RIGHT TO DEVELOPMENT, GLOBAL PARTNERSHIPS AND PEER AND PARTNER REVIEW

Taskforce on the right to development

January 26-27, 2007

Susan Mathews, Tilburg University, Netherlands

In the seventh session of the Working Group on the Right to Development, a set of criteria was adopted by consensus, to evaluate global partnerships. The global partnerships refer to open trading and financial systems that are rule-based, predictable and non-discriminatory and should boast a commitment to good governance, development and poverty reduction and are referred to in Millennium Development Goal 8.

Prior to application of the criteria to pilot partnerships, as a first step the agenda of the Taskforce meeting includes studying already established partnership monitoring frameworks to the extent of legitimate overlap with the RTD criteria. This is also with the view to progressively develop and further refine the criteria. By studying already existing monitoring frameworks to track partnership commitments, accountability and performance, it provides a platform for application and further development/refinement of the criteria. This will help ensure that RTD piloting efforts do not inadvertently 'reinvent' the wheel, and more importantly still enable RTD piloting efforts to build upon important lessons of experience worked out elsewhere. These lessons are to be drawn from similar processes that are taking place in the field of development, with a particular focus on aid policies and practices. Two-fold objectives of the exercise: 1 – information on the compliance by these partnerships with the criteria. 2 – more detailed information will have been obtained on the criteria's adequacy to assess global partnerships from an RTD perspective. Can compliance with essential elements of RTD be sufficiently established? The final aim is to actually apply and pilot the criteria in selected countries.

The monitoring mechanisms/partnership tracking frameworks for possible scrutiny are the OECD and ECA/NEPAD partnership and the African Peer Review Mechanism. The ECA-OECD partnership focuses on mutual accountability and development performance. It does not generate new commitments but rather tracks implementation of commitments already made. The African Peer Review Mechanism (APRM) shares conceptual and empirical linkages with the RTD in the form of principles such as accountability, non-discrimination and ownership.

The major test is how concepts of common concern can effectively be operationalised, monitored and evaluated in practice.

General observations

The RTD criteria were adopted to provide a normative framework by which global partnerships for development might be periodically evaluated. One of the criteria framed is that monitoring and accountability mechanisms such as peer and mutual review be set up to track partnerships in terms of performance and other objectives. The OECD and ECA/NEPAD arrangement is designed to evaluate the commitments under NEPAD, the Paris Declaration on Aid Effectiveness and is exercised through a mutual review, a partner rather than a peer review. The African Peer Review Mechanism is designed to evaluate through a peer review the commitments made under NEPAD. The underlying principles, commitments and criteria used to adjudge these peer reviews and partner reviews can be found in multiple sources including founding documents.

The relationship of the peer and partner reviews presently in place share a complex relationship with the Right to Development criteria. One view could be that the RTD criteria are similar to whatever normative or guiding criteria these mechanisms use when judging NEPAD, for example. What would be left is then to compare mechanisms. A peer or partner review adjudges partnerships, the RTD criteria also normatively aim for that. In a sense the present RTD criteria provide an underlying framework similar to those present in some existing monitoring frameworks but it cannot be considered a fully established mechanism that equals the peer or partner review, as there is no equivalent institutional set-up in place. So the criteria can provide normative guidance but has no institutional base from which to practically deploy the criteria on a periodic basis. The UN human rights system has traditionally deployed supervisory and to some extent monitoring functions through the charter and treaty bodies, using modalities such as reporting, petition systems, field reviews. It is important to establish how and through which body/bodies, the criteria might be deployed, for example, will countries be asked to report on their alignment of global partnerships with the said criteria when reporting to individual UN committees. Or will it be just ad hoc evaluations done for a certain measure of time, left to the Working Group's or Human Rights Council's political favour.

