ This has raised questions of how much such Commissioners are willing to be critical African governments as they conduct their work. The second issue relates to the capacity of the African Commission to discharge its enormous mandate. None of the Commissioners work on a full time basis.¹⁹ The African Commission lacks the financial and human resources needed to carry out its work.²⁰ It has also been observed that in both state reports and communications, the African Commission does not have a follow up mechanism to ensure that states comply with its recommendations.²¹ Thus in

¹⁴ C. Heyns African Regional Human Rights System: In need for reform (2001) 2 *African Human Rights Law Journal* 164

¹⁵ M Evans & R Murray 'The Special Rapporteurs in the African System' in M Evans & R. Murray (eds) (2002) *The African Charter on Human and People's Rights The system in practice 1986-2000* 280.

¹⁶ For a detailed discussion regarding the working relationship of the African Commission and NGOs, see A Motala 'Non-Governmental Organisations in the Africa System' in M Evans & R. Murray (eds) (2002) *The African Charter on Human and People's Rights: The system in practice 1986-2000* 246.

¹⁷ Heyns (n 14 above)

¹⁸ For example Commissioner Chigovera was the Attorney General of Zimbabwe until March 2003 when he resigned from that post.

¹⁹ V. Dankwa 'The Promotional Role of the African Commission' In M Evans & R. Murray (eds) (2002) *The African Charter on human and people's rights: The system in practice 1986-2000* 346

²⁰ Motala (n 16 above) 247-248

²¹ R Eno *The place of the African Commission In Africa's new political dispensation* <<http://www.iss.co.za>>

instances where states have failed to demonstrate the political will towards protection and promotion of rights, the African Commission has failed to do anything about it. For example states like the Democratic Republic of the Congo have consistently failed to improve the human rights situations in their countries despite numerous rulings from the African Commission recommending greater protection of rights.²² Many more issues have been raised more specifically with regard to the state reporting procedure. Eno²³ observed that,

[t]he state reporting exercise has so far yielded few results as many state representatives who present their reports are ill prepared and are unable to provide relevant information on the state of human rights in their countries.

Evans, Ige and Murray²⁴ noted that the time allocated by the African Commission to the conduct of the dialogue and presentation of reports as well as their examination is inadequate. Some states have been failing to submit their reports on time and in some cases they do not submit the reports at all.²⁵ Evidently this makes it impossible for the African Commission to oversee compliance with the African Charter by member states. It has further been argued that the location of the African Commission in Banjul, The Gambia makes it very inaccessible thereby limiting its level of engagement with people. Over and above all these issues, the failure of the African Commission to operate at its optimum has been blamed on the lack of support and political will from states.²⁶ Firstly, the allocated resources have been meagre and secondly, there has been little cooperation and support from state leaders. Even at the level of the assembly of heads of state, the reports of the African Commission do not receive adequate attention or consideration but are often simply adopted without due regard to the issues raised.²⁷

Eno²⁸ in his critique arrives at the conclusion that the achievements of the African Commission

(accessed on 4 March 2003).

²² See for example rulings of the African Commission in the following cases *Free Legal Assistance Group, Lawyers Committee for Human Rights V Zaire* 25/89, *Lawyers Committee for Human rights V Zaire* 47/90

²³ As above

²⁴ M Evans, T Ige & R Murray, 'The reporting mechanism on the African Charter' In M Evans & R. Murray (eds) (2002) *The African Charter on human and people's rights: The system in practice 1986-2000* 41

²⁵ As above

²⁶ Eno (n 21 above)

²⁷ Motala (n 16 above) 258

²⁸ Eno (n 21 above)

are still too remote to convince the African people that the Commission is the right weapon to rely on in upholding respect for human rights on the continent. It has not had the required impact capable of creating a viable human rights environment necessary to win the support and confidence of the African people.

