Africanising Accountability?

The African Peer Review Mechanism in a Human Rights Perspective

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"[The African Peer Review Mechanism] is both significant and revolutionary. (…)
It is revolutionary in that it breaks new ground. (…)
There is just nothing like it in the world and we are confident that it will play an important
role in promoting and nurturing the revival of Africa"

Speech 6 August 2003, by member of the NEPAD steering committee.

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Abstract

The African Peer Review Mechanism was launched in 2002 as a ground-breaking initiative, promoting broad-based participation in development in Africa, and signalling a reconstitution of sovereignty on the continent. The mechanism draws heavily on human rights standards and holds as one of its goals to support human rights. This thesis explores how a rights language is used in the APRM core documents and what this might mean for enhanced human rights accountability. Examinations of the APRM through the lens of a human rights based approach to development show how an explicit recognition of rights is not sufficiently carried through in rights-based benchmarks or in adequate access to channels of accountability. The contradiction is partly explained with relation to factors of capacity and political will. However, enabling characteristics of the contradiction are also emphasised and demonstrated through explorations of the first review conducted, of Ghana. The thesis concludes that the APRM holds a strong potential for strengthening human rights accountability on the African continent, but that a number of steps need to be taken to fulfil that potential.

1 Introduction

1.1   Introducing an African Renaissance

Kwame Nkrumah, first president of Ghana and co-founder of the Organisation of African Unity (OAU), famously said: "Africa must unite or disintegrate individually."[1] The African Union (AU), successor organization of the OAU, has taken on the task with refreshing vigour, promising a new era in African co-operation and integration. Motivated by Africa's marginalization on the world stage and adamant to be agents of their own history, African leaders have announced an African Renaissance, a "quest for a new and better African reality."[2]

The initiative is timely: confronted with enormous development challenges, political authoritarianism, kleptocracy, and ravaging civil wars, the newly established AU has its hands full. Where the OAU could not deliver, the AU must step up. Where the OAU was branded a "dictator's club," prominent African leaders are out to show that the continent will have no more camaraderie and is serious about sorting out its own problems.[3] Faced with prevailing images of Africa as "the Other", and neo-colonialist heroes with ready solutions to her problems, African leaders strike an important tone in their own populations when they speak of the African-owned, African-led changes they envisage.

Some contours of the Renaissance have been drawn, and among the initiatives launched is the New Partnership for Africa's Development (NEPAD). Adopted in 2001 after a proposal from

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[1] Cited in Murithi (2005) p 7.
[2] Mbeki (1999) p xviii.
[3] Grimm (2006) p 1.

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five prominent heads of state,[4] NEPAD is a "vision and strategic framework for Africa's renewal."[5] Its primary objectives are:

> "a) To eradicate poverty;
> b) To place African countries, both individually and collectively, on a path of sustainable growth and development;
> c) To halt the marginalisation of Africa in the globalisation process and enhance its full and beneficial integration into the global economy;
> d) To accelerate the empowerment of women"[6]

NEPAD is described as "a new relationship of partnership between Africa and the international community"[7] based on good governance, African leadership and ownership, regional integration, international support, and mutual accountability. This is seen as crucially different from a traditional donor/client relationship. On the world stage, the initiative has received a warm welcome, especially from the G8 who are the main group the partnership is aimed towards.[8] Among commentators and Africanists, NEPAD has had a mixed reception, on the whole applauded, but with warnings and some dose of scepticism whether this can live up to expectations.

The expressed expectations and careful optimism on behalf of NEPAD are often linked to one of its more concrete instruments, the African Peer Review Mechanism (APRM). The APRM is a voluntary "African self-monitoring mechanism"[9] meant to advance constructive dialogue between countries on the realization of NEPAD aims.[10] Through five stages of review, a country's development policies are discussed and assessed, with an emphasis on sharing experiences and best practices, "identifying deficiencies and assessing the needs for capacity building."[11] The tone is one of consultation rather than confrontation. Currently 26 states have signed up to the mechanism, and the first reviews started in 2004. Ghana was the first country to complete the initial review, in January 2006.

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[4] Initiating states are Algeria, Egypt, Nigeria, Senegal and South Africa.
[5] From the NEPAD web-pages at http://www.nepad.org/2005/files/inbrief.php
[6] From NEPAD web-page at http://www.nepad.org/2005/files/inbrief.php and NEPAD (2001) para. 67.
[7] NEPAD (2001) para. 8.
[8] Though the warmth of the reception has perhaps been stronger in words than in funding.
[9] NEPAD (2003b) para. 1.
[10] On the mandate of APRM, see NEPAD (2003b) and NEPAD (2002).
[11] NEPAD (2003b) para. 3.

By commentators, the APRM is described as "the sharpest tool in the NEPAD box"[12] and "a sea of change in the thinking of African leaders."[13] The peer review implies a notion of sovereignty as cooperative rather than unilateral, suggesting that African countries accept their sovereignty as limited by AU obligations. This "reconstitution of sovereignty" marks a shift in African regional cooperation where state sovereignty has often held an unchallengeable position.[14] Peer review means states agree to be accountable for their actions, towards one another, and towards their populations. The review process "provides a major opportunity for civil society to hold leaders accountable for their public promises."[15] Herein lays its potential to build credibility and legitimacy for NEPAD's development reforms. The APRM is thus an African-owned, African-led monitoring mechanism that reminds states of their development aims and obligations. As such, it is an experiment in Africanising accountability, in finding an adequate way, wary of context, of holding African leaders to their promises and helping them implement their visions.

1.2   Problem statement

The APRM is mandated to deal with development issues, a field within which African states have made both political promises and legal commitments. These commitments are comprised in human rights treaties, both international and regional. In international relations and in academic analysis, development issues are increasingly addressed from a rights perspective. Human rights have been mainstreamed in international organisations, implying that a rights based approach is taken to a variety of issues that have traditionally not been spoken of in human rights terms. Prominent among these issues is development, and currently there is a growing interest for human rights based approaches to development among practitioners, governments, and researchers.

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[12] Juma (2004) p 178.
[13] Hope Sr. (2005) p 283.
[14] Nagan (2004) p 4.
[15] Juma (2004) p 179.

African intergovernmental cooperation has not been unaffected by the mainstreaming paradigm, as witnessed by the proliferation of institutions dealing with human rights[16] and the mentioning of human rights in the context of various AU domains.[17] African states are often eager to sign international human rights treaties, and all AU members are party to the African Charter on Human and People's Rights. However, signatures and ratifications do not guarantee fulfilment of promises, and there seems to be a crucial gap between the ideal of securing everyone's rights, and the everyday lives of many inhabitants of the African continent.

A key issue in improving the implementation of human rights commitments is strengthening state accountability for those very commitments. The APRM is a mechanism meant to increase state responsiveness to NEPAD calls for action. Its task is to ensure that participating countries observe the principles and practices supportive of NEPAD development objectives.[18] As such, the APRM also has potential to enhance the accountability of African countries with regard to their human rights pledges.

This thesis seeks to explore to what degree the APRM holds African states to account on their human rights obligations relative to development issues. To approach this question, I will employ a human rights based approach to development (HRBAD), examining to what extent the APRM recognises human rights as relevant for its development policies, whether it measures countries' development performance against human rights standards, and what channels the APRM supplies for holding states accountable for their human rights commitments.

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[16] A good overview is given in Cilliers (2003) and discussed especially with regard to political and good governance review. See also Murray (2004) pp 22-43.
[17] The AU is the focal point of Africa's regional human rights instruments and bodies. The African Charter on Human and Peoples' Rights (ACHPR) was developed within the OAU, and has been supplemented by a range of other human rights documents. Also, the African Commission on Human and People's Rights and the newly formed African Court of Human and People's Rights are AU bodies.
[18] NEPAD (2002) para.28.

In analysing the APRM, I wish to grasp the degree to which a commitment to human rights is integrated not only in general terms, but also in relation to specific development issues. Three issues are discussed here: HIV/AIDS, gender equality, and land. I will argue that HIV/AIDS, gender equality and land are 1) crucial and contentious issues for African development, 2) human rights issues, and (therefore) 3) accountability issues.

The hypothesis of this thesis is that the African Peer Review Mechanism, while setting a new tone in African intergovernmental cooperation, so far does not live up to its potential of holding states accountable to their human rights obligations with regard to development, as shown in its dealings on the issues of HIV/AIDS, gender equality, and land. Thereby it also looses out on its potential to fulfil NEPAD promises of a new and better African reality.

1.3 Clarifying key concepts and how they relate to each other

The main conceptual tool for my analysis is the term of **accountability**. Mac Darrow and Amparo Tomas understand accountability in relation to empowerment, suggesting that the latter means "the ability of people to claim and exercise their human rights," while the former denotes "the ability to fulfil human rights obligations." [19] Accountability understood in these terms entails a process of identifying duty-bearers and claim-holders. It further necessitates the development of rights/obligations into specific indicators and benchmarks.[20] This facilitates a process where accountability can be demanded. Darrow and Tomas call for channels of contestation through which an array of different groups can insist on fulfilment of human rights obligations.[21]

In assessing the APRM impact on accountability I employ a **rights based approach to development** (HRBAD). This will be further explored in chapter 2. In short, it involves relating development policies and practices to human rights norms and coining them in

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[19] Darrow (2005) p 514.
[20] Darrow (2005) pp 511, 534.
[21] Darrow (2005) p 514.

human rights language. A defining characteristic of the HRBAD is its focus on accountability - on strengthening the ability of duty-bearers to fulfil their obligations, and empowering rights-holders to exercise their rights.[22] I will use the analytical framework provided by the HRBAD to assess APRM impact on accountability.

In understanding the phenomenon of **development**, I follow the trail of the object of study, NEPAD. The term development is pivotal to NEPAD and the APRM. It is, however, not defined in any of the central documents. The way it is spoken of does give some pointers, though, to a notion of development as a broad, wide-reaching process. The NEPAD *Declaration on Democracy, Political, Economic and Corporate Governance* outlines four thematic areas for NEPAD within which commitments are defined: democracy and good political governance, economic governance, corporate governance, and socio-economic development. This echoes the notion of development that we find in many human rights based approaches to the subject. Amartya Sen, often referred to in rights based discourses, introduces the term of "development as freedom",[23] arguing that "[d]evelopment requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states."[24] I will understand development in these terms.

1.4   Sources and Methodology

The investigations of this thesis are inter-disciplinary, finding their place in the inter-phase between international relations, development studies and human rights law. It thus derives its methodological perspectives from different fields, combining them in a qualitative study.

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[22] Alston (2005) p 813; Darrow (2005) pp 511-514.
[23] Sen (1999).
[24] Sen (1999) p.3.

1.4.1 Case studies, variables and pattern-matching

I am undertaking a case study[25] of the African Peer Review Mechanism as an accountability mechanism relative to human rights. It is an exploratory study, seeking to investigate a new and unique phenomenon by matching it to an analytical model. It is a single-case study, with several embedded sub-units of study, these being the APRM's approaches to HIV/AIDS, women's rights, and land. These embedded units make the main unit of analysis easier to study on a more specific, operational level.[26] The case is analysed by using a defined model (a human rights based approach to development) as a template to guide my investigations. This can be labelled "pattern-matching"[27] – I describe a model pattern and explore how well the empirical data matches it.

I will be assessing the influence of one variable on another. Accountability in the form of African states' ability to fulfil their human rights obligations is the dependent variable, while the continental review mechanism (APRM) is an independent variable. I wish to assess the impact of the latter on the former. As part of the analysis, I will discuss some plausible reasons for why and in what ways the APRM functions (or does not function) as an African accountability enhancing mechanism. I expect to identify other independent variables that influence accountability, and that can help contextualise and explain the APRM's role. These I place within two broad categories: capacity and political will. *Capacity*[28] denotes the structural frames the APRM functions within, be it resource constraints, consequences of globalisation, or world power politics. *Political will*[29] indicates a state's willingness and effort to realize human rights. This is expressed through both words and actions, and in forms of legal or political commitments.

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[25] On case studies as a social science methodology, see the classic study by Robert K.Yin (2003): *Case Study Research: Design and Methods.*
[26] Yin (2003) p 45.
[27] Yin (2003) pp 116-120.
[28] Tomaševski (2001) pp 532-533; Eide (2001) pp 548-549.
[29] Tomaševski (2001) pp 532-535; Eide (2001) pp 545-548.
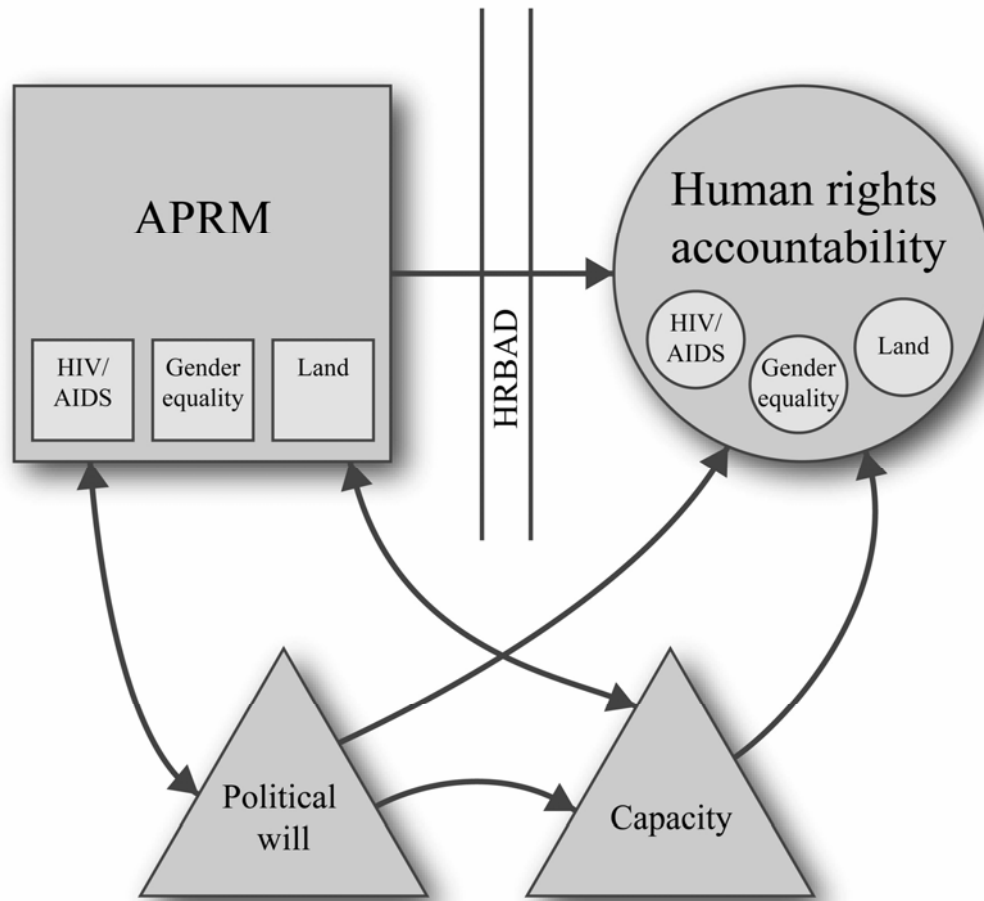
Case studies on a specific case do not allow for empirical or statistical generalisations, since the results of the analysis are not directly transferable to other empirical circumstances. However, they are generalisable to analytical propositions that can, in turn, be further developed relative to other cases.[30] This study opens for analytical generalisations on the promotion and upholding of human rights accountability. It is also an exploration of its own analytical framework, the HRBAD. I rely on a specific conceptualisation of HRBAD for my postulations on the APRM's accountability clout. I will need to reflect on whether that conceptualisation satisfactorily captures the APRM's significance for accountability on the African continent.

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[30] Yin (2003) p 10.

1.4.2 Sources and relating to these

The primary sources that will be objects of analysis are the APRM core documents[31] together with the official report on the first review conducted, in Ghana.[32] The APRM core documents determine the functioning and focus of the APRM, establishing the rules of play. They give us pointers at the identification of duty-bearers and rights-holders in the APRM framework, and define to what degree accountability can potentially be exercised. Policy defining documents such as the APRM core documents are important in establishing the relationship between the intergovernmental constellations, states, and their citizens. They deal with the status of state sovereignty, delineating what areas are considered to be of intergovernmental, i.e. not strictly domestic concern, and which are not. The Ghana report, the end product of the Ghana review, gives us indications of how the APRM core documents are implemented. The Ghana process has served as a litmus test of the mechanism, and sets precedence for future reviews, both in how the review was conducted, in what reactions it elicits from other countries, and in how the country follows up the recommendations it receives.

