

Good governance and political stability in Africa: Is the APRM working?

Introduction

The African Peer Review Mechanism (APRM) is no longer new to us in Africa. Since it was first mooted in 2002, and established in 2003 as a mechanism to monitor and measure adherence to the rule of law in Africa,¹ there has been widespread interest in the structure and workings of the mechanism. The establishment of the APRM gave rise to both optimism and scepticism in Africa. The optimism was borne from the impression that finally the continent was doing something for itself about its problems, whereas the scepticism was based on the failure of various African initiatives to address the problems faced by the continent.² As we approach a full decade of the functioning of the APRM, it is time to take stock, and to examine if indeed the mechanism has lived up to expectations, and if it is still relevant on the continent.

Overview of the APRM process

The APRM is a self-review mechanism for participating member states³ which operates on the basis of voluntary accession and is designed in such a way that the member states review the performance of their peers on a number of set standards and parameters set out in what is commonly referred to as the Base Document.⁴ With its voluntary nature, the APRM is for Africa a first departure from the consensual approach to African matters, and an attempt to move away from the 'brotherhood' mentality with which African countries operated

¹Kuwali *The responsibility to protect: Implementation of article 4(h) intervention* (2011) at 215. It is important to note that the start date for the APRM is open to interpretation. The protocol establishing it was agreed to in 2002, but other elements of the system took longer to develop with the first meeting of the Africa Peer Review (APR) Forum taking place only in February 2004. This is considered by some to be the effective start of the APRM, even though Ghana (the pioneer country in the review process) had already begun its internal processes of review.

²See Cilliers 'NEPAD's Peer Review Process' *ISS Paper 64* – November 2002 at http://www.iss.co.za/uploads/PAPER_64.PDF (accessed 30 March 2012); Abioye 'Africa's drive towards self-monitoring: NEPAD's Peer Review Mechanism' (2005) 30 *SAYIL* 193 at 194; 'The APRM: A compilation of studies of the process in nine African countries' (2010) Open Society Initiative for Southern Africa (OSISA) at vii.

³All members of the African Union are eligible to accede to the APRM by signing the Memorandum of Understanding (MOU). As of January 2011, 30 countries had acceded to the APRM, namely: Algeria, Angola, Benin, Burkina Faso, Cameroun, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia.

⁴This is a protocol which originally established the APRM in its broad outlines, and explains the purpose and intent of the system. More commonly associated with the African Union, the APRM protocol was issued on 8 July 2002 at the 38th Ordinary Session of the Organization of African Unity.

before the establishment of the African Union (AU).⁵ Such a mentality was adequate – perhaps necessary – during the struggle for decolonisation within the Organisation of African Unity (OAU), in as much as there was a ‘common enemy’. However in contemporary times it had become obsolete, and was in fact, inhibiting progress.

The nature of the APRM would seem to answer the criticism that Abass levelled against the AU (and its predecessor, the OAU) which was based on its very historical precedents

[B]eing an organisation historically founded on some pseudo-brotherhood of the African leaders, historically united in their common goal of fighting colonial dominations, the OAU never developed appetite for self scrutiny or appraisal, a trend that is already noticeable in the AU. For instance, while the AU continues to register its discomfort with events in Darfur in general terms, it has not officially condemned the violations of [IHL] in Darfur nor has it castigated the [GoS] for not doing enough to stop the atrocities committed by its own troops and militias.⁶

The APRM defines a variety of stages, rules and institutions to ensure that its results are widely perceived as fair and rigorous.⁷ These stages, rules and institutions were established through a variety of documents, mostly from the APRM secretariat.⁸ The APRM review involves a number of stages and processes which culminate in the final review report being presented to the participating heads of state and governments for discussion and ‘peer review’.⁹ At this stage, the effectiveness or ineffectiveness of the mechanism is tested by the way in which the review process and its recommendations are dealt with.

⁵Grimm and Katito ‘African Developments: Continental Integration in Africa – AU, NEPAD and the APRM’ German Development Institute Briefing Paper April 2010 available at [http://www.diegdi.de/CMS-Homepage/openwebcms3.nsf/\(ynDK_contentByKey\)/ANES-82JKD8/\\$FILE/BP%204.2010.pdf](http://www.diegdi.de/CMS-Homepage/openwebcms3.nsf/(ynDK_contentByKey)/ANES-82JKD8/$FILE/BP%204.2010.pdf) (first accessed May 2010).

⁶Abass ‘The United Nations, the African Union and the Darfur crisis: Of apology and utopia’ (2009) 54 *Netherlands International Law Review* 415-440 at 426-427.

⁷Herbert and Gruzid *The African Peer Review Mechanism, lessons from the pioneers* (2008) at 11.

⁸APRM Secretariat ‘African Peer Review Organisation and Processes’ 3 March 2003; NEPAD Heads of State and Government Implementing Committee ‘Memorandum of Understanding on the African Peer Review Mechanism’ 9 March 2003; APRM Secretariat ‘Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism’ 9 March 2003; APRM Secretariat ‘Guidelines for Countries to prepare for and to participate in the African Peer Review Mechanism (APRM)’ November 2003; APRM Secretariat ‘Country Self-Assessment for the African Peer Review Mechanism’ updated 2004; APRM Secretariat ‘APR Questionnaire General Guidance’ 2003; APRM Secretariat ‘Supplementary Document to APRM Guidelines for Country Review – The APRM National Structure’ updated 2007; and APRM Secretariat ‘Prerequisites for a Country Review Mission’ updated 2007.

⁹Abioye n 2 above at 199-202; see also Herbert and Gruzid n 7 above at 5.