However, given the difficult backdrop against which it has been operating, the African Commission has immense potential as the African human rights watchdog. This is demonstrated, for example, by the progressive decisions that it has passed on a number of cases, the most notable being the case of *SERAC v Nigeria*. Further, the African Commission enjoys a good working relationship with NGOs through out the continent and has been on the forefront in making progressive changes to the African human rights system. For example, the Special Rapporteur on Women and the Women in Law and Development in Africa played an instrumental role in the development and final adoption by heads of state, of the Protocol to the ACHPR on the Rights of Women. Thus there is need to for the institution to receive more support from the AU and NGOs in order to strengthen its capacity to execute its mandate.

While these have been identified as some of the shortcomings of the African Commission, the analysis below seeks to assess how far the APRM can compliment the important role of human rights monitoring that has been played by the African Commission. In this regard it is important to note that the argument being made here is not that Africa needs to create a new body to fill in the blanks and the incapacities of the African Commission. Rather, the analysis is to measure how far these two different mechanisms can complement each other and work towards greater realisation of human rights in Africa. However before making the conclusions on the role of the APRM in human rights monitoring, it is vital to analyse the challenges of using such a mechanism in monitoring human rights.

3.3 Challenges of the APRM as a human rights monitoring mechanism

Having analysed the functions of the African Commission and the challenges that confronts it, this chapter will now analyse some challenges of using peer review in human rights monitoring in Africa. This facilitates the reaching of a conclusion on its capacity and role in Africa.

3.3.1 Legal framework of APRM

Firstly, unlike the African Commission which is based on a legally binding document of international law, the APRM has its basis on a document and a process that does not have a binding effect at the international level. The African Commission is a treaty body and ratification of the ACHPR by the state parties creates binding legal obligations on them to abide by the standards that are in the treaty. The basis of the APRM is not that clear and at

best, it stands as a product of a declaration.²⁹ The closest treaty that it is connected to is the Constitutive Act of the AU which was adopted in 2001. The APRM is an institution of NEPAD which in turn is a programme action of the AU. The other relevant document closely connected to the APRM is the NEPAD Declaration on Governance which by itself is not a treaty but a declaration which has limited binding effect on states.³⁰ The fact that the APRM is not based on a truly legal binding document can make it a less respectable process with regard to its role in human rights monitoring in the perception of African leaders. Consequently, obligations that flow from it may not be taken seriously.

A closely related aspect is the fact that currently only 16 member states of the AU have acceded to the APRM while all members of the AU are state parties to the ACHPR.³¹ One cannot predict at this moment how many countries will accede to the APRM process and therefore how far reaching its effect will be. The African Commission has the mandate and the legitimacy to monitor human rights in all African countries.

3.3.2 APRM is not only human rights focused

The APRM is not going to focus on human rights monitoring alone like the other mechanisms such as the African Commission or the Experts Committee on the Rights and Welfare of Children. Human rights is but one of the focal areas and according to some analysts, human rights is supposed to take centre stage in the APRM as it is intricately linked to the other developmental objectives of NEPAD.³² However, there is doubt as to whether African leaders will allow adequate attention to be given to the human rights component of the review. Further, human rights being one of many things to be reviewed may not be adequately and comprehensively covered.

3.3.3 Funding for the APRM

The work of the African Commission has been suffering from a severe shortage of resources, both human and financial. Lack of political commitment to human rights protection and monitoring by the AU manifested itself, over the years, in its failure to adequately finance the African Commission.³³ This situation was partly a result of the failure of the member states to give their contributions to the continental body. At the eve of the launch of the AU, member

²⁹ E. Baimu 'The African Peer Review Mechanism: A critical Appraisal' Unpublished Document

³⁰ As above

³¹ 'High level meeting discusses the African Peer Review Mechanism.' NEPAD Dialogue Focus on Africa <[http:// www.nepad.org](http://www.nepad.org)> (accessed on 12 August 2003)

³² Hartley ,W 'Pan African Organisation to institute political peer review' Business Day 7 November 2002

³³ V, Nmeielle *The African Human Rights system; Its laws, practice and institutions* (2001) 185

states owed the organisation approximately 54.53 million.³⁴ With regard to the APRM, state parties are expected to finance the reviews. From the presentation of how the APRM is going to be conducted, it is apparent that the process shall require substantial budgets and greater financial commitments from the African governments. One of the main challenges that arises is how prepared the African states are to commit adequate resources to ensure that this new mechanism discharges its mandates effectively especially that related to human rights monitoring. The issue of funding remains a huge challenge and needs to be adequately addressed by all African states.

