

7

CLIMATE TRANSPARENCY IN AFRICA: AN INQUIRY INTO THE ROLE OF THE AFRICAN PEER REVIEW MECHANISM

Mansha Mohee

Abstract

The post-Paris shift to integrating national, transnational and international climate policy making through five-yearly nationally-determined contributions and periodic global stocktakes within an enhanced transparency framework places climate action monitoring and reporting by states at the heart of the global response to climate change. This article explores the role of the African Peer Review Mechanism in climate action and the scope for it to gain more prominence in complementing national capacities for climate action monitoring and reporting. The inquiry is premised on its strategic appeal as a home-grown regional review structure fostering peer learning, accountability, political clout and cohesion, thereby providing opportunities for leveraging best practices, knowledge sharing and the African common position on climate action. It concludes that whereas the expanded mandate of the APRM after its revitalisation since 2017 provides the basis for extending the APRM's purview to climate action, a number of challenges currently impede such a development, among which, most significantly, are unfavourable framing of climate action in its review methodology, the absence of an AU climate instrument defining relevant state duties and delayed progress on its revitalisation programme.

Key words: *Climate Action Monitoring and Reporting; NDC implementation; African Peer Review Mechanism; Paris Agreement; Enhanced Transparency Framework*

1 Introduction

In contrast to prior international climate norms,¹ the Paris Agreement² institutes a bottom-up, multilevel and incremental approach to climate action, centred around nationally-defined measures.³ Under the Agreement, both developed and developing country parties are required to formulate nationally-determined contributions (NDCs),⁴ constituting individual climate policies reflective of domestic circumstances and capabilities in five-year cycles.⁵ NDCs are slated to be progressively scaled up, informed by global stocktakes (GST), the process by which collective progress towards the long-term goals of the Agreement is periodically assessed.⁶ Central to the Paris architecture is an enhanced transparency

- 1 Since the United Nations Framework Convention on Climate Change (UNFCCC) (adopted 9 May 1992, entered into force 21 March 1994) charted the basis for international action against climate change, attempts at negotiating a common agreement on climate action, notably the Kyoto Protocol (adopted 11 December 1997, entered into force 16 February 2005) provided a rigid legally-binding framework conferring burdens on developed countries only, without engaging developing countries in the fight against climate change. For a comprehensive overview of the international climate change regime, see D Bodansky, J Brunnée & L Rajamani *International climate change law* (2017).
- 2 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNFCCC Conference of Parties (UNFCCC COP), Decision 1/CP.21 'Adoption of the Paris Agreement', UN Doc FCCC/CP/2015/10/Add.1, 29 January 2016.
- 3 For an overview of the salient features of the Paris regime, see M Wewerinke-Singh & C Doebbler 'The Paris Agreement: Some critical reflections on process and substance' (2016) 39 *University of New South Wales Law Journal* 1486; D Bodansky 'The Paris climate change agreement: A new hope?' (2016) 110 *American Journal of International Law* 288.
- 4 See the NDC Registry, <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx> (accessed 10 March 2021). For an overview of the NDCs submitted as at 31 December 2020, see UNFCCC Secretariat 'Nationally determined contributions under the Paris Agreement: Synthesis report' (Initial version) UN Doc FCCC/PA/CMA/2021/2, distributed 6 February 2021, https://unfccc.int/sites/default/files/resource/cma2021_02_adv_0.pdf (accessed 10 March 2021).
- 5 UNFCCC COP, Decision 4/CMA.1 'Further guidance in relation to the mitigation section of decision 1/CP.21' UN Doc FCCC/PA/CMA/2018/3/Add.1, 15 December 2018 (NDC Guidance).
- 6 Art 14 Paris Agreement (n 2).

framework⁷ setting forth rigorous state reporting requirements⁸ necessary to track the implementation of national pledges. A hallmark of the Paris regime, transparency is crucial for effectiveness and accountability, and a corollary to access to information, the latter being an integral part of the freedom of thought, expression and association⁹ and critical to advancing the protection and promotion of other human rights. Transparency as it relates to climate action is particularly pertinent considering state duties resulting from the growing recognition of the nexus between the right to a healthy environment and a safe climate.¹⁰

Whereas developing countries have demonstrated bold commitments in their response to climate change,¹¹ pervasive capacity and knowledge gaps in monitoring and reporting on climate action, including the dearth of climate data and availability, present significant challenges for NDC implementation and bolstering ambition over time.¹² The absence of

7 Art 13 Paris Agreement (n 2). For an analysis of the novel features of the enhanced transparency framework, see J Viñuales 'The Paris climate agreement: An initial examination (Part III of III)' EJIL:Talk 8 February 2016, <https://www.ejiltalk.org/the-paris-climate-agreement-an-initial-examination-part-iii-of-iii/> (accessed 10 July 2021). For additional guidance on the transparency framework further to art 13(3) of the Paris Agreement, see UNFCCC COP, Decision18/CMA.1 'Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement', UN Doc FCCC/PA/CMA/2018/3/Add.2, 15 December 2018.

8 Arts 13(7)-(9) Paris Agreement (n 2).

9 Access to information, while not formally recognised as a human right in itself, is mostly commonly construed as part of freedom of expression. Art 19 of the Universal Declaration of Human Rights proclaimed 10 December 1948, UN General Assembly Resolution 217 A(III), states: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' See similarly International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, art 19; African Charter on Human and Peoples' Rights (African Charter), adopted 27 June 1981, entered into force 21 October 1986, CAB/LEG/67/3 rev 5, 21 ILM 58, art 9; African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019).

10 UN Special Rapporteur on Human Rights and the Environment 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', UN Doc A/74/161, distributed 15 July 2019.

11 United Nations Development Programme and UN Climate Change 'The heat is on: Taking stock of global climate ambition' (2019) 14-18, <https://outlook.ndcs.undp.org/> (accessed 1 November 2020).

12 F Röser et al 'Ambition in the making: Analysing the preparation and implementation of process of the nationally determined contributions under the Paris Agreement' (2020) 20 *Climate Policy* 415. For an overview of the enduring capacity challenges faced by developing countries, see Y Dagnet, E Northrop & D Tirpak 'How to strengthen the

a long-running and systematic tradition of developing climate policies, and collecting and reporting climate information¹³ have constrained the elaboration of coherent first-generation African NDCs.¹⁴ Across the continent, countries sparsely avail themselves of national policies, strategies or legislation,¹⁵ or have deployed formal national climate action reporting and monitoring systems.

The Paris Agreement underscores the capacity building of developing countries as a strategic pillar in international cooperation on climate action, including in realising transparency commitments. It includes within its scope '*inter alia*, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and *the transparent, timely and accurate communication of information*'.¹⁶

Transparency-related capacity building is two-pronged, consisting of governance and information requirements.¹⁷ Capacity building is needed for establishing governance and institutional arrangements for the implementation of the enhanced transparency framework, as well as the enhancement of methodology training and data management to enable countries to meet specific information requirements.

institutional architecture for capacity building to support the post-2020 climate regime' World Resources Institute Working Paper December 2015, https://files.wri.org/d8/s3fs-public/How_to_Strengthen_the_Institutional_Architecture_for_Capacity_Building_to_Support_the_Post-2020_Climate_Regime.pdf (accessed 10 July 2021).

- 13 See VP Nanda 'Global environmental governance and the south' in S Alam et al (eds) *International environmental law and the Global South* (2015) 135; S Singh & S Rajamani 'Issue of environmental compliance in developing countries' (2003) 47 *Water Science and Technology* 301; J Setzer & L Benjamin 'Climate litigation in the Global South: Constraints and innovations' (2020) 9 *Transnational Environmental Law* 77 81.
- 14 African Development Bank 'Gap analysis report: African nationally determined contributions' (2018) 31-53, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/African_NDCs_Gap_Analysis_Report.pdf (accessed 1 November 2020).
- 15 Graham Research Institute on Climate Change and the Environment 'Climate change laws of the world', https://climate-laws.org/legislation_and_policies?region%5B%5D=Sub-Saharan%20Africa&type%5B%5D=executive (accessed 10 March 2021).
- 16 Art 11(1) Paris Agreement (n 2).
- 17 Y Dagnet et al 'Building capacity for the Paris Agreement's enhanced transparency framework: What can we learn from countries' experiences and UNFCCC processes?' World Resources Institute Working Paper March 2019 6, <https://files.wri.org/d8/s3fs-public/building-capacity-paris-agreements-enhanced-transparency-framework.pdf> (accessed 10 July 2021).