The set standards and parameters against which peer review is carried out are grouped into the following thematic areas: democratic and political governance; economic governance and management; corporate governance, and socio-economic development.¹⁰ It is under these different heads that the member countries are assessed and judged based on best practices that have been developed. The mechanism provides for the sharing of experiences amongst participating countries and the reinforcement of best practices, including identifying deficiencies.¹¹ It was conceived that solutions to and resources needed for the problems identified would be proffered in each case by the participating countries. These same countries are also allowed collectively to lobby donor agencies and international organisations for assistance.¹²

For an effective process of peer review, there must be room for genuine criticism and/or commendation based on the findings of the country review report. Geldenhuys refers to this as ‘the crux of the entire review process ...’.¹³ He notes that the APRM founding documents allow for three possibilities of action; where inadequacies are raised and governments concerned show the will to rectify the shortcomings, then other government would be urged to assist; where the political will to address the shortcomings is not there, fellow states are mandated to first try to engage the government concerned in constructive dialogue, and then, where such dialogue fails, other leaders ‘may’ wish to put the government concerned on notice of their collective intention to proceed with appropriate measures by a given date.¹⁴

It has been noted that the implementation of the APRM may enhance sustained peace and security in Africa by articulating a strong stance on domestic governance issues that lie at the root of instability and insecurity on the continent.¹⁵ This process of review will set the APRM apart as a useful initiative and a useful process in raising awareness of relevant governance and political issues of a particular country, all of which might represent conflict vulnerabilities and thus need to be addressed with appropriate measures.¹⁶ An important caveat to the APRM achieving its purpose is the level of commitment to the process displayed by its members, the inclusion of civil society and the populace in the peer review process, and the seriousness with which the issues that arise in the country review reports are weighted and handled. This paper

¹⁰APRM Secretariat ‘Objectives, Standards ...’ n 8 above.

¹¹International Peace Academy (IPA) joint report ‘NEPAD: African initiative, new partnership?’ available at www.ipacademy.org/publication/publications.html (accessed 16 August 2005).

¹²FIDH *A Human rights approach to NEPAD and the APRM* (2004) at 123.

¹³Geldenhuys ‘Brothers as keepers: Africa’s new sovereignty regime’ (2006) 28 *Strategic Review for Southern Africa* 16.

¹⁴*Ibid.*

¹⁵Kuwali n 1 above at 216.

¹⁶*Id* at 217.

seeks to analyse the impact (or lack of impact) that the APRM review process has had on the trajectory of some states that have been reviewed using the specific area of ‘democracy and good political governance’.

Democracy and good political governance through the APRM

Successive AU summits have taken decisions aimed at promoting democracy and good political development on the continent. The democracy and political governance theme of the APRM rests on the NEPAD ‘Declaration on Democracy, Political, Economic and Corporate Governance’, which was officially adopted by the AU Heads of State and Government in South Africa in 2002.¹⁷ As reflected in the objectives of this theme, the NEPAD Declaration has as its core values; the rule of law; equality of all citizens before the law; individual and collective freedoms; right to participate by means of free, credible and democratic political processes; and adherence to separation of powers including the protection of the independence of the judiciary.¹⁸ Also in 2002, the ‘Declaration on the Principles Governing Democratic Elections in Africa’ was approved,¹⁹ and in 2007, the ‘African Charter on Democracy, Elections and Governance’ was adopted as a guide and point of reference for sustained and ongoing political reform on the continent.²⁰

The democracy and good political governance theme of the APRM is aimed at ensuring that the constitutions of member states reflect the democratic ethos, provide accountable governance, and that political representation is promoted, allowing all citizens to participate in the political process in a free and fair political environment.²¹ African heads of states and government in passing this declaration, determined to increase efforts to restore stability, peace and security on the African continent, as these were essential conditions for growth and development amongst member states.²² Thus, good political governance is related to democracy, and as understood by African leaders and adopted

¹⁷NEPAD Secretariat ‘Declaration on Democracy, Political, Economic and Corporate Governance’ NEPAD/HSGIC/03-2003/APRM/MOU/Annex I available at <http://www.uneca.org/aprm/documents/book2.pdf> (accessed 30 March 2012); Matlosa ‘Democracy and political governance in Lesotho: Key issues and challenges’ Electoral Institute for Sustainable Democracy in Africa at http://www.eisa.org.za/aprm/pdf/Resources_Bibliography_Matlosa1.pdf (accessed 30 March 2012).

¹⁸Declaration n 17 above.

¹⁹AHG/Decl 1 (XXXVIII) 2002.

²⁰United Nations Economic Commission for Africa (UNECA) and Organisation for Economic Cooperation and Development (OECD) 2009 Report ‘The Mutual Review of Development Effectiveness in Africa: Performance and Progress’ Focus 9: Political Governance at http://www.uneca.org/gpad/publications/mrde2009/docs/9_Political_Governance.pdf (accessed 31 March 2012).

²¹NEPAD website at <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about> (accessed 29 March 2012).

²²NEPAD Declaration n 17 above.

under NEPAD and the APRM, it refers to a system of governance in which people participate effectively and meaningfully in the decision-making processes that affect their lives and livelihood, and to politics as the process by which values, goods and services are allocated in society.²³ Based on these declarations, one can surmise that the ‘African perspective’ is that good political governance is democratic governance, which ought to be based on respect for the rule of law, the separation of powers, the supremacy of the Constitution, the independence of the judiciary, and the promotion of human and peoples’ rights.²⁴

The APRM cites a variety of standards, codes and declarations that form the criteria against which governance in Africa can be measured in the different thematic areas.²⁵ It is important to note that only the democracy and political governance thematic area has standards allocated to particular objectives under it, the remaining three thematic areas of the questionnaire list the standards that apply to the whole theme without subdivisions under different objectives.²⁶ This can be said to be indicative of the importance of this theme to the entire process and shows the great emphasis placed on democracy and good political governance on the continent. The APRM questionnaire lists nine objectives under which questions must be answered by the state under review.²⁷ The answers provided by a member state are typically contained in its ‘National Program of Action’ (NPoA), which details steps it proposes to take to begin to address the problems that have been raised in the country self-assessment and in the review mission. This, together with the final ‘Country Review Report’ (CRR) gives a good indication of the problems (both potential and real) within a member state, and the necessary solutions to these problems. It removes the veil of secrecy that would otherwise have concealed the issues at play within a country, and helps to provide a focus for the areas to which

²³Mangu ‘The African peer-review mechanism and the promotion of democracy and good political governance in Africa’ (2007) 32 *SAYIL* 8.

