

**A critical analysis of the African Peer
Review Mechanism as a standard for
'good governance'**

By

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Abstract

This dissertation focuses on an analysis of the African Peer Review Mechanism (APRM) as a standard for ‘good governance’. The APRM is a democratic initiative on behalf of African leaders to strengthen governance and democratic processes on the continent, in order to build a successful foundation for development. This is intended to be achieved through a new concept in African politics – ‘peer review’. Thus, the APRM is an innovative solution to the governance problems of the African states. However, the APRM is not without its issues. The process is voluntary and its recommendations are not enforced. Although the APRM is intended as an overall country review, according to its rules national governments are in the driving seat, which raises concerns with regard to possible manipulations. The extensive standards utilised by the APRM and analysed in this dissertation are of little substance practically, as they mostly fail to provide definitions of key concepts, measuring tools, and normative recommendations. As case studies, this dissertation examines four problems of four African states: Rwanda and sovereignty; Kenya and democracy; South Africa and corruption; and Ghana and neopatrimonialism. These case studies show that although in many instances the APRM is on the right track, in its current format it is too weak to significantly impact on African politics. The APRM is an effort to strengthen ‘good governance’ in Africa, but it often lacks the collective will of its members to achieve its objectives.

Opsomming

Hierdie verhandeling ondersoek die Afrika Portuurgroepmeganisme (APRM) as 'n maatstaf vir goeie regering ('good governance). Die APRM is 'n demokratiese inisiatief daargestel deur Afrikaleiers om regeerkunde en demokratiese prosesse op die kontinent te versterk en om 'n suksesvolle fondasie vir ontwikkeling te lê. Die proses beoog om hierdie doelstellings te bereik deur gebruikmaking van 'n nuwe konsep in Afrika politiek, nl. 'portuurevaluering'. Die APRM is dus 'n innoverende oplossing vir die regeerprobleme van Afrika state. Nietemin is die APRM nie sonder probleme nie. Die proses is vrywillig en aanbevelings is nie afdwingbaar nie. Alhoewel die APRM 'n oorkoepelende ondersoek na state behels, is dit die state self wat die leiding neem in die proses en daarom is daar kommer dat die evalueringsproses gemanipuleer kan word. Die uitgebreide standarde wat deur die APRM gestel word en in hierdie verhandeling ondersoek word, het min substansie in die praktyk aangesien daar nie voldoende definisies van konsepte, maatstawwe en normatiewe aanbevelings gegee word nie. As gevallestudies word die verslae van vier state geëvalueer: Rwanda (soewereiniteit), Kenia (demokrasie), Suid-Afrika (korrupsie) en Ghana (neopatrimonialisme). Hierdie gevallestudies toon aan dat alhoewel die APRM 'n stap in die regte rigting is, is die huidige formaat daarvan te swak om 'n daadwerklike impak op Afrika politiek te hê. Die APRM is 'n poging tot die bevordering van goeie regering in Afrika, maar ontbreek dikwels aan die kollektiewe wil van lede om die doelwitte van die program te bereik.

Key Terms

African Peer Review Mechanism: A voluntary mechanism of NEPAD. Members are subjected to reviews from fellow states that are intended to help them identify their problems and come up with relevant solutions.

New Partnership for Africa's Development: A development framework of the African Union that seeks to find African solutions to African problems and redefine relationships with development donors.

State: A distinct geographical entity that is organised politically under the authority of a government.

'Good governance': An idea that power should be exercised in a way that benefits the citizens of the state and promotes development.

'Peer review': A concept utilised by the APRM, which focuses on states reviewing each others' governance performance, making recommendations and sharing best practices.

Democracy: A contested term that is often talked of as having a universal meaning. It is generally agreed that a democratic state must have regular free and fair elections, considerable individual rights and liberties and a government that is elected by a majority of citizens.

Corruption: Using public office for private gain. Can refer to soliciting of bribes, lack of objectivity when awarding contracts and personal favours.

Neopatrimonialism: The existence of informal rules within a political system based on personal ties, relationships and linkages. These informal rules benefit certain individuals or groups based on their connections to those in power.

Sovereignty: Refers to the right of a government to exercise power within the borders of a state without outside intervention.

Civil Society: Groups that occupy the space between the state and the public. Consists of citizens who monitor the state's activities and exercise pressure in order to achieve certain policy outcomes.

