

Development, good governance and South-South cooperation: the African Peer Review Mechanism

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I. Introduction

This chapter analyses the African Peer Review Mechanism (APRM) in the light of the version of the criteria to assess development partnerships prepared by the high-level task force on the implementation of the right to development and submitted to the Working Group on the Right to Development in 2010 (A/HRC/15/WG.2/TF/2/Add.2). After setting the Mechanism in the context of the New Partnership for Africa's Development (NEPAD), it examines the nature and functioning of the Mechanism, explores whether it is a development partnership, and then focuses on the content and process of integrating the right to development into the Mechanism.

II. Africa and the right to development

The African Charter on Human and Peoples' Rights, adopted in 1981, five years before the Declaration on the Right to Development, specifically recognizes the right to development in its article 22:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

In line with this commitment, for several decades African States have taken an active part in debates concerning the strengthening of the concept of the right to development as an international obligation. Indeed, the Declaration on the Right to Development was adopted in 1986 in large part as a result of African support. At the level of the African continent itself, there is also a more recent commitment to action to achieve sustainable development through mobilization of domestic resources and through reform of continental and national institutions supporting governance and development. Among the most important initiatives in this regard are the transformation of the Organization of African Unity into the African Union in 2002 and the adoption by the African Union of many new normative documents, including NEPAD and APRM.

III. The New Partnership for Africa's Development and the African Peer Review Mechanism

A. New Partnership for Africa's Development

The New Partnership for Africa's Development is a strategic framework setting out a "vision for Africa's renewal", initially adopted by African Heads of State

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in 2001 and endorsed by the first Summit of the new African Union held in Durban, South Africa, in 2002.¹ It is an amalgamation of different plans for an “African renaissance” developed by President Thabo Mbeki of South Africa, President Olusegun Obasanjo of Nigeria, President Abdelaziz Bouteflika of Algeria and President Abdoulaye Wade of Senegal, as well as documentation prepared by the Economic Commission for Africa (ECA), and was devised originally as an initiative separate from the creation of the African Union, in part at least to avoid the “lowest common denominator” effect of a continent-wide body. Following many years of discussion on the need for greater integration of the NEPAD initiative into African Union processes and structures, the Assembly of Heads of State and Government of the African Union adopted a decision in February 2010 that approved various measures to ensure greater coordination between NEPAD and the rest of the African Union, as well as renaming the NEPAD Secretariat the NEPAD Planning and Coordinating Agency (NPCA).² However, NPCA remains headquartered in South Africa, distant from the main African Union institutions in Addis Ababa. NEPAD is governed by the Heads of State and Government Orientation Committee (HSGOC) (until February 2010 called the Heads of State and Government Implementation Committee (HSGIC)), made up of three States from each of the African Union’s five regions, which in turn reports to the African Union Assembly. The first Chair of the Committee was President Obasanjo, who handed over to Prime Minister Meles Zenawi of Ethiopia in 2007. A 20-member steering committee of personal representatives of the Heads of State oversees programmes, supported by NPCA, which is seen as a technical body and is supervised by the Chair of the African Union Commission (the Secretariat of the African Union).

The NEPAD document³ focuses primarily on economics: bridging the infrastructure gap and the digital divide; agriculture, science and technology; capital flows; and market access. Its stated aim is to lift Africa

out of poverty; to achieve the average 7 per cent growth rate needed to meet the Millennium Development Goals, for which it estimated that an additional \$64 billion a year, or 12 per cent of Africa’s gross domestic product (GDP), would be needed. In order to achieve this goal, NEPAD emphasizes both the responsibility of Africans and the concept of mutual accountability, i.e., that those who trade with or give aid to Africa have responsibilities of their own. Though much criticized by civil society groups for its neoliberal bent and lack of analytical rigour, and even by some of its original Government supporters (notably President Wade) for failure to deliver, the NEPAD vision has received wide endorsement within Africa and is the official economic development programme of the African Union.

NEPAD explicitly recognizes that “peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development”.⁴ Accordingly, democracy and good governance form the second point of an eight-point agenda, by which “African leaders will take joint responsibility for ... [p]romoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and subnational levels”.⁵ Overall, “[t]he objective of the *New Partnership for Africa’s Development* is to give impetus to Africa’s development by bridging existing gaps in priority sectors in order to enable the continent to catch up with developed parts of the world. The new long-term vision will require massive, heavy investment to bridge existing gaps. The challenge ahead for Africa is to be able to raise the required funding under the best conditions possible. We therefore call on our development partners to assist us in this endeavour.”⁶

The NEPAD document has many weaknesses, but the central recognition of the dependence of economic progress on political good governance is of critical importance: hitherto, many African Governments had been content to blame their economic problems on the history of colonialism and continuing injustice of the international system rather than taking clear responsibility for aspects within their own control. The document does not, however, go on to use concepts of rights-based development or the right to development in its analysis of existing problems and proposals for future action: the NEPAD endorsement

¹ Assembly of Heads of State and Government of the African Union, thirty-seventh ordinary session/fifth ordinary session of the African Economic Community, Lusaka, 9-11 July 2001, Declaration on the New Common Initiative, document AHG/Decl.1 (XXXVII); Assembly of the African Union, first ordinary session, Durban, South Africa, 9 and 10 July 2002, Declaration on the Implementation of the New Partnership for Africa’s Development (NEPAD), document ASS/African Union/Decl.1 (I). The Durban Summit was both the last of the Organization of African Unity and the first of the African Union. The NEPAD Declaration adopted at Durban was adopted by the African Union.

² Decision on the integration of the New Partnership for Africa’s Development (NEPAD) into the structures and processes of the African Union including the establishment of the NEPAD Planning and Coordinating Agency (NPCA), document Assembly/AU/Dec.283(XIV) (2 February 2010).

³ New Partnership for Africa’s Development (NEPAD) (October 2001), available from www.nepad.org.

⁴ *Ibid.*, para. 71.

⁵ *Ibid.*, para. 49.

⁶ *Ibid.*, paras. 65-66.

of human rights is segregated from its discussion of objectives in relation to infrastructure, health or education.⁷

NPCA is not itself an implementing body, and it must work through the African Union's regional economic communities (RECs)—the “building blocks” of African economic integration recognized in the 1991 Abuja treaty establishing the African Economic Community—and other African Union institutions to realize its vision. While it may have been a good decision not to create another new institution with overlapping authority, the ability of NEPAD to act is currently constrained by the lack of will of its collaborating partners to move forward along the same path. The RECs vary greatly in their own institutional capacity and overlap with each other in geographical reach. In operation, NPCA has focused largely on economic matters and development policies, starting with the development of action plans for each of its sectoral priorities, including agriculture, health, capacity development and infrastructure. NEPAD has developed partnerships with international development finance institutions, including the World Bank, the Group of Eight (G8), the European Commission, ECA and others, and with the private sector. After the initial phase, more concrete programmes were developed, including perhaps most prominently the Comprehensive Africa Agriculture Development Programme (CAADP).⁸ Governance issues have been mostly left to the NEPAD companion institution, the African Peer Review Mechanism.

B. African Peer Review Mechanism

In July 2002, the African Union Summit supplemented NEPAD with the Declaration on Democracy, Political, Economic and Corporate Governance. According to the Declaration, the States participating in NEPAD “believe in just, honest, transparent, accountable and participatory government and probity in public life”.⁹ The Declaration sets out an action plan with three main substantive headings: democracy and good political governance; economic and

corporate governance; and socioeconomic development.

