

## **The New Partnership for Africa's Development: Making the African Peer Review Mechanism Work**

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### **Introduction**

Although Africa's lack of development can largely be attributed to structural factors, there is also no doubt that the continent's lack of development stems from a general failure of Africa's political leadership. Whilst promoting good leadership at national level may be a task fraught with difficulties, I argue that at a continental level, good leadership can be enhanced with the successful implementation by New Partnership for Africa's Development (NEPAD) of its African Peer Review Mechanism (APRM). In this paper, I start by briefly explaining the concept of Peer Review, I then describe the origins of the African Peer Review Mechanism (APRM); its hierarchical structure, the types of reviews envisaged under the APRM; provide a justification for its existence; highlight the contending views on it; and argue for a hybrid model to accommodate all the contending views.

### **The Concept of Peer Review**

Despite the importance of peer reviews, there is surprisingly scant literature on the subject. That notwithstanding, the concept of peer review has its origins in professional bodies and involves two broad areas: the evaluation of proposals and projects by experts and monitoring of state compliance with a provision of a treaty (Ngamau 2004, 540). It involves a systematic examination and assessment of either the performance or practices of a state by other states (peers) or designated institutions (OECD 2003; Pagani 2002; Kanbur 2004). The goal of such reviews is to assist countries being reviewed to improve their policy-making capacities, adopt best practises and comply with established standards and norms. In many ways, a peer review is a discussion among equals and "not a hearing by a superior body that will hand down a binding judgement or punishment" (OECD 2003). Thus by their nature, peer reviews are conducted on a non-adversarial basis and rely heavily on mutual trust among the states involved, as well as their shared confidence in the process (OECD 2003; Pagani 2002). The existence of these factors ensures that peer review creates, through this reciprocal evaluation process a system of mutual accountability. The success or effectiveness of the peer review depends, in large measure, on the level of influence or persuasion that other peers may exert on the country being reviewed. This form of influence or persuasion, known otherwise as "peer pressure" (Pagani 2002; Kanbur 2004) may be executed through a set of recommendations; informal dialogue; public scrutiny; ranking among countries as to their levels of compliance and through domestic public opinion or pressure (Pagani 2002).

## **The Origins of the African Peer Review Mechanism**

The origins of the African Peer Review Mechanism can be traced to the inaugural Summit of the African Union held in July 2002 in Durban, South Africa. At this Summit, the African Heads of State and Government not only adopted the Declaration on Democracy, Political, Economic and Corporate Government<sup>1</sup>, whose primary concern was to foster Africa's socio-economic development through the adoption of better democratic, political and corporate governance practises. They also committed themselves to the implementation of the APRM<sup>2</sup>. It is through the APRM that the commitments contained in the Declaration on Democracy, Political, Economic and Corporate Government are to be promoted<sup>3</sup>.

## **The African Peer Review Mechanism**

The APRM is an instrument voluntarily acceded to by Member States of the AU as an African self-monitoring mechanism (APRM Base Document 2001, paragraph 1). Participation in the APRM is open to all Member States of the AU. In this respect, it is all embracing and does not distinguish between "good" or "bad" states. However, countries wishing to accede to the APRM must first notify the Chairman of the NEPAD Heads of State and Government Implementation Committee (APRM Base Document 2001, paragraph 5) and deposit a signed Memorandum of Agreement (MOU) at the NEPAD Secretariat in South Africa<sup>4</sup>. Once a country has acceded to the APRM, it is bound to submit itself to review unless it terminates its participation in the APRM. The APRM has been tasked with the responsibility of ensuring 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 of Democracy,

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<sup>1</sup> See Paragraph 28 of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (AHG/235 (XXXV111) Annex 1. See also paragraph 17 of the Memorandum of Understanding on the African Peer Review Mechanism (NEPAD/HSGIC/03-2003/APRM/MOU).

<sup>2</sup> See Paragraph 28 the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (AHG/235 (XXXV111) (ibid) . See also paragraph 18 of the Memorandum of Understanding on the African Peer Review Mechanism (NEPAD/HSGIC/03-2003/APRM/MOU) (ibid).

<sup>3</sup> See Paragraph 28 the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (AHG/235 (XXXV111) Annex 1 (ibid)

<sup>4</sup> See Paragraph 30 of the Memorandum of Understanding on the African Peer Review Mechanism (NEPAD/HSGIC/03-2003/APRM/MOU) (supra).

Political, Economic and Corporate Governance (APRM Base Document 2001, paragraph 2). Its primary purpose is 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 reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building (APRM Base Document 2001, paragraph 3). Because its membership is voluntary, there are currently only 22 African countries that have joined the APRM out of a possible 53 countries.

