

# Assessing the effectiveness of the African Peer Review Mechanism and its impact on the promotion of democracy and good political governance

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## Summary

*Since the inception of the African Union, which superseded the now defunct Organisation of African Unity, the legal and political landscapes on the African continent have changed and are set to change further. Unlike the OAU, the AU takes democracy, good political governance and human rights seriously. Democracy and good political governance feature prominently among the objectives and principles of the AU. They are also entrenched in the objectives and principles of the New Partnership for Africa's Development, which is an initiative of the AU devised to accelerate the development of the continent and to pave the way for the African renaissance project championed by many African leaders and intellectuals. The African Peer Review Mechanism was established to assess the extent to which AU member states participating in NEPAD comply with the principles and objectives of NEPAD. Key among them are democracy and good political governance which are stressed in the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance. More than half of the AU member states have to date acceded to APRM and participate in NEPAD. This article aims to assess the effectiveness of APRM and its impact on the promotion of democracy and good political governance in AU member states. It argues that APRM is an unprecedented mechanism in interna-*

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*tional law and African politics. Despite shortcomings and challenges, it has the potential to impact positively on the promotion of democracy and good political governance on the African continent.*

## 1 Introduction

Since the inception of the African Union (AU), which superseded the now defunct Organisation of African Unity (OAU), the legal and political landscapes on the African continent have changed. Unlike the OAU, the AU takes democracy, good political governance and human rights seriously. The many declarations, statements and commitments to this effect made by African leaders over the past five years bear testimony to this.

The rhetoric of democracy and good political governance in Africa reached a climax with the establishment of the New Partnership for Africa's Development (NEPAD).<sup>1</sup> NEPAD received the support of the United Nations (UN) General Assembly, which commended it as an innovative and important development.<sup>2</sup>

The 2001 OAU Lusaka summit established the NEPAD Heads of State and Government Implementation Committee (HSGIC), which was placed under the chairmanship of Olusegun Obasanjo, then President of Nigeria.

At the AU inaugural summit, held in July 2002 in Durban, South Africa, African leaders adopted a Declaration on the Implementation of NEPAD<sup>3</sup> that endorsed the Progress Report and Initial Action Plan<sup>4</sup> and encouraged member states to adopt the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (DDPECG)<sup>5</sup> and to accede to the African Peer Review Mechanism (APRM).<sup>6</sup>

APRM is a self-monitoring mechanism adopted by AU member states within the framework of NEPAD.<sup>7</sup> It aims at promoting democracy and good political governance alongside economic and corporate governance.<sup>8</sup> The APRM Base Document<sup>9</sup> and Memorandum of Understand-

<sup>1</sup> To foster economic development of the continent, OAU Heads of State and Government adopted the Strategic Policy Framework and a new vision for the revival and development of Africa, the New African Initiative (NAI), during the 37th and last session of the OAU Assembly of Heads of State and Government held in July 2001 in Lusaka, Zambia. The NAI later became NEPAD. See AHG/Declaration 1 (XXXVII).

<sup>2</sup> UN General Assembly Declaration A/RES/57/2, A/RES/57/7, A/RES/57/300.

<sup>3</sup> Assembly/AU/Declaration (n 2 above).

<sup>4</sup> AHG/235 (XXXVIII).

<sup>5</sup> n 4 above, Annex I.

<sup>6</sup> n 4 above, Annex II.

<sup>7</sup> n 4 above, para 1.

<sup>8</sup> n 4 above, para 6.

<sup>9</sup> n 4 above.

ing (MOU)<sup>10</sup> were adopted at the 6th summit of the NEPAD HSGIC held in March 2003 in Abuja, Nigeria.<sup>11</sup> APRM was officially launched during the 9th summit of the HSGIC held in Kigali, Rwanda, from 13 to 14 February 2004.<sup>12</sup> The APRM process has been completed for Ghana, Kenya and Rwanda.<sup>13</sup>

As I have argued elsewhere, democracy is a precondition for the success of the African renaissance project endorsed by South Africa's President, Thabo Mbeki, and other African leaders.<sup>14</sup>

With scholars such as Kabongo,<sup>15</sup> Nzongola-Ntalaja,<sup>16</sup> Ake,<sup>17</sup> Hinden,<sup>18</sup> Kaba,<sup>19</sup> Max Liniger-Goumaz<sup>20</sup> and Wiseman,<sup>21</sup> I share the view that, contrary to the Eurocentrist and Afro-pessimist conventional wisdom, democracy is not a Western invention, alien to Africa or at variance with African traditions or culture. Democracy also belongs to Africa and is feasible in Africa.<sup>22</sup>

Against this background, the article assesses the effectiveness of APRM and its impact on the promotion of democracy and good political governance in AU member states.

## 2 Democracy and good political governance in Africa

The debate on democracy and good political governance has assumed

<sup>10</sup> NEPAD/HSGIC/03-2003/APRM/MOU.

<sup>11</sup> n 10 above, para 17.

<sup>12</sup> AMB Mangu 'The changing human rights landscape in Africa: Organisation of African Unity, African Union, New Partnership for Africa's Development and the African Court' (2005) 23 *Netherlands Quarterly of Human Rights* 379-408.

<sup>13</sup> South Africa and Algeria were reviewed during the AU summit in Accra, Ghana, in June-July 2007. However, the review reports have not yet been published.

<sup>14</sup> AMB Mangu *The road to constitutionalism and democracy in post-colonial Africa* (2002) 277-282.

<sup>15</sup> I Kabongo 'Democracy in Africa: Hopes and prospects' in D Ronen (ed) *Democracy and pluralism in Africa* (1986) 35.

<sup>16</sup> G Nzongola-Ntalaja 'The state and democracy in Africa' in G Nzongola-Ntalaja & M Lee (eds) *The state and democracy in Africa* (1997) 246-247.

<sup>17</sup> C Ake *Democracy and development in Africa* (1996) 130, 138, 139.

<sup>18</sup> R Hinden *Africa and democracy* (1963) 2-3.

<sup>19</sup> L Kaba 'Power and democracy in African tradition: The case of Songhay, 1464-1591' in Ronen (n 15 above) 101.

<sup>20</sup> M Liniger-Goumaz *La démocratie, dictature camouflée, démocratie truquée* (1992).

<sup>21</sup> JA Wiseman *Democracy in black Africa. Survival and revival* (1990) 10 186; JA Wiseman 'Introduction: The movement towards democracy' in JA Wiseman (ed) *Democracy and political change in sub-Saharan Africa* (1995) 1-10; JA Wiseman *The new struggle for democracy in Africa* (1996) 157 160-162.

<sup>22</sup> See Ake (n 17 above) 129-159; Hinden (n 18 above) 3-5; Kabongo (n 15 above) 35-39; Kaba (n 19 above) 101; Mangu (n 14 above) 264, 270, 272, 275, 281; Nzongola-Ntalaja (n 16 above) 19-22; D Ronen 'The state and democracy in Africa' in Ronen (n 15 above) 202.

new vigour and more dimension in Africa since the 1980s,<sup>23</sup> especially with the creation of the AU and the launch of NEPAD and APRM.

## 2.1 Democracy and good political governance

### 2.1.1 Democracy

Hoffman, Ihonvbere, Mamdani and Schochet hold that, alongside such concepts as constitutionalism and the state, democracy remains one of the most contested notions of political theory.<sup>24</sup> According to Nwabueze, 'no word is more susceptible of a variety of tendentious interpretations than democracy'.<sup>25</sup>

In Themba Sono's words:<sup>26</sup>

Throughout history, the ideal of democracy has been the mother of all mischief. No concept has spawned such a multitude of devotees as democracy, however contradictorily conceived; nor has one, in the annals of political theory and conduct, been as disfigured, debased, and distorted as this one.

Wiseman deplored the way in which so many governments, of quite different types, choose to describe themselves as democratic. In some cases, the term has even been incorporated into the official names of some states, although it is a noticeable paradox that in most of the cases where this has happened, the states concerned appear significantly undemocratic.<sup>27</sup> Democracy has acquired different, even contradictory, meanings. Even its fiercest enemies have claimed to be democrats and professed their faith in democracy.<sup>28</sup> Democracy has been deified, while wars were waged in its name. Democracy has walked through history surrounded by these paradoxes.<sup>29</sup>

Ronen holds that 'defining democracy is a challenge'.<sup>30</sup> Wiseman adds that many writers have spent their lifetimes teasing out the subtleties and nuances associated with the term democracy. In spite of those endeavours, the absence of a universally-accepted definition remains,

<sup>23</sup> Mangu (n 14 above) 59.

<sup>24</sup> On these 'polemic', 'contested' and 'controversial' concepts in political theory, see J Hoffman *State, power and democracy: Contentious concepts in practical political theory* (1988) 31; GJ Schochet 'Introduction: Constitutionalism, liberalism and the study of politics' in JR Pennock & JW Chapman (eds) *Constitutionalism* (1979) 6; J Ihonvbere *Towards a new constitutionalism in Africa* (2000) 13; M Mamdani 'Social movements and constitutionalism in the African context' in IG Shivji (ed) *State and constitutionalism: An African debate on democracy* (1991) 239.

<sup>25</sup> BO Nwabueze *Constitutionalism in the emergent states* (1973) 1.

<sup>26</sup> T Sono 'Comments on democracy and its relevance to Africa' (1992) 3 *African Perspectives: Selected Works* 29.

<sup>27</sup> Wiseman *Democracy in black Africa* (n 21 above) 4.

<sup>28</sup> Mangu (n 14 above) 172.

<sup>29</sup> D Ronen 'The challenges of democracy in Africa: Some introductory observations' in Ronen (n 15 above) 1.

<sup>30</sup> As above.

and so too does the concept that is still highly contested in analytical and ideological discourse.<sup>31</sup> I do not wish to enter this debate at any length, except to emphasise the two main conceptions of democracy that have dominated the definitional terrain, namely, the minimalist and the maximalist conceptions.