The Declaration also committed participating States to establishing an African peer review mechanism, “to promote adherence to and fulfilment of the commitments contained” in the Declaration.¹⁰ The first document describing the mechanism in some detail, adopted at the same summit in July 2002, sets out its mandate as “to ensure that the policies and practices of participating States conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance”.¹¹ On 9 March 2003, HSGIC adopted the Memorandum of Understanding on the African Peer Review Mechanism¹² (hereafter “Memorandum of Understanding”) and six countries signed it right away, bringing it immediately into force. States members of the African Union that do not sign the Memorandum of Understanding are not subject to peer review: APRM is a voluntary process. As of early 2012, 33 countries had signed the Memorandum of Understanding, well over half of the 53 States members of the African Union, representing more than three quarters of Africa's population.¹³

At the same meeting HSGIC also agreed to the establishment of a secretariat for APRM and the appointment of a seven-person “panel of eminent persons” to oversee the conduct of the APRM process and ensure its integrity. In May 2003, HSGIC announced the first seven members of the panel.¹⁴ A member of the panel is assigned to lead the process for each country reviewed, and in particular to head at least two

¹⁰ *Ibid.*, para. 28.

¹¹ *Ibid.*, annex II, para. 1.

¹² Memorandum of Understanding on the African Peer Review Mechanism, document NEPAD/HSGIC/03-2003/APRM/MOU (9 March 2003).

¹³ The countries are, in order of signing: Algeria, Burkina Faso, Congo, Ethiopia, Ghana and Kenya (March 2003); Cameroon, Gabon and Mali (April and May 2003); Benin, Egypt, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa and Uganda (March 2004); Angola, Lesotho, Malawi, Sierra Leone and the United Republic of Tanzania (July 2004); the Sudan and Zambia (January 2006); Sao Tome and Principe (January 2007); Djibouti (July 2007); Mauritania (January 2008); Togo (July 2008); and Liberia (January 2011). The communiqué of the Sixteenth Summit of the APR Forum reported that Cape Verde (which had promised to sign in 2009 but did not complete the formalities at that time), Equatorial Guinea and Niger were expected to sign at that summit (January 2012). A map of participating and applicant States is available at aprm-u.org/aprm-map.

¹⁴ Communiqué issued at the end of the seventh Summit of HSGIC, 28 May 2003. The first set of seven “eminent persons” was Adebayo Adedeji (Nigeria), Bethuel Kiplagat (Kenya), Graça Machel (Mozambique), Mourad Medelci (Algeria, replaced by Mohammed-Séghir Babès when Mr. Medelci took a domestic governmental appointment), Dorothy Njeuma (Cameroon), Marie-Angélique Savané (Senegal) and Chris Stals (South Africa). Ms. Savané was the first Chair, succeeded by her deputy, Ambassador Kiplagat. Dr. Njeuma was in turn Ambassador Kiplagat's deputy and succeeded him as Chair. When Dr. Njeuma became Chair, Professor Adedeji was elected her deputy, and in turn became Chair in July 2007.

⁷ See Bronwen Manby, “The African Union, NEPAD, and human rights: the missing agenda”, *Human Rights Quarterly*, vol. 26, No. 4 (November 2004), pp. 983-1027.

⁸ See Wiseman Nkuhlu, “NEPAD—a look at seven years of achievement: and the challenges on the way forward”, *NEPAD Dialogue* (25 January 2008); “Mayaki reports broad progress on NEPAD priority programmes as 41st meeting of NEPAD Steering Committee opens”, NEPAD Secretariat (22 January 2011); “At the 24th meeting of NEPAD Heads of State and Government Orientation Committee, African leaders put focus on programme delivery”, NEPAD Secretariat (30 January 2011). For these and other news stories on APRM, see the website of the Africa Governance Monitoring and Advocacy Project (AfriMAP), www.afri-map.org.

⁹ Document AHG/235 (XXXVIII), annex I, para. 8.

missions to the country (the “country support mission” at the outset of the process and the “country review mission” when the final report is being prepared). Some members of the panel stepped down during 2008 and 2009, leaving the panel seriously under strength until four new members were appointed in January 2010.¹⁵ Following further retirements, five new panel members were appointed in January 2012, bringing its membership to eight.¹⁶

The founding documents of APRM provided for a robust review process that would insist on remedial measures for identified governance issues. States would undertake to submit to and facilitate periodic peer reviews by a team directed and managed by the eminent persons “to ascertain progress being made towards achieving mutually agreed goals”. The report of the team would be discussed with the Government concerned. This would include establishing whether there is “the will on the part of the Government to take the necessary decisions and measures to put right what is identified to be amiss”. Then, “if the necessary political will is not forthcoming”, there are steps to engage in “constructive dialogue”. Ultimately, “[i]f dialogue proves unavailing, the participating Heads of State and Government may wish to put the Government on notice of their collective intention to proceed with appropriate measures by a given date”. These measures shall be undertaken as a “last resort”. “Six months after the report has been considered by the Heads of State and Government of the participating member countries, it should be formally and publicly tabled” at various regional structures, including the African Commission on Human and Peoples’ Rights.¹⁷ In practice, the tone of the meetings of the Forum of the African Peer Review Mechanism (hereafter “APR Forum”), made up of the Heads of State or Government of all States participating in APRM (a group separate from HSGOC), has been rather less robust, while reporting to other African Union institutions has

been weak (see below). Discontent around the functioning of the APR Forum, especially the selection process for the new members of the Panel of Eminent Persons appointed in 2010, led to the recognition by the Forum in January 2012 of an additional governance structure, the APR Committee of Focal Points, made up of personal representatives of Heads of State and Government participating in APRM, to serve as an intermediary between the APR Forum and the APRM Secretariat.¹⁸

The APRM Secretariat, functioning by late 2003 and also based in South Africa, developed a questionnaire¹⁹ to guide the assessment of participating States’ compliance with the principles of NEPAD and its Declaration on Democracy, Political, Economic and Corporate Governance. The questionnaire was formally adopted in February 2004, in Kigali, at the first meeting of the APR Forum. Recognizing that the NEPAD documents were inadequate in themselves for this task, it drew on a wide range of African and international human rights treaties and standards, including all the African human rights treaties, as well as non-binding documents such as the Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999) and best practices and codes adopted by the World Bank and the International Monetary Fund (IMF). The questions are grouped under four broad thematic headings (based on but expanded from the initial three in the NEPAD Declaration): democracy and good political governance; economic governance and management; corporate governance; and socioeconomic development. While the questionnaire has been the subject of a fair amount of criticism—including that it tries to cover too many issues, has a somewhat confusing structure with questions that often overlap and is unmanageable both for Governments and for civil society organizations seeking to respond to it—it is much more conceptually rigorous and comprehensive in its lines of inquiry around governance than the original NEPAD documents.

In order to implement APRM, several institutions have been established at country level, in accordance with the “country guidelines” issued by the APRM Secretariat. Although these have varied somewhat in form, they include: (a) a national APRM focal point, ideally at ministerial level or in the office of the presidency and reporting directly to the Head of State; (b)

¹⁵ The new panel consisted of Adebayo Adedeji (Nigeria, Chair since 2007), Mohamed-Séghir Babès (Algeria) and Domitilia Mukantanzwa (Rwanda) (appointed in 2009), Akere Tabang Muna (Cameroon), Siteke Mwale (Zambia), Julienne Ondziel-Gnelenga (Congo) and Amos Sawyer (Liberia). Professor Adedeji stepped down as Chair and as a member of the panel at the next meeting of APRF in July 2010. However, his deputy, Graça Machel, who would normally have replaced him, was (controversially) not reappointed as a member of the panel in January 2010 although she had been due to lead a second review of Kenya. Professor Adedeji was instead replaced as Chair by the next most senior member, Professor Babès. Professor Mwale was already ill when appointed to the panel in January 2010 and unfortunately died later that year. The two empty places on the panel were not filled at the 2011 APRF meeting.

