Peace and Security through Good Governance

A guide to the NEPAD African Peer Review Mechanism

Jakkie Cilliers
Institute for Security Studies

ISS Paper 70 • April 2003
Price: R10.00

"The purpose of the APRM 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 of capacity building"[1]

INTRODUCTION

Changes to the intent and content of the NEPAD African Peer Review Mechanism (APRM), and South African support for the ZANU(PF) government in Zimbabwe have tempered much of the original donor enthusiasm for the New Partnership for Africa's Development and its proposals for peer review. Taken together with the war in Iraq and the divisions that the recent bruising UN Security Council debate has opened up among Africa's development partners, the prospects for retaining a common focus amongst the G8 countries on Africa during the June 2003 Summit in Evian, France may, at first glance, appear remote. But, by a strange quirk, French rediscovery of Africa as a key ally in its enduring campaign against Anglophone dominance; and Britain's desire not to be undercut by this approach (despite Zimbabwe) could see Africa being courted by both France and Britain. In addition, Canadian Prime Minister Jean Chretian hopes to prove that the focus on Africa that he engineered during the G8 meeting in Kananaskis was not a mere flash in the pan. No change can be expected in the US position, a long-time sceptic of NEPAD and firmly set on unilateral approaches to Africa. However, this interpretation would imply that Africa is not set to disappear from the radar screens of the rich--even if for reasons that have little to do with the enduring challenges of underdevelopment and poverty on the continent.

> Prospects are improving for retaining the focus of the G8 on Africa during the forthcoming Summit in Evian, France

Events prior to and after the 5th meeting of the NEPAD Heads of State and Government Implementation Committee (HSIC), questioned the extent to which political and governance review was still part of the APRM. To Africa's development partners, the G8 group of countries in particular, issues of political accountability and good governance logically lie at the core of Africa's inability to develop. In a letter to South African President Thabo Mbeki, Canadian Prime Minister Jean Chretien, warned of the danger that the removal of political governance from the APRM would unravel external support for NEPAD. Mbeki's very public letter of response did little to restore the trust and optimism that had previously existed.

Eventually Mbeki would state that:

> It couldn't have been the intention of either South Africa or the entire leadership of the continent to subject political governance issues per se for review under NEPAD as this would have gone beyond the mandate of the Initiating Committee. There was never, ever any suggestion that we have a NEPAD peer review process that would conduct the work of the Commission of Human Rights. The Pan-African Parliament will look into all those matters that will arise from the Constitutive Act. …You have a number of institutions in the AU context with an oversight and enforcement mechanism.[2]

In retrospect, the hurt reaction of Africa's development partners reflects more on their limited understanding of African institutions and politics than it did on Mbeki—although the damage could not have been more severe.

An earlier ISS paper[3] summarized much of the debate on NEPAD shortly after the conclusion of the 5th Summit of the Heads of State and Government Implementation Committee (HSIC or HSGIC) of

NEPAD on 3rd November 2002. This paper follows closely upon the conclusion of the 6th Summit of the HSIC on 9th March 2003 in Abuja and provides additional detail on the process, structure and nature of the APRM. Two documents, approved at the Durban African Union Assembly meeting, set the scene for the discussions in Abuja, namely the Declaration on Democracy, Political, Economic and Corporate Governance and the African Peer Review Mechanism Base Document.[4] The March 2003 HSIC meeting discussed these and four new documents, namely:

- a proposed 'Accord' on the APRM. After discussion and amendment the HSIC changed the name to a Memorandum of Understanding and attached it to the subsequent public communiqué;[5]
- a document entitled 'APRM Organization and Processes' that expanded on the earlier APRM document approved at the AU Summit. This document basically fills out some of the missing pieces on the responsibilities of various structures and adds detail on some processes;
- a document with the title 'Objectives, Standards, Criteria and Indicators for APRM'; and
- an 'Outline of the Memorandum of Understanding on the Country Review Visit and Mechanism'—a single page document that simply lists paragraph headings.

Institutionally, the future of NEPAD peer review would appear to constitute four distinguishable parts:

- Political and political governance review will be based on the legally binding commitments contained in the Constitutive Act and additional frameworks such as the African Charter on Human and Peoples' Rights. This Africa-wide process of review will be conducted by institutions of the African Union such as the Commission based in Addis Ababa and the Commission on Human and Peoples' Rights based in The Gambia. The intention is that structures such as the Pan-African Parliament also play a role in this regard, once established. It is unclear how this process will or could differentiate between NEPAD and non-NEPAD countries.
- The NEPAD Secretariat, through its APR Secretariat that is being established, will largely focus on economic governance and socio-economic review. This process will be restricted to countries that voluntarily accede to NEPAD and largely draw on international codes and standards. The United Nations Economic Commission for Africa (UNECA) and the African Development Bank (ADB) will do important components of this work.
- No decision has yet been made on who/which institution will do the work regarding corporate governance and socio-economic development on behalf of the APR Secretariat. This aspect is not discussed in this paper, but one option offered by Evarist Baimu could be for NEPAD to rely on the Trade Policy Review Mechanism under the World Trade Organisation.[6]
- Finally, UNECA with support from the Organization for Economic Co-operation and Development (OECD), prepared a report[7] and recommendations for mutual review of development effectiveness between Africa and its development partners. The report will be submitted to the Conference of African Ministers of Finance, Planning and Development in June 2003 as well as to the Development Assistance Committee (DAC) of the OECD as a basis for annual discussions between the continent and the donor community.[8]

Early signs of impending political or economic crisis in a member country would also be sufficient cause for instituting a review

This paper is focused on the political and governance component of NEPAD peer review. Hunger, poverty, HIV/AIDS and lack of development in Africa are in the first instance political and governance issues. Both economic and corporate governance takes its cue from political governance and it would be naïve to suggest that the latter could improve within a corrupt and self-serving political system. Without making political governance the core focus of NEPAD, the Partnership is unlikely to make an impact on the continent. Against this background the first section briefly describes the types of Review as reflected in the various NEPAD documents. This is followed by an overview of the APRM structure and organization and seeks to unpack the often confusing and complex relationships between NEPAD and the African Union. Quite a large section of the paper then describes and comments on those structures that are to be tasked to undertake parts of the political and governance review, including the proposed APR Forum, APR Secretariat, the APR Panel of Eminent Persons and country teams. Short concluding sections comment on the mutual review of development effectiveness, financing of the APRM and concludes with some remarks on the expected APRM time lines and efficacy.

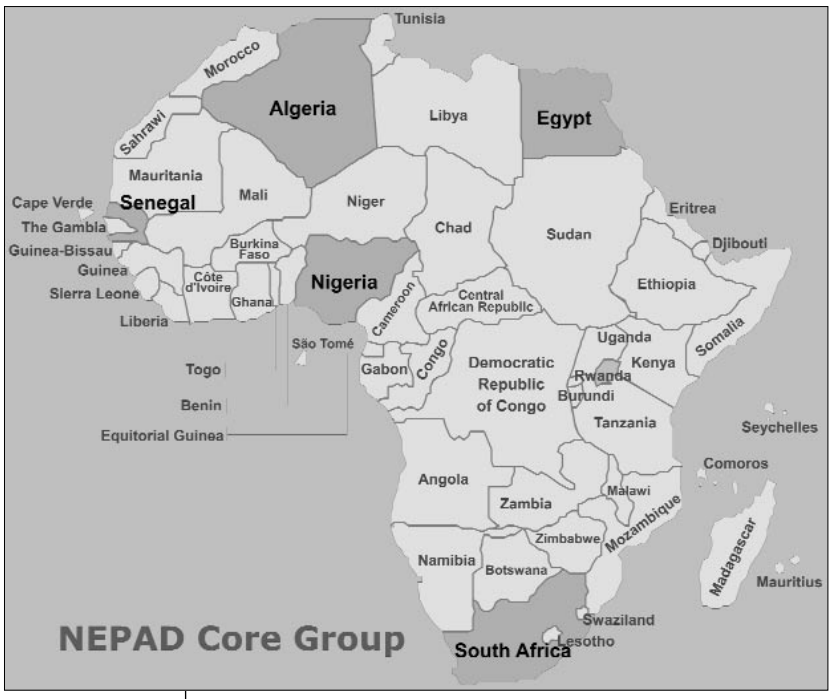
TYPES OF REVIEW

Four types of reviews are envisaged for those countries that join the Review Mechanism:

- First, the country review is the base review that is carried out within 18 months of a country becoming a member of the APRM process;
- Second, there is a periodic review that takes place every two to four years;
- Third, in addition to these, a member country can, for its own reasons, ask for a review that is not part of the periodically mandated reviews; and
- Fourth, early signs of impending political or economic crisis in a member country would also be sufficient cause for instituting a review. Such a review can be called for by participating Heads of State and Government (the APR Forum) "in a spirit

of helpfulness" to the Government concerned.