### **The Hierarchical Structure of the APRM**

Under the APRM, there are four distinct organisational components. These include:

- (a) The Committee of Participating Heads of State and Government (The APR Heads of State Forum (APR Forum)). This is the highest decision making authority in the APRM;
- (b) The Panel of Eminent Persons (APR Panel), which oversees the review process to ensure the integrity of the process and considers review reports and makes recommendations to the APR Forum. The Panel is to be constituted by 5 to 7 Eminent Persons<sup>5</sup>;
- (c) The APRM Secretariat (APR Secretariat), which provides the secretarial, technical, coordination and administrative support services for the APRM and
- (d) The Country Review Team (APR Team), appointed only for the period of the country's review visit, which carries out the review process and examines progress made by the reviewed country on its program of action (APRM Organization and Processes 2003, paragraph 1.1 a, b, c and d).

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<sup>5</sup> In terms of paragraph 3.6 of the APRM Organization and Processes, the Eminent Persons must be Africans who have distinguished themselves in careers that are relevant to the work of the APRM. They must be persons of high moral stature and demonstrated commitment to the ideals of Pan Africanism. The composition of the Panel is also to reflect broad regional balance, gender equity and cultural diversity.

## **Types of Reviews under the APRM**

There are basically four types of reviews envisaged under the APRM. These are:

- a) The base review- this is the first country review that is carried out within eighteen months of a country becoming a member of the APRM process;
- b) The periodic review-this takes place every two to four years after the first review;
- c) A member country can, for its own reasons, ask for a review that is not part of the periodically mandated review; and
- d) Early signs of impending political or economic crisis in a member country would also be sufficient cause for instituting a review. Participating Heads of State and Government can call for such a review in a spirit of helpfulness to the country concerned (APRM Base Document 2001, paragraph 14).

## **The Stages of Reviews under the APRM**

The APRM process entails periodic reviews of the policies and practices of participating states to ascertain progress made in achieving mutually agreed goals and compliance with agreed political, economic and corporate governance values, codes and stands as enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance (APRM Base Document 2001, paragraph 15). By this process, it is hoped that countries will consider the impact of their domestic policies, not only on their internal political stability and economic growth, but also the effect of such policies on their neighbours (APRM Base Document 2001, paragraph 16).

Generally, peer review is based on a five-staged process:

- a) The first stage occurs after a country has acceded to the APRM and has signed a Memorandum of Understanding (MOU) on Technical Assessment and Country Review Visit (APRM Organization and Processes 2001, paragraphs 7.1-7.2). This stage involves the reviewed country making available all the information pertinent to the review process. This stage is basically a familiarization stage, which involves a study of the political, economic, and corporate governance development environment of the country to be reviewed. Such a study is based on information

prepared by the APRM Secretariat and or provided by national, sub-regional, regional and international institutions. This first stage ends when the country to be reviewed has provided sufficient information on the country, including the draft Country Program of Action, to the Secretariat and the Secretariat has prepared a background document and issued a paper on the country including the proposal on the APR Team to the APR Panel (APRM Organization and Processes 2003, paragraphs 7.3-7.6).

- b) The second stage constitutes a Country Review Visit by the APR Team. This stage is meant to facilitate consultation between the APR Team, government officials, parliamentarians, political parties, business and civil societies (including the media, academia, trade unions, non-governmental organizations (NGOs), community-base organizations (CBOs), rural communities and representatives of international organizations (APRM Organization and Processes 2003, paragraph 7.8). At this stage, the draft Program of Action of the reviewed country is assessed and discussed with key stakeholders in order to address identified weaknesses and shortcomings in the various areas of governance and development. Challenges facing the reviewed country and the steps needed to address them are also discussed with the relevant stakeholders. A final draft Country Program of Action of the country being reviewed is thereafter drawn containing recommendations on required improvements identified by the APR Team (APRM Organization and Processes 2003, paragraph 7.9-7.11).
- c) The third stage involves the preparation of the APR Team's report, which is based in part on the findings of the Country Review Visit as well as on the findings of the research studies of the APR Secretariat prior to the visit (APRM Organization and Processes 2003, paragraph 7.12). The recommendations made are to focus on how the Program of Action of the country under review can be improved to accelerate the achievement of best practice and standards, and address more effectively the weaknesses identified (APRM Organization and Processes 2003, paragraph 7.13). At this phase, the APR Team's report is discussed with the government of the country being reviewed. This is intended to ensure the accuracy of the information and to provide the government with an opportunity both to react to the accuracy of the information and to put forward their own views on how to address the identified shortcomings, including modifying the draft Program of Action (APRM Organization and Processes 2003, paragraph 7.14).