3.3.4 Can African leaders review each other? The feasibility of genuine peer review among African leaders

The main practical challenge to the functioning of the APRM lies on the behaviour of the African leaders. The issue that needs to be discussed at great length is the feasibility of the holding of open and genuine human rights reviews by African leaders. First of all, one has to acknowledge the fact that peer review is a process and not just an event where African leaders just sit around a table and start discussing the human rights situations in their countries. As noted earlier, in chapter two there are other bodies that have been put in place to try and give credibility and transparency to the process. However, the final say and ultimate power of the process remains with the leaders when they sit as the APR Forum. What requires analysis and interrogation is their ability and capacity to genuinely review each other. The failure of the state leaders to genuinely review each other will have a negative impact on the APRM's role on human rights monitoring. The following are some of the challenges that specifically relate to the feasibility of leaders engaging in peer review on human rights

3.3.4.1 Constrains of skeletons in the closet

The first aspect is the generally bad human rights record of many African leaders. Some of the pioneers of the African Union are dictators and human rights violators such that there is doubt about how much they can do regarding the critical innovation of APRM which, is exerting of peer pressure by states on each other to ensure compliance with human rights standards. The leader of Libya was celebrating his 30 years of dictatorship when the OAU adopted the Sirte Declaration transforming it into the AU.³⁵ There is a crop of African leaders who if they participate in the APRM will put the credibility of the human rights review process into question. These include unrepentant African leaders such as Muammer Qadhafi of Libya,

³⁴ N Udombana 'Can the Leopard Change its Spots? The African Union Treaty and Human Rights' (2002) 17 American University International Law Review 1253

³⁵ As above

Robert Mugabe of Zimbabwe, Gnassingbe Eyadema of Togo, Paul Biya of Cameroon, Lansana Conte of Guinea and Colonel Sid Taya of Mauritania. As Udombana observed, in their desperation to consolidate, and cling on to power, these leaders have 'become wholly addicted to the rule of force and the abuse of law and are influenced by the philosophy that it is much safer to be feared than loved.'³⁶

Many of the African leaders lack the moral ground to challenge each other's performance as far as human rights protection is concerned. For the dictators and authoritarian leaders in Africa, the APRM's aims and objectives can be perceived as dangerous to their continued rule. As observed by Human Rights Watch, there is little reason for dictatorial governments to accede to the peer review.³⁷

3.3.4.2 Commitments to human rights by AU as an institution

One cannot analyse the APRM without looking into the broader context of the AU and individual member states' approach to human rights. The APRM will only work as a feasible mechanism for human rights monitoring to the extent that the African leaders through the AU will allow it to. What is required is the political will of the leaders to make the mechanism work. In the absence of the will, the APRM will easily fall into an old boys club for the leaders where the only 'best practices' shared will be on increasing military expenditure at the exclusion of the economic and social needs of the people. Africa has a good reputation for its almost universal acceptance and ratification of human rights instruments. Sadly however, these have not been met with corresponding effective implementation of the standards in the instruments. The same can happen and states may in the same manner widely accept scrutiny under the APRM but continue with their disregard of what is expected of them.

3.3.4.3 The doctrine of sovereignty

The AU Constitutive Act retains respect for the doctrine of sovereignty and non-interference in the affairs of another state except in certain instances.³⁸ The continent has over half a century's obsession with protection of sovereignty of states. The challenge for the APRM is for

³⁶ As above

³⁷ New Life for African Multilateralism Human Rights Watch World Report 2003 <<http://www.hrw.org>> (accessed on 29 May 2003)