The base review process consists of five stages with a number of processes both at country and continental level. The first four stages of the process will take up to six months, then there is a six-month interval before the fifth and final stage is executed.[9] As will be noted in the subsequent description of the review process, this fifth stage represents the first opportunity for external dissemination or notice of the results of the review process.



THE PROCESS OF REVIEW

Stage 1: Background research and draft plan of action

Stage One involves a study of the political, economic and corporate governance and development environment in the country to be reviewed, based principally on up-to-date background documentation prepared by the APRM Secretariat and material provided by national, sub-regional, regional and international institutions. The background document is shared between all partners (i.e. including the country being reviewed) for comment and review. On the basis of the background paper the APR Secretariat prepares an issues paper setting out the main challenges in the APRM areas of review, sharing this with all partners. The APR Panel approves the work plan and composition of the APR Team.

In response, the country to be reviewed will prepare a draft Plan of Action to improve its governance and socio-economic development and submit this to the APR Secretariat.

Stage 2: country visit

Armed with the issues paper and plan of action, this stage sees the APR Team visit the country concerned where it will meet with and brief key stakeholders on "the APRM processes, spirit and guiding principles" and seek to "build consensus with the stakeholders on the… challenge areas". These stakeholders include government, officials, parliaments, representatives of political parties, parliamentarians, the business community, representatives of civil society organisations (including the media, academia, trade unions, NGOs), rural communities and representatives of international organisations. "The main focus of the Country Review Visit will be on identifying whether the country's draft Programme of Action is adequate to address the assessed challenges and, if not, how the country can best be assisted in strengthening its final draft Programme of Action and its capacities to implement it."[10] Evident from this phase, indeed from the entire process, is the reliance upon official sources of information and interpretation.

Stage 3: Preparation of APR team recommendations

Stage Three is the preparation of the Team's country review report based on the background documentation and country visit. The report will focus on recommendations that would improve, accelerate and resource the Program of Action through time-bound additions to it.

The Team's draft country review report is first discussed with the Government concerned. According to NEPAD these discussions will ensure the accuracy of the information and provide the Government with an opportunity both to react to the Team's findings and to put forward its own views on the identified shortcomings, including modifying the draft Programme of Action. The responses of the Government will subsequently be appended to the Team's report.

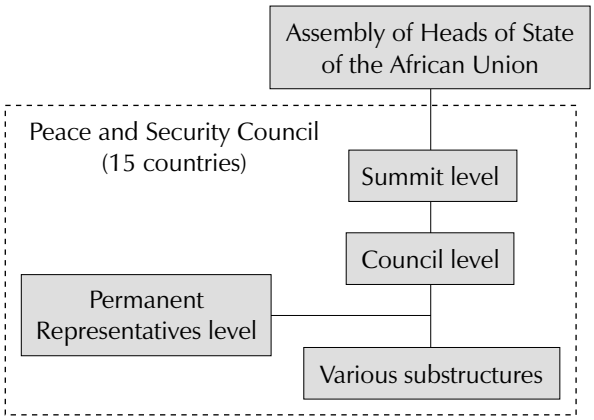
Stage 4: Internal presentation and discussion of the recommendations

The Fourth Stage begins when the APR Secretariat submits the country report to the APR Panel who submits its recommendations to the APR Forum. The stage concludes with the Chairperson of the APR Forum communicating the decisions of the Forum to the Head of the country concerned. Interestingly enough, the document discussed in Abuja recently has done away with the explicit mention of either support or sanction reflected in the APRM process document approved at the Durban Assembly meeting.[11]

Stage 5: Public release of the APRM report and implementation

During the Fifth and final Stage, and some six months after the conclusion of the previous stage, the final APRM Report is formally and publicly tabled in key regional and sub-regional structures such as the Assembly of the African Union, the Pan-African Parliament and within the relevant sub-regional structures.

Figure 1: Structure of the AU Peace and Security Council



APRM STRUCTURES

NEPAD is a program of the African Union and therefore is governed by and reports to the Assembly of the Union. Since NEPAD is headed by a meeting of the participating Heads of State of the NEPAD partners (HSGIC or HSIC), it reports directly to the Assembly. This places NEPAD in something of a unique position, since it does not report to or go through the AU Executive Council (composed of the Foreign Ministers of the Union), nor, thus far, have its activities been co-ordinated by the Commission of the Union in Addis Ababa. It is therefore interesting to compare the situation of the HSIC with the proposed Summit of Heads of State of the fifteen-country Peace and Security Council.

The Peace and Security Council of the African Union is established in terms of the Constitutive Act as "…the standing decision-making organ for the prevention, management and resolution of conflicts." [12] Once ratified by sufficient countries, the Peace and Security Council will replace the Mechanism for Conflict Prevention, Management and Resolution. Similar to the Council, the decision-making structure of the Mechanism (the Central Organ) operates at summit, ministerial and ambassadorial level.[13]

In the interim both the structures of the Central Organ and those of NEPAD therefore derive their authority from a decision of the Assembly of the African Union. The Protocol establishing the Peace and Security Council will give the PSC legal status, and define its powers and authority in international law. This is not the case with the NEPAD HSIC.[14] In fact NEPAD derives its legal authority only as part of the African Union.

The Peace and Security Council will be composed of 15 elected Member States—three from each of Africa's five regions. Ten Member States will be elected for a term of two years and five countries elected for a period of three years.[15] Membership of the NEPAD HSIC on the other hand is open-ended and voluntary and it does not formally operate at similar levels. Executive power is much more centralized within NEPAD. Below the HSIC (chaired by Nigerian President Obasanjo) is the NEPAD Steering Committee of senior officials (chaired by Professor Wiseman Nkuhlu of South Africa). Professor Nkuhlu also heads up the NEPAD secretariat located in Midrand, South Africa.

NEPAD, the Central Organ and the future Peace and Security Council all operate on the principle of equitable regional representation. Therefore, the present 20 countries that constitute the HSIC represent four from each of Africa's five regions.

An earlier ISS paper on the APRM speculated on the potential for NEPAD members to transform and even institutionalize themselves as the Peace and Security

Council of the Union. The composition of the Council, Africa's version of the UN Security Council, will already be guided by a number of specific requirements for membership, specified in the Protocol establishing the Council that was adopted at the Durban AU Assembly meeting in July 2002.

A closer examination of the PSC would indicate the potential for overlap between the role and functions of the Council and that entertained by the NEPAD APRM. In many respects the PSC may emerge as the dominant institution that seeks to

> … promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts.[16]

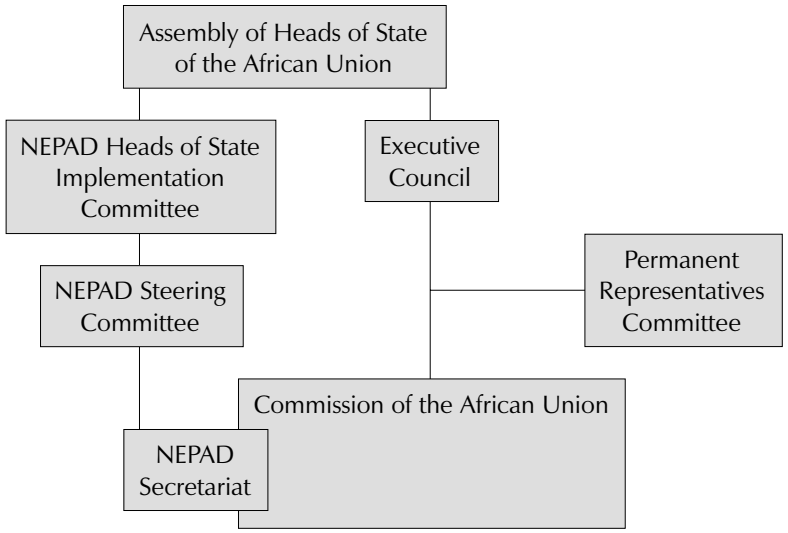
In this sense, once established, the PSC may support the role of the Commission on Human and Peoples' Rights, the Pan-African Parliament and the Economic, Social and Cultural Council (ECOSOCC).

Those countries that have chosen to participate in the APRM and have signed the Memorandum of Understanding on the Mechanism will, as from 1 April 2003, constitute the APR Heads of State Forum—the highest decision-making authority of the APRM. The APR Forum "has ultimate responsibility for oversight of the APRM organization and processes, for mutual learning and capacity building, and for applying peer pressure required to make the APRM effective, credible and acceptable."[17] Other structures are as follows:

- the Panel of Eminent Persons (APR Panel) will be appointed to oversee the review process to ensure the integrity of the process, to consider review reports and to make recommendations to the APR Forum.
- the APRM Secretariat (APR Secretariat) will provide the secretarial, technical, co-ordinating and administrative support services for the APRM.
- a Country Review Team (APR Team) will be appointed to visit the country to review progress with the county's Programme of Action and produce the APRM report on the country.