- d) The fourth stage involves the submission of the APR Team's country review report to the APR Panel by the Secretariat. The APR Panel meets to review the report in accordance with its mandate and submits its recommendations on the report to the APR Forum. Once the latter has received the report, it meets to consider the report and recommendations of the APR Panel and decides on what action to take (APRM Organization and Processes 2003, paragraph 7.15). This stage ends with the Chairperson of the APR Forum communicating the decisions of the Forum to the Head of State or government of the country being reviewed (APRM Organization and Processes 2003, paragraph 7.16).
- e) The fifth stage is the last stage and completes the first cycle of the APR process for any particular country. This phase involves making public the APRM report and action on the country review. The final APRM Report is tabled formally and publicly in key regional and sub-regional structures such as the Summit of the African Union, the Pan-African Parliament, the African Commission of Human and Peoples' Rights, the Peace and Security Council and the Economic, Social and Cultural Council (ECOSOC) of the African Union, as well as the Regional Economic Community of the region of which the country reviewed is a member (APRM Organization and Processes 2003, paragraph 7.17-7.18).

When a country shows a willingness to rectify the identified shortcomings based on the findings of these review, participating countries, donor governments and agencies are expected to come to its assistance (APRM Base Document 2001, paragraph 24). Where a state wilfully fails to take appropriate measures to implement the recommendations of the review, such a deviant or recalcitrant state may be subjected to collective adverse action. Whatever this "collective adverse action" is, it is to be resorted to only after all attempt at constructive dialogue have failed, and again only as a measure of last resort (APRM Base Document 2001, paragraph 24).

### **Justification for the APRM**

Given that African countries are already subject to other peer reviews such as the IMF Article IV Consultations, the WTO "TPRM", the ILO Enforcement Mechanism and the FAFIT reviews, the question that immediately comes to the fore is whether there is or was any need for another review mechanism. In other words, what is the justification for the APRM, what value does it add and in what way is it different from the other review mechanisms? Unfortunately, there are no easy answers to these questions and neither NEPAD nor the

APRM provide answers to these vexing questions. One is therefore left to speculate on the reasons for the APRM. Be that as it may, NEPAD as a developmental program of the African Union commits African states to upholding principles of democracy, rule of law, respect for human rights, good governance and political stability in exchange for more aid, debt cancellation and foreign investment (NEPAD 2001, paragraphs 71, 146 and 150). Giving meaning to these undertakings required that NEPAD should be seen to be more than just a pledge. It required having in place a mechanism through which NEPAD could ensure compliance with these principles lest its undertakings were to be merely rhetorical. Therefore, in essence, the need to give credibility to its undertakings proves a possible explanation for the birth of the APRM. Accordingly, notwithstanding the existence of other peer review mechanisms, the APRM can be viewed as a means through which Africa seeks to demonstrate its genuine commitment to change. It symbolizes and conveys to the international community Africa's seriousness about its reform agenda. Additionally, the existence of the APRM may possibly be justified on the basis that unlike other reviews carried out by institutions such as the OECD, World Bank/IMF or WTO, it is likely to have a better informational basis. Country visits by the latter organizations are often brief—hardly extending beyond a period of 2 weeks! The APRM review, which will be carried out by people not only knowledgeable about local conditions but also having strong affiliations to the continent, will be better positioned to give an “insider view” or perspective on the real problems facing the continent without being overly doctrinal or ideological in its approach.

### **The Contending Views on the APRM**

Notwithstanding the above concerns, the APRM has been hailed as the most innovative aspect of the NEPAD. It is seen as the most ambitious attempt by African countries to lever themselves out of the cycle of poverty, underdevelopment and instability to which the continent has been condemned by taking responsibility for the maintenance of appropriate standards (Cilliers 2002). Simply, it is seen as a means through which Africans will be able to promote good leadership, good governance, and socio-economic and political development in Africa (Akopari 2004, Juma 2004). For some, the APRM is seen as the key to the successful implementation of NEPAD's lofty objectives. It represents an opportunity for countries to respond to deficiencies identified in the peer review process and to take appropriate measure to address them. Whilst for others, the APRM should “help break a destructive solidarity between African rulers, who for too long have supported each other in holding power by rigging elections, banning opposition parties, and intimidating the press” (The Economist 2002, 15). This has been the euphoria around the APRM. However, along with the euphoria have also come doubts about whether it will succeed in its intended goals. According to Herbst and Mills (2003, 52),

while the APRM may be clear enough on paper, it still remains reliant on considerable institutional capacity and the kind of political will that has not always been there among African governments. Apart from the potential lack of political will, scepticism has also been expressed about the “moral standing” of some of the would-be-peer reviewers. Herbst and Mills (2003, 52) rhetorically ask, “how can Nigeria, for instance, act as a peer reviewer of its neighbour’s governance policies when its own have been dysfunctional for so long?” The view that Nigeria and some other countries are “delinquent” peers may render the application of peer pressure by these countries ineffective.