The Paris Agreement highlights the potential role of regional approaches to capacity building in implementing the instrument:¹⁸

All parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.

The regional climate regime has provided limited opportunity for transparency-related capacity building. African Union (AU) member states have issued declarations on climate change, highlighting their acknowledgment of its significance.¹⁹ The continental climate change strategy, while having underscored the need for building capacity for monitoring and reporting climate change programmes, does not set actionable targets and sufficiently-identified relevant mechanisms.²⁰ Moreover, regional human rights instruments have not defined state duties relating to the fulfilment, protection and promotion of rights affected by climate change. The African Commission on Human and Peoples' Rights (African Commission) also has not done enough to stress the link between human rights and climate change and to mainstream climate action in state reporting.²¹ On the other hand, climate action is increasingly recognised as a crucial element of development in scholarship,²² yet, the role of the African Peer Review Mechanism (APRM) – Africa's

18 Art 11(4) Paris Agreement (n 2).

19 See notably the AU Climate Change Declaration adopted in 2007; Nairobi Declaration on the African Process to Combat Climate Change adopted in 2009.

20 The Executive Council of the African Union called upon the African Union Commission to draw up an African Strategy on Climate Change in 2009: 'Decision on the African Common Position on Climate Change' Doc EX.CL/Dec.500(XV) Rev.1. A draft strategy was developed in 2014: Draft African Union Strategy on Climate Change (2014) Doc AMCEN-15-REF-11 as well as a draft strategy for 2020-2030 subsequently: Draft Africa Climate Change Strategy 2020-2030, https://archive.uneca.org/sites/default/files/uploaded-documents/ACPC/2020/africa_climate_change_strategy_-_revised_draft_16.10.2020.pdf (accessed 10 July 2021). Conversely, the East African Community (EAC) and the Economic Community of West African States (ECOWAS) adopted a Climate Change Declaration in 2009; the Southern African Development Community (SADC) launched a Climate Change Adaptation Strategy on Water in 2011.

21 AO Jegede 'Climate change in the work of the African Commission on Human and Peoples' Rights' (2017) 31 *Speculum Juris* 135.

22 See notably O Davidson et al 'The development and climate nexus: The case of sub-Saharan Africa' (2003) 3 *Climate Policy* 97; N Grist & CI Speranza 'Climate change and African development' in E Lundsgaarde (ed) *Africa toward 2030: Challenges for development policy* (2012) 105.

development-monitoring initiative – in climate action, while mooted in early commentary,²³ has scarcely been explored.

The APRM was established by the AU in 2003, in the context of the implementation of the New Partnership for Africa's Development (NEPAD), the AU policy framework for accelerating economic cooperation and integration among African countries. It is open for accession by AU member states as a self-monitoring mechanism, encouraging compliance with democratic, economic, corporate and socio-economic governance standards.²⁴ The APRM paradigm can present several advantages in responding to the need to enhance climate transparency, customarily stymied by various technical and political challenges. In the national context, the mechanism favours a better integration of a human rights-based approach to climate justice,²⁵ thus far elusive.²⁶ Through its broad conception of participation, it can bring together civil society, the private sector, vulnerable groups and affected communities, aside from governments. It also offers an effective model of systematic engagement amid diffuse review cycles through bi-annual update reporting and technical support functions such as the development of trackers, database compilation and benchmarking. The APRM is well positioned to facilitate regional integration on climate justice. By fostering dialogue among states and regional stakeholders and serving as a collaborative platform on climate action in Africa, it could encourage a strengthened coordinated regional approach and help reinforce the African common position on climate change.²⁷

- 23 See Seventh African Development Forum: Acting on Climate Change for Sustainable Development in Africa 'Governance and leadership response to climate change' 10-15 October 2010, United Nations Conference Centre, Addis Ababa, Ethiopia; B Unmüßig & S Cramer 'Climate change in Africa' (2008) 2 *GIGA Focus Afrika* 1.
- 24 For an overview of the APRM process, see R Herbert & S Grudz 'The African Peer Review Mechanism: Lessons from the pioneers' South African Institute of International Affairs (2008), <https://saiia.org.za/research/the-african-peer-review-mechanism-lessons-from-the-pioneers/> (accessed 15 July 2021); B Manby 'Development, good governance and south-south cooperation: The African Peer Review Mechanism' in UN *Realising the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development* (2013) 217-231.
- 25 S Duyck et al 'Human rights and the Paris Agreement's implementation guidelines: Opportunities to develop a rights-based approach' (2018) 12 *Carbon and Climate Law Review* 191; P Toussaint & A Blanco 'A human rights-based approach to loss and damage under the climate change regime' (2019) 20 *Climate Policy* 1.
- 26 See United Nations Environment Programme 'Climate change and human rights' (2015) 30-31, <https://wedocs.unep.org/bitstream/handle/20.500.11822/9934/Climate-Change-Human-Rights.pdf?sequence=1&isAllowed=y> (accessed 1 November 2020).
- 27 An African common position refers to the definition of common policy goals and a coherent approach for the continent based on shared interests and needs in multilateral

This article seeks to establish the role of the APRM in complementing climate action monitoring and reporting processes in Africa, including as a means for transparency-related capacity building. It is structured in five parts. The first part is the introduction while the second part provides an overview of the African landscape on climate action monitoring and reporting, including the current level of climate transparency under national, regional and international mechanisms. It also highlights the key support mechanisms in climate policy implementation and transparency in Africa. The third part interrogates the role of the APRM in climate action. Notably, it considers the relevance of climate action within its thematic focus areas, as well as in view of its expanded mandate for monitoring and evaluating implementation of the AU Agenda 2063 and UN Agenda 2030.²⁸ The part four of the article identifies opportunities and challenges for the APRM to acquire a prominent role in climate transparency. Part five is the conclusion.

2 The African landscape on climate action monitoring and reporting

This part provides an overview of the extant normative and institutional mechanisms on climate action monitoring and reporting in Africa. Since national mechanisms for monitoring and reporting currently are scarce across most African countries, it is worth investigating the implementation of treaty obligations under regional and international mechanisms relevant to climate action to appreciate the level of state monitoring and reporting. The first piece of this part explores national, regional and international mechanisms for monitoring and reporting climate action. The second portion of the part describes the regional structures supporting climate action monitoring and reporting in Africa.

processes. Notably in the context of international climate negotiations, relevant structures have included the African Ministerial Conference on the Environment (AMCEN); African Group of Negotiators (AGN); and the Committee of African Heads of State on Climate Change (CAHOSCC). In this respect, see notably the Algiers Declaration on Climate Change adopted in 2008 by the Conference of African Ministers of the Environment on Climate Change. For an overview, see W Scholtz 'The promotion of regional environmental security and Africa's common position on climate change (2010) 10 *African Human Rights Law Journal* 1.

28 Agenda 2063: The Africa We Want, <https://au.int/en/agenda2063> (accessed 1 September 2022); Transforming Our World: The 2030 Agenda for Sustainable Development, <https://sdgs.un.org/2030agenda> (accessed 1 September 2022).