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Abbreviations and Acronyms

ACC - Anti-Corruption Commission
ACHPR - African Court on Human and Peoples' Rights
ANC - African National Congress
APRM – African Peer Review Mechanism
ASF - African Standby Force
AU - African Union
CSO – Civil Society Organisation
DA - Democratic Alliance
DRC - Democratic Republic of Congo
ECOSOCC - Economic, Social and Cultural Council of the African Union
GDP – Gross Domestic Product
IFI - International Financial Institution
IMF - International Monetary Fund
MAP - Millennium Partnership for Africa's Recovery Programme
MNC - Multi National Corporations
MP - Member of Parliament
NAI - New African Initiative
NCOP – National Council of Provinces
NDC - National Defense Council
NEC - National Executive Committee
NEPAD – New Partnership for Africa's Development
NGO – Non-Governmental Organisation
NPA - National Prosecuting Authority
NPP - New Patriotic Party
OAU - Organization of African Unity
ODM - Orange Democratic Movement
OECD - Organisation for Economic Co-operation and Development
POA - Plan of Action
PNDC - Provisional National Defense Council
PRSP - Poverty Reduction Strategic Papers
PSC - Peace and Security Council
RPF - Rwandan Patriotic Front
SAIIA - South African Institute of International Affairs
SAP - Structural Adjustment Programmes
SAPS - South African Police Service
UN - United Nations
UNAMIR - United Nations Assistance Mission in Rwanda

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Chapter 1

African Peer Review Mechanism: Introduction

1.1. Introduction

Many African states have continuously suffered from ‘bad governance’, which includes corruption, lack of accountability and transparency, fraudulent elections and severe human rights abuses (Hope 2005: 295-296). Other common problems include institutional limitations, due to the weakness of national judicial and legislative institutions, and practices of clientilism and fraud which remain deeply ingrained in certain administrations (Bratton & Van de Walle 1997: 9). According to Bayart (1999: 5), during the 1990s many African states witnessed a reproduction of authoritarian control that had been widespread in the early post-colonial period. Bratton and Van de Walle (1997: 8) point out that in spite of the second wave of democratisation, which swept across the continent between 1989 and 1994, little changed in Africa’s governance practices. The African Peer Review Mechanism (APRM) recognises that many African states suffer from similar, if not identical problems, and intends to address these problems through mutual cooperation and ‘peer learning’ (Cilliers 2002: 4). States that support the APRM process realise that they have to work together in order to change the negative image of Africa and accelerate its performance through better democratic rule and governance (Malachia nd: 1). Thus, the APRM is seen as a mutual effort of African states to improve governance throughout the continent (NEPAD 2007). Currently, 29 African states are signatories to the process. Although these states are different, they recognise that ‘bad governance’ is a problem that affects all of them – albeit to different degrees.

The APRM forms a part of the continental framework called the New Partnership for Africa’s Development (NEPAD), which has been adopted by the (then) Organization for African Unity (OAU) in 2001. Scholars such as Shilimela (2004: 6), Cilliers (2002: 1), Juma (2004: 1) and Hope (2005: 283) argue that the African Peer Review Mechanism is the most innovative tool of NEPAD. The APRM recognises that governance problems

have been the cause of Africa's challenges (Mathoho nd: 1) and aims, through a review process, to overcome them. Accession to the APRM entails "undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance" (African Peer Review Mechanism base document 2003: 1). The idea is that through 'peer learning' and cooperation, participating African states will collectively raise the democracy bar in Africa (United Nations Development Programme nd: 1). This will be accomplished by creating political dialogue, both internally in the African states, that are signatories to the mechanism, as well as regionally, through a discussion and assessment of the country under review by African heads of state. Internally, an African government will first enter into a dialogue with their country's Civil Society Organisations (CSOs) to assess the state's performance and identify its problems, before creating a plan of action to address them (Deme nd: 2). Regionally, African states that are signatories to the APRM will monitor each other and make an assessment of the extent to which their peers are implementing the pre-agreed NEPAD framework (Cilliers 2002: 4).

Success of the APRM depends on how free it will remain from political and bureaucratic manipulation. The APRM places an important emphasis on the public and CSO participation in the process. However, its framework and rules do not prevent the government under review from manipulating the process to its own benefit (see 3.9.3.).

'Peer review' is intended to start a new chapter in African politics, domestically, regionally and internationally. Although 'peer review' has been previously used by the Organisation for Economic Co-operation and Development (OECD) members, never in the practice of international relations has such an all-encompassing mechanism being put into practice (Kanbur 2004: 161). NEPAD and the APRM aim to set innovative rules and relationships for those states who have endorsed their frameworks.

In this study 'peer review' is analysed not merely as a concept, but also in terms of its institutionalisation, applicability and implementation in African politics. The APRM's 'peer review' is set against the background of the current and historical condition of

African states that are signatories to the process. The aim of this study is to determine to what extent the APRM addresses core political and governance problems of African states. In addition, this study aims to explore ‘peer review’, and assess its relevance in the political context of the APRM signatories. The analysis is two-fold: focusing on both theoretical as well as practical aspects of the APRM.