Meanwhile, others contend that the challenge for the APRM is in its implementation, particularly the question whether African leaders would have the courage to criticize each other. The collegiality of African leaders and their propensity to rally around each other has some doubting whether the APRM will be effective (Herbst and Mill 2003, 55). Those who subscribe to this line of thought contend that African leaders seem to share a “membership in a cryptic club in which there is little inclination to castigate but greater tendency to empathize with members” (Akokpari 2004, 469). Consequently, they argue that if the peer review mechanism is to address the very political, social, and economic malpractices of some of the African states and their political elites, some straight talk will be required (Deegan 2004, 365). Referring to the failure of NEPAD to act in Zimbabwe, Herbert (2003) tersely comments:

While Robert Mugabe violently dismantles a state that was, until recently, functional, his peers applaud. So which vision of peer review is it to be? Vigorous and constructive criticism or more coddling of autocrats? Africa’s credibility—and probably its future—hinges on the answer.

The scepticism about the APRM and its ability to hold African leaders accountable is not without substance. African group solidarity has played itself out in a number of international forays including in the Commonwealth. At the Commonwealth Meeting in 2002, the Commonwealth had to decide whether to suspend Zimbabwe’s Membership, given its disputed election results, which had been marred by large-scale violence and intimidation of opposition parties, the judiciary and the illegal occupation of white farms. Although, Zimbabwe was eventually suspended from the Commonwealth, its suspension divided the association into two opposing camps—one led by Australia and the United Kingdom, which supported the suspension, and the other led by South Africa and Nigeria, which bitterly opposed the suspension (Kebonang 2003, 42). Ironically, both South Africa and Nigeria are the principal architects and sponsors of NEPAD. Other concerns that were raised during my fieldwork about the APRM included the absence of punitive sanctions and the

exclusion of international partners (such as the World Bank and IMF) in the APRM process.

### **The Absence of Sanctions**

As indicated in the preceding sections, the APRM is a voluntary monitoring mechanism, which relies on dialogue, peer pressure and monitoring of peers for its success. It is only when dialogue and peer pressure have failed that participating Heads of State and Government can notify the offending government of their collective intention to take *appropriate measures* against it by a given date (APRM Base Document, paragraph 24). However, it is not clear what would constitute *appropriate measures*. The provision is so vague as to whether or not the APRM can impose sanctions on its members. This vagueness, whether deliberate or not, has left room for differing and potentially conflicting interpretations on the question of sanctions. For instance, *appropriate measure* could mean anything from a fine, economic and political sanctions, suspension or expulsion. It could also mean in the extreme, armed intervention!

Some commentators such as Akokpari (2004, 468) contend that verbal condemnations in the absence of sanctions will have little impact in getting defiant states to undertake reforms without some forms of sanctions. They further argue that even in instances where sanctions create minimal economic hardship, they might still generate political change or desirable political responses (Kaempfer and Lowenberg 1988, 786). Whilst this may be true, it must be borne in mind, however, that NEPAD is a developmental program rather than an institution. It does not have coercive powers or the capacity to enforce anything, be it agreed declarations or reforms. Likewise, the APRM is a voluntary mechanism. States may choose to accede to it or withdraw from it without losing their membership of the AU (Akokpari 2004, 468). Like NEPAD, the APRM does not have coercive powers. This lack of coercive powers reflects the nature of the APRM, that it is more of a “soft enforcement” mechanism than a treaty. In other words, it is non-binding in the strictly legal sense and states are not bound to take on board its recommendations. However, whilst sanctions are not explicitly provided for, one may argue that the imposition of sanctions may be read into the provision, which permits for the taking of “*appropriate measures*” against erring states, although the nature of such “sanctions” has not been spelled out or elaborated.

