

**A HUMAN RIGHTS APPROACH TO THE
NEW PARTNERSHIP FOR AFRICA'S
DEVELOPMENT (NEPAD) AND THE
AFRICAN PEER REVIEW MECHANISM
(APRM)**

FOREWORD



Since it was launched on 23 October 2001, **NEPAD**, which was seen as a pledge by the African Heads of State to eradicate poverty and to put their countries back on the track for growth and sustainable development, has acquired recognition and legitimacy.

NEPAD has in fact become a programme of the African Union, thus contributing to the institutional challenge of setting up this organisation; it was acknowledged by the General Assembly of the United Nations as the main development programme for the African continent; finally, it has won international backers and in particular the G8 countries.

The FIDH has positively welcomed the willingness of African Heads of State to take over the development of their continent within a democratic framework and regards NEPAD as a major boost for human rights.

In fact, practically everything in NEPAD falls within the ambit of human rights, from democracy and good governance, to health, education, food and strengthening of the rule of law...

However, two things must be said:

-it is correct to say that NEPAD is formally rooted in human rights since the texts to which it refers – and principally the Declaration on Democracy, Political, Economic and Corporate Governance– contain many provisions on human rights; furthermore, NEPAD reaffirms *“the total and continuous commitment on the part of the African Heads of State to the African Charter for Human and Peoples’ Rights (...) the United Nations Charter, the Universal Declaration of Human Rights and all related conventions”*.

-it is also correct to say that there are fears that these roots remain purely formal.

For example, it is worrying that at the time of the inception of the project, the programmes envisaged were little more than a repetition of the political principles advocated by the Bretton Woods Institutions - which had precisely been so disparaged by many of the African Heads of State and whose disastrous impact on human rights is now widely recognised.

It is also alarming to see how NEPAD seems to favour a vision of human rights oriented more towards civil and political rights, the respect of which is

above all aimed at reassuring investors – particularly private investors – on whom NEPAD depends for the resources necessary for its operation.

It is especially alarming to see that issues of health, education or of development in general are not tackled in the perspective of rights to which the private individual or the community are entitled, and which are guaranteed by the State.

Being rooted in human rights means nothing unless the developed countries themselves assume responsibility for the bankruptcy of the African continent and honour their international obligations, principally with regards to official development aid, reduction or cancellation of the debt and access to the markets.

As for the **African Peer Review Mechanism (APRM)**, which today comprises 24 States¹, the FIDH regards it as a tool which could be used to strengthen the body of fundamental rights in Africa – but which could also turn out to be an empty shell, a political protection for indefensible regimes, if it does not have the guarantees of a free functioning to carry its mission to a successful conclusion.

The APRM must supplement and strengthen the existing mechanisms relating to human rights, like the African Commission on Human and Peoples' Rights.

Although the FIDH understands the philosophy of this mechanism, which is not to punish but to support a gradual improvement of rights and freedoms through co-operation and dialogue, it nevertheless hopes that the first reports will be uncompromising in stating the condition of human rights and the need for immediate commitment to find a solution.

In order to meet these many challenges, the purpose of this guide is to help ensure that NEPAD is no longer simply a “vision”, but a reality, fully in accordance with the rights of the African people.

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Sidiki Kaba
President of the FIDH



¹ As of 10th October 2004

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ABBREVIATIONS AND ACRONYMS

Institutions and programmes:

AAP: Africa Action Plan
AEC: African Economic Community
AfDB: African Development Bank
AGOA: African Growth and Opportunity Act
APF: African Partnership Forum
APRM: African Peer Review Mechanism
AU: African Union
CAADP: Comprehensive Africa Agriculture Development Programme
CEMAC: Central African Economic and Monetary Community (*Communauté économique et monétaire d'Afrique centrale*)
CEN-SAD: Community of Sahel-Saharan States
CEPGL: Economic Community of Great Lakes Countries (*Communauté économique des pays des Grands Lacs*)
COMESA: Common Market for Eastern and Southern Africa
CSSDCA: Conference on Security, Stability, Development and Cooperation in Africa
EAC: East African Community
ECA: United Nations Economic Commission for Africa
ECCAS: Economic Community of Central African States
ECOSOCC: Economic, Social and Cultural Council (*African Union*)
ECOWAS: Economic Community Of West African States
EU: European Union
FAO: United Nations Food and Agriculture Organisation
FDI: Foreign Direct Investment
G8: Group of most industrialised countries
HIPC: Heavily Indebted Poor Countries
HIV/AIDS: Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICT: Information and Communications Technologies
IFAD: International Fund for Agricultural Development
IGAD: Inter-Governmental Authority on Development
IMF: International Monetary Fund
IOC: Indian Ocean Commission
MAP: Millennium Africa Recovery Plan
MDGs: Millennium Development Goals
MRU: Mano River Union
NAI: New African Initiative
NEPAD: New Partnership for Africa's Development
OAU: Organisation of African Unity
ODA: Official Development Assistance

OECD: Organisation for Economic Co-operation and Development
PSC: Peace and Security Council (of the African Union)
REC: Regional Economic Community
SACU: Southern African Customs Union
SADC: Southern African Development Community
STAP: *Infrastructure* Short Term Action Plan
UEMOA: West African Economic and Monetary Union (*Union économique et monétaire ouest-africaine*)
UMA: Arab Maghreb Union (*Union du Maghreb Arabe*)
UN: United Nations
UNCTAD: United Nations Conference on Trade and Development
UNDP: United Nations Development Programme
UNESCO: United Nations Educational, Scientific and Cultural
UNFPA: United Nations Population Fund
UNHCR: United Nations High Commissioner for Refugees
WFP: World Food Programme
WHO: World Health Organisation
WTO: World Trade Organisation

Human Rights Instruments:

ACHPR: African Charter on Human and Peoples' Rights
ACRWC: African Charter on the Rights and Welfare of Child
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
CERD: Convention on the Elimination of All Forms of Racial Discrimination
CRC: Convention on the Rights of the child
DRD: Declaration on the right to Development
ICCPR: International Covenant on Civil and Political Rights
ICESCR: International Covenant on Economic, Social and Cultural Rights
UDHR: Universal Declaration of Human Rights

NOTE ON METHODOLOGY

What is the purpose of the guide? : To introduce NEPAD and the APRM

The NEPAD is subject to wide discussions throughout African civil society, with hope and scepticism aroused in equal measure.

Although everyone from Dakar to Pretoria, via Alger and Addis Ababa, has heard of NEPAD, few really know what it is actually all about.

Confronted with such a lack of information, this guide is intended to provide a detailed analysis of the NEPAD structure based on a study of its documents.

What is the methodology applied? : A study of NEPAD and the APRM in relation to the human rights commitments of the African States

Almost everything in NEPAD relates to human rights, from democracy and good governance, to health, education, food, and reinforcement of the rule of law.

The guide lists:

- all the provisions that formally tie NEPAD to the domain of human rights,
- all the dispositions that might have an impact – positive or negative – on a right or a fundamental freedom and on the States' capacity to respect, protect or implement these.

Who is the guide for? : The promotion of a rights-based approach for all members of civil society

The aim of this guide is to promote a human rights-based approach on the part of all the NEPAD actors, the only approach that can guarantee that this initiative will contribute to a real improvement in the living conditions of the African population.

The guide is aimed equally at African civil society and international civil society, the human rights defence NGOs and any other association that wishes to express its arguments and claims in terms of legal rights and obligations.

What is the aim? : To contribute to civil society participation in, and effective appropriation of NEPAD and the APRM

The guide provides the means to:

- make use of the NEPAD and APRM procedures as a new political forum, whether institutionalised or not, within which civil society can remind the states, including the developed states, of their human rights obligations. This means using NEPAD as a new forum within which the traditional messages of civil society can be addressed.
- assess the impact of the establishment of the NEPAD on human rights by integrating NEPAD concerns in all the campaigns aimed at:
 - the traditional institutions/forums (UN, African Commission on Human and Peoples' Rights, G8, etc);
 - the newly created institutions within the African Union (the African Court of Justice, the African Court on Human and Peoples' Rights).

How should this guide be used?

The guide consists of two separate parts:

- Part I: NEPAD
- Part II: the African Peer Review Mechanism (APRM)

The decision to set out the guide in this way is due to the specific nature of APRM as a voluntary mechanism that brings together only 24 member states of NEPAD², even if its principal objective is to accelerate the progress of the participating countries in implementing NEPAD.

²As of 10th October 2004

INTRODUCTION

NEPAD HAS TO ACKNOWLEDGE THE EXISTING HUMAN RIGHTS NORMATIVE FRAMEWORK AND COMPLY WITH IT³.

Today, all the African States members of NEPAD as well as all the States committed to supporting NEPAD (mainly G8 countries) are Parties to international human rights conventions. **They all have the legal duty to respect, protect and fulfil fundamental rights and freedoms.**

Most of them have signed the **UN 1993 Vienna Declaration** which reaffirms that "*the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective*" for the international community and that "*the lack of development may not be invoked to justify the abridgement of internationally recognized human rights*".

They have all signed **the Constitutive Act of the African Union**, which puts the promotion and protection of human rights among the objectives of the Union. They are all Parties to the African Charter on Human and Peoples' Rights.

Bearing in mind the spirit of NEPAD – which is meant to represent a "*new vision*" for the African continent -, this initiative has to respect – and comply with - an existing legal and political framework, constituted by all the commitments undertaken by States through regional and international human rights instruments or at international conferences.

In the conception, implementation and assessment of NEPAD, States have therefore to respect a certain number of principles and obligations, against which NEPAD will be assessed by human rights NGOs.

I. The primacy of international human rights law

Legal obligations deriving from international human rights law have primacy over any other obligation. This principle means that States have to make sure that all their commitments, in the economic, financial and commercial fields are consistent with international human rights law.

³ Human Rights and Poverty Reduction: A Conceptual Framework, <http://www.ohchr.org/english/issues/poverty/docs/povertyE.pdf>



CHALLENGE FOR NEPAD

NEPAD member States not only have the positive obligation to develop policies which contribute to the promotion and fulfilment of human rights, but they also have the duty to refrain from implementing and adopting policies which might have a negative impact on human rights. For example, an unchecked liberalisation program for social services may jeopardize the right to health, the right to education, the right of access to water, or even the right to development.

II. Responsibility of all organs of society

While States have the primary responsibility to guarantee human rights, all organs of society - individuals, local communities, intergovernmental organisations, private companies – have the obligation to respect human rights and to work towards their effective recognition and implementation.



CHALLENGE FOR NEPAD

All the actors involved in NEPAD - African States, third states, inter-governmental organisations, lending institutions, regional economic communities, and private investors - are bound to respect human rights and to ensure their effective implementation.

III. Accountability

There is a growing consensus on the centrality of accountability in poverty reduction and development strategies. The international normative framework empowers the poor by granting them human rights and imposing legal obligations on other actors. States and intergovernmental organisations, have to be held accountable for their conduct in the field of human rights, through accessible, transparent and effective mechanisms.

How to be accountable?

Broadly speaking, there are four categories of accountability mechanisms:

- **judicial:** judicial review of executive acts and omissions
- **quasi judicial:** ombudsmen, international human rights treaty bodies
- **administrative:** the preparation, publication and scrutiny of human rights impact assessments
- **political:** parliamentary processes



CHALLENGE FOR NEPAD

NEPAD has to establish accessible, transparent and effective mechanisms to assess the exercise of responsibility, be it at the national level or at the level of the institution.

IV. The principle of indivisibility

All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in equal manner, on the same footing, and with the same emphasis⁴.

According to the African Charter on Human and Peoples' Rights, "*civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights*⁵".



CHALLENGE FOR NEPAD

The NEPAD has to consider human rights in a holistic way. Health, education, development issues have to be considered as human rights, held by the individual or the community, which create corresponding duties for the State.

V. The principle of non-discrimination and equality

The twin principles of non-discrimination and equality are among the most fundamental elements of international human rights law. They are enumerated and elaborated in numerous international instruments, not least the Universal Declaration of Human Rights, the two 1966 covenants (ICESCR, ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the rights of the Child (CRC), the African Charter on Human and Peoples' Rights (ACHPR).



CHALLENGE FOR NEPAD

If the effect of a policy or a program of the NEPAD is to impoverish women, indigenous peoples or any other group protected by one of the internationally prohibited grounds of discrimination, it is prima facie discriminatory, even if the policy had no intention of discriminating against the group in question.

⁴Vienna Declaration and Programme of Action, para.5, 25 June 1983

⁵African Charter on Human and Peoples' Rights, Preamble

VI. The principle of participation in decision-making and the principle of transparency

The international human rights normative framework includes the right of those affected by key decisions to participate in the relevant decision-making processes. The right to participate is reflected in numerous international instruments⁶, including the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, the African Charter on Human and Peoples' Rights.

For this participation to be effective, rules about public disclosure of information have to be put in place. The principle of transparency is therefore a corollary of the principle of participation.



CHALLENGE FOR NEPAD

The NEPAD has to respect the principle of participation at all stages, be it the conception, implementation or assessment of NEPAD policies.

This should include the possibility for representative members of civil society to participate in relevant meetings of NEPAD organs. This participation has to be ensured both at the national level and at the level of NEPAD institutions.

NEPAD also has to put in place a consistent public disclosure information policy. These obligations are also binding upon the APRM.

VII. The principle of international cooperation and assistance

According to Articles 55 and 56 of the UN Charter, to various provisions of the International Covenant on Economic, Social and Cultural Rights, the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights, international cooperation for development, which encompasses economic, social and cultural rights, is incumbent to all States, with a strong emphasis on States able to provide aid.

It has to be stressed that international cooperation is not merely about technical and financial assistance. International assistance and cooperation also include the obligation to work actively towards an equitable multilateral trade, investment and financial system that is conducive to the reduction and elimination of poverty.

⁶See article 13, para.1 of the International Covenant on Economic, Social and Cultural Rights and article 2, para.3 of the UN Declaration on the right to development.



CHALLENGE FOR NEPAD

Developed States have to take their obligation of international cooperation and assistance into account when funding NEPAD, notably through the three main resources identified by NEPAD:

- an enhanced process of debt reduction,
- an increase in Official Development Assistance (ODA),
- an enhanced access to markets.

VIII. The Principle of the maximum use of resources towards the realisation of human rights

States have the obligation to use the maximum of their resources towards the full realisation of fundamental rights. This means that they have the obligation to use their resources *in priority* towards the enjoyment of the essential rights of their population, notably their economic, social and cultural rights.

The Vienna Declaration states that “*the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective*” for the international community and that “*the lack of development may not be invoked to justify the abridgement of internationally recognized human rights*”.

Article 2.1 of the International Covenant on Economic, Social and Cultural Rights imposes on State Parties the obligation to use the maximum of their available resources towards the full realisation of the economic, social and cultural rights of their population.

If the African Charter on Human and Peoples’ Rights does not address specifically this issue, some agree that the Charter creates the same kind of obligation⁷.



CHALLENGE FOR NEPAD

NEPAD has to set its priorities according to NEPAD member States' obligation to use the maximum of their resources towards the full realisation of NEPAD member States have to respect minimum core obligations and, with immediate effect, ensure certain minimum levels of enjoyment of various human rights. These core obligations must be treated as binding constraints - which means no trade-offs are permitted with regard to them.

⁷ See the Pretoria Declaration, adopted in October 2004, at the occasion of a Seminar organized through the auspices of the African Commission on Human and Peoples’ Rights.

PART ONE:

THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT

CHAPTER 1

NEPAD: THE FONDAMENTALS

The New Partnership for Africa's Development (NEPAD) was launched in October 2001, in an innovative and voluntarist perspective. As a result of the failure of externally imposed strategies, this pan-African initiative aims at establishing the ownership of Africa over its own development agenda.

Centred on globalisation, from which Africa has been left aside, this partnership is in keeping with the international criteria of good political, economic and corporate governance.

I. BACKGROUND AND ESTABLISHMENT OF NEPAD

NEPAD is based on the document establishing the “New African Initiative” adopted by the 37th ordinary session of the Assembly of Heads of State and Government of the OAU, on 11th July 2001 in Lusaka (AHG/Decl.1(XXXVII)).

The NAI Document, renamed NEPAD, was finalised and approved on 23 October 2001 by the Implementation Committee established by the Lusaka Summit.

The Declaration on the implementation of NEPAD (Assembly/AU/Decl. 1 (I)) adopted by the 1st Summit of the Assembly of Heads of State and government of the African Union held in Durban from 8 to 10 July 2002, guarantees the continuity of the programme during the transition from OAU to AU.

NEPAD is today a programme of the African Union for socio-economic development.

A/ Background of NEPAD

1-Failure of previous development strategies

NEPAD is a **development programme** based on the acknowledgement of Africa’s crisis and the deadlock the continent has reached in terms of development and integration into global economy.

Since the first countries became independent, several development strategies have been tested in Africa. These strategies responded to the logic of **external assistance** provided through Official Development Assistance (ODA) and loans from international financial institutions...); most of them failed. More recently, the liberal principles of economic development promoted by major international financial institutions (World Bank and International Monetary Fund –IMF) made Africa’s situation even worse.

The first African development strategies such as the Lagos Plan of Action adopted in 1980, did not succeed any better since they lacked the necessary support from the international community.

Africa's crisis: Data

- 35 of the 53 African countries experienced an armed conflict since 1990.
- African human development index (HDI) calculated by the UNDP only gained 6% since 1980 (from 0,445 in 1980 to 0,465 in 2002). As a comparison, OECD HDI raised to 0,911 in 2002. 30 of the 34 countries with "low human development" (i.e. low HDI ranking) are Sub-Saharan African countries.
- In 2003, 25 to 30 million people in Sub-Saharan Africa are infected with HIV/AIDS (2/3 of the total number of people living with HIV/AIDS).
- In 2003, Foreign Direct Investment (FDI) flows to Africa reached \$8,5 billion, while Latin America attracted \$36,6 billion.
- In 2003, Sub-Saharan Africa's economic growth calculated in terms of average GDP was estimated at 2,4% whilst demographic growth was reaching 2,4%.
- The debt burden of Sub-Saharan African States in 2003 reached \$213,7 billion. - Africa's share in international trade was of 2,2% in 2002.

Faced with this situation, at the end of the 1990's, several African leaders worked out a new way to design a development plan for Africa, and started advocating African ownership, development and global integration strategies.

2-NEPAD in the realm of African institutional renewal

The establishment of NEPAD is closely connected with the one of **the African Union**, and they were both jointly implemented.

In 1999, the Sirte Summit instituted the African Union, to replace the Organisation of African Unity (OAU) created in 1963. The Constitutive Act of the Union was ratified by the 36th ordinary session of the Assembly of Heads of State and government of the OAU held in Lomé in July 2000. At the same session, African leaders also adopted the Lomé Declaration setting out the principal objectives for Africa's development.

B/ Merger of the MAP and OMEGA plans

2 development plans were put forth under the auspices of the Organisation of African Unity (OAU).

In January 2001 at the Davos Forum, the South-African president Mr Thabo Mbeki, who initiated the "African Recovery", presented the **Millenium Africa Recovery Plan (MAP)** along with the Heads of State of Algeria, Mr. Abdelaziz Bouteflika and Nigeria, Mr. Olusegun Obasanjo.

The MAP document provides a diagnosis of the core roots of Africa's historical impoverishment, from slavery and colonisation to the unequal international trade system of today.

Around the same time, the president of Senegal, Mr Abdoulaye Wade, conceived another development plan, the **OMEGA initiative**, inspired by the "*catching up*" theory of the economist Rostow and aimed at bridging Africa's gap with developed countries.

The 4 major issues of African Recovery

- Determine Africa's own destiny
- Instil a new culture of human rights, democracy and governance
- Halt Africa's marginalisation through an enhanced integration
- Create a new partnership between North and South

During the Extraordinary Summit of the OAU in Sirte in March 2001, the MAP and OMEGA plans were merged to form the New African Initiative (NAI), whose form was approved in a declaration by the 37th ordinary session of the Assembly of Heads of State and Government of the OAU, on 11 July 2001 in Lusaka (AHG/Decl.1(XXXVII)). The Summit also established the Heads of State and Government implementation Committee (HSGIC) to be in charge of the political leadership of the initiative.

Finally, the first meeting of the HSGIC was held in Abuja, Nigeria on 23 October 2001.

The adoption of 3 principal decisions marked the beginning of the implementation stage of the Initiative.

- The first decision dealt with the name of the initiative

The name of the "New African Initiative" (NAI), which was intended to be a provisional working title, changed to "New Partnership For Africa's Development" (NEPAD), in order to emphasise partnership with developed countries.

- The second was to adopt the final NEPAD Document

The text adopted in Lusaka is finalised.

- Finally, the 3rd decision established a three-tier governing structure composed of:

- The Heads of State and Government Implementation Committee (HSGIC)
- The Steering Committee
- The Secretariat

On 23 October 2001, the NEPAD was officially launched.

As a general development programme adopted within the framework of the reform of the OAU, NEPAD now is the principal instrument of the African Union (AU).

The NEPAD execution phase was started through the implementation of the short-term plan of action (2003-2006).

C/ Institutional structure of NEPAD

The governing structures as well as a detailed organisation chart were established and adopted on 23 October 2001 by the Heads of State and Government Implementation Committee (HSGIC) at its inaugural meeting.

NEPAD is composed of 3 principal organs, completed by the African Peer Review Mechanism (APRM)⁸.

<u>The Heads of State and Government Implementation Committee (HSGIC)</u>				
<i>The Implementation Committee</i>				
Function: set policies and priorities and the Programme of Action.				
Functioning: The 1st Meeting of the Implementation Committee was held on 23 October 2001 in Abuja (Nigeria) It shall meet every four months, three times per year. It reports annually to the African Union Summit.				
Composition: The Committee was initially comprised of 15 states (3 per OAU geographical region), including including the five initiating states: South Africa, Nigeria, Algeria, Senegal and Egypt. The Durban Summit decided to increase the number of HSGIC members by 1 per region, bringing the total number of members to 20.				
North Africa	West Africa	Central Africa	East Africa	Southern Africa
Egypt Algeria Tunisia Libya	Nigeria Senegal Mali Ghana	Cameroon Gabon Sao Tome & Principe Congo	Ethiopia Mauritius Rwanda Kenya	South Africa Botswana Mozambique Angola
The 5 initiating are in charge of 5 task teams:				
- South Africa: peace, security, democracy and political governance				
- Nigeria: economic and corporate governance				
- Egypt: market access and agriculture				
- Algeria: human resources				
- Senegal: infrastructure				
Chairperson: Mr. Olusegun OBASANJO (Nigeria)				
Vice-chairpersons: Mr. Abdoulaye WADE (Senegal) and Mr. Abdelaziz BOUTEFLIKA (Algeria)				
Ex officio members: the Chairperson of the African Union in office (Mr OBASANJO since July 2004) and the NEPAD Secretary-General (Mr. Wiseman NKUHLU)				

⁸ See Part II

The NEPAD Steering Committee

Function:

- develop the Terms of Reference for identified programmes and projects, and submit them to the Implementation Committee
- oversee the Secretariat.

Functioning: The Steering Committee meets once a month.

It works in close collaboration with the African Union, the United Nations Economic Commission for Africa (ECA) and the African Development Bank.

Composition:

- personal representatives of the 5 initiating leaders (South Africa, Nigeria, Algeria, Senegal et Egypt)
- representatives of African economic and financial institutions

Representatives of other Heads of State and government members of the Implementation Committee may also participate in the debate.

The NEPAD Secretariat

Function: It is tasked with the administrative support of NEPAD and the coordination of its structures.

Functioning: The Secretariat may work in collaboration with foreign or African experts, and shall coordinate the establishment of an action plan for each priority sector.

Composition: Full-time, small core staff

The complete organisation chart and contact information are available at:
<http://www.nepad.org/en.html>

Chairperson: Mr. Wiseman NKHULU

Contact information: NEPAD Secretariat

P.O. BOX 1234
Halfway House
Midrand 1685
Pretoria
Tél: +27 11 313-3716
Fax: +27 11 313-3450

Funding: Financial contributions of African countries and development partners.

II. THE NEPAD BASE DOCUMENT

The NEPAD Base Document was initially established and adopted as the “New African Initiative” by the 37th ordinary session of the Assembly of Heads of State and Government of the OAU, on 11 July 2001 in Lusaka (AHG/Decl.1(XXXVII)).

The final NEPAD Base Document was approved on 23 October 2001 by the Heads of State and Government Implementation Committee established by the Lusaka Summit.

A/ Overview of the Document

The NEPAD Base Document was adopted on 23 October 2001 at the end of first meeting of the Implementation Committee held in Abuja (Nigeria).

This Document is composed of **7 main points**:

1-The introduction (Para. 1 to 8)

This section sets out the NEPAD as a “*pledge by African leaders*” (Para. 1) and describes the **crisis situation** in Africa that the previous development strategies did not manage to contain.

2-“Africa in today’s world” (Para. 9 to 41)

The second part of the Document focuses on Africa’s **assets** in the global context, notably in terms of mineral, ecological and cultural resources. Despite its wealth of resources, the African continent has long suffered from “*impoverishment that was primarily accentuated by the legacy of colonialism, the Cold War, the workings of the international economic system and the inadequacies of and shortcomings in the policies pursued by many countries in the post independence era*” (Para. 18). The Document, thus, underlines the role external factors played in worsening the African crisis, but also affirms “Africans must not be wards of benevolent guardians” and “rather must be the architects of their own sustained upliftment”(Para. 27). This second part finally sets out the **historical account of Africa’s marginalisation** in the globalisation process.

3-The “New political will of African leaders” (Para. 42 to 49)

Faced with this situation, African leaders acknowledge the essential role of **“an accountable government, a culture of human rights and popular participation”** (Para. 43), and accept to take joint responsibility for:

- Strengthening mechanisms for conflict prevention, management and resolution at the regional and continental levels;
- Promoting democracy and human rights;
- Restoring and maintaining macroeconomic stability;
- Instituting transparent legal and regulatory frameworks for financial markets;
- Enhancing the provisions of education and health services;
- Promoting the role of women;
- Strengthening the rule of law.

4-An “appeal to the peoples of Africa” (Para. 50 to 58)

The successful implementation of NEPAD depends on its uptake and **ownership** by African peoples themselves. The NEPAD thus encourages African populations to *“set up, at all levels, structures for organisation, mobilisation and action”* (Para. 56).