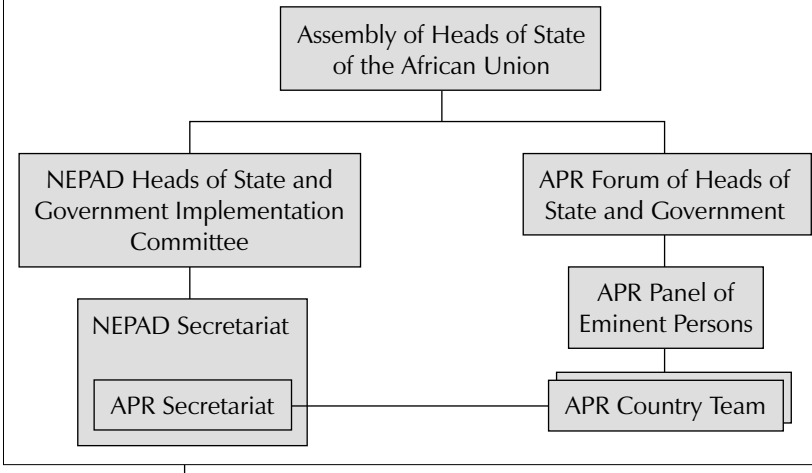
Figure 3 points to the emerging structure of NEPAD and the APRM. At present the composition of the HSIC and the APR Forum is not the same. The former provides for 20 members (although only 18 countries have formally been named), and 10 countries have signed the Memorandum of Understanding regarding the APRM. Ultimately participation in the APRM will be a requirement for membership of NEPAD. In time the NEPAD HSIC will therefore also operate as the APR Forum and one could expect that the membership of the two bodies would be the same.

Figure 2: Relationship between NEPAD and the African Union



Once a country has decided to join the APRM (by signing the Memorandum of Understanding) the next step is for the APR Secretariat to arrange a mission to the country to negotiate the exact terms of a second Memorandum of Understanding on Technical Assessment and a Country Review visit. The 6th HSGIC meeting considered and adopted a single-page framework (section headings) for this document.

Figure 3: NEPAD APRM structure



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

The overall responsibility of the APRM is vested with a Committee of Participating Heads of State and Government of the Member States of the African Union who have voluntarily chosen to accede to the APRM (APR Forum). During the 6th HSIC meeting in Abuja, Algeria, Republic of Congo, Ethiopia, Ghana, Kenya, Mozambique, Nigeria, Rwanda, South Africa and Uganda signed the Memorandum of Understanding of the APRM.[18] Unless additional countries sign the Memorandum of Understanding, these 10 countries will therefore constitute the APR Forum on 1st April 2003.

The APR Forum has the "ultimate responsibility for oversight of the APRM organisation and processes, for mutual learning and capacity building, and for applying the peer pressure required to make the APRM effective, credible, and acceptable."[19]

Amongst others the APR Forum:

- appoints the APR Panel of between five and seven Eminent Persons and its full-time Chairperson.[20] The part-time Eminent Persons will serve for a period of up four years and the Chairperson for up to five years.
- deals with the country review reports submitted by the APR Panel;
- communicates the recommendations/decisions of the APR Forum to the Head of State of the country concerned;
- exercises peer pressure (through constructive dialogue, offering assistance or applying appropriate measures) to effect changes in country practice where recommended;
- persuade development partners to support the recommendations approved by the APR Forum by providing technical and financial assistance;
- transmit APRM Reports to the appropriate African Union (AU) structures in a timely manner;
- make public, through the APR Secretariat, country review reports and press releases pertaining thereto.

The Panel of Eminent Persons (APR Panel)

According to the documents considered at the 6th HSGIC meeting in Abuja "the APR Panel shall have a mandate to:

- exercise oversight of the APR process with a view to ensuring the independence, professionalism, and credibility of the process;
- oversee the selection of the APR Teams and appoint them to conduct country reviews;
- recommend appropriate African institutions or individuals to conduct technical assessments;
- meet when required to review and make objective assessments of and recommendations on the country review reports submitted to it by the APR Secretariat;
- consider recommendations contained in the country review reports and make recommendations to the APR Forum;
- submit to the APR Forum all country review reports with recommendations on measures that could be taken to assist the country in the improvement of its governance and socio-economic development performance; and
- develop its own rules of procedure, submit these to the APR Forum for approval and approve those of the APR Secretariat and the APR Teams."

The APR Secretariat

The APR Secretariat will be supervised by the chairperson of the APR Panel at the policy level and run by an executive officer. Practically the APR Secretariat will be a unit within the NEPAD Secretariat (located in South Africa), working closely with the CSSDCA Unit of the Commission of the African Union (in Addis Ababa). The APR Secretariat will "…provide the secretarial, technical, co-ordinating and administrative support services for the APRM."[21] Its functions include:[22]

- maintaining extensive database and information on the four areas of focus of the APRM and the political and economic developments in all participating countries;
- preparation of background documents for the APR Teams;
- providing advice and facilitating technical assistance to participating countries;
- proposing performance indicators and tracking the performance of each participating countries;
- liaising with participating countries and partner institutions to follow progress of technical assessments;
- plan and organize the Country Review Visits;
- recommend to the APR Panel on the composition of APR Teams and recruit the experts required for research and analysis;
- liaising with interested external partners and support participating countries in resource mobilization for capacity building;
- organising regional networks in the various areas of focus of the APRM and convene workshops for the sharing of experience and best practice and to address constraints experienced in the implementation of country programmes of action;
- liaising with the institutions issuing the standards and codes listed in the Declaration on Democracy, Political, Economic and Corporate Governance (AHG/235(XXXVIII) Annex 2); and
- ensure full documentation of the APR processes at

Membership of the NEPAD HSIC is open-ended and voluntary

country, sub-regional and continental levels to facilitate learning.

The recent 6th HSIC meeting approved the budget and staffing of the NEPAD Secretariat, and noted 'with satisfaction' that some member countries had seconded personnel to the Secretariat and made financial contributions towards the running of the NEPAD process. The subsequent communiqué also "urged member states of the African Union to make voluntary contributions towards financing and staffing the NEPAD Secretariat, particularly for the proposed APRM."[23]

Contrary to similar processes within the Organisation for Economic Co-operation and Development (OECD)[24] and that regarding the state reports that form part of the obligations in terms of the Commission of African Human and Peoples' Rights (see below), the APR Secretariat has a much greater role in the review process and will therefore require considerably more human and financial resources than the secretariats of other review processes.[25]

OBJECTIVES, STANDARDS, CRITERIA AND INDICATORS

Considerable work has gone into the issue of *what* is to be reviewed and to which standard. This has included various meetings and the preparation of background papers, culminating in the presentation of the document on Objectives, Standards, Criteria and Indicators for the APRM to the 6th HSIC meeting. This considers, as its departure point, the Declaration on Democracy, Political, Economic and Corporate Governance that was endorsed by the inaugural Assembly meeting of the African Union in Durban, South Africa in July 2002.

The various indicative standards have been divided into the four focus areas of the APRM, namely democracy and political governance, economic governance and management, corporate governance and socio-economic development. Each focus area has now been fleshed out into a scheme divided into objectives, standards, criteria and indicators, although the sections on criteria and indicators are not yet complete. No decision has yet been made on who/which institution will technically do the work regarding corporate governance and socio-economic development on behalf of the APR Secretariat.

The objectives and standards that relate to democracy and political governance[26] all refer to existing undertakings by African governments through the OAU/AU, and here and there, to key international commitments such as the UN Convention on Refugees. There is, in this sense, no difference between NEPAD and non-NEPAD countries—both are supposed to be committed to the implementation of the stated documents. In any event, adherence to these standards are to be monitored and adjudicated by AU institutions such as the Commission on Human and Peoples' Rights that has a continental mandate and obligation to do so. It is based on this realization that Africa's development partners and others have questioned the extent to which the APRM includes substantive political and good governance review and monitoring.

The potential situation with regard to those areas that relate to economic governance,[27] corporate governance[28] and socio-economic development[29] is different. Here the standards rely heavily on international best practices and codes of conduct, many of which are quite difficult to apply within the African context, where state and private sector institutions are weak. In particular areas, the application of some standards are simply beyond the capacity of many countries. It would therefore be appropriate to expect the peer review process to be keenly aware of the problems of applicability and context.

UNECA will conduct the technical assessments of countries to be reviewed regarding economic governance and management

The UNECA will conduct the technical assessments of countries to be reviewed regarding economic governance and management, and the African Development Bank (ADB) will do so for banking and financial standards.[30]

The documents discussed in Abuja note the requirement for close co-operation between the APRM and the various Partner Institutions that will participate in the review process. To this end, the APR Secretariat intends to sign a Memorandum of Understanding with each APR Partner Institution.[31]

APRM-RELATED STRUCTURES FOR POLITICAL AND GOVERNANCE REVIEW

An earlier NEPAD HSIC communiqué (the 5th on 3 November 2002) stated that:

> pending the ultimate integration of the APRM with the African Union, the HSIC recommends that the specialized commissions, units or organs of the AU responsible for democracy, political governance and human rights be tasked to conduct technical assessments for the APRM.[32]

Of the AU structures that are to engage in political and human rights review, only the Commission on Human and Peoples' Rights based in The Gambia, the African Committee of Experts of Welfare of the Child, and the AU Commission based in Addis Ababa exist. Others—such as the AU elections committee, the Pan-African Parliament, the Economic, Social and Cultural Council

(ECOSOCC) and the Court of Justice—still have to be established.