¹⁶ The full panel then consisted of: Professor Amos Sawyer (Liberia), replacing Mohamed-Séghir Babès as Chair; Barrister Julienne Ondziel Gnelenga (Congo); Barrister Akere Tabang Muna (Cameroon); Ambassador Professor Okon Edet Uya (Nigeria); Ms. Baleka Mbete (South Africa); Ambassador Ashraf Gamal (Egypt); Dr. Mekideche Mustapha (Algeria); and Ambassador Fatuma Ndingiza Nyirakobwa (Rwanda).

¹⁷ See document AHG/235 (XXXVIII), annex II.

¹⁸ South African Institute of International Affairs, *Governance Perspectives* (February 2010); communiqué of the Sixteenth Summit of the APR Forum (28 January 2012).

¹⁹ Available from www.afrimap.org, in the African Standards section.

a national commission or national governing council, responsible for overseeing the national process and signing off on the documents produced, which should be diverse and representative of a wide range of interest groups and should be autonomous of Government (though not all countries have fully respected this rule); (c) a national APRM secretariat, to provide administrative and technical support to the national commission or governing council, ideally established outside of Government and with an independent budget; and (d) technical research institutions, given the responsibility to administer the APRM questionnaire and carry out background research.²⁰

The work of these institutions results in three important documents:

- (a) The first is a **country self-assessment report** by the country concerned using the APRM questionnaire. The development of this self-assessment is supposed to be highly participatory and managed by the national governing council rather than controlled by the Government, a “national dialogue” about the challenges the country faces. In practice, the record in relation to participation has been mixed, but positive.²¹ The eminent person assigned to the country and representatives of the APR Secretariat visit early during the preparation of the self-assessment to oversee the process and assist in its implementation (the “country support mission”). Once the draft report is completed, it is “validated” at a series of meetings with different stakeholder groups, where presentations are made about the findings and recommendations and comments solicited;
- (b) Based on the self-assessment report, each country prepares a draft **national programme of action (NPoA)** to address the problems identified; this is the second important document at national level. Both documents are then submitted to the APRM Secretariat;

- (c) On the basis of this documentation and separate expert inputs, including one or several “issues papers” as well as information collected during a “country review mission”, the APRM Secretariat coordinates the drafting of a separate “**country review report**”—the third important document—and comments on NPoA. The APRM Secretariat is assisted in this work by technical partners, including the African Development Bank, ECA and the United Nations Development Programme (UNDP), which supply information and also participate in the country missions.

The country review report is submitted to the Government concerned for its comments. The report, with the Government commentary annexed, and the final NPoA are ultimately presented and approved by the APR Forum; six months after this meeting, they are made public. The national programme of action, in practice mostly prepared by the Government, includes a detailed logical framework (logframe) presentation of costed activities and targets to achieve; the APRM Secretariat tries to ensure that this is not just a “wish list” but a serious attempt to cost and prioritize national objectives. The self-assessment report is only made public after the completion of the entire process and at the discretion of the country concerned, and none of those developed so far are easily available.

The country review reports and NPoAs of 13 countries had been published by the end of 2011: Ghana (review carried out by the APR Forum in January 2006); Kenya and Rwanda (July 2006); Algeria, Benin and South Africa (January 2008); Uganda (June 2008); Burkina Faso and Nigeria (October 2008); Lesotho, Mali and Mozambique (June 2009); and Mauritius (July 2010).²² Ethiopia was reviewed at the African Union Summit held in January 2011 and Sierra Leone in January 2012, though neither country review report was yet public by that time. The United Republic of Tanzania and Zambia were expected to be reviewed during 2012, which would bring the total to 17 of the 33 States that had signed the Memorandum of Understanding; other countries that had taken steps towards their self-assessment process included Cameroon, Djibouti and Gabon. However, at least

²⁰ See *African Peer Review Mechanism: Annual Report 2006* (APRM Secretariat, 2007).

²¹ See the guidelines for civil society and national focal points available on the website of the South African Institute of International Affairs (www.saiia.org.za) and the evaluations of the APRM processes available on the AfriMAP website (www.afrimap.org).

²² AfriMAP has published critical reviews of the APRM process in Algeria, Benin, Burkina Faso, Ghana, Kenya, Mauritius, Nigeria, Rwanda and South Africa, compiled in a 2010 report of the Open Society Institute for Southern Africa, *The African Peer Review Mechanism: A Compilation of Studies of the Process in Nine African Countries*; additional reports on Ethiopia, Mali, Mozambique and Uganda were published in 2011 (see www.afrimap.org/ReportTheme/APRM).

10 signatory countries had yet to formally launch their APRM process.

The time taken to complete all these steps has varied greatly: for South Africa eight months elapsed between the country support mission and the country review mission; for Ghana and Rwanda the period was 10 months and for Kenya 14 months; Mauritius was among the first four countries to start the APRM process in 2004 but only completed its review in mid-2010.

The APRM national reviews are funded by the Governments concerned, with assistance from a trust fund managed by UNDP to which bilateral and other donors can make voluntary contributions. The costs of implementation have varied: the Government of Kenya, for example, indicated that the total cost of the self-assessment was about \$1 million. An important review of the APRM process at the sixth Africa Governance Forum (AGF-VI) held in 2006 noted that “[t]he highly consultative nature of the APRM process has been quite expensive for the relatively weaker economies”.²³ To that must be added the costs of the APRM Secretariat and of technical partners to prepare the country review reports, initially estimated at \$15 million for the first three years. Countries that have signed up for review are supposed to contribute a minimum of \$100,000; some have contributed more, while others are in default. As at the end of 2006, the total financial contributions received from member States stood at \$8.8 million; this was equal to 62 per cent of the total contributions to the Mechanism since it was established, with the remaining 38 per cent coming from bilateral and multilateral development partners (largely the Governments of Canada, Spain and the United Kingdom of Great Britain and Northern Ireland, and UNDP).²⁴ The *Annual Report 2008* indicates that the percentages had exactly reversed: of total 2008 income of \$9,880,000, 38 per cent was from member States with bilateral partners contributing 62 per cent.²⁵ The *Annual Report 2010* showed that African States had contributed 70 per cent of the previous year’s income and the European Union the remaining funds (of a total \$3,654,000 for the year). Since 2003, member States had contributed just over \$22 million in total, and bilateral and multilateral partners just over \$15 million. By far the largest

contributions from African States were from Algeria, Nigeria and South Africa, with all other APRM members except for Burkina Faso, Egypt, Ghana, Mali and Mozambique in arrears for their obligations.²⁶ Money paid from member States or development partners is paid into an account managed by the Development Bank of Southern Africa or a trust fund held by UNDP. The African Development Bank, UNDP and ECA fund their own participation in the country missions carried out by APRM and provide other support. For example, during 2010 the African Development Bank provided a grant to support the project to revise the APRM tools and processes, while ECA organized workshops on the role of African parliamentarians in APRM.²⁷

The implementation of the programmes of action resulting from the APRM reviews was not addressed in detail in the APRM founding documents. One result is that the relationship of NPoA to other national development plans is not clear, nor is the extent to which NPoAs actually require new money or consist essentially of plans that are already under way. Calls for the APRM plans to be coordinated with other strategies have resulted in initiatives such as a meeting organized in March 2007 by UNDP, the African Development Bank and ECA to discuss support for the implementation of the plans of action of Ghana, Kenya and Rwanda.²⁸

Countries that have completed the process are supposed to prepare progress reports on the implementation of their NPoA for the APR Forum meetings, and Algeria, Burkina Faso, Ghana, Kenya, Lesotho, Mali, Nigeria, South Africa, Uganda and others have done so. However, these reports are for the most part prepared by the Governments concerned, without the civil society participation prominent earlier in the process, and have often been submitted late; there is no real capacity in the APRM Secretariat for independent monitoring of their content.