5-The “Programme of Action” (Para. 59 to 170)⁹

The fifth and longest part of the Document focuses on the **concrete implications** of NEPAD. The Programme of Action is presented as a three-step strategy comprised of: the preconditions for sustainable development, sectoral priorities, and resource mobilisation in order to achieve the targeted objectives.

6-A “new global partnership” (Para. 171 to 185)

Thanks to the implementation of this new global partnership, both Africa and its partners will derive **mutual benefits** from the development of the continent. The success of this partnership mostly depends on the establishment of new relations with development partners, who should strictly respect their responsibilities and **obligations**.

7-The “implementation of the New Partnership for Africa’s Development” (Para. 186 to 201)

It shall be carried out fast-tracking 4 priorities:

- Communicable diseases (HIV/AIDS, malaria and tuberculosis);
- Information and Communications Technology (ICT);
- Debt reduction;
- Market access.

⁹ Cf. Part 1, Chapter 1, Section 3.

A list of “essential” projects should be established after a needs assessment, in terms of structures and staff, is undertaken at the national, sub-regional and regional levels.

B/ NEPAD provisions on human rights

“Development is impossible in the absence of true democracy, respect for human rights, peace and good governance” (Para. 79)

Human rights are enshrined in the NEPAD. Indeed, respect for democracy and human rights is firmly reaffirmed in numerous provisions of the Document.

Para. 43

“Democracy and state legitimacy have been redefined to include accountable government, a culture of human rights and popular participation as central elements”.

Para. 45

“Across the continent, democracy is spreading, backed by the African Union (AU), which has shown a new resolve to deal with conflicts and censure deviation from the norm”.

Para. 49

“Promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels”.

Para. 71

“[...] peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development. African leaders are making a pledge to work, both individually and collectively, to promote these principles in their countries, sub-regions and the continent”.

Para. 79

“It is now generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the NEPAD, Africa undertakes to respect the global standards of democracy, which core components include political pluralism, allowing for the existence of several political parties and workers’ unions, open, free and democratic elections periodically organised to enable the populace choose their leaders freely.”

Para. 80

“The purpose of the Democracy and Governance Initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and the promotion of the rule of law”.

The legal value of the Base Document

The NEPAD Base Document and its Programme of Action were officially approved by a Declaration of the Organisation of African Unity adopted at the Lusaka Summit in July 2001¹⁰.

Though this Declaration has no binding value from a legal point of view, adopting Declarations instead of Decisions takes on a specific significance and solemnity, which underlines the vivid expectations of the OAU that its member countries will respect the principles enshrined in the Base Document. Besides, African states are legally bound by the obligations they already endorsed, and which the Declaration is based on.

Furthermore, the future African Court of Justice of the African Union –which is the principal judicial organ of the AU- shall have jurisdiction over all disputes and applications involving any state that ratified the Protocol establishing the Court and relating to *“all subsidiary legal instruments adopted within the framework of the Union»*, *“all acts, decisions, regulations and directives of the organs of the Union”* as well as *“all matters specifically provided for in any other agreements that States Parties may conclude among themselves”* (article 19 of the Protocol)

The Court of Justice will thus be entitled to give decisions on any dispute or application involving a state that ratified the Protocol and relating to the NEPAD Base Document.

¹⁰ AHG/Decl.1 (XXXVII)

III. THE NEPAD PROGRAMME OF ACTION

The principal objective of NEPAD is “to eradicate poverty in Africa and to place African countries, both individually and collectively, on a path of sustainable growth and development”

(NEPAD Base Document, Para.67).

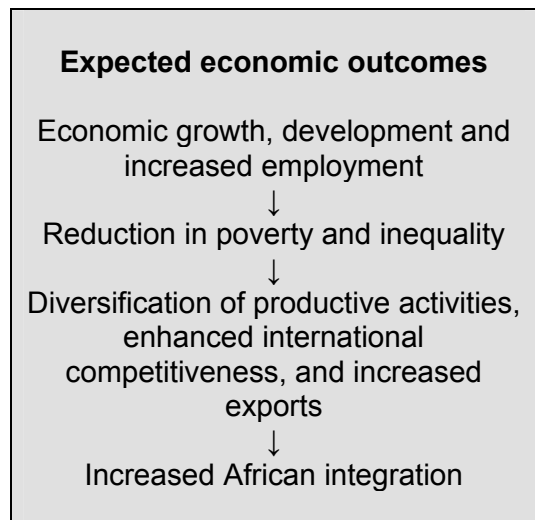
The Programme of Action established by NEPAD in order to achieve this objective is developed in Part 5 of the NEPAD Base Document.

A/ Long-term objectives

The NEPAD objectives are:

- To eradicate poverty
- To promote economic growth and sustainable development
- To halt the marginalisation of Africa in the globalisation process

The economic policy fostered by NEPAD in order to achieve these objectives and to “build a strong and competitive economy”¹¹ puts the emphasis on private sector and market economy.



As part as this programme, NEPAD sets **2 main goals** (Para. 68):

- To achieve and maintain an average GDP growth rate of above 7% per annum for the next 15 years.
- To achieve the Millennium Development Goals (MDGs) internationally adopted during the Millennium Summit in September 2000:
 - To reduce the proportion of people living in extreme poverty by half by 2015;
 - To enrol all children of school age in primary schools by 2015;
 - To achieve gender equality by 2015;

¹¹ NEPAD Base Document, Para. 50

- To reduce infant and child mortality ratios by 2/3 by 2015;
- To reduce maternal mortality ratios by 3/4 by 2015;
- To reverse the spread of HIV/AIDS and malaria by 2015;
- To implement national strategies for sustainable development and ensure environmental sustainability by 2015;
- To develop a global partnership for development encompassing objectives for assistance, trade and debt reduction by 2015.

MDGs and Human Rights

The Millennium Development Goals (MDGs) were defined during the Millennium Summit held in September 2000 and officially approved by the adoption of the Millennium Declaration.

Goal 1	Eradicate extreme poverty and hunger	ICESCR (art.11), CRC (art. 24-2 and 27-3)
Goal 2	Achieve universal primary education	ICESCR (art. 13 and 14, GC 11), CRC (art. 28 and GC1), CERD (art. 5 and 7), ACHPR (art. 17), ACRWC (art. 11-3)
Goal 3	Promote gender equality and empower women	CEDAW, ICESCR (art. 3 and 7a), ICCPR (art. 3, 6-5 and 23-2), CRC (art. 2) and CERD (GC 25), ACHPR (art. 18-3)
Goal 4	Reduce child mortality	CRC (art. 6 and 24-2), ICESCR (art. 12-2 and GC 14), ACRWC (art 5)
Goal 5	Improve maternal health	CEDAW (art. 10h, 11f, 12-1, 14b and GC 24), CERD (art. 5e), ICESCR (art. 10-2 and GC 14) and CRC (art 24d)
Goal 6	Combat HIV/AIDS, malaria and other diseases	International guidelines on HIV/AIDS and human rights, ICESCR (art. 12c and GC 14), CRC (art. 24c)
Goal 7	Ensure environmental sustainability	<i>Safe drinking water:</i> ICESCR (draft GC and GC 14) <i>Slum dwellers:</i> ICESCR (GC 14 and GC 17)
Goal 8	Develop a global partnership for development	Charter of the United Nations (art. 1-3), ICESCR (art. 2) and CRC (art.4)

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CERD: Convention on the Elimination of All Forms of Racial Discrimination

CRC: Convention on the Rights of the child

GC: General Comment

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ACHPR: African Charter on Human and Peoples' Rights

ACRWC: African Charter on the Rights and Welfare of Child

B/ The NEPAD Programme of Action: a 3-step strategy

The Programme of Action sets out the conditions for implementing sustainable development in the form of an **agenda**, which itemises:

- 1- The preconditions for sustainable development;
- 2- 10 sectoral priorities, 5 of them being particularly developed;
- 3- Required resource mobilisation for achieving the NEPAD pledges.

1-The conditions for sustainable development

These conditions are structured into 3 components:

- *The peace, security, democracy and political governance Initiative (Para. 71 to 85)*

- Peace and Security:

By institutionalising their commitments through NEPAD, African leaders intend to strengthen early warning institutions and therefore enhance conflict prevention, management and resolution. Capacity for seeking and maintaining peace shall be enhanced through the reduction of political and social vulnerabilities that are acknowledged to underlie conflict.

The right to peace and security is guaranteed by Article 23 of the ACHPR and Article 4i) of the Constitutive Act of the African Union.¹²

- Democracy and Political Governance:

“It is now generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance”. (Para. 79 of the NEPAD Base Document)

Respect for democratic principles, human rights, the rule of law and good governance is enshrined in Article 4m) of the Constitutive Act of the African Union.¹³

Through NEPAD, African leaders undertake to comply with these standards and to respect human rights and the rule of law by strengthening national political and administrative frameworks.

This sub-initiative is more developed than the previous one and comprises a set of objectives:

- undertake reforms for administrative and civil services
- strengthen parliamentary oversight
- **promote participatory decision-making**

¹² Other references to international human rights instruments are available in the appendices.

¹³ Idem

- Adopt effective measures to combat corruption and embezzlement
- undertake judicial reforms

The implementation of these measures will be assessed regularly by periodic meetings of the Heads of State and Government. These reforms are not only objectives to meet, but also “**responsibilities**”¹⁵ to take in order to achieve the general goals of NEPAD.

Free participation in national governments is guaranteed by Article 13 of the ACHPR, Article 3g) of the Constitutive Act of the African Union and the African Charter for Popular Development¹⁴.

- *Economic and corporate governance (Para. 86 to 92)*

Acknowledging that few African countries today have the capacity to fulfil their central role in the promotion of economic growth and sustainable development, the Base Document fosters the creation of programmes aimed at enhancing the quality of **economic management, public financial practices**, and promoting good corporate governance in all participating countries.

- *Sub-regional and regional Approaches to development (Para. 93 to 96)*

In terms of market, numbers of African countries are too small and sparsely populated to attract investments. NEPAD therefore advocates the development of **economies of scale** through increased regionalisation.

The strengthening of the five economic sub-regions (West Africa, North Africa, Central Africa, East Africa and Southern Africa) represents the first step towards integration. However, this initiative ultimately aims at rationalising collaboration and coordination at the continental level through strict compliance with regional economic instruments, under the supervision of the African Development Bank (AfDB).

2-NEPAD Sectoral Priorities

The NEPAD Base Document sets out 10 sectoral priorities. Most of them relate to human rights issues.

¹⁴ Idem

¹⁵ NEPAD Base Document, Article 49

Sector	Projects	HR Instruments	
<u>Infrastructures</u>		Roads, highways, airports, seaports, railways, waterways, and telecommunication facilities.	<u>Priorising sectors:</u> ICESCR art 2-1.
	ICT	Provide access to ICT for all and extend their use in all activities – industry, transport, services, trade	
	Energy	Oil and gas pipelines, transmission grids, hydropower potential	
	Transport	Set up multimodal transport facilities, create “development corridors”, air transport, harmonization of cross-borders customs and immigration policies	
	Water and sanitation	Provide access to safe water, development of African rivers, implement sanitation projects.	- ICESCR: art 11
<u>Human resources development</u>	Poverty reduction	Top priority for all components of NEPAD and economic and sectoral policies of the participating countries.	<u>Right to Development:</u> - AU: art 3k) - ACHPR: art 22 - DRD
	Education	Strengthen the academic system, creation of primary and high schools.	- ACHPR: art 17 - ACRWC: art 11 - UDHR: art 26 - ICESCR: art 13 and 14 - CRC: art 28
	Reversing the brain drain	Establish networks with experts from the African diaspora.	
	Health	Eradicate endemic and communicable diseases (HIV/AIDS, malaria, tuberculosis), reduce malnutrition, increased priority to health in national budgets.	- AU: art 3n) - ACHPR: art 16 - UDHR: art 25 - ICESCR: art 12
<u>Agriculture</u>	Achieve food security, strengthen agrarian systems, develop irrigation, and strengthen rural institutional infrastructures.	<u>Right to food:</u> - ICESCR: art 11 - UDHR: art 25 <u>Right to property:</u> - ACHPR: art 14 - UDHR: art 17	
<u>Environnement</u>	Combat natural disasters (desertification, drought) and man-made disasters	- ACHPR: art 24	

<u>Culture</u>	Protect and develop indigenous knowledge through the adoption of appropriate legislations	- ACHPR: art 17-2) and 3) - UDHR: art 27 - ICESCR: art 15
<u>Science et technology</u>	Introduce regional standards, create networks between existing centres of excellence in order to improve agricultural productivity and develop pharmaceutical products.	- AU: art 4m) - UDHR: art 27 - ICESCR: art 15

AU: Constitutive Act of the African Union

ACHPR: African Charter on Human and Peoples' Rights

ACRWC: African Charter on the Rights and Welfare of Child

UDHR: Universal Declaration of Human Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

DRD: Declaration on the right to Development

CRC: Convention on the Rights of the child

3-Resource mobilisation

To finance these priority sectors and achieve the forecast 7 % annual growth rate, African countries will need to fill an annual resource gap of 12 % of their GDP, the equivalent of **\$64 billion**. NEPAD bases the resource mobilisation on a combination of two strategies:

- ***The Capital Flows Initiative***

Firstly, NEPAD seeks to optimise the mobilisation of **domestic resources**. In particular, the Plan of Action focuses on the need to increase national savings by both firms and households, and to rationalize public expenditure and tax collection.

According to the Base Document, however, most of the required resources “will have to be obtained from outside the continent¹⁶”.

- **Debt relief** should help African countries narrow the resource gap, notably by setting debt service caps as a proportion of fiscal revenues through negotiations with donor countries. The debt relief initiative also provides for the creation of a “forum in which African countries may share experiences”¹⁷.

- Furthermore, NEPAD advocates **reform of Official Development Assistance** (ODA), notably through the creation of supervising and monitoring mechanisms to assess donor and recipient countries' performance. Although the implementation of NEPAD pledges is based on an increase in ODA flows, African leaders acknowledge that sound economic management

¹⁶ Base Document, Para. 147

¹⁷ Base Document, Para. 150

is a “prerequisite for enhancing African countries’ capacity to utilise increased ODA flows¹⁸”.

- These measures involve national and international public institutions and are considered as a short- to medium-term way to strengthen basic growth determinants. But, according to the Base Document, long-term economic growth can only be ensured by developing **private capital flows**. NEPAD therefore “*seeks to increase private capital flows to Africa, as an essential component of a sustainable long-term approach to filling the resource gap*¹⁹”.

In order to foster private investment –and more specifically Foreign Direct Investments (FDI)-, NEPAD intends to lower or eliminate the perceived “high risk” factors that dissuade potential investors.

NEPAD thus plans to establish a new initiative aimed at ensuring both assessment and ownership, and closer partnership between public and private spheres. However, national institutions are only given a mere regulating role.

- *The Market Access Initiative*

This Initiative fosters better integration of Africa into the global economy and sets a number of measures to be adopted at both continental and international levels, in the form of an agenda.

The NEPAD Base Document sets out the major issues to be addressed by national strategies and developed countries. **Diversification of production** is the prerequisite for fostering a development strategy based on a broader range of products. African economies would thus be less vulnerable to international markets fluctuations and enhance their absorption capacity in the event of economic shocks.

As the main productive sector in Africa, **agriculture** is fully integrated into NEPAD initiatives. Agricultural productivity will be increased, particularly in order to ensure food security, which is a key factor in poverty reduction. The **mining industry** is another of Africa’s asset and will also be developed through public and private investments.

Growth practicability and sustainability will also be ensured by “*the increase of production, improvement of the competitiveness and diversification of the domestic private sector, especially in the agro-industrial, mining and manufacturing subsectors, with potential for exports and employment creation*²⁰”.

¹⁸ Base Document, Para. 151

¹⁹ Base Document, Para. 153

²⁰ Base Document, Para. 158

In the meantime, **non-tariff barriers** represent the major hindrance to the development of trade between Africa and developed countries. The removal of these barriers therefore remains the principal prerequisite to Africa's sustainable development that can only happen if Africa is free to export its products in a fair and equitable trade system.

IV. THE DECLARATION ON DEMOCRACY, POLITICAL, ECONOMIC AND CORPORATE GOVERNANCE

The Declaration on Democracy, Political, Economic and Corporate Governance was adopted in Durban by the 38th ordinary session of the OAU (AHG/235(XXXVIII)), on 8 July 2002. As an AU Declaration, it applies to ALL member countries of the Union.

Through this Declaration, NEPAD is rooted in the principle of primacy of human rights. It is also the key document to the African Peer Review Mechanism (APRM).

The Declaration on Democracy, Political, Economic and Corporate Governance is one of the NEPAD key documents. Its Preamble presents the NEPAD initiative as resulting from an historical process of ownership and responsabilisation in development policies.

Though the Declaration is used as the base document for the African Peer Review Mechanism (APRM), it does not only concern participating countries to the APRM, but all member countries of the African Union, since it was adopted by the AU.

The Declaration, recalling the previous decisions of the OAU “*aimed at ensuring stability, peace and security, (...) supporting human rights and upholding the rule of law and good governance* (Para 3), thus anchors NEPAD in the African human rights instruments corpus.

The Declaration notably reaffirms the commitment of African States to:

- The Lagos Plan of Action, and the Final Act of Lagos (1980)
- The African (Banjul) Charter on Human and Peoples' Rights (1981)
- The African Charter for Popular Participation in Development (1990)
- The Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World (1990)
- The African Charter on the Rights and Welfare of the Child (1990)
- The Abuja Treaty establishing the African Economic Community (1991)
- The 1993 Cairo Declaration Establishing the Mechanism for Conflict prevention, Management and Resolution;
- The Protocol on the Establishment of an African Court on Human and Peoples' Rights (1998)
- The 1999 Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights; (1999)
- The Framework for an OAU Response to Unconstitutional Changes of Government (2000)
- The Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration (2000)
- The Constitutive Act of the African Union (2000)

NEPAD is also rooted in the international human rights system by the solemn reaffirming by African leaders of their commitment to the international obligations derived from the Charter of the United Nations and the United Nations Universal Declaration on Human Rights and all conventions relating thereto, especially the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration.

Democracy and good governance being presented as the preconditions for development and the successful implementation of NEPAD, the Declaration determines **4 main focus areas:**

- Democracy and good political governance
- Economic and corporate governance
- Socio-economic development
- The African Peer Review Mechanism (APRM)

These focus areas are successively developed in terms of issues and related commitments.

A/ Democracy and good political governance



DEFINITIONS

Democracy: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.»

Article 21-3) of the Universal Declaration on human rights

Political governance: Good governance shall be understood as the set of public policies guaranteeing a democratic and accountable conduct of the political leaders, as well as the citizens’ capacity to express themselves, participate in the decision-making process, monitor and supervise the practices of public institutions.

Definition established by the Intergovernmental Francophonie Agency²¹:

Good governance: the key attributes of good governance are:

- Transparency
- Responsibility
- Accountability
- Participation
- Responsiveness to the need of the population

United Nations Commission on Human Rights, Resolution 2000/64

1-Key principles

The goal of the Declaration is to promote the following core democratic values:

Rule of law	Constitutive Act of the AU (Article 4m)
Equality before the law and liberty of the individual	ACHPR: Article 3
Individual and collective freedoms	ACHPR: Article 10
Equality of opportunity for all	
Popular participation to decision-making, free elections	ACHPR: Article 23
Separation of powers and independence of the judiciary	ACHPR: Article 26

If the fight against corruption and implementation of peace and security mechanisms are defined as key components of the democratic process, the Declaration ultimately refers to the “**importance and urgency all of its own**”²² that respect for human rights shall be accorded in order to achieve democratic values as a whole.

²¹ Symposium on the access to international financing, 20-21 November 2003

²² Para 10

Another significant commitment enshrined in the Declaration: the promotion of women's rights and gender equality is accepted as "a *binding obligation*" (Para 11).

2-Programme of Action

The Programme of Action is divided into 3 parts:

a) *Democracy and democratic process:*

- Compliance of national constitutions with the standards of democracy
- Ensure an enhanced participation of all citizens to their country's political life and ensure a "free and fair political environment"
- Enforce strict adherence to the position of the African Union (AU) on unconstitutional changes of government
- Implement an appropriate electoral administration aimed at ensuring fair democratic elections
- Strengthen or establish electoral oversight bodies at sub-regional and regional levels
- Instil and strengthen a true human rights culture by heightening public awareness of the ACHPR, in particular through education.

b) *Promotion of good governance:*

- Adoption of codes, standards and indicators of good governance at the national, sub-regional and continental levels;
- Accountable public service
- Effective functioning of the Parliaments
- Separation of powers and independence of the judiciary

c) *Promotion of human rights:*

- Facilitate the development of civil society organisations, and strengthen human rights
- Support the Charter, African Commission and Court on Human and Peoples' Rights (in accordance with the ACHPR, article 25 and to the AU Constitutive Act, article 3h)
- Strengthen co-operation with the UN High Commission for Human Rights
- Ensure free expression and freedom of the press (in accordance with Article 9 of the ACHPR)

B/ Economic and corporate governance



DEFINITIONS

Economic governance refers to the management of budgetary, monetary, financial and fiscal state policies.

Corporate governance refers to the relations and the distribution of rights and responsibilities among directors, managers, shareholders and other stakeholders such as employees, customers, suppliers and communities.

The Declaration underlines the significant role of economic and corporate governance in promoting economic growth and poverty reduction. Respect for the related international codes and standards is a key component to “promote democracy and market efficiency, control wasteful spending, and encourage private financial flows” (Para 18).

8 prioritized international Codes and Standards, “*that need to be complied with as a minimum requirement*” (Para 17) are solemnly endorsed by African leaders. These Codes are fundamental instruments that have been agreed to by the international community, and developed with the participation of African experts and leaders.

1-Code of Good Practices on Transparency in Monetary and Financial Policies



DEFINITION

Transparency is defined as the openness concerning policy intentions, formulation and implementation.

This Code has been developed by the **IMF** in 1999 and identifies desirable transparency practices in the conduct of monetary policy and policies intended for the financial sector. These practices are amongst others:

- A clear definition of the role, responsibilities and objectives of central banks and other financial agencies;
- Open process mechanisms for the formulation and reporting of decisions on monetary and financial policy;
- Public availability of information concerning monetary and financial policies;
- Accountability and assurances of integrity for the central bank, other financial agencies and their staff.

2-The Code of Good Practices on Fiscal Transparency

This Code was prepared by the IMF in 1998 and revised in 2001. It is based on 4 major principles:

- The transparency of the roles and responsibilities of public administrations, which implies a clear legal and administrative framework for fiscal management;
- Commitment of the governments to the public disclosure of comprehensive and reliable information on fiscal activities;
- Open process for budget preparation and implementation (objectives, macroeconomic framework);
- Mandatory submission of fiscal information to public and independent scrutiny (national audit body, independent experts, legislative bodies...)

3-The Best practices for budget transparency

The Best practices were drawn up by the **OECD** in 2000 and provide that:

- The budget shall be approved by the Parliament, and reports providing budgetary information shall regularly be submitted to the legislative power;
- A system of internal and external financial control shall be established;
- The Finance Ministry should actively promote an understanding of the budget process by individual citizens and civil society organisations.

4-The Guidelines for Public Debt Management

Prepared by both the **IMF** and the **World Bank** in 2001, the Guidelines are designed to assist policymakers in considering reforms to strengthen the quality of their public debt management and thus reduce their country's vulnerability to international financial shocks.


The Guidelines recommend the clarity of the roles and responsibilities of financial agencies responsible for debt management, in particular the Ministry of finance, the central bank and civil service.

5-The Principles of corporate governance

Since they were endorsed by **OECD** Ministers in 1999, the Principles have regularly been reviewed, notably in 2004. The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance. They address 5 fundamental themes:

- The protection of the rights of shareholders (transparent and equitable management of the company)

- The equitable treatment of shareholders, including the minority and foreign shareholders (full access to important information for all shareholders, prohibition of insider trading and abusive self-dealing)
- The role of stakeholders, protection of their rights established by law and cooperation between corporations and stakeholders in creating wealth and jobs.
- Disclosure and transparency of information (share ownership, governance, results), and conduct of an annual audit by an independent expert
- Monitoring of management by the board, and board's accountability to the company and the shareholders

	DEFINITION
<p>The “stakeholders” in corporate governance are: stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of transnational corporations or other business enterprises”, including parties which are indirectly affected by the activities of transnational corporations or other business enterprises such as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non-governmental organisations, public and private lending institutions, suppliers, trade associations, and others.</p> <p><i>Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, Para 22, Sub-Commission of the United Nations Economic and Social Council on the Promotion and Protection of Human Rights on 13th August 2003 (E/CN.4/Sub.2/2003/12/Rev.2)</i></p>	

6-International Accounting Standards and International Standards on Auditing

The principal body in charge of promulgating international accounting standards is the International Accounting Standards Committee (IASC). This privately funded institution was founded in 1973 and aims at harmonizing accounting and auditing standards at the international level. This harmonization targets both:

- Internal auditing (assessment of the extent and effectiveness of a firm's management and accounting controls, and of self guarding and efficient use of its assets)
- External auditing (auditing of financial statements and supporting evidence to determine their conformity with applicable standards).

7-The Core Principles for Effective Banking Supervision


The Core Principles were issued in 1997 by the Basel Committee on Banking Supervision, and cover 7 major subject areas:

- Preconditions for effective banking supervision

- Licensing and structure of banks
- Prudential regulations and requirements
- Methods for ongoing supervision
- Information requirements
- Formal powers of supervisors
- Cross-border banking

C/ Socio-economic development

- Ownership of development strategies as a prerequisite
- Enhanced development of human resources, in particular through education and health
- Gender equality

	DEFINITION
<p>The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.</p> <p><i>Declaration on the Right to Development, 4th December 1986, article 1</i></p> <p>The right to development comprises:</p> <ul style="list-style-type: none"> - the full sovereignty over natural wealth and resources - self-determination - popular participation in development - equality of opportunities - creation of conditions favourable to the respect of civil, political, economic, social and cultural rights. 	

Liberal theories and practices that contributed to worsen Africa's situation are clearly rejected by the Declaration. In that sense, Para 23 of the Declaration, which affirms that governments have a role to play in socio-economic development, clarifies a position on which the NEPAD Base Document remained silent or at least ambiguous. The main issue is thus not to reduce the role of government but to promote a "different type of government", that would be strong enough to establish partnerships with the private sector.

"Building blocks for Africa's economic integration", the Regional Economic Communities (RECs) are also responsible for the implementation of development policies, while resource mobilisation mostly relies on the realisation of global partnership.