In addition to the above listed documents, a number of other primary sources provide important information and insights, including the official web-sites of the named institutions and the AU, press releases from the APRM Secretariat, speeches and statements made by persons involved in the review processes, relevant speeches or statements made by African leaders with a stake in the APRM, and any official information from the first country review processes, Ghana's in particular.[33]

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[31] I count the following as NEPAD and APRM core documents: The *NEPAD Framework Document* - NEPAD (2001); the *APRM Base Document* - NEPAD (2003b); the *Declaration on Democracy, Political, Economic and Corporate Governance* - NEPAD (2002); the APRM paper on *Objectives, Standards, Criteria and Indicators* - NEPAD (2003c); the *Country Self-Assessment for the African Peer Review Mechanism (Master Questionnaire)* - NEPAD (2004).

[32] APRM (2005).

[33] A note on access to information: It has in general been a source of frustration that NEPAD and APRM documents and information are not as readily available as one could wish or expect. The web-site of NEPAD seems to be updated on a rather random basis, and the APRM part of it did not, for example, have the report on Ghana online until late August 2006. There is also otherwise little documentation available on the Ghana process, except a few short press releases. This has meant that I have often had to seek out facts and figures from other sources, and have found at times contradictory messages given in these, without having an official source against which to validate information.

In analysing the above quoted documents, I apply the basic ideas of discourse analysis in positing that choice of words is important in shaping meaning, identities, and politics.[34] The aim is to "reveal and analyse the cognitive and normative frames that underpin and give direction to policies within a certain political field."[35] I will be scrutinising the presence of human rights in the cognitive and normative frames of the APRM.

To this end, I will apply a HRBAD framework based on legal sources, including international conventions, African regional treaties, and international customary law. I also rely on soft law such as declarations, joint statements, memorandums, programmes of action, and other similar documents stating common positions or policies.[36] Law is here understood as dynamic rather than positive, i.e. law is seen as the result of political processes and must therefore always be interpreted in light of the political structures it supports or opposes.[37]

Secondary sources that will be useful in conducting the analysis include academic literature on the relevant fields, and a range of "grey literature,"[38] e.g. NGO reports, UN papers, newspaper articles on the institutions and questions in focus, statements by civil society organisations, etc. This will be of particular importance in commenting on the Ghana review. To give a good picture of this, it is important to have credible, critical and diverse sources that have followed the process up close.

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[34] Mathisen (1997) pp 3-10
[35] Mathisen (1997) p 18, my translation.
[36] Soft law denotes rules and norms that are not legally binding, but that influence policy-making nonetheless, see for example Forsythe (2000) p 12, Cassese (2001) p 160; African states have to differing degrees ratified international and regional human rights instruments, and this must also be taken into consideration. The overall picture, though, is one of significant levels of adherence to the treaties that are relevant in my discussions. All 26 APRM countries (see http://www.nepad.org/) have ratified the African Charter on Human and People's Rights (ACHPR). Only ten have have so far ratified the new Protocol to the African Charter on the Rights of Women in Africa, while another eleven have signed it, among them Ghana.
[37] Forsythe (2000) p vii.
[38] Grey literature denotes all types of literature not available through the normal bookselling channels, including reports, trade literature, translations and ad hoc publications.

1.5   Outline of thesis

I start by giving an analytical framework, in chapter 2, discussing the background for taking a human rights based approach, and what such an approach might entail relative to accountability. I suggest a set of criteria to assess the degree of human rights perspective. Lastly, the chapter includes a discussion of what a human rights based approach might mean in the particular cases of HIV/AIDS, women's rights and land.

In chapter 3 I put theory to work on the case of the APRM, assessing to what degree a rights based approach is taken in the APRM, both in its core documents, and in the review process of Ghana. The analytical framework suggested in chapter 2 is used as a reference point. These assessments lead on to discussions of the APRM's impact on human rights accountability in Africa, and how this is influenced by factors of capacity and political will.

I go more specific in chapter 4, again exploring the APRM documents and process, this time through the perspective of a handful contentious cases. Drawing on the analytical outlines of chapter 2, the aim of this chapter is to see whether human rights are mainstreamed relative to three concrete rights issues: HIV/AIDS, women's rights, and land. I wish to examine how the general picture highlighted in chapter 3 is reflected in the treatment of these issues, and how the APRM stance on these issues materialises in the Ghana review.

Chapter 5 concludes the project, drawing together thoughts from the main chapters, and suggesting what future implications this has for the APRM, for the African Renaissance, and for the project of Africanising accountability.

2   Analytical Framework

I have defined accountability as "the ability to fulfil human rights obligations." [39] To explore
the APRM's impact on accountability, I wish to draw on a human rights based approach to
development. [40] In this chapter, I introduce a HRBAD, highlighting its relevance relative to
accountability. This amounts to an analytical pattern that will be employed to assess APRM
effect on African states' ability to fulfil human rights obligations.

2.1   Human rights based approaches to development – concepts and content

Human rights have gained new momentum as the power structures in world politics, and
hence African politics, have shifted. The end of the Cold War ushered in a more hegemonic
international discourse with values gaining increasing importance. [41] The idea and language of
human rights has enhanced its position in international relations and stands as a key concept
in foreign policies and development policies. In analysing changes on the African stage, it can
be useful to have an understanding of the staying power of human rights in world affairs.

2.1.1 Mainstreaming human rights in international organisations & development policies

The United Nations has been central in establishing a universal human rights framework,
encouraging states to ratify human rights treaties and follow these up. The UN has also

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[39] Darrow (2005) p 514.
[40] For discussions of what HRBADs are, this thesis draws on: Alston (1998), Alston (2005), Andreassen (2003),
Cornwall (2004), Darrow (2005), United Nations Development Group (2001), United Nations Development
Group (2003), van Weerelt (2001). Illustrative references are given in the following, rather than citing all
relevant references from the above sources.
[41] Matlary (2002).

contributed to making human rights a central theme within the international community through the process of mainstreaming human rights into all the activities of the organisation.[42] With varying degrees of dedication and sophistication, UN agencies have incorporated human rights language and standards into their policies.[43] Similar processes in African regional cooperation form the backdrop for the investigations of this thesis.

Development policies has been one of the main focus areas in the UN's human rights mainstreaming, and several agencies have actively linked human rights and their own development activities.[44] Others less eager to embrace this approach have found themselves nonetheless "drawn to the center of human rights and development debates."[45] The focus on rights makes explicit a gradual shift in development policies, from needs-based and charity-motivated activities, to activities that focus on dignity, empowerment, and justice, recognising people's right to a life in dignity rather than a life dependent on gracious grants.[46]

A rights perspective has certain implications for how development issues are approached and handled. While most development policies deal with aggregate numbers and averages, human rights are universal and at the same time apply to each individual. This means that one person's rights cannot be violated to achieve benefits for others. There will be situations of clashes between rights, but a minimum level of protection for each person should always be kept, and an average developmental benefit is not legitimate if it takes away the basic rights of one or more persons.[47] Similarly, one right should not be sacrificed to fulfil another – rights are interdependent and indivisible, constituting a comprehensive and coherent structure of civil, cultural, economic, political, and social rights.[48] These are distinguishable but not

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[42] This was initiated by the report of UN Secretary-General Kofi Annan, on renewing the United Nations, see Annan (1997).
[43] Darrow (2005) pp 479-481; see also Alston (1998).
[44] See for example UNDP's HURIST programme at http://www.undp.org/governance/programmes/hurist.htm , or UNICEF's view on its own human rights framework at http://www.unicef.org/crc/index_30194.html
[45] Darrow (2005) p 481, in a comment on the World Bank, traditionally not directly engaged with human rights questions.
[46] Alston (1998) p 105; Darrow (2005) p 511.
[47] Alston (1998) p 106.
[48] Darrow (2005) pp 502-505; Andreassen (2003) pp 19-20.

disconnected issues. Thus, any aspect of development must always be seen relative to its context.

Furthermore, the rights perspective implies founding development policies on principles of non-discrimination and protection for vulnerable groups. Human rights are centred on standards of equality and non-discrimination. Implementing these standards demands active stances by duty-bearers, to ensure that vulnerable groups are not victims of structural discrimination or violations.[49] As a consequence of this, development policies should address not only symptoms of rights violations, but also the structural causes underlying them. HRBADs draw on the recognition that inequality is not coincidental, and that power relations need to be transformed if human rights are to be respected.[50]

The idea and language of rights has thus made its way into the international development discourse and practice and put its mark on these. Before examining further what a HRBAD entails, an à propos on the use of human rights language is called for.

2.1.2 Using human rights language in development

The strengthening of human rights as an international lingo means they increasingly serve as normative standards of behaviour for countries who want to be part of the community of "civilized nations" or "liberal states".[51] Human rights are part of the image for "do-gooders" in international relations, and rights based approaches earn significant moral clout through the almost universal acceptance human rights have achieved.[52] In the study of international relations, there is a growing interest in the impact of values and norms in international politics.[53] The basic argument of "social constructivists" is that ideas and communicative

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[49] Darrow (2005) pp 505-506; Tomaševski (2001) pp 533-534.
[50] Darrow (2005) esp. pp 489-496; van Weerelt (2001) pp 2-3; Cornwall (2004) pp 1432-1434; United Nations Development Group (2003) p 19; Alston (2005) pp 805-806.
[51] The Power of Human Rights: International Norms and Domestic Change (1999) p 8.
[52] Andreassen (2003) p 19.
[53] The Power of Human Rights: International Norms and Domestic Change (1999) p 6; see also Matlary (2002).

processes matter.[54] Human rights can then be understood as a forceful normative idea that state leaders are socialised into heeding.[55] As an example, the language of human rights figures prominently in donor/client relations, where donor countries have increasingly placed conditionalities on aid contributions. Conditionalities typically circle around the term of "good governance", which besides indicating certain economic policies is often linked to democracy, the rule of law, and human rights.[56]

This makes the language of human rights a powerful tool, albeit one that is used with different motivations and intentions. Darrow and Tomas present an analysis of the linkage between human rights and development policies. They argue that the link can be made either from an instrumentalist rationale, or on normative grounds.[57] The instrumentalist argument suggests that human rights serve as a means, and a means only, towards human development.[58] Human rights are then not seen as development goals in themselves, but as a way of achieving these more efficiently. The normative perspective holds that human rights are ends in themselves, irrespective of whether they serve instrumental purposes as well.[59] They are then defined as part and parcel of the development package.

Which of these viewpoints development practitioners take, will influence what type of development model they envisage and put into practice. Later, when I explore the use of human rights language in NEPAD/APRM development policies, this is a useful distinction to keep in mind. There is a qualitative difference between upholding human rights as long as they are deemed useful, versus promoting them because they are seen as inherent to development.[60]

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[54] The Power of Human Rights: International Norms and Domestic Change (1999) p 7.
[55] The Power of Human Rights: International Norms and Domestic Change (1999) esp. ch.1.
[56] For discussions of conditionality dilemmas, see for example de Waal (2004) or Abrahamsen (2004)
[57] Darrow (2005) pp 492-497.
[58] For example, a study can argue that strengthening women's rights, or providing good education facilities, are important because they give (economic) developmental benefits.
[59] Darrow (2005) p 492-493.
[60] Alston (1998) p 105.

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The instrumental outlook on human rights and development risks turning into tokenistic use of human rights language.[61] The human rights discourse then serves as a credibility enforcer, but often without specific indications as to what transformations engagements with human rights might entail or necessitate.[62] Popular buzz-words in the development field include participation, empowerment, accountability, transparency, dignity, etc. These are referred to as human rights principles without it being clear what content these concepts have when seen through human rights lenses.[63]

Human rights scholar Philip Alston touches on this in his discussions of human rights based approaches. He conjectures that the use of diffuse words is not coincidental in the development fields, and that human rights terminology is not carried through as far as it could or should be because the specificity of it makes it controversial and difficult to build consensus around.[64] He argues that the development buzz-words risk being conveniently manipulatable.[65] Alston's basic assumption is that it *does* make a difference if you speak of development issues in a rights language or in other terms. I will explore further his understanding of a rights based approach to development, and adapt it to my analysis of the APRM and accountability.

2.2   Drawing a pattern for a rights based analysis of the APRM

Alston, together with other HRBAD scholars, highlights the potential to obtain defined standards and a certain level of specificity in development issues through using the international human rights framework. Development principles such as participation, empowerment, or accountability, can be given relatively precise contents by linking them to defined human rights.[66] Also, drawing on the precedence of legal, quasi-legal and political

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[61] Alston (1998) pp 97-98.
[62] Alston (2005) p 790.
[63] Alston (2005) pp 802-804; Darrow (2005) p 518.
[64] Alston (1998) p 97; Alston (2005) p 782, 826.
[65] Alston (1998) p 99; Alston (2005) p 760.
[66] Alston (1998) pp 105-106; van Weerelt (2001) pp 4-8.

human rights monitoring bodies, it becomes easier to identify benchmarks in development work. The fact that many states have legal obligations under international human rights law enhances this potential. States parties to international human rights treaties are legally bound to respect, protect, and fulfil human rights, and can be reminded of obligations they have made, and which there is strong international agreement on.[67]

In the context of accountability, the rights based approach to development facilitates the identification of rights and obligations, and of rights-holders and duty-bearers. A rights based approach is void if it does not succeed in empowering people to claim their rights.[68] The focus is not so much on whether the claiming of rights is done through legal or non-legal channels, or at which level it is conducted, but rather that these processes be accessible, legitimate and effective.[69]

For the purpose of analysing the APRM and to what degree it enhances human rights accountability, I suggest a range of questions that together make up the pattern the APRM will be matched against. The proposed pattern draws on the above discussion and finds its shape in a definition given by Philip Alston. He writes:

> "A human rights approach, very briefly defined, involves three elements:
> 1) explicit recognition of the right involved;
> 2) the establishment of an appropriate benchmark against which performance can be measured; and
> 3) the provision of some means through which accountability can be secured. Depending upon the right in question, the latter need not necessarily involve access to a court, or justiciability."[70]

In my later analysis of the APRM documents and process, I will ask three sets of questions. The first is on explicit recognitions of rights: Do the APRM documents refer to international and African human rights instruments? Is a language of rights used? If so, how is it used? Where, and on what topics? Are the three specific development issues of HIV/AIDS, gender equality and land spoken of in rights terms?

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[67] Darrow (2005) p 495, 511; Alston (2005) p 797; Andreassen (2003) p 19.
[68] Alston (1998) p 105; van Weerelt (2001) p 2; Darrow (2005) p 514.
[69] Alston (2005) p 813; Darrow (2005) pp 511-514.
[70] Alston (1998) p 105.

The second group of questions is on the development benchmarks of the APRM: Are they benchmarks that aim to enhance people's rights in development issues in general, and in the three specific development cases in particular? Are the development indicators clear and concrete? Are they relevant and appropriate in a rights perspective? Do they treat human rights protection as a goal of development policies, or do they follow a more instrumentalist rationale?

The third set of questions is linked to Alston's last point on means of accountability: The APRM is itself an accountability mechanism, but for whom to make use of? Does it, in its institutional build-up, its mandate, and its implementation in the review processes, secure channels for states to be held accountable in development questions? Does it empower those most in need of development gains? Does it open for participation by those affected by HIV/AIDS, or disempowered by gender structures, or in need of land to make a living?

The three sets of questions can be seen as measuring three different levels of engagement with human rights, starting with the most symbolic and tokenistic, moving to the more practical merging of human rights into development programmes, and lastly putting the principles to practice in empowering those whose rights are concerned. The questions will be applied to the APRM as such, and its angle on development on the African continent. Following that, they will be asked in the context of specific development issues: HIV/AIDS, gender equality, and land.