Theoretically, this study focuses mostly on the Democracy and Political Governance aspects of the APRM. In particular, an examination is made of the standards listed under objectives 2, 4, 5, and 6 of the Democracy and Political Governance section of the APRM framework document. These objectives are as follows:

- Objective 2: Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and the supremacy of the Constitution
- Objective 4: Uphold the separation of powers, including the protection of the independence of the judiciary and of an effective Parliament
- Objective 5: Ensure accountable, efficient and effective public office holders and civil servants
- Objective 6: Fighting corruption in the political sphere

Four states that have undergone the APRM process are used as case studies in order to determine the extent to which the ‘peer review’ mechanism is able to help states solve their individual problems. Rwanda’s problems of sovereignty are analysed with a view to determine how the APRM could deal with this problem in the general African context; Kenya’s political turmoil in early 2008 is scrutinised in order to determine why nothing was done although the APRM recognised the potential for conflict; South Africa’s cases of corruption are examined to explore the shortcomings of the APRM with regard to implementation of its recommendations; and, Ghana’s neopatrimonial cases are assessed to realise the importance between theory and practice in African states and the role that the APRM needs to fulfill in order to eliminate these differences.

1.2. Literature survey

Most scholars and practitioners agree that the APRM is the most innovative element introduced by NEPAD (Shilimela 2004: 6, Cilliers 2002: 1, Juma 2004: 1, Hope 2005: 283). However, this is where their agreement ends, considering their differences with regard to both positive and negative views of NEPAD and the APRM.

Critics (Kotze 2002, Verwey nd: 11, Mathoho nd: 6) point out that African CSOs have not been consulted in the creation of NEPAD and the APRM. Because of this NEPAD and the APRM are often seen as an elite initiative, created by African leaders without consulting their own people. Although CSOs have been given a role in the APRM process, the fact that they were not included in its creation from the beginning has seriously undermined its credibility.

A similar concern regarding the credibility of the APRM is raised due to the possible manipulation of the peer review process by governments (Verwey: 24, Mathoho: 12, Herbert 2004: 15, 18). Particularly, three concerns are identified: Firstly, governmental domination of the APRM process and the use of the CSOs as a ‘window dressing’, in order to give the process more legitimacy. Secondly, participation in the APRM for ‘show’ or appearances sake, without any real intention or commitment to reform the political and economic processes. Thirdly, criticisms of the APRM are generated by the fear that it will fail due to its non-coercive nature (Verwey nd: 8, Ojienda nd: 33, Deme nd: 23), since the APRM document vaguely refers to ‘actions’, without going into any details regarding measures which will be introduced if a state fails to deal with its internal problems.

NEPAD and the APRM are also criticised because of their perceived neo-liberal ideology (Deme: 7), as they seem to embrace economic globalisation as a panacea that will cure the continent’s problems (Endozie 2004: 157). Critics are not convinced that increased participation in the global economy is the answer. Nabudere (2002: 19) states that Africa

is the most exploited part of global economy, and therefore further participation can only worsen the current condition of African states.

Finally, Ojienda (nd: 28-31) raises an important issue by questioning the concept of ‘peer review’ itself, based on his claim that the participating countries are not really peers. The term ‘peers’ implies those who are equal in stature and Ojienda uses examples, based on indicators such as the Gross Domestic Product (GDP) and democratic orientations of various African states, to illustrate the large discrepancies and asymmetry between these so-called peers. While Herbert (2004: 14) does not question the viability of the process due to the fact that the states are not ‘peers’, he does concede that the term ‘peer review’ is a misnomer.

Positive views of the APRM, on the other hand, emanate from it being a cooperative and mutual learning mechanism, which is preferable to imposed policies (Verwey nd: 6, 8). Even though it is voluntary, there is a belief that it will collectively raise the ‘democracy bar’ in Africa (United Nations Development Programme nd: 1) and force governments to rethink their neglected partnerships with their citizens (Juma 2004: 2). Hope (2005: 286) states African public institutions have been captured by elites to serve their interests and NEPAD and the APRM have the ability to reshape them so they will serve African people.

A number of scholars are also positive about the fact that NEPAD and the APRM are Africa-wide and self-conscious democratic initiatives, that recognise that Africa holds the key to its own development (Kanbur 2004: 157, Herbert 2004: 2, Hope 2005: 287). Thus, rather than passively accepting solutions designed by others, as happened in the past with Structural Adjustment Programmes (SAPs) and Poverty Reduction Strategic Papers (PRSPs), the new generation of African leaders is attempting to come up with African solutions to African problems. Furthermore, NEPAD and the APRM could write a new chapter in the Africa-West relations, through creating a mutually beneficial exchange rather than the previous one-way aid handouts (Verwey nd: 6).