Minimalist conceptions were inspired by liberalism. Democracy was defined as a specific political machinery of institutions, processes and roles<sup>32</sup> that allowed for what Abraham Lincoln<sup>33</sup> referred to as the 'government of the people, by the people, for the people'. The notion of procedural or institutional democracy is of the sort found in Robert Dahl's concept of polyarchy,<sup>34</sup> defined by Sorensen as a political order characterised by competition for government power, political participation in the selection of leaders and policies, and civil and political rights.<sup>35</sup>

In minimalist views, democracy is synonymous with competitive, multiparty and electoral democracy and emphasises civil and political rights. Criticism is levelled against this type of democracy which is considered 'formal',<sup>36</sup> 'bourgeois',<sup>37</sup> 'elite-driven'<sup>38</sup> or 'impoverished'.<sup>39</sup>

The overwhelming majority of African scholars, including Ake,<sup>40</sup> Shivji<sup>41</sup> and Amin,<sup>42</sup> are 'maximalist' and champion a 'substantive', 'popular', and 'people-driven' democracy, which is based on values, constitutionalism and a respect for all human rights and not only civil and political rights. Maximalist scholars go far beyond a purely political democracy to consider social and economic democracy.

This broad definition of democracy is the kind of democracy that African leaders adopted under NEPAD and APRM, wherein democracy

<sup>31</sup> Wiseman *The new struggle* (n 21 above) 7-8.

<sup>32</sup> Ronen (n 22 above) 200.

<sup>33</sup> Quoted by Mangu (n 14 above) 187.

<sup>34</sup> See R Dahl *Polyarchy: Participation and opposition* (1971); R Dahl *Democracy and its critics* (1989) 220-224; G Sorensen 'Democracy and the developmental state' in JE Nyang'oro (ed) *Discourses on democracy in Africa: Africa in comparative perspective* (1996) 42; Wiseman *The new struggle* (n 21 above) 8; Mangu (n 14 above) 176.

<sup>35</sup> Sorensen (n 34 above).

<sup>36</sup> D Glaser 'Discourses of democracy in the South African left: A critical commentary' in Nyang'oro (n 34 above) 270.

<sup>37</sup> R Sandbrook 'Liberal democracy in Africa: A socialist-revisionist perspective' in Nyang'oro (n 34 above) 145; S Amin 'The issue of democracy in the contemporary Third World' in Nyang'oro (n 34 above) 61.

<sup>38</sup> JE Nyang'oro 'Discourses on democracy in Africa' in Nyang'oro (n 34 above) X.

<sup>39</sup> Ake (n 17 above) 132. See also A Olukoshi 'State, conflict and democracy in Africa: The complex process of renewal' in R Joseph (ed) *State, conflict and democracy in Africa* (1999) 457.

<sup>40</sup> Ake (n 17 above) 132-134 137.

<sup>41</sup> IG Shivji 'Contradictory class perspectives in the debate on democracy' in Shivji (n 24 above) 254-255.

<sup>42</sup> Amin (n 37 above) 70.

is defined as a system of governance in which people effectively and meaningfully participate in the decision-making processes that affect their lives and livelihood, and politics as the process by which values, goods and services are allocated in society.<sup>43</sup> Democracy is closely related to, and refers to good political governance.

### 2.1.2 Good political governance

The discourse on 'governance' was developed by the World Bank and the International Monetary Fund (IMF), following the failure of the 'dictatorships of development'<sup>44</sup> that they sponsored in the Third World, in general, and in Africa, in particular.

Hyden held that the language of governance was applied by these financial institutions to serve their narrow purposes.<sup>45</sup> As early as 1987, a World Bank report already related to 'governance'.<sup>46</sup>

In its 1989 report on the prospects for development in sub-Saharan Africa, the World Bank defined governance as the exercise of political power to manage a nation's affairs.<sup>47</sup> It did not refer to 'good' governance or to 'democratic' governance. It is only in a paper presented at a World Bank conference on development economics in 1992 that Boeninger suggested that governance was the same as 'good government'.<sup>48</sup>

Under NEPAD and APRM, governance is defined as 'the art and skill of utilising political or collective power for the management of society at all levels'.<sup>49</sup>

According to the APRM review report on Kenya:<sup>50</sup>

... [T]he practice of good governance is ideally based on, and guided by the existence of a sound democratic constitution that enables the government to manage the affairs of the state effectively while empowering the citizenry to participate in governance and hold the government accountable.

Contrary to what may have happened in the East Asian states — known as the Tigers — where development is said to have been achieved

<sup>43</sup> Country Review Report (CRR) of the Republic of Ghana (Ghana Report) 12 para 2. See [http://www.polity.org.za/article.php?a\\_id=99408](http://www.polity.org.za/article.php?a_id=99408) and <http://www.nepad.org/aprm> (accessed 4 September 2007).

<sup>44</sup> See RL Sklar 'Developmental democracy' in Nyang'oro (n 34 above) 1-30; Mangu (n 14 above) 43-44.

<sup>45</sup> G Hyden 'Governance and the reconstitution of political order' in Joseph (n 39 above) 184.

<sup>46</sup> World Bank *Sub-Saharan Africa: From crisis to sustainable development* (1987).

<sup>47</sup> Hyden (n 45 above) 184.

<sup>48</sup> E Boeninger *Governance and democracy: Issues of governance?* (1992) 24-38; Hyden (n 45 above) 184.

<sup>49</sup> Ghana Report (n 43 above) 12 para 2.

<sup>50</sup> Country Review Report (CRR) of the Republic of Kenya's Report (Kenya Report) 16. See [http://www.polity.org.za/article.php?a\\_id=99422](http://www.polity.org.za/article.php?a_id=99422) and <http://www.nepad.org/aprm> (accessed 4 September 2007).

under some 'benevolent authoritarianism', African leaders acknowledged that development was 'impossible in the absence of true democracy, respect for human rights, peace and good governance'.<sup>51</sup> Good political governance is, therefore, democratic governance, based on respect for the rule of law, the separation of powers, the supremacy of the Constitution, the independence of the judiciary and the promotion of human and peoples' rights.

## 2.2 Democracy and good political governance in the AU Constitutive Act

In the Preamble to the AU Constitutive Act, African Heads of State and Government undertook to 'promote and protect human and peoples' rights, consolidate democratic institutions, and ensure good governance and the rule of law'.<sup>52</sup>

The objectives of the AU include the promotion of 'democratic principles and institutions of popular participation and good governance'<sup>53</sup> as well as the promotion and protection of human and peoples' rights.<sup>54</sup>

The principles of the AU include the following:

- the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity;<sup>55</sup>
- promotion of gender equality;<sup>56</sup>
- respect for democratic principles, human rights, the rule of law and good governance;<sup>57</sup>
- respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;<sup>58</sup> and
- condemnation and rejection of unconstitutional changes of governments.<sup>59</sup>

The AU's emphasis on democracy, good political governance and respect for human rights is unprecedented, as they did not feature in the objectives and principles of the OAU.

<sup>51</sup> NEPAD Declaration para 71.

<sup>52</sup> Preamble AU Constitutive Act.

<sup>53</sup> n 52 above, art 3(g).

<sup>54</sup> n 52 above, art 3(h).

<sup>55</sup> n 52 above, art 4(h).

<sup>56</sup> n 52 above, art 4(l).

<sup>57</sup> n 52 above, art 4(m).

<sup>58</sup> n 52 above, art 4(o).

<sup>59</sup> n 52 above, art 4(p).

### 2.3 Democracy and good political governance under NEPAD

Democracy and good political governance constitute one of the major commitments of NEPAD.<sup>60</sup> They are also reaffirmed in the DDPECG.<sup>61</sup>

As African leaders pointed out:<sup>62</sup>

One of the tests by which the quality of democracy is judged is the protection it provides for each individual citizen and for the vulnerable disadvantaged groups. Ethnic minorities, women and children have borne the brunt of the conflicts raging on the continent today.

In terms of the DDPECG, democracy and good political governance include the following:<sup>63</sup>

- the rule of law;
- respect for individual and collective fundamental human rights and freedoms, including the right to form and join political parties and trade unions, equality before the law and equality of opportunity for all, respect for minorities, women's and children's rights, the right to participate in free, credible and democratic elections to elect leaders for a fixed term of office; and
- adherence to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments.

In support of democracy and good political governance, African leaders agreed to ensure that their respective national constitutions reflect a democratic ethos and provide for demonstrably accountable governance; to promote political representation and the participation of all citizens in the political process in a free and fair political environment; to enforce strict adherence to the position of the AU on unconstitutional changes of government and other decisions of the AU aimed at promoting democracy, good governance, peace and security; to strengthen and, where necessary, to establish an appropriate electoral administration and oversight bodies and provide the necessary resources and capacity to conduct free, fair and credible elections; to reassess and, where necessary, strengthen the AU and its election monitoring mechanism and procedures and to heighten public awareness of the African Charter on Human and Peoples' Rights (African Charter), especially in educational institutions.<sup>64</sup>

Democracy and good political governance also relate to the fight to eradicate corruption, which retards economic development and undermines the moral fabric of society.<sup>65</sup> Stability, peace and security are also considered essential conditions for sustainable development, alongside

<sup>60</sup> Ghana Report (n 43 above) para 1.

<sup>61</sup> DDPECG (n 5 above) para 7.

<sup>62</sup> n 5 above, paras 10-11.

<sup>63</sup> n 5 above, para 7.

<sup>64</sup> n 5 above, para 13.