In practice, the APRM process is now to a great extent delinked from NEPAD. Although the APRM and NEPAD Secretariats are located close to each other

²³ *Implementing the African Peer Review Mechanism: Challenges and Opportunities*, Report of the Sixth Africa Governance Forum (AGF-VI), Kigali, 9-11 May 2006, p. 37.

²⁴ *African Peer Review Mechanism: Annual Report 2006* (APRM Secretariat, 2007).

²⁵ *African Peer Review Mechanism: Annual Report 2008* (APRM Secretariat, 2009).

²⁶ *African Peer Review Mechanism: Annual Report 2010* (APRM Secretariat, 2011). Bilateral contributions over the period 2003-2010 came from Canada, Germany, Italy, Spain, Switzerland and the United Kingdom, and multilateral contributions from the African Development Bank, UNDP and the European Union.

²⁷ See “New Partnership for Africa’s Development: eighth consolidated progress report on implementation and international support: report of the Secretary-General” (A/65/167); these reports are available on the website of the United Nations Office of the Special Adviser on Africa.

²⁸ See the report of the Secretary-General on United Nations system support for the New Partnership for Africa’s Development (E/AC.51/2007/4); see also *Implementing the African Peer Review Mechanism: Challenges and Opportunities*, p. 38.

in Midrand, South Africa, there is not a great deal of communication between them. The APRM founding questionnaire relies only to a limited extent on the NEPAD documents, ranging much wider for the standards and sources of best practice that inform the assessment process. The eminent persons operate independently of the NEPAD Secretariat and the NEPAD HSGOC. And the focus of the APRM reports is not on the “big-ticket” infrastructure issues that have come to dominate the NEPAD programme but on the machinery of Government itself and on domestic accountability for resource management.

In November 2007, the APRM Secretariat hosted a workshop in Algiers at which it was announced that the APRM questionnaire and other documents would be reviewed by the Secretariat and other stakeholders.²⁹ An extraordinary summit of the APR Forum was convened in Benin in October 2008 to discuss a number of cross-cutting issues emerging from the first APRM country review reports: managing diversity and xenophobia; elections; resource control and management; land; and corruption.³⁰ In early 2010, the APRM Secretariat issued a call for submissions to the Project for Streamlining and Fast Tracking the Implementation of the African Peer Review Mechanism.³¹ However, these review processes had yet to bear fruit in the form of a published revision of the APRM questionnaire and process by early 2011, when another workshop on cross-cutting issues was announced.³²

²⁹ The workshop brought together those involved in APRM assessments at the national level, the members of the eminent persons panel, representatives of the APRM Secretariat and technical partners. The aim of the meeting was to carry forward the recommendations of AGF-VI held in Kigali in May 2006, with a view to presenting revisions to the questionnaire and other documents for adoption by the APR Forum at the African Union Summit in January 2008. See “APRM Secretariat gears up for major implementation workshop in Algiers”, *NEPAD Dialogue* (19 October 2007).

³⁰ The final communiqué of the Extraordinary Summit of the APR Forum held in Cotonou on 25 and 26 October 2008 and other reports of the meeting are available in the News section of the AfriMAP website (www.afri-map.org/newsarchive.php). A number of other cross-cutting issues have also been identified, including poverty and inequality, violence against women and gender inequality, violence against children, external dependency, crime and xenophobia, transformative leadership, constitutionalism, chieftaincy, political pluralism and competition for ideas, reform and modernization of Government, spatial inequality and environmental degradation, unemployment, capacity constraints, and poor service delivery. The original APRM questionnaire also identified cross-cutting issues which, however, are slightly different: poverty eradication, gender balance, decentralization, country capacities to participate in APRM, access to and dissemination of information, corruption, broad-based participation, and sustainability in financial, social and environmental issues.

³¹ The call for papers requested inputs on seven interrelated components: revision of the APRM methodology and processes (assignment A); revision of the APRM assessment questionnaire (democracy and political governance) (assignment B1); revision of the APRM assessment questionnaire (economic governance and management) (assignment B2); revision of the APRM assessment questionnaire (corporate governance) (assignment B3); revision of the APRM questionnaire (socioeconomic development) (assignment B4); development of an NPoA monitoring and evaluation framework (assignment C); and elaboration of modalities for enhancing the participation of civil society in the African Peer Review Mechanism (assignment D).

³² Communiqué of the Fourteenth Summit of the APR Forum (4 February 2011). The Validation Workshop on the Revised Questionnaire was held in March in Johannesburg, South Africa. The results were transmitted to

The Summit of the APR Forum in January 2012 again failed to consider the new questionnaire.³³

In part, this delay may be due to problems at the APRM Secretariat, as well as conflicts dating from 2007 to 2010 between the Chair of the panel and other members and the reduced number of APRM panel members in 2008 and 2009. The manner in which the new panel members were appointed in January 2010 was also contested by some States members of the APR Forum,³⁴ while the new appointees took time to find their feet. In 2009, the APRM Secretariat finally signed a headquarters agreement with the Government of South Africa, in principle enabling long-standing problems with staff contracts and other issues to be resolved; however, by January 2012 APRM had still to be recognized as an autonomous special agency of the African Union, which would allow this agreement to be implemented. Like most other African Union institutions, APRM is woefully understaffed and its existence appears to be ensured only until the next country review and APRM Summit. Moreover, the position of executive secretary, vacant since 2008, had still not been filled by early 2012; an Ethiopian acting director is in place. Financial management at the APRM Secretariat has also been a concern, and as a result development partners gave no money directly to the APRM Secretariat in 2009; the audit of the Secretariat for 2009 was approved only in January 2011, after being the subject of controversy at the July 2010 Summit.³⁵

IV. Is the African Peer Review Mechanism a “development partnership”?

Although NEPAD explicitly calls for development assistance to support its programmes, it is seen by African States and its own Secretariat as an African initiative that is in the first instance concerned with mobilizing African resources and generating African policies and actions. Once these policies are

the Fifteenth Summit of the APRM Forum, held in Malabo in June 2011, where it was decided that the revised questionnaire would be examined at the next summit.

³³ Communiqué of the Sixteenth Summit of the APR Forum (28 January 2012).

³⁴ See South African Institute of International Affairs, *Governance Perspectives* (February 2010).