³⁸ Hansungule M in his paper discusses that intervention in a state by the AU under its Constitutive Act will only be done with the general agreement of member states. This agreement may be difficult to attain. See 'The African Union (AU): The Dawn of a New Era for the Protection of Human and Peoples' Rights in Africa?' Unpublished Paper Presented at a Public Discussion held on 24th September 2002, Faculty of Law, University of Lund, Sweden

states to rid themselves of the notion and ideas of non-interference and the total respect for sovereignty if ever they are to be able to use peer pressure as a toll to ensure compliance with standards. This strong emphasis on sovereignty contributed to the member states' reluctance over the years to seriously challenge human rights violations by fellow statesmen.³⁹ Leaders have persistently been unwilling to criticize one another, even in the face of flagrant human rights abuses. In the absence of a change of perception in this regard it shall be difficult for states to exert pressure on each other or even to request a review in case of an impeding crisis as envisaged in the APRM Base Document. As observed by Udombana, African leaders need re-education on important documents such as the Vienna Declaration and Programme of Action on human rights which state that human rights assume priority over national sovereignty.⁴⁰ Africa has to move away from the attitude of 'watch me kill my people, and I will watch you kill yours'⁴¹ if the APRM is to be of use and relevance.

3.3.4.4 Application of peer pressure

The effectiveness of a peer review relies on the influence and persuasion exercised by the peers over each other during the final stages of the process. Peer pressure does not take the form of legally binding acts backed up by sanctions or other punitive measures. Rather the process relies on soft persuasion, which can become an important driving force to stimulate a state to change, achieve goals and meet standards. However, there is scepticism about how far African leaders are prepared to go in applying pressure on their peers. As pointed out earlier, there is so much that has to change before African leaders can be able to openly review each other. The number of states that are reluctant to participate in the APRM testifies to the fear of scrutiny by leaders in Africa. Although Zimbabwe has not acceded to the APRM, it has been cited in commentaries critiquing peer review.⁴² Africa as a continent and sub-regional bodies such as the Southern African Development Committee have failed to openly criticise the Zimbabwean government on the political and economic crisis the country is facing. The case of Zimbabwe stands as a classic example to demonstrate how African leaders are reluctant to pass judgement on each other and to apply pressure in order to ensure change. Critiques have argued as to what difference just acceding to the process will make to the mindset of the African leaders when they have failed to deal with the open human rights abuses in Zimbabwe.

³⁹ The most recent example is the case of Zimbabwe which is discussed in paragraph 3.3.4.4 below

⁴⁰ Udombana (n 34 above) 1217

⁴¹ As above

⁴² See for example Kadalie 'NEPAD's Peer Review System Needs to Be Given Real Teeth' *Business Day* 20 September 2002

Further it has been noted that any attempt to deliver justice that is anchored on the goodwill of peers is unlikely to succeed. Peer review as presently conceived risks tying its fate to the idiosyncrasies, fears and strategic interests of participating governments.⁴³

3.3.4.5 Creation of an environment conducive for peer review

As pointed out in the chapter two, there are certain preconditions that need to be created in order to facilitate open and productive peer review. These are so critical especially for political peer review which is highly sensitive. The issue of trust among leaders is critical. Currently there are suspicions among leaders about the whole NEPAD process being driven by the western countries especially those in the G8. Even some members of civil society have questioned whose agenda is really being pursued by NEPAD as well as the peer review mechanism. Some statesmen believe the whole process is the west's indirect way of seeking to sanction African states that do not abide by the recommendations made in the process.⁴⁴ These fears were indirectly confirmed by the attitude of some members of the G8 group of countries to the human rights and governance problems that Zimbabwe has been experiencing for the past three to four years. There is need to clear off suspicions and create an atmosphere of mutual trust among leaders if the APRM is to be a valuable instrument for human rights peer review.

3.4 New approaches under the APRM

Despite these challenges, there are new approaches that are introduced by the APRM to human rights monitoring in Africa. As a sign of demonstrating political will and commitment to the improvement of protection and promotion of human rights and other standards, the APRM requires state parties to draw up a time bound programme of action at the end of the base review. The APRM is very much process oriented in order to ensure compliance by states to their commitments. It further categorically requires states to make financial commitments. These two are not required of states by the ACHPR or other documents of the African Commission

It is clear from the processes of peer review that the APRM bodies such as the secretariat, APR Panel, and country review teams will play a significant role in the carrying out of the

⁴³ B Kagoro, 'Can apples be reaped from a thorn tree? A case analysis of the Zimbabwean Crisis and NEPAD's Peer Review Mechanism' Unpublished paper.