Whilst there might be a lack of clarity and vagueness by NEPAD and the APRM about the issue of sanctions, the Constitutive Act of the AU on the other hand, provides instances where sanctions may be imposed against a state (OAU/AU Summit 2002, Article 23, 1) provides for the imposition of sanctions against Members that fail or default in making their contributions to the Union. Article 23 (2) expands the circumstances under which sanctions may be imposed. These would be where a Member State fails to comply with the decisions and policies of the Union. In such an event, the Union may

impose a variety of sanctions, be they of a political or economic nature. Such sanctions may include for instance, denial of transport and communication links with other Member States and other measures of a political and economic nature as determined by the AU Assembly (OAU/AU Summit 2002, Article 23; 2). Thus, it seems the imposition of sanctions—whether political or economic—may only be properly justified under the AU Constitutive Act rather than the APRM unless one takes a broader view that the AU provisions can be extended to the APRM. Such a course of action would have to be justified and premised on the basis that NEPAD and the APRM are AU initiatives or programs.

Although sanctions may have to be expressly articulated, admittedly, it may also be desirable not to have them embodied in the APRM. This is because if the peer review is understood to be a device that is meant to help rather than coerce African States to improve their socio-economic and political environments by adopting best practices, then any scheme that seeks to achieve that through sanctions will attract fewer participants. Publication of the review reports could be a sufficient incentive for countries to comply with the review recommendations. Such publication could amount to naming and shaming; a strategy that Braithwaite and Drahos (2002, 270) have found can be effective in inducing compliance and reform. Admittedly, the extent to which this strategy may work with respect to states may be limited as it depends on the value that states place on their reputation.

In an attempt to explain why states comply with international agreements, Guzman (2002, 1827) posits in his “reputational theory of compliance” that states honour their commitments because of both their reputation concerns and direct sanctions that may be triggered by non-compliance. Focusing on reputation, he argues that states’ reputation has value. This value lies in the fact that by complying with its international obligations, a state signals to others that it is cooperative. This allows the state to enjoy long-term relationships with other cooperative states, provides a greater ability to make binding promises and reduces the need for monitoring or verification by other states (Guzman 2002; Swaine 2003). On the other hand, the failure by the state to live up to its commitments harms its reputation and makes its future commitments less credible (Guzman 2002, 1850).

Whilst naming and shaming may trigger reputational concerns for some states and therefore induce them to comply with their obligations, other states may not be overly concerned with the kind of reputation they have or project. This is because a state may have a number of reputations with respect to a number of its obligations. It may be highly cooperative with respect to certain obligations and highly uncooperative with respect to others. In evaluating the importance of reputation Downs and Jones (2002, 113), argue that whilst reputation matters, states have different levels of reliability in connection with different agreements and that considerable evidence supports the view that states possess multiple or segmented reputations (Crossen 2004,

495). In this context, a failure to comply with one set of obligations will not necessarily harm a state's reputation.

Ironically, although naming and shaming could be an effective strategy in getting countries to comply with their international obligations, the mere publication of reports by the APRM without an accompanying set of punitive measures, may fail to induce states' compliance. Whilst a country may no doubt suffer a loss of reputation as a result of its failure to comply with its obligation, such a state may in fact be notorious for non-compliance or the loss it suffers may not be sufficiently high as to alter its behaviour. Furthermore, the reputational consequence of a violation will be affected by the severity of such a violation. A minor violation which occasions no harm on other states will have a small impact compared to a major violation (Guzman 2002, 1862). Simply stated, although reputation matters, it is not decisive in matters of states relations. Downs and Jones (2002, 109), for instance, argue that whilst the US may have on one hand an unflattering reputation for its failure to make good its financial commitments to the UN, and a complimentary one on the other, with respect to its financial commitment to NATO, its reliability as a partner has not been characterised by these organizations.

In light of the above, one may concede that mere publication without more will not be sufficient. In this respect, the question of sanctions assumes once again centre stage. Although the imposition of sanctions is possible under the AU and possibly under the APRM if one took a broader view of what constituted "*appropriate measures*" under the APRM, it is not clear whether their imposition would be effective in getting countries to comply with the APRM recommendation. There is generally a lack of consensus in the economic and political literature about the effectiveness of sanctions as a means of inducing a state being sanctioned (the target state) to undertake certain reforms or to desist from engaging in a particular conduct or course of action (Cho 2004; McGillivray and Stam 2004; Drezner 2000; Bolks and Al-Sowayei 2000; Braithwaite and Drahos 2000; Dashti-Gibson, Davis and Radcliff 1997; Kaempfer and Lowenberg 1988).

Although there may be instances where sanctions are able to induce certain desired outcomes, their imposition, particularly when they relate to the limitations on imports and export, may affect ordinary citizens far more than the entrenched elites or leaders who actually make policy decisions (Dashti-Gibson, Davis and Radcliff 1997, 610). Whilst recent sanctions on Zimbabwe by the EU and USA may have adversely affected ordinary Zimbabwean citizens, they probably have had little personal effect on the country's ruling leadership and elite. Zimbabwe is experiencing a severe shortage of basic necessities (such as food, petrol and medicine), and unemployment levels have risen to over 80 percent of the population.