D/ The African Peer Review Mechanism (APRM)

NEPAD "is founded on a hard-headed assessment of the political and socio-economic realities in Africa today" (Para 26). The African Peer Review

Mechanism (APRM), defined as an organ seeking to promote “*adherence to and fulfilment of the commitments contained in the Declaration*”, shall carry out this assessment.

The APRM is based on voluntary accession and does therefore not involve all member countries of the African Union. Though the APRM is the mechanism in charge of promoting compliance with the commitments undertaken in the Declaration, it is to be reminded that they apply to all AU member States.

A complete analysis of the APRM is available in the Second Part of this guide.

The legal value of the Declaration:

Declarations are generally intended to gather the principles, policies and statements of intent aimed at managing states’ conduct in given situations, despite the absence of any legal obligation.

The Declaration on Democracy, Political, Economic and Corporate Governance has no binding value from a legal point of view. However, the adoption of declarations takes on a specific significance and solemnity, which underlines the vivid expectations of the African Union that its member countries will respect the principles enshrined in the Declaration. Moreover, the Declaration is in keeping with the existing framework of international and regional law since it reaffirms the full and continuing commitments of the AU member states to comply with the decisions of the Union and other obligations and undertakings they entered in the context of the United Nations.

Furthermore, as already underlined in the context of the NEPAD Base Document, the future African Court of Justice of the African Union –which is the principal judicial organ of the AU- shall have jurisdiction over all disputes and applications involving any state that ratified the Protocol establishing the Court and relating to “*all subsidiary legal instruments adopted within the framework of the Union*», “*all acts, decisions, regulations and directives of the organs of the Union*” as well as “*all matters specifically provided for in any other agreements that States Parties may conclude among themselves*” (article 19 of the Protocol)

The Court of Justice will thus be entitled to decide on any dispute or application involving a state that ratified the Protocol and relating to the NEPAD Base Document.

Institutional implementation of NEPAD: Chronological account

2 March 2001: Extraordinary Summit of the OAU, Sirte (Libya)

Merger of the MAP and OMEGA P

11 July 2001: 37th ordinary session of the Assembly of Heads of State and Government of the OAU, Lusaka (Zambia)

Adoption of the NAI and establishment of the NEPAD Heads of State and Government Implementation Committee (HSGIC)

23 October 2001: First Summit of the Implementation Committee, Abuja (Nigeria)

NAI is renamed NEPAD. Its governing structures are adopted.

8-10 July 2002: First Summit of the African Union, Durban (South Africa)

The Summit assesses the first year of existence of NEPAD and approves all processes relating to NEPAD undertaken since the Lusaka Summit, including:

- The Durban Declaration on the implementation of NEPAD (Assembly/AU/Decl. 1 (I));
- The Declaration on Democracy, Political, Economic and Corporate Governance AHG/235(XXXVIII);
- The *African Peer Review Mechanism – APRM* Base Document (AHG/235-Annexe I)

10-12 July 2003: 2nd Ordinary Session of the Assembly of Heads of State and Government of the African Union, Maputo (Mozambique)

The Assembly adopts a Declaration fostering the implementation of NEPAD and the harmonization of the NEPAD programmes with the structures of the African Union (Assembly/AU/Decl.8-II).

13-14 February 2004: 9th Summit of the Heads of State and Government Implementation Committee, Kigali (Rwanda)

APRM participating countries officially launch the review process.

6-8 July 2004: 3rd Ordinary Session of the Assembly of the African Union, Addis Ababa (Ethiopia)

The Assembly promotes the role of the Regional Economic Communities (RECs) in the implementation of NEPAD and urges for the popularization of NEPAD amongst all sectors of society on the African continent (Assembly/AU/Dec. 38-III).

CHAPTER 2

NEPAD: HOW DOES IT WORK? IMPLEMENTATION AND STAKEHOLDERS

I. NEPAD STAKEHOLDERS AT THE NATIONAL LEVEL

The success of NEPAD depends essentially on States' and national actors' involvement in its implementation

The first point on the NEPAD Base document insists on the need to have an “*individual and collective*” implication in the programme. African Heads of State committed themselves to respecting a certain number of obligations in the context of NEPAD and have a central role to play in the implementation of NEPAD’s core values, objectives, programmes and projects.

Among these commitments, respect for human rights appears to be both a *prerequisite* to reach NEPAD’s objectives in terms of growth and sustainable development, and a *framework* within which NEPAD’s implementation has to take place. Moreover, “*the initiative cannot replace the responsibility of individual States for the well-being of their people or their development plans, programmes and projects launched with their own and/or external resources. The NEPAD priorities must therefore be integrated into the development processes of African countries as a means of supporting and enhancing the existing potential of each country*”²³.

A/ Basic principles governing States' participation to NEPAD

1-The enhanced role of States

NEPAD starts from the negative impact of the weakening of States’ prerogatives, imposed by international institutions in the 1980s, notably through Structural Adjustment Plans. According to the NEPAD Base Document, weak State capacities remain a major constraint to sustainable development in a number of countries. Indeed, one of Africa’s major challenges is to strengthen the capacity to govern and to develop long-term policies.

National structures therefore have to be strengthened in order to ensure sustainable development, which is one of the preliminary conditions African states have to meet within the framework of NEPAD. In order to do so,

²³ Cf. « *Integrating the priorities of the New partnership for the Africa’s development into the national development process* », Office of the UN Special Adviser on Africa, 2004

NEPAD member States have to establish the required institutional reforms, in the field of peace and security, democracy and political and economic governance²⁴.

All the commitments undertaken in the context of NEPAD have to be institutionally translated at national level, in order for the initiative to be properly anchored in its core values.

The ambiguities of the conception of the role of the State in NEPAD

If NEPAD acknowledges the negative impact of a restrictive conception of the role of the State, it nevertheless fails to propose concrete solutions to reinforce its capacity of action. For example, the question of the lack of resources is not sufficiently taken into account.

NEPAD sees the role of public structures as mere markets regulators. By doing so, it builds on the conceptions developed by the Structural Adjustment Plans, which promoted a narrow conception of State's intervention coupled with the privatisation of public enterprises. When encouraging the privatisation of water supply services, NEPAD is doing nothing different. This priority given to private investors might undermine the responsibility of public structures, especially in the setting up of public social policies within the framework of the fight against poverty.

2-The participation of civil society in the NEPAD implementation process

Participation is at the heart of NEPAD and constitutes the key to its success. All NEPAD documents affirm the primary responsibility of States in ensuring civil society participation in the NEPAD process. Access to information is therefore crucial. At the occasion of the OAU Lusaka Summit in July 2001 and the inaugural AU Summit in Durban in July 2002, African leaders decided that each Member State had a duty to publicize the Constitutive Act of the African Union and NEPAD.

Para.20 of the Declaration on Democracy, Political, Economic and Corporate Governance reaffirms the importance to build up «*new partnerships between governments and the private sector, and with civil society*».

B/ Integrating NEPAD into the national structures

According to Para. 47 of the NEPAD Base Document, the “*role of African leaders*” is to “*articulate NEPAD plans as well as lead the processes of implementation on behalf of their people*”. If States represent the major framework within which NEPAD has to be implemented, conflicts of competence might arise and consistency between NEPAD and existing development plans elaborated by external stakeholders has to be addressed.

²⁴ See Part I, III

1-Institutional provisions, focal points and implementation mechanisms

The integration of NEPAD into governmental structures constitutes a fundamental step in its implementation. Since it was adopted in 2001, several countries have tried to take up this challenge, by establishing national focal points, and setting up decision-making mechanisms in order to implement NEPAD at national level.

The integration of NEPAD can follow several patterns:

- The **executive** can be responsible for the implementation of NEPAD processes, through a person reporting directly to the head of State or Government (Algeria).
- Within **governmental structures**, NEPAD can be dealt with by a Minister specifically appointed for that matter (Ghana, Gabon, Senegal, Cameroon...), focal points established within existing departments (Finance or Regional integration Ministry...), inter-ministerial committees under the authority of the Ministry of Foreign Affairs, or by coordination mechanisms established in all administrative departments (South Africa).
- The implementation of NEPAD at the national level can also be the **Parliament's** responsibility, through the creation of commissions and committees within the institution. This solution has the advantage of ensuring a close budgetary control over the use of public resources and allowing a large dissemination of NEPAD throughout the country's districts.
- An independent focal point, separate from the government, can also ensure and supervise the implementation of NEPAD (Nigeria).

The purpose of the integration of NEPAD into governing structures is to ensure an enhanced consistency between NEPAD and existing development programmes, which have very often similar objectives. By providing the required funding for NEPAD priorities, African governments can signal the alignment of the national budgetary expenditure pattern with NEPAD policy priorities.

2- Financial and budgetary allocations to NEPAD priorities

Although NEPAD has already been integrated into several national decision-making processes, none of African countries today has established a consolidated budget system for NEPAD priorities. Instead, budgetary allocations for the priority sectors in NEPAD are integrated into the capital expenditure of the budgets of the respective ministries.

This budgetary system has two major drawbacks. First, it does not provide the financial outlay for all NEPAD priorities. Second it is impossible to see what particular item in the capital budget falls into the category of what the government calls a NEPAD priority. Therefore, this system might tend to favour large-scale infrastructure projects, to the detriment of programmes aimed at improving public services, especially in the field of health or education.

3-Consultative process with civil society and NGOs

The NEPAD Base Document emphasizes the need of a “*participatory governance*” (Para. 49) and asks “*the African peoples to take up the challenge of mobilising in support of the implementation of this initiative* “ (Para 56). By referring to the notions of “*empowerment*” and “*participation*”, African Head of States finally acknowledge the essential role of civil society as a key stakeholder in the governance process.



DEFINITION

NEPAD gives a broad definition of civil society encompassing unions, women’s, youth, vulnerable groups’ organisations, rural communities, professional organisations as well as NGOs

However, civil society participation in the implementation of NEPAD remains insufficient and there is fear to see the political statements of the Base Document remain mere wishful thinking. The NEPAD program of action has indeed been conceived without any real consultation with civil society and is considered to be a top-down initiative.

The critiques addressed to the absence of civil society consultation and popular participation are therefore justified. The fact that NEPAD was adopted by democratically elected African leaders, who can thus be considered as legitimate representatives of their population, should not prevent NEPAD from engaging in a effective partnership with civil society.

The lack of access to information constitutes the major hindrance to the mobilisation of civil society. Although an official NEPAD website has been set up, the exact list of projects, their main features and financing conditions are not available, which prevents civil society from being involved in the effective implementation of NEPAD.

The disclosure of such information is incumbent upon States, which have to promote the development of the partnership through its popularization and awareness raising.

NEPAD initiators have themselves recognized that the “*reality shows that the vast majority of the populations remain ignorant of the NEPAD programme*”²⁵.

²⁵ Olusegun Obasanjo, Official speech at the AU Maputo Summit, July 2003

As a consequence, civil society has either shown little interest or has strongly rejected this initiative.

To reinforce civil society's capacity to assess NEPAD, it is therefore urgent that African States put in place national institutions dedicated to NEPAD, undertake large raising awareness campaigns and gather all the comments made by civil society, respecting a genuine participatory approach.

Civil society has to play an active role in NEPAD

The main challenge for civil society is to strengthen the decision making process of its organisations while keeping its independence, which is the guarantee of the efficiency of its support towards NEPAD.

The need to include civil society organisations in the implementation of NEPAD is stressed in the NEPAD official documents as the key of NEPAD's success and legitimacy. As a result, NOS have increased their activities and research on the issue. However, human rights organisations remain too silent within this movement. Their presence is necessary in order to promote a human rights approach to development, in the respect of the African Charter on Human and Peoples' Rights and the Declaration on Good governance. NEPAD should not be the sole concern of development organisations but on the contrary should generate an enhanced cooperation between all components of civil society.

II. NEPAD AND REGIONAL ECONOMIC COMMUNITIES (RECs)

Africa's current integration landscape comprises 14 Regional Economic Communities (RECs). 7 of them are considered as the building blocks of the African Union and the African Economic Community.

RECs have an essential role to play in the coordination and the implementation of the NEPAD programmes and projects. They shall notably promote the integration of NEPAD priorities at both sub-regional and national levels. In the medium term, the increased cooperation between the existing RECs should ensure the continental integration of the NEPAD programmes.

A/ Overview of the RECs

Africa today is composed of **14 Regional Economic Communities**, including the **seven building blocks** of the African Union and the African Economic Community, which are:

- The Arab Maghreb Union (**UMA**)
- The Common Market for Eastern and Southern Africa (**COMESA**)
- The Community of Sahel-Saharan States (**CEN-SAD**)
- The Economic Community of Central African States (**ECCAS**)
- The Economic Community of West African States (**ECOWAS**)
- The Inter-Governmental Authority on Development (**IGAD**)
- The Southern African Development Community (**SADC**)

7 geographically more limited communities are subsets of the above:

- The Central African Economic and Monetary Community (CEMAC), a group composed of 6 ECCAS countries (CEMAC) ;
- The East African Community (EAC) made up of COMESA members Kenya and Uganda, and SADC member Tanzania;
- The Economic Community of Great Lakes Countries (CEPGL), consisting of 3 ECCAS members;
- The Indian Ocean Commission (IOC), made up of 4 members of COMESA and 1 French dependency (Reunion);
- The Mano River Union (MRU), consisting of 3 members of ECOWAS;
- The Southern African Customs Union (SACU), made up of 5 SADC members;
- The West African Economic and Monetary Union (UEMOA), with 8 members of ECOWAS.

The Regional Economic Communities:

Community	Members
Economic Community of West African States (ECOWAS).	15: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
West African Economic and Monetary Union (UEMOA)	8: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, Togo
Mano River Union (MRU)	Guinea, Liberia, Sierra Leone
Economic Community of Central African States (ECCAS)	11: Angola, Burundi, Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, DRC, Rwanda, Sao Tome and Principe, Chad
Central African Economic and Monetary Community (CEMAC)	6: Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Chad
Economic Community of Great Lakes Countries (CEPGL)	3: Burundi, DRC, Rwanda
Inter-Governmental Authority on Development (IGAD)	7: Djibouti, Eritrea, Ethiopia, Kenya, Uganda, Somalia, Sudan
Arab Maghreb Union (UMA)	5: Algeria, Libya, Morocco, Mauritania, Tunisia
Common Market for Eastern and Southern Africa (COMESA)	20: Angola, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Uganda, DRC, Rwanda, Seychelles, Sudan, Swaziland, Zambia, Zimbabwe
Indian Ocean Commission (IOC)	5: Comoros, Madagascar, Mauritius, Reunion, Seychelles
Southern African Development Community (SADC)	14: South Africa, Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, DRC, Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe
Southern African Customs Union (SACU)	5: South Africa, Botswana, Lesotho, Namibia, Swaziland
Community of Sahel-Saharan States (CEN-SAD)	18: Benin, Burkina Faso, Djibouti, Egypt, Eritrea, Gambia, Libya, Mali, Morocco, Niger, Nigeria, Central African Republic, Senegal, Somalia, Sudan, Chad, Togo, Tunisia
East African Community (EAC)	3: Kenya, Tanzania, Uganda

B/ RECs' provisions on human rights

The RECs have a decisive role to play in “*the gradual attainment of the objectives of the African Union*” (Constitutive Act, article 3l) and thus have to

foster the “*promotion and protection of human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments*” (Constitutive Act, Article 3h)

Most of the Treaties establishing the RECs refer to the African Charter on Human and Peoples’ Rights (see chart below).

CER	Human rights provisions in the Treaties
ECOWAS	Art 4g): Promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR
IGAD	Art 6Af): Promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR
SADC	Preamble et Art 4c) Promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR
COMESA	ACHPR, article 6e): Promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR Art 6h): Democracy and good governance
CEN-SAD	<i>No available data</i>
ECCAS	No mention
UMA	No mention
EAC	Art 3g): Promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR
UEMOA	Art 3: Respect for fundamental rights enshrined in the UDHR and the ACHPR
MRU	<i>No available data</i>
CEMAC	Preamble: Commitment to the principles of democracy, fundamental freedoms, respect for human rights and the rule of law
IOC	No mention
CEPGL	Preamble: loyalty to the ACHPR
SACU	No mention

C/ Relations between NEPAD and the RECs

Though institutional relations between RECs and the African Union still need to be clarified, notably through the adoption of Protocols on their mutual relations, the RECs, just like States, are responsible for implementing the AU programmes, including NEPAD.

1-RECs as building blocks of the African Union and the African Economic Community

First conceived as the “*building blocks*” of the African Economic Community, today RECs are the pillars of the African Union.

The Lagos Plan of Action adopted in 1980 already advocated an increase of the role of the Regional Economic Communities in development strategies.

This essential role was further reaffirmed and clarified by the Treaty Establishing the **African Economic Community (AEC)**, adopted in Abuja by the 27th Ordinary session of the Assembly of Heads of State and Government of the OAU in 1991. Article 28 of the Treaty provides for the “*strengthening of the existing regional economic communities and the establishment of new communities where they do not exist*”. RECs’ capacity to address concrete implementation of the AEC’s objectives is strongly highlighted. In the long-term, increased cooperation among the communities shall ensure the integration of the whole continent.



DEFINITION

The African Economic Community (AEC): The AEC was launched by the adoption of the Abuja Treaty in 1991 and came into force in 1994. The aim of the AEC is to promote economic, social and cultural development as well as African economic integration. Once the Treaty adopted, the organisation was officially referred to as the OAU/AEC.

The African Economic Community shall be established gradually in 6 stages over the following 34 years: by 2028, an African Economic and Monetary Union shall be set up.

Article 3g) of the Abuja Treaty guarantees “*the promotion and protection of human and peoples’ rights in accordance with the provisions of the ACHPR*”.

The African Union took over these principles: the Preamble of the Constitutive Act of the African Union acknowledges the “*need to accelerate the process of implementation of the Treaty establishing the African Economic Community*”, and thereby fosters the development of the African Regional Economic Communities. The Commission of the Union shall furthermore ensure the coordination between the existing RECs (Statutes of the Commission, Article 3t).

The relations between the African Union and the RECs are based on the **Protocol on relations between the AEC and the RECs** adopted by the OAU in 1998, which will remain in force until a specific Protocol is adopted by the African Union and ratified by all RECs.

This Protocol notably provides for the establishment of Committee **on Coordination**, composed of Chief Executives of the Regional Economic Communities and responsible for promoting the harmonization of programmes and policies at the continental level.

Therefore, the African Union plays a significant role to “coordinate and harmonize policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union” (Article 3l) of the **Constitutive Act** of the Union).

Moreover, Para. 3 of the Declaration on Democracy, Political, Economic and Corporate Governance reaffirms the continuing commitment of African States

to the Abuja Treaty and anchors the AEC –and thus the RECs- in the NEPAD process.

RECs therefore have responsibilities towards NEPAD as a programme of the African Union, that were underlined by the Decision on the implementation of NEPAD (Assembly/AU/Dec. 38 (III)) adopted by the 3rd Summit of the AU held in Addis Ababa in July 2004.

2-The role of RECs within NEPAD: coordination, harmonization and funding

- *Coordinating and harmonising programmes*

RECs are responsible for mobilising and supervising the transposition of the objectives, goals and strategies of NEPAD into concrete and practicable programmes at national and sub-regional level.

NEPAD provides for an enhanced sub-regional integration through the RECs, which shall supervise the implementation of its programmes both in each of their Member States and at the level of the Community. In the long term, the establishment of coordination programmes between the RECs shall rationalise their activities and foster the continental implementation of the NEPAD projects and objectives.

This sub-regional approach necessitates a close cooperation between the NEPAD Secretariat and the RECs' governing structures.

- *Cooperation between RECs and the NEPAD Secretariat*

In order to launch such cooperation, the Chief Executive Officers of the RECs and the NEPAD Secretariat met in Abuja (Nigeria) on 29-30 October 2003, and made a number of joint commitments to “*take steps to promote the ownership of NEPAD in their respective organisations and Member countries*” by:

- Incorporating the monitoring of the implementation of the NEPAD programmes and projects developed under such framework in standing agenda items of the meetings of the RECs’;
- Establishing a NEPAD focal point in each REC and promoting the establishment of similar NEPAD focal points or desks in member countries;
- Integrating regional programmes with programmes adopted under the NEPAD framework and ensuring that NEPAD principles and priorities are mainstreamed into the national development frameworks;
- Establishing cooperation mechanisms and synergetic working modalities with other sub-regional organisations;
- Involving the private sector and civil society more intensely.

The joint support of the RECs and NEPAD Secretariat to the implementation of NEPAD shall be facilitated by regular meetings and result in an enhanced cooperation between RECs.

The stages of the implementation process of NEPAD programmes and projects would thus be as follow:

1. The national NEPAD Focal Point identifies the required programmes and projects;
2. Relevant projects are submitted to the sub-regional Focal Point established by the REC to which the country belongs, to determine their consistency with the NEPAD priorities and their impact on all Member Countries.
3. The Focal Point of the Community then submits the selected projects to the NEPAD Secretariat for examination and listing.

- *Funding*

Most RECs have individual agreements with development partners and international institutions and can thus be determining organs for funding and promoting NEPAD, notably by strengthening their capacity to negotiate successfully at international level.

Several RECs already benefit from economic partnerships:

- Following the Cotonou agreement, the **European Union** developed partnership agreement with several RECs (with ECOWAS in particular) and intend to include RECs in the future Economic Partnership Agreements forecast to be implemented in 2008.
- IGAD has already developed several partnership agreements with **developed countries** (United Kingdom, Denmark, Germany, Norway amongst others).
- Lastly, several RECs –namely: ECOWAS, UMA, SADC and COMESA- are represented in the World Trade Organisation (WTO). However, all RECs should notify their existence to the WTO in accordance with Article XXIV of the GATT.

Besides, sub-**regional development banks**, which could play a similar role as the African Development Bank at sub-regional level, should take into account the NEPAD priorities and assist Member countries in financing the projects determined under the NEPAD framework.

Despite these provisions, the lack of resources considerably slows down the integration of NEPAD priorities into the RECs policies and programmes. Moreover, RECs overlaps (most countries are members of at least 2 RECs) make it difficult to harmonise NEPAD at the continental level

D/ Civil society participation at the level of the RECs

To date, the participation of civil society in the RECs' processes is still not ensured. Only the SADC decided, in September 2004, to develop an observer status.

The RECs, "*pillars*" of the implementation of NEPAD, should comply with its recommendations in terms of popular participation and determine an observer status to each REC in order to integrate fully civil society into their decision-making processes.

III. NEPAD AND THE AFRICAN UNION

NEPAD, as a programme of the African Union, and according to the decisions adopted at the Maputo Summit in 2003²⁶ (Assembly/AU/Decl.8 (II), and the Addis Ababa Summit in 2004 (Assembly/AU/Dec. 38 (III), shall be fully integrated into the structures and processes of the Union

A/ NEPAD and the African Union

NEPAD was initially conceived and approved by the Organisation of African Unity (OAU) as the development blueprint for the future African Union.

During the transition from OAU to AU, the institutional and operational relations between NEPAD and the AU were not clearly identified, and NEPAD was finally considered by the Heads of State and Government Implementation Committee (HSGIC) as the socio-economic programme of the African Union. Therefore, NEPAD shall be fully integrated into the structures and processes of the Union by the end of the transitional period.

Until then, the NEPAD structures remain independent of the AU Secretariat (the Commission), though the AU organs and the NEPAD Secretariat are expected to work in close cooperation and collaboration.

Official institutional links between the NEAD and the AU processes already exist:

- The African Union's Chairperson and the Secretary-General are ex-officio members of the Implementation Committee.
- The AU Commission (Secretariat of the Union) participates in NEPAD's Steering Committee meetings.

NEPAD: mandated initiative or subsidiary organ?

The position of the NEPAD programme within the AU structures remains unclear. Indeed, though NEPAD is presented as a "*mandated initiative*²⁷", the NEPAD implementation Committee, the central institution of the programme, enjoys considerable devolution of powers.

²⁶ 2nd Ordinary session of the Assembly of the AU, Maputo (Mozambique), 10-12 July 2003

²⁷ Communiqué issued at the end of the 2nd meeting of the HSGIC, para. 20

- NEPAD Heads of State and Government Implementation Committee has to report annually to the African Union Summit.

B/ Relations between NEPAD and the organs of the African Union

The African Union is composed of 18 organs established by the Constitutive Act of the African Union. The African Commission and Court on Human and Peoples' Rights are another 2 subsidiary bodies, established by the African Charter on Human and Peoples' Rights.

The 18 organs of the African Union:

Organ	Composition	Mandate
The Assembly (supreme organ of the AU)	Heads of State and government or their duly accredited representatives	<i>Articles 6 to 9 of the Constitutive Act</i> - Determines the common policies of the Union; - Takes decisions on reports and recommendations from the other organs; - Monitors the implementation of policies and decisions of the Union, and ensure compliance by all member States.
The Executive Council	Ministers of Foreign Affairs or others as designated by the governments of Member States.	<i>Articles 10 to 13 of the Constitutive Act</i> Coordinates and takes decisions on policies in areas of common interest to the Member States
The Pan-African Parliament	265 members	<i>Article 17 of the Constitutive Act</i>
Court of Justice		<i>Article 18 of the Constitutive Act</i>
The Commission of the AU	1 chairperson, 1 deputy chairperson and 8 commissioners, under the authority and mandate of the Executive Council	<i>Article 20 of the Constitutive Act</i> <i>Statutes adopted on 9th July 2002 (Assembly/AU/2 (I)d-Rev.1)</i> Secretariat of the Union, promotes integration and socio-economic development
Permanent Representatives Committee	Permanent Representatives to the Union and other Plenipotentiaries of Member States.	<i>Article 21 of the Constitutive Act</i> Responsible for preparing the work of the Executive Council and acting on the Executive Council's instructions.

Specialized Technical Committees	Rural Economy and Agricultural Matters	<i>Articles 14 to 16 of the Constitutive Act</i> - prepares projects and programmes of the Union and submit them to the Executive Council; - ensures the supervision and evaluation of implementation of decisions taken by the organs of the Union ; - ensures the coordination and harmonization of projects and programmes of the Union ; - submits to the Executive Council, either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of the Act - carries out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Act
	Monetary and Financial Affairs	
	Trade, Customs and Immigration Matters	
	Industry, Science and Technology, Energy, Natural Resources and Environment	
	Transport, Communications and Tourism	
	Health, Labour and Social Affairs	
	Education, culture and human resources	
Economic, Social and Cultural Council		<i>Article 22 of the Constitutive Act</i>
Peace and Security Council	15 membres elected in March 2004	
3 Financial Institutions	African Central Bank	<i>Article 19 of the Constitutive Act</i>
	African Monetary Fund	
	African Investment Bank	

1-The Commission

The Commission is the Secretariat of the African Union.