2.1 Monitoring and reporting mechanisms

2.1.1 National mechanisms

A few African states have formulated climate and climate-related sectoral policies or strategies to define coordinated national responses to address climate change impacts within the context of economic and sustainable development priorities.²⁹ Most of these instruments underline the need for robust monitoring and reporting systems to collect data, track progress, share information among stakeholders and enhance access to climate information. The Ghana Climate Change Policy (2013), for instance, identifies monitoring and reporting as one of seven systemic pillars to achieve progress towards its objectives.³⁰ The Uganda Climate Change Policy (2015) refers to the strengthening of existing monitoring and evaluation (M&E) systems and the development of a Performance Measurement Framework.³¹ The Kenya Climate Change Framework Policy (2016) outlines a number of measures for the development of a consolidated and integrated monitoring, reporting and verification system in the face of weak and scattered mechanisms.³² Nonetheless, despite the emphasis drawn on monitoring and reporting in emerging climate policy planning, the implementation of these measures generally is stalled, due to inadequate finance strategies, the absence of legal frameworks and incoherent governance systems.³³

29 See notably Revised Nigeria National Climate Change Policy (2021); Uganda National Climate Change Policy (2016); Zimbabwe National Climate Change Response Strategy (2015); Ghana National Climate Change Policy (2013); Tanzania National Climate Change Strategy (2012); South Africa National Climate Change Response Policy (2011). Only Kenya has adopted climate legislation: Kenya Climate Change Act 11 of 2016, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ClimateChangeActNo11of2016.pdf> (accessed 15 July 2021).

30 Ghana National Climate Change Policy (2013) 2-15, <https://www.greengrowthknowledge.org/sites/default/files/downloads/policy-database/GHANA%29%20Ghana%20National%20Climate%20Change%20Policy.pdf> (accessed 15 July 2021).

31 Uganda National Climate Change Policy (2015) 48, <https://www.mwe.go.ug/sites/default/files/library/National%20Climate%20Change%20Policy%20April%202015%20final.pdf> (accessed 15 July 2021).

32 Kenya Climate Change Framework Policy (2016) sec 9.4, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ClimateChangeActNo11of2016.pdf> (accessed 15 July 2021).

33 See, eg, Graham Research Institute on Climate Change and the Environment 'Governance of climate change policy: A case study of South Africa' Policy Brief June 2019, https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2019/06/GRI_Governance-of-climate-change-policy_SA-case-study_policy-brief_8pp.pdf (accessed 15 July 2021).

2.1.2 Regional mechanisms

African Union mechanisms

AU climate plans do not provide for the setting up of a regional climate action monitoring and reporting system.³⁴ Instead, monitoring and reporting mechanisms are spread across various programmes. Under the framework for the implementation of the Africa Regional Strategy for Disaster Risk Reduction (ARSDRR), the African Union Commission (AUC) since 2007 convenes the Africa Regional Platform on Disaster Risk Reduction (AfRP), a biennial forum bringing together African member states, intergovernmental organisations and development partners. It serves as a regional coordination mechanism supporting the monitoring of the implementation of progress of disaster risk reduction policies, strategies and programmes.³⁵ NEPAD is mandated to monitor Africa's progress in meeting key regional and global goals for technical reporting. The promotion of climate resilience is one of its strategic priorities.³⁶ Notably, under the NEPAD Programme on Agriculture and Climate Change, it convenes the Africa Climate-Smart Agriculture Alliance (ACSAA), launched in 2014. ACSAA brings together the public sector, civil society and researchers to review progress on Vision 25x25, the policy framework for scaling up climate-smart agriculture in the continent.³⁷ The Vision lays special emphasis on monitoring and learning.³⁸

Human rights mechanisms

The mandate of the African Commission on Human and Peoples' Rights (African Commission) broadly involves the promotion and protection of human rights through research and the dissemination of information, advisory and interpretative functions and the development of guidelines,

34 Manby (n 24).

35 African Union Commission (AUC) 'Programme of action for the implementation of the Sendai framework for disaster risk reduction 2015-2030 in Africa in line with the Africa Regional Strategy for Disaster Risk Reduction' November 2016 11, https://www.preventionweb.net/files/49455_poaforsendaiimplementationinafrica.pdf (accessed 15 July 2021) ARSDRR was adopted by the AU Heads of State and Government in 2004, https://www.unisdr.org/files/13093_AFRICA_REGIONALDRRSTRATEGYfullPDF.pdf (accessed 15 July 2021).

36 NEPAD website, <https://www.nepad.org/strategic-priorities> (accessed 15 July 2021).

37 NEPAD 'Africa Climate Smart Agriculture Vision 25x25: Africa's strategic approach for food security and nutrition in the face of climate change', <https://www.nepad.org/publication/africa-csa-vision-25x25-africas-strategic-approach-food-security-and-nutrition> (accessed 15 July 2021).

38 UN Special Rapporteur on Human Rights and the Environment Report (n 10) 3,4 & 5.

rules and principles.³⁹ None of the African human rights treaties, including instruments adopted more recently, recognises climate change as an impediment to the realisation of rights. The African Commission has only but exceptionally attempted to close this gap by calling for an inquiry into the human rights implications of climate change in the African context.⁴⁰ Otherwise, thus far it has not made use of special mechanisms such as the Special Rapporteur or Working Group engagement on the subject.⁴¹ It has commissioned no studies or promotional initiatives such as seminars, dialogues or events to foster national responses.⁴² It also has not highlighted the impact of climate change on human rights under the communications procedure.⁴³

A similar gap is noticeable in the state reporting procedure. The African Commission's Guidelines on State Reporting do not identify climate action under any of the provisions of the instruments.⁴⁴ State reports submitted prior to the entry into force of the Paris Agreement, on the rare occasion where they have made reference to climate change, did so in passing without delving into the latter's human rights implications.⁴⁵ Only South Africa has addressed the singular impact of climate change on the vulnerability of women.⁴⁶ This is not impressive

39 African Charter on Human and Peoples' Rights adopted 27 June 1981, entered into force 21 October 1981, CAB/LEG/67/3 rev. 5 21 ILM 58, art 45.

40 African Commission 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa' adopted at its 46th ordinary session, 11-25 November 2009, Banjul, The Gambia (ACHPR Resolution 153); 'Resolution on Climate Change in Africa' adopted at its 55th ordinary session, Luanda, Angola, 28 April-12 May 2014 (ACHPR Resolution 271); 'Resolution on Climate Change and Human Rights in Africa' adopted at its 58th ordinary session, Banjul, The Gambia, 6-20 April 2016 (ACHPR Resolution 342).

41 See Jegede (n 21) for an overview of the inadequacies of approach of the African Commission to the human rights implications of climate change.

42 As above.

43 As above.

44 African Commission 'Guidelines for National Periodic Reports under the African Charter' (1989), <https://www.achpr.org/legalinstruments/detail?id=4>; 'State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights' (Tunis guidelines), <https://www.achpr.org/legalinstruments/detail?id=30>; 'Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', file:///C:/Users/user/Downloads/Guidelines%20on%20State%20Reporting%20under%20the%20Maputo%20Protocol_2.pdf (accessed 10 November 2020).

45 See Jegede (n 21) 143.

46 Republic of South Africa 'Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa (2003-2014)' submitted 10 February 2015 para 505, <http://www.achpr.org/files/sessions/58th/state-reports/2nd-2002-2015/>

as it shows that states are not paying adequate attention to how climate change disproportionately affects populations in their reports. Concluding Observations also have not urged states in that direction.⁴⁷ More recently, the last few state reports submitted have more frequently featured references to climate change, especially in the context of mainstreaming climate in new legislation and national frameworks. The last periodic report of Malawi, for instance, identified climate change as a key priority area for its national development strategy for 2017 to 2022.⁴⁸ It referred to climate change management as a policy area in its agriculture and forestry management framework. Similarly, the state report submitted by Niger alludes to institutional programmes for building the resilience of the population to climate change, disaster and crises.⁴⁹ Significantly, the report submitted by Mauritius considered climate action under article 24 of the Charter (right to a satisfactory environment). While stressing its vulnerability to climate impacts as a small island developing state (SIDS), it indicated the range of legislative and institutional mechanisms put in place for climate adaptation and mitigation.⁵⁰ The report from Cameroon highlights the impact of climate change under a number of the Charter rights,⁵¹ including the right to a healthy environment and the right to a healthy and sustainable environment under the Protocol to the African

staterep2_southafrica_2003_2014_eng.pdf (accessed 10 November 2020).