<sup>65</sup> n 5 above, paras 8 & 14.

democracy, good governance, human rights, social development, protection of environment and sound economic management. Accordingly, African leaders undertook to unite their efforts to prevent, manage and resolve all conflicts in Africa.<sup>66</sup>

In support of good governance, they agreed to:<sup>67</sup>

- adopt clear codes, standards and indicators of good governance at the national, sub-regional and continental levels;
- establish an accountable, efficient and effective civil service;
- ensure the effective functioning of parliaments and other accountability institutions, including parliamentary committees and anti-corruption bodies; and
- ensure the independence of the judicial system to prevent abuse of power and corruption.

To promote and protect human rights, they agreed to:<sup>68</sup>

- facilitate the development of a vibrant civil society, including strengthening human rights institutions at the national, sub-regional and regional levels;
- support the African Charter, the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights;
- strengthen co-operation with the UN Commissioner for Human Rights; and
- ensure responsible free expression, including the freedom of the press.

DDPECG refers to standards and codes of democracy and good political governance, which consist mainly of international and regional human rights instruments. Finally, it stresses the nine objectives of APRM in the area of democracy and good political governance. These objectives include the following:<sup>69</sup>

- prevention and reduction of intra- and interstate conflicts;
- constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, citizens' rights, and supremacy of the Constitution;
- promotion and protection of cultural, civil and political rights;
- upholding the separation of powers, including the protection of the independence of the judiciary and of an effective legislature;
- ensuring accountable, efficient and effective public office holders and civil servants, and promoting the development and participation of civil society and the media;

<sup>66</sup> n 5 above, para 9.

<sup>67</sup> n 5 above, para 14.

<sup>68</sup> n 5 above, para 15.

<sup>69</sup> n 5 above, para 15.

- fighting corruption in the public sphere;
- promotion and protection of the rights of women;
- promotion and protection of the rights of children; and
- promotion and protection of vulnerable groups, including internally displaced persons and refugees.

The APRM process is based on assessing whether an AU member state participating in NEPAD complies with the above standards, codes and objectives.

## 2.4 Democracy and good political governance under APRM<sup>70</sup>

### 2.4.1 Mandate, purpose, and leadership of APRM

The mandate of APRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the DDPECG.<sup>71</sup>

Its primary purpose is to encourage and build responsible leadership through a self-assessment process and constructive peer dialogue, to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and the reinforcement of successful and best practices, including identifying deficiencies and assessing the capacity-building needs of participating countries.<sup>72</sup>

APRM is led by the Committee of Participating Heads of State and Government (APR Forum). The overall responsibility of APRM falls on the Panel of Eminent Persons (APR Panel), who are recognised experts in one of the four thematic areas of APRM appointed by the APR Forum. These experts are persons of high moral stature who have demonstrated a commitment to the ideal of pan-Africanism. The members of the APR Panel lead the Country Review Teams (APR Teams). One of them is appointed the Chairperson of the Panel for a maximum period of five years.<sup>73</sup> The mission and duties of the Panel, as well as reporting arrangements to the APR Forum, are spelled out in a charter that also secures the independence, objectivity and integrity of the Panel.<sup>74</sup>

<sup>70</sup> On APRM, also see Mangu (n 12 above) 391-395; AMB Mangu 'What future for human and peoples' rights under the African Union, New Partnership for Africa's Development, African Peer Review Mechanism and the African Court?' (2004) 29 *South African Yearbook of International Law* 144-151.

<sup>71</sup> n 4 above, para 2.

<sup>72</sup> n 4 above, para 3.

<sup>73</sup> n 4 above, paras 6-8.

<sup>74</sup> n 4 above, para 10. The Charter provided for in the APRM Base Document has not been adopted. This matter is therefore regulated by the Rules of Procedure of the Panel and Secretariat (see NEPAD/HGSIC-3-2003/APRM/Guidelines/O&P of 9 March 2003 <http://www.nepad.org/2005/files/documents/48.pdf> (accessed 4 September 2007)).

The APR Panel ensures the integrity of the review. It is assisted by a secretariat (the APR Secretariat), which should be competent and technically capable to undertake the analytical work that underpins peer review and also conforms to the principles of APRM.<sup>75</sup>

#### 2.4.2 Reviews and stages of APRM

APRM entails periodic reviews of the policies and practices of participating states to ascertain progress made towards achieving mutually-agreed goals and compliance with agreed political, economic and corporate governance values, codes and standards as outlined in the DDPECG.<sup>76</sup>

The cardinal principle of APRM is that every review must be technically competent, credible, and free of political manipulation.<sup>77</sup>

There are four types of reviews under APRM:<sup>78</sup>

- a country review, which is the base review, carried out within 18 months of a country becoming a member of the APRM process;
- a periodic review, which takes place every two to four years;
- a review that can be solicited by a member country for its own reasons in addition to the above; and
- a review that can be instituted by participating Heads of State and Government in a spirit of helpfulness to the government of a participating country where there are early signs of impending political or economic crisis.

APRM is a peer-review process consisting of five stages.<sup>79</sup> Stage one is the preparatory phase, both at the level of the APRM Secretariat and at the national level. It involves a study of the political, economic and corporate governance and development environment in the country to be reviewed.

It is based on up-to-date background documentation prepared by the APRM Secretariat and material provided by national, sub-regional, regional and international institutions.<sup>80</sup>

Under the leadership of the APR Panel, a questionnaire on the four focus areas of APRM is forwarded by the APR Secretariat to the country to be reviewed. The country establishes a Focal Point (a member of the Cabinet) and constitutes an independent National Governing Council (NGC) or a National Commission, consisting of all the stakeholders, to conduct the self-assessment exercise on the basis of the questionnaire, and with the assistance, if necessary, of the APR Secretariat and/or

<sup>75</sup> n 61 above, paras 11-12.

<sup>76</sup> AHG/235 (n 4 above) para 15; APRM MOU (n 10 above) para 5.

<sup>77</sup> n 4 above, para 4; n 10 above, para 12.

<sup>78</sup> n 4 above, para 14; n 10 above, para 13.

<sup>79</sup> n 4 above, paras 18-25; Mangu (n 12 above) 393-394.

<sup>80</sup> n 4 above, para 18.

relevant partner institutions. A Country Support Mission (CSM) is then sent to assist in the preparation of a country self-assessment report (CSAR) and a preliminary programme of action (POA). Both the CSAR and the POA are submitted to the APR Secretariat. During the same period, the APRM Secretariat develops a background document on the country (Country Background Document) and the Country Issues Paper (CIP) on the four thematic areas and cross-cutting themes to guide the country review process. The CIP identifies areas that require further information, as well as major shortcomings and deficiencies and areas for capacity building for further investigation by the Country Review Mission (CRM). This is done through desk research and gathering available, current and pertinent information on the governance and development status of the country in the four assessment areas.

At this stage, the MOU for Technical Assessment and the Country Review Visit are signed between the government of the participating country and the APR Team led by a member of the APR Panel.

Stage two is the Review Team Visit, or CRM, to the country concerned to carry out the widest possible range of consultations with the government, officials, political parties, parliamentarians and representatives of civil society organisations, including the media, academia, trade unions, business, and professional bodies.<sup>81</sup>

During stage three, the Country Review Report (CRR) is drafted on the basis of the briefing material prepared by the APR Secretariat and the information gathered in stage two.<sup>82</sup> The draft CRR is first discussed with the government concerned to ensure the accuracy of the information and to provide the government with an opportunity both to react to the findings and to put forward its own views on how the identified shortcomings may be addressed.

The response of the government is appended to the CRR,<sup>83</sup> which should be clear on a number of points in instances where problems are identified. It must state whether the government is willing to take the necessary decisions and measures to put right any identified shortcomings, what resources are needed to take the corrective measures, how much of these resources the government can provide, how much needs to come from external sources, and how long the process of rectification will take.<sup>84</sup> At this stage, the country finalises its POA, taking into account the conclusions of the draft report.

Stage four begins with the submission of the final CRR, plus the final POA to the APR Forum through the APR Secretariat and the Panel. It ends with the consideration and adoption of the final report, including their decisions in this regard.<sup>85</sup>

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<sup>81</sup> Para 19.

<sup>82</sup> Para 20.

<sup>83</sup> Para 21.

<sup>84</sup> Para 22.

<sup>85</sup> Para 23.

If the government of the country in question shows a demonstrable will to rectify the identified shortcomings, the participating governments will provide whatever assistance they can, as well as urge donor governments and agencies to come to the assistance of the country being reviewed.

If there is no such political will, the APR Forum will do everything practicable to engage reluctant governments in constructive dialogue, offering, in the process, technical and other appropriate assistance. If dialogue proves fruitless, they may wish to put the government on notice of their intention to proceed with appropriate measures by a given date. Such measures are to be utilised only as a last resort.

In the meantime, the government should consider a further opportunity to address the shortcomings identified under a process of constructive dialogue.<sup>86</sup> The anticipated duration of each peer review, from the start of stage one to the end of stage four, is six months, but this has never been adhered to.<sup>87</sup>

Stage five is the final stage of APRM. It is the formal and public tabling of the report in key regional and sub-regional structures, such as the Pan-African Parliament, the African Commission, the Peace and Security Council and the Economic, Social and Cultural Council (ECOSOCC) of the AU. This should happen within six months after the report was considered by the APR Forum.<sup>88</sup> The APRM process as a whole is to be reviewed once every five years.<sup>89</sup>

### 2.4.3 Accession and funding of APRM

Accession to APRM is subject to the signing of the Memorandum of Understanding and the depositing of the signed document at the NEPAD Secretariat. Participation in the APRM process is therefore subject to the signing of the MOU, the notification to the Chairperson of the NEPAD HSGIC and the adoption of the DDPECC.

This will entail an undertaking to be subjected to periodic peer review, as well as to facilitate such review, and be guided by agreed parameters for good political, economic and corporate governance.<sup>90</sup>

The governments of the AU member states under APRM are themselves responsible for the funding of the review of their countries.<sup>91</sup> Subjecting oneself to peer review, and accepting to bear the costs of such a review, even though it may result in adverse findings, is yet evidence that a country is committed to democracy and good governance under APRM.