According to article 3d) of its Statutes, the Commission is in charged of helping member States in implementing AU policies and programmes, including NEPAD.

The Commission shall ensure the integration of the Regional Economic Communities (RECs)²⁸ as well as “*strengthen cooperation and co-ordination of activities between member States in fields of common interest*”²⁹, including NEPAD”. The Commission shall also strive for the promotion and popularization of the objectives of the Union.

²⁸ See previous chapter

²⁹ Statutes of the Commission, Article 3q)

The Commission is chaired by its president (Mr A. Omar Konaré) assisted by a deputy chairperson, and is composed of **8 commissioners** in charge of the following portfolios³⁰:

- Peace and Security

- **Political affairs** (human rights, democracy, good governance, electoral institutions, civil society organisations, humanitarian affairs, refugees, returnees and displaced persons)

- Infrastructures and energy

- **Social affairs** (health, children, drug control, population, migration, labour and employment, sports and culture)

- **Human resources, science and technology** (education, information and communication technologies, youth, human resources, science and technology)

- Trade and industry

- **Rural economy and agriculture** (rural economy, agriculture and food security, livestock, environment, water and sanitation, natural resources and desertification)

- **Economic affairs** (economic integration, monetary affairs, private sector development, investment and resource mobilisation)

2-The Pan-African Parliament

The creation of the Pan-African Parliament was initially provided for by the Abuja Treaty establishing the African Economic Community adopted in 1991. The African Union further integrated this institution into its structures in order “*to ensure the full participation of African peoples in the development and economic integration of the continent*”³¹.

The Parliament will have **consultative powers** during a 5-years transitional period, and shall then evolve into an institution with full legislative powers. It is composed of 265 members designated by the respective national parliaments of the member States. It held its first session on 16 September 2004 in South Africa.

The Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament was adopted by the Sirte Summit on 2 March 2004 and came into force on 14 December 2003.

Article 3 of the Protocol provides that the role of the Pan-African Parliament shall be to “*facilitate the effective implementation of the policies and objectives of the African Union*”, thus establishing the competence of the Parliament to address any issue relating to NEPAD. As such, the Parliament is enabled to “*make recommendations aimed at contributing to the attainment of the objectives of the Union and draw attention to the challenges facing the*

³⁰ Statutes of the Commission, Article 12

³¹ Constitutive Act of the African Union, Article 17

integration process in Africa as well as the strategies for dealing with them³² “, notably through the creation of **committees**³³.

The Parliament should thus establish an ad-hoc committee on NEPAD as soon as possible in order to enable its members to exercise their consultative powers on the programme.

3-The Peace and Security Council (PSC)

The Peace and Security Council is a **permanent decision-making body** for conflict prevention, management and resolution. It was solemnly launched on 25 May 2004.

The **Protocol** relating to the establishment of the PSC replaced the Cairo Resolution (1993), as well as the resolutions and decisions of the OAU relating to the Mechanism for Conflict Prevention, Management and Resolution in Africa. It was adopted on 9 July 2002 by the 1st Ordinary session of the Assembly of the African Union held in Durban and came into force on 26 December 2003.

The **Preamble** of the Protocol clearly underlines the links between NEPAD and the PSC and recognises the NEPAD “*conditions for sustainable development*” relating to peace, security, democracy and good governance³⁴. The PSC is also rooted in the “principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal Declaration of Human Rights.”³⁵

4-The Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)

The Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) is a **special programme of the African Union**.

CSSDCA was first established by the **Kampala document** (1991) on the initiative of the Ugandan and Nigerian presidents MM. Museveni and Obasanjo. The 36th OAU Summit, held in Lomé from 10th to 12th July 2000, adopted the Solemn Declaration on the CSSDCA (AHG/Decl. 4 (XXXVI)).

Conceived as a synergy between the various activities undertaken by the OAU/AEC, CSSDCA comprises 4 “Calabashes” (security, stability, development, cooperation). The CSSDCA programme covers most of the NEPAD priorities; however, while NEPAD considerably develops the modalities of a partnership with industrialized countries, CSSDCA mainly addresses the strengthening of Regional Economic Communities (RECs) without integrating the global partnership dimension.

³² Protocol, Article 11 para.. 4

³³ Protocol, Article 12, para.. 13

³⁴ Protocol, Article 3f)

³⁵ Protocol, Article 4

The implementation of CSSDCA is ensured by a Standing Conference, to convene every two years during the Summit of Heads of State and government. Plenipotentiaries and Senior Officials are to undertake review meetings in between Sessions of the Standing Conference.

The first Standing Conference of Heads of State and Government on CSSDCA took place during the Durban Summit held from 8 to 10 July 2002. It adopted a Memorandum of Understanding reaffirming the existing links between CSSDCA and NEPAD, which notably underlines “*the convergence and complementarity of their objectives in the realisation of the goals of the African Union*”.

The Memorandum is rooted in **international human rights law** and notably refers to the ACHPR, the Charter of the United Nations and the Universal Declaration of Human Rights³⁶. It guarantees civil, political, economic, social and cultural rights.

The Memorandum adopted in Durban also recommends the establishment of national conflict management mechanisms as well as the creation of national focal points involving the civil society and the private sector. Each of these focal points shall undertake monitoring of the country’s compliance with the CSSDCA process³⁷, and produce country reports prepared with the active participation of civil society, the private sector, members of the parliament and NGOs.

These reviews shall be undertaken under the responsibility of African eminent persons, who shall publicly disclose their conclusions during the AU Assembly Summits.

The risks of overlap and duplication between CSSDCA and NEPAD

CSSDCA and NEPAD were initially established according to 2 different approaches: Whilst the CSSDCA process was meant to be a framework for the adoption of common values for the African Union as well as benchmarks against which successes could be measured, NEPAD was conceived as an action programme for achieving the objectives of the Union

However, the implementation of NEPAD reveals obvious similarities between the two AU Programmes, in particular as far as priorities are concerned. Moreover, the question of the links between the review process in the framework of the CSSDCA and the APRM needs to be addressed.

³⁶ Memorandum, Article 1h

³⁷ Memorandum, Article 4

5-The African Commission on Human and Peoples' Rights

The African Commission is a subsidiary organ of the African Union. It was established in 1987 in accordance with Article 30 of the African Charter on Human and Peoples' Rights, and is tasked with promoting and protecting human and peoples' rights, as well as interpreting the provision of the African Charter³⁸.

Looking at the strong commitments of NEPAD to human rights, the African Commission should play a strong institutional role in order to ensure the coherence between NEPAD and the States' human rights obligations deriving from the African Charter on Human and Peoples' Rights. Whereas the Commission is a Partner institution to the APRM³⁹, no coordination mechanism has been envisaged between NEPAD and the African Commission.

Despite the absence of such a formal institutional link, the Commission could play a role in different ways:

- by adopting resolutions on the potential impact of NEPAD on the full enjoyment of human rights (Art. 45 of the Charter)
- by receiving communications from State Parties, NGOs with the Observer Status before the Commission or individuals, on human rights violations perpetrated by a State Party, at the occasion of the implementation of a NEPAD project or program. (Art. 47 and 55 of the Charter)
- by integrating NEPAD concerns when examining State Parties reports (Art.62 of the Charter).

6-The African Court on Human and Peoples' Rights

Since 25 January 2004, date of the entry into force of the **Protocol** creating the African Court on Human and Peoples' Rights, Africa has a new mechanism of protection of human rights that complements the role of the African Commission on Human and Peoples' Rights. The African Court is not part of the organs of the African Union as stated in Article 5 of its Constitutive Act (founding Treaty of the AU) adopted in July 2000 by the Heads of State and Government. But the Court is a conventional organ created "within the African Union".

On top of its consultative competence (Protocol, Art. 4), its competence in amicable dispute settlements (Protocol, Art. 9), the Court has a double contentious competence (Protocol, Art. 3, 5, 6, 7):

-The Court may receive and examine the petitions made by the African Commission, a State Party to the Protocol or any African intergovernmental organisation, aiming at denouncing human rights violations by a State Party. NGOs with the observer status before the African Commission and individuals

³⁸ ACHPR, Article 45

³⁹ See Part II, section 3

may also submit cases to the Court, if and only if the State accused of violating human rights has accepted such competence, in conformity with Article 34.6 of the Protocol.

-The Court is also competent (Protocol, Article 3) to rule on any dispute submitted to its attention regarding the interpretation of the Charter's provisions and of any other relevant human rights instrument ratified by the States concerned.

Under the conditions of competence exposed above, the African Court could therefore examine a petition, aiming at denouncing a human rights violation arising from the implementation of a NEPAD project or program.

7-The Court of Justice of the Union

The African Court is not the only regional jurisdictional body in Africa: the Court of Justice established by Articles 5 and 18 of the Constitutive Act of the African Union is "the principal judicial organ of the Union".

The mandate and mode of functioning of the Court of Justice are laid down in a Protocol adopted on 11 July 2003 by the Heads of State and Government. The Protocol has not yet come into force.

The African Court of Justice shall have jurisdiction over all disputes and applications involving State parties to the Protocol and relating to: "*all subsidiary legal instruments adopted within the framework of the Union*", "*all acts, decisions, regulations and directives of the organs of the Union*" as well as "*all matters specifically provided for in any other agreements that States Parties may conclude among themselves*"⁴⁰

These provisions thus entitle the Court of Justice to give ruling on any dispute or application involving a State party to the Protocol and relating to NEPAD, the Declaration on Democracy, Political, Economic and Corporate Governance or any other decision adopted by the AU within the purview of NEPAD.

C/ Intervention opportunities for civil society organisations

Since NEPAD shall be fully integrated into most of the AU organs, civil society organisations have the possibility to act on the implementation of NEPAD by addressing these AU bodies.

1-At the level of the African Union

The participation of civil society in the activities of the Union is guaranteed by Article 4c) of the Constitutive Act of the African Union and the African Charter for Popular Participation (1990).

⁴⁰ Protocol, article 19

The observer status in force at the time of the OAU has been reviewed in June 2004, when new criteria for the granting of observer status were adopted by the Permanent Representatives Committee. These criteria have not yet been officially approved by the Executive Council of the Union. NGOs applications should be possible mid-2005.

NGOs wishing to apply shall be registered in a Member State of the Union without any restriction to undertake regional and continental activities; and show a minimum of three years proof of registration.

Under certain conditions, the observer status will allow NGOs to participate in the meetings of AU Organs and to make interventions.

Specific criteria will be defined for international civil society organisations.

2-At the level of the Peace and Security Council

Since promotion of peace and conflict resolution constitute key priorities of the NEPAD process, the Peace and Security Council could play a central role in the implementation of the programme.

The PSC shall hold closed or **open** meetings. Under Article 8 Para. 10c) of the Protocol, during the open meetings, the PSC may invite “*any regional mechanism, international organisation, **civil society organisation** involved and/or interested in a conflict or a situation under consideration by the Council*” to participate to the related discussion, without the right to vote.

Moreover, Article 20 of the Protocol provides that “*non-governmental, community-based organisations and other civil society organisations*” shall be invited to address the Peace and Security Council.

This provision is completed by Articles 21 and 22 of the Rules of procedure of the PSC adopted on 16th March 2004. According to these articles, “*the PSC may invite a representative of a CSO with observer status to the Union⁴¹ to participate in the discussions*”, on presentation of an accreditation letter of the President of the Commission.

Moreover, NGOs, research centres and academic institutions are encouraged to work in cooperation with the PSC in order to foster the functioning of the Early warning system⁴².

3-At the level of the Economic, Social and Cultural Council (ECOSOCC)

Article 22 of the Constitutive Act of the African Union provides for the creation of the Economic, Social and Cultural Council in accordance with the African Charter for Popular Participation. This **permanent consultative body** is

⁴¹ See Observer status of the AU

⁴² Protocol, article 12

composed of Civil Society Organisations (CSO) representatives from the AU member States.

The purpose of the ECOSOCC is to foster a real partnership between all segments of civil society and governments of the member States of the Union. The ECOSOCC also aims at promoting the participation of civil society in the development, implementation, supervising and monitoring of the economic, social and cultural programmes of the African Union. Therefore, the ECOSOCC is expected to work in close collaboration with all AU organs.

The Statutes of the Economic, Social and Cultural Council were adopted by the 3rd Ordinary session of the Assembly of the AU held in Addis Ababa in July 2004 (Assembly/AU/Dec.48 (III)).

Article 3 of these Statutes sets out a non-exhaustive list of the different types of CSOs entitled to become members of the ECOSOCC; these CSOs include:

- social groups representing women, youth or vulnerable persons
- professional associations (media, health, culture, lawyers, chambers of trade and industry...)
- NGOs and community-based organisations
- workers and employers unions
- social and professional groups from the African diaspora

The ECOSOCC shall be composed of 150 members (one representative for each civil society organisation), distributed as follows: 2 CSOs from each member State of the Union, 10 CSOs operating at regional level and 8 at continental level, 20 CSOs from the African diaspora, and CSOs, in ex-officio capacity, nominated by the Commission based on special considerations, in consultation with Member States. A preliminary meeting of the ECOSOCC is to take place in February 2005.

The Economic, Social and Cultural Council will comprise:

- A General Assembly (supreme organ) composed of all 150 members of the ECOSOCC
- A Standing Committee elected by the General Assembly and composed of 18 members
- 10 **Sectoral Cluster Committees**, 8 of them corresponding to the portfolios of the Commission of the Union. The other 2 will respectively be in charge of gender issues and women empowerment, and cross-cutting programmes. The last will focus on strategic planning, new development projects and perspectives, as well as NEPAD and CSSDCA.

A Credentials Committee⁴³ will be established in order to determine the list of eligible organisations. It will be composed of civil society representatives from each of the 5 sub-regions, 1 representative of the diaspora, 1 nominated representative for special interest groups such as vulnerable groups and 2

⁴³ Statutes, article 10

representatives of the Commission. The Committee is tasked with encouraging, considering and selecting applications for membership of civil society organisations.

Eligibility requirements for ECOSOCC membership

(Article 6 of the ECOSOCC Statutes)

- Be national, regional, continental or African Diaspora CSO,
- Have objectives and principles that are consistent with the principles and objectives of the Union as set out in Articles 3 and 4 of the Constitutive Act
- Be registered in a member State of the Union and/or meet the general conditions of eligibility for the granting of observer status to NGOs
- Show a minimum of 3 years proof of registration as either an African or an African diaspora CSO prior to the date of submission of application
- Provide annual audit statements by an independent auditing company
- Show proof that the ownership and management of the CSO is made up of at least 50% of Africans or African diaspora
- At least 50% of the basic resources shall be derived from contributions of the members of the organisation. External voluntary contributions should be fully revealed and declared in the application for membership
- Provide information on funding sources in the preceding 3 years
- For regional and continental CSOs, show proof of activities that are being started or are operative in at least 3 member States of the Union
- Adherence to a Code of ethics and conduct for CSOs affiliated to the AU
- Rejection of CSOs discriminating on the basis of religion, gender, ethnic, racial or political considerations

4-At the level of the African Commission on Human and Peoples' Rights

NGOs with the observer status before the Commission can adopt recommendations, especially in the framework of the Civil society forum, to urge the Commission to pass resolutions on the impact of NEPAD on the enjoyment of the rights enshrined in the African Charter.

NGOs with observer status before the Commission can also submit shadow reports to the governmental reports presented under article 62 of the Charter, in order to stress on the effects of NEPAD on the rights contained in the Charter.

Finally, these NGOS can submit communications dealing with alleged violations of human rights, caused by NEPAD projects or programs (Art. 47 and 55 of the Charter).

5-At the level of the African Court on Human and Peoples' Rights

If a NEPAD project or program has caused a human rights violation, individuals and NGOs with observer status to the African Commission can

submit a petition to the African Court on Human and People's if and only if the State accused of violating human rights has accepted such competence, in conformity with article 34.6 of the Protocol.

Danger of overlap and duplication between the AU structures and NEPAD

The NEPAD programme covers most of the mandates and prerogatives of the AU organs. Rationalizing and linking up NEPAD and AU structures is thus necessary to curtail the duplication of the NEPAD implementation mechanisms.

For instance, strong overlaps are to be underlined between the portfolios of the Commission, the Specialized Technical Committees and the thematic clusters of the NEPAD Secretariat. Special attention should be given to the creation of specialized committees in the NEPAD framework (such as the sub-committee on peace and security): these committees should not compete with the AU existing organs (in this case, the PSC).

IV. NEPAD AND THE INTERNATIONAL COMMUNITY

“We hold that it is within the capacity of the international community to create fair and just conditions in which Africa can participate effectively in the global economy and body politic.”⁴⁴

NEPAD aims at establishing relations between Africa and multilateral institutions not only by maintaining existing initiatives and programmes, but also by strengthening them in order to integrate them into the priorities and i needs dentified within the NEPAD framework.

Introduction

The implementation of NEPAD is based on the establishment of a new partnership with developed countries, in order to address the **funding** of development.

International assistance is already provided under **3 main financing terms**: Official Development Assistance (ODA), debt relief and trade relations –in particular international market access. These 3 terms involve a wide range of stakeholders, through bilateral or multilateral agreements (e.g. with the European Union, the OECD and other international institutions such as the World Bank and the World Trade Organisation –WTO).

- *Official Development Assistance (ODA)*

ODA flows and the ambiguous role they play in the relations between donor countries and Africa are the heart of the issues addressed by NEPAD.

After a significant decline in the late 1990's, ODA flows into Africa have raised in the past 4 years: from \$16,4 billion in 2000, ODA to Africa reached \$22,2 billion dollars in 2002 and is forecast at \$23,3 billion dollars in 2003. This level, however, remains lower than the average ODA flows received in the early 1990's (\$26, 6 billion).

In average, developed countries only provide 0,3% of their GDP for ODA, while the target set by the United Nations in 1970 is 0,7%.

⁴⁴ Point 41 NEPAD Base Document

By adopting Western standards such as “good governance”, NEPAD aims at complying with aid conditionality to foster the increase in ODA flows by 2015, in accordance with the commitments undertaken by donor countries in the framework of the Millennium Development Goals (MDGs). This claim has been taken into account during the Monterrey Summit in 2002, when G8 committed itself to significantly increase its financial development assistance (see below). However, donors tend to consider the accession to the African Peer Review Mechanism as a new aid conditionality –which is contrary to the principles set forth by the Mechanism⁴⁵.

- Debt relief

The debt issue is closely linked to assistance, since financial aid is often returned in the form of debt servicing: in 2002, Africa received \$22,2 billion dollars of ODA flows, but paid \$21,9 dollars as external debt servicing.

However, NEPAD hardly address the issue of debt treatment. Though the Bretton Woods Institutions sets the Heavily Indebted Poor Countries Initiative (HIPC) as a consistent answer to the debt problem, all African countries are not eligible for the initiative: only 23 countries have benefited from debt relief measures within its framework. Besides, it is now confirmed that the whole process is long and finally not as “profiting” than expected, since only a relatively limited part of the external debt is cancelled. Lastly, it is to fear that multilateral donors, who often bear the costs of debt relief, might then reduce the future ODA flows as a compensation.

- Market access and trade relations

To date, Africa’s share in international trade is 2%. However, many contradictions are to be underlined between donor countries’ aid and trade policies. Indeed, Africa’s step-back in global trade since the 1970’s caused a loss of earnings of over \$70 billion dollars per year (5 times more than the received ODA flows).

In 2002, 71% of the volume of total exports were primary products. Though trade negotiations should mainly focus on agriculture and cooperation, developed countries continue to grant massive agricultural subsidies⁴⁶, thereby reducing African products’ competitiveness.

Despite the numerous claims of both African countries and international institutions (WTO through the Doha agenda, IMF, World Bank and the United Nations), developed countries have not yet reduced their subsidies to restore fair competition.

⁴⁵see Part 2.1

⁴⁶ For instance, in 2003, a person living in Sub-Saharan Africa would receive in average \$21 per year from international assistance. An European cow would receive \$800 subsidies per year

In terms of market access, steps have been taken in bilateral trade relations with the establishment of enhanced partnerships with African exporting countries: the African Growth and Opportunity Act (AGOA) signed into law by the Congress of the United States in May 2000 provided 37 African countries meeting criteria of “good governance”, a duty-free access to the American market to 1,800 products until 2008.

Moreover, several incentives led by development partners have succeeded to establish bilateral partnerships: 40 African countries signed bilateral agreements providing for the mutual application of the most-favoured nation principle with China, that also implemented duty-free access to some products from developing countries. Canada also decided to extend the special tariff granted to least advanced countries for 10 more years.

NEPAD: consolidated report of the UN Secretary-General on progress in implementation and international support

The consolidated report of the Secretary-General annually considers and assesses the support of the United Nations to NEPAD. Mr Annan’s second report was presented to the General Assembly in September 2004 (A/59/206). It welcomed the progress in the implementation of NEPAD, but also urged the international community to engage more firmly in the implementation process, notably by increasing ODA levels, adopting debt relief measures and intensifying FDI flows and trade. Mr Annan also called for an enhanced consistency of foreign policies: though ODA flows increased this year, their impact is hindered by the lack of coordination between donors.

Though these financing terms involve a wide range of stakeholders, NEPAD has already developed enhanced partnerships with some of them, such as G8, international financial and trade organisations World Bank and WTO).

A/ G8: the principal funding partner of NEPAD

G8 has become one of the major partners of NEPAD at the international level. During its last Summits, G8 integrated the NEPAD priorities into its Africa Action Plan. Moreover, G8 works in close collaboration and on a regular basis with the NEPAD Steering Committee.

1-Integration of NEPAD into the G8 agenda

- The Genoa Summit (2001)

<p>G8 Members: Canada France Germany Italy Japan Russia United Kingdom United States</p> <p><i>European Union</i></p>
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The New African Initiative (NAI) is officially presented to G8, which adopts the “*Genoa Declaration*”, acknowledging the validity of the priorities determined by NAI.

Each G8 leader. then appointed an Africa Personal Representatives (APRs)

- The Kananaskis Summit (2002) and the Africa Action Plan

As the United Nations General Assembly has approved NEPAD as the general framework for international support to Africa's development, G8 members adopt the **Africa Action Plan**, thus marking their political and financial support to NEPAD. They also decide to allocate one additional billion dollars to the Heavily Indebted Poor Countries Initiative (HIPC) to reduce their debt.

This Action Plan shall be "*pursued in individual and collective capacities and through the international institutions to which the G8 countries belong*". It also encourages "*South-South cooperation and collaboration with international institutions and civil society, including the business sector, in support of the NEPAD*".

The Africa Action Plan – AAP

The AAP is the cornerstone of G8's support to NEPAD, and sets forth over a hundred commitments to support the programme in the following key areas:

- Peace and security;
- Governance;
- Education;
- Health;
- Economic growth;
- Debt relief;
- Agriculture and water sanitation.

In terms of trade, the Africa Action Plan is in keeping with the Doha newly launched multilateral trade negotiations. It also reaffirms the commitments undertaken in 2002 in Monterrey, notably: increase G8 member countries' ODA levels by 12 billion dollars by 2006.

The AAP thus plans to release public and private resources in the long term. However, this release shall not be a mere massive contribution of capital but a commitment to allocate new financial and technical resources.

G8, however, lays down the respect for human rights, democracy, good governance and the rule of law as the **pre-condition** to its support.

The G8 Africa Action Plan's aid conditionality

The AAP maintains the previous aid conditionality: African partners "will be selected on the basis of measured results", and G8 will "focus our efforts on countries that demonstrate a political and financial commitment to good governance and the rule of law, investing in their people, and pursuing policies that spur economic growth and alleviate poverty".

Moreover, the APRM process is considered by the AAP as a source of information for considering the "eligibility for enhanced partnerships". G8 member countries "will each make their own assessments in making these partnership decisions". While they "will focus particular attention on enhanced-partnership countries", they will also "work with countries that do not yet meet the standards of NEPAD but which are clearly committed to and working towards its implementation". They will not "work with governments, which disregard the interests and dignity of their people".

The promotion of good political and economic governance, notably through the APRM, thus remains the G8's conditionality to its support to African countries.

- The Evian Summit (2003)

G8 leaders adopt the joint report of implementation of the Africa Action Plan, presented by their personal representatives for Africa (APR), with the attendance of 5 founders of NEPAD.

Para. 8 of this report puts the emphasis on the concept of "**accountability**" and welcomes the decision of several African G8 partners to include African participation in the OECD Development Assistance Committee (DAC) peer-review process.

- The Sea Island Summit (2004)

The Sea Island Summit marks a step-back of the G8's involvement in the implementation of NEPAD. Despite the presence of 6 African leaders, negotiations focused on the situation in Iraq and the Middle East.

Though the Africa Action Plan, which shall be reevaluated in 2005, is renewed, it hardly refers to NEPAD but underlines the slowness of its implementation.

2-The African Partnership Forum

Since the Evian Summit in 2003, the partnership between G8 and NEPAD has been expanded and renamed **African Partnership Forum (APF)**.

This Forum is composed of:

- The 20 countries participating in the governing structures of NEPAD
- The Commission of the African Union
- The NEPAD Secretariat
- RECs

- G8 member countries
- 11 OECD countries (the most significant donors in the zone)
- The World Bank and the IMF
- The United Nations.

The NEPAD Steering Committee plays a significant role in the Forum's meetings. The first session of the Forum was held in Paris on 10 November 2003, the second in Maputo (Mozambique) on 8 April 2004.

B/ The World Bank

1-The involvement of the World Bank through its programmes on the fight against poverty

Poverty reduction is one of NEPAD's sectoral priorities.

In its base document, NEPAD expresses its will to *“support existing poverty reduction initiatives at the multilateral level, such as the Poverty Reduction Strategy approach linked to the HIPC debt relief initiative and work with the World Bank to accelerate implementation and adoption of the Comprehensive Development Framework, the Poverty Reduction Strategy and related approaches⁴⁷”*.

At the end of the 1990s, the World Bank started underlining the vulnerability of the poorest populations in the face of macro-economic instability - itself generated by the implementation of the policies recommended by the international financial institutions.