- 47 African Commission 'State reports and Concluding Observations', <https://www.achpr.org/statereportsandconcludingobservations> (accessed 10 November 2020).
- 48 Republic of Malawi 'Combined Second and Third Periodic Report under the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women in Africa (2015-2019)' submitted 7 February 2020 paras 53, 59, 64 & 66, file:///C:/Users/user/Downloads/Malawi%202nd%20Periodic%20Report,%202015-2019.pdf (accessed 10 November 2020).
- 49 Republic of Niger '15th Periodic Report on the implementation of the African Charter on Human and Peoples' Rights (2017-2019)' submitted 25 November 2019 paras 252, 275, 339 & 340, file:///C:/Users/user/Downloads/NIGER%2015%20%C3%A8me%20RAPPORT%202017-2019-ENG.pdf (accessed 10 November 2020).
- 50 Republic of Mauritius '9th & 10th Combined Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights (2016-2019)' submitted 6 February 2020 paras 420-444, file:///C:/Users/user/Downloads/Mauritius%209th-10th%20Combined%20Periodic%20Report%202016-2019.pdf (accessed 10 November 2020).
- 51 Republic of Cameroon '4th, 5th & 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights and 1st Reports relating to the Maputo Protocol and the Kampala Convention (2015-2019)' submitted 3 January 2020 paras 630-632, 886, 893 & 971-986, file:///C:/Users/user/Downloads/Cameroon%204th-6th%20Periodic%20Report,%202015-2019-ENG.pdf (accessed 10 November 2020).

Charter on Human and People's Rights on the Rights of Women in Africa (African Women's Protocol,⁵² but also in the context of internal displacement under articles 2 and 4 of the Kampala Convention.⁵³ The last report submitted by Zimbabwe referred to climate change under article 24.⁵⁴

Regional economic communities (RECs) mechanisms

The Climate Change Strategy and Action Plan of the Southern African Development Community (SADC CCSAP) underlines the need to establish a standardised monitoring, evaluation and reporting framework for climate change programmes.⁵⁵ It highlights the conduct of regular reviews of climate change programmes and capacity building of member states for the monitoring and evaluation of climate change programmes.⁵⁶ The SADC Climate Services Centre, a World Meteorological Organisation (WMO) Regional Climate Centre, provides operational services for monitoring and prediction of extreme climate events. Similarly, the Climate Change Policy Framework of the East African Community (EAC) emphasises research, monitoring and forecasting.⁵⁷ The Economic Community of West African States (ECOWAS) adopted the Lomé Declaration on Climate Change and Protection of Civilians in West Africa in 2009, calling for a human rights approach to climate change. It is set to launch its Climate Change Strategy at the 2021 United Nations Climate Change Conference (COP26) in November 2021.⁵⁸

52 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (African Women's Protocol) adopted 11 July 2003, entered into force 25 November 2005.

53 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted 22 October 2009, entered into force 6 December 2012.

54 Republic of Zimbabwe '11th-15th Combined Report under the African Charter on Human and Peoples' Rights and 1st-4th Combined Report under the Maputo Protocol (2007-2019) submitted 1 August 2019 para 22, file:///C:/Users/user/Downloads/ZIMBABWE_11th-15th%20Combined%20Report%202007-2019_ENG.pdf (accessed 10 November 2020).

55 SADC Secretariat 'SADC climate strategy and action plan' (2015) 35, https://www.sadc.int/files/5615/9126/1263/SADC_Climate_Change_Strategy_and_Action_Plan-English.pdf (accessed 15 July 2021).

56 As above.

57 EAC Secretariat 'EAC climate change strategy' (2011-2016) and EAC Climate Change Master Plan (2011-2031), <https://www.eac.int/documents/category/environment-and-natural-resources> (accessed 15 July 2021).

58 Pan African Climate Justice Alliance 'ECOWAS region to launch its climate change strategy in COP26', <https://www.pacja.org/using-joomla/extensions/components/content-component/list-all-categories/85-news/249-ecowas-region-to-launch-its-climate-change-strategy-in-cop-26> (accessed 15 July 2021).

2.1.3 International mechanisms

Universal Periodic Review

The Human Rights Council and the special procedures mechanisms have increasingly sought to address state obligations in responding to the human rights implications of climate change through a number of statements, decisions, Concluding Observations, General Comments and General Recommendations.⁵⁹ Unlike the human rights treaty bodies, the Universal Periodic Review (UPR) reviews state compliance with human rights norms more broadly, beyond one specific treaty. In general, the UPR has generated dialogue on adaptation and mitigation efforts since its first cycle.⁶⁰ However, only a few country reports from African states, save for SIDS, have highlighted climate change impacts or described national climate action. Notably, Comoros referred to the establishment of a ministerial unit for follow up on the United Nations Framework Convention on Climate Change (UNFCCC).⁶¹ The Maldives underscored the island's vulnerability to climate change and the introduction of a Climate Change Council for scrutinising the climate impact of development projects and a Climate Change Fund to enhance the implementation of adaptation and mitigation efforts.⁶² São Tomé and Príncipe indicated the set-up of a four-year project for the development of climate-resilient

- 59 For a comprehensive list of statements, decisions and reports, see Office of the United Nations High Commissioner for Human Rights Human Rights Mechanisms addressing climate change, <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HumanRightsMechanisms.aspx> (accessed 10 November 2020). See in particular Human Rights Council Resolution 7/23 (2008); 10/4 (2009); 18/22 (2011); 26/27 (2014); 29/15 (2015); 32/33 (2016); 35/20 (2017); 38/4 (2018); 42/21 (2019) & 44/7 (2020).
- 60 Office of the United Nations High Commissioner for Human Rights 'Mapping human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Individual report on the UN General Assembly and the Human Rights Council, including the Universal Periodic Review Process' (2013) paras 97-122; H van Asselt & R Moncel 'All hands on deck! Mobilising climate change action beyond the UNFCCC' (2012) 21 *Review of European, Comparative and International Environmental Law* 163; The Mary Robinson Foundation and the Centre for International Environmental Law 'Incorporating human rights into climate action data portal', <https://www.mrfcj.org/incorporating-human-rights-into-climate-action/> (accessed 10 November 2020).
- 61 Comoros 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21' submitted 8 November 2013 para 109, A/HRC/WG.6/18/COM/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/185/29/PDF/G1318529.pdf?OpenElement> (accessed 10 November 2020).
- 62 Maldives 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21' submitted 14 February 2020 paras 78-87, A/HRC/WG.6/36/MDV/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/034/21/PDF/G2003421.pdf?OpenElement> (accessed 10 November 2020).

livelihood options.⁶³ Lesotho and Zimbabwe underlined concerns for agricultural production and food security.⁶⁴ Morocco pointed to climate mainstreaming in national frameworks on sustainable development and gender equality.⁶⁵ Nonetheless, whereas the significance of the UPR and special mechanisms has been recognised, their consideration of climate action generally is considered insufficient.⁶⁶

The UN Agenda 2030 Voluntary National Review

The Voluntary National Review (VNR) is a follow-up and review mechanism for tracking progress on the UN Agenda 2030 Sustainable Development Goals (SDGs).⁶⁷ Country reports are reviewed by the High-Level Political Forum on Sustainable Development (HLPF) under the auspices of the Economic and Social Council (ECOSOC).⁶⁸ Pertinently, SDG 13 relates to action to combat climate change and its impacts. Five targets have been identified under the Goal, notably, strengthening resilience and adaptive capacity to climate-related disasters; integrating climate change measures into policy and planning; building knowledge and capacity to meet climate change; implementing the UNFCCC; and promoting mechanisms to raise capacity for planning and management.⁶⁹

63 São Tomé and Príncipe 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21' submitted 11 November 2015 para 98, A/HRC/WG.6/23/STP/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/259/10/PDF/G1525910.pdf?OpenElement> (accessed 10 November 2020).