Additionally, if sanctions were to be imposed by the AU or APRM, the support of the international community, institutions and developed states would be crucial. Many African countries rely on aid provided by international institutions. A significant amount of their trade is also with the developed

states rather than amongst themselves. For instance, the EU is Sub-Saharan Africa's largest single trading partner, providing a market for 31 percent of Africa's exports and accounting for 40 percent of Africa's imports (Hinkle and Schiff 2004, 1321). Thus, for sanctions to work, sanctioning states must have the ability to alter the target country's terms of trade regardless of the targeted regime's efforts to substitute (Drezner 2000, 76). Except perhaps for South Africa in its relationship with Lesotho (a country that is within South Africa's territorial boundaries and thus exclusively dependent on it for both its exports and imports) many African countries do not generally have the ability to influence the terms of trade of other members.

Furthermore, where sanctions are collectively imposed, as opposed to being unilaterally imposed by a single state, their success will depend on the existence of an effective monitoring mechanism to eliminate the problem of rent seeking by states. The problem of rent seeking arises because sanctions represent a cost both to the country or countries imposing them and the target state (Cho 2004, 785; Ehrmann 2002, 384; Bolks and Al-Sowayel 2000, 242). Because sanctions may disrupt the economic activities of those imposing them as well, there is an inherent danger that some States will backslide (Drezner 2000, 83). Additionally, the effectiveness of sanctions will depend of the countermeasures that a target state undertakes or develops. Thus, countermeasures may be fatal to sanctions as they can minimize the effects of such sanctions (Bolks and Al-Sowayel 2000, 244). The challenge for the AU and APRM would be to ensure not only that none of its Members backslid but also that the target State did not find alternatives. Without the participation of the international community, this task would be fraught with difficulties.

### **The Role of International Institutions and Developed States**

The APRM is an African self-monitoring mechanism. It is an initiative through which Africans themselves are seeking to take a proactive stance on matters that affect them. Under the APRM, all reviews are to be African led. Peer pressure is expected to come from African leaders themselves. The wisdom of excluding representatives of institutions like the World Bank/IMF, the EU and developed countries in the APRM has both its merits and demerits. Exclusion could be important in enhancing a sense that the APRM is truly an African ownership initiative. This would address concerns and criticisms that have always been levelled against the World Bank/IMF Structural Adjustment Programs, that they were an imposition on African countries that discounted African input and participation and ownership. It is these factors that are often given as reasons for the failure of African reform programs initiated by the World Bank/IMF. Second, the value that could be added in having an exclusively African peer review is that such a review will presumably be made by people knowledgeable about the local conditions, whereas World Bank/IMF reviews may not generate the right information and pay insufficient attention to local economic institutions. Thus, the outcomes of such reviews

are bound to accurately reflect African realities without being overly burdened by the World Bank/IMF ideological drives.

On the other hand, whilst the exclusion of the World Bank/IMF and other institutions may resonate well and strongly with Africa's sense of ownership of the APRM, without some form of real pressure, the APRM may fail to influence States to comply with its recommendations. This is precisely because under the APRM, it would appear that failure to undertake the necessary reforms would not automatically attract sanctions or punitive measures. In fact, the question of sanctions is so vaguely articulated that it is difficult to say whether or not they exist! What is clear however is that, "if the necessary political will is not forthcoming from the government, participating states should do everything practicable to engage it in constructive dialogue, offering in the process technical and other appropriate assistance" (APRM Base Document 2001, paragraph 24). It is only when all avenues of dialogue have been exhausted that Member States may, "put the government on notice of their collective intention to proceed with appropriate measures by a given date" (APRM Base Document 2001, paragraph 24). Thus, these measures do not penalise a country for a failure to implement the review recommendations nor do they provide an incentive to undertake the recommendations or take steps to avoid an unfavourable review. In my view, therefore, the involvement of international institutions will provide the APRM with some "teeth". Institutions such as the World Bank/IMF can play a powerful role in assisting in the implementation of locally decided reforms by helping states overcome local structural problems, rather than imposing structuring adjustments.

Apart from the issue of sanctions and participation of key players in the APRM, other potential challenges facing the APRM include lack of funding, the establishment of a competent Secretariat, and a credibility and independent APRM process.