The basic structure of the African Union as proposed in the Constitutive Act is depicted in Figure four. Many of the Union's constitutive institutions and organs, including the banks and specialized technical committees, do not exist or are in a process of establishment.

Those organs, committees or units that could play a role in political and good governance review as part the APRM include:[33]

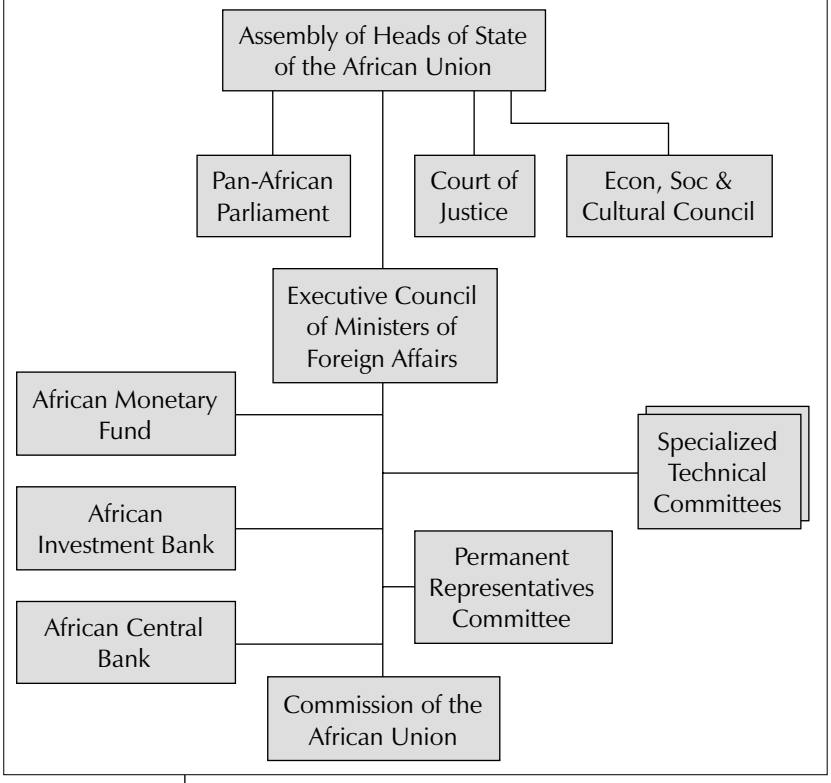
- structures that form part or will form part of the Commission of the African Union;
- the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution or its successor, the Peace and Security Council (PSC);
- the Unit responsible for the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA);
- the election monitoring committee;
- the African Commission on Human and Peoples' Rights;
- the African Committee of Experts on the Rights and Welfare of the Child (not discussed as part of this paper);[34]
- the Pan-African Parliament (PAP); and
- the Court of Justice.

The Economic, Social and Cultural Council or ECOSOCC is not mentioned in the documents discussed at the most recent HSIC meeting but is included for reasons evident from an examination of its mandate.

Where the AU institutions have inadequate or no capacity, the APR Panel will recommend appropriate African and international oversight institutions with requisite capacity to conduct technical assessments for approval by the APR Forum.[35]

The sections that follow comment on some, but not all, of the partner institutions, starting with the Commission of the African Union.

Figure 4: Future structure of the African Union



The Commission of the African Union

The Commission of the AU is the successor to the General Secretariat of the OAU. It derives its legal status from the Constitutive Act of the African Union. Following the adoption of the Statutes of the Commission during the Durban Summit of 2002, the restructuring of the Commission is proceeding apace.

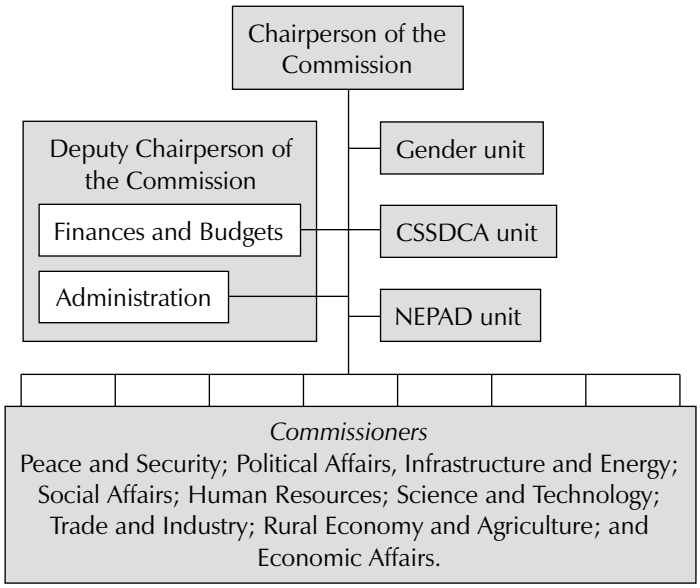
Whereas the OAU had consisted of a secretary-general and five assistant secretaries-generals, the Commission of the AU will have a chairperson, a deputy chairperson and eight commissioners. The portfolios of the eight commissioners are as follows:[36]

- peace and security (conflict prevention, management and resolution, and combating terrorism and so on);
- political affairs (human rights, democracy, good governance, electoral institutions, civil society organizations, humanitarian affairs, refugees, returnees and internally displaced persons);
- infrastructure and energy (energy, transport, communications, infrastructure and tourism and so on);
- social affairs (health, children, drug control, population, migration, labour and employment, sports and culture and so on);
- human resources, science and technology (education, information technology communication, youth, human resources, science and technology and so on);
- trade and industry (trade, industry, customs and immigration matters and so on);
- rural economy and agriculture (rural economy, agriculture and food security, livestock, environment, water and natural resources and desertification and so on);
- economic affairs (economic integration, monetary affairs, private sector development, investment and resource mobilization and so on).

A special unit is also established within the Office of the Chairperson to co-ordinate all activities and programmes of the Commission related to gender issues.

Since the final structure of the Commission is not yet finalized it serves little purpose to delve into that, but by way of comparison—the post structure of the OAU provided for 363 persons while the latest proposal for the Commission is for 818 persons (down from an earlier estimate of 1 200) with a budget of US$66 million at present salary levels (the budget of the AU for 2002/3 approved in June 2002 was roughly US$37 million).[37]

Figure 5: Structure of the Commission of the African Union



The Commission is tasked, as part of its functions, to "…assist Member States in implementing the Union programmes and policies, including, CSSDCA and NEPAD… "[38] and to take action "…in the domains of responsibility as may be delegated by the Assembly and the Executive Council…" including all areas in which a common position has been established,[39] "ensure the promotion of peace, democracy, security and stability"[40] as well as "provide operational support to the Peace and Security Council."[41] The Commission also prepares and submits an annual report on the activities of the Union to the Assembly, the Executive Council and the Parliament[42], making it the key monitoring and implementation unit of the Union.

Inevitably the role and structure of the Commission as it relates to the APRM still have to be defined and harmonized but it would be fair to comment that political and governance review—the degree to which Member States implement the various commitments made as members of the Union—will be a key responsibility of the commissioner for political affairs.

Some work on the peer review process has already occurred within the Commission as part of its CSSDCA Unit (Conference on Security, Stability, Development and Co-operation in Africa). The CSSDCA initiative culminated in a Solemn Declaration that OAU Heads of State adopted in Lomé Togo during 2000 and established a Standing Conference, which meets every two years during the OAU summit. The first such Standing Conference subsequently occurred in 2002 during the Durban Summit. The Lomé Solemn Declaration also indicated that provision

"should be made for African Parliamentarians to make their contributions to the conference through the Pan-African Parliament, while representatives of civil society may forward their views and recommendations to the Standing Conference through the OAU General Secretariat."[43]

Nigeria and South Africa subsequently donated funds to the Secretariat that led to the creation of a CSSDCA co-ordination unit in Addis Ababa.[44]

During the Durban AU Assembly meeting, African leaders adopted a memorandum of understanding that set out a framework and process for a CSSDCA/AU peer review process. The Memorandum includes a series of clear undertakings to standards of democracy, human rights and other issues that would, if implemented, have far-reaching implications for the continent. Under a final section entitled 'Monitoring Performance', Member States agreed to a comprehensive series of mechanisms for monitoring performance at the continental, sub-regional and national levels. The CSSDCA Unit was thus tasked to elaborate a comprehensive work programme and time schedule for "overseeing the monitoring process, with diagnostic tools and measurement criteria for assessing performance, as well as deficiencies and capacity restraints that impede them."[45] A first task, mandated by the 5th meeting of the Abuja Heads of State Implementation Committee, is the harmonization between the intentions of NEPAD and those of the CSSDCA/AU.[46] Another sub-structure mentioned in the NEPAD document is the proposed election committee.