²⁴*Id* at 9.

²⁵These standards and codes are contained in the APRM Objectives, Standards, Criteria and Indicators (OSCI) and in the APRM Self-Assessment Questionnaire n 8 above.

²⁶Herbert and Grudz n 7 above at 333.

²⁷Objective one: Prevention and reduction of intra- and inter-state conflicts; Objective two: Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, citizen rights and supremacy of the constitution; Objective three: Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments; Objective four: Uphold the separation of powers, including the protection of the independence of the judiciary and of an effective legislature; Objective five: Ensure accountable, efficient and effective public office holders and civil servants; Objective six: Fighting corruption in the political sphere; Objective seven: Promotion and protection of the rights of women; Objective eight: Promotion and protection of the rights of children and young persons, and Objective nine: Promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees.

aid, investment and technical expertise should be directed. This type of 'independent intervention' in the trajectory of a state is a welcome development as it doubles as a type of early warning signal. It should be welcomed as it should assist governments to prioritise their actions in areas where they are most needed.

Practical workings of the good political governance theme

Since the establishment of the APRM, less than half of its thirty member countries have been reviewed.²⁸ This has raised concerns about the pace of the review process and the impact of this pace on the credibility of the entire process.²⁹ As stated above, the aim of the APRM is effective peer-review which will offer African solutions to the problematic issues identified within countries and aid these countries in the implementation of the solutions. Of the countries reviewed, however, we have seen instances in which some form of internal conflict has erupted even after the country has undergone the intensive and rigorous process of peer review. This despite the fact that the issues fuelling the conflicts were raised and identified in the APRM report for action. The question then arises as to why these issues still gave rise to conflict even though they had been singled out for action by the APRM report? Could it be that the ability of the mechanism to function and its effectiveness is limited solely to the review process itself and to identifying the problematic issues confronting a country? Or could it be a case of the 'reviewed' country failing to implement the recommendations of the APRM? In exploring this aspect of the democracy and good political governance theme of the APRM, this article shall consider some of the instances where conflicts have broken out after the APRM review.

South Africa and the xenophobic riots

In May 2008, sixty-two people (including 21 South Africans) were killed, at least 670 people were wounded, and over 100 000 people were displaced – their homes and businesses looted, destroyed or seized by local residents – in a series of horrific attacks and riots against black non-South Africans.³⁰ Those

²⁸NEPAD website n 21 above. These are Ghana, Rwanda, Kenya, South Africa, Algeria, Uganda, Benin Republic, Nigeria, Burkina Faso, Mali, Mozambique, Lesotho, and Ethiopia,

²⁹Herbert and Gruzd n 7 above at 8.

³⁰Crawford 'Counting the cost of our descent: Xenophobia in South Africa today' (2010) 1 *New Routes* 12; Turianskyi 'Off track? Findings from South Africa's First APRM Implementation Report' (2010) *SAILA Occasional Paper* no 53 at 20. This was a manifestation of sentiments against non-South African blacks which had been building up and simmering since the onset of the new South Africa. This developing problem had also attracted the attention of international organisations. See Pityana 'Xenophobia and the human rights challenge' Human Rights Commission Racism and Xenophobia Consultative Workshop October 1998; Graham 'An overview of xenophobia in SA (trends, patterns and challenges)' Human Rights Commission Racism and Xenophobia Consultative Workshop October 1998, both available at <http://www.queensu.ca/samp/Conferences/Agendas/agenda3.htm#PRESENTATION>; see also

affected became 'refugees' overnight and were housed in temporary refugee camps set up across the country. The reasons for the attacks stemmed from the sentiments of black South Africans that foreigners (derisively called '*makwerekwere*') were responsible for their inability to get jobs and to access the economic wealth of the country, and the failure of the state government in the realm of service delivery, due to the high influx of foreigners into townships across the country.³¹ For months after the riots, and after a semblance of normalcy had returned to the affected townships, government decided that the 'refugees' had to either be repatriated or re-integrated into the areas from which they had been driven.³² Whilst many opted to be repatriated to their countries of origin for fear of facing a repeat of the circumstances that led to their fleeing for their lives were they to return, many who had no alternative opted to be re-integrated. They found that little had changed in the attitudes of the locals.³³ To date this remains the position on the ground. Even though there has not been a recurrence of the attacks of 2008, there have a number of incidents across the country³⁴ reminiscent of the 2008 attacks. These go to indicate that the problem of xenophobia has not been adequately addressed. This was confirmed in the report of the Technical Committee on Political and Good Governance to the APRM, which indicated that,

however, xenophobia directed at foreigners remains prevalent and many face discrimination from citizens and employers and exclusion from critical services. Non-citizens from other African countries in particular often face xenophobia, and may have limited access to employment and residence permits than non-citizens from other regions.³⁵

The xenophobic attacks in South Africa happened soon after the completion of the APRM review process in the country. At the end of the self-assessment, the CRR on South Africa was issued by the APRM.³⁶ It was a product of the consideration of both the 'Country Self-Assessment Report' (CSAR) and the 'Country Review Mission' (CRM). The CRR highlighted areas where the country was making progress and areas that were lacking and needed more attention and political will to be adequately addressed. Amongst the issues

Human Rights Watch (1998) *Prohibited persons' abuse of undocumented migrants, asylum-seekers, and refugees in South Africa* a publication of the Human Rights Watch; International Organisation for Migration (IOM) 'Towards tolerance, law and dignity: Addressing Violence against foreign nationals in South Africa' publication no 01/2009 available at <http://www.xenophobia.org.za/tolerance.pdf> (accessed 31 March 2012).