The mechanisms such as the African Peer Review Mechanism go through five stages, which end in a national programme of action, as can be now viewed from Ghana's experience. Since the RTD criteria are set up to evaluate partnerships, the logical extension should be that they should be used to

adjudge NEPAD or PRSPs. However, peer review and mutual review mechanisms already perform the role of accountability mechanisms, especially in the case of NEPAD. The reports from the work of the mechanisms thus become a valuable source of information to evaluate individual criterion and can feed into developing and deploying the criteria. There is also a move to note the lessons learned from already established mechanisms such that the criteria can be improved as a result and also to point out the similarities and also the differences between the RTD criteria and the criteria by which the mutual and peer review operate.

So a number of practical projects come into light, but they need to be properly delineated and not conceptually overlapped:

1. An application of the RTD criteria to pilot partnerships – such as PRSPs, NEPAD – external, independent review, requires an institutional base. Or focus instead on a county, thus exploring all partnerships – PRSPs, NEPAD, MDGs within a country setting and whether they meet the criteria. Or a thematic study on specific subject areas, user fees in health and education, infrastructure projects and its environmental and social impacts.
2. Analysis of present mutual and peer review mechanisms – in light of the RTD and the broader human rights framework in order to learn, compare and judge. This can include :
   -a comparative analysis of the RTD criteria with equivalent normative criteria present in mutual and peer review mechanisms such as OECD/ECA or APRM;
   -identifying points of convergence, divergence and gaps in the systems;
   -how far these existing mechanisms function as accountability mechanisms in a human rights sense, even if not explicitly framed as such;
   -learning from existing experiences at evaluating partnerships

NEPAD: African Framework for Africa?

The New Partnership for Africa's Development (NEPAD) is a consolidated framework by which African countries negotiate their development mandates in country, and their mutual and external development commitments. It is part of the 'African Renaissance' in development and governance that came together in 2001, with the avowed aim and need to also forge a new relationship with donors and development partners. The NEPAD claims to be a long – term vision of an African owned and African-led development programme. While initially termed as a 'New African Initiative', instead the leaders later decided on the term 'New Partnership'. This is a telling change which reflects that while NEPAD is projected as an African vision and development renaissance, it still gazes

outwards towards external donors and developed nations. The NEPAD strategic framework document arises from a mandate given to the five initiating Heads of State (Algeria, Egypt, Nigeria, Senegal, South Africa) by the Organisation of African Unity (OAU) to develop an integrated socio-economic development framework for Africa. The 37th Summit of the OAU in July 2001 formally adopted the strategic framework document. NEPAD adopts a market-centred approach to development primarily financed by flows of Western aid and capital (Gathii). NEPAD is founded on principles of good governance in African countries, especially the adoption of sound macroeconomic policy frameworks and improved economic and corporate governance. This is pretty much in tune with what is prescribed by institutions like the World Bank and IMF. It does not challenge international governance structures or aid prescriptions, or the unfairness of rules of international trade.

NEPAD establishes it own implementation mechanism, even though it is the economic program of the AU. It has been described as both a programme in support of the African Union and as a mandated initiative of the African Union. This ambiguity in its relationship with the AU was partly brought on by a need to separate NEPAD from the slow and cumbersome procedures of OAU decision-making and distance NEPAD from the political aspirations of the AU. The linkage between NEPAD and the AU has remained largely at the level of rhetoric. The third and final part of the NEPAD document starts with a chapter on initiating a new global partnership with a view to sharing the responsibilities and mutual benefits for Africa and her development partners. The plan under NEPAD is far reaching including proposals for peace and security, democracy and good governance as well as economic recovery. It is clearly oriented towards political and economic liberalisation, in no small manner influenced by the carrot of developed country assistance and credit.