During the 2002 Durban meeting of AU Heads of State, agreement was reached on a Declaration Governing Democratic Elections in Africa.[47] The Declaration views democratic elections as the basis of the authority of any representative government and an essential ingredient for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development.

The Declaration seeks to strengthen the role of the Commission in the observation and monitoring of elections and encouraged it to mobilize extra-budgetary funds. It also mandated the Commission to undertake a feasibility study on the establishment of a:

- Democratization and Electoral Assistance Fund;
- Democratization and Election Monitoring Unit; and to

- Draw up a roster of African Election Experts.

The Commission is to work out standards of procedures, preparations and treatment for personnel selected to serve on AU observer missions, and is encouraged to promote co-operation and work in partnership with African organizations, international organizations, national institutions, non-governmental organizations and civil society groups involved in the elected monitoring and observation work. A meeting to complete much of this work is scheduled for April 2003 in South Africa. Finally, the Declaration committed the Commission to making its reports public.

The challenges that confront the AU in giving effect to this Declaration are reflected in the fact that each election monitoring mission costs in the region of US$200,000, and that requests for several such missions are received each year. The total budget available within the OAU for election monitoring during 2001/2 was only $120,000 with the result that the AU will continue to have to rely on donor support to fulfil this crucial role.

The Pan-African Parliament

By February 2003 the Protocol establishing the Pan-African Parliament (PAP) had received 10 ratifications, still far short of the 27 ratifications required for the Protocol to come into effect.[48] Once established, the PAP will be composed of five delegates from each Member State and have consultative and advisory powers only, although the intention is that it develop into an institution with full legislative powers, whose members are elected by universal adult suffrage. The motivation for the role of the PAP in peer review is found in its objectives (Article 3) that include the promotion of the principles of human rights and democracy in Africa and encouragement of good governance, transparency and accountability in Member States. Included as part of its Functions and Powers[49] the Protocol provides that the Parliament may: "Examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, inter alia, matters pertaining to respect of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law."

Should sufficient countries ratify the Protocol in the next few months, the modalities and logistics required by the PAP would indicate that several years would be required before the Parliament is operative as part of a peer review process. Following an earlier offer by Libya to host the Parliament that was only circumvented by some deft footwork, there was general relief in many countries when South Africa recently publicly offered to host the PAP.

Each election monitoring mission costs in the region of US$200,000, and requests for several such missions are received each year

The Economic, Social and Cultural Council

In accordance with Article 22 of the Constitutive Act:
1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.
2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

The Council is meant to give effect to the principle of "participation of the African peoples in the activities of the Union"[50] and recognition of "the need to build a partnership between governments and all segments of civil society."[51]

At present a technical committee is being established that will look at the drafting of a Protocol on ECOSOCC, and opinions on the composition and functioning of the Council differ widely.[52] The original intention for the ECOSOCC Protocol to be finalized in time for approval by the Assembly of the African Union in Maputo in mid-2003, and open for signature and ratification thereafter has proven unrealistic. This will probably stand over to the next Assembly meeting in Madagascar the year thereafter.

The key question in terms of the functions and powers of ECOSOCC is the relative weight that is to be attached to the advisory function on the one hand and that of representivity on the other. The larger the organization and the greater the focus on representivity, the more difficult the advisory function becomes.

The power of ECOSOCC lies in the fact that, as a structure of the Union, it has the 'right to be heard' and its submissions taken into account.[53] The advisory function of ECOSOCC could also be strengthened to include a monitoring and oversight role if the draft protocol were to include provision to revise the ECOSOCC powers after a period of five years—in line with the desire of African leaders to institute a system of peer review.

Another way to give ECOSOCC (and the PAP) 'teeth', would be to link it to the reporting system of the African Commission on Human and Peoples' Rights—implying that the latter body simultaneously table its reports to the Assembly of the Union and to structures such as ECOSOCC and the Pan-African Parliament. Currently, the Commission submits reports directly to the Assembly of the African Union, who then adopt them more by way of process than substance. Requiring these

reports to go through ECOSOCC would open them to greater transparency and public scrutiny.

The African Commission on Human and Peoples' Rights[54]

The central document on human rights in Africa, the African Charter on Human and Peoples' Rights, was opened for signature in 1981 and entered into force in 1986. It has been ratified by all 53 member states of the OAU/AU. At the time the Charter provided only for the creation of a Commission and not a Court on Human Rights. A Protocol to the African Charter on the establishment of the African Court on Human and Peoples' Rights was only adopted in 1998 and has only received six of the required 15 instruments of ratification. The sole supervisory body of the African Charter currently in existence is, therefore, the African Commission on Human and Peoples' Rights.

The African Commission was constituted and met for the first time in 1987. It has adopted its own Rules of Procedure (amended in 1995) and Guidelines for State Reporting (amended in 1998).

According to Article 45: "The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
   (a) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
   (b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
   (c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government."

The African Commission consists of 11 commissioners, who serve in their individual capacities, and has an annual budget of less than US$750,000. The Commission meets twice a year in regular sessions for a period of up to two weeks and the commissioners are nominated by state parties to the Charter and elected by the Assembly of the AU. The Secretariat of the African Commission is based in Banjul, The Gambia and the Commission itself alternates its meetings between Banjul and other African capitals.

Two of the more controversial articles of the African Charter relevant to the role that it could play in peer review relate to the way in which the Commission is supposed to deal with individual communications. Article 58 provides that "special cases which reveal the existence of serious or massive violations of human and peoples' rights" must be referred to the Assembly, which "may then request the Commission to undertake an in-depth study of these cases." Where the African Commission has followed this route, the Assembly has failed to respond, but the Commission has nevertheless made findings that such massive violations have occurred. The African Commission has not referred cases to the Assembly in recent years.

> The power of ECOSOCC lies in the fact that, as a structure of the Union, it has the 'right to be heard'

Article 59 provides that:

1. All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.
2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

In practice the Assembly serves as a rubber stamp for the publication of the report by the African Commission, but the principle that the very people in charge of the institutions whose human rights practices are at stake—the heads of state—should take the final decision on publicity undermines the legitimacy of the system.

Each state party is required to submit a report every two years on its efforts to comply with the African Charter.[55] NGOs are allowed to submit shadow or alternative reports, but the impact of this avenue is diminished by the lack of timely access to the state reports.

Reporting under the African Charter, as in other systems, is aimed at facilitating both introspection and inspection. 'Introspection' refers to the process when the state, in writing its report, measures itself against the norms of the Charter. 'Inspection' refers to the process when the Commission measures the performance of the state in question against the Charter. Much like the APRM, the objective is to facilitate a constructive dialogue between the African Commission and the states. Reporting has, however,

been very tardy, with approximately half of the state parties not having submitted any reports. In 2001 the Commission started to issue concluding observations in respect of those reports that have been considered.

The African Commission has also appointed a number of special rapporteurs, with varying degrees of success[56], working groups on Freedom of Expression and on Indigenous People or Communities, and has, since 1995, also conducted a number of field visits , the purpose of which has ranged from fact finding to good offices and general promotional visits. The Commission has also adopted resolutions on a number of human rights issues in Africa.[57]

The Annual Activity Reports of the African Commission, which reflect the decisions, resolutions, and other acts of the Commission, are submitted each year for permission to publish to the meeting of the Assembly of Heads of State and Government of the OAU/AU.

Christof Heyns argues that the African regional human rights system is faced with almost insurmountable challenges, including massive violations on a continent of immense diversity, where a tradition of domestic compliance with human rights norms is still to be established, and that the African Charter is in dire need of reform.[58]

At the same time, he argues that the continuous creation of new mechanisms for the protection of human rights in Africa is exacerbating the situation. Instead of focusing on getting the mechanism created by the African Charter—the African Commission—to function properly, new mechanisms are created, such as the African Human Rights Court. Even before the African Human Rights Court is established, the NEPAD African Peer Review Mechanism is developed, and so forth. By themselves, all of these mechanisms could be a viable starting point, but the current proliferation of mechanisms means that there is a lack of focus of resources and effort, with the result that none of them might be in a position to make any difference.

The current proliferation of mechanisms means that there is a lack of focus of resources and effort

MUTUAL REVIEW OF DEVELOPMENT EFFECTIVENESS

At their meeting on 3 November 2002, the HSIC made the following request: "In the spirit of mutual responsibility and accountability that is embedded in NEPAD, the HSGIC underscored the need for mutual review of development partners in terms of their commitment to Africa. The ECA and OECD should urgently conclude work on the institutional framework for this review."[59]

The subsequent document, considered by the HSIC during its March 2003 meeting, was prepared by the UNECA, drawing on the on-going work between the UNECA and OECD Secretariats. For the UNECA and the OECD "…NEPAD provides a basis for implementing the Monterrey Consensus in the African context, with mutual undertakings and accountability in the areas of good governance, aid levels and aid effectiveness, and policy coherence".[60]

The joint OECD/AU reviews will be informed by a set of indicators derived from the APRM, on the African side on the basis of existing commitments covering peace, security, and political governance; economic and corporate governance; human development; and capacity building; and by indicators on the side of the external partners, on the basis of existing commitments, covering medium-term aid flows; support within local medium-term budgeting and planning frameworks; donor practices; capacity building; and policy coherence, including the status/changes with respect to agricultural subsidies, effective tariff rates, and debt stocks/reductions.