Arguably one of the most significant problems faced by African states is the practice of neopatrimonialism (Bratton & Van de Walle 1997: 61-89, Taylor 2004: 29-32). Herbst (2000: 29) points out that the basis of the post-colonial state in Africa is the colonial state, where practices such as corruption have originated (Bayart 1993: 71). Africa thus needs to overcome these negative practices and the APRM is a tool that can help it achieve this goal. However, According to Taylor (2004: 31), for African leaders to embrace APRM principles and give up their neopatrimonial practices would be to commit “a form of class suicide”.

Politics in Africa is different from politics in the West. The political, administrative, and bureaucratic institutions are much more personalised and corrupt than in Western states. Herbst (2000: 132) claims that “across Africa, elites have developed norms which differed drastically from the European determination to build the state in order to ensure their, and the state’s, physical survival”. Bayart points to the increasing criminalisation of the African state (Bayart 1999: 15), while Clapham (1996: 5) discusses the ‘shadow states’ – in which rulers use formal statehood merely as a façade, behind which to conduct what became essentially personal survival strategies. The implications of African states’ ‘difference’ as compared to their Western counterparts cause this study to question the applicability of the neo-liberal approach to democracy and governance which is embedded in the international standards referred to by the APRM.

African states suffer from many problems, and the APRM offers many solutions. Hope (2005: 283) claims that although the APRM is heavily criticised, it is currently the only truly African solution designed to deal with problems of African states. The literature available does raise certain issues with regard to ‘peer review’ in Africa, but no in-depth study is currently available that critically analyses the APRM as a standard for ‘good governance’. This study aims to provide such an explanatory analysis.

1.3. Identification and demarcation of the research problem

This study aims at examining and critically analysing ‘peer review’ in the African political context. Specifically, the main research question is twofold: a) Does the APRM recognise core governance problems of African states? b) Provided that it does, are the measures to be taken according to its standards sufficient to improve the situation or eradicate the problems completely?

Apart from the above, this study also addresses three sub-questions: What are the core governance problems of African states? How does the APRM intend to solve these problems? And, what do the terms ‘good governance’ and democracy mean in an African context?

The main research question of the dissertation examines both the problems of African states as well as the solutions proposed by the APRM. ‘Peer review’ is expected to impact significantly on the politics of the African states. It is thus important to determine whether it recognises the core governance problems of the African states, and if it does, how does it intend to solve them? Chapter two is focused on African states and their current political condition. In particular, problems of corruption, fraudulent elections, ineffective institutions, lack of transparency and accountability, clientilism, and neopatrimonialism are discussed and analysed. The APRM is considered to be an ambitious process, as it refers to a large number of international and African standards, treaties and declarations, against which participants are to be judged (Juma 2004: 180). Chapter three defines and describes the concept of ‘peer review’ and the related concepts of ‘good governance’ and democracy, the achievement of which is one of the main goals of the APRM. A detailed description of the APRM structure and processes is provided in order to gain a deeper insight into the mechanism, together with the potential shortcomings of the APRM.

This provides the necessary background to the critical analysis of the APRM as a standard for ‘good governance’, which takes place in chapters four and five. Chapter four

is concerned with the APRM standards set out in Democracy and Political Governance objectives 2, 4, 5 and 6. Particularly the analysis is focused on determining the effectiveness of standards with regard to solving problems identified in chapter two. Chapter five provides four case studies of ‘peer-reviewed’ states – Rwanda, Kenya, South Africa and Ghana. The chapter provides an analytical examination with regard to the problem of each state and the extent to which the APRM is able to help the state address it, through its standards and recommendations.

Finally, chapter six answers the main research question and the sub-questions of this study. The first sub-question requires an identification of problems and challenges faced by African states and an identification of common patterns. Whereas it is impossible to claim that all African states suffer from the same problems, it is nevertheless feasible to identify general shortcomings that many African states suffer from. An example would be the problem of corruption. Although different states are affected to different extents, corruption is considered to be a common problem in Africa (Mbaku nd: 5). This study therefore, to a large extent, generalises about ‘the African State’, but explores core governance issues with reference to case studies of four specific states.

The second sub-question has a specific focus on the political and governance problems that African states face and examines how the standards listed under the objectives 2, 4, 5 and 6 of the APRM framework document attempt to solve them. This provides the theoretical part of the APRM’s solutions to African problems. The practical part is provided by an analysis of four African states that have undergone the ‘peer review’ process – South Africa, Rwanda, Kenya and Ghana – focusing on the practical recommendations for the solution of their problems that were given to these states by the APRM.

