

**TITLE: NEW PARTNERSHIP FOR AFRICA'S
DEVELOPMENT: WHAT LEGAL FORCE
DOES IT BEAR?**

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DECLARATION

I *wamakau Irene nzisa* do hereby declare that this dissertation is my original work and that it has not been submitted or is being submitted for a degree in any other university.

SIGNED _____

WAMAKAU IRENE NZISA

This dissertation is submitted for examination with my approval as University examiner.

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DEDICATION

I would like to dedicate my work:

To all African leaders who for them, the glory of Africa is their heart's content.

To all those persons who for them bloodshed was well worth the liberation of the continent.

To my family.

ACKNOWLEDGEMENT

I would like to thank the Almighty God for bringing me this far and enabling me realize my goals.

To my parents, my sister Nduku and brothers, Joe and Victor, for being that constant pillar of strength that helped me through all times harsh and polite, many thanks.

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ABBREVIATIONS

MAP	Millennium Partnership or Africa's Recovery Program
NEPAD	New Partnership for Africa's Development
UNECA	United Nations Economic Commission for Africa
OAU	Organization of African Unity
NAI	New Africa Initiative
AU	African Union
HSIC	Heads of State Implementation Committee
ANC	African National Congress
CEO	Chief Executive Officer
EU	European Union
ADB	Africa Development Bank
ICT	Information Communication Technology
ODA	Official Development Assistance
GDP	Gross Domestic Product
IDG	International Development Goals
REC	Regional Economic Communities
APRM	African Peer Review Mechanism
ECOSOC	Economic Social and Cultural Council

INTRODUCTION

This New Partnership for Africa's Development is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world¹

NEPAD is the culmination of the initiative of president Thabo Mbeki of South Africa and president Abdoulaye Wade of Senegal. President Mbeki spearheaded the millennium partnership for Africa's Recovery Programme (MAP) while president Wade had the OMEGA plan.

In the late 1990's Thabo Mbeki on a personal initiative coined the catch phrase "African Renaissance"². This was probably in an attempt to pursue and revive failed African philosophies such as Pan Africanism, Negritude, Ubuntu and Black Consciousness. The African Renaissance did not materialize as a political concept and instrumental strategy in applied policy matters, but it managed to consolidate a

¹ Paragraph 1 NEPAD document

² Henning Melber

philosophical foundation.³ Gradually it was translated into MAP, which Mbeki qualified as a “declaration of a firm commitment, by African leaders to take ownership and responsibility for the sustainable economic development of the continent”.⁴

During the United Nations Economic Commission for Africa (UNECA) Conference for ministers held in Algiers in May 2001, Mbeki presented “MAP”, Wade the “OMEGA plan” and “UNECA”, “a Compact for Africa Recovery”. It was agreed that the documents be tabled in a merged version to the Organization of Africa’s Unity (OAU) summit in Lusaka. The final draft was adopted by the Heads of state at their summit meeting on 11th July 2001 as A New Africa Initiative (NAI). Subsequently on 23rd October 2001 the modified document was renamed NEPAD.

The above marked the birth of NEPAD. It has been seen by many as a programme long overdue. Many people have criticized the document both positively and negatively. It has been seen as a programme that seeks to move Africa from the undeveloped continent. NEPAD however has its shortcomings that would have to be addressed to enhance its success. This paper seeks to examine the aspect of its implementation and workability from a legal perspective.

³ Henning melber, “The New Africa Initiative and the African Union: a Preliminary Assessment and Documentation.” Uppsala: Nordic Africa Institute 2001 (Current African Issue No.25)

⁴ Mbeki at The World Economic Forum Meeting at Davos.

STATEMENT OF THE PROBLEM

NEPAD is a very noble initiative. It has been described by some as a vision, a policy, a strategy, a plan and an organization. In some respect it is all of these.⁵ The goals of NEPAD, whatever it be, have been set out in a self-titled document.

Looking at the document one gets the impression of a new found will of Africa to work together as one. To work together towards improving the continent and the lives of Africans in all frontiers. It is a beginning of a partnership between Africa and the developed world.

However the document does not clearly say what NEPAD is. It does not state whether it is establishing an institution or not. It talks of Africa but it does not say who – read states – is bound by the document. It does not even say from when those policies are to be effected. In international law, instruments that have such attempts at regional integration have provisions for their binding nature. So the question stands; what is the position of NEPAD at international law?

In the NEPAD governance structure, the OAU/AU Summit of Heads of State and Government are at the apex. The AU has been seen to play a major role in the growth and development of NEPAD. Curiously though, the constitutive Act of the African Union makes no provision or mention whatsoever of NEPAD. Thus the question, is a

⁵ NEPAD A New Dawn for Africa

programme of the AU or it is all encompassing so as to include even non-member of the African Union in Africa.

OBJECTIVES

This paper seeks to examine the history, growth and development of NEPAD so as to be able to achieve the following objectives:

- a) To determine what exactly NEPAD is
- b) To identify the legal principles, if any, that give it the character of an international legally binding instrument.
- c) To give suggestions towards making NEPAD binding on those who subscribe to it.

This dissertation shall be divided into three (3) chapters: -

- (i) Chapter one will define NEPAD, what it is and its goals as well as the intentions of its founders.
- (ii) Chapter two will try to find a linkage with the African Union if any exist.
- (iii) Chapter three shall try to analyze the document and see if it has a legally binding document with regard to international law and any tensions that emerge.
- (iv) Chapter four shall encompass suggestions on how NEPAD can be made binding on its members and suggestions on how to resolve any tensions that may have emerged.

JUSTIFICATION

NEPAD is an integral part of a more unified Africa. This paper contributes to the debate on NEPAD in that it seeks to bring out legal issues on the binding nature of the NEPAD document.

An idea that lacks concrete mechanisms for its implementation is like a toothless bulldog. NEPAD will be useless if the entire region cannot implement it and be binding on it.

It is important that various aspects be seen from different perspectives. This paper takes a critical approach to the binding character of NEPAD and emerging tensions. An approach that will expose certain loopholes and challenge those behind NEPAD to fill in these gaps so that NEPAD can achieve the sort of integration it seeks.

RESEARCH METHODOLOGY

The research for this paper has been undertaken by the use of papers presented at various workshops, press releases of the meetings of Heads of State and Government Implementation Committee of the New Partnership for Africa's Development (HSIC) as well as various postings made on the Internet.