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<sup>86</sup> Para 24.

<sup>87</sup> Para 26.

<sup>88</sup> Para 25.

<sup>89</sup> Para 28.

<sup>90</sup> Para 5.

<sup>91</sup> Para 27.

### 2.4.5 The first AU member states reviewed

It was expected that Algeria, Egypt, Nigeria, Senegal and South Africa, whose leaders initiated NEPAD, will likewise take the lead and become the first countries to be reviewed. Unfortunately they did not, and this sent the message that even those who are the most vocal about NEPAD and APRM may not be very committed to the process.

Instead, leadership in this regard came from Ghana, the first black and sub-Saharan country to achieve independence in 1957. The CRR described Ghana as a 'country of firsts'.<sup>92</sup> It was followed by Rwanda, which had emerged from genocide, and by Kenya, a country still embroiled in a constitutional process.

The APR process started with the appointment of the members of the NGC to preside over the review process at the national level. It consisted of seven members in Ghana, 50 in Rwanda, and 33 in Kenya.

Ghana presented us with the best practice of NGC. This NGC enjoyed great autonomy and independence and did not comprise any single cabinet member. To safeguard their independence, the members of the NGC were not sworn in by the President, but were inaugurated.<sup>93</sup> Reportedly, other NGCs were *de jure* or *de facto* chaired by a member of the cabinet who tended to exclude or silence other stakeholders, especially civil society, as stated by some of their members.

The APRM teams for Ghana, Kenya and Rwanda were led by Dr Chris Stals, Prof Dorothy Njeuma and Dr Graça Machel, members of the APR Panel of Eminent Persons from South Africa, Cameroon, and Mozambique. CRMs to Ghana, Kenya and Rwanda were fielded from 4 to 16 April 2005 (Ghana), from 18 to 30 April 2005 (Rwanda), and from 3 to 14 October 2005 and 10 to 14 April 2006 (Kenya). The teams consisted of 16 (Ghana), 14 (Rwanda) and 18 (Kenya) members.

The country review of Ghana was finalised at the 3rd APR Forum Summit in Khartoum, Sudan, on 22 January 2006. Kenya and Rwanda were peer reviewed at the 5th APR Forum meeting held in Banjul, The Gambia, on 30 June 2006.

## 3 Assessment of democracy and good political governance in Ghana, Kenya and Rwanda: Findings and recommendations of the APR Panel

The findings and recommendations of the APR Panel for the first three countries to be reviewed were based on NEPAD codes and standards and the nine APRM objectives in the area of democracy and good political governance. The Panel also identified 'overarching' or 'cross-

<sup>92</sup> Ghana Report (n 43 above) 4 para 14.

<sup>93</sup> n 43 above, 5 para 17.

cutting' issues. The governments of the reviewed countries were approached to comment on the APR Panel's reports.

### 3.1 Compliance with APRM codes and standards

The APR Panel found that the three countries had signed or ratified several international treaties with a bearing on democracy and good political governance. However, where ratification occurred, it was not always followed by the incorporation of these instruments into domestic law. On the other hand, treaties were not always enforced when they had been domesticated and the states concerned hardly complied with their reporting obligations on ratification of some instruments.

The CRR found that Ghana had been enthusiastic in acceding to, and ratifying, some regional and global standards and codes, but the country had still to adopt a binding time-frame to accede to, or ratify, outstanding universal and regional instruments such as the African Charter on the Rights and Welfare of the Child (African Children's Charter) (1990), amendments to the AU Constitutive Act (2003), the AU Convention Against Corruption (2003), the AU Non-Aggression and Common Defence Pact (2005), the Protocol on the African Court on Human and Peoples' Rights (1998), the Protocol on the African Court of Justice (2003), and the Protocol on the AU Convention on the Prevention and Combating of Terrorism (2004).

The Panel recommended the ratification of the Optional Protocol to the Convention against Torture (CAT, 2002); the Optional Protocol to the Convention Against All Forms of Discrimination Against Women (CEDAW, 1999); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of the Others (1949); the Convention on the Rights of the Child (CRC, 1995); the UN Convention against Corruption (2003); the UN Convention against Transnational Organised Crime (2000); the Supplementary Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000); the Protocol against Human Trafficking in Women and Children (2000); the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflicts (2000); and the Protocol on the Illicit Manufacturing of and Trafficking in Fire-Arms (2002).

Ghana was also advised to adopt a deliberate plan to clear outstanding arrears and institute a mechanism for automatic compliance with its reporting obligations, to develop a plan and programme to incorporate into Ghana's domestic law the ratified covenants and conventions, so as to make them an integral part of the country's own enforceable standards.<sup>94</sup>

The APR Panel complained that Rwanda had not signed or ratified the International Covenant on Civil and Political Rights (CCPR) First and

<sup>94</sup> n 43 above, 15-16 paras 11-13.

Second Optional Protocols and the Optional Protocol to CEDAW as well as the Statute of the International Criminal Court.

Rwanda also made reservation against the jurisdiction of the International Court of Justice (ICJ) with regard to disputes with other states parties, against freedom of movement of refugees under the UN Refugee Convention and against the African Children's Charter. On the other hand, when international instruments had been incorporated, there was a demonstrable lack of enforcement capacity and the country had not complied with its reporting obligations.<sup>95</sup> For instance, the only report on the implementation of the African Charter was the consolidated report submitted in 2004, many years after its ratification by Rwanda.<sup>96</sup>

In Rwanda, the CRM confirmed that the most common problems in relation to regional and international standards and codes on democracy and good political governance were (a) tardiness in acceding to them; (b) ensuring timely reporting on implementation; and (c) inadequate domestication.

The CRM advised the government of Rwanda to adapt and harmonise its domestic laws to be consistent with its international commitments and to set up an inter-ministerial structure to co-ordinate actions to enhance the rights of its citizens.<sup>97</sup>

Although Kenya had signed and ratified several international conventions, and the Constitution has sought to implement most of the human rights obligations of Kenya, including civil and political rights, Kenya has not yet comprehensively translated its international commitments into domestic laws, particularly the codes and standards dealing with the rights of women, children, refugees and migrant workers. Kenya signed, but did not ratify, the AU Peace and Security Protocol, the AU Convention on Preventing and Combating Corruption and the Protocol on the Rights of Women in Africa.

Kenya has not signed or ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Geneva Convention on the Protection of Civilian Persons in Times of War, the Convention on the Political Rights of Women, the Convention for the Protection of Rights of Migrant Workers and their Families or CEDAW.<sup>98</sup>

### 3.2 Compliance with NEPAD objectives

As pointed out earlier, there are nine NEPAD objectives that should be

<sup>95</sup> CRR of the Republic of Rwanda (Rwanda Report) 32-33 paras 79-83. See [http://www.polity.org.za/article.php?a\\_id=99411](http://www.polity.org.za/article.php?a_id=99411) and <http://www.nepad.gov.rw/aprm.php> (accessed 4 September 2007).

<sup>96</sup> n 95 above, para 80.

<sup>97</sup> n 95 above, para 84.

<sup>98</sup> Kenya Report (n 50 above) 60-61.

achieved by any country under APRM in the area of democracy and good political governance.

### 3.2.1 Prevention and reduction of intra- and interstate conflicts

The CSAR noted that Ghana is a stable country in a neighbourhood that has been characterised by violent conflicts, insecurity and instability, and represents an oasis in an otherwise volatile sub-region.<sup>99</sup>

Ghana was also commended for its contribution to (sub)-regional and international peace-keeping.<sup>100</sup> However, there were several potential and real areas of internal conflict that needed appropriate attention. These include land ownership, land use and chieftaincy. 'Underlying land and chieftaincy disputes were issues of inheritance and succession, which, in turn, [were] due to the absence of uniform and legally enforceable set of governing principles.'<sup>101</sup>

The CRM found that discussions around the first objective were dominated by chieftaincy institutions and their roles.<sup>102</sup> It therefore recommended that the chieftaincy should be more responsive to the needs and demands of the rapidly changing Ghanaian society and to the aspirations of people across the gender divide. It urged that the capacity of the Traditional Houses of Chiefs should be enhanced.

Ghana was also advised to reform its land law in order to provide for easy access to land, and to adopt an action plan to complete the process of accession to, and to ratify outstanding international protocols, particularly those related to human rights.<sup>103</sup>

The CRM commended Rwanda for the establishment of a National Unity and Reconciliation Commission to reconcile its people and advised the government to deepen its national reconciliation effort.<sup>104</sup>

However, the CRM made no recommendation<sup>105</sup> and failed to advise on the prevention and reduction of interstate conflicts in the Great Lakes region, where the CSAR established that Rwanda invaded the DRC twice, and the real causes of its conflict with Uganda remained unclear.<sup>106</sup>

As compared to its neighbours, who are often plagued by civil unrest and insurrections, Kenya was credited with Best Practice as an 'Island and Haven of Peace for the Region'.<sup>107</sup> Nevertheless, the CRM found

<sup>99</sup> n 43 above, 16 para 15.

<sup>100</sup> n 43 above, 17 Box 2.2.

<sup>101</sup> n 43 above, 17 para 17.

<sup>102</sup> n 43 above, 18 para 22.

<sup>103</sup> n 43 above, 19 para 26.

<sup>104</sup> Rwanda Report (n 95 above) 34 37-55 paras 85 & 98-156.

<sup>105</sup> n 95 above, 37 para 98.

<sup>106</sup> n 95 above, 35 para 91.

<sup>107</sup> Kenya Report (n 50 above) 63 Box 3.1.

that internal conflict in Kenya was rife.<sup>108</sup> The Kenyan society remained deeply divided on tribal and ethnic lines and confronted with the issue of managing diversity and with the challenge of building a relevant constitutional framework acceptable by all.<sup>109</sup>

Ethnic politics was responsible for much of the trouble. There have been inequalities between ethnic groups and between Europeans and Asians on the one hand and among Africans on the other.