NEPADs stated aim is to achieve the overall 7 percent annual growth necessary for Africa to meet one of the MDGs: halving poverty by 2015. NEPAD incorporates the MDGs into its key planning. By framing its aims around the MDGs, NEPAD creates a common project for countries and development partners. NEPAD is based on the notion of an 'enhanced partnership' which is a common commitment by African countries and donors to a set of development outcomes (defined by African countries), whereby donors pool funds, guarantee them for an extended period and channel them through budgetary processes, which are then jointly monitored on the basis of outcomes. The UN Economic Commission for Africa has been a prominent player in how the NEPAD was constructed. The ECA Compact for African Recovery was one of the initiatives that brought about NEPAD and the ideas of enhanced partnership, mutual accountability towards development outcomes and peer review were all developed within the Compact document. The ECA

functions as the continent's premier expert community on economic issues, including economic and corporate governance, convenes key fora, including the African Development Forum (ADF), the biggest annual meeting of all African stakeholders to discuss development issues; the 'Big Table' that brings together African ministers of finance and their OECD counterparts; the Poverty Reduction Strategies Learning Group, has created the African Gender and Development Index. The ECA will continue to align its work programme with the priorities of the African Union and the NEPAD agenda.

The principles of enhanced partnership were developed by the UNECA, African governments and select donors, with almost no input at all from development NGOs (De Waal). In fact, the process leading towards the adoption of NEPAD has been criticised as being a top-down programme that was formulated with little consultation of civil society, the representative organs, such as parliaments, and the African peoples in general. African human rights institutions such as the African Commission on Human and People's Rights (African Commission) were not involved.

Human rights, when mentioned in the core NEPAD Declaration, is placed under the democracy and political governance initiative. From the wording in that text, it is clear that there is an emphasis on civil and political rights and no mention of socio-economic rights. This is absent even from the section on socio-economic development. While there is reference to the African Charter on Human and Peoples' Rights, there is no real link to the stance of people-centred development or the right to development in the African Charter. The right to development has been neatly excised from the key sections in the NEPAD Declaration of Democracy, Political, Economic and Corporate Governance (Declaration on Governance). One likely reason for this might have been that the language of the right to development or even socio-economic rights does not gel well with multiple donors, including the EU and certain rich, powerful countries such as the U.S which channels money through their Millennium Challenge Account. NEPAD puts emphasis on new partnerships with industrialised countries and with multilateral organisations based on mutual commitments and obligations. Not only are clear human rights references or mentions left out, with only a partial acknowledgement of human rights as civil and political rights, it is not clear as to how NEPAD fits in with the African human rights system. This is made complex by its own ambiguous relationship with the AU. There is also no mention of integration of human rights in development or even the links between human rights and peace and security. NEPAD might create a system deviation by putting money, resources and political will into narrowed rights and good governance regimes that facilitate market openness, trade and financial liberalisation and private and predominantly foreign investment, bypassing the more comprehensive rights regimes but largely under-resourced African human rights system. One

other major point is that the NEPAD document includes promoting gender equity as one of its two principal aims. However, in common with most high-level African initiatives, the involvement of women has been at best marginal, and commitments to gender equity such as those adopted in Beijing have not been accorded mainstream status within NEPAD.

Mutual accountability review and peer review mechanisms: a part of human rights armour?

African Peer Review Mechanism

Three main dimensions of governance are emphasised within NEPAD: economic and corporate governance; political governance; and peace and security. Considerable progress has been made in defining the elements of economic and corporate governance, and a framework was adopted by both NEPAD's committee of experts and its heads of state implementing committee in March 2002. The most innovative aspect of this is the African peer review mechanism. The APRM broadly echoes the OECD peer review mechanism, which is regarded as a successful means of identifying and promoting appropriate practices. The APRM could be viewed as the jewel in the NEPAD crown, or the sharpest tool in the African governance tool box, yet others have referred to it as being one's brother's keeper.