³⁵ See, for example, the AfriMAP submission to the Project for Streamlining and Fast Tracking the Implementation of the African Peer Review Mechanism (April 2010); Jerry Okungu, “APRM at a crossroads: Where is the African Union leadership?”, *New Vision* (Uganda) (4 September 2009); APRM Secretariat, “APRM Secretariat responds to criticism” (7 October 2009); Steven Gruzd, “Peer review under scrutiny”, *City Press* (Johannesburg) (7 February 2010); Jerry Okungu, “Did Adedeji’s tenure at the APRM derail the African dream?”, *Africa News Online* (17 August 2010).

developed, donors may be asked for assistance as part of the new partnership. The review mechanism that NEPAD set in motion was also developed as a free-standing African initiative to improve continental governance, referring to African-endorsed standards and working in an African context. Indeed, APRM was adopted in part specifically because of suspicion of the governance-monitoring efforts of the World Bank, the European Union, bilateral donors and non-governmental organizations (NGOs) in the United States and Europe such as Freedom House. Those exercises were and are seen as essentially no more than old-fashioned conditionality, externally imposed and without roots in African realities. There is very strong resistance to ranking countries on the basis of the opinions of experts from rich countries, whatever the strength or otherwise of the methodology used.

Thus, APRM has taken on a life of its own in Africa and operates with little reference to development assistance. APRM does not examine development assistance to African countries and the extent to which it may comply with the Paris Declaration on Aid Effectiveness (2005) or other relevant standards: its focus, even more than that of NEPAD, is almost exclusively internal. To that extent, it does not really fit within the "global partnership for development" of Millennium Development Goal 8.

However, APRM provides an interesting and unique example of South-South peer review. No other regional grouping has committed itself to similar peer review on political as well as economic governance issues.³⁶ In this respect, it is an example of a genuine partnership among States of more equal economic power than has generally been the case in the supply of development assistance.

The country review reports and national programmes of action are discussed in plenary session by the Heads of State of all the countries that have signed up for peer review: the Head of State of the country concerned must defend his/her record before his/her peers, responding to the comments of the independent eminent person assigned to lead the reporting on that particular country. In this regard, though APRM could certainly be strengthened in terms of its enforcement powers, and though it may be charged that Heads of State are unlikely to be too hard on one another, the

mechanism provides a useful model for other development partnerships. Even its most powerful participants can potentially be embarrassed, and the accountability does not run only in one direction.

Moreover, that APRM focuses on governance and domestic accountability for resource management makes it a particularly useful tool for examining right to development issues outside the highly politicized debates over the international economic order. APRM was developed not only in a context of full awareness of the many injustices of the international trade, aid and debt regimes, but also by people who were convinced that complaints about these injustices would not in themselves actually help the delivery of development within Africa. Thus, while the fight for international economic reform should continue, African Governments should also be held to account for their own commitments to use the resources that are already at their disposal to deliver respect for the full range of development and governance standards at the national level.

Nevertheless, APRM does of course have links to international trade, aid and debt negotiations. At the outset these links were to a certain degree implicit (and at times they were explicit) in the interactions between the NEPAD initiative and the Group of Eight industrialized nations (G8). In June 2002, in direct response to the adoption of NEPAD, the G8 adopted the Africa Action Plan at the Summit held at Kananaskis in Canada, elaborating and strengthening statements on Africa adopted at previous summits.³⁷ In November 2003, the G8 established the Africa Partnership Forum, in the wake of the Evian Summit, as a way of broadening the existing high-level G8-NEPAD dialogue, to encompass Africa's major bilateral and multilateral development partners.³⁸ The promises made were elaborated and repeated at successive summits, most importantly in 2005 at Gleneagles following the publication of the report of the Commission for Africa appointed by United Kingdom Prime Minister Tony Blair.³⁹ The basic premise appeared to be that the African Heads of State committed to NEPAD would improve governance in their countries and the continent in general (through APRM among other tools); in return, development partners would increase the level and quality of assistance and access they gave to Africa. In that sense, APRM is also relevant to the concept of development partnerships as they are usually understood.

³⁶ Prior to APRM, the Organisation for Economic Co-operation and Development (OECD) had developed the concept of peer review furthest and has put in place mechanisms for a peer review of a range of economic issues, including development assistance. OECD does not, however, review nearly such a wide range of issues. See Fabrizio Pagani, "Peer review: a tool for cooperation and change: an analysis of an OECD working method", OECD, document SG/LEG(2002)1 (11 September 2002).

³⁷ G8 Africa Action Plan adopted on 27 June 2002, Kananaskis, Canada, available from www.g8.gc.ca.

³⁸ See www.africapartnershipforum.org.

³⁹ *Our Common Interest: Report of the Commission for Africa* (March 2005).

Insofar as this more conventional development partnership aspect of the role of APRM is concerned—the quid pro quo of increased aid from the donor countries in return for action on governance within Africa—there were at the outset several distinctly different interpretations on the G8 and African sides of what APRM should achieve. Among the G8 (and, more generally, OECD), the prevalent view seemed to be that the purpose of APRM and similar assessments should be to rate African countries on their governance performance: if a country achieved a certain standard, then it should be rewarded with additional aid. This approach was made explicit in the European Commission’s governance profiles developed beginning in 2006.⁴⁰ The understanding of African Governments, however, is rather that the purpose of APRM is to enable each country to decide for itself what its main challenges are and that development assistance should be awarded to support the process of addressing whatever challenges are identified in the national programme of action. This seems to be the interpretation that would fit much more closely into an analysis from the point of view of the right to development.

V. Integration of the right to development into the African Peer Review Mechanism

The APRM questionnaire that shapes the self-assessment and the country review reports was not developed with the right to development specifically in mind. Nevertheless, a comparison of the questionnaire with the criteria for implementation of the right to development provides some useful insights for both documents. There are two main areas in which APRM could be improved in relation to its commitment to the right to development. The first is the content of the subject matter that it is investigating, and the second is the process by which it carries out its work. On the other hand, the APRM questionnaire addresses some areas in more depth than the right to development criteria, while the process itself holds some lessons for the implementation of the right to development at the international level, in particular the element of independent review of progress towards achieving development goals.

A. Content

The country review reports produced by the APRM process have, if anything, exceeded expectations. There are certainly many points that could be criticized in any one of the reports, both in terms of factual content and in analysis, but on the whole they have been remarkably successful at identifying the key issues facing each country and making recommendations that could begin to address them. While no radically new findings have been made, the reports are forthright in tone, avoiding the usual circumlocutions and politeness of reports by intergovernmental bodies. In South Africa, for example, xenophobia was identified as a key issue, while the challenge of managing diversity was stressed for Kenya; both countries faced violent proof of these issues soon after the reports were published. The national programmes of action are notably weaker. They are drafted by the Government in each case rather than the APRM continental team, and though the continental structures may comment on the drafts with the aim of strengthening them, the Government tends to avoid clear commitments to deal with the most problematic issues. In the case of Kenya, for example, the report decried the lack of independence of the judiciary, and especially the vulnerability to executive influence of the process for the nomination and appointment of judges. Yet the programme of action referred only to “enforcement of judicial reforms and existing administrative measures to ensure members of the bench improve efficiency, accountability and monitoring of judicial functions”. There was no mention of steps to end executive interference and ensure respect for the rule of law.⁴¹

The four headings of the APRM questionnaire used to guide country self-assessments and review reports—democracy and good political governance; economic governance and management; corporate governance; and socioeconomic development—give it many strengths from the right to development perspective. It includes detailed questions related to respect for human rights, good governance, the rule of law and democracy, as well as delivery of socioeconomic development for all sectors of society. These questions address many of the issues identified by the attributes, criteria and indicators recommended by the task force in its report on right to development criteria and operational sub-criteria submitted to the Human Rights Council at its fifteenth session in March 2010 (A/HRC/15/WG.2/FT/2/Add.2). Nevertheless, the process of revising the questionnaire could well

⁴⁰ See European Commission, Communication “Governance in the European Consensus on Development” (30 August 2006), document COM (2006) 421 final, and the working document that accompanied it, document SEC(2006) 1020. See also the AfriMAP commentary on this communication, available at www.afriMAP.org/researchDetail.php?id=20.