The joint reviews will be processed through institutional mechanisms, including an Overseas Development Assistance Forum, as set out in the NEPAD framework document, and the UNECA/OECD Ministerial Consultation where several African Finance Ministers are invited to meet with OECD Ministers of Development Co-operation, as well Heads of bilateral and multilateral agencies, for a dialogue on issues of mutual concern (known as The Big Table).[61]

The ODA Forum will be comprised of the Ministers in attendance at the UNECA Annual Conference of African Ministers of Finance and Planning and Development. The document suggests that this Conference take place concurrently with the Annual Meeting of the African Development Bank, beginning in June 2003.

The outcomes of the ODA Forum will be a Development Effectiveness Report and be used for developing common African positions on ODA reform and other related issues such as debt, market access, and agricultural subsidies. Such common African positions can be taken to relevant international fora like the World Bank/IMF meetings. A report from each ODA Forum, along with recommendations, will be sent to the NEPAD HSGIC.[62]

FINANCING OF THE AFRICAN PEER REVIEW MECHANISM

The APRM base document approved in Durban last year stated that: "funding for the Mechanism will

come from assessed contributions from participating member states."[63] While the Mechanism will therefore be funded primarily by Africans themselves, donor assistance would be "…sought mainly for the implementation of the Programme of Action and capacity building to improve the weak areas… if they are managed in a way that clearly respects African ownership of the APRM and all its processes.[64]

As a first step the APR Forum now expects to receive a business plan for all the operations of the APRM over the first five years at its next meeting in Maputo during June 2003. The plan would provide for base reviews of all countries that accede to the process, probably one subsequent periodic review, and would also include provision for requested and instituted reviews. The business plan would allow the APR Forum to determine the required contributions from the participating countries to fund the Mechanism.

CONCLUSION

Institutionally, peer learning within the AU and its subsidiary program, NEPAD, will potentially develop along two main streams. On the one hand, political and human rights review will be based on the legally binding commitments contained in the Constitutive Act and additional frameworks such as the African Charter on Human and Peoples' Rights. This Africa-wide process of review will be common to all Member States of the Union. Practically, NEPAD peer review will be limited to economic and corporate governance review and restricted to countries that voluntarily accede to NEPAD. While the NEPAD secretariat (through its APR secretariat) will do the latter, it is unclear how the Country Teams will integrate these two streams.

The HSIC meeting of November 2002 provides the appropriate framework to view the future of the APRM structures when it "called on the AU to establish a mechanism and, where necessary, develop capacity through which the implementation of its decisions can be monitored. However, since this process will take some time before it is realized, the HSIC has decided to implement the APRM through the NEPAD Secretariat for co-ordination and administration, under the supervision of the Panel of Eminent Persons, as a transitional arrangement."[65] By implication, the APRM Secretariat will cease to exist at some point in the future when the NEPAD secretariat loses its quasi-independent status and is absorbed into the Commission of the African Union. At that point the Commission will fully assume responsibility for monitoring the adherence of both NEPAD member countries and AU member states to their commitments that underpin membership to the Union and its Development Partnership. The APRM text adopted at the AU Summit in Durban already provides for a revision of the APRM after five years 'to enhance its dynamism' while the initial business plan for the APRM that is to be compiled is for a similar period. At present the separate existence of the NEPAD secretariat in Midrand has been sanctioned until July 2003.

It needs reiteration that monitoring the degree to which African countries adhere and implement their undertakings taken under the auspices of the African Union is necessarily a core function of the Commission. The ability of the Commission to perform more than a distant watching function has historically been constrained by the lack of willingness of Member States to allow the Commission to do so and a lack of capacity within the Commission. NEPAD will have to confront these realities if it is to be different. But practically it is difficult to see how the NEPAD secretariat with much less resources and experience will be able to perform this without massive reliance upon outsourcing and partnerships with other institutions.

The communiqué that followed the 6th HSIC meeting of 9th March 2003 reads, in part, as follows: "The HSGIC [or HSIC] recalled the decisions taken at its Fifth Meeting regarding the timetable for the conclusion of work on the APRM process." This was that the NEPAD Secretariat should design and finalise the accession process to the APRM by the end of January 2003 and develop detailed criteria and indicators for measuring performance on political and economic governance for consideration at the next HSGIC meeting that concluded on 9th March 2003. The communiqué further "Mandated the Chairman to undertake further consultations with the Representatives of each region on the HSGIC, on the appointment of the Chairperson and members of the Panel of Eminent Persons, and for this process to be concluded by 31st March 2003."

Practically the next steps in the establishment of the APRM therefore include:

- the appointment of the Eminent Persons and Chairperson of the APR Panel—an announcement to this effect is expected during the first week of April 2003;
- completion and approval (by the APR Forum) of a business plan including budget and scales of contribution from participation countries for the APRM—this should be presented at the next HSIC meeting in mid-2003;
- formalization and approval of the mandate of the APR Panel, including its reporting arrangements to the APR Forum, in a Charter;
- finalization and approval of the rules of procedure for the APR Forum and the APR Panel;
- finalization and approve a Code of Conduct for all components of the APRM organisation; and
- finalization and signature of Memoranda of Understanding between the APR Secretariat and each APR Partner Institution.

In line with the ambitious time-schedule for the APRM process, and on the assumption that there will not be further delays and problems, the first results from the

APRM could, in theory, be expected some 18 months after the start of the Mechanism, i.e. by September 2004. Even the most sympathetic of observers would hold that this requires a common political will and co-operation unparalleled in African history.

Given the weaknesses evident in the institutions responsible for political and governance peer review, it is reasonable to expect several years to pass before there are tangible results from the Commission of the Union in this respect. In fact, the emerging nature of the APRM is a far cry from the original intention of President Mbeki, who simply wanted the UNECA to conduct peer review for NEPAD. The difference between that intent and the present structures and process reflect the extent of the compromises that had to be made in the process. It serves little purpose to point to the fact that the effective removal of political and good governance components from NEPAD and its location within the various structures within the African Union contradicts the original purpose and content of the APRM as contained within various NEPAD documents and communicated to Africa's development partners. This inevitable compromise was one that South African President Mbeki and his advisors had sought to delay and sometimes avoid. But as one of the architects of the Constitutive Act and the Protocol on the Pan African Parliament, South Africa could hardly be seen to undermine the African Union which it presently chairs. Similarly, the extent of Nigerian and other resistance to the duplication and competition evident from overlapping peer review processes made the harmonization and rationalization of peer review inevitable.

Against this background Africa's development partners may have to judge the political will and vigour evident from the peer review process as part of their considerations in funding the various country action plans that will follow. Giving money away intelligently is one of the most difficult of undertakings. It remains true for those countries and institutions wishing to engage and support NEPAD and the question will have to be asked to what extent the NEPAD model for peer review is a cost-effective tool to effect positive change. The standard assumption is that working national systems serve as a building block for effective regional systems. NEPAD appears to turn this logic around in the manner in which is seeks to build appropriate capacity, although the purpose, national assistance, remains unchanged.

The HSIC have decided against the development of a legally binding instrument such as a protocol to the Constitutive Act on the APRM as the basis for NEPAD peer review. Different to the state reporting mechanism under the African Charter of Human and Peoples' Rights and the Trade Policy Review Mechanism under the World Trade Organization, the APRM imposes a moral obligation on state parties to provide a program of action for implementation. It relies on what can best be described as 'soft' legality rather than a clear, legally binding commitment for implementation.[66] In any case NEPAD's best chance is to work with a coalition of willing African leaders who co-operate because they believe in the contribution that the APRM can make. Time will tell who counts themselves part of that group.

If the understanding presented in this paper is correct, NEPAD peer review will be a closed, state-to-state process with no room for non-official input or consultation, apart from the ability to comment on country reports at the point that they are released in whatever format. Although the various country reports will eventually be tabled in institutions such as the Pan-African Parliament, the PAP does not exist and even if the protocol is ratified in the next year, it will take some years before it functions as an integral structure of the Union. Even then it is questionable if a continental body could improve on the deleterious state evident in many national parliaments, including that of many NEPAD member countries. Given the experience with the reports of the African Commission on Human and Peoples' Rights it will also require a change in the way in which the Assembly of the Union has worked if country reports are to serve as a reflection of change. Ultimately only one factor will determine the impact of the APRM and that is a deep and genuine commitment by African leaders and their governments at every level to reform. It remains to be seen if this will materialize.