Since 1999, the Bank has furthermore proposed the enforcement of what it defines as a new approach to the fight against poverty in highly indebted countries. Such countries can see their debt alleviated, provided they adopt adjustment programs, known as PRSPs (Poverty Reduction Strategy Papers), in collaboration with, and if need be with the assistance of, the World Bank and the International Monetary Fund. The PRSP has thus become the key mechanism to coordinate loans and grants from the World Bank and the IMF to highly indebted countries. This orientation is designed to link debt-alleviation and international aid to concrete results in the fight against poverty.

Finally, the World Bank has adopted a more nuanced position as to the extreme liberalism that it used to advocate. One could say that it has partly switched from a radical, Hayek-inspired, form of liberalism (according to which anything that hinders the free workings of the market is deemed nefarious, and where the role the State is limited to eliminating any such obstacle), to a more social liberalism, where the failures of exchange and certain effects of the market have to be compensated by a preventive or distributive action of the state.

⁴⁷ NEPAD Base Document, Para. 115

Critical analysis of the World Bank policies:

- Reduction in poverty and inequalities always experienced as the inevitable result of sustainable growth thanks to liberalising structural reforms;
- A strong enough State to ensure free market functions;
- Domestic savings built up through capitalisation pensions;
- Social policies as basically targeted assistance policies, along with partial privatisation, and defined as a condition for growth, since their mission is to ensure social stability, prerequisite to putting the policies in place;
- Sustained support for informal economy;
- The proposed deregulation/liberalisation of labour markets (no minimal wage, shrunk job security laws, decentralised negotiations).

"The World Bank and Human Rights", FIDH report n° 354, January 2003, <http://www.fidh.org>

2-The World Bank's support to large-scale NEPAD infrastructure projects

On top of its involvements through the Poverty Reduction Strategy Papers and the HPIC initiative, the World Bank has shown its interest in NEPAD since its inception, notably by creating a special office dedicated to the African initiative.

The World Bank in association with the ABD and the European Union has chosen to give its support primarily to the implementation of regional infrastructure projects. The Bank has participated in the funding of the NEPAD twenty priority projects.

The Inspection panel of the World Bank

Private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank can make a request for inspection to the Inspection Panel of the World Bank.

To request an inspection, individuals have to:

- live in the project area (or represent people who do) and are likely to be affected adversely by project activities.
- believe that actual or likely harm results from failure by the Bank to follow its policies and procedures.
- Their concerns have been discussed with Bank management and they are not satisfied with the outcome.

<http://www.inspectionpanel.org>

C/ NEPAD and the WTO

In addition to NEPAD's broad-based support for the WTO, African Heads of State must identify strategic areas of intervention and, together with the international community, strengthen the contribution of trade to the continent's recovery.

NEPAD wants to assist Member states in capacity- building in the private sector, as well as strengthening country and sub-regional capacity in trade negotiations, implementing the rules and regulations of the WTO, and identifying and exploiting new trading opportunities that emerge from the evolving multilateral trading system.

D/ NEPAD and United Nations

Though African governments have the primary responsibility for mobilizing resources from domestic and external sources for the implementation of NEPAD, the United Nations system can “*play an important **catalytic and supportive role***”⁴⁸ in that process through the vast range of activities it provides (loans, grants, technical assistance, advocacy...).

1-NEPAD in the United Nations documents

Since 2002, the United Nations have affirmed their support to NEPAD through 4 Resolutions adopted by the General Assembly:

- *Resolution A / RES / 57 / 2 (18th September 2002): “United Nations Declaration on the New Partnership for Africa’s Development”*

The Assembly welcomes the NEPAD initiative, considered as a “*serious commitment*”. Though underlining the primary responsibility of African leaders for implementing NEPAD, the resolution recalls the “*essential role*” of international support (United Nations, donor countries...) in implementing NEPAD.

- *Resolution A / RES / 57 / 7 (4th November 2002): “Final review and appraisal of the United Nations New Agenda for the Development of Africa in the 1990s and support for the New Partnership for Africa’s Development»*

All multilateral organisations, including the United Nations system, shall align their activities with the priorities of NEPAD. The Resolution focuses on the required coordination of the various support activities relating to NEPAD, in particular at regional level, and urges the adoption of measures to strengthen

⁴⁸ Economic and Social Council, Committee for Programme and Coordination, report of the Secretary-General, 31st March 2004

cooperation with the African Union and the Regional Economic Communities. To this end, the Resolution A / RES / 57 / 7 recommends thematic clusters to be established within the United Nations in order to collaborate with donors.

- *Resolution A / RES / 57 / 300 (20th December 2002): “Strengthening of the United Nations: an agenda for further change”*

According to Para. 25 of the Resolution, the Special Adviser on Africa⁴⁹ – placed under the authority of the Secretary-General- is responsible for coordinating global advocacy in support of NEPAD.

- *Resolution A/RES 58/233 (23rd December 2003): “New Partnership for Africa’s Development: progress in implementation and international support”*

Through this Resolution, the General Assembly reaffirmed and updated its commitments, and called for the United Nations system to enhance its support to African countries and NEPAD Secretariat in elaborating projects and programmes within the framework of NEPAD priorities.

2-Institutional implementation

United Nations system support for NEPAD has been organized around 6 thematic clusters that broadly correspond to the NEPAD priorities. Each of these clusters is composed of sub-clusters tasked with specific issues and closely working with related United Nations agencies and organs. These 6 clusters are:

- *Infrastructure development*

The United Nations Economic Commission for Africa (**ECA**), which facilitates the sub-clusters on water and sanitation, energy, transport and ICT, are the overall convenor of this cluster, working in close collaboration with the World Bank.

- *Governance, peace and security*

This cluster is convened by the United Nations Development Programme (**UNDP**)

- *Agriculture, trade and market access*

The Food and Agriculture Organisation of the United Nations (**FAO**) convenes this cluster.

- *Environment, population and urbanisation*

This cluster is convened by the United Nations Human Settlements Programme (**UN-Habitat**) and works in collaboration with the United Nations Population Fund (UNFPA) and the Economic Commission for Africa (ECA).

⁴⁹ At date, Mr. Ibrahim Gambari

- *Human resources development, employment and HIV/AIDS*

This cluster, for which **UNICEF** is the convenor, is composed of 3 sub-clusters, namely: education, employment and HIV/AIDS.

- *Science and technology*

This cluster, which is convened by the United Nations Educational, Scientific and Cultural Organisation (**UNESCO**) and the United Nations Conference on Trade and Development (**UNCTAD**), works in close collaboration with the NEPAD Secretariat.

Besides, UN Secretary General Mr Kofi Annan appointed an **international panel** of 13 eminent economists, development practitioners and academics in July 2004, to strengthen international support for NEPAD. The panel will monitor the scope and progress of international support for NEPAD.

V. NEPAD AND THE PRIVATE SECTOR

NEPAD seeks to increase private capital flows to Africa, as an essential component of a sustainable long-term approach to filling the resource gap. NEPAD pleads for the improvement of business environment through the reinforcement of the rule of law and the partnership between the private and public sector.

The conditions that promote private sector investments by both domestic and foreign investors are the following:

-Improved governance, so that participation in the Economic and Political Governance Initiatives is a prerequisite for participation in the Capital Flows Initiative.

-An increase in national savings through the eradication of capital flight, corruption, the improvement of financial structures by the creation or the reinforcement of local capital markets.

This initiative reaffirms the will of African leaders to bear their own share of responsibility in the difficulties faced by the African continent.

Private investment and human rights

The link between investments and Human Rights depends on several factors, in particular the type of investment concerned, the sector in which the investment is made, the country concerned, the motivations of the investors, and the action taken by governments. While foreign investments can be – in certain cases – beneficial for economic development, and therefore for the realisation of economic, social and cultural rights, the liberalisation of investments can prove very dangerous for Human Rights. For example, privatisations present serious risks for the supply of essential services, such as health, education, access to water or energy. Any increase in investors' rights provided for in investment liberalisation agreements must be offset by clarification of the investors' obligations towards individuals and communities.

CHAPTER 3

A HUMAN RIGHTS APPROACH TO NEPAD: THEMATIC CHALLENGES

I. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

A/ The major challenges in the field of human rights

1-The challenge of indivisibility of all rights

Despite references to international texts asserting or reaffirming the indivisibility of all rights, NEPAD seems to put a stronger emphasis on civil and political rights, linking them to the issue of democracy and political governance.

Sadly enough, health, education or more generally development issues are not envisaged in a human rights perspective, where individuals are rights-holders and the State, the duty-bearer.

A recurrent criticism was to say that NEPAD was dealing with economic and social issues but not economic and social *rights*. Moreover NEPAD refers to the Millennium Development Goals, which do not sufficiently take the human rights dimension into consideration.

Critical analysis of the Millennium Development Goals in relation to human rights

- First, MDGs are incomplete: they do not address crucial issues that are essential features of human rights. For example, regarding health, the MDGs do not refer to reproductive health.

-Second, human rights have a particular preoccupation with vulnerable individuals and groups. From the human rights perspective, the average condition of the whole population is unhelpful and can even be misleading: for example, improvements in average health indicators may actually mask a decline for some marginal groups.

-Third, it might be argued that some of the targets set out in the MDGs are unacceptable from a human rights perspective. For example, the goal of reducing maternal mortality by three quarters by 2015 could be considered as unacceptable.

See E/CN.4/2003/58, Report of the Special Rapporteur on the Right to Health to the UN Commission on Human Rights

2-The challenge of the development for all; the respect of the right of equality of treatment and the right to non-discrimination

As a program specifically aimed at getting Africa out of its current marginalized position in the world community, NEPAD cannot afford to let

certain categories of the African populations remain outside the development process.

NEPAD member States should be particularly vigilant when affecting resources, and when selecting the geographical location of projects. If one region was to be chosen over and above another, NEPAD could in the longer term be deemed to be implementing a discriminatory policy.

3-The challenge of the international partnership

The question of the international partnership is at the heart of the NEPAD. It is now widely acknowledged that globalization allows multiple actors (third-party nations, international organisations, and corporations) to affect human rights in a given country. International law and human rights have progressively adapted to this situation by enlarging the concept of accountability, in order to on the one hand, encompass extra-territorial obligations of nations (notably in terms of their foreign aid and international cooperation), and on the other, to impose obligations on non-state actors whose activities may impact, even indirectly, human rights in a given country.

Aid, debt relief, access to markets, access to private financial flows and stability in the global economy are all needed for the full realisation of rights in the poorest and least developed countries.

4-The challenge of the implementation: all the actors of the NEPAD have to respect human rights

For the vision of NEPAD not to become a mere “wishful thinking”, implementation has to be guaranteed and controlled.

The challenge is two-fold:

- NEPAD has to contribute positively to the promotion and fulfilment of human rights,
- NEPAD should not jeopardize the enjoyment of human rights, and more specifically economic, social and cultural rights.

For these challenges to be met, the NEPAD has to set up mechanisms and procedures allowing for the impact assessment of NEPAD projects and programmes on human rights, and impose on all its partners – including private entities– to respect human rights in their activities.

Evaluation mechanisms envisaged in the NEPAD base document

- The NEPAD has to establish an independent mechanism for assessing donor and recipient country performance (para. 149),
- The NEPAD has to require that country plans prepared assess their poverty reduction impact, both before and after implementation (para.116).

B/ Economic, social and cultural rights according the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁰

The ICESCR imposes an immediate obligation to take measures towards the progressive realisation of human rights, to the maximum of the state Party's available resources.

Article 2.1	NEPAD member States' obligations
<i>"to take steps by all appropriate means, including particularly the adoption of legislation"</i>	-Begin <i>immediately</i> to take steps towards full realisation of the rights contained in the Covenant -At the national level, use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures.
<i>"to achieve progressively the full realisation of the rights"</i>	-Take measures independently of the increase in resources and use effectively all resources available. -Refrain from taking measures (through law or policy) that would jeopardize existing achievements ("principle of non retrogression")
<i>"to the maximum of its available resources"</i>	-Ensure the satisfaction of, at the very least, minimum essential levels of each of the rights", irrespective of the availability of resources in the country.
<i>"individually and through international assistance and co-operation, especially economic and technical"</i>	-Spend, in priority, the resources received through international assistance towards the realisation of its minimum core obligations.

The Covenant encompasses a various number of rights, such as:

- The right of everyone to the enjoyment of just and favourable conditions of work (art.7),
- The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing (art.11),
- The fundamental right of everyone to be free from hunger (art. 11.2),
- The right of everyone to the enjoyment of the highest attainable standard of physical and mental health (art.12),
- The right of everyone to education (art.13).

For all these rights, the Covenant imposes three types of obligations⁵¹:

- **The obligation to respect** requires States to refrain from interfering with the enjoyment of economic, social and cultural rights.

⁵⁰It's the article 2.1 which exposes the general obligations of State Parties to the Covenant

⁵¹Maastricht Guidelines on violations of economic, social and cultural rights, E/C.12/2000/13

- **The obligation to protect** requires States to prevent violations of such rights by third parties.
- **The obligation to fulfil** requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.

C/ Economic, social and cultural rights and the African Charter on Human and Peoples' Rights

The Charter imposes an immediate obligation to give full effect to the rights, to the maximum of State Parties' resources.

The African Charter on Human and Peoples' Rights guarantees civil, political, economic, social and cultural rights.

The Charter covers **individual rights**:

- The right to property (art. 14)
- The right to work (art.15),
- The right to enjoy the best attainable state of physical and mental health (art 16),
- The right to education (art 17),
- The right to receive information (art 9)

... as well as **collective rights**:

- The right to economic, social and cultural development (art 22),
- The right to a healthy environment (art 24)
- The right to freely dispose of the country's wealth and natural resources (art 21).
- The right to a general satisfactory environment favourable to their development (art.24).

According to the African Commission on Human and Peoples' Rights, States have four different obligations⁵².

-The obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights

-The obligation to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation commits the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties (Union des Jeunes Avocats /Chad).

⁵²ACHPR/COMM/A044/1 -CESR and SERAC v. Nigeria

-The **obligation to promote** the enjoyment of all human rights. The State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.

-The **obligation to fulfil** is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights. This is linked to the above-mentioned 'duty to promote'. It could consist in the direct provision of basic needs, such as food - or resources that can be used for food (direct food aid or social security).

Unlike the ICESCR, the ACHPR does not contain any provision on the obligation for State Parties to use the maximum of their resources towards the realisation of the rights contained in the Charter.

However, in a declaration adopted by African civil society in a seminar organized under the auspices of the African Charter on Human and Peoples' Rights⁵³, it was stated that:

"States Parties have agreed to adopt legislative and other measures, individually or through international cooperation and assistance, to give full effect to the economic, social and cultural rights contained in the African Charter, by using the maximum of their resources. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the African Charter".

D/ The obligation of international cooperation and assistance⁵⁴

It is not sufficient to call on African States to respect their obligations in the field of human rights. Developed States also have to:

a) Take their international human rights duties into account with a view to engage in international assistance and cooperation, and act on their commitments made during recent world conferences and the MDGs;

b) Take measures to ensure the coherent and consistent application of these obligations across their international policy-making processes. For example, the States' duties of international cooperation should be understood and respected by officials within foreign affairs, officials in finance and trade who represent the State in international negotiations on those issues, and State representatives who are responsible for the policies and projects of the Bretton Woods institutions;

⁵³ Declaration of Pretoria, adopted in October 2004, at the end of a seminar the objective of which was to define the nature of state obligations in the economic, social and cultural rights arena, in the light of African realities, organized under the scope of the promotional activities of the African Commission under Article 45 (1) (b) of the African Charter on Human and Peoples' Rights (ACHPR)

⁵⁴ See *Human rights and poverty reduction: a conceptual framework*, <http://www.ohchr.org>

c) Ensure that, in accordance with the United Nations target, their development assistance is no less than 0.7 per cent of GDP; they should also carefully examine the quality of their development assistance, support human rights-related development projects and help developing States fulfil their core obligations and reach the international minimum threshold;

d) Ensure that the commercial activities for which a State has direct responsibility, such as Export Credit Agencies (government agencies aimed at handing financial guarantees to companies operating abroad), conform to international human rights standards;

e) Take reasonable measures to ensure that the overseas operations of companies headquartered in their jurisdiction are respectful of the international human rights obligations of both the home and host State.

E/ Corporate responsibility in the field of human rights⁵⁵

Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights.

As a result of new developments in human rights law, it is becoming increasingly clear that transnational corporations have obligations to respect human rights and to avoid complicity with human rights violations carried out by others. However, a strong and coherent system of accountability, which fully outlines the obligations of transnationals, has yet to be developed and adopted at the international level.

Now a new set of instruments has been proposed to fill this gap - the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights⁵⁶. The Norms, emerging from the deliberations of the Sub-Commission's working group on transnational corporations, are based on existing international human rights instruments. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law (para. 1).

Nature of corporations' obligations under the UN norms (para.1)

«Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law»

⁵⁵E/CN.4/2004/10

⁵⁶Adopted by the Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003 (E/CN.4/Sub.2/2003/12/Rev.2).

MAIN OBLIGATIONS OF NEPAD ACTORS:

1-NEPAD member states

- NEPAD member states have to **refrain from adopting** or implementing policies or programmes that could jeopardize the full enjoyment of economic, social and cultural rights.

It is therefore crucial that NEPAD put in place **an impact assessment procedure** to monitor the effects of NEPAD policies in the field of health, education, and agriculture.

-NEPAD member States have to **protect their citizens** by preventing violations of their rights by third parties.

It means that NEPAD member States have to adopt measures to refrain private companies from intervening in the enjoyment of their citizens' rights.

-NEPAD member States have to adopt policies and programmes - within NEPAD - which will **contribute to the full realisation of human rights**.

It means that:

-NEPAD member States have to use, as a priority, the maximum of their resources to fulfil human rights,

-NEPAD has to allocate its resources, including those obtained through international assistance, primarily towards programmes that contribute to the realisation of human rights.

2-Developed States

-Countries giving money to NEPAD member States have to make sure that the money is being spent in priority towards the realisation of programmes which contribute to the full realisation of fundamental economic and social rights in the receiving country,

-Developed states have to respect their obligation of cooperation and assistance especially by increasing debt reduction, Official Development Aid and access to markets.

This obligation is binding both upon States outside the African Union and developed States within the AU, which also have the obligation to help the poorest African countries to respect their human rights commitments.

3-Private companies

-In the framework of NEPAD, private companies have the **direct obligation to respect and protect human rights** in their field of activity and sphere of influence.

II. NEPAD AND WOMEN'S RIGHTS

Promoting the role of women in all activities is one of the NEPAD long-term objectives (NEPAD Base Document, Para. 67).

To address fully the discrimination to which African women are subjected in all political, economic and social fields, NEPAD should however integrate women's rights in ALL the priority sectors set out in the Base Document.

A/ Women in Africa

- Violence in armed conflict situations: In 2003, the majority of the **4 million** African refugees and displaced persons were women and children⁵⁷. In time of armed conflict and because of the precarious living conditions in refugee camps, many women and girls are subjected to **rape and torture** and may even become victims of human trafficking.
- Female genital mutilation, excision: Approximately **2 million** young girls are subjected to female genital mutilation each year in Africa.
- Domestic violence: Though widespread, the incidence of domestic violence remains largely unknown. 35% of Egyptian women say they have been raped by their husband.
- Health:
 - **HIV/AIDS: 15 millions** African women (**60%** of HIV positive Africans) are infected with HIV/AIDS⁵⁸. Prostitution and rape (in particular in armed conflict situations) accelerate the spread of HIV/AIDS amongst the female population. Women are traditionally responsible for orphans or infected persons in the family, which increases the economic burden of the disease on the household.
 - **Reproductive health**: 40% of pregnant women in Africa on average have no access to antenatal health care or to medical assistance at birth. The maternal mortality rate is around **6%**. With a total fertility rate of 5.3 births per woman, children also suffer directly from the impact of their mothers' privation and lack of health care.

⁵⁷ Source: Office of the United Nations High Commissioner for Refugees, UNHCR, report dated 15 June 2004.

⁵⁸ Source: UNIFEM, United Nations Development Fund for Women

- Education: In 1996, the average female adult illiteracy rate was 60% against 41% for male adult illiteracy. In some countries, 80 to 90% of women are illiterate⁵⁹. More generally, women remain excluded from all skilled or technical professions.

- Employment: The female unemployment rate is higher than the male rate, and only 3 women in 10 are gainfully employed. Though a majority of African countries ratified the relevant international conventions, female employees enjoy a far lower income than males. As a result many women do casual work as they can more easily be employed though to the detriment of their education.

- Agriculture: The contribution made by women to agricultural food production amounts to 70%, to the processing of fresh agricultural produce - 100%, to livestock farming - 50% and to the sale of produce - 60%⁶⁰. However, African women only benefit from 5% of the business of credit associations and co-operatives, new technologies and productive factors introduced in Africa. In many countries, women are still excluded from the right to own landed property.

- Civil and political rights: Women make up 8% of African Parliaments, the minimum share of 30% set by the PNUD being met only in Mozambique and South Africa. Women are also greatly under-represented in the judiciary and in public administration both at national and local level.

B/ Obligations relating to women's rights

1-At African level

Instrument	Article	Provision
Constitutive Act of the AU	Article 4l)	promotion of gender equality
ACHPR	Article 2	enjoyment of all rights and freedoms without any discrimination on grounds of sex
	Article 18-3	The State shall ensure the elimination of all discrimination against women and also ensure the protection of the rights of women and children as stipulated in international declarations and conventions
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women	Whole Document	To date, only Comoros, Libya and Rwanda have ratified this Protocol which will only come into force after its ratification by member countries of the African Union and once national laws are amended to take account of its objectives (notably legal provisions to prohibit genital mutilation)

⁵⁹ Burkina Faso, Sierra Leone, Chad and Guinea

⁶⁰ These are usually unpaid jobs on which the family's livelihood depends.

In addition, a **Formal Declaration on Gender Equality in Africa** was adopted by the 3rd Ordinary session of the Assembly of the African Union in Addis Ababa in July 2004(Assembly/AU/Decl.12(III)).

2-At international level

Instrument	Article	Provision
UDHR	Preamble	Gender equality in human dignity and rights
	Article 2	Entitlement to all rights and freedoms without any discrimination on grounds of sex
	Article 16	Equal rights for men and women in marriage
	Article 25-2	Special care and assistance in motherhood
ICESCR	Article 2-2	Full exercise of the rights without sex discrimination
	Article 3	equal right of men and women to the enjoyment of all economic, social and cultural rights
	Article 7a)ii	Women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work
	Article 10-2	Special protection and social security benefits for mothers
ICCPR	Article 2-1	All rights ensured without any sex discrimination
	Article 3	Equal right of men and women to the enjoyment of all civil and political rights
CEDAW⁶¹	Whole document	Recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality for men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

UDHR: Universal Declaration of Human Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICCPR: International Covenant on Civil and Political Rights

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

In addition, gender equality is included in the Millennium Development Goals (**MDGs**).

C/ NEPAD provisions relating to women and gender issues

The promotion of the role of women in all activities is one of the NEPAD long-term objectives (NEPAD Base Document, Para. 67).

Through NEPAD, African leaders make the following commitments:

⁶¹ Adopted by General Assembly resolution 34/180 of 18 December 1979 and came into force 3 September 1981. Somalia and Sudan are the only AU member countries that have not yet ratified this Convention (on 9 June 2004).

Area	Para.	Provision
Socio-economic development	Para. 49	To promote the role of women in social and economic development by reinforcing their capacity in the domains of education and training, by developing income generating activities through facilitating access to credit, and by assuring their participation in the political and economic life of African countries
MDGs	Para. 68	To make progress towards gender equality and empowering women by eliminating gender disparities in the enrolment in primary and secondary education by 2005
	Para. 68	To reduce maternal mortality rates by ¾ by 2015
Poverty reduction	Para. 115	To give special attention to the reduction of poverty among women
	Para. 116	To establish a gender task team to ensure that the specific issues faced by poor women are addressed in the poverty reduction strategies of NEPAD
Private sector	Para. 164	Strengthen and encourage the growth of micro-, small and medium-scale industries through appropriate technical support from service institutions and civil society, and improve access to capital by strengthening micro-financing schemes, with particular attention to women entrepreneurs.

However, the most significant provisions in terms of gender equality are reaffirmed in the **Declaration on democracy, political, economic and corporate governance**:

Para. 4: reaffirms the “*full commitment of African States to the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration*”.

Para. 10: “*to end the moral shame exemplified by the plight of women in conflict situations in Africa*”.

Para. 11: “*We accept it as a binding obligation to ensure that women have every opportunity to contribute on terms of full equality to the political and socio-economic development in all our countries*”.

Para. 22: “*The marginalisation of women remains real despite the progress of recent years. We will, therefore, work with renewed vigour to ensure gender equality and ensure the full and effective integration of women in political and socio-economic development*”.

D/ Major issues

The situation of women is only partially and intermittently taken into account by NEPAD, which considers women's rights in a mere micro-economic framework. The NEPAD Programme of Action thus fails to address the specific effects of economic policies as a growing factor of gender inequality. However, NEPAD should systematically include the gender dimension to its development strategies and address this issue in terms of fundamental rights that women are entitled to enjoy and that the State guarantees.

For instance, the NEPAD definition of poverty identifies "gender" with all forms of prejudices and does not address the specific implications of inequalities between men and women: indeed, several NEPAD sectoral priorities such as agriculture or health are developed without any mention to women's fundamental rights.

In accordance with Para. 116 of the Base Document, the NEPAD Secretariat has established a new institutional mechanism specifically to address the gender issue. The creation of the Gender Task Force reflects the NEPAD commitment to give top priority to gender equality. This Task Force is composed of 12 representatives of civil society organisations.

NEPAD Gender Task Force

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III. NEPAD AND THE RIGHT TO HEALTH

Health is one of the NEPAD key priorities. According to Article 49 of the Base Document, it is also a “responsibility” that African countries have to assume, “with high priority given to tackling HIV/AIDS, malaria and other communicable diseases”.

A/ Health situation in Africa

- Average life expectancy at birth in Sub-Saharan Africa is 46.3 years, while the world average life expectancy is 66.9 years.
- Infant mortality rate is the world’s highest with 108 per 1000 live births. 5 million children under the age of 5 die every year.
- 33% of Africa’s total population suffers from chronic malnutrition.