The CRM recommended that the government should establish a strong and enduring framework for the management of diversity. It also advised the government and political parties to design and engage in conflict resolution mechanisms to reduce factional frictions, build consensus on crucial national issues, defuse ethnic tension and promote tolerance. The government was also required to take legal and administrative steps to remove all forms of discrimination prevailing in Kenyan society.<sup>110</sup>

### **3.2.2 Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, citizens' rights and the supremacy of the constitution**

Under this objective, collated and analysed data in the CSAR indicate that, although the rule of law is a reality in Ghana, some sections of the populace are routinely denied access to justice because they cannot afford legal representation. Due to poverty, the judicial system in Ghana is inaccessible to the majority of the population. The high cost of justice is a serious cause for concern.

The judiciary still suffers from a lack of adequate capacity to administer justice. The availability of office space and courtrooms is a major problem. Budgetary allocations have been insufficient to meet the growing infrastructure needs of the judiciary.<sup>111</sup>

Created in 1992, the Electoral Independent Commission (EIC) suffers from certain deficiencies in institutional capacity that affect the effective performance of its functions.<sup>112</sup> The EIC also suffers from the general perception that it is partisan and in favour of the incumbent government. To the extent that this perception affects its integrity, its efficacy is undermined.

The CSAR also stressed that the pronouncements of the Human Rights Commission (HRC) were not always respected and the government attempted to influence or manipulate its work. The situation of women was also cause for concern.<sup>113</sup>

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<sup>108</sup> n 50 above, 62.

<sup>109</sup> n 50 above, 63 Box 3.1; 62-66.

<sup>110</sup> n 50 above, 62-66.

<sup>111</sup> Ghana Report (n 43 above) 21 para 32.

<sup>112</sup> n 43 above, 22 para 34.

<sup>113</sup> n 43 above, 23 para 37.

Few women hold decision-making positions. Out of 200 members of parliament, only 19 are women, despite the fact that the affirmative action policy of 1998 provided for at least 40% of women. Dr Stals's team found that there was a lack of political will or commitment to gender equality by the political class.<sup>114</sup> The CRM also recommended the lifting of the ban on political party activity in decentralised systems, including political party campaigns on the basis of party affiliations.<sup>115</sup>

In Rwanda, the CRM found that the existence of core aspects of democracy and political freedoms was not clearly visible. There could not be healthy competition for power without equity of access to the political space for all contending political organisations, and the environment was not sufficiently liberal to allow for free and fair competition.<sup>116</sup> The political pluralism entrenched in the Constitution was, *de facto*, impossible.<sup>117</sup>

More resources were recommended for the EIC, and the CRR called on the government to respect the constitutionally-entrenched principle of the secret ballot, which was denied in local elections where voters lined up behind their candidates.<sup>118</sup>

Rwanda was, however, commended for its new Constitution that provides for the sharing of power among political organisations and ethnic groups to deal with the legacy of genocide. A ceiling of 50% is placed on the representation of the majority party in the cabinet and in the Chamber of Deputies to allow for a government of national unity.<sup>119</sup>

In Kenya, the APR Panel confirmed the finding also made in Ghana that the electoral system lacked requisite capacity<sup>120</sup> and there were areas of no respect for, and non-implementation of, the rule of law<sup>121</sup> by the judiciary and the police. The judiciary was not independent, while parliament was subordinate to the executive in law making and could not perform its oversight functions.<sup>122</sup> The president could unilaterally dissolve parliament at any point.<sup>123</sup> Decentralisation has been replaced with 'de-concentration'.<sup>124</sup>

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<sup>114</sup> n 43 above, 23 para 37.

<sup>115</sup> n 43 above, 24 para 42.

<sup>116</sup> Rwanda Report (n 95 above) 39 para 102.

<sup>117</sup> n 95 above, 39-40 paras 103-106.

<sup>118</sup> n 95 above, 40 para 107.

<sup>119</sup> n 95 above, 38 para 101.

<sup>120</sup> Kenya Report (n 50 above) 67.

<sup>121</sup> n 50 above, 68 71.

<sup>122</sup> n 50 above, 71.

<sup>123</sup> n 50 above, 72.

<sup>124</sup> n 50 above, 68 73.

Kenya's political parties are regional, ethnic-based and poorly institutionalised.<sup>125</sup> Internal democracy within political parties is also lacking.<sup>126</sup>

The CRM recommended that a political parties bill be adopted to prohibit the registration of parties based on ethnic, age, tribal, religious or regional membership,<sup>127</sup> but APRM experts stopped short of addressing the question of constitutional reform to provide for the supremacy of the Constitution and the rule of law, the independence of the judiciary, decentralisation, and the effectiveness and autonomy of parliament.

### 3.2.3 Promotion and protection of civil, political, economic and social rights

The CSAR noted that the majority of the elite and household respondents were satisfied with the steps taken to protect civil and political rights in Ghana. However, there were concerns that economic rights were virtually non-existent.<sup>128</sup>

The CRM found that a lot still needed to be done to improve and strengthen human rights, particularly the rights of marginal and vulnerable groups, including women, children and disabled persons.<sup>129</sup>

The CRM recommended that the government should adopt a self-binding plan to ratify all the international human rights treaties, to take measures to domesticate them and to comply with state-reporting obligations towards various treaty bodies. Other recommendations were made to strengthen the Commission on Human Rights and Administrative Justice (CHRAJ).<sup>130</sup>

Rwanda was commended for best practice in promoting the rights to health<sup>131</sup> and access to education.<sup>132</sup> The CRM also advised the government to ensure fair justice under the *Gacaca* system.<sup>133</sup>

The current Constitution of Kenya was blamed for its conspicuous silence on the rights to health, education, food, healthcare, clean and safe environment, and to the preservation of cultural heritage despite the ratification of relevant international instruments such as CESC. <sup>134</sup>

The CRM encouraged the Kenyan authorities to accord economic, social, and cultural rights the necessary recognition and relevance and

<sup>125</sup> n 50 above, 69.

<sup>126</sup> n 50 above, 70.

<sup>127</sup> n 50 above, 76.

<sup>128</sup> Ghana Report (n 43 above) 26 para 46.

<sup>129</sup> n 43 above, 26 para 48.

<sup>130</sup> n 43 above, 27 para 54.

<sup>131</sup> Rwanda Report (n 95 above) 43 para 117, Box 2.1.

<sup>132</sup> n 95 above, 55 para 156, Box 2.3.

<sup>133</sup> n 95 above, 43 para 117.

<sup>134</sup> Kenya Report (n 50 above) 77-84.

the ministry of health to regard private health care providers as well as health-related non-governmental organisations (NGOs) as partners and support them.<sup>135</sup>

### **3.2.4 Upholding the separation of powers, including the protection of an independent judiciary and an effective legislature**

The CRM found that parliament was neither effective nor independent of the executive branch, and parliamentary committees were too weak to provide the much-needed oversight and power to countervail executive power in Ghana<sup>136</sup> and in Kenya (where the President could at any time dissolve parliament).<sup>137</sup>

The CRM rightly recommended that appropriate capacity should be provided to parliamentary committees to enable them to perform their functions efficiently in overseeing and providing effective checks and balances against the executive, as stipulated in the Constitution. The fact that most ministers come from parliament is no reason why it should not be effective or autonomous.

The CRM in Rwanda confirmed the CSAR's finding that, though declared to be independent, the judiciary is in practice an appointee of the executive branch. There is no judicial service commission, but instead the Superior Council of the Judiciary, a powerful body with responsibility to appoint and discipline judges and other judicial officers. This council is presided over by the President of the Supreme Court who is appointed by the President. The CSAR noted that 'instead of separation of powers, there is in fact, fusion of powers' in the hands of the President.<sup>138</sup> The CRM rightly recommended that the Rwandan authorities ensure that the Supreme Court and the judiciary are independent of the executive branch and the bar association should be represented on the Superior Council of the Judiciary.<sup>139</sup> Unfortunately, no finding or recommendation was made in relation to the effectiveness of parliament.

### **3.2.5 Ensuring accountable, efficient and effective public office holders and civil servants, and promoting the development and participation of civil society and the media**

The CSAR and CRM noted a number of obstacles to the emergence of an effective and efficient public service in Ghana.<sup>140</sup> Sexual harassment and issues of gender equality and gender mainstreaming in the public

<sup>135</sup> n 50 above, 84.

<sup>136</sup> Ghana Report (n 43 above) 29 para 63.

<sup>137</sup> Kenya Report (n 50 above) 72.

<sup>138</sup> Rwanda Report (n 95 above) 44 paras 119-120.

<sup>139</sup> n 95 above, 44-45, paras 120-121.

<sup>140</sup> Ghana Report (n 43 above) 31 para 69.

sector were singled out as major problems that should be addressed urgently and vigorously. The development of an enforceable code of conduct for public officials and a policy aimed at mainstreaming gender in the public service were recommended.<sup>141</sup>

The CRM advised that financial, legal, moral and ethical measures should be taken to enable the public service to deliver more effectively and efficiently.<sup>142</sup>

Measures were also recommended to the government of Kenya to fight corruption in the public service and to speed up the strengthening of capacity for investigating and evidencing cases in the Attorney-General's office.<sup>143</sup> Rwanda was commended for its reforms to improve the administration's capacity and for instituting a Civil Service Commission.<sup>144</sup>

### 3.2.6 The fight against corruption in the public sphere

The CRM found that 'corruption is regarded as a major governance problem' in Ghana.<sup>145</sup> It encourages the implementation of the recommendations of anti-corruption bodies and the establishment of a central organ within the government, but independent of it, which would be vested with exclusive jurisdiction to fight corruption.<sup>146</sup> Drastic measures were also proposed to fight rampant corruption in the public sphere in Kenya.<sup>147</sup>

Although Rwanda was commended for its efforts to combat corruption, the CRM advised Rwanda to consider creating an all-embracing institution comprising all existing agencies dealing with corruption, instituting an offence for a false declaration of assets and strengthening the right of access by citizens to administrative documents and information.<sup>148</sup>

### 3.2.7 Promotion and protection of the rights of women

The CRM identified gender equity as one of the overarching issues in Ghana.<sup>149</sup> The CSAR noted that more than half of the Ghanaian population is female and that good governance demands that all people, both men and women, be involved in the development and democratic

<sup>141</sup> n 43 above, 32 para 71.