64 Lesotho 'National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21' submitted 4 November 2019 para 46, A/HRC/WG.6/35/LSO/1, <https://undocs.org/A/HRC/WG.6/35/LSO/1> (accessed 10 November 2020); Zimbabwe 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21' submitted 22 August 2016 para 125, A/HRC/WG.6/26/ZW E/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/185/75/PDF/G1618575.pdf?OpenElement> (accessed 10 November 2020).

65 Morocco 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/2' submitted 20 February 2017 paras 28 & 50, A/HRC/WG.6/27/MAR/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/037/94/PDF/G1703794.pdf?OpenElement> (accessed 10 November 2020).

66 See, eg, Amnesty International 'Environment and climate change issues and recommendations should be integral part of universal periodic review' Joint Oral Statement delivered during item 6 general debate in the 43rd session of the UN Human Rights Council on 15 June 2020, <https://www.amnesty.org/fr/documents/IOR40/2520/2020/fr/> (accessed 10 November 2020).

67 UN General Assembly 'Transforming our world: The 2030 Agenda for Sustainable Development' 21 October 2015, A/RES/70/1 (UN 2030 Agenda).

68 Paras 72-79 UN 2030 Agenda (n 67).

69 Goal 13 UN 2030 Agenda (n 67).

Whereas 46 African countries have thus far submitted VNRs, most have only recently started doing so. In the last five years only 15 African countries reported more than once.⁷⁰ Nonetheless, reporting under the procedure has provided the most comprehensive outlines of African states' climate action among the treaty-monitoring mechanisms.⁷¹

2.2 Support mechanisms

Since the adoption of the Paris Agreement, a proliferation of regional and international institutional programmes provide technical and financial support to African countries in respect of climate action, including NDC implementation, capacity building and monitoring and reporting.

2.2.1 Policy implementation

The United Nations Development Programme (UNDP) runs an NDC support programme providing technical assistance to countries in developing context-specific integrated climate and development solutions, facilitating knowledge sharing among actors at the regional level through the UNDP NDC Solutions Exchange and mobilising political ambition on climate action.⁷² The programme currently serves 11 African countries.⁷³ Furthermore, the German Ministry for the Environment, Nature Conservation and Nuclear Safety set up the NDC Cluster to support developing countries in the implementation of their NDCs. Eight

70 United Nations Department of Economic and Social Affairs High-Level Political Forum on Sustainable Development Voluntary National Reviews, <https://sustainabledevelopment.un.org/vnrs/> (accessed 10 November 2020).

71 See, eg, République du Bénin 'Contribution Nationale Volontaire à la Mise en Œuvre des ODD au Forum Politique de Haut Niveau' New York, Juillet 2020, https://sustainabledevelopment.un.org/content/documents/26282VNR_2020_Benin_Report.pdf (accessed 25 March 2021); Burkina Faso 'Rapport National Volontaire de Mise en Œuvre des Objectifs de Développement Durable (2016-2018)' Juin 2019, https://sustainabledevelopment.un.org/content/documents/23390Burkina_Faso_VNR_FINAL.pdf (accessed 25 March 2021); République du Burundi 'Rapport de l'examen national volontaire sur la mise en œuvre des objectifs de développement durable au Burundi' Avril 2020, <https://sustainabledevelopment.un.org/content/documents/26316RAPPORTDELAMISEENOEUVREDESODDsAUBURUNDI.pdf> (accessed 25 March 2021); République de la Côte d'Ivoire 'Rapport Volontaire d'Examen National de la mise en œuvre des objectifs de développement durable en Côte d'Ivoire' Juin 2019, https://sustainabledevelopment.un.org/content/documents/23327COTE_dIVOIRE_Draft_Rapport_VNR_CIV.pdf (accessed 25 March 2021).

72 UNDP 'NDC support programme', <https://www.ndcs.undp.org/content/ndc-support-programme/en/home/about/our-strategy.html> (accessed 10 November 2020).

73 As above.

African countries are currently part of the initiative. Notably, three of the five focus countries, namely, Kenya, Morocco and Ethiopia, benefiting from close engagement, are African.⁷⁴ The NDC Partnership, a network initiative hosted by the World Resources Institute and the German Office of the United Nations Climate Change, launched in 2016, consists of a coalition of governments and institutions aimed at knowledge sharing and policy coordination across countries. Twenty African countries are partners to the coalition. The National Adaptation Plan (NAP) Global Network, established in 2014, provides support to developing countries in accelerating their adaptation efforts and fosters south-south learning and exchange. It currently runs long-term in-country programmes in Côte d'Ivoire, Ethiopia, Ghana, Guinea, Togo, Uganda and South Africa.⁷⁵

2.2.2 Support on finance

The Africa NDC Hub, launched in 2017 by the African Development Bank (AfDB), is a platform providing financial support for NDC implementation in the context of sustainable development. It serves as a collaboration platform and resource pool geared towards fostering long-term climate action, mobilising means of implementation and promoting coordination, advocacy and partnerships. Its activities are coordinated through a secretariat hosted at the Climate Change and Green Growth Department of the AfDB. Furthermore, the African Risk Capacity (ARC) was established for assisting AU member states in building capacity and gaining access to finance for disaster risk management.⁷⁶ The ARC consists of a specialised agency supervising the development of ARC capacity and services and approving and monitoring the implementation of contingency plans and a financial affiliate acting as an insurance risk pool.

2.2.3 Transparency

The Africa Adaptation Initiative (AAI) was launched in 2015 by the African Ministerial Conference on Environment (AMCEN) to step up adaptation efforts on the continent, including addressing the adaptation financing gap, with flagship programmes in climate information services and risk transfer, the Lake Chad River Basin Early Warning System and knowledge

74 'NDC cluster focus countries', <https://www.ndc-cluster.net/focus-countries> (accessed 15 July 2021).

75 NAP Global Network 'In-country NAP support programmes', <https://napglobalnetwork.org/in-country-support-programs/> (accessed 15 July 2021).

76 Agreement for the Establishment of the African Risk Capacity (ARC) Agency (2016), <https://www.africanriskcapacity.org/wp-content/uploads/2016/11/AUDecisiontoEstablishARCSA-1.pdf> (accessed 10 November 2020).

management for adaptation planning in Africa. Climate Analytics, a Berlin-based organisation founded in 2008, provides independent science-based assessment tracking of countries' implementation of mitigation pledges, notably through the Climate Action Tracker. It currently conducts assessments of climate action in Morocco, Ethiopia, Kenya and South Africa.⁷⁷ Climate Watch, managed by the World Resources Institute, also provides datasets and country profiles tracking national commitments and progress.⁷⁸

3 The African Peer Review Mechanism and climate action: Current role

This part examines the current role of the APRM in climate action. It first provides an overview of the Mechanism, including its organisational structure, mandate, periodic review process and other procedures. It then describes the APRM's role in human rights. Finally, it gives an account of its current role in climate action, and identifies opportunities and challenges for an enhanced role.

3.1 An overview of the APRM

3.1.1 Governance and management

The APRM was created in a bid to advance the continent's socio-economic development through enhanced political and corporate governance practices.⁷⁹ Since its establishment in 2003, it has been recognised as a specialised agency of the AU in 2012.⁸⁰ The Mechanism is open to participation by AU member states through the submission of an expression of interest and the signing of a memorandum of understanding.⁸¹ Participation is granted upon the commitment to submit and facilitate

77 Climate Analytics 'Climate action tracker', <https://climateanalytics.org/what-we-do/climate-action-tracker/> (accessed 15 July 2021).