The third sub-question of this dissertation requires a definition of the concepts ‘good governance’ and democracy and a clarification of their meaning in the African context. Here the assumption is that meaning given to these concepts and their application in

African politics is likely to vary considerably. Therefore it is important to find out what meaning is given to these concepts by the APRM through its standards.

The time frame under examination is the post-colonial period (when discussing the African state) and the period from 2001 to 2008 (the creation and development of NEPAD and the APRM).

1.4. Methodology

This study adopts a descriptive-analytical approach in addressing the research problem. The method utilised is qualitative, due to the descriptive-analytical nature of the study. Theoretically, this dissertation focuses on problems that affect African states, by examining academic writings on Africa. African historical trends and the contemporary situation are analysed with the aim of determining and understanding the political environment of African states. Secondly, this study focuses on the APRM's solutions to Africa's problems. The APRM's Democracy and Political Governance standards are analytically described in order to determine their relevance to Africa's problems identified in the first part of the dissertation and whether these standards are sufficient to overcome these problems. Thirdly, case studies of the APRM's 'peer review' of Rwanda, Kenya, Ghana and South Africa are examined to determine the practical impact of the APRM on the problems of African states.

The data sources used are primary sources, such as official documents on NEPAD and the APRM, particularly the sections on Democracy and Political Governance and various regional and international standards they refer to, including United Nations and African Union documentation and various frameworks on human rights. The official documents aid in understanding the practices of NEPAD and the APRM and are compared to the existing situation with the intention of establishing the extent to which they are being implemented and what major challenges remain. The official documentation is supplemented by secondary sources on Africa, NEPAD and the APRM, including books and journal articles.

1.5. Conclusion

The APRM is arguably the most ambitious project undertaken thus far to improve governance in Africa. The African continent has been subjected to undemocratic and bad governance practices throughout its short post-colonial history. African leaders behind the APRM have an opportunity to change this. However, this will be no easy task. Although the APRM is extensive in its scope, identification of the problems and provision of recommendations, it is also non-binding. Thus, both a strong will to change bad practices is needed on behalf of governments that have acceded to the APRM, as well as an exercise of diplomatic pressure by their 'peers'. The APRM is definitely going to have an impact on African politics. What remains to be seen is whether the APRM is strong enough in order to establish 'good governance' in Africa.

Chapter 2

The state of the state in Africa

2.1. Introduction

“The current African crisis is increasingly seen as rooted primarily in government incapacity and mismanagement” (Jackson & Rosberg 1986: 19). This chapter examines contemporary African states and the governance problems they face. In doing so, it provides a historical-descriptive discourse on the state in Africa, as well as a theoretical framework through which an analysis of ‘good governance’ in Africa is possible. The historical-descriptive part provides a background to the current state of the state in Africa and describes the contemporary situation. The theoretical part presents the information that is necessary for the analysis of the African Peer Review Mechanism (APRM) as a standard for ‘good governance’.

Firstly, background to the contemporary African states is examined, as it is necessary to look at the past in order to understand the present. Both international and domestic factors that have influenced African states are examined and analysed. From the discussion, it emerges that post-colonial African states suffered from problems of sovereignty, as a result of artificial state creation by the former colonial powers. It also becomes evident that African states had problems in implementing democratic processes, which resulted in corruption and neopatrimonialism. Thus, the second part of the chapter examines African political governance, and the problems that it faces, whether these were created by the politicians themselves, or were subject to external factors. This chapter is concluded with a summary of the main findings that constitute the key problems in the contemporary African state.

2.2 Background to the state in Africa

Dunn (2001: 49) points out that the African state has been labeled as failed (Leys 1976), lame (Sandbrook 1985), fictive (Calaghy 1987), weak (Rothchild 1987), collapsing (Diamond 1987), quasi (Migdal 1988), invented and imposed (Jackson 1990), shadow (O'Brien 1991), overdeveloped and centralised (Davidson 1992), swollen (Zartman 1995), soft (Herbst 1996), extractive and parasitic (Clark 1998), pre-modern (Buzan 1998), post-state (Boone 1998) and shadow (Reno 1999). How did the African state then, arrive at such a state? When examining the contemporary state in Africa, it is important to bear in mind the words of Herbst (2000: 29) who said that “the basis of the post-colonial state in Africa is the colonial state”. In spite of the fact that decades have passed since the demise of colonialism, in many ways the African state continues to be affected by its legacy – whether it is artificial borders, imposition of Western political ideas, or even the practices of neopatrimonialism. Many present-day conflicts and problems in Africa stem from economic, environmental, political and social changes that are a direct result of the legacy of European colonial rule (O'Toole 2001: 3). The colonial system has transformed the political geography of Africa in a few years' time, and the depth and intensity of its penetration of African societies continue to cast its shadow (Young 2000:24). Many African states continue to have ties with their former colonial masters (particularly the francophone ones), and in general the majority of African states have some sort of a relationship with the West.