CHAPTER ONE

1.1.1 WHAT IS NEPAD

“Let me invite Africa to cast her eyes beyond the past and to some extent the present with their woes and tribulations, trials and failures and some successes and see herself an emerging continent, bursting to freedom through the shell of centuries of serfdom. This is Africa’s age, yes, the moment when she must grapple with destiny to reach the summit of sublimity saying. Ours was a fight for noble values and worthy ends and not for lands and enslavement of man. Africa is a vital subject matter in a world of today, a focal point of world interest and concern. Could it be that history has delayed her re-birth for a purpose? How she sees her destiny is a more vital and rewarding quest than bemoaning her past with its humiliation and suffering?”

These were words of one of Africa’s finest, chief Albert Luthuli, former president of the African National Congress (ANC).⁶ They are as relevant today as when they were said many years ago. Unfortunately, in the years that followed this clarion call to action for the emancipation from the claws of racism and colonialism the status quo remained for more than three decades after that speech.

As Africa enters the 21st Century, her people are faced with basic problems of survival that they expected to have been overcome after almost half a century of political independence.⁷ At independence virtually every African country declared war on poverty ignorance and disease. Today Africa is poorer than it was forty years ago. The majority of Africans have no access to basic education and modern technology. Disease that had been eradicated from the face of the earth in the past war period are currently ravaging

⁶ A.N.C was in the forefront fighting for the liberation of South Africa

⁷ P.Anyang’Nyongó, “Unity or Poverty: The dilemmas of progress in Africa since independence”, in NEPAD A New Path? (Heinrich Boll Foundation 2002), pg 19

the continent as if Africa is not part of the modern world. HIV/AIDS has found a home in Africa, capitalizing on the ignorance of the people and their poverty. Millions of Africans are promoted to higher glory – as the newspapers put it in death announcements – at a time when demands of rapid economic growth most need the human resources.⁸

Kwame Nkrumah soon after Ghana's independence observed that without a serious commitment to a people centered development process and collective self reliance that he believed socialism was all about, and without political unity at the continent level, neo-colonialism would continue to balkanized and under-develop Africa, and poverty would be perpetuated.⁹ Forty years after independence, Africa is back to square one: poor and still looking for unity to salvage the continent from poverty.¹⁰

At the start of the millennium, African leaders pledged to work together for a better Africa. It is then that initiatives such as NEPAD were born. Africa from time immemorial has faced a myriad of problems, the majority of which are traced back to historical factors such as colonialism, the world wars and the workings of other international economic systems.

⁸ Ibid

⁹ P. Anyang'Nyongó, "Unity or Poverty: The Dilemmas of Progress in Africa since independence", in NEPAD A New Path? (Heinrich Boll Foundation 2002), pg 20

¹⁰ Ibid pg 21

It has been argued that colonialism subverted the traditional structures, institutions and values. That it created an economy subservient to the economy and political needs of imperial powers. As a result Africa has been integrated to the world economy as a supplier of cheap labour and raw materials, draining Africa's resources rather than industrialising Africa.

However, even after independence Africa's situation has only worsened so that one questions the blaming of colonialism for Africa's problems. In my view, colonial Africa was much better than postcolonial Africa. Today many African countries are facing civil strife and this is one of the major factors contributing to its slow or poor development. There has been ongoing concern amongst key African development practitioners over the continent's portrayal exclusively as a hopeless case of endless wars, corruption, disease and dictatorship.¹¹

The May 2002 cover story of 'The Economist' for example declared Africa to be "The Hopeless Continent". The beauty of the continent is lost on many in the west. Examples of progress or sites of commercial development or beauty are either ignored or seen as "Un-African". This perception has a serious negative impact on Africa in many spheres. NEPAD has come to change this perception by creating a channel through which this change can be realised.

¹¹ Rev. Dr. Godfrey Philip Ngumi, Religious Organizations Reflecting the Vision of NEPAD: A Kenyan Perspective, a paper presented at the Discussion on NEPAD organized by Hanns-Seidel-Stiftung and the African Academy of Sciences, at the Serena Hotel on 7th November 2002

The NEPAD is a plan of extra ordinary vision, but also of immense realism. It recognizes the enormous potential creativity and dynamism of the African people. It has been shaped by their personal experience of the painful history of Africa. And it acknowledges that peace; security, democracy, good governance, human rights and sound economic management are pre-conditions for ending the marginalisation of the continent. It foresees a new partnership with the international community. But above all its cornerstone is the proposition that the key to progress in Africa lies first and foremost with Africans.

The NEPAD policy document is a comprehensive development plan that addresses key social economic and political priorities in a coherent and balanced manner.¹² The document provides a vision, clear goals and comprehensive strategy for Africa's sustainable development. President Abdoulaye Wade of Senegal, Thabo Mbeki of South Africa, General Olusegun Obasanjo Nigeria and Abdelaziz Bouteflika of Algeria spearheaded the document at the behest of the organization of Africa's Union (OAU). The strategy was adopted by the OAU in July 2001 and endorsed by the G8¹³ summit leaders in the same month. At the birth of the African Union (AU), NEPAD was

¹² NEPAD – A New Dawn for Africa; CEO's views on the chances of a successful African development initiative, Pricewaterhousecoopers

¹³ The G8 countries are the United States of America, the United Kingdom, France, Italy, Japan, Canada and Russia. A representative of the European Union (EU) now sits at these meetings

officially recognized as the economic blueprint for Africa and was thereafter endorsed by the various African heads of State.

NEPAD is a pledge by African to eradicate poverty and to place their countries both individually and collectively, on a path of sustainable growth and development and at the same time to participate actively in the world economy and body politic.¹⁴ It has been put forward as an African programme of liberating the people of the continent from poverty and underdevelopment and ushering the path towards freedom and development.

NEPAD is a homegrown African programme by the Africans for Africans. It is Africa's genuine attempt to develop a programme to deal with its crisis of underdevelopment. It is also a change of the structural relationship between the developed North and Africa. NEPAD is a partnership first among Africans themselves and second a partnership between Africa and the developed North and the rest of the developing world.¹⁵ Africa is taking responsibility for her own destiny. Through NEPAD, African leaders have agreed collectively to make a clear commitment to a set of principle that will foster economic growth and development, banishing from their midst poverty and hunger thus ensuring human fulfillment.¹⁶

¹⁴ The NEPAD document paragraph 1

¹⁵ South African minister, Dlamini Zuma, NEPAD and the African Union, a statement to the students of the University of Iceland, given on 23rd September, 2002

¹⁶ Ibid

NEPAD is driven by the idea of African renaissance. Africans have a rich historical and cultural heritage that they should realize and appreciate and use it as a basis of inspiring them to liberate themselves from the humiliation of being the most underdeveloped continent in the world.¹⁷ Africa is endowed with enormous human and natural resources making it potentially one of the richest, if not the richest continent. However the resources have hardly been utilized to cause development in Africa and for Africans. In fact thanks to being dominated by people from other continent for centuries, African human and natural resources are used to cause development outside the continent while African people are suffering form the consequences of underdevelopment.