78 Climate Watch 'NDC tracker', <https://www.climatewatchdata.org/2020-ndc-tracker> (accessed 15 July 2021).

79 The New Partnership for Africa's Development: The African Peer Review Mechanism (APRM Base Document) adopted by the Assembly of Heads of State and Government at the 38th ordinary session of the Organisation of African Unity, Durban, South Africa, 8 July 2002, AHG/235 (XXXVIII) Annex II, <https://www.aprm-au.org/publications/partnership-for-africa-nepad-and-aprm/> (accessed 10 November 2020).

80 Decision on the Integration of the APRM into the African Union, 23rd ordinary session of the AU Assembly of Heads of State and Government, 26-27 June 2014, Malabo, Equatorial Guinea, Doc Assembly AU Dec 527 (XXIII).

81 APRM Base Document (n 79) para 5; Memorandum of Understanding on the African Peer Review Mechanism (2003) Doc NEPAD/HSGIC/03-2003/APRM/MOU.

periodic peer reviews,⁸² and implement review recommendations.⁸³ To date, it counts 40 participating states. Zimbabwe and the Seychelles are the latest to have acceded to the Mechanism in February 2020.

The APRM consists of four governing bodies. The highest decision-making body is the APR Forum, a committee of the Heads of State and Government of participating states.⁸⁴ It considers and adopts country review reports, submits recommendations to the head of state of the country subject to review and follows up on their implementation.⁸⁵ It meets at least twice a year in ordinary session.⁸⁶ Second, the Focal Points Committee, composed of representatives of Heads of State and Government, reviews the budget and work programme of the APRM and oversees processes for resource mobilisation through member states, partners and other donors.⁸⁷ Third, the APR Panel of Eminent Persons, comprising between five and nine African experts appointed by the APR Forum for a term of four years, oversees the review process to ensure its independence, professionalism and credibility, and appoints the country review teams.⁸⁸ The APR Secretariat provides technical, administrative and coordination support for the functioning of the APRM.⁸⁹ National APRM structures include a National Focal Point; the National Governing Council, comprising key governmental, civil society and private sector actors, which provides policy guidance for the implementation of the APRM; a National Secretariat; and national technical research institutions.⁹⁰

3.1.2 *Mandate*

The mandate of the APRM, as defined in its constitutive instrument, was to ensure that the policies and practices of states conform to the standards outlined in the Declaration of Democracy, Political, Economic and Corporate Governance.⁹¹ These standards, objectives and indicators

82 Para 5 APRM Base Document (n 79).

83 Statute of the African Peer Review Mechanism (APRM Statute) adopted at the 25th APR Forum, Nairobi, Kenya, <https://www.aprm-au.org/publications/statute-of-the-aprm/> (accessed 15 July 2021).

84 Art 9 APRM Statute (n 83).

85 Arts 9(9) & (10) APRM Statute (n 83).

86 Art 9(12) APRM Statute (n 83).

87 Art 10 APRM Statute (n 83).

88 Art 11 APRM Statute (n 83).

89 Art 12 APRM Statute (n 83).

90 Arts 14-18 APRM Statute (n 83).

91 New Partnership for Africa's Development: Declaration on Democracy, Political,

are defined under its four thematic focus areas, namely, democracy and political governance; economic governance and management; corporate governance; and socio-economic development. In 2017, further to the revitalisation of the mechanism, its mandate was further extended to include compliance with AU Agenda 2063 and UN Agenda 2030.⁹² Moreover, it was mandated to serve as an early warning tool for conflict prevention in Africa considering its synergies with the African Peace and Security Architecture and the African Governance Architecture.⁹³

3.1.3 Peer review process

Four categories of review can be conducted under the APRM.⁹⁴ A base review is undertaken immediately after a country accedes to the APRM. Thereafter a periodic review is held in two to four-year cycles. A review may also be requested by a participating state outside the framework of mandated reviews. In addition, a review may be commissioned by the APR Forum in instances of impending political and economic crisis in a participating state. The review process consists of a desk review, a country review visit and the development of a country review report, submitted to the APR Forum for adoption and the formulation of recommendations, and finally disseminated to key regional and sub-regional structures such as the Pan-African Parliament (PAP), the African Commission, the AU Peace and Security Council (PSC) and the AU Economic, Social and Cultural Council (ECOSOCC).⁹⁵

Economic and Corporate Governance adopted by the Assembly of the OAU Heads of State and Government at the 38th ordinary session, Durban, South Africa, 8 July 2002, Doc AHG/235 (XXXVIII) Annex II, <https://www.un.org/en/africa/osaa/pdf/aprm-declaration.pdf> (accessed 10 November 2020). The comprehensive body of relevant standards under each of the four areas of the Declaration were identified in 'Objectives, standards, criteria and indicators for the African Peer Review Mechanism' (2003), <https://www.aprm-au.org/publications/objectives-standards-criteria-and-indicators/> (accessed 15 July 2021).

92 Decision on the Revitalisation of the African Peer Review Mechanism, 28th ordinary session of the Assembly of the AU Heads of State and Government, Addis Ababa, Ethiopia, 30-31 January 2017, Doc Assembly/AU/Dec.631(XXVIII).

93 Decision on the Report of the African Peer Review Mechanism, 30th ordinary session of the Assembly of the AU Heads of State and Government, Addis Ababa, Ethiopia, 28-29 January 2018, Doc Assembly/AU/Dec.686(XXX).

94 Para 14 APRM Base Document (n 79).

95 Arts 18-25 APRM Base Document (n 79). The review process is further described in APRM 'Guidelines for countries to prepare for and to participate in the African Peer Review Mechanism', <https://www.aprm-au.org/publications/aprm-guidelines/> (accessed 15 July 2021).

The desk review involves the development of an issues paper by the APR Secretariat based on desk research, including relevant legislation, treaty ratifications and development plans; a country self-assessment questionnaire; and a national programme of action filled by national stakeholders of the country under review, identified by the APR Focal Point. The country review visit is a two to three week-long mission whereby a country review team, under the leadership of the APR Panel, conducts wide-ranging consultations with national stakeholders including the government, political parties, the media, academia and the private sector. Using the background study prepared by the APR Secretariat and further field information, the country review team produces a country review report which is discussed with the government. The latter's responses are appended to the report. The review report is sent to the APR Forum for consideration and formulation of recommendations to the government. The APR Forum engages in 'constructive dialogue'⁹⁶ with the government, whereby participating states deliberate to identify technical and financial support needs and solutions to assist the country to respond to the deficiencies highlighted in the report. The report is then made publicly available. After the country review, the country's plan of action is monitored by the Governing Council at the national level. Implementation or progress reports are submitted annually to the APR Secretariat.

3.2 The African Peer Review Mechanism and human rights

The APRM monitors compliance with a number of human rights instruments under its four thematic focus areas, namely, democracy and political governance, economic governance, corporate governance and socio-economic development.⁹⁷ It has been likened to other human rights-monitoring mechanisms such as the African Commission.⁹⁸ A rights-based approach has been further embedded in the Mechanism's purview following its integration as an autonomous entity within the AU system, its revitalisation and a growing recognition of its linkages with other human rights frameworks. The more recently adopted APRM Statute (2016) broadens the mandate of the APRM to include compliance with an expansive range of instruments:

96 The concept is further described under part 4.1.1.

97 The Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (n 91) includes reference to a comprehensive range of human rights instruments as well as questions relating to respect for human rights, the rule of law and democracy under the scope of the governance areas pertinent to the review process.