Because of this, dependency and structuralist theorists, such as Burchill and Linklater (1996: 124) and Baylis and Smith (1997: 207) have claimed that neo-colonialism is currently taking place in Africa. According to them, the West is exploiting the continent for its natural resources and it is said that African colonies were granted independence without necessarily possessing freedom (Jackson 1990: 22). Domestically, on the other hand, since gaining independence, most of the African states have not shown any inclination to diminish their hold on power. On the contrary, they have preserved and even expanded the hierarchies of rule inherited from colonialism (Hugo & de Jager 2004: 27). In that sense, the power structures inherited from the colonial powers have served to

enhance the rule of the new African leaders. Following the demise of colonialism Africans expected that the new era would bring them freedom, democracy, and economic development (Agbese & Kieh 2007: 8). However, instead “attempts to create autonomous states in most of Africa produced the antagonistic political and economic conflicts associated with neo-patrimonialism and primary accumulation that have always accompanied transitions to democracy and industrialisation” (Brett 2006: 7).

2.3. Definition of a ‘state’

It is necessary to examine the concept of a ‘state’ and make a distinction between the legal and the political definition. The legal definition of a state was established at the Montevideo Convention of 1933. According to it, a territory may be classified as a ‘state’ if it possesses the following attributes: a permanent population; a defined territory; an effective government; and, the capacity to enter into relations with other states (Sparling 2005: 38). Politically, Max Weber’s definition of a state is used most often, which defines a state as being in possession of a monopoly of legitimate violence within a specific territory (Wolff 1996: 39). Another political definition of a state is “a political organisation in which authority is substantially centralised and in which force is a fundamental part of political control” (Mazrui 1986: 67).

African states are often deficient in both definitions. Firstly, many of them are unable to claim a monopoly on the means of violence, legitimate or otherwise. Examples of this would include Somalia and Sudan. Secondly, claims of territorial integrity are highly dubious as vast sections of territory remain outside the control of many African governments (Dunn & Shaw 2001: 55), such as in the cases of Democratic Republic of Congo and Uganda. Therefore, certain African states do not even fall under conventional definitions of what a state is. Nevertheless, the international system continues to treat them as full states, in spite of their deficiencies. This situation is a direct result of colonialism and is discussed later in 2.4.

2.4. International background to the state of the state in Africa

Most International Relations theories do not distinguish between different states in the international system, on the assumption that it is populated by 'like units'. This is particularly evident in realism and neo-realism. Sovereignty plays a major part in this, as states in the international system are sovereign and are thus entitled to perform the same functions under their central authority or government. However, these theories do not focus on whether governments of sovereign states carry out these functions well, badly, or not at all. Rather, the emphasis lies in the fact that these governments make legal claims to perform these functions and are therefore accepted as members of the international community (Buzan 1998: 215). This brings about a generalised view of the states in the international system, which disregards their internal differences, which are especially evident when examining African and Western states. It is worth mentioning that the unit of analysis in the contemporary international system and the standard of evaluation are usually the comparatively high levels accomplished by Western democracies (Jackson 1990: 19). The state in Africa, on the other hand, is not performing according to Western notions of statehood (Dunn & Shaw 2001: 49) and the attempt to create Western-style democracies in Africa carries an air of improbability (Clapham 1998: 266).

One of the reasons why no differentiation is made between states is because the Westphalian model, which was the first to provide a structure for the international system and the position of states within it, has been expanded to include the developing African states, in spite of the differences in time and evolution of the international system as a whole. Because of this, African states are often seen as weak adaptations of the Westphalian state system. The grounds for this adaptation have historical roots, as they represent the legacy of colonialism. African states had to adopt the Westphalian political model after gaining independence from their European colonial masters (Buzan 1998: 217-218). Thus, African states are late entrants into the international system, and are still in the early stages of their development and state-building (Ayoob 2004: 100). Because of this, most of them are not only internally deficient but also externally weak (Jackson &

Rosberg 1986: 2). In fact, some argue that the post-colonial state in Africa never met the requirements established by Weber because it failed to be institutionalised. Certain authors note that the state in Africa is actually not collapsing, since there was never a state to begin with (Dunn & Shaw 2001: 56).