NEPAD proposes that Africans have the right and duty to struggle to end all this by ensuring that their resources are managed and utilized to bring about their development.

One of the major challenges for Africa is and has been bad and undemocratic governance. Majority of its governments are corrupt, dictatorial and unaccountable. Wars and violation of human rights and lack of civil and political liberation ravage the continent. NEPAD realizes this and promises the world that it will ensure the establishment of the culture of democracy, the exercise of human rights and peace in Africa as a moral justification and condition of deserving aid from development

¹⁷Mwandawiro Mghanga, The chances of NEPAD: An Alternative African People's Contribution Towards Their Development, a paper presented at the discussions on NEPAD organized by Hanss-Seidel-Stiftung and the African Academy of Sciences at the Serena Hotel on 23rd November 2002

partners to trigger on sustainable development in African countries. NEPAD calls upon African leaders and regimes to build and nurture democracy and human rights in their countries.

1.1.2 GOVERNANCE STRUCTURE OF NEPAD¹⁸

The NEPAD offices are to be found at the Development Bank of Southern Africa in Midrand South Africa. Mr. Wiseman Nkuhlu has been the initial chief operating officer.

To help implement the NEPAD process a governance structure was set up. At the apex is the African Union (AU) summit of heads of state and government. There is also the Heads of State Implementation Committee, which is comprised of heads of state of fifteen (15) countries. This committee meets once every four months. Its Chairman is President Obasanjo of Nigeria while President Bouteflika of Algeria and President Wade of Senegal are its Vice-Presidents. Central Africa is represented by Cameroon, Gabon and Sao Tome' and principe'. The representatives of Eastern Africa are Ethiopia, Mauritius and Rwanda. Kenya has been co-opted but cannot vote as yet.¹⁹ The Northern Africa comprises of Algeria, Egypt and Tunisia. Libya has the same status

¹⁸ Dr. John Kudjoe, The African Union and NEPAD, (Unpublished)

¹⁹ Kenya and Libya were recently co-opted into the Heads of State Implementation Committee. They are yet to become full members of the Committee. They currently only enjoy observer status

as Kenya. From Southern Africa we have Botswana Mozambique and South Africa.

Mali, Senegal and Nigeria represent Western Africa.

The main function of the implementation committee is to set out policies and priorities and the programme of action. It is expected to report annually to the African Union summit.

Down the ladder is the Steering Committee, which meets once a month. It is chaired by professor Wiseman Nkuhlu of South Africa. The committee is made up of the representatives of the five founding countries. They are²⁰: Ambassador M'hamed Achache and Ambassador Rabah Hadid of Algeria, Ambassadors Mona Omar and Raouf Saad of Egypt, Ambassador Isaac Aluko-Olokun and High Commissioner Tunji Olagunju of Nigeria, Professor Wiseman Nkuhlu and Mr. Smunda Mokoena of South Africa and from Senegal, Dr. Cherif Salif Sy and Mme Gnounka Diouf.

The function of the steering committee is to develop the terms of reference for identified programmes and projects as well as overseeing the secretariat. It is also required to develop a strategic plan for marketing and communications at national, regional, continental and international levels.

There are also five working teams that are meant to focus on specific NEPAD initiatives as follows:

²⁰ Supra, note 11 at pg.5

- Peace and security – South Africa with the African Union
- Economic and corporate governance – United Nations Economic Commission for Africa (UNECA).
- Infrastructure – Senegal with the Africa Development Bank (ADB)
- Agriculture and Market Access – the African Union
- Financial and Banking Standards – the Africa Development Bank (ADB) with Nigeria.

In addition Algeria has declared an interest in the human development sector while Egypt has a role in market access and market diversification working team.

Lastly, there is the secretariat that has a full-time small core staff. It is based in Midrand South Africa. It provides the liaison, co-ordination and administrative and logistical functions for NEPAD. It is also responsible for the outsourcing of work on technical details to leading agencies and/or continental experts.

The secretariat is also responsible for the co-ordination of the production of business plans for the priority areas ²¹:

- Political governance (including peace and security) and conflict Prevention, Management and Resolution.
- Economic and Corporate governance including the measurement of economic governance performance and a peer review mechanism.

²¹ Supra, note 11 at pg.4

- Infrastructure including Information and Communication Technology (ICT), water and sanitation, transport and energy.
- Agriculture and market access including harmonizing standards to encourage intra African trade, enhancing trade capacity through diversification and adding value, exchange rate management and encouraging private sector engagement with NEPAD, and creating uniformity and rationalization by developing standard protocols and guidelines for negotiating international agreements and rationalizing regional economic initiatives.
- Human development including health and communicable diseases, education and poverty eradication.
- Capital flows including mobilizing domestic resources, maximizing private capital flows, reforming Official Development Assistance (ODA) and identifying goals, criteria and mechanism for debt reduction.

These plans of action were presented for approval by the Heads of State Implementation Committee (HSIC) at its meeting on 25th –26th March in Abuja.

1.1.3 GOALS AND OBJECTIVES OF NEPAD²²

NEPAD has two main long-term objectives, which it outlines as: -

²² The NEPAD document, paragraph 67 and 68

- a) To eradicate poverty in Africa and to place African countries both individually and collectively on a path of sustainable growth and development and thus halt the marginalisation of Africa in the globalization process.
- b) To promote the role of women in all activities.

NEPAD identifies its goals as follows: -

- i) To achieve and sustain an average Gross Domestic Product (GDP) growth rate of above seven (7) percent per annum for the next fifteen (15) years.
- ii) To ensure that the continent achieves the agreed International Development Goals (IDG's) which are: -
 - a) To reduce the proportion of people living in extreme poverty by half between 1990 and 2015.
 - b) To enroll all children of school age in primary schools by 2015.
 - c) To make progress towards gender equality and empowering women by eliminating gender disparities in the enrolment in primary and secondary education by 2005
 - d) To reduce infant and child mortality ratios by two thirds between 1990 and 2015.
 - e) To reduce maternal mortality ratios by three quarters between 1990 and 2015.
 - f) To provide access for all who need reproductive health services by 2015.
 - g) To implement national strategies for sustainable development by 2005, so as to reverse the loss of environmental resources by 2015.