⁴⁴ M Mathoho 'An African Peer Review Mechanism: A panacea for Africa's governance challenges?' <<http://www.cps.org.za/execsumm/polbrief09.pdf>> (accessed on 2 September 2003)

reviews. This can be contrasted to state reporting under the African Charter, where it is largely the state which compiles the report and may in some cases seek input from NGOs. Since the reviewed state authorities will not largely handle the process, it is hoped that the reports produced in the APRM shall reflect as much as possible the truth and reality regarding human rights situations of the reviewed states. More credibility is added to the reports by the engagement of the services of competent and appropriate African institutions and experts in the peer review process.⁴⁵ The fact that the reports are in a way insulated from government interference can make people trust that true and objective scrutiny is carried out on human rights performance of states. The involvement of broader civil society and non-state actors is a shield to ensure that the process is as much as possible free from political manipulation.⁴⁶

In respect of the processes, the APRM introduces the aspect of interventionist review⁴⁷ in addition to the initial and usual periodic reviews. With interventionist reviews, state parties can request the review of a state in order to avert an impending problem or disaster. If followed by the African state in its true sense, this type of review will facilitate the rescuing of African states from experiencing catastrophic human rights violations as was witnessed in the 1994 genocide in Rwanda. In terms of article 47 of the ACHPR, state parties may draw attention to human rights violations by another state by submitting a communication to the African Commission. However, unlike the interventionist approach of the APRM, this provision only requires state parties to draw attention to already committed human rights violations. State parties to the ACHPR however have not effectively used this procedure. There is need to give states the courage and clout to rise up and utilise both processes provided under the APRM and the ACHPR.

The APRM also brings in the aspect of follow up which has been one of the major criticism levelled against the African Commission. At the conclusion of all stages of the peer review, the state which was being reviewed is expected to demonstrate willingness to rectify any problems that have been identified by the process. Assistance, be it financial or technical can be sought on its behalf to facilitate the process of rectification.⁴⁸ In the absence of the necessary political will, the state parties to the process have an obligation to use every practicable way to apply pressure firstly on the reviewed state to make right its situation. It is at this stage that the concept of peer pressure is to be put in use by the African leaders. However, should the dialogue and peer pressure on the review fail, state parties will as a last

⁴⁵ Paragraph 11 APRM Base Document

⁴⁶ Baimu (n 29 above)

⁴⁷ Paragraph 14 APRM Base Document

⁴⁸ Paragraph 24 APRM Base Document

resort give the government concerned notice that appropriate action will be taken against it.⁴⁹ This notice will increase pressure on the state so that it reconsiders its position.⁵⁰ Regarding this aspect of the APRM Baimu⁵¹ noted that,

By clearly spelling what should happen once the reports have been considered and providing various mechanisms for putting pressure on government to act upon recommendations of the reviewing body, the APRM breaks a new ground in the practice of review processes.

3.5 APRM as a political process

From the above discussion on the APRM and peer reviews generally, it is apparent that this is largely not a legal process of enforcement of standards but rather a political process. A political process as opposed to a legal one is where review is not legalistic but is a means to induce compliance with norms through dialogue and compromise.⁵² APRM adopts an approach that does not focus on conformity to the legal rules *per se* but seeks to promote sharing of experience, reinforcement of successful and best practices, identifying deficiencies and assessing the needs for capacity building. The APRM thus comes in as a political process where leaders are using political pressure as a tool to enforce compliance with standards. Having noted that, it is critical to point out that in some ways the APRM exhibit some characteristics of legal enforcement. As part of its follow up mechanism state, parties can take measures of sanction against state parties which display unwillingness to reform and take corrective measures to rectify any anomalies noticed during the review.⁵³ The APRM as a political process introduces a missing component to the human rights system in Africa, which has been quasi-judicial in the form of the African Commission.

3.6 Conclusion

The effectiveness of the African human rights monitoring system will depend on the extent to which the African states support it, by allocating sufficient resources and by implementing the recommendations and decisions that emanate from it. African states have to fulfil their human rights obligations under the ACHPR, and other African and international human rights instruments. African states need to take action in order to indicate their conviction that genuine respect for human rights in Africa is the only firm foundation on which peace and economic development can be built and sustained.