<sup>142</sup> As above.

<sup>143</sup> Kenya Report (n 50 above) 97.

<sup>144</sup> Rwanda Report (n 95 above) 47 para 128.

<sup>145</sup> Ghana Report (n 43 above) 33 paras 75-76.

<sup>146</sup> n 43 above, 35 para 84.

<sup>147</sup> Kenya Report (n 50 above) 25.

<sup>148</sup> Rwanda Report (n 95 above) 49 para 135.

<sup>149</sup> Ghana Report (n 43 above) 122 paras 6-7.

processes.<sup>150</sup> Women are still victims of domestic violence,<sup>151</sup> and many of their rights are not fully recognised.

The APR Panel recommended that Ghana adopt a binding time frame within which to ratify the 2003 AU Protocol to the African Charter on the Rights of Women in Africa, take additional measures to enforce the law against abusers of women's rights, speed up efforts to enact the Domestic Violence Bill, domesticate CEDAW, increase budgetary allocations to the Ministry of Women and Children's Affairs and other institutions dealing with the protection of women's rights and initiate a policy framework to be implemented over an agreed reasonable time frame in order to bind the government and all political parties to adopt a 40% quota for women in all spheres of society.<sup>152</sup>

Rwanda was commended for best practice in promoting the rights of women.<sup>153</sup> Nearly half (49%) of the seats in the Chamber of Deputies are held by women, an unprecedented representation of women in positions of responsibility in Africa and the largest in the world, a shining model of best practice worthy of emulation.<sup>154</sup>

Nevertheless, the CRM recommended that the government engage in more capacity-building activities to enhance the effectiveness of women parliamentarians.<sup>155</sup> The situation of women in Kenya also deserved improvement.<sup>156</sup>

### 3.2.8 Promotion and protection of the rights of children

The CSAR held that Ghana was the first country in the world to ratify the UN Convention on the Rights of the Child and other relevant instruments. The CRM recommended that Ghana adopt the UN Protocol against Human Trafficking in Women and Children, review the Children's Act to mirror closely international standards on the rights of the child, and adopt a binding time frame within which to accede or ratify UN instruments on the rights of the child. It also suggested that the Minister of Women and Children Administration (MWCA) recommend a policy instrument on behalf of the government for possible representation of the youth in the legislature. 'This could be rationalised on the grounds of affirmative action of the youth constituency in Ghana.'<sup>157</sup>

<sup>150</sup> n 43 above, 35 para 85.

<sup>151</sup> n 43 above, 37 para 94.

<sup>152</sup> n 43 above, 38, para 96.

<sup>153</sup> Rwanda Report (n 95 above) 51-52 para 143, Box 2.2.

<sup>154</sup> n 95 above, 50 para 138.

<sup>155</sup> n 95 above, 51 para 143.

<sup>156</sup> Kenya Report (n 50 above) 107.

<sup>157</sup> Ghana Report (n 43 above) 40 para 105.

Recommendations were also made to the government of Kenya to better promote and protect the rights of the children.<sup>158</sup> The CRM recommended that Rwanda ratify the African Children's Charter to better protect these rights.<sup>159</sup>

### 3.2.9 Promotion and protection of the rights of vulnerable groups, including displaced persons and refugees

The CRM recommended that the international community assist Ghana with the necessary support to cope with the demands of its refugee population, especially women and children, and that Ghana should review its internal capacities and constraints to cater for the rights and needs of internally displaced peoples.<sup>160</sup> Unfortunately, no recommendation was made in relation to ethnic minorities, refugees, migrant workers, the aged, disabled persons, people living with, and children orphaned by HIV/AIDS.<sup>161</sup>

The CRM recommended that the government of Rwanda undertake an in-depth dialogue with the Batwa minority.<sup>162</sup>

### 3.3 Identification and recommendations on over-arching issues

The APR Panel identified some overarching issues related to democracy and good political governance in the reviewed countries.

It clearly demonstrated that Ghana made significant and commendable progress in institutionalising democracy and promoting good governance. Ghanaians have created unique institutions and processes that other African countries might consider emulating or adapting for their own use<sup>163</sup> namely, the Annual Governance Forum<sup>164</sup> and the Peoples' Assembly.<sup>165</sup>

The Forum and Assembly have expanded the political space for ordinary people and have brought the government somewhat closer to them. These institutions have certainly demystified the government, rendering it less abstract and remote. Other examples of best practices that can be emulated include the National Commission for Civil Educa-

<sup>158</sup> Kenya Report (n 50 above) 110.

<sup>159</sup> Rwanda Report (n 95 above) 53 para 149.

<sup>160</sup> Ghana Report (n 43 above) 42 para 111.

<sup>161</sup> n 43 above, 41 para 106.

<sup>162</sup> Rwanda Report (n 95 above) 55 para 156.

<sup>163</sup> Ghana Report (n 43 above) 14 Box 2.1: Dividends of Democracy in Ghana.

<sup>164</sup> The Annual Governance Forum has been held every year since 1998, initially under the auspices of the National Institutional Renewal Programme and Parliament and, more recently, the National Governance Programme. It allows stakeholders to discuss selected issues on democracy and good governance.

<sup>165</sup> The Peoples' Assembly was instituted in 2001 as an annual unstructured interaction between the President and the people. The Peoples' Assembly allows Ghanaians from all walks of life to pose any question to the President.

tion (NCCE)<sup>166</sup> and the Commission for Human Rights and Administrative Justice (CHRAJ).

However, the CRM identified a number of major deficiencies to be addressed by the Ghanaians to achieve the objectives of NEPAD. These deficiencies were found in the practical workings of the Constitution and democracy, the institutional capacities, the delivery of public services, the electoral process and the performance of governance institutions at the various levels of the governance system.<sup>167</sup>

Cross-cutting or overarching issues include the following:<sup>168</sup>

- capacity constraints and the marginalisation of women (gender equity);
- corruption;
- decentralisation;
- land issues (ownership of land, access to land, the transfer and registration of land, the protection of land ownership);
- chieftaincy;
- unemployment (especially unemployment of the youth); and
- external dependency and over-reliance on external policy analysis and aid.

In Rwanda, the promotion of political pluralism and competition of ideas, separation of powers and the protection of the rights of vulnerable groups were originally identified as overarching issues.<sup>169</sup>

The CRM recommended that the government should improve democratic processes, especially political pluralism, and recognise the need for political parties and civil society to operate freely and express competitive ideas for governance within the rule of law. On the other hand, all restrictions on political rights and freedoms should be removed.<sup>170</sup>

Overarching issues in Kenya included the following:<sup>171</sup>

- managing diversity in nation building;
- implementing gaps (poor implementation of government policies and programmes);

<sup>166</sup> The NCCE is constitutionally mandated to create and sustain within the Ghanaian society an awareness of the principles and objectives of the Constitution as the fundamental law of the people of Ghana, and to educate or encourage its people to defend the Constitution. It is intended to promote and consolidate citizenship transparency and accountability in public life. It is competent to formulate programmes for consideration by the government aimed at realising the objectives of the Constitution. It should design, implement and monitor programmes for educating Ghanaians about their citizenship entitlements and responsibilities. See Ghana Report (n 43 above) 22 paras 35-36; 23, Box 2.3: Successful democratic institutions in Ghana.

<sup>167</sup> Ghana Report (n 43 above) 14 para 9.

<sup>168</sup> n 43 above, 121-125.

<sup>169</sup> Rwanda Report (n 95 above) 136 para 439.

<sup>170</sup> n 95 above, 136-137 paras 439-441.

<sup>171</sup> Kenya Report (n 50 above) 23-25.

- constitutional reform and consensus building;
- corruption;
- poverty and wealth distribution;
- land;
- gender equality;
- youth unemployment; and
- transformative leadership.

The CRM found that the lack of a suitable constitution was probably the main challenge to democracy and good political governance in Kenya.<sup>172</sup> Unfortunately, it made no recommendation as to the principles that should underlie the new constitution.

### **3.4 Governments' comments on APR Panel findings and recommendations**

The governments of Ghana, Kenya and Rwanda responded to the APR Panel's reports.

#### **3.4.1 Comments from Ghana**

The best response to a CRR has so far come from Ghana, the first country to complete the peer review process.<sup>173</sup> Instead of objecting to the CRR, Ghana took note and congratulated the APR Panel 'for a report that lives up to the expectations of APRM'<sup>174</sup> and reiterated its commitment to the process.

Moreover, contrary to the comments made by the governments of other countries reviewed so far, Ghana's comments did not come directly from the government of Ghana, but from the NGC on its behalf. The government of President Kufuor involved all the stakeholders and let the NGC that had led the country self-assessment process also comment on the CRR.

Although the APRM instruments provide that comments should come from the government, there is no rule that the NGC and other stakeholders involved in the CSAR should not be involved in the comments.

#### **3.4.2 Comments from Kenya**

The Kenyan government agreed with the panel on a number of comments. It undertook to submit other comments to parliament, making it clear that parliament, which plays a key role in the adoption and domestication of codes and standards and even in the implementation

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<sup>172</sup> n 50 above, 24-25 27.

<sup>173</sup> Ghana Report (n 43 above) Appendix II 129-132.