2.3 A human rights based approach to development – more particular cases

2.3.1 Presenting three hot potatoes and why they are relevant to the APRM

The three specific development issues that this thesis will grapple with are tricky, power-riddled, human rights questions. Above all they are fields of significance for development prospects in most African countries:

- HIV/AIDS threatens to destroy populations and cripple societies, striking the most productive part of the population. The epidemic has immense disparaging effects on life

expectancy, on the delivery of public services, and on economic and political stability, to mention but a few broad consequences.[71]

- Gender structures are integral to development considerations worldwide, with women often taking the brunt of crises and shouldering heavy work burdens. In many African countries, there is still a long way to go to reach gender equality in such areas as education, wage employment, or political leadership.[72] There is strong concurrence in the development field that empowering women brings strong development gains for whole communities.[73]

- Controversies over land are complex webs of past and present power relations. Stability and predictability in property rights are important to attract investments and spur economic growth. At the same time, patterns of inequality are often entrenched through property laws that favour the elite, while insecurity of tenure leaves millions of poor households without a protected livelihood.[74]

In these ways, the issues of HIV/AIDS, gender equality, and land are unavoidable when speaking of development in African contexts. In addition, they are the focus of this study because they have proven to be recurring issues of controversy for African leaders. There are strong stigma connected to HIV/AIDS, gender structures are deeply entrenched, and land is often interlinked with class and power relation. The lack of consensus on these questions enhances their relevance and importance in the APRM process.[75] As much as the APRM is an important mechanism for encouraging already positive traits, it cannot live up to its mandate of reviewing development progress unless it is also ready to tackle unclear and controversial questions. This is even more so considering the historical "dictator club" image of the OAU, and the way state sovereignty has been a holy cow in African regional cooperation.

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[71] With regard to HIV/AIDS and development, I especially draw on Poku (2005); Democratising Development: The Politics of Socio-Economic Rights in South Africa (2005); the March volume of International Affairs on HIV/AIDS, available at http://www.blackwell-synergy.com/toc/inta/82/2;jsessionid=aBZjpeNpJXV5DJyWO
[72] See for example the measurements for Millennium Development Goal 3: "Promote Gender Equality and Empower Women", at http://www.unmillenniumproject.org/goals/goals03.htm
[73] With regard to gender and development, I especially draw on Nussbaum (2000), Cagatay (1998).
[74] With regard to land issues and development, I especially draw on McAuslan (1998), Toulmin (2006).
[75] See a similar comment from Philip Alston on the process around the Millennium Development Goals in Alston (2005) p 797.

I thus argue that HIV/AIDS, gender equality and land are highly relevant in any African development analysis, and that the controversy surrounding them makes them interesting test cases in an analysis of the APRM. In the following, the links will be drawn to human rights, sketching what a human rights based approach to each of these issues entails.

2.3.2 A human rights based approach to HIV/AIDS

The fundamental point in a human rights based approach to HIV/AIDS is acceptance that the epidemic is a rights issue, and that states have obligations to take all necessary measures to prevent epidemics.[76] Such an argument draws on several rights, such as the right to life[77] and the right to a highest attainable level of health.[78] The latter right is in a HIV/AIDS perspective understood to include the right to treatment.[79] The fulfilment of this right requires building up a well functioning health sector that can provide counselling, testing, treatment, and care on an equitable basis.[80]

HIV/AIDS also raises questions of prevention, non-discrimination, participation, and support. Human rights are relevant to all these aspects. In prevention, the right to information[81] and education[82] are crucial, to enable people to protect both themselves and others. A human rights based approach to HIV/AIDS builds on the "AIDS paradox": the best way to combat the spread of HIV is to protect the rights of those infected.[83] This includes strict

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[76] Cf. International Covenant on Economic, Social and Cultural Rights (1966) art.12.2(c) obliging State Parties to take steps to achieve "[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases".

[77] ACHPR art.4; This, like other rights, is included and elaborated on in a range of other human rights instruments. In the following I will mostly refer to the ACHPR since it applies to all African states, and since the APRM is an African institution.

[78] ACHPR art.16.

[79] *HIV/AIDS and Human Rights: Revised Guideline 6 Access to prevention, treatment, care and support* (2002)

[80] Toebes (2001) pp 177-178; *HIV/AIDS and Human Rights: Revised Guideline 6 Access to prevention, treatment, care and support* (2002) pp 14-21.

[81] ACHPR arts.9, 25.

[82] African Charter on Human and Peoples' Rights (1981)arts.17, 25; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) art.12; African Charter on the Rights and Welfare of the Child (1990) art.11.

[83] Heywood (2004) p 1.

confidentiality,[84] access to counselling and treatment,[85] non-discrimination[86] etc. All these factors must be there to promote (rather than impose) openness and thereby encourage people to test themselves and gain knowledge of how to protect themselves and others.[87]

The government has obligations both towards those infected, and towards those affected by the epidemic. HIV is an epidemic that hits the poor the hardest.[88] A human rights based approach to HIV/AIDS demands addressing the underlying structures that reproduce inequality and deprivation.[89] This includes taking actions to protect the rights of the most heavily affected groups, such as AIDS-orphans, or women in poor communities.[90]

Finally, a human rights based approach to HIV/AIDS implies a right to accountable government.[91] Mark Heywood describes HIV/AIDS as "a crisis of politics and accountable and democratic governance."[92] The buzz-word participation can be given concrete content in the perspective of HIV/AIDS: it involves the right of people to information from their government on its HIV/AIDS policies, participation of stakeholders in the development, evaluation and improvement of those policies, responsiveness from the state towards demands by interest groups, room for civil society to challenge the state on its policies, and so forth.[93] All this should be striven for at international, national, and local level.

If the APRM is to function as an accountability mechanism for development in African countries, I expect that it takes the above outlined concerns into account. In short, it should recognise HIV/AIDS as a rights issue with the many facets this includes of rights involved

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[84] Cf. the right to privacy: ICCPR art.17.
[85] Cf. the right to health, supra footnote 78.
[86] ACHPR art.2; on discrimination based on HIV status, see *HIV/AIDS and Human Rights: International Guidelines* (1998) para.30.
[87] Heywood (2004) p 10.
[88] Marais *Mail&Guardian* 19 May 2006.
[89] cf. ch.2.2.2 discussions; Darrow (2005) pp 477-482, 489-492.
[90] African Protocol on Women's Rights art.24(a).
[91] ACHPR art.13.
[92] Heywood (2004) p 11.
[93] *HIV/AIDS and Human Rights: International Guidelines* (1998), especially Guideline 2 on supporting community partnership (paras. 24-26) and Guideline 11 on state monitoring and enforcement of human rights (paras. 44-45).

and affected groups identified; I further expect that the APRM assists in the elaboration of tangible benchmarks for the fulfilment of the rights of the above identified rights-holders; lastly, I expect that participation is pinned down to including ways for people affected by HIV/AIDS to hold government to account on its human rights promises to them

2.3.3 A human rights based approach to gender equality

Women's rights is an important part of human rights, underlined in instruments such as the African Protocol on Women's Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Beijing Declaration from 1995. Central to any rights based approach to gender issues is the principle of non-discrimination.[94] Non-discrimination in the international legal texts is commonly understood to not only mean prevention of direct discrimination, but also to include active measures responding to structural discrimination or inequality.[95]

Gender is a typical component of the basic human rights dilemma between universalism and cultural relativism. Gender structures are often deeply embedded in cultural traditions that on the one hand warrant protection, while they on the other hand might function as impediments to rights implementation. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women takes this into account, emphasising the elimination of harmful practices. Article 5 obliges states to "prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards."[96] In the international framework also, women's rights are always given priority over social and cultural patterns that might deny them these.[97]

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[94] ACHPR art.2 and 18.3; African Protocol on Women's Rights Preamble para.9 and 11, art.2; CEDAW art.2; common article 3 of ICCPR and ICESCR.
[95] Smith (2003) p 185.
[96] Art. 5; see also paras. 12 and 13 in the Preamble, and art.2.2 and 4.2(d) (the Protocol has been signed by 20 out of 23 states party to APRM, though only nine of these have ratified the Protocol as of 1st of June 2006); Article 1.3 of the African Charter on the Rights and Welfare of the Child reiterates the same principle.
[97] This principle is encoded in CEDAW art.5 (CEDAW is ratified by 25 out of 26 states party to the APRM).

A human rights approach demands that the vulnerability of women in developing countries be recognised and phrased in rights language. This implies that states acknowledge and address violations of women's equality, autonomy, and bodily integrity. In the APRM I expect to find such an acknowledgement, together with identification of specific areas where women's rights are under pressure. I anticipate a follow up of the African Protocol on Women's Rights and clear-cut benchmarks and recommendations drawn from this, especially regarding structurally and culturally imbedded discrimination that disadvantages women in development issues. I also expect to find guidelines for stronger woman representation in public life and in the elaboration of development policies.

2.3.4   A human rights based approach to land

Land rights are a recurring topic in discussions on development in Africa, reflecting the central place land has in social, political, and economic life in most of Africa.[98] However, opinions are diverse on how land disputes should best be dealt with. There seems to be agreement that law reform is necessary, but the place of customary law in a reformed system sparks disagreements.[99]

The international human rights framework does not give any clear cut vision of how land issues relate to rights.[100] Questions of land also often touch on collective rights, which are central in the African regional human rights framework.[101] These include the right of peoples to dispose of their wealth and natural resources. [102] Adding to the complications are questions on the place and interpretation of customary law. It is often the elite who are in a position to interpret what the customary law of a region is, not necessarily strengthening and protecting

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[98] Toulmin (2006) p 1.
[99] McAuslan (1998) p 526.
[100] Tomaševski (2001) p 536.
[101] Arts.19-24 of the ACHPR concern peoples' rights.
[102] ACHPR art.21; cf. ICCPR art.1 on self-determination.

access to land for women and other marginalised groups, such as migrants, ethnic minorities, and political dissidents.[103]

Furthermore, granting land to someone will often mean taking it away from someone else. Human rights protect the rights of individuals, and even when a right to land as property[104] can be contested on grounds of illegitimacy and inequality, confiscation of land must respect the right to equality before the law,[105] the right to privacy,[106] the right to compensation,[107] and the basic principle of predictability of the law.

Where confiscation and redistribution can be argued for, state obligations to ensure an adequate standard of living[108] for its inhabitants are central. Poverty is increasingly recognised as a violation of human rights, and states have obligations to respect, protect and fulfil the rights necessary to lift people out of poverty.[109] There is strong evidence that secure access to land would be key to underpinning the livelihoods of poor communities and thus give them a chance to escape poverty.[110]

The questions still remain, however, what structure of land management would best integrate all these concerns, and whether the political will is there to secure the benefits of land ownership for the large majority of the population. Land laws are not legal technicalities, they are highly political.[111] They influence the interests of different groups and can potentially change power relations. The legitimacy of any land policy then relies on its processes of accountability and to what extent it empowers many different groups to participate. The right

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[103] McAuslan (1998) pp 541-542; Toulmin (2006) p 6; Lastarria-Cornhiel (1997) p 1317; United Nations Development Programme (2006) p 9.
[104] ACHPR art.14; UDHR art.17; for a discussion of the right to property see Krause (2001), especially pp 203-208 on the inherent conflict between the right to property and social rights
[105] ACHPR art.3.
[106] ICCPR art.17.
[107] Derived from the right to property, see footnote 104.
[108] ACHPR art.22 (on the right to development).
[109] See for example Sengupta (2005); Pogge (2005).
[110] United Nations Development Programme (2006) pp 8-9; Toulmin (2006).
[111] United Nations Development Programme (2006) p 8.

to participation[112] underscores the importance of community-based processes of land distribution and accountable local land administrations.

In the APRM process I expect to see land issues discussed with an eye for the underlying structures that privilege some and dispossess others; with a recognition of every individual's right to be treated with respect; and with a nuanced discussion on the role of customary norms in land questions. I further anticipate finding bold goals for progress on land redistribution, and plans for involvement of a range of stakeholders, especially vulnerable groups, in such redistributions.

The APRM's treatment of these three issues, and the degree to which it matches the pattern of rights based approaches sketched here, will be further examined in chapter 4. First, it is necessary to give the broader picture, of the APRM's approach to human rights as such, and what this might mean for rights accountability on the continent.

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[112] ACHPR art.13.

3 Rights perspectives and perspectives on rights in APRM: strengthening states' ability to fulfil human rights obligations?

This chapter seeks to explore to what degree the APRM holds African states to account on their human rights obligations relative to development issues. To approach this question, I will employ a human rights based approach to development (HRBAD) as outlined in chapter 2.2. I will examine to what extent the APRM recognises human rights as relevant to its development policies, whether it measures countries' development performance against human rights standards, and what channels the APRM supplies for holding states accountable. Further, I will discuss some variables that affect the APRM's impact on human rights accountability on the African continent.

Before becoming engrossed in these analyses, though, a short introduction of the APRM structure and process is asked for, presenting the APRM vision and its key characteristics. I will shortly discuss what it implies that the APRM is a peer review, describe the bodies involved in the review, and present the different stages of the process. Further, I introduce two of the APRM's distinguishing features: that it is voluntary, and that it engages in political reviews.

3.1 How do you say "accountability" in African?

3.1.1 …"an African self-monitoring mechanism"[113]

As an African initiative, the APRM is unique and a ground-breaking experiment, as a first time project for the continent. It has connotations to other similar international mechanisms, the most well known being the peer reviews conducted under the Organisation for Economic

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[113] NEPAD (2003b) para.1.

Co-operation and Development (OECD). Peer review can be defined 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."[114] Although peer reviews have states as primary actors, input from civil society is recognised as important to encourage constructive dialogue and give credibility to the process.[115] The fact that the review is initially between states can be both a strength and a weakness. On the one hand, the mechanism can contribute to the creation of a common language and socialisation of states into certain behavioural patterns.[116] On the other hand, camaraderie between states risks taking the edge off the review, with no one wishing to offend anyone else and therefore avoiding sensitive issues and effective criticism.[117]

3.1.2 …"technically competent, credible and free of political manipulation"[118]

To ensure the independence and credibility of the peer review, the process is led by a Panel of Eminent Persons, a group of seven prominent Africans elected on the ground of competence, moral stature, and commitment to the ideals of Pan-Africanism.[119] They send a team, led by a Panel member, on a Country Review Mission. The APRM Secretariat assists in the operations, and the review teams can draw on the expertise of APRM's Partner Institutions. Throughout the process, a broad consultation of stakeholders is expected, both at the national level, and on the part of the APRM institutions. Relevant stakeholders include government, political parties, public sector officials, civil society organisations, media, trade unions, academia, private sector organisations, and individual citizens.[120] Participating countries are expected to establish a national Focal Point at a ministerial level, responsible for the APRM process in particular, and all NEPAD activities in general. The official peer review is done by

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[114] OECD definition, cited in Heuty (2005) p 15.
[115] Heuty (2005) p 18, NEPAD (2003c) para.1.3.
[116] The Power of Human Rights: International Norms and Domestic Change (1999) chapter 1, pp 1-38.
[117] Naidu (2002) p 1.
[118] NEPAD (2003b) para.4.
[119] NEPAD (2003b) para.6.
[120] NEPAD (2003b) para.19.

the APRM heads of state and government in what is called the APRM Forum (see diagram of the APRM regional bodies).

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                    │ (Participating Heads of State and Governments)│
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                    │              APRM Panel                     │
                    │        (Panel of Eminent Persons)           │
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│                  │  │    APRM Team     │  │                          │
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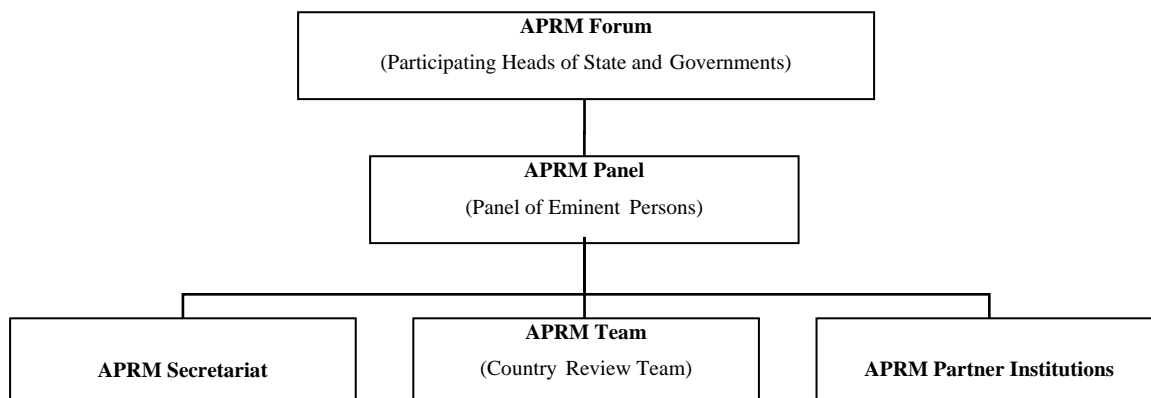
3.1.3 …"sharing of experiences and reinforcement of successful and best practice"[121]

There are five stages in the APRM process.[122] The first stage is the broad preparation of background materials, including a self-assessment done by the country under review.[123] This is used to formulate a draft National Programme of Action (NPA). On the background of these two documents and an additional background paper prepared by themselves, the APRM Secretariat puts together an Issues Paper for the Country Review Mission. In the second stage, the team conducts a Country Review Visit, engaging in as wide consultations as possible. Based on the findings in stages one and two, the Country Review Mission prepares a report, assessing the commitments made, identifying shortcomings, and postulating how those shortcomings might be addressed. This is stage three. The report is presented to the government under review who is given an opportunity to react and to add its own suggestions on what response the shortcomings require.