³¹Crawford n 30 above.

³²*Id* at 13.

³³*Ibid.*

³⁴*Ibid.* Threats and counter-threats against black non-South Africans have become commonplace. Instances of Somalis, Zimbabweans and those of other African nationality being harassed, molested and at times killed in Johannesburg, Cape Town and in other parts of the country still occur.

³⁵IDASA, APRM Technical Report: 'Democracy and Good Political Governance' at 105.

³⁶APRM Country Report for South Africa (final Sept 2007).

identified were the increasing phenomena of corruption, the levels of poverty, the lasting impact of apartheid on the people, and xenophobia. On the issue of xenophobia, the report pointed to this lingering problem within the country in the following words,

Despite the solidarity and comradeship between black South Africans and the rest of the people of sub-Saharan Africa during the decades of struggle against apartheid and for liberation, foreigners, mostly of African descent, are being subjected to brutality and detention. Xenophobia against other Africans is currently on the rise and should be nipped in the bud.³⁷

This had also been an issue in the CSAR, which had indicated that ‘competition for limited resources between citizens and non-nationals seeking political and economic stability in South Africa is a potential source of conflict’.³⁸ It also noted that ‘there is active discrimination against vulnerable groups including non-nationals. The latter raises concerns about xenophobia’.³⁹ The attitude of the government of South Africa to this issue can be noted in the two separate drafts of the CSAR. While the first draft of May 2006 spoke of ‘countering high levels of xenophobia’, the final version that was submitted to the APRM Secretariat, seemed to have watered down the strong language used in the earlier version, and instead suggested that, according to submissions, refugees and asylum seekers ‘sometimes face discrimination ... and xenophobic attitudes’. The government, at that stage, did not consider the issue of xenophobic tendencies to be as bad or deserving of attention as the review process reports had indicated. This was further confirmed by former President Mbeki at the ‘peer review’ of the South African CRR by the Heads of States and Governments of the APRM (APR Forum), on 1 July 2007 in Accra, Ghana, when he strongly rebutted the perception of xenophobia being on the increase in South Africa.⁴⁰ With this attitude of the South African government to the delicate issue of xenophobia, amongst other issues raised by the APRM process, it is little wonder that the NPoA, which was designed to indicate the actions and steps that the state would take to address the issues raised in the CRR, was silent on how to address the problem of xenophobia.

The APRM review process requires that annual implementation reports on the NPoA be issued by the country to indicate the progress being made in relation to the issues raised, and how the country is coping with the implementation of the recommendations of the CRR. South Africa submitted its first

³⁷*Id* s 7.1.10 at 310.

³⁸Mbelle ‘The APRM process in South Africa’ (2010) joint report by Africa Governance Monitoring and Advocacy Project (Afrimap) and the Open Society Initiative for Southern Africa (OSISA) at 16.

³⁹*Ibid.*

⁴⁰*Id* at 20.

Implementation Report (SAIR I) on the NPoA in 2009.⁴¹ The report has been criticised by civil society as not fulfilling and reflecting the purpose for which it was designed.⁴² In discussing the xenophobic violence of 2008, the SAIR I glossed over the root cause of the attacks by concluding that poverty in the communities in which the attacks started have a huge role to play in the attacks.⁴³ It indicated that a National Action Plan to combat racism, xenophobia and related intolerances has been developed, but failed to give any details of what the plan was.⁴⁴ The report sought to downplay the fact that the government had knowledge that xenophobic tendencies had been increasing steadily in the country, and that nothing had been done to address the problem, despite the fact that the CRR had warned the government about the situation. The report also did not assess the inadequate response of the South African government to the attacks, and did not indicate the steps taken by the government to ensure that guilty parties were brought to book for their actions. Neither did it indicate steps that the government planned to take to prevent similar scenarios from recurring.⁴⁵ The SAIR II (covering the period of January 2009 - September 2010) submitted by the government, went a little further in acknowledging the problem of xenophobia, and sought to expatiate on the government's anti-xenophobia initiatives.⁴⁶ These include the review of the immigration policy, the dissolution of the Standing Committee for Refugee Affairs and Refugee Appeals Board in favour of a new Refugee Appeals Authority, an initiative to educate learners about the ills of xenophobia, and the implementation of a South African Human Rights Commission (SAHRC) investigative report into the 2008 attacks.⁴⁷ Even though this report shows greater acknowledgement of the problem by the

⁴¹APRM Focal Point 'First Report on the Implementation of South Africa's African Peer Review Mechanism Programme of Action'.

⁴²Turianskyi n 30 above at 5. In his paper, Turianskyi comments that much of the progress and achievements discussed in the progress report had little to do with the APRM, and rather referred to the accomplishments achieved since the country's democratic transition in 1994. He says, 'overall, the Implementation Report does a poor job of discussing and analyzing progress on the commitments in the APRM NPoA and fails to provide evidence that South Africa is making serious efforts to implement it'.

⁴³APRM Focal Point Report concluded that since the attacks occurred in the poor communities, there was an undeniable class dimension. At 27, it reiterated the position of the South African government that 'socio-economic inequalities, competition for scarce resources, poor living conditions and a high rate of unemployment may have exacerbated an already tense situation'.