Peer review according to Pagani, can be described as the systematic examination and assessment of the performance of a state by other states, with the ultimate goal of helping the reviewed state improve its policy making, adopt best practices and comply with established standards and principles. The examination is conducted on a non-adversarial basis, and it relies heavily on mutual trust among the states involved in the review, as well as on 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 accountability. Peer review can be distinguished from judicial proceedings, fact-finding missions and reporting and data collection, which could be viewed as mechanisms for monitoring and ensuring compliance with internationally agreed policies and norms. It is not dispute resolution, goes beyond fact-finding to include an assessment of the performance of the state and by contrast with reporting, it is characterised by dialogue and interactive investigation, which can comprise the recourse to questionnaires, and it usually involves no formal reporting by the examined state. The effectiveness of peer review relies on the influence and persuasion exercised by the peers during the process, and the resulting peer pressure. The impact is greatest when the outcome of the peer review is made available to the public. All peer reviews contain the following structural elements – a basis for proceeding, an agreed set of principles, standards and criteria against which the country

performance is to be reviewed, designated actors to carry out the peer review and a set of procedures leading to the final result of the peer review. Peer review is the combination of the activity of several actors: the collective body within which the review is undertaken; the reviewed country; the examiner countries; and the Organisation secretariat. The independence, transparency, accuracy and the analytic quality of work of the Secretariat are essential to the effectiveness of the peer review process.

Accession to the APRM entails 'undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance'. 16 countries of the AU's 53 countries have acceded to the APRM. Review to cover four areas: 1. Democracy and Political Governance 2. Economic Governance and Management 3. Corporate Governance 4. Socio-economic development.

The APRM as it presently stands has an extremely wide scope which has been criticised by some as affecting the preparation of competent assessments. The mandate of the APRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards in the Declaration on Democracy, Political, Economic and Corporate Governance (Declaration on Governance). Some of the potential divergences between NEPAD and the African regional human rights system have already been pointed out, though some of the problems can also extend to the human rights corpus in general, in terms of the narrowness and modification of scope, threats to indivisibility and adjusting the human rights agenda to donor vision. Considering that the APRM was created in this development and governance framework, does it carry with it these shortfalls? The APRM is unique for a host of reasons, it has no equivalent in the AU framework but its evolution has been far removed from human rights mechanisms already operating under the regional human rights system. Despite these problems with its origin and evolution, the process by which the peer review is conducted might well make up for these deficiencies, especially if open to truly public scrutiny.

Five stages of the APRM:

First stage – background study and collection of information from different sources by the APRM secretariat, including the completion of a detailed questionnaire

Second stage – APRM Review Team will pay a visit to the country to consult with government and civil society

Third stage – Report is prepared in draft form and discussed with the government

Fourth stage – report is submitted to the Participating Heads of State and Government and considered - if government shows will to change, assistance should be provided. If no political will, constructive dialogue, if that fails, then possible notice of appropriate measures.
Fifth stage – report is lodged with regional and sub-regional institutions

While there seems to be clear requirements for participatory processes in-built, there should be room to allow for shadow reports and critiques of the assessments, such that vigorous debate on the issues is generated and fostered. It is also not clear if the APRM process can substitute for genuine, transformation-oriented democracy that grows within the country rather than being an internal shortcut at democracy that answers to external development and governance imperatives. In terms of impact or effect, much depends on the role of peer pressure. African States are not generally a source of aid to each other, they lack credible instruments of sanctions, condemnation. Much will have to be done to actually effect policy reversals or action by reviewed countries. As one author puts it, if African leaders fail to hold each other strictly accountable to the new principles they espouse, the renaissance is dead.

In terms of the APRMs relationship with other global partnerships such as PRSPs and even MDGs to the extent that is it not fully internalised in practice into the NEPAD system, this still needs to be worked out. Could the APRM provide a counterweight to IMF, World Bank and donor assessments and policies or considering that it is part of the NEPAD system, merely reinforce already existing development frameworks? Going by the experience of Ghana, in November 2005, the National APRM Governing Council organized a workshop in coordination with the National Development Planning Commission to brainstorm on the relevance of the APRM PoA to the Ghana Poverty Reduction Strategy (GPRS II), the main existing planning document prior to the APRM report. The workshop agreed in principle that there should be no difference between the PoA and the existing national development strategies, but rather should be integrated into one development document. However, the essence of the APRM PoA should not be lost, as the reference document for "good governance" in the country and efforts should be made to track it systematically. It needs to be further explored where these ready convergences are necessarily a positive sign.