⁴¹ See Bronwen Manby, “Was the APRM process in Kenya a waste of time? Lessons that should be learned for the future” (AfriMAP, April 2008).

benefit from a close review of the criteria developed by the task force. At the same time, APRM addresses important issues that the criteria overlook, while the overall organization of the APRM questionnaire into four themes is intuitively easier to follow than the three “attributes” of the 2010 version of the right to development criteria.

1. Democracy and good political governance

The questionnaire opens with the section on democracy and good political governance, in itself an important indication of the priority placed on these issues for the overall development objectives of NEPAD. The first issue to be noted in relation to the content of this section is that the list of “standards and codes” to which States are invited to indicate their adherence is quite incomplete,⁴² and the questionnaire does not ask about cooperation with the monitoring mechanisms for these standards. The absence of these standards also means that important issues have been omitted in the questions in the APRM questionnaire that follow.

This section addresses five broad “objectives” for African States: prevention and reduction of intra- and inter-State conflicts; upholding constitutional democracy, including strengthening the role of the legislature and judiciary; promotion and protection of human rights, including women’s and children’s rights and the rights of vulnerable groups; ensuring accountable, efficient and effective public office holders; and fighting corruption in the political sphere. These would cover many of the issues under the right to development framework,⁴³ and some themes in substantially more detail than put forward in the proposed criteria. For example, the APRM questionnaire asks specific questions about elections and democratic governance. While these could be strengthened with greater reference to international instruments in the area (including the African Union’s own African Charter on Democracy, Elections and Governance, which was adopted in 2007 after the APRM questionnaire was finalized, but built on standards that already existed in 2004), the right to development criteria refer only to participation in a more diffuse sense and could use-

fully borrow from the focus on representative democracy included in the APRM surveys.

There are other important ways in which this section of the APRM questionnaire could be strengthened. Objective three, question 1, in the democracy and good political governance section, is a “catch-all” question, asking “What measures have been put in place to promote and protect economic, social, cultural, civil and political rights as enshrined in African and international human rights instruments?” The breadth of this question is not helpful in prompting a clear response, while the indicators that are provided do not help to shape an analysis of the country situation. This question includes the only mention in the entire questionnaire of freedom of speech, as one in a list of six rights whose recognition by law is to be described (the others are employment, education, health, freedom of religion and housing). There are no follow-up questions relating to freedom of expression more generally, including freedom of the press and broadcast media as well as access to information, nor of freedom of assembly and association. The questions on discrimination also fail to look specifically at issues of discrimination in access to citizenship and to the political rights that follow, except in relation to women’s participation in politics and leadership positions: in many African countries exclusion of marginalized ethnic groups from citizenship rights has been central to political crises and conflict. All of these issues are critical to the development of accountable and responsive Government, and thus the achievement of equitable development outcomes.

2. Economic governance and management

The section of the questionnaire dealing with economic governance and management has five “objectives”: macroeconomic strategies that support sustainable development; transparent, predictable and credible Government economic policies; sound public financial management; fighting corruption and money laundering; and acceleration of regional integration. These objectives would address several of the proposed right to development criteria.⁴⁴

However, the list of standards and codes at the outset of the section again seems lacking in comprehensiveness, and this limited range has affected the questions posed, which are—as has been widely

⁴² For a list, see the AfriMAP submission to the Project for Streamlining and Fast Tracking the Implementation of the African Peer Review Mechanism (April 2010).

⁴³ In particular, 1 (i) “To contribute to an environment of peace and security”; 1 (j) “To adopt and periodically review national development strategies and plans of action on the basis of a participatory and transparent process”; 2 (c) “To ensure non-discrimination, access to information, participation and effective remedies”; and 2 (e) “To promote good governance and respect for the rule of law at the national level” (see A/HRC/15/WG.2/TF/2/Add.2, annex).

⁴⁴ In particular, 1 (b) “To maintain stable national and global economic and financial systems”; 1 (d) “To establish an economic regulatory and oversight system to manage risk and encourage competition”; and 1 (f) “To promote and ensure access to adequate financial resources”.

noted by civil society commentators—quite focused on macroeconomic orthodoxy with little if any attention to distributive justice and broader development issues. In part, this may be because the relationship between the heading of this section and the heading on socioeconomic development is not clear. Although objective one, question 1, refers to “sustainable development”, there is no definition of the term, nor does the guidance on how to answer refer to questions of how models for development are chosen and the environmental constraints that must be considered in national economic planning processes. Neither here nor under the heading on socioeconomic development are Africa’s environmental treaties mentioned.⁴⁵ The right to development criteria are also weak on this point, beyond referring to promoting sustainable management of the environment and the use of natural resources,⁴⁶ reflecting a general failure to reach international consensus on a model for development that ensures that all countries enjoy a fair share of finite planetary resources.

Subsequent questions refer to public financial management, yet do not address many relevant issues, including the well-known challenges of management of primary resource revenues (especially from oil) or development assistance, which between them form a large part of the revenue of many African countries. There are a wealth of resources that could have been drawn on in relation to extractive industry best practice, while the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action would be important source documents on development assistance. Moreover, the questionnaire is notable for not mentioning the process of drafting poverty reduction strategy papers (PRSPs) which, in the context of obtaining debt relief, have been a principal tool for developing national economic policies in many African countries. The proposed criteria on implementing the right to development are also not much help in this regard, since they focus for the most part, understandably, on ensuring that development assistance is provided.⁴⁷

3. Corporate governance

The inclusion of the third section of the APRM questionnaire, on corporate governance, is an important and unusual recognition of the need to hold pow-

erful private sector institutions to account. It examines five objectives, which urge countries to promote an enabling environment for economic activities and at the same time ensure that corporations act as good corporate citizens, respect good business ethics and treat their shareholders, employees, communities, suppliers and customers in a fair and just manner; and to hold corporations, directors and officers accountable for their actions. Notably, the criteria on implementation of the right to development hardly touch upon this issue, beyond calling for an economic system to “manage risk and encourage competition”.⁴⁸

Nevertheless, the APRM questionnaire does not draw as widely as it could on the many relevant standards and codes in this area, including the rapidly increasing number of (largely voluntary) standards that apply to the operations of multinational corporations operating in African countries, for example, the OECD Guidelines for Multinational Enterprises of 2011 or the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) endorsed by the Human Rights Council at its seventeenth session in June 2011.⁴⁹

4. Socioeconomic development

The fourth section of the questionnaire, on socioeconomic development, is perhaps of most interest to the right to development as it has been traditionally understood; indeed, the section on standards and codes does refer to the Declaration on the Right to Development, though once again this list is not exhaustive. It is in this section that questions are asked about outcomes in social and economic rights: health, education and other indicators of relevance to the Millennium Development Goals, including in relation to vulnerable groups. This heading thus covers the largest number of criteria included in the proposals by the task force, especially those under attribute 1, “Comprehensive and human-centred development policy” and attribute 3, “Social justice in development”.⁵⁰ Its six objectives focus on self-reliance in development; poverty eradication; outcomes in key areas of social policy including education and health; access

⁴⁸ Criterion 1(d).