⁴⁴Turianskyi n 30 above at 29 where the author lists other initiatives identified in the report.

⁴⁵It is important to note that a year and a half after the original attacks, xenophobia was again on the rise as there were talks of plans to evict foreigners after the World Cup, and in the Western Cape Province, local workers in the town of De Doorns drove out 3 000 foreigners from their shacks, accusing them of stealing their jobs by accepting lower wages.

⁴⁶Parliamentary Monitoring Group (PMG) 'Second Report on the Implementation of South Africa's APRM Programme of Action' at <http://www.pmg.org.za/node/24944> at 53 (accessed 2 April 2012).

⁴⁷*Ibid.*

South African government, it has still been criticised for lacking clarity on the implementation and results of these initiatives.⁴⁸ The lack of coordination of the different initiatives on different levels and by different departments is also a problem. A pilot project aimed at educating learners which was initiated by the Dept of Home Affairs Counter-Xenophobia Unit has not been sustained or expanded to other provinces.⁴⁹ It has been said that the SAIR II lacks any indication of the effectiveness of these government initiatives in making foreigners feel more welcome in the country.⁵⁰

It would appear that even though South Africa is one of the pioneer countries of the APRM, it is still not fully committed to giving effect to the APRM recommendations when it comes to its own backyard. The fact that the country disputed parts of the CRR, especially the parts dealing with xenophobia, seems to suggest that when the report is not favourable, or does not fit into the picture a country desires to paint of itself, then it is disputed. When the report is favourable there seems to be no dispute. While one cannot expect the issues raised by the CRR to be solved immediately, one can at least expect that efforts would be made to meet the challenges identified in order to ensure that the goals of the APRM and the wider NEPAD project are being met. Regrettably, this has not been the case.

Kenya and the post-election violence of 2007-2008

On 27 December 2007, Kenya held its fourth general election which proved to be the most contested in the history of the country (on all levels: civic, parliamentary and presidential).⁵¹ The presidential election came down to a struggle between the incumbent president, Mwai Kibaki (of the Party of National Unity (PNU)), and his erstwhile National Rainbow Coalition colleague, Raila Odinga (of the Orange Democratic Movement (ODM)). On 30 December, the incumbent was controversially declared the winner of the elections by the Electoral Commission of Kenya, and hurriedly sworn in for a second five-year term.⁵² This unleashed a wave of horror and mayhem that brought the nation close to collapse.⁵³ Violence erupted in the various strongholds of the ODM, as the party protested that they had been robbed of victory. These protests quickly

⁴⁸ 'Implementing the APRM: Views from the Civil Society, South Africa Report June 2011' a report of the APRM Monitoring Project funded by OSISA, AfriMAP, OSFSA available at http://www.saiia.org.za/images/stories/pubs/books/aprm_amp_report_sa_20110628.pdf (accessed 2 April 2012).

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Wanyeki 'Lessons from Kenya: Women and the post-election violence' (2008) *Feminist Africa* 10 at 91.

⁵² Kagwanja and Southall 'Kenya – a democracy in retreat?' (2009) 27 *Journal of Contemporary African Studies* 259-277 at 259.

⁵³ *Ibid.*

degenerated into a deadly orgy of ethnic slaughter, rape and plunder which lasted till April 2008, and left between 1 000 and 2 000 people dead, and 600 000 internally displaced.⁵⁴ This unfortunate turn of events in Kenya, customarily hailed as a relatively peaceful and stable haven of democracy on the continent, was stopped by a power-sharing agreement between Kibaki and Odinga, brokered by an AU mediation team and a panel of eminent Africans, led by the former UN Secretary General, Kofi Annan. However, the fact that the dispute over the elections snow-balled into ethnic violence was not entirely surprising as Kenya has for years had a history of simmering tensions between and amongst its different ethnic groups.⁵⁵

This was also aptly captured in the Kenyan 2006 APRM country review. As was the case with South Africa, the conflict in Kenya broke out soon after the completion of its APRM review. Kenya was one of the pioneer countries of the APRM, and was also amongst the first group of ten countries voluntarily to accede to the APRM MOU in March 2003. In 2004, Kenya was amongst the first four countries selected for the first set of peer reviews, along with Ghana, Rwanda and Mauritius.⁵⁶ Kenya's self-assessment ran from February 2004 to March 2006, and in June 2006 the CRR and the NPoA were formally presented to the APR forum which then debated the reports.⁵⁷ The CRR provided a critical analysis of the problems facing Kenya, and did not shy away from calling for difficult decisions to be made and implemented. Whilst describing Kenya as a 'bastion of stability', the report noted the ethnic strife that remained raised a real possibility of ethnic politics and regional inequalities.⁵⁸ On this issue the report stated

Like many other African countries, Kenya is a very diverse country ... Tribal and ethnic identities are pronounced, with each major 'tribe' preferring its leader to

⁵⁴*Id* at 260.

⁵⁵See Wanyeki n 51 above at 91-92 for a brief history of these tensions; in addition, see Kagwanja and Southall n 52 above for an assessment of what led to the 2008 eruption of violence.

⁵⁶Reitmaier 'The African Peer Review Mechanism at country level: Views from Kenya' (2011) *SAIIA Occasional Paper* at 83 and 5.

⁵⁷Akoth 'APRM Process in Kenya, a pathway to a new state?' (2007) a report of the APRM Monitoring Project funded by AfriMAP and OSFSA available at http://www.afriMAP.org/english/images/report/APRM_Kenya_EN.pdf (accessed 3 April 2012). The author acknowledges that the process in Kenya yielded the first comprehensive documentation to date of the political, social, cultural and economic situation in Kenya. This review concluded that while the APRM process in Kenya did yield a significant amount of quality data and a valid report, the process was not as empowering and inclusive as it should have been.