Many questions remain, therefore. But the debate on peer review has opened up considerable space for African civil society organizations to seek out and establish parallel processes to hold African governments and leaders accountable to their stated commitments and decisions. Perhaps it is here where most hope for accountability and effective review could be found.[67]

ENDNOTES

1. African Peer Review Mechanism (AHG/235(XXXVIII) Annex 2.
2. As quoted by Peter Fabricius, African leaders agree on peer review system, The Star, 4 November 2002, <www.iol.co.za>, accessed on 5 November 2002.
3. Jakkie Cilliers, NEPAD African Peer Review Mechanism, ISS Paper no 64, Institute for Security Studies, Pretoria, November 2002. Also available at <www.iss.co.za>.
4. Among the other interesting changes made between the draft and final version of the Memorandum of Understanding (originally submitted to the Heads of State as a document with the title 'Accord on the African Peer Review Mechanism') is the removal of the APR Panel of Eminent Persons as final arbiter in any dispute relating to the interpretation of the APRM agreements and the watering down of the status of the Memorandum of Understanding from a document to which countries had to submit an Instrument of Accession to one that requires the relevant country to submit a duly signed copy of the Memorandum of Understanding to the NEPAD secretariat.
5. Whereas the Accord was patently an international legal document, the Memorandum of Understanding does not appear to have that status.
6. The African Peer Review Mechanism: A critical appraisal, undated draft paper, Centre for Human Rights, University of Pretoria, March 2003.
7. Towards an Institutional Mechanism for Mutual Review of Development Effectiveness between Africa and its Partners, NEPAD/HSIC/03-2003, February 2003
8. 6th HSGIC communiqué, 9th March 2003, par 20.
9. Par 25 & 26 of African Peer Review Mechanism Annex 2, op cit. Also see endnote 11 below for possible changes to this time-line following the most recent HSIC meeting.
10. Par 6.8, African Peer Review Mechanism Organisation and Process, op cit.
11. The document discussed in Abuja during the 6th HSGIC meeting that is summarized in the main text of this paper appears to water down this 4th stage. The content of this stage, as approved by the AU Assembly in Durban in 2002, read as follows:

    The Fourth Stage begins when the Team's report is submitted to the participating Heads of State and Government (the APR Forum) through the APRM Secretariat. The consideration and adoption of the final report by the participating Heads of State and Government, including their decision in this regard, marks the end of this stage.

    If the Government of the country in question shows a demonstrable will to rectify the identified shortcomings, then it will be incumbent upon participating Governments to provide what assistance they can, as well as to urge donor governments and agencies also to come to the assistance of the country reviewed. However, if the necessary political will is not forthcoming from the Government, the participating states should first do everything practicable to engage it in constructive dialogue, offering in the process technical and other appropriate assistance. If 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. The interval should concentrate the mind of the Government and provide a further opportunity for addressing the identified shortcomings under a process of constructive dialogue. All considered, such measures should always be utilized as a last resort.

    The 6th HSGIC document also does away with the requirement for the APRM Report to be made public within a set period (6 months after consideration by the APR Forum). Instead the APR Forum is now required to "transmit the APRM Reports to the appropriate African Union structures in a timely manner" and "make public, through the APR Secretariat, country review reports and press releases pertaining thereto." (par 2.2)
12. "The functions, powers, composition and organization of the PSC shall be determined by the Assembly and set out in a protocol relating thereto." Article 20(bis) AU Constitutive Act as amended by the 1st Extraordinary Session of the Assembly of the Union, 3–4 February 2003, Addis Ababa, Ethiopia.
13. By February 2003, 34 member countries of the Union had signed the Protocol establishing the Council although only Algeria has ratified it. It would appear unlikely that the Protocol would be ratified in time for the next ordinary Assembly meeting of the African Union in Maputo during July 2003 as envisaged some months ago.
14. The preamble to the PSC Protocol notes the desire of the AU member states to establish "…an operational structure for the effective implementation of the decisions taken in the areas of conflict prevention, peace-making, peace support operations and intervention, as well as peace-building and post-conflict reconstruction, in accordance with the authority conferred in that regard by Article 5(2) of the Constitutive Act of the African Union."
15. The Council will be supported by the Commission itself, a Panel of the Wise, a Continental Early Warning System, an African Standby Force and a Special Fund. The PSC will function continuously, meeting at least twice a month at the level of Permanent Representatives, and annually at the level of Ministers and Heads of State and Government. All these meetings are to be in Addis Ababa except by agreement of two-thirds of the members of the PSC to meet elsewhere. Articles 5 and 8 of the PSC Protocol.
16. PSC Protocol, Art 3(f).
17. Par 2.1, African Peer Review Mechanism Organisation and Process, NEPAD/HGSIC-3-2003/APRM/Accord/Annex lll, Draft 29 January 2003.
18. Twelve African countries had signed a Declaration of Intent at the 5th HSIC meeting in Abuja, Nigeria on 3 November 2002 including Egypt, Mali, Mauritius and Gabon. These four countries did not sign the Memorandum of Understanding during the 6th HSIC meeting in March 2003, although Kenya and Uganda did do so. The other countries that signed the Memorandum of Understanding are Algeria, Republic of Congo, Ethiopia, Ghana, Mozambique, Nigeria, Rwanda and South Africa. 17 countries stated they will join the APRM in January 2003.
19. Par 2.1, African Peer Review Mechanism Organisation and process, op cit.
20. "The Eminent Persons must be Africans who have distinguished themselves in careers that are relevant to the work of the APRM. Members of the Panel must be persons of high moral stature and demonstrated commitment to the ideals of Pan Africanism. The composition of the Panel will also reflect broad regional balance, gender equity and cultural diversity." (Par 3.6, ibid.)
21. Par 4.1, African Peer Review Mechanism Organisation and process, op cit.
22. Par 4.2, ibid.
23. Communiqué issued at the end of the Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa's Development, Abuja, 9 March 2003 (hereafter 6th HSGIC Communiqué, 9 March 2003), par 7.
24. See F Pagani, Peer Review as a Tool for Co-operation and Change: an analysis of an OECD working method, African Security Review, 12(4), Institute for Security Studies, 2002, pp 15–24

25. During March 2003 the United Nations Development Programme (UNDP) started providing a US$1.9 million funding package to support the NEPAD Secretariat for an initial period of 15 months. The contribution is part of a broader $3.5 million project expected to draw funding from additional international partners. In addition to providing institutional support to the NEPAD Secretariat, the UNDP funding will help in six key areas:

    Promoting political governance and democracy in Africa, including assisting the Secretariat as it finalizes the African Peer Review Mechanism;

    Creating a Technical Support Facility to allow NEPAD to mobilize expertise from a variety of disciplines;.

    Establishing a NEPAD Advisory Panel, consisting of Africans from constituencies, such as academia, civil society, government and the private sector, to provide guidance on NEPAD's future directions and ensure that the initiative is well known throughout the region;

    Developing a Communication and Popularization Strategy to incorporate a common approach for NEPAD and the African Union;.

    Translating the concept of the "new partnership" into development co-operation policies, principles and practices which ensure African ownership;

    Promoting in African countries NEPAD objectives in tandem with the Millennium Development Goals.