One of the main problems with the adaptation of the Westphalian model is the difference in the international system itself at the time when European states were evolving and the contemporary situation in which African states have to develop. On the one hand, European development took place without outside intervention and influences. On the other hand, African states have to develop in a highly intrusive international system, in which they are the least developed (Buzan 1998: 218). Whereas European states were able to produce and develop their own political forms, particularly as a result of war and state formation, their African counterparts have had no such possibility, as they were bound by the already established rules, norms and constraints of international relations. In fact, the foundations for most of the modern advanced industrial economies were laid under non-democratic or highly limited democratic conditions (Leftwich 2000: 131). The international system currently expects African states to follow a specific pattern of development, with little or no room for adjustments and adaptations, and with no regard for cultural and historical differences. Clapham (1996: 49) argues that one critical effect of the idea of territoriality in the definition of African statehood was to help insulate ethnic conflict from the international system. It rendered illegitimate the assumption (which had assumed overriding importance in the idea of European statehood) that peoples with a common language, culture and historical identity were entitled to be governed as part of single state, and that international frontiers should be demarcated in order to allow for this to take place.

One can therefore argue that the European experience does not provide a template for state-making in the other regions of the world (Herbst 2000: 22). As already mentioned, it does not take into account historical or cultural differences between states. However, after the demise of colonialism, African states had to adopt this model and are currently judged based on their adherence to it. This is where the main difference between the

domestic and the international African state comes in: “across Africa, elites have developed norms which differed drastically from the European determination to build the state in order to ensure their, and the states’, physical survival” (Herbst 2000: 132). Generally accepted definitions of the state in International Relations theory do not fit African reality (Dunn & Shaw 2001: 55). African and Western democracies simply cannot be compared, because of the fundamentally different ways in which they function. Currently the majority of African states are in no way accountable to their citizens, and practices of neopatrimonialism and clientilism persist in many of them. This form of ‘African democracy’ functions against the background of the state’s fulfillment of basic international democratic prerequisites, such as regular multiparty elections, which do not actually provide a positive change. Multiparty elections in Africa do not always provide a choice for the electorate. African elites who already have a firm grip on power have a tendency to exclude opposition parties, hold fraudulent elections or elections in which the victory is predetermined. An example of this is the 2008 elections in Zimbabwe. Human Rights Watch report (2008: 16-17) speaks of incidents of intimidation and violence in the run up to the election. As a result, the opposition candidate, Morgan Tsvangirai, was forced to withdraw from the election, as his supporters were being targeted. It is also important to note that the institutionalisation of democratic institutions does not necessarily democratise African states either, as African political actors have a tendency to ignore formal rules and operate informally, as a means of achieving their objectives (Hyden 2006: 47). In this sense, many African rulers have demonstrated a significant ability to disregard formal rules and procedures, adapting to the new democratic circumstances and continuing to run the state in a neopatrimonial manner.

Eventually, the International Financial Institutions (IFIs) acknowledged that ‘bad governments’ had turned many states into the “source of man-made economic decline” (North 1981: 20). The implementation of ‘good governance’ was called for, as a means of creating a stable political system, which would allow for successful economic development. The concepts and ideals of ‘good governance’ stem from neo-liberalism, which is not only an economic doctrine but a political one as well, as it involves strong normative theories of politics and the state. In normative terms, neo-liberal theory

celebrates individual economic and political freedom as representing the good life itself. Beyond the preservation of peace and order, it is hostile to state limitation on the rights of the individuals, irrespective of race, sex or creed (Leftwich 2000: 113). Neo-liberalists' theorising of Africa is also often based on the view that the continent lacks hegemonic power. Africa is seen as a continent dominated by other global players. African states have little to no ability to influence outcomes in international relations and they are typically acted upon by other actors. When dealing with Africa, the International Monetary Fund (IMF), World Bank and industrialised democracies of the North have a tendency to prescribe policies aimed at reproducing Western economic and political ideals (Dunn & Shaw 2001: 2). An economic example of this is implementation of SAPs and PRSPs in Africa. Currently, the African Peer Review Mechanism uses many political ideas (its international standards) that have originated in the West and that are strongly influenced by neo-liberalism. At this point in time it remains to be seen whether Western neo-liberal ideas of democracy and 'good governance' prove suitable for African states, as Bouquet (2004: 241) asks whether "Western type democracy (is) the most suitable form of governance in all senses of the term, for African cultures at this stage of their history?"

Bouquet's question is actually rhetoric, since 'good governance' is a part of the emerging politics of the new world order (Leftwich 2000: 121). Hyden (2006: 248, 253) points out that the neo-liberal paradigm is paramount at the global level and has political conditionalities that African states have to accept even if they do not embrace the paradigm. Because of this, 'good governance' tends to be prescriptive, usually forcing African states to adopt Western concepts and principles of governance and democracy without sufficient analysis of how they would fit into local political processes. The difference in the case of the APRM is that it is African states themselves who are to decide how to implement ideas of democracy and 'good governance' in their states, thus allowing for at least some sort of adaptability to local circumstances. However, Ihonvbere (quoted in Agbese & Kieh 2007: 280-281) points out another problem – the sincerity of African governments that state the intent to establish democracy and good governance within their borders. According to the author, authoritarian states have merely changed

their rhetoric in order to continue receiving aid from the international community and thus cannot be entrusted with the democratisation process.