In order to achieve these goals and objective, African leaders will have to

take joint responsibilities for the following: -

- Strengthening mechanisms for conflict prevention, management and resolution.
- Promoting and protecting democracy and human rights by developing clear standards of accountability, transparency and participative governance.
- Promoting the development of infrastructure, agriculture and its diversification into agro-industries and manufacturing to serve both domestic and export market.
- Promoting the role of women in social and economic development by reinforcing their capacity in the domains of education and training.
- Revitalising and extending the provision of education, technical training and health services (with priority to HIV/AIDS, Malaria etc)
- Restoring and maintaining macro-economic stability by developing standards and targets for fiscal and monetary policies and appropriate institutional frameworks.
- Instituting transparent legal and regulating frameworks for financial markets and auditing of private companies and the public sector.
- Building the capacity of African states to set and enforce the legal framework and maintain law and order.

How do we measure NEPAD's success? This will be measured by²³:

- a) Economic growth, development and increased employment.
- b) Reduction in poverty and inequality.
- c) Diversification in Africa's production activities, increased competitiveness on the global market, and an increased volume of exports.

²³ Supra note 18

d) Increased African integration, with a view to a fully functioning African Union (AU)

The issue of capacity building is also critical to the successful implementation of the NEPAD process, in particular the extent to which African countries develop commensurate capacity for undertaking strategic NEPAD projects.²⁴ Capacity building permeates all the priority areas, because it underpins the success of the whole initiative.

NEPAD is apparently viewed as Africa's Marshall plan, a proposal to inject massive financial resources into Africa's development while reforming it politically and economically to be accommodated into the global world market not as a dependent but as a partner.²⁵

But what does the NEPAD document say about the NEPAD. What are its provisions? What exactly is this vision? Chapter two shall look into the NEPAD document to see what it really is.

²⁴ Ibid

²⁵ Hence the use of "Partnership" in NEPAD

CHAPTER TWO

2.1 NEPAD: THE DOCUMENT

The NEPAD document contains a vision, a perspective and the outlines of a plan for the redevelopment of Africa. It clarifies the objectives and approach to development projects that were being appraised, further developed and negotiated between partners in Africa and the rest of the world. The NEPAD document is a thick brief and below is the outline of the document under the eight subheadings it has been sub-divided into.

2.2 INTRODUCTION

In its introduction, the document defines what exactly NEPAD is.²⁶ It states that it is driven by the determination of Africans to extricate themselves and the continent from the malaise

It also recognizes that there is a marked difference between Africa and the developed world. Africa is poor and backward while the developed world is flowered with prosperity as Africa continues with its backward trend.

²⁶ NEPAD document paragraph 1

Indeed statistics have been given of the position of Africa and NEPAD outlines some of them.²⁷ 340 million people, which represents half of Africa's population, live on less than 1USD per day,²⁸ the mortality rate of children under five (5) years of age is 140 per 1000, and life expectancy at birth is only 54 years. Only 58 per cent of the population has access to safe water. The illiteracy rate stands at 41 per cent for people over fifteen (15) years. Seventy five (75) per cent of people living with HIV/AIDS are in Sub-Sahara Africa.²⁹ One in 13 African women die during pregnancy or childbirth, representing nearly half such deaths world wide, estimated at 515,000 per year.³⁰ Nineteen thousand children die in Africa each day as a result of preventable diseases and malnutrition.³¹ In sub-Saharan Africa alone, there is a foreign debt of USD 40 million is paid to service debts³² which were accumulated as a result of the cold war, apartheid and failed projects. Unemployment across the continent stands at over 40 percent.

²⁷ Ibid paragraph 5

²⁸ Rural Poverty Report, 2001 United Nations International Fund for Agriculture Development. See www.un.org

²⁹ Final Declaration of Commitment on HIV/AIDS of the 26th UN General Assembly Special Session 27th June 2001

³⁰ Africa Recovery vol.16 no.1 April 2002

³¹ United Nations Development Program. See www.un.org

³² The Vicious Circle: AIDS and Third World Debt, Development Movement, June 2001, www.wdm.org.uk

The above is a brief insight to what NEPAD has to come from. NEPAD calls for the reversal of this situation by changing the relationship that underpins it. It realizes the richness of Africa and calls upon all Africans to take a stand, not to allow themselves to be conditioned by circumstance but to determine their own destiny by co-operating with each other and their partners in the international community.

2.3 CONTENTS OF THE NEPAD DOCUMENT

The document has been divided into a number of topics; the first is the **introduction**, which has been covered already.

The second is “**Africa In Today’s World: Between Poverty And Prosperity**”. It talks of what caused Africa’s impoverishment from a historical perspective. It starts by talking of some of the riches of Africa, which are divided, into four components: The rich mineral deposits, flora and fauna and rich natural habitat. The second is the ecological lung provided by the rain forests; thirdly paleontological and archeological sites³³ and finally a rich African culture.

The historical reasons given for the impoverishment include colonialism, cold war, workings of international economic systems, inadequacies and shortcomings of

³³ Here evidence of evolution of the earth, life and the human species is found. Such sites include Olduvai gorge in Tanzania, and Kariandusi in Kenya among others

policies pursued by African states. Global revolution is also discussed and the place of Africa in the same. Indeed the document states that Africa can catch up with the rest of the world in the global revolution.

“**A new political will of African leaders**” is the third topic. Under this it is recognized that past African leadership has been poor, however, this seems to be changing with democratically elected leaders being on the increase.³⁴ Democracy is also spreading fast through the backing of the African Union (AU). It is noted that the rest of the world is beginning to note this change and declaring their support for Africa.³⁵ To achieve the objectives of NEPAD, African leaders must take responsibility for a number of things³⁶, which include strengthening mechanisms for conflict prevention and protecting and promoting democracy and human rights.³⁷

The fourth topic is an “**Appeal To The Peoples Of Africa**”. Here a case is made to the people of Africa to work together towards improving their continent. It is acknowledged that NEPAD has to take off under difficult circumstances but the struggle Africans would be waging will be successful only if they are the masters of their own

³⁴ While this is true the majority turn to tyrants after tasting the power seats

³⁵ The United Nations Millennium Declaration, which was adopted in September 2000, confirms the global community’s readiness to support Africa’s efforts to address the continent’s underdevelopment and marginalisation.

³⁶ NEPAD document paragraph 49

³⁷ See chapter one on the same

destiny.³⁸ Political leaders are called upon to realize the seriousness of the situation and mobilize themselves to put order back to Africa. They should not relent in implementing this program.