⁴⁹ For a comprehensive list of international principles, see www.business-humanrights.org/Categories/Principles.

⁵⁰ Including 1 (a) “To promote constant improvement in socioeconomic well-being”; 1 (c) “To adopt national and international policy strategies supportive of the right to development”; 1 (g) “To promote and ensure access to the benefits of science and technology”; and 1 (h) “To promote and ensure environmental sustainability and sustainable use of natural resources”; 3 (a) “To provide for fair access to and sharing of the benefits of development”; 3 (b) “To provide for fair sharing of the burdens of development”; 3 (c) “To eradicate social injustices through economic and social reforms”.

⁴⁵ Including the African Convention on the Conservation of Nature and Natural Resources (1968) and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991).

⁴⁶ Criterion 1(h).

⁴⁷ For example, 1(f) “To promote and ensure access to adequate financial resources”.

to water, sanitation, energy, finance, markets, technology, housing and land; gender equality; and broad-based participation in development.

APRM thus makes an important contribution to ensuring accountability in achieving these socio-economic goals that is often not integrated into “governance” assessments (even though they may be the subject of separate reviews). Under this heading, objective one, question 1, asks how national development programmes are designed, adopted and implemented and who participates; this process would allow for discussion of the PRSPs and similar initiatives. Objective six is to “encourage broad-based participation in development by stakeholders at all levels”, and question 1 asks about the mechanisms put in place to achieve this. However, it is unfortunate that these questions are separated from section 2 of the questionnaire on economic governance and management; they are important additions which should be integrated into the questions about economic strategies, not regarded as separate from macroeconomic policy and the other issues dealt with under section 2.

B. Process

Among the most positive aspects of APRM are the insistence in its core documents on broad-based participation in national development strategies in general and its own processes in particular. The role of independent oversight in the shape of the panel of eminent persons and the national governing councils is perhaps the most important innovation within APRM as a development partnership itself; these strengths of the Mechanism could usefully be emphasized for development partnerships more generally. However, APRM still has many weaknesses, notably the lack of mechanisms to ensure that the national programmes of action are integrated into other national planning processes and properly monitored to ensure their effective implementation.

1. Participation and access to information

One of the strengths of the APRM process has been its emphasis on national-level participation in the completion of the self-assessment reports.⁵¹ In this regard, APRM takes good account of the participatory criteria outlined in the right to development criteria.⁵² Each one of the review processes so far has

had weaknesses in this regard, and sometimes major ones; but overall, they have generally provided new space for national dialogue that did not previously exist, especially for civil society groups that are not among the leading policy think tanks invited to other meetings. In some countries, notably Benin, Ghana and Mali, genuinely independent processes were led by respected figures and research was carried out by accomplished and independent research bodies. And even in the countries with a weak tradition of open public debate, such as Algeria, Ethiopia and Rwanda, a (small) space for discussion was opened by APRM that would not otherwise have existed.

Nevertheless, in most of the countries that have implemented APRM the rhetoric has not been fully respected in reality, and Governments have to a greater or lesser extent sought to control the process by limiting the participation of non-State actors. This has been the case even in countries with relatively good democratic credentials, such as South Africa.

Among the weaker aspects of the process has been access to information at all levels, a critical aspect of a rights-based approach to development (and thus also the right to development). Access to and dissemination of information is identified in the APRM questionnaire as one of the cross-cutting issues that require “systematic attention across all areas of the questionnaire”. Yet gaining access to information about APRM implementation itself can be extremely difficult, especially for those who are not directly involved in national processes or who are not among the few organizations that have been able to develop links with the continental structures.

During the key self-assessment phase, access to information made available by implementing Governments has been highly variable. Official national websites and media outreach have varied enormously in quality, and some processes have been quite closed, without easy access to critical documentation. On a positive note, several countries have adapted the questionnaire using non-technical language for use at the national level in focus groups and opinion polls. However, systems for reporting back to those who have made submissions to the self-assessment on how their inputs have been used have been limited, and there has often been confusion between “consulting

⁵¹ On this issue, see, generally, G. Masterson, K. Busia and A. Jinadu, eds., *Peering the Peers: Civil Society and the African Peer Review Mechanism* (Electoral Institute for the Sustainability of Democracy in Africa, 2010).

⁵² Including: 1 (j) “To adopt and periodically review national development

strategies and plans of action on the basis of a participatory and transparent process”; 2 (a) “To establish a legal framework supportive of sustainable human-centred development”; 2 (b) “To draw on relevant international human rights instruments in elaborating development strategies”; and 2 (c) “To ensure non-discrimination, access to information, participation and effective remedies”.

civil society” and “hiring civil society groups as consultants” to implement the self-assessment process, whether as technical research institutes or in another role. The involvement of national parliaments has also been limited, despite the emphasis in principle on democratic governance. Perhaps most importantly, although presentations are made during the national validation process that summarize the content of the draft self-assessment reports, neither these presentations nor the full draft report are made generally available, meaning that there is no way for those who made inputs to see how they were reflected in the report submitted to the APRM Secretariat. The excuse often given—that the material is extremely voluminous and publication not practical—is not a sufficient response to this criticism. The finalized self-assessment reports are only published at the discretion of the authorities conducting the process (for example, in Uganda); indeed, the APRM Secretariat instructs Governments not to publish them until the process is completed and the country review report and NPoA are approved by the APR Forum.

At the continental level, the APRM website⁵³ is out of date, despite at least two redesigns, and fails to include many relevant documents, including APR Forum communiqués, country review reports and core texts (especially the French versions). It is left for the most part to a handful of NGOs to provide useful background information on how the Mechanism is progressing, but these organizations do not have access to all relevant documents.

It is also problematic that the publication of the country review report and NPoA is delayed until six months after the APR Forum meeting that adopts them. In addition, the discussions of the report by Heads of State at the APR Forum are held in camera and are fed back to the national level in a haphazard way, depending on the efforts of independent journalists. Although some of the APR Forum communiqués have included information about the presentations and discussions by Heads of State, it would be desirable for the APR Forum to adopt formal public “concluding observations” on each country review report and plan of action that do not simply report factually on the presentations made but also express the collective view of the Heads of State present on the report and NPoA.

2. Harmonization

Many commentators have noted the potential or actual overlap of the APRM process with other governance and development initiatives in Africa; this was recognized also by the discussions at the sixth session of the APRM Forum on implementation of the Mechanism.⁵⁴ At the moment, however, NPoAs fail to address many of the issues raised by the country review reports, or to give a clear sense of priorities or linkages to ongoing work that is planned through other initiatives. There seems to be little clarity on what their purpose actually is. If they are in fact to be a tool for national development, the APRM programmes of action need to be appropriately integrated and harmonized with other documents such as the PRSPs, “sector-wide approaches” for reform and development assistance, the Millennium Development Goals reporting documents, or the national adaptation programmes of action required under the United Nations climate change regime. For this purpose, it is likely that national planning ministries are best placed to take responsibility within the executive for implementation and reporting on NPoAs. The country review reports (if done well) could be the major source of information for bilateral and multilateral donors, which themselves seek to assess governance performance and support national development.

This need for harmonization relates also to the concept of “policy coherence” among different interactions between the same partners: a human rights and right to development analysis should not only be integrated throughout the APRM assessments themselves, but that analysis should also inform other development strategies that guide Government policy at the national level and interactions between the same partners internationally.⁵⁵ Consensus on the key measures of governance and what needs to be done will greatly help in achieving agreement on a rights-respecting national development framework which development partners can successfully fund.