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[121] NEPAD (2003b) para.3.
[122] The five stages are described in NEPAD (2003b) paras.18-25.
[123] NEPAD (2004).

In the fourth stage the report, with government comments appended, is submitted via the APRM Panel to the APRM Forum. This is where peer pressure between states can be acted out, as the recommendations in the report are presented and discussed. Six months later, in the fifth stage, the report is publicly tabled at various key regional and sub-regional organisations. The implementation phase starts for the NPA.

The first four stages were originally expected to take up to six months. This has been adjusted to approximately nine months, following the wrapping up of the first country reviews. The consultative nature of the process has proved time-consuming.[124] The country review of Ghana, for example, started in March 2004, with the final report handed on to the APRM Forum in June 2005 and discussed in January 2006. The five stages are the procedure for the base review. A periodic review is to follow, every two to four years.

3.1.4   …"voluntarily acceded to"[125]

The APRM is a mechanism that states sign up to based on their own choice rather than as a common AU initiative. About half of the AU's members have acceded to the APRM. A voluntary mechanism is often understood as conducive to state sovereignty.[126] In the case of the APRM, however, the fact that it is voluntary is described as a change and challenge to an infamous tradition of misconceived African unity and solidarity.[127] The APRM, because it is voluntary, is "exclusive and discriminatory".[128] Instead of understanding African unity in the terms of one-size-fits-all, it sets up a special club within the AU. It has become a place for do-gooders to assemble.[129] In this sense, it is a new approach to African regional integration.[130]

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[124] Grimm (2006) p 4.
[125] NEPAD (2003b) para.1.
[126] Heuty (2005) p 14.
[127] Naidu (2002) p 1.
[128] Cilliers (2002) p 2; de Waal (2002) p 469.
[129] Grimm (2006) p 2.
[130] Nagan (2004) pp 2-4.

3.1.5 …"guided by agreed parameters for good political governance"[131]

The assessment of political governance in a peer review is unique to the African mechanism.[132] The place and nature of this political review has been widely discussed between participating countries since the very initiation of the APRM. Some have argued for a simply economic and corporate governance review mechanism, and the political aspects have in some public statements been downplayed compared to the original mandate.[133] This is therefore one of the main areas in the APRM that needs to be clarified and that the first country reports set precedence for. The core documents highlight the inter-linkage between political and economic issues, and set clear demands also for a review of a country's democratic situation.

The question of political review is seen as NEPAD's crux among commentators and international partners. One analyst argues that without making political governance the core focus of NEPAD, its impact will hardly be significant.[134] The understanding I take of development supports this view: development is not only about economic growth, but involves "the removal of major sources of unfreedom."[135] Speaking of development in human rights terms entails taking a comprehensive approach where the indivisibility and interdependence of rights is acknowledged. Whether the APRM takes this approach is part of the following discussions.

3.2 Matching the APRM against a human rights pattern

According to a paper by the International Federation of Human Rights, "practically everything in NEPAD falls within the ambit of human rights."[136] Drawing on Philip Alston's definition of a human rights based approach to development, I will here investigate whether

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[131] NEPAD (2003b) para.5.
[132] de Waal (2002) p 472 ; Bandora (2006) p 4.
[133] Cilliers (2003) p 14.
[134] Cilliers (2003) p 2.
[135] Sen (1999) p 3.
[136] International Federation for Human Rights (FIDH) (2004) p 3.

the APRM then takes a rights perspective in its quest to ensure that countries observe principles and practices supportive of NEPAD objectives.

3.2.1   Explicit recognition of the rights involved?

My first question is whether the APRM framework recognises rights as relative to its mandate, and, in those instances where human rights are engaged with, in what ways and with regard to which topics they are referred to.

The *Declaration on Democracy, Political, Economic and Corporate Governance[137]* sets out the vision of NEPAD, identifying its main objectives and commitments. These are commitments that the APRM is mandated to "promote adherence to and fulfilment of."[138] The *Declaration* places NEPAD and the APRM within a human rights framework. The preamble reaffirms earlier OAU decisions "aimed at ensuring stability, peace and security, promoting closer economic integration, ending unconstitutional changes of government, supporting human rights and upholding the rule of law and good governance."[139] Among the OAU decisions listed are the African Charter on Human and Peoples' Rights (ACHPR), its Protocol on the establishment of an African Court on Human and Peoples' Rights, and the African Charter on the Rights and Welfare of the Child.

The Preamble also reaffirms the commitment of the states parties to "other international obligations and undertakings into which [they] have entered in the context of the United Nations," mentioning specifically the UN Charter, the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Beijing Declaration. Human rights are thus explicitly and comprehensively recognised as crucial to the APRM. They are presented as the basis of the mechanism. I will explore further how these references to human rights are followed through.

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[137] NEPAD (2002) [hereinafter: the *Declaration*].
[138] NEPAD (2002) para.28.
[139] NEPAD (2002) para.3.

Where rights are spoken of in the APRM core documents it is most often relative to the focus area democracy and political governance. In the *Declaration*, promoting and protecting human rights is presented as one of three parts of an action plan to fulfil commitments in this area, the others being to support democracy and to support good governance.[140] Rights are not mentioned in the clauses on economic and corporate governance, nor in the part of the declaration dealing with socio-economic development. The lack of a rights language in relation to socio-economic development is somewhat rectified in the Ghana report where "strengthening accountability" and "guaranteeing protection of human rights and the rule of law" are recognised as central objectives for socio-economic developments.[141] This is however not due to APRM guidelines on this, but rather that the above mentioned objectives are laid down in Ghana's Poverty Reduction Strategy, which is integrated in Ghana's APRM self-assessment.

References to human rights in APRM documents are in most instances general. Specific rights referred to include equality before the law, freedom to join political parties and trade unions, participation in democratic processes, protection of vulnerable and disadvantaged groups including women, children, and ethnic minorities, and freedom of the press. The importance of strengthening human rights education, human rights institutions, civil society and the AU human rights protection bodies is also highlighted. Again, it is interesting to note that no economic or social rights are specifically mentioned. This is striking considering how African states have often asked for a strengthening of these rights in the UN, and criticised Western countries of a bias towards civil and political rights. This omittance in the NEPAD strategy paper has caused some commentators to ask whether NEPAD is designed more to suit Western investors than to cater for the African populace.[142]

Furthermore, human rights are continuously portrayed as a separate chart of goals to attain, rather than as an integral part of all NEPAD/APRM objectives. Human rights are listed *in*

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[140] NEPAD (2002) para.15.
[141] APRM (2005) p 101, para.6.
[142] International Federation for Human Rights (FIDH) (2004) pp 3-4 ; see also Olukoshi (2002); Adebajo Mail&Guardian 14 November 2003.

addition to democracy, good governance, socio-economic development, corporate responsibility, etc., rather than as *the basis of* these principles and aspirations. NEPAD/APRM policy makers have not, it seems, seen this potential in the human rights framework. Rather illustratively, paragraph 10 of the *Declaration* postulates that "respect for human rights has to be accorded an importance and urgency *all of its own*."[143] This shows that human rights are seen as a development goal and are not treated in a purely instrumental way, but it also somehow ironically indicates how little NEPAD's human rights ambitions are tied in to the rest of its ambitions.

Human rights are thus explicitly but somewhat superficially recognised as important to NEPAD and the APRM. In the APRM core documents, the goals related to human rights are mainly in the form of civil and political rights, and are not treated as integral to the comprehensive APRM mission, or to socio-economic development in particular. From an accountability perspective, this means that a significant portion of states commitments are not even spoken of in the form of rights or obligations. This is far from conducive to strengthening states' ability to fulfil obligations relative to socio-economic rights.

The fact that human rights are at all mentioned in the documents is however still significant for human rights accountability as a whole. Risse, Ropp and Sikkink[144] show how the acceptance and use of a human rights discourse is a first crucial step towards active protection and promotion of human rights by political leaders. Political agents can set both themselves and others in motion through their use of language.[145] "Talking the human rights talk" has consequences for what is expected of a leader, also when human rights are referred to in a tokenistic way.[146] Explicit recognition of rights is thus the first step of building government's capacity to fulfil its human rights obligations, as indicated by Alston's three-tier definition of a human rights based approach to development. The second element in that definition is the establishment of benchmarks tied to human rights standards.

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[143] NEPAD (2002) para.10, my emphasis.
[144] The Power of Human Rights: International Norms and Domestic Change (1999).
[145] Mathisen (1997) p 6.
[146] The Power of Human Rights: International Norms and Domestic Change (1999) pp 27-28.

3.2.2 Establishment of appropriate benchmarks?

Benchmarks are crucial for accountability, establishing what are the rights of rights-holders and the duties of duty-holders. I ask whether the indicators used in the APRM are relevant and appropriate in a rights perspective.

The NEPAD objectives and focus areas outlined in the *Declaration* are further elaborated on in several documents, in particular in *Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (OSCI-document),*[147] and in the *Questionnaire*[148] which states use for self-assessment. These documents specify which **standards** are relevant to every particular NEPAD **objective**, and then draw from these standards specific **criteria** states should live up to, and **indicators** that point out state compliance with the criteria. An example of a composite of objective, standards, criteria and indicators is given in annex 1.

International human rights instruments are used as standards throughout the APRM focus areas. Both the *OSCI-document* and the *Questionnaire* are quite detailed, the Questionnaire including 58 criteria questions, each with between two and seven indicators tied to it. The Questionnaire also refers to 69 instruments which constitute relevant standards. A majority of these are human rights instruments, in the form of legally binding conventions, or soft law declarations, statements, etc. All the legal documents referred to in the *Declaration* are included here, plus a long range of instruments relevant to more particular development topics. These references to human rights instruments are repeated in the Ghana report, where each focus area has specific standards tied to it. The benchmarks that the APRM wishes to measure countries against are thus in large part international human rights standards.

It is significant that human rights instruments are given such a prominent role as sources for standard-setting. However, the connections from the HR standards to the criteria listed are not

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[147] NEPAD (2003c).
[148] NEPAD (2004).

always clear. Often the criteria indicate whether a treaty is ratified, and ask how it is implemented, but they give little guidance as to how the treaty can and should be implemented to promote sustainable development. They are quite vague and present few identifiable, specific standards to which states can be held to account.

In the Ghana report, some more specific indications are made. The report describes how the hearings conducted on democracy and political governance during the Country Review Mission "were dominated by discussions on the need for Ghana to ratify outstanding standards and codes and to domesticate them."[149] Where ratifications are patchy, Ghana is recommended to develop a binding time frame for ratifying these and translating them into local laws.[150] The review team also emphasises the need for organisational structures to oversee the implementation of laws,[151] and the importance of sensitising the regular public of the content and application of the laws.[152]

As with the *Declaration*, the *OSCI-document* and the *Questionnaire* link human rights mostly to democracy and good governance, and seldom mention them specifically in relation to economic and corporate governance and socio-economic development. One notable exception is the inclusion of social corporate responsibility and respect for labour rights as a part of corporate governance. Also, in the discussions of socio-economic development, the right to development is given a central place.[153] The ICESCR is, however, not mentioned at all as a standard for socio-economic development. This is unexpected, especially since many of the criteria named concern central social and economic rights such as education, health, access to water and land, and the cross-cutting issue of gender.

The way rights are discussed in general terms opens considerable space for country-specific processes and local adaptation of the self-assessments. Though few concrete benchmarks are

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[149] APRM (2005) p 15, para.12; Among the review team's experts on democracy and good political governance was Professor Michelo Hansungule, professor of human rights law at the University of Pretoria.
[150] APRM (2005) para.13 p 16, para.23 p 106.
[151] APRM (2005) para.21 p 49.
[152] APRM (2005) para.23 p 106.
[153] ACHPR art.22; UN Declaration on the Right to Development (1986).

designated in the APRM core documents, they can potentially be drawn from the long list of standards indicated. At the same time this means that the framework given does not provide guidance for rights questions and does not necessarily challenge unilateral tenors of sovereignty. As briefly discussed earlier, lack of specificity in development policies is not uncommon, making it easier to build consensus, but also avoiding controversial questions and risking to say very little of substance.

The sheer amount of human rights standards actually referred to shows this duality well. On the one hand, the long list of treaties and declarations states are expected to comply with demonstrates an important explicit recognition of rights and a will to use human rights standards as benchmarks. On the other hand, it can come across as an exaggerated list of all somewhat relevant international standards, enhancing a suspicion of tokenistic use of buzz-words. The broadness of the approach taken might be an unfortunate, or convenient, way of neglecting the nitty-gritty daily life rights issues. The ARPM's approach to specific rights issues will be discussed further in chapter four. Suffice it to point out here the example of objective 3 in the area of democracy and good governance (see text box above). This objective is one of 25 objectives laid out in the *OSCI Document*. In itself, it asks enough to fill several reports – in fact it covers more or less what African states are expected to report on to the African Commission of Human and People's Rights, reporting duties which many states have severe delays in fulfilling or do not show interest in complying with.[154]

In the report on Ghana, the room for country specificity is used skilfully. The *OSCI-document* and the *Questionnaire* are followed quite closely in what benchmarks are used as starting points. With these as a general framework, central questions for Ghana such as capacity constraints, gender, corruption, decentralisation, land, chieftaincy, unemployment, and external dependency are repeatedly raised and discussed critically.[155] In assessing objective 3, the Country Review Mission gives concrete recommendations as to what Ghana can do to improve its human rights record, including urging the country to comply regularly with its

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[154] Murray (2004) p 60.
[155] APRM (2005) pp 121-125.

reporting obligations to the African Commission on Human and Peoples' Rights.[156] Civil, political, economic, social and cultural rights are elaborated on with concrete examples of rights that need to be addressed. Measures are proposed to strengthen some of these rights, including enactment of an Access to Information Bill, enhancement of the capacity of named human rights institutions, facilitation of police reforms, and ratification and domestication of international human rights treaties.[157] Although finding some concrete form in these discussions, these points are rarely reiterated when similar topics are mentioned later, in discussions of other objectives. Again, human rights are seen more as a separate agenda than as an integral part of the whole APRM project.

The general picture both in the APRM core documents and the first country review is thus one where human rights treaties are held forward as norms but not elaborated on. There are notable exceptions in the Ghana report where more concrete development challenges are discussed and acknowledged as human rights questions. These are however seldom linked to human rights more specifically than through the requirements that treaties should be ratified and implemented. Bearing in mind that implementation is often the crucial missing link in human rights protection world wide, a concretisation of means of implementation seems to be missing. The last element in the rights based approach to development concerns the opportunities given to hold states accountable. This is crucial for the question of implementation of rights.