### **Funding the APRM**

The APR Secretariat does not currently have its own funding nor has NEPAD/AU made any budget for it. States participating in the APRM are however, expected to bear the cost of such reviews (APRM Base Document 2001, paragraph 27). Africa has not only suffered from economic stagnation but has also experienced a debilitating debt burden or a debt-overhang. Many African countries have had difficulties in paying their membership fees in the AU and its predecessor. In 1999, the Libyan government had to pay in excess of US\$ 4.5 million on behalf of some of the defaulting countries in addition to its US\$ 1 million grant to the process leading to the establishment of the AU (Udombana 2002, 233). Recently, the AU reported arrears of nearly US\$ 39.9 million out of a budget of US\$ 43 million. In the face of this reality, it is unclear how states will meet or honour their obligations to the APRM. As Bekoe (2003, 6) states, "it is questionable if countries that have not regularly paid their dues for membership in the new African Union and other regional

initiatives over the years will now pay for the operation of the APRM". Without adequate funding, the APRM runs the danger of collapsing. In this regard, opposition to the involvement of institutions such as the World Bank and IMF must be premised on the reality of the African situation than on ideological considerations.

### **The Competence of the Secretariat**

Until the APR Secretariat is fully operational, it is difficult to give an objective assessment of its competence. However, once operational the competence of the Secretariat will be influenced not only by available funding but also by the quality of staff employed by the Secretariat and its ability to carry out its functions. Thus, the technical competence of the Secretariat will determine whether the Secretariat is able to discharge its mandate efficiently and competently. While the APRM emphasizes the deployment of African expertise in the peer review process (APRM Base Document 2001, paragraph 11), it also acknowledges that there may be instances, where the services of non-African experts, individuals or institutions will have to be used (APRM Organization and Process 2003, paragraph 3.8).

### **The Independence and Credibility of the APRM**

The independence of the APR Panel will be another important factor that will determine the credibility of the review process. The APR Panel's credibility will depend on whether they are able to provide accurate and independent assessments of the conditions in countries being reviewed. Thus, any signs of bias or cover-ups, will compromise the entire APRM. As Bekoe (2003, 4) states, "the members of the APRM panel should be above reproach and independent of Africa's patron-client network."

The seven members of the "eminent persons" group that has been approved for the peer review panel include: Graca Machel (internationally known for her work with UNICEF and the effect of armed conflict on children); Adebayo Adedeji (a former Executive Secretary of the UN Economic Commission for Africa from 1975-1991. He has been critical and sceptical about NEPAD); Marie-Angelique Savane' (a former Director of the UN Population Fund (Senegal); Bethuel Kiplagat (former Kenyan Ambassador to France and the United Kingdom and now a leader of the African Peace Forum); Dorothy Njeuma (former vice Minister of Education in Cameroon); Mourad Medelci (served as Minister of Trade, Budget and Finance) and Chris Stals (former governor of the South African Reserve Bank from 1991-1998).

Looking at the current panel of "eminent persons", it is made up of highly prominent people who are unlikely to compromise their integrity by endorsing less than accurate reviews. Thus, one could argue that the

composition of the current panel satisfies an important aspect of a reliable peer review commission, that is, its independence.

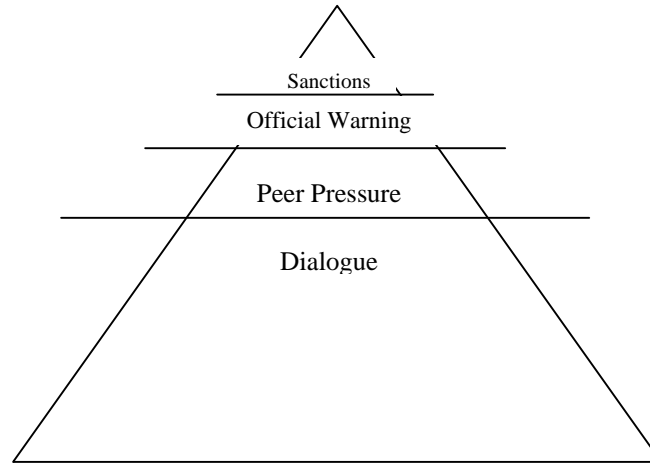
### **Publication of Review Reports**

As noted earlier, the APRM provides for the publication and dissemination of its review reports in key places regional places and institutions (APRM Base Document 2001, paragraph 25). Prompt publication of these reviews would be crucial so that momentum is not lost in helping and holding states accountable. Publication will also need to be widespread so that information is not only available to government officials, other states and the donor community, but a large segment of the population such as civil societies, academic institutions and ordinary citizens. To be more effective, the APRM published reports can draw a list of compliant and non-compliant states. This list could contain all member countries and rank them according to whether they have implemented or failed to implement the recommendations of the APRM. The list could indicate the level of compliance and suggest ways forward. In this way, non-cooperating states can be identified, assisted and if need be, pressured, even isolated unless they improve.