⁵⁸APRM 'Country Review Report (CRR) of the Republic of Kenya' at 46-48, highlighted issues of corruption, especially in land allocation and identified 'overarching issues' that Kenya would need to address, starting with 'managing diversity in nation building', and going on to filling the 'implementation gap' between policy and action on the ground; addressing poverty and wealth distribution; land reform; constitutional reform; and addressing gender inequality and youth unemployment.

be the next president. The emphasis on ethnicity has been a cause of tension and conflict. Differences over religion and gender and ethnicity have fed into the vulnerability and marginalisation of certain social groupings. *The dominance of 'tribal', or ethnic, interests is a constant threat to national unity, as the experiences of the former Yugoslavia or Rwanda in the not too distant past demonstrates. Kenya has so far avoided these extreme dire consequences, but ethnic competition and tensions are present, and the country has already experienced forms of ethnic cleansing.*⁵⁹

The CRR went on to stress that differences in opinion and belief in the political arena were being used by politicians and their followers to polarise and mobilise group action in order to protest or attack perceived interests. It referred to the preceding processes of the APRM (CSAR and the CRM) and acknowledged the issue of ethnicisation of basic political issues in Kenya.⁶⁰ In providing direction on the way forward, the report encouraged Kenya to consider different devices that could be used to accommodate diversity;⁶¹ to strengthen sanctions against ethnic incitement and deliberate anti-diversity actions, and the promotion and adoption of constitutional guarantees for equal opportunities and equality.⁶² Lastly and most importantly, the report called for 'transformational leadership' that would recognise the need for dramatic change in a society and that would entail not simply directing change but managing it in a way that ensures broad ownership, legitimacy and self-directed sustenance and replication of change in all associated systems.⁶³ In response, the Kenyan NPoA indicated the steps to be taken by the state to address the issues raised in the CRR. On the issue of ethnic and tribal conflicts, the NPoA indicated that government and political parties were 'to design and implement conflict resolution mechanisms (at community, ethnic and other levels)'.⁶⁴

As an indication of the dissatisfaction of the APRM panel assigned to Kenya with the ethnic undertones in the country, the problem of ethnic diversity in Kenya was strongly emphasised at the presentation of the CRR to the APR Forum in Banjul, Gambia in June 2006. Dr Graca Machel (the member of the APRM panel assigned to Kenya) stated that Kenya was too fractured and its leadership was unable to resolve its political crisis. Among the report's recommendations was the creation of a panel of eminent African personalities to help the country address the political undercurrents threatening its

⁵⁹*Id* at 241 (my emphasis).

⁶⁰*Ibid.*

⁶¹These include electoral representation, political representation, territorial autonomy/devolution, ethnic balancing and recognition of minority languages as national or official languages.

⁶²Kenya CRR n 58 above at 241.

⁶³*Ibid.*

⁶⁴Kenya National Program of Action (NPoA) at 3 available at www.nepadkenya.org/documents/KenyaNPOA.pdf (accessed 4 April 2012).

democratic trajectory.⁶⁵ This warning to the APR forum was indeed indicative of things to come, but unfortunately, the government of Kenya did not heed the warnings by doing enough to implement the recommendations. If these warnings had been heeded, perhaps the events of December 2007 - April 2008 would not have unfolded. The APR forum, rather than carrying out a proper 'peer review', ignored the warnings raised by the panel, and opted instead to 'praise and commend Kenya for being candid thorough and open'.⁶⁶

Kenya's progress report on the implementation of the national program of action was discussed by the APR Forum in 2009.⁶⁷ In the report, Kenya did not seek to shy away from the assessment that had been made by the CRR, it rather acknowledged the ethnic tensions in the country and indicated that the government had put measures in place to control the rising ethnic tensions and to repair the fragmentation of the Kenyan society. These included the establishment of District Peace Committees in the different areas and a National Steering Committee on Peace Building and Conflict Management by the government to address the problem.⁶⁸ In its discussion of the progress report, the APR Forum noted that 'Kenya is back to work after the post-election violence and congratulated the country for its candid report'.⁶⁹ The forum mandated a second country review for Kenya along the lines of 'the Democracy and Political Governance aspects especially in light of the post-election violence and the mediation efforts which yielded a coalition government'.⁷⁰

Democracy and political governance and the (review of) place of political will

The APRM has been referred to as a most extraordinary tool for the opportunity that it presents to civil society and business to contribute to policy-making.⁷¹ By requiring broad public participation, the APRM has the potential to rebuild trust in politics and inject fresh thinking into national problem solving. It is said that too often, politics is a game played by elites who can retain power despite poor performance because the public is insufficiently informed and mobilised.⁷² This is indeed true and is something that the APRM

⁶⁵Juma 'African mediation of the Kenyan post-2007 election crisis' (2009) 27 *Journal of Contemporary African Studies* 407-430 at 417.

⁶⁶Okungu 'Kenya passed "ordeal" with flying colours' (14 July 2006) *The Nation*.

⁶⁷Reitmaier n 56 above at 10-11, this document was a two-year progress report, due to the inability of the APR Summits of 2007 and 2008 to discuss the initial progress report that had been submitted.

⁶⁸APRM 'Kenya Progress Report on the Implementation of the APRM NPoA' at www.nepadkenya.org/documents/progress_report_jan06.pdf at 13 (accessed 4 April 2012).

⁶⁹Communiqué issued at the end of the 10th Summit of the APR Forum, January 2009 Addis Ababa.

⁷⁰*Ibid.*

⁷¹Herbert and Gruzd n 7 above at 5.