3.2.3   Means through which accountability can be ensured?

From its initiation, NEPAD has been criticised as a top-down project, lacking of grassroot participation.[158] Not without reason, since its premises and progress have in large part been decided by African leaders, and NEPAD is extensively promoted on a diplomatic level, more than in local development. One of the APRM objectives, however, reads "encourage broad-

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[156] APRM (2005) pp 15-16, paras.12-13.
[157] APRM (2005) pp 25-27, paras.43-54.
[158] International Federation for Human Rights (FIDH) (2004) p 54 ; Hope Sr. (2005) p 288 ; Olukoshi (2002).

based participation in development by all stakeholders at all levels,"[159] and the Peer Review is meant to be NEPAD's participatory alibi. One commentator deems that "the [APRM] process may return governance to the people of Africa."[160] If this is to be so, the process needs to be transparent and accessible.[161] It needs to welcome public scrutiny and place policy discussions in the public sphere,[162] enabling rights-holders to claim their rights. I will take the APRM system and processes themselves as an illustration of the kind of broad-based participation that the APRM wishes to promote. To assess the means available to ensure accountability through the APRM I will ask whether information is available, whether there are mechanisms for participation by civil society, and whether governments have incentives to comply with the APRM.[163]

In the structure of the APRM process, the need for building accountability is recognised. In the *Memorandum of Understanding* on the APRM, states parties agree to "ensure the participation of all stakeholders."[164] A national Focal Point of the country under review is expected to ensure broad participation throughout the review. This involves ensuring information is available, raising awareness about the national APRM process and publicising possible participation channels widely.[165] The establishment of a coordinating institution makes the flow of information easier, providing one main contact point for both the press and civil society bodies wishing to contribute in the review process. The regional NEPAD Secretariat also assists in spreading information and raising awareness about the APRM at a continental level. This is done through press releases, newsletters, seminars, and web pages with access to NEPAD documents. Little information on country specific processes is available there, though, and such information must thus be acquired from the national structures.

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[159] NEPAD (2003c) p 28.
[160] Juma (2004) p 179.
[161] de Waal (2002) p 474.
[162] Cilliers (2002) p 6; Hope Sr. (2005) p 290.
[163] de Renzio (2006) p 1.
[164] NEPAD (2003a) para.22.
[165] NEPAD (2003e) para.35; UNDP Regional Bureau for Africa (2005) p 7.

The national Focal Point is responsible for defining a road map for stakeholder participation and establishing feedback mechanisms for the process, all in consultation with the same stakeholders.[166] This is one of the main domestic responsibilities in stage one of the review process. The form this takes is open; the requirements are that the participation should be broad, should enhance national ownership of the process, and contribute to strengthen governance in the country through building trust between government and stakeholders and empowering the latter to be involved with government.[167]

Should a government be unwilling to be held accountable, the measures at hand for the APRM Panel and Forum to ensure NEPAD objectives are complied with are not clearly defined. How peer pressure is to be exercised has not been elaborated on in the core documents. They speak of possible "appropriate measures",[168] though these are never given more concrete form. The emphasis is rather more on "assistance"[169] which should be offered to states who do comply with the rules of the game. The APRM uses incentives in the form of carrots rather than sticks. Not least, the promise of enhanced partnerships with donors and investors lies as a key motivation in NEPAD and APRM policies.[170]

The two first country reviews that have been conducted show how the participatory measures available can differ, though done within the same APRM framework. The process in Ghana has been hailed as an inclusive venture where many independent, critical voices were actively invited to participate.[171] Ghana's Focal Point was located in a separate NEPAD Ministry who also supplied a secretariat. However, the main coordinating responsibility lay with the National APRM Governing Council, whose members were drawn from the civil society. Added credibility was given to the process by the assignment of the main technical assessments to four independent research organisations. This is reflected in the lack of pompousness with which the self-assessment report is written. The APRM Country Review

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[166] NEPAD (2003e) para.35.
[167] NEPAD (2003e) para.36.
[168] NEPAD (2003b) para.24.
[169] NEPAD (2003b) para.24.
[170] Ghana report para.1 p 73.
[171] Grimm (2006) p 3.

Mission expresses satisfaction with the independence of the process which was greatly beneficial to its own investigations and evaluations.[172]

A significant effort was put into giving broad access to the process. Information to civil society was provided through a Stakeholder Liaison Officer who worked to identify and reach stakeholders in all the different regions of Ghana.[173] Strategies used to spread information included television and radio discussions, newspaper articles, pamphlets, educational and awareness raising tours, and targeting of specific stakeholders.[174]

The review team congratulates Ghana on having conducted broad consultations and engaging a large number of stakeholders in the process.[175] The process is described as having involved at least 50 000 Ghanaians.[176] Means of participation included panel interviews, group discussions, memoranda, workshops, hearings, and autonomous reviews.[177] Most of Ghanaian civil society was involved in some way or another, either directly by conducting parts of the review, indirectly by being a point of consultation, or through shadow reporting.[178] Also, the process has been relatively well made known through Ghanaian media, and the publication of the report was long awaited.[179] Through its NPA, Ghana expresses a wish to continue this trend and also create more "opportunities for the assertion of rights by all groups, especially women, children, young persons, persons with disability and the aged."[180]

As a point of comparison, the process in Rwanda has received some more critical comments on the centralised control of the project. The Rwandan Focal Point was placed under the office of the President, and the centrality of the President in the process has raised some

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[172] APRM (2005) paras.5-6 p xii.
[173] APRM (2005) p 137.
[174] APRM (2005) p 139.
[175] APRM (2005) pp 9-10.
[176] APRM (2005) p 137.
[177] APRM (2005) p 138.
[178] APRM (2005) p 136.
[179] APRM (2005) p 10.
[180] APRM (2005) p 147.

questions with regard to its political autonomy.[181] Another difference from Ghana is the number of independent bodies involved. While Rwanda's national commission (who coordinated the process) were drawn from civil society, these were not in charge of the review as such, which was done by government agencies. Civil society was involved towards the end of the review, as a control post, rather than throughout the process.

The domestic implementation of the APRM can thus take country-specific turns that have a significant impact on the process, and hence on the success of the review and what the APRM might mean for enhanced accountability. The establishment of channels of information and participation are up to the country under review, and no sanctions are foreseen should a country not live up to expectations. With more odious countries than Ghana lining up to be reviewed, the APRM Panel will have to balance well the consent for country-specific processes with insurance that the ventures are inclusive and critical. The Country Review Mission can, on the background of the commitment made by the participating state to ensure the participation of all stakeholders, contact any groups or individuals they might wish to meet, if they feel that the national Focal Point has not engaged an adequate amount or representation of stakeholders.[182] However, there is always a risk that the information available to the review team will be government dominated and controlled.

The most basic importance of the APRM for enhancing state accountability is then perhaps just the fact that government commitments, such as signing up to the APRM, open a space for civil society to gain information, ask questions, and pressure government on outcomes.[183] How much space civil society is given, or are able to take, will vary between the country processes, and probably also between different stakeholders in each country. The questions of which accountability channels are available will have to be asked for each review, together with the question of which stakeholder groups are invited to participate. The latter question will be explored further in chapter 4, with regard to rights-holders in the specific contexts of HIV/AIDS, women's rights, and land.

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[181] Grimm (2006) p 4.
[182] NEPAD (2003e) para.45.
[183] Alston (2005) pp 813-814.

What is in any case certain is that the APRM core documents consistently push for broad stakeholder participation. Echoing Risse, Ropp and Sikkink, Rita Abrahamsen argues that this in itself is a powerful tool, because the outlined structure of the process becomes an image in which the bodies under review are reshaped. This is the "productive power of auditing mechanisms such as the APRM": undergoing a review requires that governments transform themselves into auditable bodies.[184] The coming years will show if this rings true through the review processes of 26 ARPM member states.

3.3 Why human rights can be easy to mention but hard to implement

The APRM has potential to be an accountability mechanism that holds states to their human rights obligations. As seen in the discussions above, this potential is only partly recognised and realised in the APRM documents and process. I will consider some possible factors that affect both the APRM design and the broader picture of human rights accountability on the African continent. I will also assess some changes in these factors might work to strengthen the accountability impact of the APRM.

3.3.1 Capacity

African leaders are up against a number of constraints that are structural and that are not easily changed, even if they would wish them so. The APRM functions within a world of *realpolitik* where its impact on human rights accountability is affected by the limitations this places on APRM agents. Some capacity issues stand out as especially relevant when analysing the APRM's influence on accountability.

The most obvious is that accountability demands considerable human and institutional capacity. Each country review is time- and resource-consuming, for both the APRM regional

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[184] Abrahamsen (2004) p 1463.

bodies and the country participating. This is not only a matter of financial resources, but also questions of access to expertise, to reliable statistics, to necessary infrastructure, to already existing institutions or processes of participation, etc. With NEPAD attempting to fathom everything of relevance to African development, the challenge is all the greater. Furthermore, many African countries already spend significant amounts of resources on other review procedures. The danger of consultation fatigue is imminent, and the results from different evaluations are not necessarily coordinated or concurring. If the APRM just adds to this cacophony it risks doing very little for the ability of a state to fulfil human rights obligations.

A possible response to these capacity challenges is the prioritisation of a few central issues in NEPAD, to make the APRM more feasible and also more credible.[185] This could allow for better targeting in the review and prove to be a more efficient way of using available resources. A more targeted mechanism would also facilitate a stronger coordination of African institutions, clarifying how the APRM supplements other human rights institutions such as the African Commission on Human and Peoples' Rights. The challenge for the APRM is one of upholding an ambitious vision while nailing concrete development issues.

An important aspect of domestic capacity constraints regards the APRM presumption of an active civil society. In many African countries, civil society is weak and there is not a strong culture for democratic participation.[186] Stakeholders might have quite restricted capacities to comment extensively on a long range of issues tied to development. In the case of Ghana, which has a relatively active and autonomous civil society, this restriction is noted by the Country Review Mission with regard to the field of public finance management, where few stakeholders put across a thorough understanding of the questions at stake.[187]

The APRM faces the challenge of strengthening civil society in the very process of engaging with civil society. In short and medium term, APRM effects on accountability might therefore not be very visible while the mechanism works to open a space where broad consultation is

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[185] de Waal (2002) p 463.
[186] Cilliers (2002) p 6.
[187] APRM (2005) paras.94-96.

manageable and where public scrutiny thrives. The strengthening of civil society depends on the cooperation of many parties – among them civil society at both domestic and international level, donors, and governments. Partnerships between these parties are potential channels for building capacity to conduct reviews, to undertake shadow reporting, and in general to use the space opened up by the government's APRM commitments.

International agents potentially influence capacity constraints in other ways as well. Although NEPAD and especially the APRM are described as African-owned and African-led initiatives, the effective implementation of their recommendations depends on substantial amounts of financing from outside the continent. While NEPAD wishes to transform the donor relationship to one of more mutual accountability, the de facto answerability of African states towards donors can sometimes conflict with their obligations towards their citizens. This is carefully indicated in the report on Ghana, where dependency on aid is discussed in several different contexts. The report does not necessarily see any option to significant external support for Ghana if development aims are to be achieved, but it points out how externally placed conditionalities can and have forced the Ghanaian government to subordinate social priorities.[188]

In addition to weakening the national ownership of development processes, aid dependency may undermine state accountability to its citizens because of the unreliability of donor resource flows.[189] There are some current efforts to coordinate aid better and make it more predictable, but most of the largest donors (who also have significant influence in the international financial institutions) are reluctant to make such changes.[190] This vulnerability to exogenous factors is not restricted to aid flows. The globalised economic system leaves already poor economies extremely vulnerable to external fluctuations. NEPAD states are part of an international economic structure which may hamper rights protection in developing countries.[191] While NEPAD has been founded precisely to counter the marginalisation of the

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[188] APRM (2005) para.23 p 49.
[189] APRM (2005) para.29 p 50.
[190] de Waal (2004) p 161.
[191] Sengupta (2002) paras.28-37.

African continent in the global economy, it does not have a magic formula against these potential destabilisations of states' ability to protect human rights. To strengthen states' ability to fulfil human rights obligations it might therefore prove crucial to reduce aid dependency, through for example continued pressure for a fairer international trade system, debt cancellations, and more predictable aid.[192]

3.3.2 Political will

Capacity is also a question of choice. According to international human rights standards, fulfilling obligations must be a priority, also when there are valid capacity constraints to consider. States' ability to fulfil human rights must therefore also be read in light of the choices of the political agents who support and promote the policies I have analysed above. The impact of the APRM on human rights on the African continent is influenced by various factors related to political will.

Many African countries struggle with a tradition of domestic non-compliance with human rights norms.[193] It is not in the interest of all African leaders to have an efficient APRM. This probably influenced the drawing up of the APRM – as mentioned earlier, there were pressures to shift focus away from democracy and political governance - and it will impact on the various review processes and their credibility. Some of the countries that have signed up for the APRM have doubtful human rights credentials. The fact that they have signed up is an indication that they regard the risk of being named and shamed as manageable.[194] If the APRM simply rubber stamps these regimes it loses its crunch and will have very little importance for accountability.

An important question in this regard is whether African leaders are willing to publicly criticise each other. The case of Zimbabwe (though not a case that will be raised in the APRM) has clearly shown how reluctant the community of African leaders can be to speak

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[192] Millennium Declaration para.15; NEPAD (2001) para.46.
[193] Christopher Heyns, cited in Cilliers (2003) p 12.
[194] Grimm (2006) p 2.

out on a fellow leader's adverse actions towards his opposition and towards the general population.[195] The international attention around president Robert Mugabe has also roused an African scepticism towards eager, external critics that call for heavy-handed sanctions. This scepticism, in its constructive version, stands as a testimony that African leaders are resolute to deal with these issues themselves. However, the same scepticism might also be the illustration of a continued camaraderie between state leaders leaving little room for accountability.

In the APRM documents, the general terms in which human rights are dealt with can be read as indications of the level of political will. Commitments are easier to avoid when they are vague and not too specific. Tokenistic use of buzz-words can fudge a process rather than strengthen it. The generality with which human rights are spoken of can thus be a political tool. Furthermore, in the African regional system there is a proliferation of institutions which threatens to undermine the efficiency of each and any of them. Rather than securing the adequate functioning of one body, mandated to protect and promote human rights on the continent, a number of new institutions have been launched over just the past years, all with responsibilities relative to human rights accountability. Christopher Heyns argues how, with the lack of focus of resources and efforts it entails, this exacerbates the situation rather than contributes to solving it.[196] It is pertinent to ask how the APRM should manage something the African Commission on Human and Peoples' Rights has not had much success in achieving. Political will has often been flailing in letting the Commission have a strong voice or substantial impact on domestic issues.[197]

On the other hand, political will is also the APRM's arguably strongest card. It is what drives the process forward. The project was initiated with a call for more democratic leadership and a vision to reward such leadership. The APRM relies on the interest and honest intentions of the participating countries. The impact that the APRM can have in a country is dependent on how much impact that country allows it to have. The case of Ghana demonstrates a situation

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[195] Cornish Mail&Guardian 07 July 2006.
[196] Quoted in Cilliers (2003) p 12.
[197] See for example The African Human Rights System (2005) .

where the government showed high commitment to involve different stakeholders, also those critical of the state apparatus, and where the result was a public dialogue which was both frank and constructive. The Ghanaian government made some choices on which themes to highlight and which stakeholders to invite into the process. In any country under review, these choices have to be made and will be important for the process and its outcomes. This arrangement for country-specificity is a characteristic of the APRM process and important to promote local ownership. It means that the APRM's impact on accountability will always in part depend on the choices of each state under review.

The role of the APRM Panel becomes all the more important in ensuring the independence of the reviews. As the experiences from the first reviews grow, the Panel might more easily give guidance on which domestic structures promote autonomous assessments. The Country Review Mission contributes through its possibility to identify and hear alternative voices. Again, the support and strengthening of civil society is crucial to avoid the process falling prey to little cooperative states. Furthermore, the APRM Forum has a role to play. The concept of "peer pressure" needs some substance both to indicate to states that the African community is serious about its involvement with internal affairs, and to commit the said African community to take steps, should they be asked for.

The analyses of the APRM's rights perspective reveal certain discrepancies. Human rights are committed to expressly, but it is not made clear in what way they are part of the mechanism's mandate. The universality and indivisibility of rights is affirmed, but socio-economic issues are rarely treated as rights. A range of human rights instruments are referred to as viable standards, but the language of rights is not concretised in benchmarks related to these standards.

From an accountability perspective, this means the potential of the APRM is only partly realized. The APRM can bolster the ability of African states to fulfil their human rights

obligations - the express recognition is there, as well as references to standards, and important concessions are made in the consistent focus on participation. However, it becomes difficult for stakeholders to fully exercise their participatory opportunities when there is a lack of benchmarks to hold states to account on. The devil is in the details, and the APRM details seem to have little connection with the broader human rights vision presented. The specifics of the mechanism will be further explored in the coming chapter.

4 Three contentious cases: is APRM empowering rights-holders to claim their rights and duty-bearers to fulfil their obligations?