Probably the most important part of this document is the fifth topic

“Program Of Action: The Strategy For Achieving Sustainable Development In The 21st Century” Here the long term objectives and goals are outlined.³⁹ Conditions for sustainable development are detailed as:

- i. Peace and security initiatives
- ii. Democracy and political governance initiatives
- iii. Economic and corporate governance initiatives
- iv. Sub regional and regional approaches to development

The document proceeds to identify various sectoral priorities and states objectives as well as actions to be taken to achieve these objectives. The sectoral priorities include:

- a) Bridging the infrastructure gap which will involve:
 - i. All infrastructure sectors⁴⁰: roads, highways, airports, seaports, railways, waterways and telecommunication facilities

³⁸ NEPAD document paragraph 54

³⁹ Ibid paragraph 67 and 68

⁴⁰ Only sub-regional or continental infrastructures will be the focus of the plan. See paragraph 99 of NEPAD document.

- ii. Bridging the digital divide which calls for investing in Information and Communication Technologies (ICTs)
 - iii. Energy as a factor of production
 - iv. Transport
 - v. Water and sanitation
- b) Human resource development initiative including reversing the brain drain. This entails:
- i) Poverty reduction
 - ii) Bridging the education gap
 - iii) Reversing the brain drain to turn it to brain gain for Africa
 - iv) Health
- c) Agriculture – address the weak agricultural systems, to increase food production and raise nutrition standards
- d) The environment initiative because a healthy and productive environment is a prerequisite for the New Partnership for Africa’s Development
- e) Culture – to protect and effectively utilize indigenous knowledge that represents the continents culture and share this knowledge for the benefit of humankind

For NEPAD to succeed, Africa will need immense resources for implementation. The document has tried to evaluate the mobilizing of resources. To achieve the estimated 7 percent annual growth rate need to meet the IDGs,⁴¹ - particularly the goal of reducing by half the proportion of Africans living in poverty

⁴¹ International Development Goals

by the year 2015 – Africa needs to fill an annual resource gap of 12 percent of its GDP⁴², which translates, to USD 64 billion. This calls for increased domestic savings, as well as improvements in the public revenue collection systems but as usual⁴³ the bulk of the required resources will be obtained from outside the continent.

Under mobilizing resources, NEPAD shall focus on the following:

- a) Capital flow initiatives – improved governance is a necessary requirement for increased capital flows. To achieve this initiative the following will be done:
 - i. Increase domestic resource mobilization
 - ii. Debt relief
 - iii. ODA⁴⁴ reforms
 - iv. Increase private capital flows
- b) Market access initiative which involves:
 - i. Diversification of production both at the African level and the international level
 - ii. Mining⁴⁵ at the African level

⁴² Gross Domestic Product

⁴³ Africa seems to always seek from outside for whatever development it needs, the end result is a huge external debt and constant interference from the donors in the management of state affairs

⁴⁴ Overseas Development Assistance

- iii. Manufacturing both at the African and international level
- iv. Tourism focusing at the African level
- v. Services especially in the field of information and Communications Technologies
- vi. Promoting the private sector both at the African and international level
- vii. Promoting African exports both at the African and International level
- viii. Removal of non-tariff barriers

The sixth topic talks on “**A New Global Partnership**”. Under this topic the document reiterates the position of Africa, its riches and its opportunities. Here NEPAD places Africa for sale, simply put, opportunities for the outside world in Africa. However its first target is a south- south partnership. NEPAD also looks at establishing a new relationship with industrialized countries and multilateral organizations. The relationship with the outside world will however need to be renegotiated as the current relationship by way of aid given to the continent in itself has created serious problems for developing countries.⁴⁶

Various partnerships between Africa and the industrialized world are identified and the objective set as to rationalize these partnerships and to ensure that real benefits to

⁴⁵ Africa has immense wealth in terms of minerals, no wonder the unending civil wars because of black diamonds

⁴⁶ NEPAD document paragraph 186

Africa flow from them. A number of responsibilities and obligations of the developed countries and multilateral institutions have been set out in the document.⁴⁷

The final topic is “**Implementation of the New Partnership for Africa’s Development**”. It identifies programmes that need to be fast-tracked and they are:

- ❑ Communicable diseases – HIV/AIDS, malaria and tuberculosis
- ❑ Information and Communications Technology
- ❑ Debt reduction
- ❑ Market access

To implement this programme the document suggests a project approach. The document lists only three projects⁴⁸ namely, agriculture, promotion of the private sector and infrastructure and regional integration.

The programme also proposes a needs assessment to assess the needs in the five priority sectors in terms of structures and staff. This will start with the national needs assessment to the sub regional then aggregated to formulate an overall regional plan.

The document also discussed the management mechanism of the New Partnership for Africa’s Development.⁴⁹ In its conclusion the object of NEPAD is stated as one to

⁴⁷ Ibid, paragraph 188

⁴⁸ See www.mapstrategy.com for an exhaustive list

consolidate democracy and sound economic management on the continent. Africa seems to recognize that it has the key to its development. Indeed the adoption of a development strategy as set out in the broad approach in the NEPAD document, together with a detailed programme of action, will mark the beginning of a new phase in the partnership and co-operation between Africa and the developed world.

The documents final call is true to the letter. In fulfilling its promise, this agenda must give hope to the emaciated African child that the 21st century is indeed an African century.⁵⁰

2.4 PARTNERSHIPS IN NEPAD

The concept of “partnership” seems to have been deliberately chosen by the initiating African leaders in christening this initiative, to emphasize that this must be a relationship of partners, of people who share a common future – both positive and negative- this is at the heart of globalisation and of developing humanity or what has come to be known as the ‘world citizen’.⁵¹ The principle of ‘international responsibility’ in creating this world citizen is what underscores the partnership in NEPAD.

⁴⁹ See chapter one for a detailed structure

⁵⁰ NEPAD document paragraph 201

⁵¹ Globalisation wants to do away with all borders so that even nationals no longer see themselves as belonging to one state but rather to the entire world

Partnership is at two levels in the NEPAD initiative:

- Partnerships between Africans and among Africans themselves, as individuals, countries and Regional Economic Communities (RECs). It is also an initiative by African leaders to the led, to partner with them to create conditions and environment necessary for development. That is why the issue of integration, of improving intra-African trade and encouraging trans-border projects are central to NEPAD. Here the issues of trust and accountability become crucial. The African leaders are saying that we have experienced governance and economic decline and have decided that good governance is good for Africa, not because somebody else wants or has demanded for it. They are saying that under the initiative, the ruled are partners, not subjects and together they forge a common destiny.
- Partnership with the rest of the world: NEPAD provides the platform for Africa to bring to the table, its contribution to the world – material and human resources, biodiversity, market etc – and partner with the rest of the world on terms it considers acceptable.