3. Independent oversight: the eminent persons and the national governing councils

The APRM panel of eminent persons is a unique and positive innovation among systems for monitoring development assistance. Although the record is mixed, some of the eminent persons have not been afraid

⁵³ As of early 2012, at aprm-au.org, with even fewer documents than at the previous address (www.aprm-international.org). The only “annual” reports publicly available – and not on this website – are for 2006, 2008 and 2010. Editor’s note: as at the time of publication, the annual report for 2011 had been posted on the website.

⁵⁴ *Implementing the African Peer Group Mechanism: Challenges and Opportunities*, p. 38. See also Faten Aggad-Clerx, “Addressing the APRM’s national programmes” in *Grappling with Governance: Perspectives on the African Peer Review Mechanism*, Steven Gruzd, ed. (South African Institute of International Affairs, 2010).

⁵⁵ I am grateful to Margot Salomon of the London School of Economics for this point.

to speak out when they have believed that national self-assessment processes have been insufficiently participatory or lacking in content. They have made perhaps the most significant contribution to the process where they have complemented their technical command of the governance issues of APRM with the strong sense of political stewardship that the process requests from them. The competence and credibility of these individuals is thus central to the effectiveness of the APRM reviews.

For this reason, the fact that the panel was left seriously under strength for about two years is a matter of particular concern, as is a lack of clarity in the way in which the vacant places were then filled in January 2010. The APRM procedures relating to the panel's mandate and reporting systems and the appointment and term limits of its members should be formalized on the basis of consultation. As it currently stands, the appointments are made on an ad hoc basis that does not conform to standard procedures for filling other African Union posts. Although the recognition of the APR Committee of Focal Points in January 2012, with responsibility for oversight of the budget process; resource mobilization; liaison between the Secretariat, focal points and partners; and the APRM Trust Fund and audit should improve governance of the process, there remain serious concerns.

At the national level, the establishment of an independent national governing council outside the control of the executive to govern the APRM process and validate the self-assessment reports has also been of key importance, though not occurring in every case. The national governing council is the body that provides strategic policy direction to the implementation of APRM, and it should be autonomous from Government and inclusive of all key stakeholders. It should, in principle, have the key responsibilities during the self-assessment process, commissioning the technical research institutions to do the research, signing off on the final report and hosting the country support and country review missions from the continental structures. The APRM guidelines require the establishment of a national APRM secretariat to provide technical and administrative support to the national governing council. Even where the council has been relatively independent, its secretariat has sometimes been very closely controlled by the Government and this has reduced the freedom to act of those involved in the conduct of the process.⁵⁶

⁵⁶ See the overview chapter in Open Society Institute, *The African Peer Review Mechanism: A Compilation of Studies of the Process in Nine African Countries*.

4. Monitoring and enforcement

Concern has been raised about the voluntary nature of APRM. In favour of this approach is the argument that the countries that have signed up have done so not because they feel compelled, or as an empty exercise (as sadly seems to be the case with many human rights treaties), but because they see real value in the process. The counterargument is that NEPAD is premised on the notion that Africa's development has to be approached from a holistic perspective, and making the APRM voluntary undermines integration efforts.

Similarly, there is discussion among those following APRM about the relative importance of "national ownership"—which everyone agrees is critical for the success of the project—and independent monitoring and enforcement of the Mechanism's findings and conclusions. Certainly, the idea that APRM should issue condemnations of countries' performance in governance in the style of a human rights group or "take action" on the behaviour of recalcitrant Governments is rejected. APRM is not a human rights monitoring body but rather a tool for mutual learning, and there are other, more appropriate African Union institutions for the more obviously critical and political role.

It is in the light of these criticisms that the role of the independent oversight systems is so important. To date, they seem only a partially realized commitment: a model from which international development partnerships in general could learn, but a model that needs strengthening nonetheless.

The fact that Heads of State consider and debate the APRM country review reports and national programmes of action—which are then made public, enabling others also to comment on them—gives them a status and importance across African countries that is not available to any other development or governance assessment process. On the other hand, the fact that the formal debate takes place only before Heads of State means that the process is at risk of political capture by individuals with no interest in seriously addressing the issues at stake.⁵⁷ Civil society groups feel strongly that peer review by fellow Heads of State should be backed up by a greater effort to monitor the performance of a Government against the programmes of action to which they have agreed. It is particularly unfortunate that the national governing councils are often disbanded following the completion

⁵⁷ See, for example, Jerry Okungu, "Kenya passed 'ordeal' with flying colours", *The Nation* (Kenya), 14 July 2006.

of the self-assessment process, and even if they are continued in some form they have had little or no role in preparing or commenting on the progress reports on the NPoA to the APR Forum. Governments have thus for the most part been left to pick and choose the issues that they report on to the Forum, leaving the more difficult issues aside.

There is a lack of follow-up on the reports by other African Union institutions, despite the original commitment made in the APRM founding documents. Although the head of the APRM Secretariat has on occasion reported on the APRM process to the Pan-African Parliament, there is no formal process of validation of the reports and programmes of action by the Parliament, nor do representatives of the Governments concerned appear before the Parliament to answer questions on the findings and recommendations of the reports, though there have been efforts by ECA and others to inform the Parliament about the APRM processes. No APRM review report has been submitted to the African Commission on Human and Peoples' Rights as part of its process of reviewing States' respect for the African Charter.⁵⁸

VI. Concluding remarks

The most important innovation of APRM is the move towards providing more serious accountability for resource allocation and implementation of policy decisions at both domestic and international levels. It is this innovation that makes APRM, whatever its shortcomings, a useful step forward in realizing the right to development in the relationships between Africa and the rich world. If the concerns of content and process raised in this chapter and by others were dealt with, its contribution would be that much stronger.

Both NEPAD and APRM were developed as part of an important process towards strengthening continental integration in both the economic and political spheres, symbolized by the transformation of the

Organization of African Unity into the African Union and the adoption of a range of new commitments by member States. Although the downfall of President Muammar Gaddafi of Libya means that some of the more ambitious projects are no longer on the agenda, the future institutional structures of the African Union and the procedures by which the member States interact with each other are still in development and may have a profound impact on the implementation of NEPAD and APRM, whose status within the African Union has been a subject of debate since it was first established. Significant efforts have been made since 2008 for the development of an "African governance architecture", bringing together the various relevant organs of the African Union in a more coordinated way to create an overall political and institutional framework for the promotion of democracy, governance and human rights in Africa, the relationship of APRM to other African Union structures is still not clear. This lack of clarity has relevance for the impact of APRM in other African Union decision-making forums. Many States also defend national sovereignty in ways that undermine the integrationist ideal, and others are so fragile that their chances of implementing any collective vision are slim.

To date, the verdict on APRM is mixed: though the reports have been more thorough and forthright than many expected and every country reviewed has seen at least some national debate that perhaps would not have taken place, every country has also seen significant weaknesses in the way that research and participation were conducted, and especially in the structures that are supposed to ensure that the issues identified for action are in practice addressed. The greatest test of APRM as a continental and national tool for the improvement of governance, and consequently the realization of the right to development, will be the extent to which the analysis of the country review reports and the action points in the national programmes of action are actually used in practice. On this matter, the jury is still out, and a retreat from some of the initial commitments to a robust process raises concerns that the full potential of this interesting and innovative mechanism will not be fulfilled.

⁵⁸ "APRM countries fail to table reports to African rights body", *Agence de presse africaine*, 13 November 2010, accessed at afrimap.org.