98 M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41, 55, 73.

The APRM has the mandate to promote and facilitate self-monitoring by the participating states, and to ensure that their policies and practices conform to the agreed political, economic, corporate governance and socio-economic values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance; and the African Charter on Democracy, Elections and Governance, as well as other relevant treaties, conventions and instruments adopted by participating states whether through the AU or through other international platforms.⁹⁹

The guiding principles explicitly include ‘good political, economic, social and corporate governance; democracy; the rule of law; respect for human rights; and peaceful resolution of conflicts’¹⁰⁰ and civil society participation.¹⁰¹ Furthermore, the first Ten-Year Implementation Plan of AU Agenda 2063 identifies APRM implementation as a key indicator of the second priority area ‘human rights, justice and the rule of law’ under Goal 11 ‘Democratic values, practices, universal principles of human rights, justice and the rule of law entrenched’.¹⁰² It is further recognised as a tool for accountability, communications and capacity building in the framework of the implementation of AU Agenda 2063.¹⁰³

3.3 The APRM and climate action

3.3.1 Expanded mandate

Among the salient measures taken to revitalise the APRM is its monitoring and evaluation role of AU Agenda 2063 and UN Agenda 2030.¹⁰⁴ Both development frameworks include climate action as priority goals. AU Agenda 2063 Aspiration 1 ‘A prosperous Africa based on inclusive growth and sustainable development’ underlines commitments for adaptation to climate change.¹⁰⁵

99 Art 4(1) APRM Statute (n 83).

100 Art 5(3) APRM Statute (n 83).

101 Art 5(4) APRM Statute (n 83).

102 AU Agenda 2063 ‘First ten-year implementation plan 2014-2023’ (2015) 69, <https://www.tralac.org/documents/resources/african-union/1135-agenda-2063-first-ten-year-implementation-plan-2014-2023/file.html> (accessed 15 July 2021).

103 AU Agenda 2063 Implementation (n 102) 87, 94, 95.

104 Decision on the Revitalisation of the African Peer Review Mechanism (n 93) paras 7(i) and (v).

105 African Union Commission ‘Agenda 2063 Framework Document’ (2015) 29, 30 & 34-35, <https://www.nepad.org/publication/agenda-2063-framework-document> (accessed 15 July 2021).

The Africa of 2063 envisioned under this aspiration is a prosperous continent where the citizens have a high standard of living, are well educated with a skilled labour force, transformed economies, productive agriculture and healthy ecosystems, with well-preserved environment and a continent resilient to climate change.

Aside from a goal, climate resilience features as a cross-cutting issue in the framework in view of Africa's marked vulnerability to climate impacts. It is described as a risk factor likely to affect the attainment of the Agenda goals,¹⁰⁶ notably a challenge for addressing hunger,¹⁰⁷ a threat to the blue economy¹⁰⁸ and peace and security.¹⁰⁹ AU Agenda 2063 also highlights capacity needs in climate action.¹¹⁰ Furthermore, as highlighted in the previous part, Sustainable Development Goal 13 of UN Agenda 2030 relates to climate action.¹¹¹ The expanded mandate of the APRM therefore now explicitly includes the review of climate action.

3.3.2 *Revised country self-assessment questionnaire*

The country self-assessment questionnaire¹¹² was revised following the extension of the APRM's mandate to reflect new standards, relevant to the targets of AU Agenda 2063 and UN Agenda 2030, under its focus areas. In the revised questionnaire¹¹³ climate action features under the broad-based sustainable socio-economic development and the corporate governance thematic focus areas. Under the former, countries are required to report on climate action in the context of 'environmental sustainability and accountability' by describing measures put in place for combating climate change, specifying, among others:

- protection of the environment with regard to the key objectives and action plans of the Johannesburg World Summit on Sustainable Development and the Kyoto Summit aimed at combating climate change;

106 Ch 5 Agenda 2063 Framework Document (n 105).

107 Agenda 2063 Framework Document (n 105) 53.

108 Agenda 2063 Framework Document (n 105) 69.

109 Agenda 2063 Framework Document (n 105) 82.

110 Agenda 2063 Framework Document (n 105) 127.

111 UN Agenda 2030 (n 68) Goal 13.

112 'Country self-assessment questionnaire for the African Peer Review Mechanism', https://sarpm.org/documents/d0000974/P1092-APRM_questions.pdf (accessed 15 July 2021).

113 'Revised country self-assessment questionnaire for the African Peer Review Mechanism', <https://www.aprmtoolkit.saiia.org.za/documents/official-documents/456-revised-aprm-questionnaire/file> (accessed 15 July 2021) (revised assessment questionnaire).

- implementation of bold policies for diversification of energy sources, using renewable energies such as biomass, solar and facilitating their access by the majority of citizens from all social backgrounds.¹¹⁴

The call for measures that consider ‘citizens from all social backgrounds’ in the thematic area underscores the sensitivity of the APRM to respond to equity concern in climate change.

Under the corporate governance thematic area, question 3 deals with the following: ‘How are organisations complying with environmental regulations in your country and conducting business in an environmentally friendly manner?’ Also, under the objective ‘Ensuring that organisations act as good corporate citizens’, information is required on the measures adopted by organisations to address climate change or for the control of carbon trading and emissions.¹¹⁵

An analysis of the country review process after the revitalisation reforms of the APRM¹¹⁶ reveals reference to climate risks and impacts, without adequate formulation of climate action measures. The first country review report for Uganda in 2008 had identified climate change as a significant challenge to be addressed by the government.¹¹⁷ Upon its second review, the country self-assessment for Uganda in 2017 highlighted the effects of climate change on food insecurity, disease prevalence, land degradation and soil erosion.¹¹⁸ The country review mission noted the impact of climate change on resource availability for ethnic minorities.¹¹⁹ The APR Panel recommended that more efforts are made towards durable solutions to climate change through global arrangements.¹²⁰ Uganda’s updated national plan of action does not identify relevant activities undertaken in the fulfilment of climate-related objectives.¹²¹ It remains otherwise difficult to assess the scope of review of climate action in recent

114 Revised assessment questionnaire (n 113) 78.

115 Revised assessment questionnaire (n 113) 68.

116 The Uganda Country Review Report is the only post-2017 review report made publicly available.

117 APRM ‘Country Review Report No 7: Republic of Uganda’ (January 2009) (Uganda Country Review Report) paras 805 & 807, <https://www.aprm-au.org/publications/country-review-report-no-7-uganda/> (accessed 15 July 2021).

118 Cited in APRM ‘Second country review report: Republic of Uganda’ (January 2018) para 529, <https://www.aprm-au.org/publications/uganda-second-country-review-report/> (accessed 10 November 2020) (Uganda 2nd Report).

119 Para 170 Uganda 2nd Report (n 118).

120 Para 533 Uganda 2nd Report (n 118).

121 Uganda Country Review Report (n 116) Annex II, 438, 439, 470.

country reviews or implementation progress reports due to delays in the publication of reports.¹²²

4 The African Peer Review Mechanism and climate action: Opportunities and challenges for an expanded role

This part describes the opportunities and challenges for an enhanced role of the APRM in climate action monitoring and reporting. It sets out the features making the APRM a particularly compelling stakeholder in climate action monitoring and reporting and highlights the relevant procedures for achieving a more active role, while identifying prevailing challenges.

4.1 Opportunities for an expanded role

The APRM country review process shares some similarities with the current climate paradigm, notably, NDC implementation and the enhanced transparency framework. Akin to the Paris regime, the APRM process is country-driven and lays special emphasis on national ownership and leadership. It also supports constructive dialogue and participatory approaches along with other procedural avenues, which are all opportunities for the APRM for an expanded role on climate reporting and monitoring.

APRM reviews draw from country self-assessments, nationally-defined and updated programmes of action. The principle of differentiated capacities and progress timeframes is embedded in the APRM's operational framework:¹²³

Given the differences of historical context and stages of development, countries will start from different base lines, and will not be expected to reach their highest level of performance at the same time. The rate of progress will also depend critically on the level of commitment and political will of each country to take deliberate steps to realise its vision.

122 The lack of access to information in APRM implementation has on numerous occasions been criticised. See eg Manby (n 24) 28; Y Turianskyi 'African peer review: Progress is being made, but there are problems' *The Conversation* 12 March 2019, <https://theconversation.com/african-peer-review-progress-is-being-made-but-there-are-problems-113048> (accessed 10 November 2020).