⁴⁹ Paragraph 24 APRM Base Document

⁵⁰ Baimu (n 29 above)

⁵¹ As above

⁵² As above

⁵³ As above

Some opportunities for change have been opened in some African countries by the creation of the APRM. However, without taking charge of the challenges raised above, the APRM may not add substantial value to the process of human rights monitoring and implementation in Africa. If the opportunity offered by the peer review process is ceased and fully utilised, Africa may witness the beginning of a new era in terms of effective political coercion of states into complying with set standards for human rights.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

It has been argued in this paper that Africa has a number of human rights mechanisms, the oldest and currently functional one being the African Commission. The other recently created mechanisms such as the African Court on Human and Peoples' Rights are yet to be operationalised. In addition to these, there is the APRM which does not have an exclusively human rights mandate but covers it among other issues such as economic and corporate governance. This study demonstrated that the main contribution that the APRM will make to human rights monitoring in Africa is to create space for a political process and dialogue among states to learn from each other, apply peer pressure and develop action plans on human rights promotion and protection among other issues. The absence of a political process in human rights protection in Africa had long been identified as one of the drawbacks to making states fully commit themselves to human rights. This political process would not be provided by the African Commission which is a judicial body. Further, the APRM introduces new innovations such as the use of indicators and the interventionist reviews as strategies of making states comply with agreed international standards. As noted by Ottaway peer review provides an unprecedented opportunity to hold African leaders accountable.¹ According to Takirambunde of Human Rights Watch, the APRM if properly implemented can be 'an unprecedented achievement for African integration, democracy and human rights'.²

The existence of the APRM as a political process along side the judicial and quasi-judicial ones provides a two-tier system on human rights monitoring in Africa. One system is legal while the other is political.³ In this regard there is complementarity rather than competition between these processes as their mode of operation and the force that drives them are clearly distinct. The African Commission and the African Court on Human and Peoples' Rights are the main bodies responsible for the implementation of the ACHPR. The peer review thus compliments the work of the African Commission by providing a political process for states to fully engage in dialogue and implementation of human rights. This study concludes by noting

¹ M, Ottawa 'The G8 and Africa: A Kernel of hope' <<http://www.cep.be/pubs/2002/wd189pdf>> (accessed on 20 August 2003)

² African Peer review taking shape, 2003 Africa Recovery 16(4)
<<http://www.un.org.ecosocdev/geninfo/afrc/vol16no4>> (accessed on 14 August 2003)

³ E, Baimu 'Human rights mechanisms and structures under NEPAD and the African Union: Emerging trends towards proliferation and duplication' August 2002 Occasional Paper 15 Centre for Human Rights University of Pretoria 13

that despite the challenges that it is facing, the African Commission remains with the significant task of ensuring the protection and promotion of human rights in Africa and the APRM comes in to complement it.

The APRM has potential in complimenting the work of the African Commission. However as demonstrated, in this study there are some challenges that the APRM faces which make it difficult for it to engage in human rights monitoring. It is important that those challenges and other related issues are addressed in order to make the mechanisms effective in ensuring that states comply with set standards. In this regard the following recommendations are suggested.

4.2 Recommendations

4.2.1 Enhancing the role of the African Commission in the APRM

As observed in chapter two and three, the African Commission has a very peripheral role to play under the APRM. It has been noted that the African Commission as a judicial process has its strengths but lacks the political coercive power to ensure compliance with its decisions and recommendations by states. As such, it is recommended that the African Commission be given a greater role to play in the APRM. At the moment, all that the APRM envisages is that at the end of the review, the African Commission receives a report of the process. This process marginalizes and disregards the important work and experience of the African Commission as the mother organ on human rights monitoring in Africa. The APRM process shall involve numerous national, regional and international organisations especially in the process of coming up with the report and recommendations for change. Thus there is need for the African Commission to be one of the institutions that will make significant input in the development of the report and recommendation by providing information and insights from its many years of experience as a human rights mechanism. This can only be done if the African Commission is involved in the early stages. This means that there is a need to review the current arrangement and give the African Commission an opportunity to make input in the early stages of the review. The participation of the African Commission in the APRM can be done in terms of rule 87 of its Rules of Procedure that empowers it to engage in any activities that will facilitate the discharging of its mandate.