Mutual Review

Mutual review is based on two core normative principles which were explicitly identified in the Monterrey Consensus, especially in the case of the financing of MDGs. These are a need and capacity principle, the need principle emphasising that countries ought to have access to the

resources they need to meet the MDGs and the capacity principle points out that countries ought to provide the resources required to meet the MDGs to the extent of their capacities. A country is deemed to need external resources if there is no real improvement in domestic resource generation. A partner review of the sort that is being attempted through the ECA/OECD review could assess need, capacity, and specifically what has been highlighted, performance and accountability.

ECA and OECD have been jointly working on the 'Mutual Review of Development Effectiveness in the context of NEPAD'. Mutual review is a variation of peer review. The peer and partner review mechanism has historically been closely associated with the OECD which has successfully applied this method since its creation in many policy arenas. OECD supports AU/NEPADs objectives in four domains – (1) The African Peer Review Mechanism (2) Peer learning and policy dialogue in support of reform (3) Aid policies and aid effectiveness and (4) The monitoring of development trends and progress.

In distinction to the peer review mechanism, the mutual review establishes a symmetrical scrutiny even if the policies and responsibilities that will be brought under scrutiny are asymmetric. The mutual review mechanism explicitly aims to promote the flow of resources and bring harmonisation and coherence into aid architecture. While also predicated in a lesser measure on good governance objectives, the mutual review mechanism does not have the enlarged scope, mandate and ambition of the APRM. While the APRM might also facilitate donor aid harmonisation, transparency and coherence, in some contrast to the mutual review, it does potentially and in principle serve firstly as an 'internal' and 'regional' accountability mechanism. It is important to study further how the peer review and the mutual review serve each other or compete as systems.

The notion of mutual accountability among development partners for their respective commitments, responsibilities and performance in pursuit of shared goals was first recognised in the Monterrey Consensus. The Mutual Accountability Review was initiated by the NEPAD Heads of State and Government Implementation Committee and developed by ECA and OECD jointly over the period 2002-2004. In 2003 NEPAD took the decision to ask the ECA and OECD to develop a mutual accountability process in which Africa and its OECD partners could track the implementation of their commitments to development progress in Africa. The Mutual Review serves as a consultation mechanism between Africa and OECD countries to assess and monitor progress in delivering on commitments and achieving goals.

The Mutual Review set up under the aegis of the OECD, ECA and NEPAD tracks the volume and characteristics of aid and private flows to African nations. The Mutual Review Report, 2005 relies on the commitments and associated quantitative targets of the Paris Declaration on Aid Effectiveness (adopted on 2 March 2005). As of October 2006, 33 African countries have officially subscribed to the Paris Declaration. Among them, 20 African countries have taken the additional step to participate in the first Monitoring Survey led by their national aid coordinators with support from the local donor community. The action commitments agreed to in the Paris Declaration were grouped into five areas: Ownership, Alignment, Harmonisation, Managing for Results, Mutual Accountability. While the Paris Declaration is more narrowly focused on the aid flows and budget monitoring and resource management, the Mutual Review could be seen as bringing in the governance context and making the links with good governance and aid effectiveness.

The two key concepts that resonate are performance and accountability. These two interrelated concepts also serve as guiding principles for building the capacity of African political and economic processes and institutions. The mutual review does not seek to generate new commitments but rather to track implementation of commitments already made. Thus the focus is on action frontiers and on 2007 Performance Benchmarks in seven major policy areas. The seven areas are MDG progress and prospects; African agricultural performance and trade issues; political and economic governance; capacity development; aid flows; aid quality; and policy coherence for African and OECD governments. The first report was finalised in October 2005 and in 2006, the roadmap for the Mutual Review Report of 2007 was set in place with a brainstorming event in September 2006, to create a common understanding of the 2007 Mutual Review Process.