123 Para 1.4 Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (n 91).

In practice, this is reflected in the provision for a base review within 18 months of the accession of a new participating state, which allows the country to develop its plan of action based on its particular circumstances.¹²⁴ Participation in APRM review processes would therefore be particularly apt to refine and sophisticate African states' implementation of NDCs and transparency-related obligations under the Paris regime. In this wise, the participation of vulnerable populations disproportionately affected by climate change is crucial as it will enable them to share their lived experiences in relation to climate change and how they wish it to be addressed, a possibility that can bring climate justice and human rights to the centre of the process.

Also, a similar feature to the Paris regime is the APRM's leaning to capacity building and support needs. The review process rests on 'constructive dialogue' among participating states: 'Participating countries will encourage and support each other and exercise constructive peer dialogue and persuasion where necessary to ensure that all countries achieve full compliance by a mutually agreed date.'¹²⁵ In fact, ARM Forum deliberations on country review reports often involve discussions of the financial support needs of countries for the implementation of targets and the identification of appropriate financial options. The opportunity for peer exchange on shared challenges, solutions and climate data, through 'constructive dialogue', would also be beneficial to consolidate the African common position on climate change, especially on red-line issues such as loss and damage and compensation.

As described in the introduction to this chapter, climate transparency-related capacity building hinges upon governance and information requirements. Weak governance systems and the lack of political will have proven to hinder NDC implementation and monitoring and reporting on climate commitments. As a mechanism seeking to enhance governance practices across the continent, the APRM would be useful for understanding country-specific structural issues impeding progress.

Civil society participation constituting one of its guiding principles,¹²⁶ hence the APRM process provides the rare opportunity for a multi-stakeholder approach to climate action monitoring and reporting.

124 Para 17 APRM Base Document (n 79).

125 Para 1.4 Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (n 91).

126 Para 1.3 Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (n 91); APRM Guidelines for countries to prepare for and to participate in the African Peer Review Mechanism (n 95) para 13.

Prepared under the guidance of the NGC, numerous national actors are involved in the development of the country self-assessment, including national research institutions.¹²⁷ Country review visits also include consultations with civil society organisations and the private sector.¹²⁸ The participation of various stakeholders in the review process promotes enhanced synergies, likely to boost coordination and coherence in climate action and mainstream human rights implications in the review. Other procedures under the APRM can be relevant in further integrating climate action monitoring and reporting. These include targeted thematic reviews, capacity building and early warning.

The APRM undertakes targeted reviews on specific governance topics in countries. In 2019, for instance, Senegal and Djibouti underwent reviews focusing on mineral resources at the heart of the restructuring of the Senegalese economy and matters relating to decentralisation in Djibouti respectively.¹²⁹ The APRM has identified climate action as a crucial parameter for transformative leadership in Africa;¹³⁰ thematic reviews could serve to further glean relevant issues and measures. The APRM's long-standing partnership with other review mechanisms makes it a strategic actor on climate action monitoring and reporting amidst various international mechanisms. In 2018, for instance, the APRM participated in the UN High-Level Political Forum for the preparation of UN Agenda 2030 VNRs.¹³¹ In this respect, it could play an enhanced role in building countries' technical capacities in implementing national monitoring and reporting mechanisms.

In addition, the PSC has recognised the nexus between climate change and peace and security in Africa. It recently urged the AUC to reinforce climate action mainstreaming in its activities, particularly in early warning and prevention of conflicts and violent crises.¹³² As the APRM has been

127 Revised Assessment Questionnaire (n 113) 3.

128 APRM Base Document (n 79) para 18.

129 APRM 'Annual Continental Report 2018' para 10, <https://www.aprm-au.org/wp-content/uploads/2019/08/APRMANNUALREPORT2018.pdf> (accessed 10 November 2021).

130 APRM & AGA 'The Africa governance report: Promoting African Union shared values' (2019), https://au.int/sites/default/files/documents/36418-doc-eng_the_africa_governance_report_2019_final-1.pdf (accessed 15 July 2021), ch 3 Transformative Leadership 23.

131 Para 31 APRM Annual Continental Report (n 129).

132 PSC 'Report of the PSC on its activities and the state of peace and security in Africa, for the period from February 2019 to February 2020' 33rd ordinary session, 9-10 February 2020, Addis Ababa, Ethiopia, para 208.

mandated to serve as the early warning tool for conflict prevention,¹³³ it would need to undertake a systematic review of climate risks and impacts.

4.2 Challenges against an expanded role

Despite the opportunities, a number of challenges currently preclude a more active role of the APRM in climate action monitoring and reporting. These include the framing of climate issues, the absence of a regional climate instrument, and the lack of effective APRM implementation.

The two tools for facilitating climate action monitoring and reporting in country reviews, the country-self assessment questionnaire and the plan of action, currently do not sufficiently integrate climate action. The latter constitutes only a minor, barely discernible, indicator within environmental management,¹³⁴ neither is it featured among examples of cross-cutting issues, which countries are encouraged to describe in a stand-alone chapter to their self-assessments, and build into their responses under every thematic area.¹³⁵ For the APRM to complement national monitoring and reporting on climate action, climate action should be made more prominent, and relevant targets and indicators, drawn from UN Agenda 2030 SDG 13 and AU Agenda 2063, could be formulated to urge and further enable countries to formulate pertinent responses and actions.

As underlined in part 3.2, the APRM is mandated to review compliance with an expansive range of instruments, including treaties adopted through the AU and other international platforms. Since the APRM is recognised as an AU entity, a regional climate instrument defining relevant state duties would further justify a review of its implementation and allow for further climate action monitoring and reporting. Moreover, even after its revitalisation, concerns over the slow pace of the Mechanism persist. Country reviews continue to be delayed and inconsistent. Nonetheless, the APRM's growing membership and steady political support point to its enduring relevance in the region. The APRM should build upon this momentum, review targets reached under its revitalisation programme for restoration, reinvigoration and renewal and revisit strategic orientations.¹³⁶

133 Decision on the Report of the African Peer Review Mechanism (n 80).

134 Revised Assessment Questionnaire (n 113) 78.

135 Revised Assessment Questionnaire (n 113) 5.

136 'APRM Strategic Plan 2016-2020', <https://www.aprm-au.org/publications/aprm-strategic-plan-2016-2020/> (accessed 15 July 2021).

5 Conclusion

The chapter sought to appreciate the role of the APRM in climate action and determine its prospects as a regional body for enhancing capacity for as well as complementing climate action monitoring and reporting in Africa. It first outlined the climate action monitoring and reporting landscape in Africa, providing a snapshot of national, regional and international mechanisms relevant to African countries. National mechanisms, while underscored in national policies, are not widely implemented. The regional climate regime is fragmented at best, and the lack of a regional treaty as well as the absence of the elaboration of the link between human rights and climate change by the African Commission preclude the setting up of a robust regional mechanism for monitoring and reporting climate action. A number of support mechanisms assist countries in policy implementation and, financing and tracking progress on commitments. However, such support is available to some countries only and can only go so far, if governance systems in climate action remain weak. While at the time of the establishment of the APRM as an initiative tuned to development in Africa, climate action was not foreseen as a priority area, the more recent expansion of its mandate and the recognition of the nexus between development and climate resilience have brought about a definite opportunity for review of climate action by the APRM. The most recent country review report published indicates that climate action has still not featured sufficiently in the country self-assessment, national programme of action or recommendations.

The APRM can be a useful tool for climate action monitoring and reporting, as it mirrors mechanisms under the current international climate architecture. The APRM review process is country-driven and relies on nationally-defined implementation plans and timelines. It is also geared towards capacity building and early warning. In addition to country reviews, the APRM could further mainstream climate action in its thematic reviews, emphasise issues of significance to climate justice and human rights, act as a partner in designing and setting up national monitoring and reporting mechanisms and reinforce its monitoring mandate in the context of the peace and security-nexus.