The initiative however recognizes that partnership does not mean equality, rather it's a relationship, an association with common interest(s) over a long period of time. Partnership implies a sharing of burden and rewards and as in any partnership; the size of the investment is not as critical as the fact that the environment is conducive and stable for investment. Even if Africa were the junior partner, this does not in itself diminish the respectability that Africa gains

as it redefines and redesigns its relationship with the rest of the world. By enhancing codes of conduct and values of governance for the continent, NEPAD is placing primacy on indigenous ownership of development.

The above is an outline of NEPAD's vision. The most important question however is, how will it be implemented? What is the legal standing of NEPAD? Is it binding to any group of persons? Is it enforceable, does it have the force of the law? Does it form an institution or is it a document or a working paper of an institution?

2.5 INTERNATIONAL RELATIONS

Most international relations and transactions are based on agreements between the parties, which agreements incorporate terms and conditions of such relations and transactions.

The treaty is the basic means of regulating international relations and may be either bilateral or multilateral. Treaty is the generic term used to embrace conventions, agreements, arrangements, protocols and exchange of notes.⁵²

⁵² Rebecca M.M Wallace, International Law, 3rd ed. (London Sweet & Maxwell 1997) pg

The 1969 Vienna Convention on the Law of Treaties⁵³ is the main international instrument on the subject of treaties. It defines a treaty as an international agreement concluded between states in the written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its designation.⁵⁴ The Convention is limited to international agreements in the written form.

However the fact that the Convention does not apply to international agreements between states and other subjects of international law or between such other subjects of international law or to international agreements not in the written form does not affect:⁵⁵

- a. The legal force of such agreements.
- b. The application to them of any other rules set forth in the Convention to which they will be subject under international law independently of the Convention.
- c. The application of the Convention to the relations of states as between themselves under international agreements to which other subjects of international law are also subjects.

⁵³ U.K TS 58(1980) Cmnd 7964

⁵⁴ 1969 Vienna convention on the Law of Treaties, Article2

⁵⁵ Ibid Article 3

However, not all written agreements necessarily establish binding relations. Such are known as “soft law”. Soft law is the generic term used to describe non-legally binding international instruments. The term embraces treaties (“legal soft law”) containing general obligations and non-binding or voluntary resolutions, statements of intent and codes of conduct produced by individuals for example groups of eminent international lawyers, purporting to articulate international principles (“non-legal soft law”).⁵⁶

A requisite for soft law is that it be in written form. The number of instruments, which fall within the category of soft law, has spawned during the last 20 years and the subject matter of such instruments is becoming increasingly diverse and includes inter alia economic measures and environmental instruments. The Charter of Paris for a New Europe adopted by the Conference on Security and co-operation in Europe⁵⁷ is a perfect example of soft law.

An advantage of soft law is that it may be employed to overcome deadlock in relations between state parties pursuing conflicting ideological and economic aims. An alleged disadvantage is that, it may discourage states from undertaking “hard law” obligations. Soft law is intended to mould conduct in the international scene and may eventually be transformed into hard law. Subsequent state practice

⁵⁶ C.M Chinkin, The Challenge of Soft Law: Development and Change in International Law (1989) 38 I.C.L.Q 850

⁵⁷ 30 I.L.M 190 (1991)

may be such to change the status of soft law by domesticating it, or the soft law may ultimately result in a hard law treaty being concluded. A very good example of this is the 1948 Universal Declaration of Human Rights, which is a statement of intent that led to the promulgation of the 1966 Covenant of Civil and political Rights⁵⁸ and the 1966 covenant on Economic Social and Cultural Rights.⁵⁹

From this background, then can we answer the question, what is NEPAD's legal position? What is the position of its implementation mechanism?

⁵⁸ U.K.T.S 6(1977) Cmnd. 6702; 6 I.L.M 368 (1967)

⁵⁹ U.K.TS 6(1977) Cmnd. 6702; 6 I.L.M 360 (1967)

CHAPTER THREE

3.1 IMPLEMENTATION OF NEPAD

As can be deduced from chapter two preceding, both treaties and soft law must be in written form. The NEPAD document is in written form as an agreement between states parties of the African Union. So what is it? Is it a treaty or soft law?

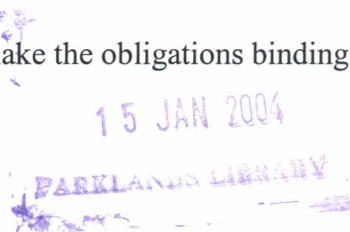
While a treaty has provision that are of a binding nature to the signatory states, soft law is not binding neither does it have signatories, it just has parties that believe in it but it is NOT binding. Soft law is in place just as a guiding factor but does not have any binding legal obligations.

Treaties upon their entry into force must be transmitted to the United Nations Secretariat for registration and publication.⁶⁰ These provisions are intended to end the practice of secret treaties, which was regarded as contributing to the outbreak of the First World War, as well as enabling the United Nations Treaty Series, which contains all registered treaties, to be as comprehensive as possible.

⁶⁰ Article 80, 1969 Vienna Convention on the Law of treaties

A treaty, in the document creating it, also has provisions on when the treaty may enter into force, and in some instances, who are entitled to subscribe to the treaty.⁶¹ It also provides for the way in which a state will be deemed to have consented to the treaty provisions, which may be either by way of signature, exchange of instruments, ratification or accession.

From the above, the NEPAD document clearly fails the test of a treaty. It is a document seeking an agreement between African states, that is a fact. It does not have a clear commencement or 'entry into force' date nor does it provide for signatories, yet it calls on all African states to embrace it. It creates obligations upon states with regard to various economic and political sectors, but it does not make the obligations binding on the parties.



It would therefore seem that NEPAD is soft law. It does not in itself call for signatures nor does it have a commencement date. Usually in treaties this is declared in the document that upon deposit of so many instruments or receipt of so many signatures, the treaty is deemed to have entered into force. The NPEAD document seems to me to be a voluntary calling.

If NEPAD is soft law how does it hope to achieve the kind of integration it envisages? Under the African Union a number of steps have been undertaken towards

⁶¹ For instance the African Charter on Human and Peoples Rights was intended solely for African states

the implementation of NEPAD though it is on a voluntary basis and is open to the member states of the African Union.

The first among these is the continued commitment by the Heads of State and Government Implementation Committee to see NEPAD through. They have continually publicized NEPAD and prepared progress reports as well as plans of Action to guide them in their work.

His Excellency the president O. Obasanjo of Nigeria prepared the Declaration on Democracy, Political, Economic and Corporate Governance, which seeks to foster a strong statement of reaffirmation by African leaders of their commitment to the principles and core values of democracy and good political, economic and corporate governance. By adopting this declaration members will be bound by the principle of *pacta sunt servanda*. This is a principle in International law by which parties to an agreement are expected to honour it in good faith.