<sup>174</sup> n 43 above, 129.

of the POA, was actually excluded from the process. This raised the issue of the ownership of the process by the people of Kenya.

### 3.4.3 Comments from Rwanda

The CRR reported that political parties were not able to operate at grassroots level, and pointed out that this amounted to a denial of much of political activity to citizens; and that there was no separation of powers, as the independence of the judiciary was compromised by the fact that the Supreme Council of the Judiciary had no representation from the bar association, and was chaired by the President of the Supreme Court appointed by the President.<sup>175</sup>

The Rwandan government held that the establishment of a consultative forum involved in the activities of political parties was an internal peer review mechanism<sup>176</sup> and that the nomination of the President of the Supreme Council of the Judiciary by the president was not uncommon in democratic regimes. Nor was it arbitrary, since the President nominated two candidates among whom the senate had to choose freely.<sup>177</sup> President Kagame reaffirmed this position in response to the APR Panel's comments during the 5th summit of the HSGIC in Banjul, The Gambia, on 30 June 2006. Comments from the government and the President of Rwanda were appended to the APR Panel's report on this country.<sup>178</sup>

Surprisingly, the APR Panel made and appended its own comments after submission of the CRR to the APR Forum.<sup>179</sup> In their comments, the APR Panel conceded and agreed with the government of Rwanda.<sup>180</sup> So far, this has been the only case where additional comments were received from a government and considered after submission of the CRR to the APR Forum, and where the Panel's comments have been appended to a CRR, making these last-minute comments very controversial for a number of reasons. First, the presence of those comments was not announced in the introduction of the CRR.<sup>181</sup> Second, they should not have been allowed, based on the Panel's own contention that no further comments from a country would be allowed after submission of the CRR to the Forum by the APR Panel.<sup>182</sup> Third, they contradicted some of the findings in both the CSARs and the CRRs. The CSAR earlier found that, although declared to be independent, the

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<sup>175</sup> Rwanda Report (n 95 above) 142-144 paras 3, 4 & 5.

<sup>176</sup> n 95 above, Appendix I.

<sup>177</sup> As above.

<sup>178</sup> As above.

<sup>179</sup> n 95 above, Appendix II.

<sup>180</sup> n 95 above, Appendix II 148-149.

<sup>181</sup> n 95 above, 29 paras 69-70.

<sup>182</sup> n 95 above, v.

judiciary was, in practice, an appointee of the executive branch and instead of separation of powers, 'there is in fact, fusion of powers'.<sup>183</sup>

The CRM also found that restricting the operation of political parties to the guidelines of a consultative forum does indeed restrict political pluralism, and that the existence of core aspects of democracy and political freedom was not clearly visible, and hence no healthy competition for power was possible. The environment was not sufficiently liberal to afford an equal chance for all individuals appropriately qualified to compete and political parties could not operate freely, although authorised *de jure*.<sup>184</sup>

As far as the independence of the judiciary is concerned, the fact that the President nominates both candidates changes very little when the Senate can hardly choose the second nominee due to a lack of autonomy *vis-à-vis* the executive.

The APR Panel's contention that 'the review process is a permanent dialogue rather than a scorecard'<sup>185</sup> was not enough to dismiss altogether its earlier findings or those made by Rwandan stakeholders in the CSAR issued by the National Commission, which has been presided over by the government of Rwanda.

#### 4 Problems and challenges to the success of APRM

With regard to the APRM instruments, the conduct of the APR process, the findings of the NGCs, the conclusions and recommendations of the APR Panel and the comments from the governments of the countries reviewed, APRM is fraught with a number of problems and challenges that need to be addressed urgently to promote and consolidate democracy and good political governance.

First, when assessing compliance with codes and standards, the peer review process consists only of the listing of international conventions, agreements or treaties that have been or should have been signed, ratified and domesticated, without paying attention to their actual enforcement in domestic law.

Second, the nine objectives of APRM could be reduced to six or five, as some seem redundant. The promotion and protection of civil, political, economic and social rights (Objective 3) could, for instance, be dealt with under Objective 2 (Constitutional democracy, including periodical political competition and opportunity for choice, the rule of law, citizen's rights and the supremacy of the constitution) and Objective 7 (Promotion and protection of the rights of women), while the promotion and protection of women's rights could also be considered under

<sup>183</sup> n 95 above, 44 paras 119-120.

<sup>184</sup> n 95 above, 39-40 paras 102-106.

<sup>185</sup> n 95 above, Appendix II 248.

Objective 9 (Promotion and protection of the rights of vulnerable groups).

Third is a critical problem regarding the inclusiveness and broadness of the process. APRM is cabinet-driven and centred. The procedure for the selection of stakeholders to sit on NGCs is unclear. Civil society organisations that are soft on governmental policies are more likely to be selected than those which take a hard stance or are close to the opposition. Universities, research institutions and academics are marginalised.

So far, the NGC that has been the friendliest towards civil society is the NGC of Ghana, which consists exclusively of members of civil society and comprises a former university vice-chancellor, a catholic bishop and a former Chairperson of the Bar Association.<sup>186</sup>

Fourth is the problem regarding the credibility and objectivity of the CSAR, given the dominant role played by the cabinet in the process and the critical issue of its public ownership. NGCs are so cabinet-centred that they even exclude other branches of state authority, such as parliament and the judiciary, despite their respective roles in the adoption of codes and standards, the achievement of NEPAD objectives and the implementation of the POA.

The self-assessment process is instead conducted by the cabinet that chairs the NGC, establishes a focal point, controls the APRM national secretariat, and claims responsibility for the drafting of the CSAR.

NGCs have tended to use the CSARs to showcase what their countries consider — and want the rest of the world to consider — their democratic and good governance credentials in order to get much needed external financial resources. This is wrong, for if African countries had already achieved democracy and good political governance, there would be no need for them to embark on APRM. On the other hand, the popular ownership of APRM would require that all three branches of state authority and the administration be fully involved. However, the people should demand, and receive, ownership of the process. There should be public campaigns, the media should be widely used and the APRM instruments translated in national languages that the people speak and understand. The people must be brought in for APRM to achieve its results. The POAs will never become a reality without the involvement of the people. On the other hand, it is only because of public ownership that the government of the day can be held accountable for compliance with APRM.

At the end of the day, except for that of Ghana, the cabinets of countries have excluded all other stakeholders in commenting on the CRR. The rule that the latter should be made public six months after its consideration by the APR Forum is unfortunate, as it runs counter to the principles of NEPAD and favours authoritarian governance, instead of

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<sup>186</sup> Ghana Report (n 43 above) 5 paras 16-17.

the preferred democratic one characterised by accountability and transparency. Surprisingly, this rule is firmly supported by all AU member states, including the champions of NEPAD.

Another problem, or challenge, relates to the integrity and independence of the APR Panel. Cabinet, which already dominates the self-assessment process, is tempted to manipulate the work and to undermine the independence of members of the APR Panel, who are viewed more as prosecutors than as experts to assist them. When they do not receive the findings and recommendations they expected from the APR Panel, cabinets use their comments to engage in disputes over the accuracy of the information, putting pressure on APR Panel members, who are sometimes compelled to make concessions where CSARs may have concluded on bad political governance. African leaders should not recognise the competence and independence of the APR Panel, and then expect the CRRs to reflect their own views on the quality of their governance.

It is also worth stressing that positions on the APR Panel are never advertised. The mandate of the eminent persons is equally unclear, and so are the criteria for their appointment. Without challenging their integrity and competence, one should admit that the members of the APR Panel and Secretariat are appointed and may also be dismissed by the heads of state and government of the participating countries according to their own criteria.

Accordingly, they are accountable to them and cannot be said to be immune to political pressure from African heads of state and government in the APR Forum, especially those who nominated them. This may affect their independence and integrity if their status is not secured in a binding instrument.

CRRs from the APR Panel are also questionable on a number of grounds. The APR Panel's findings are generally incomplete. The recommendations do not always cover all the findings, nor do they relate to all the areas of deficiency. Some of these recommendations do not touch on 'hard' issues of democratic or good political governance.

The APR Panel commended Kenya as a 'model' of best practice in organising the review process.<sup>187</sup> This was quite surprising, as this was contradicted by many findings in the CSAR and the CRM. Civil society organisations also complained that the CRR had focused on the delivery of services and did not tackle the more challenging task of institutional reform that was vital for the country's democratic transition.<sup>188</sup> The same goes for Rwanda. The APR Panel made no recommendation as to the role the country could play in preventing or reducing interstate conflicts in the Great Lakes region. They also dismissed the findings and recommendations made earlier in the CSAR and CRR on the issues of

<sup>187</sup> Kenya Report (n 50 above) 38.

<sup>188</sup> J Okungu 'Civil society wrong on NEPAD' *The East African* 21-27 May 2007 655 15.

separation of powers, independence of the judiciary, and political pluralism.

Another problem with the CRR is that the APR Panel commended the POAs without questioning their enforceability and enquiring whether the required resources would come from national budgets or from external donors. APRM is costly. Therefore, its funding is a critical issue that should be addressed by African countries. Africans should understand that they cannot long for democracy and good political governance, which is in their best interest, and yet rely on others to pay for it.

Once they sought resources to finance their authoritarian rule, to silence the opposition and confiscate the rights of their people. Now, they should find resources to finance the democratic project. Even if the international community will, and should, assist, APRM should first be funded by Africans themselves.

One of the most serious problems with APRM is that it has no teeth. There are no effective sanctions for the persistent lack of democracy and good political governance in a country. On a number of occasions, leaders of countries participating in NEPAD and APRM, including some of its architects, have been eloquently silent and supportive of colleagues who behave badly in terms of democracy, good governance and human rights or whose elections had been manifestly rigged. This is reminiscent of the criticism once levelled against the OAU, considered a 'club' of authoritarian leaders supporting one another to remain in power. The club mentality seems to have survived in some leaders. Unfortunately, it is not possible for socially responsible African intellectuals, who should be 'organic' intellectuals of their people, to keep quiet when genocide is occurring, when massive human rights violations are being committed, and when democracy and good political governance are being denied to Africa.