26. NEPAD Framework Document (2001); Constitutive Act of the African Union (2000); Cairo Declaration on the Establishment, within the OAU, of the Mechanism for Conflict Prevention, Management and Resolution (1993); [or the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) when operational]; Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) Solemn Declaration (2000); Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (2000); Charter of the United Nations (1945); African Charter on Human and Peoples' Rights (1990); Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999); UN Universal Declaration on Human Rights (1948) and all conventions relating thereto; UN and African anti-corruption codes (none are mentioned); Convention on the Eradication of Discrimination Against Women (CEDAW); Beijing Plan of Action (1995); African Charter on the Rights and Welfare of the Child (1990); United Nations Convention on the Rights of the Child; The OAU Refugee Convention (1969); and the UN Convention on Refugees.
27. NEPAD Framework Document (2001); Abuja Treaty establishing the African Economic Community (1991); Constitutive Act of the African Union (2000); Code of Good Practices on Fiscal Transparency; Guidelines for Public Debt Management; International Standards in Auditing; International Accounting Standards; Code of Good Practices on Transparency in Monetary and Financial Policies; Principles for Payment Systems; Core Principles for Securities and Insurance Supervision and Regulations; Core principles for Effective Banking Supervision; United Nations and African Union anti-corruption codes and standards; and Recommendations on Anti-Money Laundering
28. Principles of corporate governance (OECD and Commonwealth); International accounting standards; International standards on auditing; Core principles of Effective Banking Supervision; Core principles for Securities and Insurance Supervision and Regulations; African Charter on Human and Peoples' Rights; ILO labour codes; and WHO codes on industrial and environmental safety and hygiene.
29. NEPAD Framework Document (2001); Right to development in African Charter on Human and Peoples' Rights (1981); African Charter for Popular Participation in Development (1990); NEPAD Framework Document (2001); WSSD Johannesburg Plan of Implementation (2002); UN Millennium Declaration (2000); The Right to Development in the African Charter on Human and Peoples' Rights (1981); UN Declaration on the Right to Development (1986); The African Charter on the Rights and Welfare of the Child (1990); World Summit on Social Development Plan of Action (1995); NEPAD Framework Document (2001); Constitutive Act of the African Union (2000); Convention on the Elimination of Discrimination against Women (CEDAW); Beijing Plan of Action (1995); African Charter on Popular Participation in Development (1990); and World Summit on Social Development Plan of Action (1995).
30. Par 6.1, ibid.
31. Par 6.9, ibid.
32. In par 16.
33. Par 6.3, African Peer Review Mechanism Organisation and process, op cit.
34. The Charter on the Welfare of the African Child provides for the establishment of an African Committee of Experts to *inter alia:* monitor the implementation and ensure protection of the rights enshrined in the Charter; interpret the provisions of the Charter; and formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa. States party to the Charter are required to submit reports to the Committee within two years after ratification. The Committee can receive and investigate complaints from individuals or NGOs. The eleven members of the Committee were elected in 2001 for a period of five years. It has met twice, in April and December 2002.
35. Par 6.4 & 6.6, ibid.
36. Article 12 of Statutes of the Commission of the African Union
37. Interviews in Addis Ababa, February 2003. Membership arrears normally run at between US$30m and $50 million. A special funding committee is presently investigating funding options and recommendations should be tabled at the next meeting of the Executive Council.
38. Article 3, 2(h) of Statutes of the Commission of the African Union.
39. Article 3, 2(n), ibid.
40. Article 3, 2(r), ibid.
41. Article 3, 2(s), ibid.
42. Article 3, 2(u), ibid.
43. Par 15, ibid.
44. Originally the unit reported to the assistant secretary-general political affairs but following a recent internal restructuring within the Interim Commission the Unit now reports directly to the Interim Chairman.
45. Elsewhere the memorandum spoke of country reports and visitation panels composed of eminent, reputable Africans, conducted in two-year cycles. This included a set of core values and commitments and some 50 specific key performance indicators regarding democracy, human rights, security, economic issues and development. The closing paragraphs of the memorandum speak of the designation of focal points and national co-ordinating committees within each country, including annual monitoring of the country's compliance with the CSSDCA process.
46. The Heads of State decision on the CSSDCA "reaffirmed the centrality of the CSSDCA Process… as a monitoring and evaluation mechanism for the African Union."
47. Following the Report of the Secretary-General on Strengthening the Role of the OAU/AU in Elections, Observations and Monitoring and the Advancement of the Democratization Process in Africa. AHG/Decl. 1 (XXXVIII) and CM/2257 (LXXVI)
48. Botswana, Libya, Malawi, Mali, Namibia, Rwanda, SADR, South Africa, Sudan and Tanzania. Report of the

Interim Chairperson of the Commission on the Status of AU Treaties (as at 10 February 2003), EX/CL/14(II), Executive Council, Second Ordinary Session, 3–6 March 2003, N'Djamena, Chad, par 77.

49. Article 11(1), Treaty Establishing the African Economic Community relating to the Pan-African Parliament.
50. Constitutive Act of the African Union, as amended, Article 4(c).
51. Ibid. Preamble.
52. See K Sturman and J Cilliers, ECOSOCC: bringing people's power to the Union, in African Security Review, vol 12, no 1, Institute for Security Studies, Pretoria, 2003.
53. At the same time ECOSOCC would not have the exclusive right to be heard since each individual sub-structure or organ of the Union will inevitably retain the right to engage or call on submissions and hearings from whom it may desire.
54. This section is based on C Heyns, The African Regional Human Rights System: the African Charter, Centre for Human Rights, University of Pretoria, 2003.
55. Although it is not provided for in the African Charter that the reports should be submitted specifically to the African Commission, the Commission recommended to the Assembly that the Commission be given the mandate to consider the reports. The Assembly subsequently endorsed this recommendation.
56. There has been widespread criticism of the lack of effective action on the part of the Special Rapporteur on Summary, Arbitrary and Extrajudicial Executions, while the same is true of at least the first incumbent of the position of Special Rapporteur on the Conditions of Women in Africa. In contrast, the Special Rapporteur on Prisons and Conditions of Detention in Africa has set the standards for years to come.
57. In addition to country-specific and other more *ad hoc* resolutions, they have adopted resolutions on topics such as the following: fair trial; freedom of association; human and peoples' rights education; humanitarian law; contemporary forms of slavery; anti-personnel mines; prisons in Africa; the independence of the judiciary; the electoral process and participatory governance; the International Criminal Court; the death penalty; torture; HIV/AIDS; and freedom of expression.
58. The shortcomings in the African Charter relate to the norms recognised (the omission of important civil and political as well as socio-economic rights, the inclusion of concepts which are not easy to translate into legal terms, and the absence of adequate rules in respect of restrictions on rights) as well as the monitoring mechanism itself (none of the main monitoring procedures allowed by the Commission—individual communications, state reports and special rapporteurs—are provided for explicitly in the Charter, and the provisions concerning secrecy and massive violations should be scrapped).
59. Par 20 of communiqué.
60. Joint reviews would be based on existing policy commitments as recorded in: NEPAD's founding statement and Action Plan; the Development Partnership Strategy (first set out in the OECD/DAC 1996 policy statement on "Shaping the 21st Century: The Role of Development Co-operation"); the Millennium Development Goals emerging from the agreement among Heads of State at the Millennium Summit; the Monterrey Consensus; the Kananaskis G8 "Africa Action Plan"; and the 2002 OECD Ministerial Statement in "Action for a Shared Development Agenda".
61. This is an annual consultation organized by the ECA and OECD where African Finance Ministers are invited to meet with OECD Ministers of Development Co-operation and Heads of major bilateral and international agencies.
62. 6th HSGIC communiqué, 9th March 2003, par 20. In effect while the UNECA proposal was forwarded to the NEPAD HSIC for their consideration and endorsement, a similar proposal will be submitted to OECD/DAC prepared by the OECD Secretariat. On that basis, a joint paper of the UNECA and OECD Secretariats will be prepared for consideration by the Conference of African Ministers of Finance and Planning and Development in June 2003 and the DAC. Following those outcomes, an updated paper will be submitted to the HSGIC on the way forward.
63. Par 26. The communiqué of the 35th Session of the Commission/Conference of African Ministers of Finance, Planning and Economic Development, convened by the UNECA in Johannesburg, South Africa, 21-23 October 2002, similarly included the recognition that the APRM will be implemented with resources to come predominantly from Africa.
64. Par 8.3, African Peer Review Mechanism Organisation and Process, op cit.
65. Par 14 of the 5th HSGIC communiqué.
66. The legal basis for the TPRM is annex 3 of the Agreement establishing the WTO. The Commission is established in terms of Article62 of the African Charter. E. Baimu, op cit.
67. According to Christof Heyns (ibid) NGOs already have a special relationship with the African Commission. Large numbers have registered for affiliate status. NGOs are often instrumental in bringing cases to the Commission; they sometimes submit shadow reports; propose agenda items at the outset of Commission sessions; and provide logistical and other support to the Commission, for example by placing interns at the Commission and providing support to the special rapporteurs and missions of the Commission. NGOs often organise special workshops just prior to Commission sessions, and participate actively in the public sessions of the Commission. NGOs also collaborate with the Commission in developing normative resolutions and new protocols to the African Charter.

The ISS mission

The vision of the Institute for Security Studies is one of a stable and peaceful Africa characterised by a respect for human rights, the rule of law, democracy and collaborative security. As an applied policy research institute with a mission to conceptualise, inform and enhance the security debate in Africa, the Institute supports this vision statement by undertaking independent applied research and analysis; facilitating and supporting policy formulation; raising the awareness of decision makers and the public; monitoring trends and policy implementation; collecting, interpreting and disseminating information; networking on national, regional and international levels; and capacity building.

About this paper

An earlier ISS paper (Paper 64) summarized much of the debate on NEPAD shortly after the conclusion of the 5th Summit of the Heads of State and Government Implementation Committee (HSIC or HSGIC) of NEPAD on 3rd November 2002. This paper follows closely upon the conclusion of the 6th Summit of the HSIC on 9th March 2003 in Abuja and provides additional detail on the process, structure and nature of the APRM.

About the author

Dr Jakkie Cilliers is the executive director of the ISS.

Funder

This paper is published under the auspices of the Training for Peace in Southern Africa Programme, a collaborative project of the ISS, ACCORD and the Norwegian Institute for International Affairs, funded by the Royal Norwegian Government.

Published by the Institute for Security Studies • P O Box 1787 • Brooklyn Square • 0075 • Pretoria • SOUTH AFRICA
Tel: +27-12-346-9500/2 • Fax: +27-12-460-0998
Email: iss@iss.co.za • http://www.iss.co.za

67 Roeland Square • Drury Lane • Gardens • Cape Town • 8001 • SOUTH AFRICA
Tel: +27-21-461-7211 • Fax: +27-21-461-7213
Email: issct@iss.co.za

ISSN: 1026-0404

9 771026 040004

INSTITUTE FOR SECURITY STUDIES