### **Making the APRM Work: The Way Forward**

Although the APRM faces a number of limitations and challenges, it would appear that essentially, the critical concern is whether the APRM should embody a set of sanctions or not. As noted earlier, arguments for and against sanctions are compelling. Consequently, I propose a compromise position, which will be a hybrid of these two competing and yet compelling views. This hybrid position advocates for a mixed balance between the use of peer pressure and sanctions in the APRM. It also calls for the inclusion of all the key players, such as international institutions, in the APRM process if the latter is to work. One way of thinking of this hybrid model is to think of it in terms of a regulatory pyramid as depicted by Figure 1 below. This regulatory pyramid is similar to the one proposed by Ayres and Braithwaite (1992) in their seminal work on responsive regulation.

To conceptualise how this compromise hybrid position would work, the regulatory pyramid as first proposed by Ayres and Braithwaite (1992) and subsequently developed by Braithwaite (2002) in his book, *Restorative Justice and Responsive Regulation*, provides some useful insights. Although the focus by Braithwaite's (2002) pyramid model is more on restorative justice, its attraction is that it can be applied in any regulatory setting. This pyramid model is, as Braithwaite (2002:30) puts it, "an attempt to solve the puzzle of when to punish and when to persuade."

**Figure 1**

An example of a Regulatory Pyramid. Adapted with modifications from Braithwaite (2002).

In terms of the Braithwaite's regulatory pyramid, to secure compliance where there has been, for instance, wrongdoing, breach of the peace or of agreed standards and principles or reforms, the starting point should be dialogue rather than punishment (Braithwaite 2002, 30). To have any meaningful outcome, such dialogue must not only be all-inclusive (involve all stakeholders) but must also be held in a non-adversarial manner. Only when dialogue has failed can punitive measures be taken by moving up the pyramid. Even so, such punitive measures must be taken only as a last resort (Braithwaite 2002, 30). The usefulness of the pyramid is that it does not pre-empt which matter would be resolved by dialogue and which one would attract a punitive sanction. In a sense, it is a dynamic model which, according to Braithwaite (2002, 30), is not intended to specify in advance which types of matters will be dealt with at the bases of the pyramid, which ones should be in the middle and which are the most serious ones for the peak of the pyramid.

Under the regulatory pyramid model, compliance may be achieved at the initial stage of dialogue with threats of sanctions being in the background rather than in the foreground. Nonetheless, where compliance is achieved after having escalated up the pyramid, that is, through the use of punitive measures, the reforming state is still rewarded for its compliance by putting the pyramid into reverse and de-escalating down the pyramid Braithwaite (2002, 31). De-escalation is indicative of the success rather than the failure of the punitive measure. As Braithwaite (2002, 31) succinctly states,

The pyramid is firm yet forgiving in its demands for compliance.  
Reform [is] rewarded, just as recalcitrant refusal to reform following  
wrongdoing...result[s] in punishment.

The hybrid model advocated for in the paper, just like Braithwaite's regulatory pyramid, will have dialogue at its base, as shown in figure 1 above, and punitive measures up the ladder for countries that deliberately violate their obligations to the detriment of the common good. It will also be inclusive. The novelty of such an approach is that it will satisfy both the need for dialogue and the need for sanctions without the latter being in the foreground. By being inclusive, it will not only appeal to the international community but will also make the threats of sanctions more credible.

### **Conclusion**

One of the weaknesses of the APRM is that, in its present form, it is structured in such a way that its reviews are to be all encompassing. The reviews are to cover areas on democracy, economic, political and corporate governance. In a lot of ways, many of the areas that the APRM focuses on are fairly well covered by for instance the WTO and the World Bank/IMF. The value that is likely to be added by the APRM may remain suspect unless it curves-out areas of emphasis that are not already covered by the well-established review mechanisms. Until it does this, it will be handicapped in its delivery as its review process will simply be duplicitous of other reviews without much value being added. Lastly, the extent to which the APRM can promote good leadership in Africa will depend on the political willingness of Africa leaders to implement its findings and to hold each other accountable. It would also depend on whether the APRM can "bite". Without a clear set of sanctions and the involvement of other international players such as the World Bank/IMF, the ability of the APRM to make credible threats against delinquent states is doubtful. Yet, the provision of sanctions in the APRM is likely to encounter opposition and even render the APRM unattractive to African countries. Given this paradox, the hybrid position advocated for in this paper accommodates both arguments in favour of and against sanctions.

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