B/ Obligations relating to health

1-African instruments

Instrument	Article	Provision
Constitutive Act	Art 3n)	work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent
ACHPR	Art 16	1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. Party States to the Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

The **African Commission on Human and Peoples’ Rights**, through its work on economic, social and cultural rights, gives a more extensive interpretation of the right to health, defined as:

- Availability of accessible and affordable health facilities, goods and services of reasonable quality for all;

- Access to the minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger for everyone and to prevent malnutrition;
- Access to basic shelter, housing and sanitation and an adequate supply of safe drinking water;
- Access to reproductive, maternal and child health care based on the life cycle approach to health;
- Immunization against major infectious diseases;
- Education, prevention and treatment of HIV/AIDS, malaria, tuberculosis and other major killer diseases;
- Education and access to information concerning the main health problems in the community including methods of preventing and controlling them;
- Training for health personnel including education on health and human rights;
- Access to the humane and dignified care of the elderly and of persons with mental and physical disabilities;

In addition, the **Maputo Declaration on malaria, HIV/AIDS, tuberculosis and other related diseases** adopted by the 2nd Ordinary session of the Assembly of the AU (Assembly/AU/Decl. 6 (II)) provides that 15% of national budgets shall be allocated to health.

2-International instruments

Instrument	Article	Provision
UDHR	Art 25	Everyone has the right to a standard of living adequate for his health
ICESCR	Art 12	Right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States' commitment to take necessary measures to ensure: <ul style="list-style-type: none"> - the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; - the improvement of all aspects of environmental and industrial hygiene; - the prevention, treatment and control of epidemic, endemic, occupational and other diseases; - the creation of conditions which would assure medical services for all and medical attention in the event of sickness.

Moreover, the right to health is high on the list of the **MDGs**, particularly with regard to the reduction of infant mortality, improved maternal health and access to reproductive health services.

C/ NEPAD provisions regarding health

NEPAD includes health in its key sectoral priorities and acknowledges that the poorest peoples are particularly vulnerable to diseases. NEPAD sets out several strategies to develop Africa's human capital and curb epidemics:

At national level: NEPAD encourages African leaders to give higher priority to health care in their own budgets and promotes processes aimed at procuring affordable drugs. It is also striving to strengthen the existing programmes for containing communicable diseases, notably through the promotion of health education.

At international level: NEPAD urges international institutions to provide greater financial support, in particular for the battle against HIV/AIDS and other communicable diseases. The forecasted financial requirements provided by the ODA and international institutions such as the WHO are 10 billion dollars per annum.

D/ Major Issues: improved integration of the right to health

1-Health: not an economic issue but a fundamental human right

It is to be welcomed that NEPAD considers health as a development priority. However, the Base Document focuses on the economic benefit that can be derived from an efficient health system and thus turns what should be an objective in itself into a mere development instrument.

Though it is true that improved health conditions have an important impact on economic growth, health shall not merely be a “state of complete physical and mental well-being, which contributes to an increase in productivity and consequently to economic growth⁶²”: it is a fundamental right guaranteed by Article 16 of the African Charter on Human and Peoples’ Rights.

2-Public health and poverty

NEPAD establishes the link between public health and poverty and acknowledges that these 2 issues are closely linked, in particular in societies marked by inequality. This position implies the development and implementation of social policies aimed at ensuring equal access to health care.

3-Allocation of funds

To implement the NEPAD provisions on health priority in national budgets and affordable access to drugs, 2 prerequisites have to be taken into account:

- The allocation of funds shall be prioritised
- Developed countries shall assume their responsibilities.

⁶² NEPAD Base Document, Para 128

IV. NEPAD AND HIV / AIDS

A/ HIV/AIDS in Africa

- Sub-Saharan Africa makes up 10% of the world population but almost 2/3 of the total number of persons infected with HIV/AIDS, that is to say **25 to 30 million** people (58% of them being women). The adult prevalence rate (15-49 years) is the world's highest at 7.6%. Southern Africa is the worse affected African region.
- In 2003, it is likely that HIV/AIDS will have killed 2.2 million people. **15 million** people have died of HIV/AIDS in Africa since the outbreak of the pandemic.
- In addition to the losses in terms of human lives, HIV/AIDS has a critical impact on the development of the continent: it decimates the workforce, impoverishes and breaks up families: in particular it is responsible for the millions of orphans. **11 million** African children have been orphaned by HIV/AIDS in Sub-Saharan Africa, and this number could rise to 20 million by 2010. According to UNAIDS, HIV/AIDS has direct repercussions on at least **60 million** Africans.
- Since the disease remains culturally associated with what are considered deviant behaviours (injecting drugs, homosexuality, promiscuity...), people infected with HIV/AIDS often experience **stigma and discrimination** in relation to work, property, education and health care.
- Finally, **access to treatment and drugs**, in particular antiretroviral treatments (triple combination therapy) and generic drugs, remains largely inadequate. In 2003, only an estimated 50,000 to 100,000 people in sub-Saharan Africa (or about **1% to 2%** of those in need) had access to such treatment. 90% of medical expenditure relating to HIV/AIDS is provided by the individual; a complete course of treatment against pneumonia or STI (sexually transmitted infections) can cost an unskilled worker one month's salary.

B/ HIV/AIDS and human rights

1-At African level

In addition to the existing provisions on the right to health in African human rights instruments, African leaders took into account the specific issues relating to HIV/AIDS.

The **Abuja Declaration and Framework for Action on HIV/AIDS, tuberculosis and other related infectious diseases** was adopted on 27 April 2001 by the Extraordinary Summit of the Heads of State and Government of the OAU on HIV/AIDS.

This Declaration identifies the specific issues relating to HIV/AIDS, in particular the vulnerability of women and young people as well as discrimination against people living with HIV/AIDS⁶³. The Declaration also affirms African leaders' "personal responsibility"⁶⁴ for combating HIV/AIDS and for widely mobilising civil society.

Moreover, African Heads of State and Government have committed themselves to allocating 15% of their national budgets to the improvement of the health sector and the fight against HIV/AIDS. This provision was further reaffirmed by the Maputo Declaration adopted in July 2003⁶⁵.

2-At international level

The **International Guidelines on HIV/AIDS and Human Rights** were adopted at the end of the second International Consultation on HIV/AIDS organised by both the United Nations and the World Health Organisation (WHO) in 1998. These Guidelines focus on the necessary respect for human rights in fighting the pandemic and were updated in 2002.

Besides, international human rights provisions relating to the right to health are complemented by the Declaration of Commitment on HIV/AIDS adopted by the United Nations General Assembly (Resolution A/RES/S-26/2) in June 2001. The Declaration has no binding value from a legal point of view but represents a clear commitment by governments to, amongst others:

- Address the "*stigma, silence, **discrimination** and denial, as well as the lack of confidentiality, that undermine the prevention, care and treatment efforts and increase the impact of the epidemic on individuals, families, communities*

⁶³ Para. 12: « We are aware that stigma, silence, denial and discrimination against people living with HIV/AIDS increase the impact of the epidemic and constitute a major barrier to an effective response to it. We recognize the importance of greater involvement of People Living with HIV/AIDS.

⁶⁴ Para. 24

⁶⁵ See previous section

and nations” (Para. 13). Respect for the fundamental rights of people infected with HIV/AIDS shall be enforced by the strengthening or enactment of appropriate laws and regulations to ensure the full enjoyment of all their human rights and fundamental freedoms (Para. 58)⁶⁶.

- **Reduce the cost of drugs** and related technology in close collaboration with the private sector and pharmaceutical companies (Para. 24)

- Strengthen international and regional **cooperation** by promoting the fair sharing of research findings, and affirm “*that all such research should be free from bias* “ (Para. 73)

Combating HIV/AIDS is also one of the 8 Millennium Development Goals (**MDGs**)

C/ NEPAD provisions on HIV/AIDS

The fight against HIV/AIDS is included in the “Human resources development” section of the NEPAD Base Document, which acknowledges the “*widespread incidence of communicable diseases, in particular HIV/AIDS, on African development efforts*” (NEPAD Base Document, Para. 125).

Combating HIV/AIDS is also one of the 5 top priority programmes (Para. 186) that need to be fast-tracked with the specific support of the international community (Para 124).

D/ NEPAD and HIV/AIDS: major issues

1-Enhanced consideration of the specific needs of people infected with HIV/AIDS

There is no mention of all to the rights of infected people in the NEPAD Base document. Since NEPAD mainly addresses the impact of the epidemic in terms of human resources and development, it ignores the fight against discrimination though this is established in the Abuja and United Nations Declarations. It is thus critical that NEPAD integrates the provisions of these instruments into its programmes for addressing health and HIV/AIDS.

2-Projects prioritisation

Considering the dramatic human, social and economic impact of HIV/AIDS on Africa’s development, the fight against HIV/AIDS should be a top priority in itself. The lack of prioritisation of the NEPAD sectoral priorities compromises

⁶⁶ With regard to non-discrimination at work, see also the Code of Practice on HIV/AIDS and the workplace by the OIT

the development efforts set by NEPAD that may be hindered by insufficient consideration of the disease's specifics.

3-Intellectual property, costs and access to treatment

Since antiretrovirals were made available, their price dropped considerably (by 90%) in Sub-Saharan Africa. Since June 2003, the cheapest antiretroviral combination (triple therapy) approved by the WHO is available for \$675 per patient per year, whilst the cheapest **generic combination** recommended by the WHO dropped to \$300 per patient per year. However, these prices are still far too high for a large-scale private purchase and the use of generic products (e.g. products not covered by copyright and patent) remains insufficient.

Intellectual property and trade agreement: the WTO Agreements on Trade-related aspects of intellectual property rights (TRIPS)

The TRIPS came into force on 1 January 1995. The TRIPS' obligatory standards for patent protection might be an impediment to the realisation of economic, social and cultural rights, in particular in terms of public health.

Though the Doha Declaration adopted in November 2001 reaffirms the primacy of public health over intellectual property, the TRIPS are an obstacle to the production and exportation of generic products whose cost is half as expensive as patented drugs.

Though the right to property is enshrined in the UDHR (Article 27), Article 15-1b) of the ICESCR recognizes the right of everyone "to enjoy the benefits of scientific progress and its applications".

V. NEPAD AND EDUCATION

Education is incorporated into NEPAD sectoral priorities as a determining prerequisite to human resources development (NEPAD Base Document, Para. 117 to 122 of the Base Document).

A/ Education in Africa

1- Primary education

- In 2002, 57% of girls and 62% of boys living in Sub-Saharan Africa were in primary education, against a world average of 83% of girls and 79% of boys. In total, 45 millions primary age children do not have access to basic education.

- According to the NEPAD Secretariat, the male illiteracy rate in Sub-Saharan Africa reached 33,4% and the female illiteracy rate 52,4%, against 15% and 16% respectively compared with the world average.

-Today, 20 African countries have achieved primary education for all. According to the World Bank's estimates, the required international financial support to achieve the objective of universal primary education in Africa amounts to 2 million dollars of per year.

2-Secondary education and brain drain

- According to a survey published by the Development Research Institute, over 30% of researchers from developing countries are employed in a industrialised country.

- One out of ten African student settles abroad.

B/ Obligations relating to education

1-At African level

Instrument	Article	Provision
ACHPR	Article 17	Every individual shall have the right to education
CADBEE	Article 11	Free and compulsory basic education, development of secondary education progressively made free and accessible to all, promotion of regular attendance at schools

ACRWC: African Charter on the Rights and Welfare of the Child

2-At international level

Instrument	Article	Provisions
UDHR	Article 26	Right to free and compulsory elementary education, generally available technical and professional education, access to higher education.
ICESCR	Article 13	Right of everyone to education. Free and compulsory primary education, generally available secondary education, accessible higher education.
	Article 14	Each State Party should undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.
CRC	Article 28	Primary education compulsory and available free to all, development of different forms of secondary education, offering financial assistance in case of need and access to higher education.
DRD	Article 8-1	Equality of opportunity for all in their access to basic resources, including education.

UDHR: Universal Declaration of Human Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

CRC: Convention on the Rights of the Child

DRD: Declaration on the Right to Development

C/ NEPAD provisions on education

NEPAD provisions relating to education, skills development and reversal of the brain drain are included in the human resources development Initiative⁶⁷.

1-Bridging the education gap: quantitative and qualitative improvement of education systems (Para. 117 to 120)

NEPAD advocates the achievement of primary education for all by 2015 within the framework of the Millennium Development Goals. However, the NEPAD core plan of action for education is based on 3 priorities:

- To work towards improvements in curriculum development, quality improvements and expand access to ICT, notably in primary schools;
- To expand access to secondary education and improve its relevance to Africa's development;
- To promote networks of specialised research and higher education institutions.

⁶⁷ NEPAD Base Document, Para. 94

To finance and supervise these objectives, NEPAD plans to work in closer cooperation with international donors and multilateral institutions (and with UNESCO in particular). Public resources shall also be strongly mobilised through the adoption of relevant norms and standards relating to public expenditures on education.

NEPAD also fosters a thorough effort to implement education infrastructures in order to address the inadequacy of African education systems, acknowledged to underlie the education gap⁶⁸.

2-Reversing the brain drain (Para 121 and 122)

Skills development and the reversal of the brain drain are prerequisites for optimising social capital. NEPAD urges the elaboration and implementation of strategies aimed at retaining within the African continent critical human capacities that are essential for Africa's development (scientific and technical knowledge being particularly emphasised):

- Establish a reliable database on the brain drain, both to determine the magnitude of the problem, and to promote networking and collaboration between experts in the country of origin and those in the diaspora;
- Develop scientific and technical networks to channel the repatriation of scientific knowledge to the home country, and establish cooperation between those abroad and at home;
- Ensure that the expertise of Africans living in the developed countries is utilised in the execution of some of the projects envisaged under NEPAD.

D/ Major issues

1-A supply-based approach

NEPAD exclusively tackles the issue of education in the light of the insufficiency of its supply structures: the insufficient number of schools, the poor quality of teaching, overcrowded classes, and long distances to schools are pointed out as determining factors to be addressed in order to bridge the education gap, which is thus related to the lack of investment in Africa.

It is now essential to take into account criteria and restraints inducing the choices of parents, e.g. to consider the main features of the education demand: What will be the effect of school fees on the household income? Will there be a loss of earning through while children are attending school and therefore not working? What is the forecast for the cost-effectiveness of education?

Policies fostering attendance in schools by children should not be merely based on building of classrooms as NEPAD might be seen to imply. Special

⁶⁸ NEPAD Base Document, Para. 119

programmes aimed at reducing opportunity costs for underprivileged families should be developed and implemented as a decisive complement of the supply-based approach, in order to encourage children's attendance to schools and, ultimately, their development, as well as poverty reduction.

2-The emphasis on secondary education

Though NEPAD integrates the objective of universal primary education into its priorities, it mainly concentrates on secondary and higher education, which still remains almost exclusively for the elite.

VI. NEPAD AND INFRASTRUCTURE

NEPAD places ALL infrastructure sectors, including transport, energy and communication, at the top priority of its Programme of Action (NEPAD Base Document, Para. 96 to 114).

A/ Infrastructure in Africa

The 4 types of infrastructure:

- Transport infrastructure / movement of goods and people: roads, bridges, harbours and airports.
- Telecommunications infrastructure / movement of information and ideas: telephone lines, tele- and radio-communication aerial, etc.
- “Public utility” or utilities infrastructure aimed at improving healthiness and primary needs satisfaction: water supply and sanitation, electricity, waste collection and treatment.
- Service infrastructure: public programmes and policies covering social provisions of individuals, notably health and education

- Transport infrastructure

- Road density in Africa reaches 6.84 kilometres per 100 square kilometres (compared to 12 kilometres per 100 square kilometres in Latin America). Because of the lack of infrastructure facilities, the cost of goods transportation in Africa is one of the highest in the world, this constituting a major impediment to African products’ competitiveness.

- In a number of countries, road facilities are concentrated in urban areas or around harbours (since most of them were built in the colonial era in order to facilitate exports), but cross-border roads integrated into regional road networks as well as local infrastructure are far less developed. 85% of rural secondary roads are in bad condition.

- 15 to 20% of African agricultural production are lost or wasted between the places of production and consumption due to the bad condition of roads and the lack of stocking facilities.

- The maintenance of existing infrastructures

- While efforts are being made to implement the construction of trans-African highways, existing roads' condition is steadily deteriorating. While almost 17% of Sub-Saharan main roads were surfaced in 1992, this percentage dropped to 12% in 1998⁶⁹.

- An investment of one million dollars in the maintenance of existing power lines in Sub-Saharan Africa would represent a gain of 12 million dollars.

B/ Human rights provisions relating to infrastructure

There is no specific provision relating to infrastructure in international human rights law. However, infrastructure development has a critical impact on the implementation of several human rights.

Indeed, infrastructure services are a basic requirement for the realisation of fundamental rights such as the rights to health, education, housing or water access through the construction of hospitals, schools, housing complexes and water supply facilities. To that extent, Infrastructure is an integral part of the right to development.

Since infrastructure projects usually imply large-scaled and labour-intensive activities, their development furthermore involves legal obligations relating to human rights, notably in terms of work and funding.

C/ NEPAD provisions on infrastructure

Infrastructure strongly underlies the implementation of the NEPAD Programme of action that addresses all of its components: transport (roads, highways, airports, seaports, railways and waterways), energy, Information and Communication Technologies (ICT), water and sanitation. The structural gap identified in all infrastructure sectors is considered as a very serious handicap to African socio-economic development.

1-Provisions

- General provisions:

NEPAD argues that both African States and the international community will benefit from the increased development of infrastructure, and sets out the following objectives:

- To improve **access** to, and affordability and reliability of, infrastructure services for both firms and households;

⁶⁹ Source: World Bank

- To enhance regional **cooperation and trade** through expanded cross-border development of infrastructure, in order to “obtain cheaper African goods and services”. Moreover, the realisation and funding of infrastructure projects requires the establishment of large-scale economies (e.g. sub-regional and regional markets) able to ensure the cost-effectiveness of high-priced investments.
- To increase financial **investments** in infrastructure by lowering **risks** facing private investors, especially in the area of policy and regulatory frameworks;
- To build adequate **knowledge and skills** in technology and engineering with a view to installing, operating and maintaining “hard” infrastructure networks in Africa.

These programmes and projects shall mainly be **funded** through ODA and credit, but NEPAD strongly focuses on Foreign Direct Investments (FDI) and fosters the promotion of **public-private partnerships** (PPPs) to meet installation and maintenance costs.

- Energy

Though the energy sector is “a factor of production the cost of which directly affects prices of other goods and services, and the competitiveness of enterprises⁷⁰”, it also remains a “domestic necessity”. NEPAD thus plans “to increase Africans’ access to reliable and affordable commercial energy supply from 10 to 35 per cent or more within 20 years».

- Information and Communication Technologies (ICTs)

NEPAD insists on the fact that Information and Communication Technologies “driven by the convergence of computers, telecommunications and traditional media, are crucial for the knowledge based economy of the future⁷¹”. In order to bridge the “digital divide” and “double teledensity to two lines per 100 people by 2005, with an adequate level of access for households”, service costs should be lowered and African ICT engineers trained.

2-Implementation

The implementation of the NEPAD infrastructure programme is doubtlessly the most advanced and has been fostered by the development of a large range of partnerships.

Indeed, 63 of the 90 “NEPAD projects” set out by the Conference of the international private sector on the financing of NEPAD held in Dakar in 2002, are related to infrastructure: 14 of them concern transport infrastructure (roads

⁷⁰ NEPAD Base Document, Para. 109

⁷¹ NEPAD Base Document Para. 104

and highways), 35 relate to energy (dams and sanitation) and 14 projects carry out ICT development.

D/ Major issues

1-Funding

The funding of the required resources identified by NEPAD in order to implement its infrastructure programme has to be questioned. Indeed, the financial support of the AfDB, the World Bank and The European Union does not cover yet the total 8.1 billion dollars required to implement the 20 top priority infrastructure projects.

One the one hand, investors generally overestimate the real and financial cost-effectiveness of infrastructure projects. Since the needs of the population are generally not correctly assessed, the product is not sufficiently used to generate the expected growth outcomes. It is furthermore difficult, in developing countries, to impose taxes or tolls that would allow to meet the realisation costs faster.

On the other hand, use costs for use and recurrent expenditures (maintenance and renovation) are often underestimated. The issue of maintenance is thus critical: if half of the infrastructure needs were met, Africa would still not afford to meet maintenance costs of facilities.

2-Localisation of projects

In view of rural depopulation and the increase of urbanisation rates, donors and partners rather invest in urban areas with a higher demand. Though urban development is an emergency all of its own, urban equipment is often implemented to the detriment of deserted and enclosed rural areas, thus further increasing rural depopulation and urban overpopulation and often without properly addressing the issue of urban infrastructural insufficiencies in the meantime.

Should investors give greater importance to transport infrastructure and thus count on the expected growth outcomes for local population (as this happened in Asia)? The link between growth and infrastructure, however, is not that clear and is more and more questioned by development experts.

The question of project localisation is another issue: projects can be either implemented in border and coastal zones to foster exports and trade, or strengthen existing development poles and corridors to generate better development dynamics. Infrastructure programmes can also focus on enclosed regions to ensure a better economic integration and a more equal dissemination of development, though the immediate cost-effectiveness of the projects might then be reduced.

3-Priorisation

The NEPAD Base Document and projects implementation put the emphasis on transport, energy and transport infrastructure. However, the realisation of service and utilities infrastructure is an overall priority for achieving all the NEPAD objectives.

Though infrastructure remains an essential factor in the realisation of the rights to health, education, housing and water access, the NEPAD Base Document remains silent on this type of infrastructures. The lack of prioritisation of the NEPAD sectoral priorities should be balanced in view of the ICESCR.

4-The weight of donors' logics

Developing countries are often compelled to foster the implementation of international large-scale infrastructure projects aimed at selling off their production in better conditions and integrating into the global economy.

However, this strategy is mainly dictated by major international donors concerned about cost-effectiveness –and sometimes their own interest. Since investment costs of all infrastructure projects represent huge amounts of money, donors and investors usually give higher priority to cost-effective (or identified as such) projects and would rather finance a large-scale harbour complex than a surfaced road aimed at opening up an underdeveloped region...

The same logic underpins the choice of the type of infrastructure which donors prefer to finance: utilities and service infrastructure is less cost-effective on the short-term than transport or telecommunications ones and as such often neglected by private investors or international donors, which should comply with the principle of prioritisation.

5-Corporate social responsibility

Private companies have the **direct obligation to respect and protect human rights** in their field of activity and sphere of influence⁷².

The procurement process should thus necessarily be based on criteria relating to corporate social responsibility of the companies appointed to implement NEPAD projects.

⁷² See p.93

6-Consideration of the impact of infrastructure projects on human rights

Infrastructure projects might have a negative impact on human rights:

- The construction of large-scale complexes may cause massive displacements of people;
- Infrastructure projects, based on the principle of cost-effectiveness, may affect the regional equilibrium by promoting “development corridors” and “industrialisation poles” to the detriment of other regions, which might discriminate underdeveloped rural populations.

Impact studies –before, during and after the project is implemented- should thus be led in order to evaluate its repercussions on populations concerned. NEPAD should also establish effective and transparent legal courses of action and provide for compensation mechanisms accessible to populations concerned.

VII. NEPAD AND AGRICULTURE

NEPAD makes agricultural development one of its key priorities (Core Document, Para. 129 to 134). In order to translate its commitments on agriculture into concrete form, NEPAD has elaborated the Comprehensive Africa Agriculture Development Programme (CAADP).

Though NEPAD mainly considers the economic implications of agricultural development, issues relating to agriculture are multifarious and address at the same time the right to food, the right to work and the right to property.

A/ Agriculture in Africa

1-Agricultural production⁷³

- 65% of Africa's population lives in rural areas while 62% of the labour force works in the agricultural sector.
- Sub-Saharan Africa has recorded lower growth in agricultural output over the past decade, with a significant decline in agricultural growth rate (3,1% in the 1990's to a stagnant rate of 2,1% since 2000). As a result of massive agricultural exports, per capita food production is negative.
- Over 50% of African total land area is devoted to agriculture.

2-Food and food security

- 201 million people in Sub-Saharan Africa are undernourished, a figure that represents 24% of the total number of undernourished people throughout the world.
- As of August 2003, 23 of the 38 of countries facing serious food shortages that required international assistance were in Africa.

3-Impact of agricultural subsidies

Like most developing countries, African States are seriously penalized by the massive subsidies granted to farmers in the developed countries. Since they cannot afford to grant equal levels of financial aid to their agricultural

⁷³ Source: FAO, The state of food and agriculture 2003-2004, www.fao.org

producers, they have to lower their tariffs and open up to the unfair competition from subsidised products from developed countries.

B/ Obligations relating to agriculture and the right to food

1-At African level

Instrument	Article	Provision
ACHPR	15	Right to work: interpreted by the African Commission in terms of agriculture
	14	Right to property
	16	Right to food: included by the African Commission in the right to health

Many of the rights enshrined in the African Charter have been linked with issues relating to agriculture:

-The right to property is understood as the right to equitable and non-discriminatory access to land ownership.

-The right to work implies the adoption of social measures favourable to agriculture, notably in terms of subsistence.

In July 2003, the Assembly of Heads of State and Government of the AU adopted the **Declaration on Agriculture and Food Security in Africa** (Assembly/AU/Decl.7 – II), which in particular encourages African leaders to “engage in consultations at national and regional levels with organisations of civil society and other key stakeholders, including small-scale and traditional farmers, private sector, women’s and youth associations, etc., aimed at promoting their active participation in all aspects of agricultural and food production”. African governments also committed themselves to allocating at least 10% of their national budgets to agriculture within a five-year period.

2-At international level

Instrument	Article	Provision
ICESCR	Article 11-1 et 2	<p><u>Right to food:</u></p> <ul style="list-style-type: none"> - The right of every person to an adequate standard of living for himself and his family, including adequate food. - The fundamental right of every person to be free from hunger. <p><u>Agriculture:</u></p> <p>The States’ obligation to develop or reform agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources</p>
CEDAW	Article 14-2 g)	Women should be guaranteed equal access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes

The **right to food** is an integral part of economic, social and cultural rights. It has been authoritatively defined in general comment No. 12 of the Committee on Economic, Social and Cultural Rights. In accordance with Article 11-2 of the ICESCR, **access to land and agrarian reform** must form a key part of the right to food, which also entails a core international dimension: States must not take action that would have a negative impact on the right to food of people in another country⁷⁴. This provision tackles explicitly the negative impact of the massive agricultural subsidies granted by developed countries.