After an overall approach, it is vital to dive deeper into the APRM focus on rights and the APRM effect on rights fulfilment. I present three development issues, three nitty-gritty daily life rights issues. The pertinent question is how talking the human rights talk has affected the accountability of African states vis-à-vis people affected by HIV/AIDS, vis-à-vis women, and vis-à-vis groups who are denied access to land.

I ask whether HIV/AIDS, women's rights, and land are addressed in the APRM, and if so if they are seen in a rights perspective. Concomitantly, I examine what benchmarks are set for progress on these matters, and whether those standards of achievement are human rights based. Lastly, in my focus on means of accountability, I enquire into what space is given in the APRM processes for participation by stakeholders affected by the three rights issues. I also examine how participation by these stakeholders is foreseen more generally in the APRM vision of development on the African continent.

4.1 The APRM take on HIV/AIDS

Stephen Lewis, UN Special Envoy on HIV/AIDS in Sub-Saharan Africa, vividly describes the disparaging effects of the pandemic on African societies and its detrimental impact on development prospects. He argues that it is not possible to speak of the future of sub-Saharan Africa without including HIV/AIDS as a central part of the analysis.[198] I will investigate here how and where HIV/AIDS is included in NEPAD/APRM analyses of African development, and whether a rights perspective is taken in discussions of the pandemic.

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[198] Lewis (2002), para.14.

4.1.1 Explicit recognition? …HIV/AIDS as APRM's blind spot

The *NEPAD Framework Document* names HIV/AIDS, together with other communicable diseases, as "one of the major impediments facing African development efforts."[199] It points out in frank terms that "[u]nless these epidemics are brought under control, real gains in human development will remain an impossible hope."[200] It further identifies communicable diseases as one of four areas where programmes should be fast-tracked.[201] In the *OSCI-Document* this is followed up with HIV/AIDS specifically mentioned as a key social development area.[202]

The urgency of the situation is thus expressed in some paragraphs. This urgency is, however, seemingly not carried through in the rest of NEPAD/APRM policies. In the end, the above quoted paragraphs are the exception. Apart from these, NEPAD/APRM documents are near void of references to HIV/AIDS. Stephen Lewis points this out, commenting that this leads to a "curious and disabling contradiction."[203] While the potential impact of the situation is acknowledged, there is little guidance on how to face the challenges this implies. Africanist Alex de Waal makes a similar observation, stating that HIV/AIDS is NEPAD's "biggest blind spot" and an area that should be unambiguously prioritised.[204]

When HIV/AIDS *is* mentioned, it is discussed mainly as a health question.[205] It is not referred to in terms of rights: neither is the right to health mentioned, nor are any other relevant rights taken into account. The only exception is in the *Questionnaire* where HIV/AIDS is mentioned in relation to corporate governance. Corporate social responsibility is explained as including

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[199] NEPAD (2001) para.125.
[200] NEPAD (2001) para.125.
[201] NEPAD (2001) para.186.
[202] NEPAD (2003c) para.5.1 (A)(c), p 23.
[203] Lewis (2002), para.14.
[204] de Waal (2002) pp 463, 475.
[205] NEPAD (2002) para.21; de Waal (2002) p 475.

respect for human rights, and corporations are expected to impact positively on communities afflicted by the epidemic.[206] The obligations of states, however, are flagrantly absent.

In the Ghana report HIV/AIDS is discussed somewhat more elaborately. The Country Review Team shortly presents Ghana's strategies to combat HIV/AIDS and notes that Ghana recognises "the development relevance of the disease and the need to combat it with a holistic approach."[207] In addition to the attention given to HIV/AIDS as a key social development area, the epidemic is mentioned relative to both political and corporate governance. In the political context the focus is on the rights of vulnerable groups. In its self-assessment, Ghana identifies people living with HIV/AIDS and children orphaned by HIV/AIDS as vulnerable groups whose rights the state has special obligations to protect.[208] This is the most explicit recognition of HIV/AIDS as a question of rights in any APRM document.

4.1.2 HIV/AIDS benchmarks? …the package of key social development areas

The lack of a rights perspective on HIV/AIDS is reflected also in the benchmarks used to measure progress in combating HIV/AIDS. The indicators set for objective 3 of socio-economic development – "Strengthen policies, delivery mechanisms and outputs in key social development areas (including education for all, combating of HIV/AIDS and other communicable diseases)" – are included in annex 2. The three standards proposed for measuring advances in key social development areas are not human rights instruments.[209] Also, the sheer amount of admirable goals envisioned points to the need to prioritise effectively to avoid the project staying at a level of development buzz words. Here, a number of key social development areas are lumped together in one out of 25 APRM objectives. This doesn't allow room for more targeted benchmarks that could easily be drawn from standards specifically relative to HIV/AIDS, such as the AU's Abuja Declaration from 2001[210] or the

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[206] NEPAD (2004) pp 59, 61.
[207] APRM (2005) para.13, p 103.
[208] APRM (2005) para.106, p 41.
[209] The *Millennium Declaration* (precursor to the Millennium Development Goals – MDGs) has been criticised for not including human rights in its approach to central development issues, see e.g. Alston (2005).
[210] Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Intectuous Diseases (2001).

AU's common position in preparation for the UN General Assembly Special Session on HIV/AIDS in 2006.[211]

More concrete targets are given in Ghana's National Programme of Action. Ghana presents six main focus areas relative to socio-economic development objective 3. One of the six prioritised issues is combating HIV/AIDS. The benchmark set is a 10% annual reduction in HIV prevalence rate.[212] The activities suggested to achieve this are the deployment of ARVs (Antiretrovirals), education, and voluntary counselling and testing. Ghana thus acknowledges treatment as a tool in the state's approach to the epidemic. The NPA includes a focus on both protection of those who are not infected (education), and of those who are infected (treatment, education, voluntary counselling and testing). The earlier acknowledgement by Ghana in its self-assessment that people living with HIV/AIDS have rights that government must respect and promote adds an additional rights perspective to these benchmarks.

Although the APRM core documents thus hardly bring up the question of HIV/AIDS and do not phrase it in rights language, it is clear that the country under review and the country review team have opportunities to do this to a larger degree, adding to the accountability impact of the process.

4.1.3 Means of participation? …listing the stakeholders

In the above quoted objective 3 of socio-economic development, emphasis is placed on "effective participation of all stakeholders in the design of policies, delivery mechanisms and monitoring of outcomes."[213] As with the rest of the APRM framework, an explicit commitment to participation is given as an integral part of both the review process in particular and development processes in general.

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[211] Africa's Common Position to the UN General Assembly Special Session on AIDS (June 2006) (2006).
[212] Ghana's prevalence rates are estimated at about 2,3% for adults (15-49 years) in 2005 (see UNAIDS (2006), p 11). Although far from the 20 – 25 % experienced in many countries in Southern Africa, the number is nonetheless significant and the risk of escalation is indisputable.
[213] NEPAD (2004), p 83.

Given the sheer dimensions of a question on "policies, delivery mechanisms and outcomes in key social areas" it is perhaps not surprising that participation by people infected and affected by HIV/AIDS is not mentioned specifically in the Ghana report, neither in the country self-assessment nor in the Country Review Mission's findings. However, as described earlier, the review process in Ghana consulted a range of stakeholders, and in Ghana's NPA several stakeholders are listed as important to include in reversing the spread of HIV/AIDS, notably civil society, NGOs, traditional authorities, and religious bodies. The effective involvement of all these groups would be crucial in the effort to stop the spread of HIV in Ghana. The budgeted investment to attain this NPA goal is however rather low,[214] indicating that this is not a priority area.

4.1.4 Capacity and political will: reluctance to make commitments by governments and avoidance of commitments by the international community

In the Ghana report a note is made that although Ghana is investing "increasing amounts in HIV prevention and control," there are still "concerns about the sustainability of commitment and resources."[215] It is clear that states' ability to fulfil their human rights obligations relative to HIV/AIDS demands an enormous resource base. In the APRM process, this is recognised. The NEPAD Framework Document sets as one of its main aims relative to HIV/AIDS to campaign for increased international financial support.[216] Enhancing the legitimacy of regimes and thus making them more eligible for support is an important motivation for participation in the APRM.

Part of the challenge that HIV/AIDS poses that falls on the international community and should be fulfilled under international obligations.[217] The framework for international obligations is, however, very weak with regard to these kinds of obligations, and promises of support and international cooperation made at numerous international summits are currently

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[214] See APRM (2005)pp 237 & 242. Of a grand total of almost 3 billion $ dedicated to the NPA, half a million is put aside for the issue of reversing the spread of HIV/AIDS.
[215] APRM (2005) para.14 p 103.
[216] NEPAD (2001) para.124 p 31.
[217] *HIV/AIDS and Human Rights: International Guidelines* (1998) paras.72-131.

not respected by most developed countries.[218] There is little opportunity for developing countries to hold developed countries to account on these promises. This affects both the ability of African states to keep their commitments, and their ability to make commitments in a climate of unstable international partnerships.

An additional structural constraint is set by the pharmaceutical companies and their regulations of prices on medications. One NEPAD aim is thus to procure affordable drugs, and "explore the use of alternative delivery systems for essential drugs and supplies." African countries have met little understanding in the World Trade Organisation in their attempts to bypass patent rights when these have conflicted with the fulfilment of rights.[219]

The fulfilment of the human rights of people infected and affected by HIV/AIDS is thus influenced not only by the capacity of the state in question, but also by international and corporate actors and their actions and interests. These capacity constraints do not, however, remove responsibilities from African states to address the issue and take action on it. Capacity is also a consequence of priorities. The apparent reluctance in the APRM base documents to fully grasp the pandemic as a development and human rights issue is perhaps symptomatic of the at best passive, at worst tragic reaction to HIV/AIDS by some African leaders.[220] The political leadership in one of the NEPAD initiating countries, South Africa, has shown very little will to address the HIV/AIDS epidemic, at least not from a rights perspective.[221] As one NGO activist pointedly comments: "Government doesn't want NGOs which advise, only NGOs which do things like feeding AIDS orphans."[222] Considering the message this sends of HIV as a charity issue which a government can deal with as it finds fit, it is perhaps not surprising that there is so little room for HIV/AIDS accountability in the APRM basic outlines.

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[218] Lewis (2002) paras.31-41.
[219] Prescription for world's poorest stays unwritten Mail&Guardian 20 February 2003.
[220] de Waal (2002) p 475.
[221] Treatment Action Campaign (2006); Denialist Twaddle. Mail&Guardian 8 August 2003.
[222] Penderis (2006), para.4.

Much more bold commitments on HIV/AIDS have been made in other contexts of African regional cooperation, exemplified in the Abuja Declaration, or in the African contribution to the recent UN General Assembly Special Session on AIDS.[223] However, the picture that appears in studying the APRM stance on HIV/AIDS is one where the epidemic is not linked to the human rights principles that form the reference framework for the APRM. This apparent reluctance to extend a human rights language to the epidemic means that the APRM can have little direct impact on rights accountability with regard to the rights of people infected or affected by HIV/AIDS.

The Ghana process does give some indications that the potential is there, in spite of the bleak diagnosis, for the APRM to play a role in ensuring that HIV/AIDS commitments are followed through, and don't just remain promises on paper. The challenge then lies with the review teams to raise the issue and address it as a human rights issue; with governments to engage with stakeholders as advisors and not only as charity posts; with international partners to support civil society and to support governments who make themselves accountable; and with the APR Forum to treat HIV/AIDS as a question of supranational concern and relevant for the state of human rights on the African continent.

4.2   Empowering women through the APRM?

On the NEPAD web pages, "accelerating the empowerment of women" is named as one of the partnership's main objectives.[224] The member states of the African Union (and thus also of NEPAD and the APRM) in 2003 adopted a protocol to the ACHPR dealing with exactly this, the Protocol on the Rights of Women in Africa.[225] It provides a solid basis for women to claim and exercise their human right, and to hold states accountable to their obligations. In the following I will explore how the APRM includes gender equality in its policies, and

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[223] Africa's Common Position to the UN General Assembly Special Session on AIDS (June 2006) (2006)
[224] NEPAD web pages at http://www.nepad.org/2005/files/inbrief.php
[225] As mentioned earlier, 10 APRM countries have ratified the Protocol, with another 11 having signed but not yet ratified.

whether it takes a rights perspective on gender, allowing for empowerment and accountability.

4.2.1   Explicit recognition? …concretising women's rights in Ghana

Gender is understood as a cross cutting issue in the APRM.[226] In the core documents, it is linked to conflict, education, agriculture, democratic representation, microeconomic policies, and social corporate responsibility, among other issues.[227] Women's central role in development is acknowledged, and gender equality is understood as a key social development area and vital to tackle poverty.[228]

Questions of gender and development are partly discussed in rights terms. In the field of democracy and political governance, one of the central objectives is "promotion and protection of the rights of women."[229] In the introduction to this objective, there is also a note that "issues pertaining to women's rights which are not covered under this objective are treated exhaustively in the economic governance and socio-economic development sections,"[230] allowing that also in these areas, development is a question of rights. This is one of few places in the APRM core documents where socio-economic issues are referred to as rights issues.

In the actual discussion of socio-economic development, the most specific links between socio-economic issues and women's rights are an objective on gender equality in education, and an encouragement to governments to "provide evidence of women's empowerment in the domain of access to and control of productive resources and services."[231] These exceptions mainly confirm the general absence of references to women's rights, echoing the impression

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[226] NEPAD (2004) p 11.
[227] See for example NEPAD (2002) art.10; NEPAD (2001) paras.49, 68, 154, 155, 164; NEPAD (2004) pp 38.
[228] NEPAD (2002) arts. 11, 20 ; NEPAD (2004) p 77.
[229] NEPAD (2003c) para.2.9 p 13.
[230] NEPAD (2004) p 21.
[231] NEPAD (2004) p 21.

that in the APRM human rights are treated as a separate issue which is not directly relevant to neither economic issues nor social factors.

The Ghana review process allows for discussions of more particular circumstances where women's rights are violated. One of the members of the National APRM Governing Council is a women's rights advocate,[232] giving an indication that gender issues are seen as important in the domestic review process. The marginalisation of women is discussed repeatedly in the Ghana report, with the pronouncement made that it "remains a very real problem in Ghana, despite constitutional and legislative provisions to protect and preserve the rights of women."[233] Of importance, a number of potentially controversial issues of women's rights are raised, including access to land, the institution of chieftaincy, harmful cultural practices, violence against women, affirmative action, and tokenistic gender mainstreaming.[234] These are discussed with respect for the complexities of the matters and with a note of how deeply it affects the lives of many people.

The review team express that "equity with regard to gender and region is the most emotional issue that the CRM [Country Review Mission] observed in the socio-economic thematic area."[235] They are still consistently clear in saying that all practices of gender discrimination must be "tackled with greater resolution and eliminated as soon as possible."[236] The APRM documents in their application in the Ghana process then seem to concretise the aim of women's empowerment, bringing the issue closer to local circumstances and thus allowing local actors a bigger role.

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[232] Ms. Gloria Ofori-Boadu is the former Executive Director of the International Federation of Women Lawyers in Ghana and currently President of the Women's Assistance and Business Association – APRM (2005) p 23.
[233] APRM (2005) para.6 p 122.
[234] E.g. APRM (2005) para.26 p 19, para.37 p 23, para.70 p 31, p 122.
[235] APRM (2005) para.88 p 120
[236] APRM (2005) para.7 p 122

4.2.2 Gender equality benchmarks? …on the strengths of country-specificity

In both the Ghana report and the APRM core documents, CEDAW is one of the most frequently mentioned standard-setting instruments. In the most recent APRM documents, the Protocol on Women's Rights in Africa is also included. The importance of ratification and domestication of these is stressed throughout.[237] The repeated references to these two legally binding instruments thus gives the APRM a rights dimension that is noteworthy. In addition, the APRM documents often refer to the Beijing Plan of Action.[238] Together, these instruments provide clear standards for women's rights and ample benchmarks for the APRM to employ.

Besides these references to other standard-setting instruments, the APRM policy documents themselves give little detailed benchmarks for women's rights. The most often mentioned gender-related benchmarking is the occasional request for gender disaggregated statistics for social indicators. The most specific women's rights target is socio-economic development objective 5 on gender equality, see annex 3. It reads: "Progress towards gender equality in all critical areas of concern, including equal access to education for girls at all levels."[239] The indicators set for the objective are quite open, and there are no concrete targets except for the ever present term of "equality". Understood in a human rights framework, this term sets standards for gender-sensitive development policies, though these are not elaborated on in the APRM policies.