When broadly assessing the concept of mutual review from a human rights point of view, certain areas stand out. The mutual review is presently limited to aid effectiveness, though some of the key areas such as MDG progress and prospects, agricultural performance and trade, political and economic governance clearly have human rights repercussions and do impact on a host of civil, political, social, economic and cultural rights. The mutual review itself as mentioned earlier is based on a symmetric review but contains asymmetric responsibilities. The asymmetric responsibilities come about as a result of the need/capacity principles. This is then coupled with explicit good governance and democratic principles specified throughout the NEPAD Declaration and the various aid consensus and declarations over the years. So need/capacity is mediated through performance and achievement of good governance objectives by recipient states, this is the fundamental asymmetric responsibility of African nations. Human rights obligations are centred on the nation-state and adding human rights into the mix of the mutual review concept will entrench the

asymmetric responsibility of good governance. However, it will not in a 'symmetric' fashion place the responsibilities of donor states within a human rights obligations framework, as can be viewed from debates ranging from the NIEO to the RTD.

Key discussion points:

1. The RTD criteria were adopted to provide a normative framework by which global partnerships for development might be periodically evaluated. One of the criteria framed is that monitoring and accountability mechanisms such as peer and mutual review be set up to track partnerships in terms of performance and other objectives. The OECD and ECA/NEPAD arrangement is designed to evaluate the commitments under NEPAD, the Paris Declaration on Aid Effectiveness and is exercised through a mutual review, a partner rather than a peer review. The African Peer Review Mechanism is designed to evaluate through a peer review the commitments made under NEPAD.
2. The present RTD criteria might provide an underlying framework similar to those present in already existing monitoring frameworks but it cannot be considered a fully established mechanism that equals the peer or partner review, as there is no equivalent institutional set-up in place. So the criteria can provide normative guidance but has no institutional base from which to practically deploy the criteria on a periodic basis.
3. There should be an analysis of present mutual and peer review mechanisms – in light of the RTD and the broader human rights framework in order to learn, compare and judge.
4. Human rights, when mentioned in the core NEPAD Declaration, is placed under the democracy and political governance initiative. From the wording in that text, it is clear that there is an emphasis on civil and political rights and no mention of socio-economic rights. While there is reference to the African Charter on Human and Peoples' Rights, there is no real link to the stance of people-centred development or the right to development in the African Charter. NEPAD might create a system deviation by putting money, resources and political will into narrowed rights and good governance regimes that facilitate market openness, trade and financial liberalisation and private and predominantly foreign investment, bypassing the more comprehensive rights regimes but largely under-resourced African human rights system.
5. The APRM is unique for a host of reasons, it has no equivalent in the AU framework but its evolution has been far removed from human rights mechanisms already operating under the regional human rights system. Despite these problems with its origin and evolution, the

process by which the peer review is conducted might well make up for these deficiencies, especially if open to truly public scrutiny.

6. It is also not clear if the APRM process can substitute for genuine, transformation-oriented democracy that grows within the country rather than being an internal shortcut at democracy that answers to external development and governance imperatives.
7. Could the APRM provide a counterweight to IMF, World Bank and donor assessments and policies or considering that it is part of the NEPAD system, merely reinforce already existing development frameworks?
8. While the Paris Declaration is more narrowly focused on the aid flows and budget monitoring and resource management, the Mutual Review could be seen as bringing in the governance context and making the links with good governance and aid effectiveness.
9. Performance and achievement of good governance objectives by recipient states is the fundamental asymmetric responsibility of African nations, monitored by mutual or partner reviews. Human rights obligations are centred on the nation-state and adding human rights into the mix of the mutual review concept will entrench the asymmetric responsibility of good governance. However, it will not in a 'symmetric' fashion place the responsibilities of donor states within a human rights obligations framework.