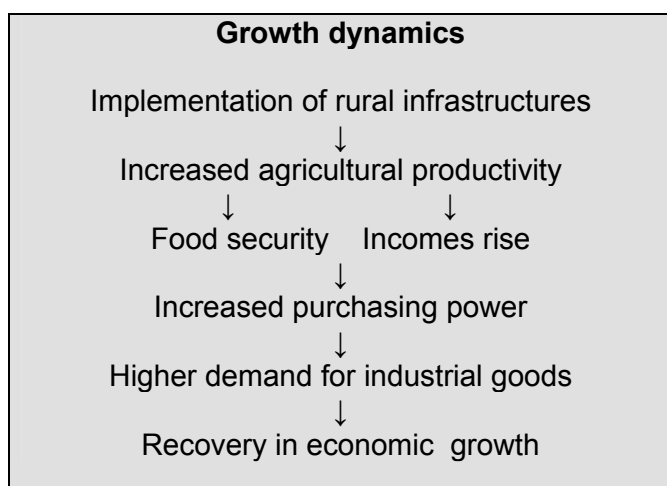
Furthermore, the right to food is closely linked to the concept of **food sovereignty** based on:

- Food production for domestic and local markets, based on peasant and family farmers;
- Access to land and production resources;
- Community control over production resources;
- Public investment in support for production activities of families and communities.

C/ NEPAD provisions on agriculture

1- Provisions

NEPAD acknowledges that the majority of Africa's peoples live in rural areas within generally weak and unproductive agrarian systems subject to adverse external circumstances (climatic uncertainty, economic policy, instability in world commodity prices...). Its programme for agriculture thus stresses the need for restructuring agricultural systems in order to achieve **food security**, quantitative and qualitative increase in food production ensuring increase in nutritional standards.



NEPAD fosters the reorganisation of “inadequate” African agrarian systems to ensure both food security and poverty reduction, notably by increasing agricultural productivity through the implementation of rural infrastructures. The anticipated increase in agricultural capacity will result in an increase in the purchasing power of rural populations and thus lead to

higher effective demand for industrial goods, the resulting dynamics

⁷⁴ Source: Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, The right to food, Note by the Secretary-General

representing a significant source of economic growth. The role of the agro-industry sector is particularly emphasised.

Finally, NEPAD draws attention to the decrease in international assistance for the agricultural sector and calls for the reversal of this negative trend.

2- Implementation

In 2003, the United Nations Food and Agriculture Organisation (FAO) approved 3 programmes within the framework of its Technical Cooperation Programme in support of NEPAD activities, for a total amount of one million dollars. These 3 projects aim to:

- Provide advisory support to the NEPAD Secretariat;
- Incorporate forestry, fisheries and livestock sectors in the NEPAD-CAADP;
- Provide assistance in the establishment of a common market for basic food products.

D/ Major issues

1-Specific impediments to small-scale farmers' capacity building

NEPAD remains silent on the specific constraints faced by small-scale farmers in Africa. However, the steady drop in agricultural prices, the unfair competition with greenhouse crops grown in Western countries, the weakness of international support, the increase in food product imports of non-African traditional crops (mainly wheat and European oleaginous plants) and rural depopulation are significant threats to African agricultural development that NEPAD should take into account to ensure small-scale farmers full access to development.

NEPAD should thus extend the participation of civil society to rural communities, ensure an equitable allocation of budgetary resources and implement mechanisms to ensure private investment support for family agricultural smallholdings.

2-Development of domestic demand

The NEPAD agricultural strategy aims principally at basing the growth and development of African agriculture on exports and external markets, without placing sufficient emphasis on domestic demand.

PART TWO:

THE AFRICAN PEER REVIEW MECHANISM - APRM -

African States confirmed and strengthened their involvement in the NEPAD process through the establishment of a monitoring mechanism, the African Peer Review Mechanism (APRM).

The effective implementation of the APRM in 2004 is a real political innovation, which confirms both the originality of the process and the true political will of the NEPAD member countries

The main purpose of the APRM is to foster the adoption and implementation of the NEPAD programmes and priorities.

I. OVERVIEW OF THE APRM

The African Peer Review Mechanism (APRM) is the cornerstone of NEPAD.

It was adopted by the Durban Summit in June 2002 as an African self-monitoring mechanism voluntarily acceded to by Member States of the African Union.

The APRM fosters to promote the adherence to and compliance with the undertakings enshrined in the Declaration on democracy, political, economic and corporate governance.

A/ APRM principles

1-Origins of the peer review process

Peer review practices were first developed by the Organisation for Economic Cooperation and Development (OECD) in the 1960's, and then extended to other international organisations such as the EU, the IMF and the WTO.

The APRM adopted within the framework of NEPAD, however, is a **mutual political review process** and as such covers a wider range of issues than the mechanisms existing within the EU and OECD. Indeed, the political dimension of the process, which intends to be free of any political manipulation, completes the mainly economic NEPAD objectives and gives full credibility to the initiative.



Peer review process: OECD Definition

“Peer review can be described as the systematic examination and assessment of the performance of a State by other States³, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles.

The examination is conducted on a non-adversarial basis, and it relies heavily on mutual trust among the States involved in the review, as well as their shared confidence in the process. [...]

With these elements in place, peer review tends to create, through this reciprocal evaluation process, a system of mutual accountability⁷⁵.”

⁷⁵ SOURCE: <http://www.oecd.org/dataoecd/33/16/1955285.pdf>

In concrete terms, African leaders participating to the APRM process will submit the actions undertaken by their governments in the areas of peace and security, democracy, human rights, political, economic and corporate governance, to the review of other Africans.

The codes, standards and values referred to as benchmarks for reviewing the policies and practices of African States are contained in the Declaration on democracy, political, economic and corporate governance.

2-Objectives of the APRM

The ultimate goal of the APRM is to assist the reviewed State in improving its policies, adopting successful and best practices as well as complying with the agreed standards and principles.

The efficiency of this mutual review process will be ensured through dialogue and persuasion exercised by peers during the review. “**Peer pressure**”, however, shall not be carried out in the form of legally binding instruments such as sanctions or other obligatory measures.

Indeed, the APRM is a **self-monitoring and voluntary** mechanism aimed at ensuring a constructive dialogue and sharing of experience between States, in order to provide integrated solutions to common problems.

Moreover, the APRM solemnly reasserts the **African ownership** of the review criteria, mainly developed by Africans and not only imposed by donors. Once fully integrated into the APRM process, these criteria will strengthen donor countries’ confidence in Africa, thus ensuring an increased assistance that will be more transparently managed through specific APR mechanisms. African countries could then benefit from general aid allocations that are more adapted to the funding needs of NEPAD than the actual assistance by projects.

B/ AU Member States participating to the APRM

Accession to the APRM is voluntary-based: therefore, **participation of a Member State of the African Union in NEPAD activities does NOT imply that the country concerned participates in the APRM process.**

Countries wishing to participate in the APRM will notify the Chairman of the NEPAD Heads of State and Government Implementation Committee and sign the Memorandum of Understanding on the APRM (MOU).

The APRM: a voluntary, non-binding process:

All procedures to be adopted under the APRM shall be consistent with the decisions and procedures of the African Union.

According to Para. 30 of the Memorandum of Understanding on the APRM (MOU), the MOU may be **amended** at any time by mutual consent of all participating countries (upon written request of any participating State).

Furthermore, "a participating State may **terminate** its participation in APRM simply by giving written notice to the NEPAD Secretariat, which in turn will inform other participating States in writing. The effective date of termination will be 6 months after the receipt of the notice" (MOU, Para. 32).

1-Adherence ...

To date, 24 Member States of the African Union have signed the MOU and thus acceded to the APRM. The majority of these countries also participate in the NEPAD Heads of State and Government Implementation Committee (HSGIC), with the exception of Burkina Faso and Uganda:

APRM participating States and date of signature of the MOU:

North Africa	Algeria	9/3/03
	Egypt	9/3/04
Central Africa	Congo	9/3/03
	Cameroon	3/4/03
	Gabon	14/4/03
West Africa	Mali	28/5/03
	Nigeria	9/3/04
	Ghana	9/3/03
	Burkina-Faso	9/3/03
	Senegal	9/3/04
	Sierra Leone	8/7/04
	Benin	31/3/04
Est Africa	Kenya	9/3/03
	Ethiopia	9/3/03
	Mauritius	9/3/04
	Tanzania	8/7/04
	Uganda	9/3/04
	Rwanda	9/3/04
Southern Africa	South Africa	9/3/04
	Mozambique	9/3/04
	Angola	8/7/04
	Lesotho	8/7/04
	Malawi	8/7/04
	Zambia	10/9/04

2-...And reservations.

Although almost half of the Member States of the AU acceded to the APRM today, a number of African States still express reservations:

- Some countries notably express their fears that the APRM could represent an **external intervention** (even if regional) and refer to the principle of non-interference in the internal affairs of States enshrined in Article 3 of the OAU Charter and Article 4g) of the Constitutive Act of the African Union.
- Some other government feel jeopardised by the voice and action opportunity given to political **opposition and civic groups** in the APRM process.
- The APRM might also be subjected to **competition with other existing review mechanisms**, in particular those established by international institutions. Botswana for instance, which participates in the NEPAD Implementation Committee but not in the APRM, underlined that review reports elaborated by the United Nations, their agencies and the Bretton Woods Institutions could be used at a consistent basis for curtailing duplication of both information and review costs.
- At last, some States expressed their concern that the APRM might be used as another **conditionality to development assistance**. This concern is all the more justified that the G8 affirmed that “the peer-review process will inform its considerations of eligibility for enhanced partnerships”.

The core guiding principle of the APRM though, is not to create new conditionality modalities. Besides, participating countries only may exert peer pressure. Such a stand on the part international community might doubly compromise the APRM process:

- The countries reviewed might improve on the review report to meet the conditions of donors, APRM then losing all interest.
- If a transparent and hard-headed APRM process is ensured, donors might reject or postpone partnerships, considering the information provided by the review.

Ownership of APR criteria:

Donor countries tried to influence the adoption of the review indicators. As criteria such as good governance are becoming required conditions for developing countries to benefit from foreign investment and assistance, the APRM objectives might well be misappropriated in order to legitimise the conditionality to assistance (good governance, market access...) set by developed countries. The possible lack of ownership would then question the core voluntary basis of the Mechanism.

C/ THE APRM: Chronological account

2001: The African Peer Review Mechanism is proposed within the framework of NEPAD.

8-10 July 2002: Durban Summit

The Mechanism's outlines determined in June 2002 and enshrined in Para. 28 of the Declaration on Democracy, Political, Economic and Corporate Governance are approved by the first session of the African Union, which also adopts the APRM Base Document.

19- 20 October 2002: 35th Conference of African Ministers of Finance

The Conference, convened by the United Nations Economic Commission for Africa (ECA) in Johannesburg (South Africa), calls for African leaders' commitment to APRM.

3 November 2002: 5th Summit of the NEPAD Implementation Committee (Abuja)

APR structures are established, notably through the creation of an APRM Department within the NEPAD Secretariat. 12 countries accede to the APRM⁷⁶.

9 March 2003: 6th Summit of the NEPAD Implementation Committee (Abuja)

A set of organisational and operational documents are adopted, including the Memorandum of Understanding on the APRM, which is the official accession document of the process: APRM institutional implementation is thus achieved.

28 May 2003: 7th Summit of the NEPAD Implementation Committee (Abuja)

Members of the APR Panel (the "Eminent Persons") are nominated. Since the previous Meeting in March 2003, 4 more countries have acceded to APRM⁷⁷.

13 February 2004: First Summit of the Committee of the Participating Heads of State and Government in the APRM (APR Forum), Kigali

Budget is unanimously approved, and each Participating country accepts to make available a minimum of \$100,000 towards the operationalisation of APRM. The President of Nigeria, Mr Olesegun Obasanjo, also Chairperson of the NEPAD Implementation Committee, is elected Chairperson of the APR Forum.

24-29 May 2004: First APRM Support Mission to Ghana

21-24 June 2004: APRM Support Mission to Rwanda

⁷⁶ South Africa, Algeria, Central African Republic, Egypt, Ethiopia, Gabon, Ghana, Mali, Mauritius, Mozambique, Nigeria and Rwanda

⁷⁷ Burkina Faso, Cameroon, Kenya and Uganda

28-30 June 2004: APRM Support Mission to Mauritius

26-27 July 2004: APRM Support Mission to Kenya

II. THE APRM DOCUMENTS

The APRM Base Document was adopted by the African Union in July 2002.

It is completed by a range of operational and organisational official documents adopted by the NEPAD Heads of State and Government Implementation Committee, the APR Forum of Participating Heads of State and Government and the Panel of Eminent Persons.

This corpus forms the terms of reference as well as the institutional framework of the APRM.

A/ The APRM Base Document (AHG/235-Annexe I)

The APRM Base Document was adopted in Durban on 8 July 2002 by the 38th Ordinary session of the Assembly of Heads of State and government of the Organisation of African Unity.

This Document defines the **mandate** of the APRM, which is to “ ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance” (Para. 2).

As a mechanism voluntarily accepted by member States of the African Union, the purpose of the APRM is to foster the adoption of policies and practices promoting political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration.

The Base Document establishes the APR leadership and management structures⁷⁸ and determines **4 types of peer review**:

1. the base review carried out within eighteen months of a country becoming a member of the APRM process;
2. a periodic review that takes place every 2 to 4 years;
3. a review requested by a member country, outside the framework of periodically mandated reviews;
4. a review called for by the Participating Heads of State and Government in case of early signs of an impending political or economic crisis in a member country.

⁷⁸ See following section

The **5 stages** of the APRM review process are developed. In order to guarantee the African ownership of the process, funding for the Mechanism will come from assessed contributions from participating member states.

B/ The Memorandum of Understanding on APRM – MOU

The MOU was developed by the APRM participating states, and approved by the 6th Meeting of the Heads of State and Government Implementation Committee (HSGIC) on 9th March 2003 as the **official accession document** of the APRM.

Member countries of the African Union wishing to accede to the APRM shall ratify the MOU and deposit the signed document at the NEPAD Secretariat.

The MOU specifies the commitments, undertakings and obligations of the APRM participating States and draws up a list of recommendations relating to:

- The funding of the APRM:

Participating countries shall facilitate the provision of adequate resources for implementing the APRM at national level. Funding shall provide APR Review Teams with a full access to information and ensure a broad and popular dissemination of information relating to the APRM process. These resources can be provided by African governments, business entities or non-governmental institutions operating in the country.

- The national Programmes of Action (APRM Base Document, Para. 13):

Participating States should take all necessary steps to facilitate the development of such Programmes, which shall be finalised at the end of the first review cycle with the participation of all stakeholders at national level (trade union, women, youth and civil society organisations, private sector, rural communities and professional associations). Through the thorough development of these Programmes of Action, the sharing of experience and good practices will ensure the establishment of a constructive peer dialogue.

C/ “APRM: Organisation and Processes”

This document was adopted by the 6th Meeting of the Heads of State and Government Implementation Committee (HSGIC) on 9th March 2003 as the **operative guideline** of the Mechanism.

It details the APRM organisational components and specifies their respective mandates, structures and responsibilities:

- The APR Forum composed of the participating Heads of State and Government;
- The APR Panel composed of “African Eminent Persons”;
- The APR Secretariat;

- The APR Teams tasked with the effective country review visit;
- The APR Partner Institutions providing technical assistance.

The Document also develops the 5 stages of the review process.

The “APRM: Organisation and Processes” document finally determines the funding conditions of the Mechanism and recommends a business plan for all APRM operations of the over the first five years, to be developed and submitted to the APR Forum for consideration. The budget estimates will be developed based on the assumption that all countries acceding to the process would have to be reviewed during that period.

D/ The “Objectives, standards, criteria and indicators for the APRM”

This Document was adopted by the 6th Meeting of the Heads of State and Government Implementation Committee (HSGIC) on 9th March 2003 as another operative guideline.

The APRM **Objectives** cover all key objectives prioritised in the NEPAD Base Document. They are organised around the 4 focus areas of the Declaration on democracy, political, economic and corporate governance.

The codes and **standards** are those agreed to by the African Union, the internationally recognised ones, as well as all the instruments referred to in the Declaration on democracy, political, economic and corporate governance.

The **criteria** have been articulated in terms of questions (e.g.: has the country ratified all relevant instruments? Has it taken adequate measures to implement these instruments?), with **indicators** determining if the criteria have been met. These indicators are comprised of international index and shall be used as the working instrument of the review visit.

E/ The “Guidelines for countries to prepare for and participate in the African Peer Review Mechanism”

The Guidelines were approved by the 2nd Meeting of the APR Panel on 4 October 2003 and aim at providing a clear and single framework for conceiving and implementing the review conclusions in the focus areas identified in the Declaration

The Guidelines particularly focus on the role of all stakeholders at **national level** in each stage of the APRM process. To that extent, they recall that it is the responsibility of participating States to provide clear information on the APRM processes and ensure a broad-based understanding of the APRM principles.

To fully integrate the APRM processes into the existing governmental structures, the APR Panel recommends an APR national focal point to be established within the governing structures (either at ministerial level or as an individual reporting directly to the Head of State or government).

The country concerned shall also develop a self-assessment on the basis of the APR questionnaire and indicators in order to coordinate the existing development strategies with the NEPAD priorities. A roadmap on the participation in the APRM, which shall provide information on the national coordinating structures, the APRM stages and the roles and responsibilities of all stakeholders, should be widely publicized to establish and popularize feedback mechanisms between different levels of government and non-governmental stakeholders.

F/ The country self-assessment questionnaire

The self-assessment questionnaire has been developed by the APR Secretariat under the authority of the APR Panel as the **cornerstone** of the APRM process, on the basis of which the country concerned shall develop its self-assessment prior to the review visit. The questionnaire is addressed to the APR national focal point responsible for disseminating the document and centralise responses of the different stakeholders prior to forwarding them to the APR Secretariat.

This questionnaire is divided into 4 major sections corresponding to the 4 focus areas of the Declaration on democracy, political, economic and corporate governance. The standards and codes referred to in the questionnaire are more detailed than in the “Objectives, standards, criteria and indicators for the APRM” document, and take better account of international human rights instruments.

Each section is dedicated to one objective and sets a range of questions all stakeholders of the national focal point shall answer according to their area of expertise.

III. THE APRM STRUCTURES

The governing and administrative structures of the APRM were officially approved on 14 February 2004 by the 9th Summit of the Heads of State and Government Implementation Committee in Kigali (Rwanda).

APR FORUM

Forum of the Heads of State and Government of the participating countries

Composition:

The APR Forum is composed of participating Heads of State and government of the member States of the AU who have voluntarily acceded to the APRM. It is the highest decision-making authority in the APRM.

Function:

- Appoint the APR Panel and its Chairperson;
- Consider and adopt country review reports submitted by the APR Panel;
- Communicate its recommendations to the Head of State or Government of the reviewed country immediately after the review meeting;
- Exercise constructive peer dialogue and persuasion (through offering assistance or applying appropriate measures) to effect changes in country practice where recommended;
- Persuade development partners to support its recommendations by providing technical and financial assistance;
- Transmit APRM Reports to the appropriate AU structures and make these reports public in a timely manner;
- Ensure that the APR process is fully funded by the participating countries (including non-governmental partners);
- Approve a Code of Conduct for all components of the APRM organisation.

Chairperson:

The President of Nigeria, Mr Olusegun Obasanjo, also the chairperson of the NEPAD Heads of State and Government Implementation Committee, was appointed chairperson of the APR Forum by the 1st Summit of the APR Forum convened in Kigali on 13 February 2004, in order to root the APR process within the NEPAD structures.

APR PANEL

Panel of "Eminent Persons"

Composition:

7 African Eminent Persons "of high moral stature and who demonstrated commitment to the ideals of Pan Africanism.⁷⁹", appointed by the APR Forum and nominated by participating countries. Members of the Panel will serve for up to 4 years.

Members of the Panel appointed during the 7th meeting of the Heads of States and Government Implementation Committee (HSGIC) in May 2003 are:

- Mrs Marie-Angélique SAVANE, (Senegal): appointed **chairperson** by the 3rd meeting of the Panel in November
- Prof. Adebayo ADEDEJI (Nigeria)
- H.E. Bethuel KIPLAGAT (Kenya)
- Dr. Graça MACHEL (Mozambique)
- Dr. Dorothy NJEUMA (Cameroon)
- Dr. Chris STALS (South Africa)
- Mr. Mourad MEDELICI (Algeria)

Function:

The APR Panel ensures the integrity of the process. It thus appoints members and Partner Institutions of the Review Teams, oversees and approves their work. Once the recommendations contained in the country review reports considered, the APR Panel makes recommendations to the APR Forum.

APR SECRETARIAT

Function:

The APR Secretariat provides the technical and administrative support services for the APR Panel and Teams. The functions of the APR Secretariat include:

- Maintaining an extensive database and information on the four areas of focus of the Declaration on democracy and political, economic and corporate governance in all participating countries;
- Recommend to the APR Panel on the composition of APR Teams, recruit the experts required for research and analysis, and prepare background documents to facilitate their research.
- Plan and organize the country review visits;
- Liaising with participating countries, partner institutions, the institutions issuing the standards and codes listed in the Declaration, and the interested external partners;
- Organising regional networks in the various areas of focus of the APRM in order to ensure the sharing of experience and information between participating countries.

Contact informations:

Tel.: +27 11 313-3828 / Fax: +27 11 313-3440

⁷⁹ APRM Base Document, Para. 5

PARTNER INSTITUTIONS

Composition:

A provisional list of APR Partner institutions was established by the 1st Summit of the APR Forum held in Kigali on 13 February 2004:

Strategic partners	Regional resource institutions	International resource institutions
<ul style="list-style-type: none"> - AU: African Commission and Court on Human and Peoples' Rights, African Committee of the Experts on the Rights and Welfare of the Child, Peace and Security Council, Pan-African Parliament, CSSDCA. - AfDB - United Nations Economic Commission for Africa (UNECA) - UNDP 	<ul style="list-style-type: none"> - RECs - Association of African Central Banks - African Academy of Sciences - African Capacity Building Foundation 	<ul style="list-style-type: none"> - The United Nations and its agencies - OECD - European Union Commission - The Commonwealth Secretariat - Secretariat of La Francophonie - League of Arab States - IMF - World Bank - International Institute for Democracy and Electoral Assistance (IIDEA). - Transparency International

Function:

Partner Institutions provide technical assistance and participate in the APR Teams if required. External technical assistance should respect African ownership in the conduct of assessments.

APR TEAMS

Composition:

APR Teams are appointed by the APR Secretariat and approved by APR Panel for each country review visit. They shall be composed of:

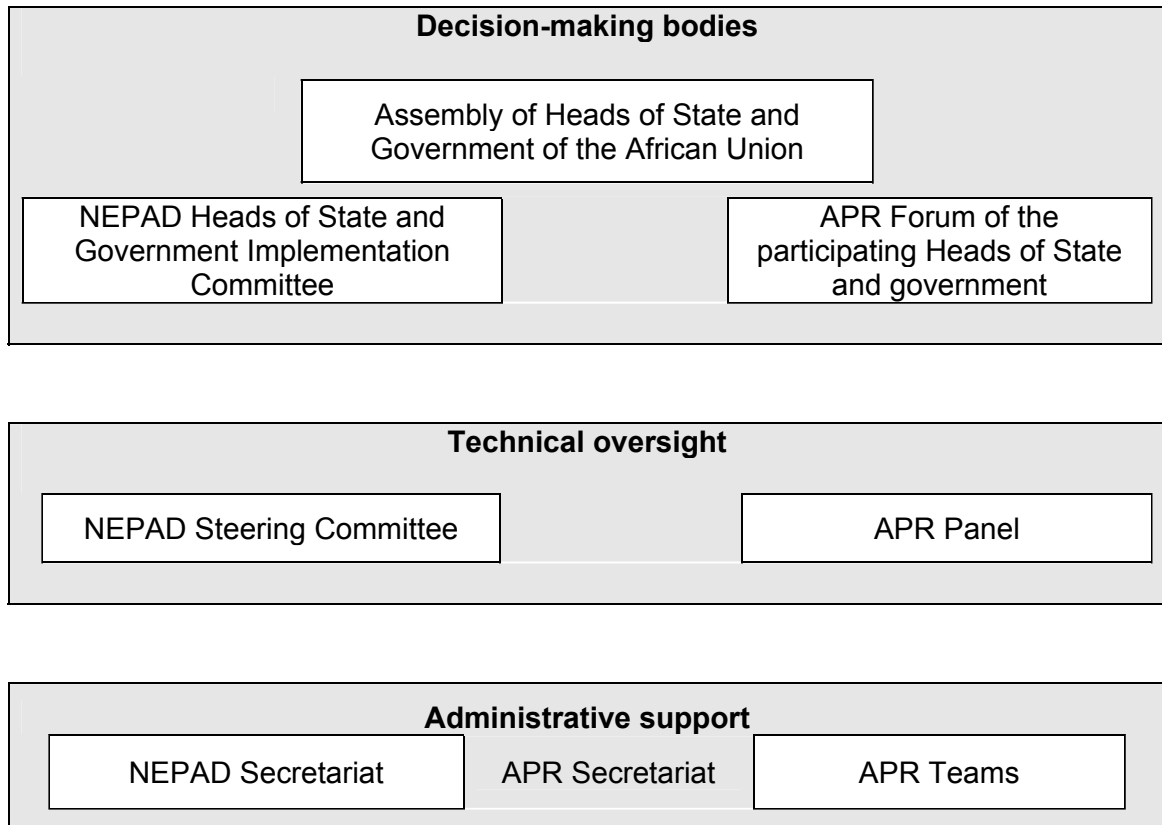
- A member of the APR Panel as the Team leader
- The concerned officers of the APR Secretariat, and a member of the NEPAD Secretariat if required
- One observer from each Partner institution that conducted technical assessments in the course of the review
- Experts from the Pool of experts, the list of which shall be approved by the Panel
- If possible, 2 observers from 2 other participating countries

Function:

APR Teams conduct the country review visit on the basis of the prior analysis of the APR Secretariat and the draft national Programme of Action, and collect information on the 4 focus areas of the Declaration on democracy, political, economic and corporate governance.

At the stage of periodic reviews, APR Teams are tasked with assessing the progress made in the implementation of the national Programme of Action adopted at the end of the first country review.