Apart from the common target of equality, the APRM leaves it up to the participating state to define its benchmarks. The country is asked to list what steps it takes, what targets it sets for itself, and what prior reports it has made. Of more measurable targets, the APRM asks the country under review to detail resource allocations, the number of women in decision-making positions, gender ratios in education, and critical areas of gender disparity. With the APRM

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[237] See for example APRM (2005) para.13 p 16.
[238] Beijing Declaration (1995).
[239] NEPAD (2003c) pp 27-28.
The indicators used in political governance objective 8 "promotion and protection of the rights of women" are quite similar to the ones in socio-economic development objective 5, and are therefore not discussed separately in this section.

being a cyclical process, these are indicators that can be revisited in the periodical review, asking states to explain any lack of progress and to develop a plan for improving their scores. The main clue is that these targets are defined by the state itself. This can provide a positive climate for accountability. Keeping in mind the huge differences in development across the African continent, also in the situation of women, country-specific targets are a useful tool. Being domestically decided, they make it easier for domestic stakeholders to participate, and since they are explicitly supported by the government, they are easier to hold government accountable for.

On the other hand, if states do not give concrete targets for their own progress on gender equality, but circumvent these with diffuse promises, the APRM review team faces a considerable challenge in producing benchmarks that can be used to hold the state to account on its women's rights promises. In countries where civil society is strong, this should be possible. However, in many countries civil society may not have the capacity to participate, or to produce shadow reports, and the review team will be highly dependent on the information that the state itself gives,[240] in everything from statistical data to assessments of the effectiveness of gender mainstreaming. If the review team and the APRM Panel are not prepared to spot and point out tokenistic mention of women's rights, the APRM can have equally little impact on accountability.

In the case of Ghana, the review team received good help from the way the government structured the review process, and from the involvement of various stakeholders. It is clear in the Ghana report that the review team is willing to push the government on gender issues if it feels these have not been satisfactorily addressed. The government is urged to adopt a binding time-frame for ratification of the African Protocol on Women's Rights, with a comment that this is "long overdue, and it is unclear what is causing the delay."[241] The government follows up in the National Programme of Action where successful ratification and implementation of

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[240] Cilliers (2002) p 6.
[241] APRM (2005) para.95 p 37; see also para.13 p 16.

the Protocol is one of the benchmarks identified.[242] The NPA further sets aims for Ghana to enact specifically named domestic legislation on women's rights, to enhance the capacity of women's rights groups, and to increase the number of women represented in public life, and politics in particular.[243] In the area of economic governance, Ghana adds an extra objective on gender that elaborates on targets for gender mainstreaming in the economic sphere. [244]

Furthermore, in the NPA section on socio-economic development targets, "mainstreaming gender in the policy making process"[245] is named as one of six main public policy challenges.[246] The acknowledged poor implementation of gender policies and programmes is responded to with the targets of ensuring gender desks in all ministries, building capacity of women in public office, and putting in place an "enabling socio-cultural environment for women empowerment."[247] Indicators include gender parity in schools, an increase in proportion of women appointees to 20%, and an increase in the proportion of women MPs.[248] These are benchmarks that government can later be measured against, and can as such make a contribution to human rights accountability in Ghana.

The principles of the APRM are thus efficiently concretised in the Ghana process. It is, however, interesting to note that the targets on gender mainstreaming are limited to the one or two objectives of direct relevance to it. Gender is not in effect mainstreamed throughout the APRM standard-setting documents, or in Ghana's NPA, which enforces a suspicion of tokenistic mention of women's rights.

4.2.3 Means of participation? …speaking of women

The APRM documents speak of the participation of both women and women's rights groups. They underscore the role of women in development and the importance of involving women

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[242] APRM (2005) p 159.
[243] APRM (2005) pp 154, 159, 160.
[244] APRM (2005) p 196.
[245] APRM (2005) p 228.
[246] APRM (2005) p 227.
[247] APRM (2005) p 241.
[248] APRM (2005) p 241

in development processes. In discussing women's rights, one of two main questions in the *Questionnaire* is "What measures have been put in place to enhance the participation of women in the society?"[249] In the APRM's own institutions there is a focus on assuring gender balance. In the listings of stakeholders that should be involved in the APRM processes, women's groups are always mentioned.

In the Ghana review process, several women's rights groups were active and took part in various review forums, although they also comment on a lack of transparency and access to information on the process.[250] The Country Review Mission encourages Ghana to continue improving the participation of women in many different development arenas.[251] The team applauds Ghana's express will to take a gender perspective on development and improve the plight of women, but also enquire after more visible effects of these commitments.[252]

The mention of women's participation can sometimes take an ironic turn when "women" are portrayed as a separate category of stakeholders, in addition to other groups. For instance, in the foreword to the *Questionnaire* many groups are thanked for their contribution, among them "key regional resource institutions, individual experts and civil society including women, trade unions, academicians and the media."[253] The probable presence of women in all of the groups mentioned is apparently not thought of, almost as if women as such are a separate and secluded group of society.

This might be interpreted as a symptom of political correctness where women should always be mentioned. However, it also reflects the use of language found in the general human rights discourse where women are targeted as a separate group with rights endowed on them as a result of them being women. It is sometimes a difficult balance to find between universal rights and special treatment for a group. In this light, it is interesting that the documents here

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[249] NEPAD (2004) p 38.
[250] WiLDAF (Women, Las and Development in Africa) (2005).
[251] APRM (2005) para.42 p 24, para.96 p 38, pp 117-118.
[252] APRM (2005) pp 117-118. Considering the slightly paternalistic sound of Ghana's "Ministry of Women and Children Affairs", the question is timely.
[253] NEPAD (2004) p 4.

under scrutiny sometimes choose to use the word "women" rather than for example "women's rights groups". Reminiscent of the way gender mainstreaming is acknowledged but not practiced with regard to socio-economic issues, women are acknowledged as stakeholders, but as a separate group, and not as integral parts of all the other groups of stakeholders listed.

4.2.4   Capacity and political will: paralysis or tacit acceptance?

The UN Task Force on Women, Girls and HIV/AIDS in Southern Africa describe a situation of "gender paralysis" in Southern Africa, indicating that "the problem [of women's vulnerability] is either so large that it forces this gender paralysis, or it is so accepted that it does not warrant significant attention from governments, donors and communities."[254] Although describing one particular aspect of women's rights and state accountability, the comment is interesting and captures a larger picture where both capacity and political will are central to women's rights.

Capacity in the context of women's rights denotes an ability to tackle multi-layered and entrenched obstacles to fulfilments of women's rights. This can partly be a question of having the resources to invest in for example girls' education, or in micro-credit schemes aimed at women small-crop farmers. This depends on what resources the state has or makes available.

This ability, in addition to being a result of capacity, is also a result of political will. Women's rights are promoted and protected through the signals given by a state for what standards the society should uphold. Typical indicators for this might include legal reforms, political statements, or affirmative action schemes. In this thesis I assume, together with Darrow and Tomas, that nothing is natural or inevitable about patterns of inequality.[255] This also applies to any African woman's situation of inequality. The challenge for the APRM in this regard is to employ the "African dialectic"[256] – the affirmation of international human

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[254] Quoted in Heywood (2004) p 8.
[255] Darrow (2005) p 475.
[256] Pityana (2004) pp 40-51.

rights standards together with the assertion of African values and civilisation – to eradicate patterns of inequality.

While it is difficult to distinguish between lip service and substance with regard to both women's rights and human rights more in general, the general impression both from the APRM base documents and the Ghana process is that women's rights are on the agenda of African leaders, and that the promises they have made at least obligate them to keep reiterating commitments to women's rights and gender mainstreaming. It is perhaps still too early to say what practical impact this might have on the daily lives of women on the continent. The express commitments made, and the consistent focus on participation are, however, and important first step in letting the APRM be an accountability channel for promoting and upholding women's rights

4.3   Land & the APRM

Land issues in African societies often reflect entrenched societal inequalities and provoke pertinent questions on rights protection and state accountability. As discussed in chapter two, the international human rights framework does not give any clear direction for reconciling property rights with demands for access to land.[257] I have indicated that a rights based approach to land would include an analysis of the underlying structures that privilege some and dispossess others, a recognition of every individual's right to be treated with respect, and a nuanced discussion of the role of customary norms. I will in the following examine whether and how land issues are discussed in the APRM, and how state accountability vis-à-vis land rights might be strengthened in the process.

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[257] Tomaševski (2001) p 536.

4.3.1 Recognition of land rights? …on basic needs and Ghana's hands-on approach

The core NEPAD and APRM documents make very few references to land. Actually, only two of the documents mention it. In the *Framework Document* the issue is raised once, in the form of a common aim to "improve land tenure security under traditional and modern forms of tenure, and promote the necessary land reforms"[258] In the *Questionnaire*, access to and ownership of land is mentioned relative to women's rights.[259] Also, states are asked to elaborate on the level of affordable access of citizens to a range of basic goods, including land.[260] Property rights on the other hand are briefly mentioned under the section on corporate governance in the *OSCI-document*, with an emphasis on protecting property rights and creditors' rights to encourage economic growth.[261] Any complexities in administering both property rights and the access of poor to land are not discussed.

In the Ghana review process the issue of land is discussed to a much larger extent. It is identified as an "area of deficiency in the Ghanaian system that [is] of a recurring or cross-cutting nature," and Ghana is encouraged to take a "holistic, immediate and critical approach" to it.[262] In the discussions of land as a cross-cutting issue, the emphasis is on insecurity of tenure, economic growth, and protection of land rights, especially of "the poor, the vulnerable and women."[263] The Panel recommends that the problem of land be addressed, although (or perhaps because) it is a sensitive issue. It further pushes for a review of Ghana's land policies and a plan for implementation of these.[264]

The Ghana report links the land issue to the chieftaincy institution in Ghana and gives respectful but critical comments on the need to revise these traditional structures.[265] The report balances a focus on the economic and social aspects of the land issue. It advocates the positive impacts of clarifying and improving the land administration system, and urges Ghana

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[258] NEPAD (2001) para.155.
[259] NEPAD (2004) pp 78.
[260] NEPAD (2004) p 84.
[261] NEPAD (2003c) para.4.4.
[262] APRM (2005) para.3 p 121.
[263] APRM (2005) para.10 p 123.
[264] APRM (2005) para.11 p 123.
[265] APRM (2005) paras.12-13 pp 123-124.

to facilitate for further investment in land. At the same time the Country Review Mission underlines the centrality of access to land to most Ghanaians' livelihoods. There is a consistent focus on marginalised groups, especially women. The only place where land is expressly spoken of as a right, is with relation to these groups.[266] The Ghana report thus presents nuanced discussions of the land issue, and demonstrates the leverage the APRM leaves for country-specific development problematiques to be raised, and the potential for reading these into a rights framework.

4.3.2 Benchmarks for progress? …how do you measure transformations of traditional institutions?

The *OSCI-document* does not include any standards or indicators relative to land. The *Questionnaire* briefly touches on it in the elaboration of benchmarks for socio-economic development objective 4 "Ensuring affocrable access to water, sanitation, energy, finance (including micro-finance), markets, ICT, shelter and land to all citizens, especially the rural poor."[267] Access to land is presented as part of a "package" of basic needs. The objective sets an important standard by consistently referring to "affordable access," implying something more than the mere availability of a goods in an area. Furthermore, a quite detailed description of results is asked for, allowing for progress to be tracked in coming reviews.

To track progress on these indicators, Ghana establishes a set of goals and adhering activities. One of the issues addressed relative to the above quoted objective 4 is "limited access to land and poor land management."[268] The indicators suggested are the "proportion of women who own land increased significantly" and "population with access to land increased."[269] The amount of resources budgeted for this component of the NPA are substantial, indicating this to be a priority area for the Ghanaian government.[270]

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[266] APRM (2005) para.10 p 123.
[267] NEPAD (2004) p 84.
[268] APRM (2005) p 240.
[269] APRM (2005) p 240.
[270] 170 million $ out of a total budget of almost 3 billion $.

The NPA addresses the issue of land in several other contexts, where more concrete targets are provided. These include developing a Land Use Master Plan identifying land areas of dispute, reforming land laws, and simplifying and improving land administration, aimed simultaneously at a beneficial investment environment and easier access to land for vulnerable groups.[271] For the latter aim, there is a proposition to create Land Banks to facilitate accessibility. These are easily monitored benchmarks that open for enhanced state accountability and transparency.

On the whole, the NPA seems to follow the recommendations given by the Country Review Mission, except on the issue of the chieftaincy institutions. While the Ghana report discusses politically sensitive and problematic sides of the role of chieftaincies, the NPA gives little indication of how the state wishes to approach this topic. There is no aim related to how the traditional system of land ownership might be transformed to open for better access to community lands.

This shows both the potential impact of the Country Review Mission, and its limitations. The review team can exert some pressure through its recommendations, but the transformation of these into monitorable benchmarks is dependent on cooperation from the state in question. The impact of the APRM hinges on the interest and goodwill of states to make it work. This is both its weakness and its strength: it restrains the effects it might have on human rights sceptic states, but also ensures a real commitment once the benchmarks are set. In the delicate and power-riddled case of land in Ghana, it is significant that the Country Review Mission chooses to raise the issue as often as it does, obviously not afraid to discuss a touchy topic. The Review Mission at the same time points out that any plan of action in this field must be developed by the Ghanaians themselves.[272]

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[271] APRM (2005) pp 150, 215, 235.
[272] APRM (2005) para.13 p 124.

4.3.3 Means of participation? …empowering the vulnerable

In the APRM core documents, participation is not elaborated any further relative to the issue of land. Through the Ghana report we are given some indications of who might be involved in designing and implementing policies on land. Both in the report and in Ghana's NPA, civil society, NGOs, traditional authorities and private investors re-occur as central agents in designing and implementing policies on land. How the different interests of these stakeholders might be balanced is not elaborated on.

In its NPA, Ghana expresses a will to involve civil society organisations and traditional authorities in improving access to land. The activities proposed to obtain the aims, however, give little guidance as to how these stakeholders should be included to help identify and reach the goals. The activities listed as suggestions are simply "improve access to land, increase irrigation, improve land tenure."[273] It is very unclear what the means of participation are in such a context, or how vulnerable groups should find channels of claiming their rights. Comments by stakeholders from meetings with the review team indicate that while stakeholder participation is sought after in Ghanaian projects on access to basic needs, there is still some way left to go to make it effectual.[274] The overall impression given through the report is nonetheless that the review process of the APRM has enhanced the focus on local ownership of development projects, and renewed a domestic discussion on land policies.

4.3.4 Capacity and political will: raising sensitive issues

In addition to imperfect local ownership of development projects, stakeholders point out capacity constraints as a real threat to the fulfilment of basic needs. The government in the introduction to its NPA underscores this, stating that it faces a major challenge in "inadequate human and institutional capacities as well as the dearth of resources needed to translate desires into deeds."[275] It is clear that the government of Ghana cannot shoulder the NPA on its own. The degree to which the APRM process can contribute to renewed state

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[273] APRM (2005) p 240.
[274] APRM (2005) para.67 p 115.
[275] APRM (2005) p 147.

accountability relative to for example land depends in part on the support Ghana is given from outside to follow up the review.

Stakeholder comments cited in the Ghana report support this view, but assert that a lack of political will is the central explanatory factor for a lack of access to basic goods. Stakeholders express that while the government understands the nature of the problems, implementation is deficient. This is explained partly with capacity constraints and "lack of appropriate consultation with stakeholders," but first and foremost with a lack of political will.[276]

It is probably too early to say whether the APRM process has improved the political will to tackle this issue – the second round of reviews might indicate that better. It is significant that stakeholders find an arena to express these concerns, though, and that the Country Review Mission and the APRM Panel give them space and quote them so bluntly. Together with the consistent focus by the Country Review Mission on land as an imperative issue for Ghana's development, these are indications that the APRM process can strengthen state accountability also in a specific question such as the issue of land.

The exploration of the APRM's approach to three of Africa's current development headaches exposes a pattern where human rights have little impact and where sensitive issues are avoided rather than dealt with.