Most importantly however is the African Peer Review Mechanism (APRM). This is an instrument voluntarily acceded to by Member States of the African Union as an African self-monitoring mechanism.

The mandate of the Africa Peer Review Mechanism 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 in

Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.⁶²

Participation in the process is open to all member states of the African Union. After adoption of the Declaration on Democracy, Political, Economic and Corporate Governance by the African Union, countries wishing to participate in the APRM will notify the chairman of the NEPAD Heads of State and Government Implementation Committee. This will entail an 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.

Every review exercise carried out under the authority of the mechanism must be technically competent, credible and free of political manipulation. These stipulations put together constitute the core guiding principles of the Mechanism.

At the point of formally acceding to the peer review process, each state should clearly define a time-bound Programme of Action for implementing the Declaration on Democracy, Political, Economic and Corporate Governance, including periodic reviews.

⁶² See www.nepad.org on the APRM

3.2 THE AFRICAN PEER REVIEW MECHANISM: ORGANISATION AND PROCESSES

The African Peer Review Mechanism base document⁶³ was approved by the NEPAD Heads of State and Government Implementation Committee and endorsed by the African Union (AU) Summit in Durban, South Africa in July 2002.

This document envisages four distinct organizational components of the African Peer Review Mechanism (APRM). They are:

1. The Committee of Participating Heads of State and Government (APR Forum)

This is the highest decision making authority in the APRM .The APR forum has ultimate responsibility for oversight of the APRM organization and processes for mutual learning and capacity building and for exercising the constructive peer dialogue and persuasion required to make the APRM effective, credible and acceptable.

The mandate of the APRM forum is to:

- Appoint the APR panel and its chairperson
- Consider adopt and take ownership of the county review reports submitted by the APR panel
- Communicate the recommendations of the APR Forum to the Head of State or government of the reviewed country immediately after the reviewing meeting

⁶³ AHG/235 XXXVIII

- Exercising constructive per dialogue and persuasion (through offering assistance or applying appropriate measures) to affect changes in country practice where recommended
- Persuade development partners to support the recommendations approved by the APR forum by providing technical and financial assistance
- Transmit APRM Reports to the appropriate African Union AU structures in a timely manner
- Make public through the APR secretariat country review reports and press releases pertaining there to
- Establish and approve the rules of procedure for the APR Forum and approve those of the APR panel
- Approve a code of conduct for all components of the APRM organization and
- Ensure that the APR process is fully funded by the participating countries (including non governmental partners)

2. The Panel Of Eminent Persons (APR Panel)

The APR panel's main function is to oversee the review process ,to ensure the integrity of the process ,to consider review reports and to make recommendations to the APR forum.

The APR panel shall have the following mandate:

- Exercise oversight of the APR process with a view to ensuring the independence, professionalism, and credibility of the process
- Oversee the selection of the APR teams and appoint them to conduct country reviews
- Recommend appropriate African institutions or individuals to conduct technical assessment;
- Meet when required to review and make objective assessments of and recommendations on the country review reports submitted to it by the APR secretariat;
- Consider recommendations contained in the country review reports and make recommendations to the APR Forum;
- Submit to the APR Forum all country review reports with recommendations on measures that could be taken to assist the country in the improvement of its governance and socio-economic development performance; develop its own rules of procedure, submit these to the APR Forum for approval and approve those of the APR Secretariat and APR Team

3. The APR Secretariat

The APR Secretariat purpose is to provide the secretarial, technical, coordinating and administrative capacity to undertake and manage the analytical work that underpins the peer review process and also conforms to the principles of the APRM.

4. APR Teams

These Teams will be constituted only for the period of the country review visit. The composition of the APR Team will be carefully designed to enable an integrated, balanced, technically competent and professional assessment of the reviewed country and will be approved by the APR Panel.

The APR Panel is to approve the composition the APR Team and its terms of reference for each country review visit. The APR Secretariat will produce guidelines for the conduct of the country review visit and the APR Forum.

5. The APR Partner Institutions and Technical Assessments

The APR partner institution refers to the institutions that will conduct the technical assessment on countries to be reviewed. Such technical assessments can best be conducted as part of the PARM process after consultations between the countries to be reviewed and the APR Secretariat and Panel.

3.3 THE APRM PROCESS

There will be four types of review:

- ❖ The first country review is the base review that is carried out within eighteen months of a country becoming a member of the APRM process.

- ❖ There is a periodic review that takes place every two to four years.
- ❖ A member country can, for its own reasons, ask for a review that is not part of the periodically mandated reviews
- ❖ Early signs of impending political or economic crisis in a member country would also be sufficient cause for instituting a review. Participating Heads of State and Government can call for such a review in a spirit of helpfulness to the Government concerned.

The process will entail periodic reviews of the policies and practices of participating states to ascertain progress being made towards achieving mutually agreed goals and compliance with agreed political, economic and corporate governance values, codes and standards as outlined in the Declaration on Democracy, Political, Economic and Corporate Governance.

The peer review process will spur countries to consider seriously the impact of domestic policies, not only on internal political stability and economic growth, but also on neighbouring countries. It will promote mutual accountability, as well as compliance with best practice.

Bearing in mind that African countries are at different levels of development, on joining the Mechanism, a country will be assessed (the base review) and a timetable

(Programme of Action) for effecting progress towards achieving the agreed standards and goals must be drawn up by the state in question, taking into account the particular circumstances of the state.

The APRM base document identifies five stages in the APR process. Once a country has acceded to the APRM, the APR Secretariat will arrange a mission to the country with a view to negotiate the exact terms of the Memorandum of Understanding on Technical Assessment and Country Review Visit using the outline provided.