The African Commission can provide information on the recommendations and rulings that it has passed against states and use the APRM as a way of getting states to bring each other to comply and act in terms of the ACHPR.

4.2.2 Role of civil society and the media

In light of the challenges for peer review on human rights that were pointed out in chapter three it is recommended that there is need for civil society to play a great role in the process of peer review especially during the research stage leading to the compilation of the country reports. Active participation of civil society will ensure that the final reports and recommendations made to the states reflect the reality as much as possible.

The peer review's success is premised on the greater involvement of the media. Firstly the media should report on the various stages of the process, as each country is reviewed. Media reporting on the APRM will raise awareness on the issues at hand and keep people alert and on the look out on the actions of states as they engage in dialogue and action to implement recommendations. Effort should be made to publish in full or in part reports and recommendations made during the review process. Publication of information provides civil society with the opportunity to make follow up and carry out any advocacy activities at the national, regional and international levels. There is need to show the heads of state that people have interest in the process and that they are following it up closely. Media publicity of the peer review process can create indirect pressure on states to comply with standards and recommendations.

One of the criticisms against the African Commission has been that it failed to make use of the media and the media also failed to find its work as worthy of consistent publication. As a result when the African Commission faced challenges of non-commitment by heads of states, only a few people were aware of it meaning that no strategic interventions could be done. The challenge is on human rights NGOs to ensure that the media gets interested in covering the peer review process. It is only when the non-compliance with human rights recommendations are made public through the media that there will be shame upon the guilty states.

4.2.3 Genuinely open dialogue

It has been argued in this paper that African leaders have a history of failing to openly condemn each other's bad human rights performance. As a result, violations go unchecked despite paper commitment in international treaties to prevent and deal with such violations. If the APRM is to influence any effective change on the ground, there is need for leaders and other relevant state organs to engage in open dialogue about human rights situations firstly in their own respective countries and then in the region.

4.2.4 Mutual reviews with development partners

Another recommendation is that Africa's development partners should play a critical role in facilitating states' compliance with recommendations coming out of reviews. This can be done through the mutual reviews to be conducted between Africa and the development partners.⁴ The outcome of the APRM processes will be discussed and this will give an opportunity to development partners to make relevant input where necessary. It was noted earlier in this paper that Africa's development partners have a particular interest in political peer review as one of the major keys of ensuring Africa's development. Thus the mutual reviews present an opportunity for Africa to account to its partners on human rights issues.

4.2.5 Commitment to human rights by the AU

The APRM will not succeed independent of the general commitment to human rights by the AU. The AU Constitutive Act and other relevant AU documents such as the protocol creating the Peace and Security Council show that the AU is making renewed commitments to human rights as one of the strategies of ensuring lasting peace and stability in the continent. However the AU has to show greater commitment beyond what is on paper by properly resourcing the mechanisms that it created such as the African Commission, the Peace and Security Council and APRM.

4.2.6 Need to creation conducive environment for peer review

It was argued in chapter two that in order for peer review to work, there is need to create a conducive environment that will facilitate open dialogue and learning. There is need for the African leaders to build mutual trust among themselves and take measures to make the process credible.⁵ In the first place, this means that leaders should not interfere with the process for coming with the country reports. Secondly there is a need to have leaders build trust among themselves one level and at another there has to be trust between African and its development partners such as the G8.

⁴ Economic Commission for Africa 'Towards an institutional mechanism for mutual review of development effectiveness between Africa and its partners' NEPAD/HSGIC/03-2003/DOC.4.2. See also paragraph 18 of the Communiqué issued at the end of the 5th meeting of NEPAD HSGIC held in Abuja Nigeria in November 2002

⁵ UN Economic Commission For Africa, 'African Peer Review Mechanism: Process and procedures' 2002 African Security Review 11(4) 9

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