The APR three-tier governing structure is thus similar to the NEPAD one:



IV. THE APRM PROCESS

The APRM process is organised in 5 stages, as identified in the APRM Base Document adopted in Durban in July 2002 and detailed in the “APRM: Organisation and Processes” document.

These 5 stages represent the first cycle of the review process and shall result in the adoption of a National Programme of Action to achieve the objectives set forth by the 4 focus areas of the Declaration on democracy, political, economic and corporate governance. Progress made in the implementation of the Programme of Action will be assessed by another periodic review cycle.

A/ Preliminary steps

1-Registration of civil society organisations to the NEPAD Secretariat

In September 2004, the NEPAD Secretariat created an **Office of Gender and Civil Society Organisations** and appointed Mrs Litha Musyimi-Ogana at its head.

Mrs Musyimi-Oganas task will be, amongst others, to establish a database of all existing civil society organisations in Africa. This database will serve as a reference for the APR Secretariat when consulting civil society representatives during the review visits. This list shall also be transmitted to the Commission of the African Union once the observer status of the Union will be defined and adopted.

All civil society organisations should thus register to the NEPAD Secretariat at the following address

Mrs Litha Musyimi-Ogana
NEPAD Secretariat
P.O. BOX 1234 / Halfway House, Midrand
1685, South Africa
Email: litham@nepad.org
Tel: 27 11 313 3835 / Fax: 27 11 313 3778

2-Establishment of a national APR focal point

The creation of a national APR focal point is a prerequisite for initiating the review process. The focal point shall work in close cooperation with the APR Secretariat during the whole APR process. It will include representatives of all major stakeholders –government, members of the Parliament, civil society, and private sector. The national Focal point is notably responsible for disseminating information and ensuring a broad-based understanding of the APR processes.

The national focal point can be established either within existing structures (at ministerial level or through a person reporting directly to the head of State or Government) or within newly created ones. The work of the APR focal point shall be fully integrated in the medium term decision-making processes.

The national focal point is the main structure within the APR procedures and represents a major instrument for integrating all stakeholders⁸⁰. The work of the focal point is based on cooperation, specifically with civil society, and the APR Secretariat thus tends to consider the report developed by the National focal point as inclusive and exhaustive. It is therefore critical that civil society organisations actively participate in the formulation of the report and programme of Action to have their claims and suggestions taken into account as early as possible in the process.

The role of the African Commission on Human and Peoples' Rights

As a Partner Institution, the African Commission should be deeply involved in the APRM process, in particular through participating in the preparation of the background report and review visits.

Civil society organisations with observer status at the African Commission and whose countries participate in the APRM shall in particular ask the Commission to intervene in the APR process.

This would ensure the consistency between the control of the ACHPR implementation by the Commission and the human rights monitoring by the APRM.

B/ Stage 1: Gather data and information on the basis of the APR criteria and indicators

The first stage of the APRM process emphasizes the participatory dimension:

⁸⁰ Guidelines for countries to prepare for and participate in the African Peer Review Mechanism

1-Preliminary work of the national focal point and the APR Secretariat

The preparation for the APR process is detailed in the “Guidelines for countries to prepare for and participate in the African Peer Review Mechanism”, and includes:

- a briefing session with the APR focal point, organised by the APR Secretariat and followed by a working session on the questionnaire.
- a seminar with representatives of all stakeholders involved in the focal point, focusing on available data and the quality of indicators and aimed at preparing a first draft Programme of Action.
- separate meetings with major stakeholders at their request to explain the APR processes and instruments.
 - Joint research of the national focal point and the APR Secretariat in order to gather existing information and reports. These data form the basis for the APR Secretariat report.
- a final meeting with the national focal point to reach agreement on the responses to the questionnaire for a specific country processes and to establish a timeline for country review.



TAKE ACTION


- 1/ Contact the APR Secretariat
- 2/ create within every civil society organisation a documentary database, based on its work and publications and organised around the 4 focus areas of the Declaration on Democracy, political, economic and corporate governance
- 3/ Organise a civil society organisations' network

2-Distribution of the questionnaire, national self-assessment and development of the draft national Programme of Action

The country will elaborate a self-assessment on the basis of the questionnaire, with the assistance, if necessary, of the APR Secretariat and/or relevant Partner Institutions before formulating a preliminary Programme of Action.

The Programme of Action shall incorporate the existing policies, programmes and projects: e.g. Poverty Reduction Strategy Papers (PRSPs), Medium Term Expenditure Frameworks (MTEF), human rights action plans, MDG strategies, ongoing institutional reforms, governance and socio-economic programmes and projects ...

Both the self-assessment and the draft Programme of Action shall then be submitted to the APR Secretariat, which, during the same period, will draw up a background document on the country to be reviewed.

	TAKE ACTION
<p>1/ Civil society organisations shall get and disseminate the questionnaire in order to have their claims and/or suggestions fully integrated in the answers of the focal point. If the final answers of the latter are considered inadequate, CSOs may send complementary information to the APR Secretariat⁸¹.</p> <p>2/ They shall participate in the development of the national Programme of Action and broadly disseminate its outlines.</p>	


3-Background analysis of the APR Secretariat

This set of documents shall guide the country review process. On the basis of all available data, the Secretariat will determine whether some issues require more thorough assessments before the country review can take place, and may, if need be, request the assistance of technical experts (from the African Pool of experts or the Partner Institutions).

C/ Stage 2: Country review visit

Under the leadership of the APR Panel, the Country Review Team will visit the country concerned. The APR Team shall carry out the widest possible range of consultations with the Government, representatives of political parties and civil society organisations (including the media, academics, trade unions, business and professional organisations).

The main purpose of the visit is to gather information on the views of the different stakeholders on governance in the country and to clarify the issues identified in the preliminary report. Issues that had not been taken into account in the draft Programme of Action can then be integrated.

	TAKE ACTION
<p>1/ Since the duration of the visits is expected to be short (2 to 5 days), civil society shall prepare for the meetings with the APR Team in collaboration with the widest possible range of organisations. This cooperation can be established through preliminary forums and seminars in order to gather information and present an exhaustive overview of the work of the organisations to the APR Team.</p> <p>2/ CSOs should also synthesize the issues inadequately taken into account by the national Programme of Action.</p>	

D/ Stage 3: Joint finalisation of the review report and national Programme of Action

1-Drafting of the Team's report


The APR Review Team prepares a draft report on the basis of the background information completed by the information provided by the visit.

This report must take into account the applicable political, economic, corporate and socio-economic development commitments made in the draft national Programme of Action. It shall also identify any remaining weakness and recommend on further actions that should be included in the Programme of Action.

2-Discussion with the Government

The draft report shall then be discussed with the Government of the country visited to provide it with the opportunity to react to the ARP Team's findings and discuss how to integrate them to the Programme of Action. The responses of the government shall then be incorporated to the report.

At this point, the government of the country concerned shall finalise its Programme of Action taking into account the conclusions and recommendations of the APR Team's draft report.

	<p style="text-align: center;">TAKE ACTION</p> <p>Civil society should plan to be particularly active during this stage, since the draft report of the APR Team's forms the basis of the final report.</p> <p>Thanks to its compared analysis of the States' preliminary report and the results of the fact-finding mission, this stage provides civil society with the opportunity to present a detached analysis that can influence the final report.</p>
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The Team's report must clarify the main areas where problems have been identified. Is there a will by the government to implement the necessary measures to address the identified problems? What resources are necessary to take corrective measures? How much of these can the government provide, and how much is to come from external resources? Once the resource mobilisation assessed, how long is the rectification process expected to take?

⁸¹ Secretariat contact information: see p.135



TAKE ACTION

Civil society organisations can, in the light of the above mentioned indicators denounce the possible passivity of the government, for instance in the allocation of resources, in accordance with Article 2-1 of the ICESCR.

E/ Stage 4: Submission and adoption of the review report

1-Presentation of the Review Team's final report

The APR Team's report and national Programme of action are finalised and sent to the APR Secretariat and Panel, then submitted to the APR Forum of participating Heads of State and government. The report will only be considered as final once considered and adopted by the APR Forum.

The estimated duration of the APR process from to the start (stage 1) to the consideration of the report by the Heads of State and government (Stage 4) should not exceed 6 months.



TAKE ACTION

If the submission and consideration of the report lasts more than the forecasted 6 months –in particular because of possible disagreement between the government of the reviewed country and the APR Team- civil society must denounce this situation to the government and the APR Secretariat, e.g. through open letters.

2-Adoption of the final report

If a country shows a demonstrable will to rectify the identified shortcomings, it is incumbent upon other APR participating countries to provide whatever assistance they can. In the absence of any “demonstrable will” from the said government, the other participating governments shall engage in a “constructive dialogue”. If dialogue does not succeed, participating governments might “put the government on notice of their collective intention to proceed with appropriate measures”.

F/ Stage 5: Public disclosure of the Team's review report

Six months after the report has been considered by the participating Heads of State and government, it shall be formally and publicly tabled in key regional and sub-regional structures such as the Regional Economic Community to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the Peace and Security Council and the Economic, Social and Cultural Council of the African Union.



TAKE ACTION

Civil society organisations must review the report as soon as it is tabled, and can, if need be, address critiques and recommendations to the national focal point which is responsible for ensuring the decisions adopted within the framework of the report and the Programme of Action.

The National Programme of Action:

The national Programme of Action is the key input delivered into the APRM process. It is meant to guide and mobilise the country's efforts in implementing the required rectifications to improve governance and socio-economic development practices and policies.

The Programme of Action also lists and clarifies the priorities of the country and the nature of national consultations. To this end, the Programme should clearly present and explain the responsibilities of all stakeholders (government, civil society, private sector) in implementing it.

The National Programme of Action shall include:

- an **assessment of compliance** with the APRM Objectives, standards (), criteria and indicators, and an analysis of major development and governance challenges the country faces;
- an outline of the **priorities** for enhancing governance and socio-economic development in the short, medium and long term;
- a description of **ongoing programmes** (such as Poverty Reduction Strategy Papers (PRSPs), Medium Term Expenditure Frameworks (MTEF), human rights action plans, MDG strategies, ongoing institutional reforms, governance and socio-economic programmes and projects...);
- clear **commitments** on key governance and socio-economic development priorities over the next 3 years, including the list of key stakeholders for implementation and the estimated budgetary implications and allocations;
- a description of **national consultations** that have taken place during the self-assessment and the elaboration of the Programme of Action.
- a description of the feed-back mechanisms established to promote the role of local actors (in particular, efforts to disseminate information in an easily accessible and understandable manner).
- a description of the **capacity building** and resource mobilisation requirements for undertaking the Programme of Action.
- a specification of the **implementation, monitoring and evaluation mechanisms** for the Programme of Action.

G/ Periodicity of peer review

To be fully effective, reviews have to be undertaken regularly in order to assess the progress made towards achieving the agreed objectives, the weaknesses and the evolution of the general situation –in particular, the slowdown in economic activities. Periodic review shall take place every 2 to 4 years or earlier if an impending political crisis identified.

The periodicity of the reviews generates a certain pressure on the participating members to give effect to the peers' recommendations. Generally, these recommendations should take the form of a strategy acknowledged as the best as possible by all participating countries, rather than an inflexible position. The ultimate purpose of the review process is to establish an open, non-conflictual dialogue between peers: peer pressure is the driving force of the APRM process and guarantees the review efficiency, especially if it is made public. Media and public interest shall thus be involved to ensure its success.

V. THE APRM OBJECTIVES

The APRM Objectives are based on the 4 focus areas of the Declaration on Democracy, Political, Economic and Corporate Governance.

Focus area	Objectives
Democracy and political governance	1/ Prevent intra- and inter-country conflicts 2/ Democracy and rule of law 3/ Promotion and protection of economic, social, cultural, civil and political rights 4/ Separation of powers, independence of the judiciary, efficiency/effectivity of the Parliament. 5/ Accountability and efficiency of the administration, public office holders and civil servants 6/ Fighting corruption in the political sphere 7/ Promotion and protection of the rights of women 8/ Promotion and protection of the rights of the child 9/ Promotion and protection of the rights of vulnerable groups, including displaced persons and refugees
Economic governance and management	1/ Macroeconomic policies that support sustainable development 2/ Incitation à l'investissement étranger et à la consommation intérieure 3/ Transparency and coherence of economic policy 4/ Sound public finance management 5/ fighting corruption and money laundering Lutte contre la délinquance économique corruption et blanchiment d'argent 6/ Acceleration of regional integration, harmonization of monetary, trade and investment policies amongst the participating states
Corporate governance	1/ Provide an enabling environment and effective regulatory framework for economic activities 2/ Ensure that corporations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability 3/ Promote the adoption of codes of good business ethics 4/ Ensure that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner 5/ Accountability of corporations and directors

Socio-economic development	1/ Promote self-reliance in development 2/ Accelerate socio-economic development to achieve sustainable development and poverty eradication 3/ Strengthen policies and outputs in key social development areas (education, HIV/AIDS and other communicable diseases) 4/ Ensure an affordable access to water, health, energy, finance, markets, and ICT to all, especially the rural poor. 5/ Promote gender equality, particularly equal access to education for girls 6/ Promote a broad-based participation by all stakeholders in development processes.
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CONCLUSION

HOW AND WHERE CAN CIVIL SOCIETY ADVOCATE AND LOBBY FOR A HUMAN RIGHTS APPROACH TO NEPAD?

The aim of this guide is to promote a human rights-based approach on the part of all NEPAD actors, the only approach that can guarantee that this initiative will contribute to a real improvement in the living conditions of the African population.

In order to achieve this goal, civil society has a crucial role to play.

The guide is aimed equally at African civil society and international civil society, human rights NGOs and any other association that wishes to express its arguments and claims with respect to legal rights and obligations.

The guide provides the means to:

- Make use of the NEPAD and APRM procedures as a **new political forum**, whether institutionalised or not, within which civil society can remind the states - including the developed states - of their human rights obligations. This means using NEPAD as a *new* forum to which the traditional messages of civil society can be addressed.

- Address the **new issue of NEPAD's impact on human rights** in all the fora *traditionally* targeted by civil society in their advocacy and lobbying campaigns. (UN, African Commission on Human and Peoples' Rights, G8, etc);

-Study the potentialities of using the **newly created institutions of the African Union** (the African Court of Justice, the African Court on Human and Peoples' Rights) to raise concerns about NEPAD.

A/ At the NEPAD institutions level

- The Secretariat:

Send the details of your organisation to the Civil Society Officer in order to appear in the civil society database of the NEPAD secretariat.

- The NEPAD Steering Committee:

Despite the absence of a formal accreditation procedure, NGOs can nevertheless request to participate in meetings of the Steering Committee, on an ad hoc basis.

-More generally ask the NEPAD to respect its commitment to establish an independent mechanism for assessing donor and recipient country performance (para. 149 of the Base document).

B/ At the national level

1-NEPAD member States

-Identify the NEPAD focal point (person or structure) within your government. In the absence a such structure, ask for its creation,

-Send to the Focal point, even prior to any consultation process, a request urging your government to respect its human rights obligations when implementing NEPAD (primacy principle, non discrimination, principle of the maximum use of resources...),

-Ask to the national consultative human rights institutions to integrate the issue of NEPAD in their mandate,

-Ask for the integration -within your country's plan of action - of a proper impact assessment on poverty reduction, both before and after implementation, as envisaged in paragraph 116 of the NEPAD Base document;

-Urge your government to adhere to the African Peer Review Mechanism (APRM),

-Ask for the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which is cited in NEPAD official documents as a reference,

-Ask for the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, and for the adoption of a declaration accepting the competence of the Court to receive cases under article 5 (3) of the Protocol.

-Organize information and raising awareness campaigns on NEPAD.

2-Developed States

- Urge them to respect their obligation to spend 0.7 % of their GNP on official development aid.

-Urge them to make sure that the money they're giving to support NEPAD is being spent in priority towards the realisation of fundamental economic and social rights in the receiving country.

C/ At the level of the African Union

-Apply for the Observer status once the criteria for granting such status are been adopted (mid-2005), in order to participate in all the meetings of the AU institutions which have a link with NEPAD (Peace and Security Council...)

-Study the possibility to become a member of the Economic, Social and Cultural Council (ECOSOCC), once the electoral process is been launched mid-2005.

D/ At the level of the African Commission on Human and Peoples' Rights

NGOs with observer status can ask the Commission to:

-Adopt resolutions on the impact of NEPAD on the full enjoyment of the rights enshrined in the African Charter on Human and Peoples' Rights (art. 45 of the Charter),

-Deal with communications received by State Parties, NGOs with observer status before the Commission or individuals, which expose alleged human violations in relation with NEPAD (art.47 and 55 of the Charter),

-Take into consideration NEPAD's implications when reviewing state Parties reports (art.62 of the Charter).

E/ At the level of the Regional Economic Communities (RECs)

-Use all the relevant RECs meetings as political momentums to recall on NEPAD member States to respect their human rights obligations, when negotiating within the Regional Economic Communities.

-Participate in the meetings of the governing bodies of these institutions, when a procedure allows it. If not, ask for the creation of such procedure.

F/ At the level of international organisations

1-World Bank

-Identify the NEPAD projects financed by the World Bank and monitor their evolution and potential impact on human rights. If the Bank has contrevened

to its directives and policies when funding NEPAD projects, submit a complaint to the Inspection Panel of the World Bank.

2-World Trade Organisation (WTO)

-Lobby African governments to convince them to use their human rights obligations when negotiating WTO agreements.

-Lobby developed States delegations to convince them to respect their obligation to increase access to markets when negotiating WTO agreements.

3-G8

-Use G8 meetings as political momentums in order to recall on developed States to respect their obligations in the field of international cooperation and assistance (debt reduction, increase in official development aid, access to markets).

G/ At the level of the United Nations

-United Nations treaty monitoring bodies: Committee on Economic, Social and Cultural Rights (ICESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Elimination of Racial Discrimination (CERD), Human Rights Committee (HRC), Committee against Torture (CAT):

-Integrate in the shadow reports submitted to the various committees, any relevant information on the impact of NEPAD on the enjoyment of human rights,

-Study the possibility to introduce individual complaints or communications dealing with NEPAD, to the CEDAW, CERD, CAT or HRC, when possible⁸²,

-When reports from developed States are being examined by the Committee on Economic, Social and Cultural Rights, send to the Committee any relevant information on the developed States' obligation of cooperation and assistance in the context of NEPAD.

-Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Working groups...)

-Submit all relevant information on the impact of NEPAD on a particular right, be it civil and political or economic, social and cultural,

⁸²These four committees can under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated. For more information, see <http://www.ohchr.org/english/bodies/index.htm>

-Follow-up of the Millennium Declaration

-Contribute to the establishment of the national reports aimed at assessing the progress made in implementing the Millennium Development Goals.

H/ Towards private companies

-Recall on private companies in charge of NEPAD projects that they have a duty to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law in their respective spheres of activity and influence,

-Ask the NEPAD to incorporate corporate social responsibility criteria into procurement procedures.

I/ Among civil society

-Build up alliances at the national, regional and international level, with all the components of civil society (development NGOs, environmental groups, unions, women's organisations...) to share experience and develop common lobbying strategies on NEPAD.

J/ At the level of the African Peer Review Mechanism⁸³

-Ask the African Commission on Human and Peoples' Rights to study the possibility of using its "partner institution" status to play a more active role in the evaluation process in order to ensure a consistency between the monitoring realized by the Commission on the basis of the African Charter and the evaluation undertaken by the APRM,

-Send the details of your organisation to the NEPAD Civil Society Officer and to the APR Secretariat in order to appear in the NEPAD civil society database,

-Participate to the national consultations organized by the NEPAD focal points and send all relevant information to the APR Secretariat,

-Disseminate the questionnaire, in order to have your claims and/or suggestions fully integrated in the answers of the focal point. If the final answers of the latter are considered inadequate, you may send complementary information to the APR Secretariat,

-Participate in the drafting of the National Action Plan,

⁸³ see Part II for a thorough analysis of the APRM

-Analyse the public report and make comments and recommendations that could be taken into account in the follow-up process.

ANNEX 1:

STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES BY MEMBER STATES OF THE AFRICAN UNION

The following chart of Member States of the African Union shows which are a party (indicated by the date of adherence) or a signatory (indicated by an "s" and the date of signature) to the following instruments:

- (1) **ICESCR**: International Covenant on Economic, Social and Cultural Rights
- (2) **ICCPR**: International Covenant on Civil and Political Rights
- (3) **CERD**: International Convention on the Elimination of All Forms of Racial Discrimination
- (4) **CEDAW**: International Convention on the Elimination of All Forms of Discrimination against Women
- (5) **CRC**: Convention on the Rights of the Child

Member States of the African Union	ICESCR	ICCPR	CERD	CEDAW	CRD
Algeria	12/12/89	12/12/89	12/03/72	10/06/96	16/05/93
Angola	10/05/92	10/05/92		17/10/86	04/01/91
Benin	12/06/92	12/06/92	30/12/01	11/05/92	02/09/90
Botswana		08/09/00	24/03/74	12/09/96	13/04/95
Burkina Faso	04/04/99	04/04/99	17/08/74	13/11/87	30/09/90
Burundi	09/08/90	09/08/90	26/11/77	07/02/92	18/11/90
Cameroon	27/09/84	27/09/84	24/07/71	22/09/94	10/02/93
Cape Verde	06/11/93	06/11/93	02/11/79	03/09/81	04/07/92
Chad	09/09/95	09/09/95	16/09/77	09/07/95	01/11/90
Central African Republic	08/08/81	08/08/81	15/04/71	21/07/91	23/05/92
Comoros			S: 22/09/00	30/11/94	21/07/93
Congo	05/01/84	05/01/84	10/08/88	25/08/82	13/11/93
Côte d'Ivoire	26/06/92	26/06/92	03/02/73	17/01/96	06/03/91
Djibouti	05/02/03	05/02/03		01/01/99	05/01/91
DRC	01/02/77	01/12/77	21/05/76	16/11/86	27/10/90
Egypt	14/04/82	14/04/82	04/01/69	18/10/81	02/09/90
Equatorial Guinea	25/12/87	25/12/87	08/11/02	22/11/84	15/07/92
Eritrea	17/07/01	23/04/02	30/08/01	05/10/95	02/09/94
Ethiopia	11/09/93	11/09/93	23/07/76	10/10/81	13/06/91
Gabon	21/04/83	21/04/83	30/03/80	20/02/83	11/03/94
Gambia	29/03/79	22/06/79	28/01/79	16/05/93	07/09/90
Ghana	07/12/00	07/12/00	04/12/69	01/02/86	02/09/90

Guinea	24/04/78	24/04/78	13/04/77	08/09/82	02/09/90
Guinea-Bissau	02/10/92	S: 12/09/00	S: 12/09/00	22/09/85	19/09/90
Kenya	03/01/76	23/03/76	13/10/01	08/04/84	02/09/90
Lesotho	09/12/92	09/12/92	04/12/71	21/09/95	09/04/92
Liberia	S:18/04/6 7	S: 18/04/67	05/12/76	16/08/84	04/07/93
Libya	03/01/76	23/03/76	04/01/69	15/06/89	15/05/93
Madagascar	03/01/76	23/03/76	09/03/69	16/04/89	18/04/91
Malawi	22/03/94	22/03/94	11/07/96	11/04/87	01/02/91
Mali	03/01/76	23/03/76	15/08/74	10/10/85	20/10/90
Mauritania			12/01/89	09/06/01	15/06/91
Mauritius	03/01/76	23/03/76	29/06/72	06/08/84	02/09/90
Mozambique		21/10/93	18/05/83	21/05/97	26/05/94
Namibia	28/02/95	28/02/95	11/12/82	23/12/92	30/10/90
Niger	07/06/86	07/06/86	04/01/69	07/11/99	30/10/90
Nigeria	29/10/93	29/10/93	04/01/69	03/07/85	19/04/91
Rwanda	03/01/76	23/03/76	16/05/75	03/09/81	23/02/91
Saharawi Arab Democratic Republic					
Sao tome and Principe	S: 31/10/95	S: 31/10/95	S: 06/09/00	03/07/03	13/06/91
Senegal	13/05/78	13/05/78	19/05/72	07/03/85	02/09/90
Seychelles	05/08/92	05/08/92	06/04/78	04/06/92	07/10/90
Sierra Leone	23/11/96	23/11/96	04/01/69	11/12/88	02/09/90
Somalia	24/04/90	24/04/90	25/09/75		S: 09/05/00
South Africa	S: 03/10/94	10/03/99	09/01/99	14/01/96	16/07/95
Sudan	18/06/86	18/06/76	20/04/77		02/09/90
Swaziland	26/06/04	26/06/04	07/05/69	25/04/04	06/10/95
Tanzania	11/09/76	11/09/76	26/11/72	19/09/85	10/07/91
Togo	24/08/84	24/08/84	01/10/72	26/10/83	02/09/90
Tunisia	03/01/76	23/03/76	04/01/69	20/10/85	29/02/92
Uganda	21/04/87	21/09/95	21/12/80	21/08/85	16/09/90
Zambia	10/07/84	10/07/84	05/03/72	21/07/85	05/01/92
Zimbabwe	13/08/91	13/08/91	12/06/91	12/06/91	11/10/90

ANNEX 2:

SOURCES AND FURTHER INFORMATION

The documents referred to in this guide are available online at: www.fidh.org.

GENERAL BACKGROUND ON NEPAD:

NEPAD official website: www.nepad.org

NEPAD official documents:

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ISA-AFRICA, Portal N°1 of Africa, NEPAD: <http://isa-africa.com>

Human Rights Instruments:

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APRM:

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AFRICAN UNION:

●*Overall information, official documents, protocol establishing the AU organs* : African Union official website: www.africa-union.org

● *African Commission on Human and Peoples' Rights*: www.achpr.org

REGIONAL ECONOMIC COMMUNITIES:

ECOWAS: <http://www.ecowas.int/>

ECCAS: <http://www.ceeac-eccas.org/>

CEN-SAD: <http://www.cen-sad.org/fr/index.htm>

COMESA: <http://www.comesa.int/>

IGAD: <http://www.igad.org/>

SADC: <http://www.sadc.int/>

UMA: <http://www.maghrebarabe.org/>

SACU: www.sacu.com

UEMOA: www.uemoa.int

OTHER INSTITUTIONS:

●United Nations: www.un.org

●General Assembly Resolutions:

www.un.org/depts/dhl/dhlf/resguidf/gares1fr.htm

● United Nations High Commissioner for Human Rights, OHCHR : www.ohchr.org

● United Nations Economic Commission for Africa: www.uneca.org

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