To deal with the latter first: the most striking aspect of the APRM's dealings with HIV/AIDS and land is how these issues are hardly mentioned. Admittedly, both of these matters demand enormous resources and they present African states with challenges that the states can not shoulder on their own. However, in a mechanism meant to identify and help increase states' capacity to deal with development challenges, this is hardly a legitimate reason to skip discussions. A more plausible explanation is that some African states still wish these issues to

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[276] APRM (2005) paras.67-68 p 115.

be under domestic sovereignty and not a part of the intergovernmental agenda. This is underscored by the lack of rights language relative to HIV/AIDS and land. Rights are an international lingo giving states obligations that they can be held accountable for also on the international stage. The tendency in the APRM documents is that obligations relative to specific issues are not acknowledged.

The APRM dealing with women's rights presents some deviations from the general pattern. Gender equality is given a central spot in the APRM, and it is also often identified as a question of rights. The use of women's rights language is also here largely restricted to general principles, though, and seldom tied in with other development factors. This is most clearly the case in the discussions on gender mainstreaming, which is encouraged, but which is not followed through with a consistent gender equality perspective in the APRM's proposed development benchmarks. Similarly, women's participation is emphasised throughout, but always as a separate, distinct interest group, rather than as an integral portion of all parts of society.

In dealing with the issues of HIV/AIDS, women's rights and land, it becomes clear how complex the principle of participation is. These are three issues that affect a huge amount of Africans. They are issues that affect discriminatorily – large, identifiable groups are extremely vulnerable to the rights violations implied in these issues. The APRM makes a strong case for participation. It sets an important example through a national review process that emphasises broad and open participation. However, perhaps simply through lack of space to specify details, there are few guidelines on participation by people vulnerable to the ravages of HIV/AIDS, or denied gender equality, or living on land without security of tenure. It therefore also carries the risk of leaving these to oblivion.

Where the APRM lingers in employing the human rights framework it has right under its nose, Ghana and the APRM's Country Review Mission to Ghana take a stronger grasp, especially in the three cases discussed here. HIV/AIDS, women's rights and land are tied closer to human rights principles, and a range of concrete benchmarks are given with relation

to all three areas. The review team working with Ghana have been adamant to encourage tangible results, and that the Ghanaian government have been willing to engage in a process which ties them to certain commitments. In addition, the review process itself has involved many stakeholders, meaning the government has a lot of witnesses to the promises they have made, and dialogue partners in reaching its aims. For the strengthening of Ghana's ability to fulfil human rights, these are important steps.

The most important explanatory factor to the positive impression made by Ghana is probably political will. The government has paved the way for a review where they were also willing to prick their own conscience.[277] In addition, the APRM Panel has established a culture of constructive scrutiny and their review team did not waver in asking uncomfortable questions or seeking out a variety of stakeholders. In the cases where the core documents in themselves are not clear, the APRM institutions necessarily have more influence on the situation. In the case of Ghana, the influence was used to encourage a tangible, accountable process.

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[277] APRM (2005) para.17 p 5.

5   Conclusions

5.1   Implications for human rights accountability on the African continent

Human rights language is used in international development policies with different
motivations and outcomes. The overall picture in the APRM is one of frequent reference to
human rights, but with little consequence for the way development is approached. Human
rights are recognised and given support, but they are treated as a separate issue, and not as
integral to development. Bordering on tokenistic references to rights, this leaves little
substance for processes that strengthen accountability.

It can still be argued that precisely the express commitment to human rights, at whatever level
of superficiality, opens a space for enhanced claims and fulfilment of rights.[278] The potential
to use the human rights references more effectively is always there, and the human rights
standards listed can be employed, as demonstrated by the Ghana review. Where Stephen
Lewis speaks of a "curious and disabling contradiction"[279] in the express recognition but lack
of action on HIV/AIDS, I would speak of an "enabling contradiction" in APRM's approach to
human rights. The enabling contradiction is composed of several elements. First, there is the
express recognition of rights as a substantial part of the APRM's mandate. This lays the basis
for claims that can later be put to government. Although the talk of rights is not concrete,
support is lent to a detailed international framework.

Add to this one of the APRM's defining characteristics, the principle of broad participation.
Although the APRM core documents give little guidance on what channels of participation

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[278] Cf. The Power of Human Rights: International Norms and Domestic Change (1999).
[279] Lewis (2002) para.14.

are conducive to this principle, the criterion of supplying a plan for meaningful participation obliges states to give other actors a place in the review process. Opening such a space also means states risk having their development agendas commented on, criticised, and influenced by diverse stakeholders.

In the Ghana report, the voices of numerous stakeholders are heard – and many more were listened to during the process. It is clear that they have influenced the national review process and its outcomes, and it is probable that they have had their say on the employment of rights language in the review process. In Ghana, the combination of express commitments to rights and access to the review process resulted in a range of factors that point towards a strengthening of human rights accountability.

It does not automatically follow from the example of Ghana that all reviews will employ the rights framework more actively than the APRM core documents do – the small glimpse given from Rwanda confirms that. Comparisons with other review processes would be fruitful to examine if the phenomenon of an enabling contradiction reoccurs. It is probably a phenomenon influenced by factors of capacity and political will. Ghana has a reasonable amount of both, making it less vulnerable to capacity constraints or political dragging of feet. It has served as a litmus test of the APRM process, and it will serve as a point of reference for future reviews. However, because it is not an extreme case, it has perhaps shown us more of the potential than the limits of the APRM. Therefore, further analysis of the reviews and their impact on accountability is asked for.

5.2   Implications for the reconstitution of sovereignty

It can be argued that the APRM makes very little difference to the notion of sovereignty in African intergovernmental relations. In spite of an "enabling contradiction" in APRM references to human rights, the process indisputably demonstrates how certain issues are not included in an African intergovernmental review. Prominent among these are HIV/AIDS and land. The Ghana report nonetheless dealt at length with land, choosing to make it a question

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of public scrutiny for Ghana. It is clear that these rather sensitive issues were raised largely as a consequence of express political will to face uncomfortable questions. When so much is dependent on political will, the APRM can have little clout in reconstituting sovereignty. Then it will just support those processes where the government is interested in conceding sovereignty, relative to those topics on which government wishes to adhere to international opinions.

Two factors speak against such an interpretation, and convey a certain influence of the APRM on the notion of sovereignty. Firstly, the mere fact that the APRM has been launched as a peer review mechanism indicates that development issues are not simply domestic affairs. The basic *raison-d'être* of the mechanism is that there are questions on development that can and should be raised in international fora. With attention given to the process across the African continent, each participating country is in principle open for scrutiny.

Secondly, the APRM Panel and its review teams have so far acclaimed high legitimacy and have established a precedence for country reviews characterised by constructive questions and guidance. The goals and means of the country's development policies might in the end hinge on the capacity and political will of the government in charge, but that does not stop the APRM institutions from putting issues on the agenda, inviting stakeholders to dialogue, or suggesting certain approaches to a concern. The mandate of the APRM bodies, and what they make of it, will be important in the evolving transformations of the African Union. Already, there is a sense of respect combined with frankness which challenges old notions of camaraderie and sovereign rule.

5.3 Implications for the rights based analytical framework

Throughout my explorations, I have employed a rights based approach to development as my analytical tools. On a last note, the analytical framework should be given a closer look. It is a framework not necessarily adapted to the phenomenon that it is used to analyse. I have explored to what degree the APRM holds African states to account on their human rights

obligations relative to development issues. In these explorations, some inadequacies of my investigative structure stand out.

A HRBAD assumes an independent state with considerable leverage. The human rights framework is built round a world view where states are the primary agents, both as regards violations and protection of rights. Government is seen as the provider of development. However, many African states are typically weak, some are even characterised as failed states. As discussed earlier, the state's ability to fulfil its human rights obligations can be hampered by capacity constraints, or by external economic fluctuations, or by the rules of the game of international trade. A state can also be impeded in fulfilling its duties in the face of political unrest in neighbouring countries. A human rights system that assumes that all states are equal entities does not adequately capture the structures African states are contained by.

Moreover, several African governments do not have control over the whole territory of their state. Human rights can be violated by insurgent groups or militia. While the human rights standards insist that this is the responsibility of the state to prevent, the facts on the ground are not that simple. Some non-state groups have de facto jurisprudence over an area and a population, but there are few possibilities for holding them accountable. Some of the same picture is revealed in assessing the involvements of large international corporations in developing countries. As NEPAD shows, Africa is eager to attract foreign investment. However, there exist only weak structures for holding accountable the investors that profit from a country's natural resources or labour forces. States can find that their hands are tied faced with big business powers and the rights violations their dealings might induce. While corporate social responsibility is a hot research area in the field of human rights, there are as yet few efficient ways of making corporations abide by human rights standards.

The human rights framework is also poorly developed on the question of international obligations. While these are confirmed as key to human rights protection,[280] they are at best interpreted to mean that the international community has a responsibility to act when grave

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[280] Universal Declaration of Human Rights (1948) art.28.

violations are committed. The APRM will gradually be able to show an exclusive collection of states who have the commitment to act on their development problems, but who are dependent on international support to realise their commitments. However, the international human rights framework does not elaborate on obligations for such support. The APRM as a community has made some frail pledges to assist countries that successfully follow the process. The APRM further solicits the cooperation of the international development community in building 'enhanced partnerships' where mutual accountability is the order of the day. This would entail a system where also donors could be held responsible for the processes and outcomes of their support.[281] It would be a possible way of making international obligations more tangible. However, HRBADs as of yet do not adequately capture this dimension of human rights accountability.

The human rights situation on the African continent is thus influenced by a range of different factors and actors, but the significance of some of these is not recognised in the HRBAD framework where the state plays the key role. The "universal" principles of human rights are still largely understood as domestic responsibilities. In questions of accountability relative to development issues, it is important to note the role of non-state entities and to develop structures that can hold these to account on their actions. The human rights based approach to development will need to take in these aspects to a stronger degree if it is to give a faithful picture of development concerns on the African continent.

5.4   Hypothesis and Nkrumah revisited

When starting out on this exploratory case study, I expected to find that the African Peer Review Mechanism sets a new tone in African intergovernmental cooperation, but so far does not live up to its potential of holding states accountable to their human rights obligations with regard to development. This would be shown in its dealings with the issues of HIV/AIDS, women's rights, and land. The hypothesis is in large part confirmed, though with some

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[281] For further explorations of this, see e.g. Sengupta (2001) paras. 32-36, 44-46.

adjustments. The Ghana process has validated the potential for human rights focus in the core documents. It has also confirmed the importance of concrete benchmarks and adequate channels of participation for strengthening accountability. The APRM's dealings with HIV/AIDS and land revealed a lack of rights perspectives on socio-economic issues, while the focus on women's rights shed light on nuances of the use of rights language in development matters. Factors related to the categories of capacity and political will have also proved crucial in giving a fuller picture of human rights accountability on the African continent, with political will standing out as a key determinant of APRM success.

Kwame Nkrumah held a vision that Africa must unite of else disintegrate. The accountability approach perhaps rather asserts that Africa must dare to be exclusive. The exclusive element of the APRM is a buffer against rubber-stamp-use of the mechanism by repressive states. However, signing up to the APRM can not in itself be adequate to join a club of human rights respecting states. Rather, a displayed willingness to make oneself accountable can serve as an appropriate measure. The APRM focus on rights allows for this. It makes it possible to identify specific duties and makes it more difficult to avoid obligations in the use of vague buzz-words. State performance on these rights can be assessed, and with it state willingness to abide by international standards. That can be a crucial step in strengthening African states' ability to fulfil human rights, in Africanising accountability.

6   Annexes

Annex 1: Objectives, standards, criteria, indicators[282]

Democracy and good governance, objective 3: "Promotion and protection of economic, social, cultural, civil and political rights as enshrined in all African and international human rights instruments."

Standards:
a. African Charter on Human and People's Rights
b. Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights
c. UN Universal Declaration of Human Rights

Indicative **criteria**:
a. Has the country acceded to and ratified all relevant African and international instruments?
b. Does the country have the relevant institutions such as the human rights commission and public protector, with appropriate capacity and resources?
c. What has the government done to implement the various international instruments guaranteeing respect for economic, social, cultural, civil and political rights to which it has acceded and ratified?
d. Does the country have the necessary technical, financial and other capacities to fulfil its domestic and international obligations in these regards?
e. To what extent are these rights realised in the country?

Indicators:
a. Effectiveness of institutions and processes for implementation, oversight and public awareness of human rights principles and the country's obligation therein.
b. Regularity and quality of country reporting to treaty bodies
c. Adequacy of budgetary provisions and effectiveness of inter-departmental committees to give effect to the country's international obligations
d. The overall state of these rights in the country

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[282] NEPAD (2003c) pp 5, 9-10.

Annex 2: HIV/AIDS benchmarks[283]

Socio-economic development, objective 3: "Strengthen policies, delivery mechanisms and outputs in key social development areas (including education for all, combating of HIV/AIDS and other communicable diseases)"

Standards:
- the Millennium Declaration,
- the NEPAD Framework Document
- the WSSD Johannesburg Plan of Implementation

Question 1: What measures has government taken to strengthen policy, delivery mechanisms and monitor outcomes in order to make progress towards the social development targets?

Indicators
(i) Provide evidence of legal, policy and institutional steps to strengthen policy and delivery mechanisms;

(ii) Provide details of the overall volume and criteria for resource allocation for this purpose;

(iii) Present evidence of effective participation of all stakeholders in the design of policies, delivery mechanisms and monitoring of outcomes;

(iv) Outline the challenges faced and efforts to address constraints.
Please give detailed explanation with supporting material where applicable

Question 2: What are the outcomes of the policies and mechanisms on social indicators?

Indicators
Describe the trends in social indicators over the past 5-10 years with regard to:

(i) Health, especially with respect to infant mortality and malaria;

(ii) Prevalence rates for HIV/AIDS and other communicable diseases disaggregated by gender, and between rural and urban areas;

(iii) Education, particularly with respect to the rate of enrolment of girls in schools including tertiary institutions and other institutions of higher learning.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

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[283] NEPAD (2003c), para.5.3, p 25 ; NEPAD (2004), pp 82-83.

Annex 3: Gender equality benchmarks[284]

Socio-economic development objective 5: "Progress towards gender equality in all critical areas of concern, including equal access to education for girls at all levels"

Standards:
- NEPAD Framework Document
- Constitutive Act of the African Union
- Millennium Declaration
- CEDAW
- Beijing Plan of Action
- Right to development in the ACHPR (1981) including the Protocol on the Right of Women in Africa

Question 1: What measures has the country taken to mainstream gender equality and with what results?

Indicators:
(i) Provide evidence of legal, policy and institutional steps to promote and encourage gender equality;

(ii) Provide evidence of specific targets towards gender equality in all critical areas of concern;

(iii) Provide details of resource mobilisation and allocation, in particular show the percentage of national budget allocated to promote gender equality;

(iv) Provide evidence of progress made in terms of trends of:
- Participation and contribution of women in key economic and social activities
- Gender ratios at all levels of education and training,
- Women participation in decision-making positions,
- Any other gender disparity indicators (for example disparities in wages and earnings)

(v) Provide details of prior reports or evaluations on the status of women in the country.

Please give detailed explanation with supporting material where applicable

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[284] NEPAD (2003c) pp 27-28; NEPAD (2004) pp 84-85.

Annex 4: Benchmarks for access to land[285]

Socio-economic development, objective 4: "Ensuring affordable access to water, sanitation, energy, finance (including micro-finance), markets, ICT, shelter and land to all citizens, especially the rural poor"

Standards:
- The Right to Development in the ACHPR
- UN Declaration on the Right to Development
- Millennium Declaration
- The African Charter on the Rights and Welfare of the Child
- World Summit on Social Development Plan of Action

Question 1: What policies and strategies has the government put in place to ensure that all citizens, in particular the rural and urban poor, have affordable access to basic needs?

Indicators:
(i) Provide evidence of legal, policy, processes and institutional steps to ensure affordable access to basic needs;

(ii) Provide evidence of the resources mobilised and allocated and criteria for such allocation;

(iii) Describe the results achieved in terms of:
• Percentage of population disaggregated by region, residence, gender, social category, etc. with affordable access to basic needs,
• Availability and accessibility of basic services to rural and urban poor and other vulnerable groups,
• Particular impact of the privatisation of public utilities where applicable;

(iv) Outline the challenges faced and steps to address these constraints.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

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[285] NEPAD (2003c) pp 26-27; NEPAD (2004) p 84.

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