When the Memorandum of Understanding between the APR Forum and Government is signed the stage is set for the APR process to start. As the APR process is conceived as a collaborative effort between the participating country and the APRM to improve governance and socio-economic development in the country and in Africa, their respective roles will be outlined in the following sections:

a) **Stage one**

This will involve a study of the political, economic and corporate governance and development environment in the country to be reviewed, based principally on up-to-date background documentation prepared by the APR Secretariat and material provided by national, sub-regional, regional and international institutions.

b) Stage two

This constitutes the Country Review Visit of the APR Team; the country is mainly in a facilitating role, ensuring that the APR Team is enabled to carry out its review smoothly and with full access to all sources of information and stakeholders. Responsibilities of the country will be further elaborated in the MOU to be negotiated after the country has acceded to the APRM by the country.

c) Stage three

This involves the preparation of the PR Team's report and concerns mainly the Team itself. The Team's report is based in part on the findings of the Country Review Visit as well as on the findings of the research studies of the APR Secretariat prior to the visit. It should clearly summarise all those findings concisely and analyze their implications for the country's governance and socio-economic development.

d) Stage Four

This stage begins when the APR Secretariat submits the APR Team's country review report to the APR Panel. The APR Forum meets to consider the report and the recommendations of the APR Panel to decide what action to take in accordance with its mandate.

e) **Stage five**

This stage involves making public the APRM Report and action on the country review. The final APRM Report, containing all essential elements, is tabled formally and publicly in key regional and sub-regional structures such as the Summit of the African Union, the Pan-African Parliament, the African Commission on Human and people's Rights, the Peace Security Council and the Economic, Social and Cultural Council (ECOSOC) of the African Union, as well as the Regional Economic Community of the region of which the country reviewed is a member, this completes the first cycle of the APR process for any particular country.

The above is a brief overview of NEPAD's implementation process. Is this an effective process will it lead to the success of the Process? Chapter four will give recommendations to this implementation plan and give a conclusion to this dissertation.

CHAPTER FOUR

4.1 SUMMARY

NEPAD is a call to all African Nations. It is a policy document under the African Union. Under paragraph 200, it is stated that the Heads of State promoting NEPAD will advise the OAU⁶⁴ on an appropriate mechanism for implementation. The implementation process as outlined in the preceding chapter is under the auspices of the African Union. A critical question then would be; does this effectively shut out non-members of the African Union?

Creating NEPAD under the African Union would be to place way too much burden on an already exhausted body. Further, some of the policy strategies of the AU are already duplicated in NEPAD. NEPAD is supposed to be a breath of fresh air for Africa, tucking it under the AU does not bring the burst of freshness Africa seeks.

Africa is as diverse as it is uniform. Different cultures, peoples states and regimes; similar people languages and cultures. NEPAD has plenty of economic policies that African States should or are expected to pursue. However this poses a serious problem. Not all states are on an equal economic standing, infact the variation of economies is to say the least, outrageous. The majority of African states have rich resources but very poor economies, however the degree of their poverty varies.

⁶⁴ Organisation of African Unity. It is now known as the African Union

The variation in strength of economies poses a great challenge for the implementation of NEPAD. NEPAD is keen on achieving e-readiness⁶⁵ for Africa in this era of the World Wide Web. While this may be important and perhaps befitting of the more industrialized countries such as South Africa, It would sound too high a leap considering the majority of African people, to be precise 340 million people live on less than a dollar a day⁶⁶ of primary importance should be feeding the hungry populace and providing a consistent source of food and then sending them forth to realize NEPAD's vision.

Again, these economic policies require lots of fund to implement. Already African states are up to their necks in debt. They can hardly pump any more funds to their economies that are already in Intensive Care Unit.

The NEPAD document acknowledges a new political generation in Africa characterized by democracy. This may be true. However a number of countries are involves in internal conflicts of such magnitude that it is almost impossible to undertake a project so immense as NEPAD. The political instability of most African states makes it almost impossible to have any meaningful development.

⁶⁵ Paragraph 110 NEPAD document

⁶⁶ Supra chapter two at note 28

An interesting scenario has been created by NEPAD. It identifies a number of sectors and sets out goals objectives and actions to be undertaken in each sector. The document however either ignores or assumes the fact that states could be pursuing different objectives to achieve the same goal. Does that mean then that states must abandon their objectives and pursue those of NEPAD?

To finance NEPAD a huge chunk of financial resources is required. NEPAD calls for domestic saving but notes that the bulk of the funds would have to come from outside the continent.⁶⁷ A lot of African states are deep in debt. Debt relief is proving to be an impossible dream – it may never come true. Will the borrowing be done by the African Union on behalf of the states, or will the states have to do their own borrowing? Finances will become a major roadblock for NEPAD.

NEPAD has goals whose dates for achievement have been set. However it is not clear when NEPAD should start to operate. Will its commencement be simultaneous in all of Africa? This is not clear.

The above are some of the key questions that arise from the NEPAD strategy. Indeed it is clear that great brains and minds are behind this project. It is indeed one of the greatest economic plans of all time, however should the implementation mechanism fail, it may become one of the many white elephants that have become synonymous with Africa.

⁶⁷ NEPAD document paragraph 147

4.2 SUGGESTIONS

The following suggestions may be beneficial to the NEPAD implementation process:

- The African Peer Review Mechanism should be compulsory for all states that accede to it. This will not only make it effective but will ensure that states do not avoid the review when it is convenient to them.

- NEPAD document should be converted to hard law. There are several advantages to such an approach but most important is the fact that states tend to obey that which is compulsory rather than that which whose purpose is only to guide. Also hard law has provisions for repercussions where states do not follow what has been set. This will also bring Africa together and hopefully be able to achieve its desire of one day being an economic giant.

- While the APRM is a self-monitoring mechanism, the effectiveness of the same may be put into question. In the Covenant of Civil and Political Rights⁶⁸, states parties are required to carry out a self-monitoring exercise every two years and present a report to the Human Rights Commission. This is a mandatory procedure. Many states still so not submit their reports and are always in violation of these fundamental rights. The

⁶⁸ U.K.T.S 6(1977) Cmnd 6702; 6 I.L.M

process should therefore be mandatory for all participating countries and an external monitoring mechanism carried out simultaneously while keeping in mind the international principles of state sovereignty.

- A clear time frame should be set for the realization of the goals set out by the NEPAD document. This not only ensures that states work at achieving the goals but that the goals themselves are realized.

- NEPAD is plan that seeks to involve the whole of Africa. However the APRM is only open to member of the African Union. This openly discriminates non-member states. The end result therefore is that the expected development of Africa will only be partially achieved. NEPAD should be open so as to include non-members of the African Union.

4.3 CONCLUSION

No one wants to see NEPAD fail. But unless certain adjustments and clarifications are made, through action, NEPAD will most usefully operate as a development paradigm – as a set of overarching objectives and behavioral guidelines – and less of a mechanism for development.⁶⁹

⁶⁹ Dr. Greg Mills, Dearth and Excess: Good Governance, Globalization and African Recovery (Cape Town: Tafelberg, 2002)

NEPAD's vision is blurred by setting its sights on the hope that greater global integration will save Africa. This arises from the absence of popular participation in determining its focus. Yet NEPAD's vision can be restored if African leaders enter into a partnership with their people. The vision of a new Africa dawning in the twenty first century is too precious to be lost because we failed to see that Africa's men, women and children are indeed its greatest treasure.