⁷²*Ibid.*

seeks to rectify within African societies. In Africa, we have over time seen politicians compete by appealing to ethnic, regional and even country biases rather than advocating specific policy changes. The APRM offers an opportunity to change this political dynamic and focus the national conversation on progress and policy.⁷³

South Africa

In attempting to establish why these issues still gave rise to conflicts within these countries, even after they had been earmarked for action by the APRM report, one needs to look at the level of response of the reviewed countries to the issues raised. As we have seen above, in the case of South Africa there was an initial denial of the magnitude of the issue of xenophobia in the country. The response of the government to the CRR, and the fact that the issue of xenophobia was not addressed in the NPoA, already indicated that government was not ready to acknowledge that there was a problem, or a potential problem, and downplayed the findings of the CRR in this regard. Ultimately, the pressure of civil society came to bear on government, and this was reflected in the SAIR I and II reports that acknowledged the issue of xenophobia and gave some level of indication as to what actions were being taken by government to address them. Thus, initiatives put in place (as indicated above) to address the problem were mostly put in place by civil society organisations; there was no concerted effort driven by government to stem the tide of the problem.

Kenya

The same is seen in Kenya, though here the review process that raised and emphasised the divisions in the society along ethnic and tribal lines, was accepted by the government. There was no dispute of these findings by the APRM process. However, the government showed no political will to address these issues. The steps suggested by the CRR to the Kenyan government were not implemented in the months leading to the December 2007 elections, and the campaign rhetoric of the politicians did not help matters. The failure of the Kenyan government in this regard was recently acknowledged by the country's planning minister when he said, 'we could have avoided the conflict if we had taken the APRM seriously'.⁷⁴

Mali

A similar situation unfolded in Mali in March 2012. Mali was peer reviewed in 2009, with the APRM following its normal process. The CRR was

⁷³*Ibid.*

⁷⁴Planning minister, Wycliffe Oparanya, speaking to reporters at a two-day summit of the APRM, Durban KwaZulu-Natal 13-14 April 2012.

discussed by the APR Forum in June 2009, with the lead panellist for Mali, amongst other things, highlighting some of the major challenges facing the country. The need for peace and security (especially in the North) coupled with the fight against corruption, topped this report. The fact that these issues were raised in the CRR of Mali did not prevent a *coup d'état* in March 2012. This *coup* ousted the government of the incumbent president of Mali, Amadou Toumani Touré.⁷⁵

The countries discussed above are not the only ones that have failed to heed and follow through on the recommendations that came out of the APRM review process. In the review of Uganda, the CRR raised very important issues. Amongst these, on the democracy and good governance theme, were: the threats to Ugandan democracy; the militarisation of the society; intra-state conflicts and their causes; and the removal of presidential-term limits.⁷⁶ In its response to these issues, the government of Uganda vehemently rejected some of the concerns of the CRR⁷⁷ and even claimed that the report was a misrepresentation, misinterpretation or falsification of issues.⁷⁸

In the case of Algeria, the CRR failed to raise the issue of the 'state of emergency' under which the Algerian people had lived for almost fifteen years. Thus, even though the CSAR and the CRM mentioned the issue of the state of emergency, it was done in passing, and not followed up in the CRR. This is seen as a shortcoming on the part of the APRM process in Algeria.⁷⁹ This situation persists as the Algerian government, under the guise of preventing terrorism, has failed to lift the emergency laws.⁸⁰

Review

These scenarios bring us to the question of what the reviewed country does with the outcome of the review process. They also reflect the political will, or lack thereof, on the part of the reviewed country. As reflected in the 'Objectives, Standards, Criteria and Indicators for the APRM', the decision of any country to sign up for the APRM is intended to indicate its commitment

⁷⁵As of the time of writing, the military junta had succumbed to the pressures of the international community, and stepped down and handed over power to the Deputy President to organise elections.

⁷⁶Tindifa and Luutu 'The implementation of the APRM in Uganda, A critical evaluation' (April 2011) a joint AfriMAP and OSIEA report available at <http://www.afriMAP.org/ReportCountry/Uganda> at 28-30 (accessed 19 April 2012).

⁷⁷*Id* at 32.

⁷⁸*Id* at 25.

⁷⁹AfriMAP report 'The African Peer Review Mechanism: A compilation of studies of the process in nine Africa countries' (2010) Open Society Initiative for Southern Africa, available at <http://www.afriMAP.org/librarySearchDisplay.php> at 65-66 (accessed 23 November 2010).

⁸⁰*Ibid.*

to good governance and respect for the principles of democracy and human rights. This ought to be the basis of the engagement of any African state with the APRM process; the desire to improve and to ensure good governance in the various states. There should and must be a commitment on the part of African countries to abide by what they have undertaken, if for no other reason than to ensure that the phrase ‘African solutions to African problems’ does not become just another meaningless cliché.

African states need to demonstrate the political will to carry through what they have committed to, regardless of what issues the review process raises. This demonstration of political will is one, amongst others, of the important factors needed if the APRM is to succeed. The current sentiment that where the report raises issues with which the host country does not agree, these can simply be ignored, cannot be accepted. At most, the mechanism of the review process is one of engagement at all levels; engagement within the host country in the process of its self-assessment; engagement between the host country and the APRM panels and country review missions; and engagement at the highest level of the peer review process at the APR forum. This process of engagement should be used to provide a platform ‘for the sharing of experiences amongst participating countries, and the reinforcement of best practices including identifying deficiencies’, and as a way for ‘solutions to and resources needed for the problems identified to be proffered in each case by the participating countries’.⁸¹ As the basis for the same countries collectively to lobby donor agencies and international organisations for assistance, the process of engagement needs to be more sincere, and needs to be backed by the political will to deal with and enforce the steps suggested by the process. This is the only time when the ‘process of review will set the APRM apart as a useful initiative and a useful process in raising awareness about relevant governance and political issues of a particular country, all of which might represent conflict vulnerabilities and thus need to be addressed with appropriate measures’.⁸²

Manby notes that had the problems highlighted in the APRM report been tackled, it is possible that the violence and distress of the 2008 crisis in both South Africa and Kenya could have been avoided.⁸³ In pursuing this line of argument, he agrees that the ‘biggest concern is the issue of political will’.⁸⁴ He continues to ask

⁸¹FIDH n 12 above; Kuwali n 1 above.