The success of APRM will depend on political and intellectual commitment and continental leadership. African Heads of State and Government have already shown leadership by adopting the NEPAD instruments and by endorsing APRM. Such commitment should be sustained throughout the process. They should undertake to adopt all the codes and standards and strive to achieve the NEPAD objectives even if this cannot be achieved overnight.

On the other hand, as recommended in the Bible, those who are 'strong' should assist their 'weak' and take the lead instead of unnecessarily seeking to compromise. This would be in the interest of all. In these endeavours, they will count on a committed intellectual and pan-Africanist leadership that already exists on the continent.

As we have stated time and time again in CODESRIA and other African scientific organisations, there is no reason to entertain a scholarship of silence, compromise or sycophancy just to please our leaders when millions of our people are dying as victims of authoritarianism and bad political, economic, social and corporate governance.

With due respect to their Excellencies, when the continent and its people are suffering and remain underdeveloped, albeit by foreign powers and companies with the complicity of some local leviathans, and when the dream of an African renaissance is being shattered, African intellectuals should tell the truth to those in power and society. Therefore, 'diplomacy' is not part of the academic and scientific language to be used at truly African universities, including the University of South Africa (UNISA), whose motto is 'Towards an African university in the service of humanity'.

Sustained and courageous political and intellectual leadership is critically needed for the success of APRM, for the establishment and consolidation of democratic and developed states in Africa and for an African renaissance.

## 5 Conclusion

APRM is a self-monitoring mechanism established by AU member states to ensure that the policies and practices of the countries participating in NEPAD conform to the agreed political, economic, and corporate governance values, codes and standards contained in the NEPAD Declaration on Democracy, Good Political, Economic and Corporate Governance adopted during the AU inaugural summit in Durban. It is pivotal to NEPAD and the most essential test of its credibility.

Out of the 53 AU member states, 26 have acceded to APRM, which represents 652,5 million (or 73,6%) of the total African population of 886 million. Accordingly, APRM carries the hopes of millions of African peoples after decades of colonialism, apartheid, neo-colonialism, exploitation and disenchantment.

In the current context of our continent, scholarship would be useless and universities irrelevant should they fail to make the most of the opportunities that occur to address the problems confronting our people and fail to contribute to the improvement of their living conditions.

Gone are the days when African intellectuals could accept their leaders' injunction: 'Silence: Development in progress' or 'Silence! We are developing!'<sup>189</sup> when there was no visible sign of development or democratic governance, despite tons of slogans released for popular and foreign consumption. AU, NEPAD and APRM were devised as part of the African renaissance project. As Mamdani argued, 'there can be no African renaissance without an African-focused intelligentsia'.<sup>190</sup>

<sup>189</sup> J Ki-Zerbo 'African intellectuals, nationalism and pan-Africanism: A testimony' in T Mkandawire (ed) *African intellectuals rethinking politics, language, gender and development* (2005) 82.

<sup>190</sup> M Mamdani 'There can be no African renaissance without an African-focused intelligentsia' in W Makgoba (ed) *African renaissance: The new struggle* (1999) 125-134.

Joseph-Kizerbo also insisted on the role of intellectuals in generating the driving force of the African renaissance.<sup>191</sup> This renaissance is not possible without democracy and good political governance implemented as the rule of the political game across the continent.

As far as codes and standards are concerned, the peer reviews of Ghana, Kenya and Rwanda have demonstrated that these AU member states have signed, ratified and domesticated a number of international conventions. This is the case of many other AU member states, despite the fact that some key instruments remain to be signed, ratified or domesticated and states are still to comply with their reporting obligations.

As for the nine NEPAD objectives in the area of democracy and good political governance, African countries have made tremendous progress in the prevention and reduction of intra- and interstate conflicts and in the promotion of constitutional democracy, including periodic political competition, the rule of law, citizens' rights and the supremacy of the constitution. Human rights, including civil, political and economic rights are better promoted than ever before on the continent. There is more respect for the separation of powers, including the protection of an independent judiciary and an effective administration. An accountable and efficient public service is being promoted. Civil society has developed tremendously, and the media has been making an important contribution, while at the same time benefiting from the new environment characterised by the emergence of democracy.

The scourge of corruption in the public sphere is being combated. African leaders show more commitment to the promotion and protection of the rights of vulnerable groups, such as women and children, and internally displaced persons and refugees.

The number of success stories has increased since the beginning of the century. However, there are still many cases of failure characterised by the persistence of conflict and the rise of new ones, the survival of the tropical leviathan, the lack of independence of the judiciary and autonomy of the legislature, the absence of an effective administration and an accountable and efficient public service, and of a strong civil society, rampant corruption in the public sphere, a violation of the rights of citizens and non-citizens, including the rights of women, children, displaced persons, refugees and other vulnerable groups, and by vote rigging.

Ake never minced his words when he criticised the electoral democracies based on vote-rigging and where people were 'voting without choosing'<sup>192</sup> and which Mkandawire labelled 'choiceless democracies'.<sup>193</sup>

<sup>191</sup> Ki-Zerbo (n 189 above) 88.

<sup>192</sup> Ake (n 17 above) 137.

<sup>193</sup> T Mkandawire 'Crisis management and the making of choiceless democracies, in Joseph (n 39 above) 119-136.

In all these areas of deficiency, the APR Panel has made helpful recommendations aimed at improving the situation, even if these recommendations were not always consistent with and appropriate to the findings, and even if some governments attempted to manipulate the process. This is no reason to indulge in Afro-pessimism, particularly rife among non-African policy makers and analysts as well as those quarters of African scholarship which tend to be critical of anything coming out of the continent.

Arguably, the overall objective of NEPAD is to make an assessment and pave the way for a brilliant future for democracy and good governance in Africa. Had the AU member states already achieved democracy and development, then the need to devise NEPAD and its APRM would not have arisen.

Despite criticism, shortcomings and challenges, APRM is an unprecedented development in international law and in comparative constitutional and human rights law. It constitutes yet another contribution by Africa to the development of the law of nations.

For the very first time in the history of international law, states that used to cling to the sacrosanct principles of state sovereignty, independence and non-interference in their respective national affairs, agreed to subject their governance to comprehensive peer review.

To borrow from Barney Pityana, UNISA's Vice-Chancellor and Principal, when he reflected on the African Charter which was adopted by a OAU Assembly of Heads of State and Government, whose leadership could hardly be considered a democratic one, the launching of APRM at a time when these principles continued to be worshipped was yet another 'miracle'.<sup>194</sup>

Under structural adjustment programmes imposed by international financial institutions such as the World Bank and the International Monetary Fund, the review was part of the conditions for foreign aid. It only concerned economic governance and was mainly undertaken by Western experts despatched to Third World countries.

However, under APRM, the review process, which includes democracy and good political governance, is led by Africans, as African leaders whose ears used to be finely tuned to the voices of foreign experts and deaf to local voices, except when they threatened state authority, have come to realise that African experts and 'eminent persons' also exist.

The peer reviews of Ghana, Kenya and Rwanda have demonstrated the effectiveness of APRM. Despite the way the review process was conducted, the findings arrived at and the challenges that remain, the leaders of these three countries should be commended for their

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<sup>194</sup> NB Pityana 'Hurdles and pitfalls in international human rights law: The ratification process of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights' (2003) 28 *South African Yearbook of International Law* 112.

courage and commitment to making Africans believe that this was feasible on the continent.

Arguably, APRM has the potential to impact positively on democracy and good political governance in AU member states. No matter how critical one may be about it, APRM constitutes a step forward on the path to democracy and development in Africa. To achieve this result, deficiencies, shortcomings and challenges need to be recognised and addressed, while best practices, which also exist, should be commended or emulated.

Critical among the challenges are those related to the inclusiveness of the process. It should cease to be government- and state-centred and driven, the integrity and independence of the members of the APR Panel and Secretariat, the question of funding, which should primarily come from Africans themselves, the need for sustained political and intellectual commitment and leadership, and the ownership of the process which should not be left in the hands of African leaders, but rather become and remain the people's and an African affair. Until now, the AU, NEPAD and APRM have proceeded without the people. It is time for the people to be included for them to be truly successful.

As Shivji would warn, confiscating the process from the hands of those who devised it in good faith, to finally make them accountable and to ensure that they deliver on their commitments, will be a 'fight'.<sup>195</sup> Africans have already won many struggles, including the struggles against slavery, colonialism, apartheid and one-party and military rule. There is little doubt that committed, united, informed and driven by informed scholarship produced by African intellectuals and universities, Africa's people will fight and win this struggle for democracy and good political governance. As Joseph and Ake remind us, beyond the instrumentalist versus idealist debate, democracy is good for development, but it is also a matter of survival.<sup>196</sup>

As Pliny the Elder taught centuries ago, *Ex Africa semper aliquid novi* - there is always something new coming out of Africa.<sup>197</sup> APRM is one of these rare, new and good things which have come out of Africa in a century that some of our leaders have vowed to make an 'African century'. As African intellectuals, we should invest in this new era that has begun and work for an African renaissance, which will not be fully possible until development and a respect for democracy and good political governance, featured prominently in the AU, NEPAD and APRM instruments, become a reality.<sup>198</sup>

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<sup>195</sup> IG Shivji *Fight my beloved continent: New democracy in Africa* (1992).

<sup>196</sup> See CI Ake *L'Afrique vers la démocratie* (1991) 1 14; Ake (n 17 above) 138 139; R Joseph 'State, conflict and democracy' in Joseph (n 39 above) 6.

<sup>197</sup> Mangu (n 12 above) 379-380.

<sup>198</sup> n 12 above, 380.