⁸²Kuwali n 1 above.

⁸³Manby ‘Was the APRM process in Kenya a waste of time? Lessons that should be learned for the future’ at http://www.afrimap.org/english/images/paper/Manby_APRM-Kenya.pdf (accessed 4 April 2012).

⁸⁴*Ibid.*

was the Kenyan government ready to try and fix what was broken? Were the APRM eminent persons and secretariat willing to hold them to account? And were other African heads of state who had signed up for the APRM process – to whom the APRM eminent persons and secretariat report – ready to urge remedies for poor performance, or would their own glass houses discourage the throwing of stones?⁸⁵

In furthering the agenda of the APRM, Akoth, while noting the opportunity for engagement provided by the process to civil society organisations to press forward their aims and advocacy, also noted that

in broad terms, the APRM process will remain fundamentally hollow if it does not deal with the essential causes of bad governance and the misery that Africa's men, women and children now suffer. The state cannot be allowed to hide behind the notion of 'inadequacies of governance' while the unjust and unequal manner in which the state is now constituted is ignored. This will in time relegate the APRM to the dustbin in which so many other ritualistic processes, enthusiastically adopted for Africa and then dropped, have already been abandoned.⁸⁶

Conclusion

The APRM presents a great opportunity for governments to escape the political blame game and start afresh. African governments who have the political will and who seek to effect good and better governance within their societies, can use the APRM process to reposition themselves as champions of reform and win political credit for fostering rather than frustrating change. That is where the APRM requires a significant measure of political maturity.⁸⁷ Even though the voluntary nature of the APRM has been rightly criticised by some⁸⁸ (in that there is no compulsion on African states to join the mechanism, and as a result states with a long history of undemocratic rule have refused to join the mechanism and therefore cannot be reviewed), this should not detract from the need to ensure that the APRM does not become another talk-shop amongst African leaders. The conclusions of the review processes must have real impact on national development strategies.⁸⁹

⁸⁵*Ibid*

⁸⁶Akoth n 57 above at 19.

⁸⁷Herbert and Gruzd n 7 above at 6.

⁸⁸Sibuyi 'An assessment of the African Peer Review Mechanism with specific reference to South Africa' (unpublished dissertation 2008) available at http://www.nmmu.ac.za/documents/theses/APRM%20doc042008final%20_v2_.pdf at 17-18 (accessed 19 April 2012); Heubaum 'Making the African Peer Review Mechanism (APRM) work, a rough road ahead for NEPAD's key component' Working Paper FG 6 2005/05 December 2005 German Institute for International and Security Affairs 4 available at http://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/wp_5_05_ks.pdf (accessed 19 April 2012).

⁸⁹AfriMAP 'Submission to the APRM Secretariat: Review of the APRM questionnaire and process documents' December 2007 available at http://www.afriMAP.org/english/images/report/AfriMAP_SubmissionAPRM_Dec07.pdf (accessed 19 April 2012).

The salient point about the APRM is the combined pull of resources by African countries and the collaboration towards meeting set goals. The issue of political will is again important on the part APR Forum. States must demonstrate a willingness to ensure the independence of the review process, to submit themselves and their countries to review, and to take steps to rectify the problems unearthed by the review process. Where the ‘political will’ to take the necessary steps is not evident on the part of the reviewed country, then the ‘peers’ on the APR Forum must be willing and able to take necessary steps as provided for in the APRM founding documents. In such cases, the Forum is mandated ‘to first try to engage the government concerned in constructive dialogue, and lastly, where such dialogue fails, then other leaders “may” wish to put the government concerned on notice of their collective intention to proceed with appropriate measures by a given date’.⁹⁰

The APRM has been perceived as elitist and exclusionary in some quarters in that it is seen to be driven by the leaders of countries without any contribution and involvement of the people on the ground in the countries.⁹¹ As the country reviews progress, and as the mechanism enters into the second review phase,⁹² it is hoped that this perception will decrease, especially as the process consciously encourages and pushes for the involvement and contribution of more and more members of civil society and citizens in the country in the review process.⁹³

In order to achieve the good political governance and democracy goal of the APRM, it is imperative that member states accept the issues raised in the CRR as sufficiently important and urgent to warrant immediate action. Member states, whilst being free to engage with the mechanism if they query any of its findings, must also be proactive in implementing the interventions they have proposed in their NPoA’s. As with many other grand ideas and initiatives that have been implemented in Africa, the main test of the effectiveness of the APRM will be seen in the political will of African states to change their trajectory, and in the positive impact it makes on its members. This is very important to making the mechanism work,⁹⁴ and it remains one of the main challenges to its success. This concern has been aptly captured as follows

... the greatest test of the APRM as a continental and national tool for the improvement of governance will be the extent to which the analysis of the

⁹⁰Geldenhuys n 13 above.

⁹¹Melber ‘South Africa and Nepad – Quo vadis?’ (2004) 11/1 *SAJIA* 89, who describes NEPAD and the APRM as ‘... a “pact among elites” which seeks to gain control over defining Africa’s future development discourse ...’ (own emphasis).

⁹²As noted above, Kenya is slated for its second review in 2012.

⁹³Melber n 91 above.

⁹⁴Abioye n 2 above at 201.

country review reports and the action points form national programmes of action are actually used in practice. This remains an open question.⁹⁵

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