2.5. Domestic background to the state of the state in Africa

It is also important to consider domestic factors when examining the background to the contemporary African state. In an extraordinary use of diplomacy, African leaders were able to arrange a state system that reinforced their own biases to retain the states that colonialists had demarcated (Herbst 2000: 135). Elites that came to power were able to utilise the dominant system of rule used by the colonial powers, and furthermore, they had a strong external source of support in these former colonial powers. The colonial state is argued to have instituted an anti-democratic ethos that continues to pervade politics to the present day. African leaders took over an established authoritarian system of rule and merely continued with it, adjusting it to their own needs along the way. In particular, the absence of domestic political accountability has been a key legacy of colonialism that shapes politics and inhibits reform to this day (Bratton & Van de Walle 1997: 38). Since there was no political accountability present in the colonial state, the new African leaders merely continued with the established system of rule, which suited their needs as it allowed them to claim virtually unlimited power without much protest from the citizens.

The first half of the 1990s saw widespread political turbulence across the African continent. This turbulence led to transitions away from one-party and military regimes, as well as the launching of liberalisation reforms, competitive elections and new regimes. This transition has occurred in the majority of African states. Analysts started talking about a new era of African democracy, as autocratic leaders acknowledged that they could not monopolise the political processes in their countries and agreed to divide and re-distribute the excessive powers they had accumulated. By 1994 this transition was complete and in the place of one-party governments new constitutional rules were adopted, that guaranteed fundamental political liberties, allowed multiparty elections, and

placed basic checks on the power of the political executives (Bratton & Van de Walle 1997: 3-8).

However, even though the rules of conducting politics have fundamentally changed, the practices remained largely the same and most of the ‘new’ post-1994 African states were not that different from the post-colonial states. Long-standing leaders have survived multiparty elections, judicial and legislative institutions remained weak, and neopatrimonial practices of clientelism, corruption and fraud have continued flourishing in certain administrations (Bratton & Van de Walle 1997: 9). An example of this is Kenya, where although the constitution was amended to allow more parties to stand for election, ruling party KANU continued to be in power until 2002. In spite of a change in leadership Kenya continues to suffer from a poor human rights record and was recently ranked as the 6th most corrupt country in the world by Transparency International (Nangulu-Ayuku 2007: 139,152) It must be pointed out that African governments have established themselves as main actors in the development of domestic political economies. Politicians and bureaucrats took virtually complete control of governmental institutions, making corruption a part of the political economy (Herbst 2000: 132). Currently, many of the states that have initiated democratic transitions have entered an uncertain limbo in which their regimes reflect a contradictory combination of characteristics of democracy, authoritarianism and inherited practices of neopatrimonialism (High Beam Research nd: 2). An example of this is Nigeria, which in spite of its transition from a military dictatorship to civilian rule continues to exhibit elements of authoritarianism, combined with corruption and a poor human rights record (Alubo 2007: 205-207, 222).

Throughout the post-colonial era, politics in Africa were focused on survival, as survival is the precondition for pursuing any other goal (Clapham 1996: 5). African rulers thus created power structures which have benefited them significantly, while negatively affecting governance processes in their states. This elite rule continues in many African countries until the present day – for instance in Zimbabwe under Robert Mugabe. Clapham (1996: 8) points out that while such power structures may work to the overall

benefit or advantage or disadvantage of the individuals who are affected by them, they will always confer greater benefits on some people than others. The people who typically benefited from such relations were the African elites and not the ordinary citizens of African states. African domestic politics were and still are characterised by inequality. Bayart (1993: 60) actually points out that in Africa the state is the main manufacturer of inequality.

It is also important to point out that the concept of a 'nation-state' is non-existent in many African states. The continent has over 3,000 different ethnic groups that are scattered across the continent. Scholars have identified 371 ethnic groups in Nigeria alone (Online Nigeria 2007). The reality of the situation is that in many instances people identify with their ethnicity before their citizenship. This is hard to change, "as the central difficulty of 'nation-building' in much of Africa is the lack of any shared historical mythology and memory on which state elites can set about building the nation" (Herbst 2000: 129). Apart from that, a number of the new African rulers in post-colonial Africa, such as Idi Amin in Uganda (who persecuted several Ugandan tribal groups and Asians), were much more preoccupied with building personalised regimes of power within their states rather than building nations (Steyn 2003). National identity remains highly problematic in many African countries and often has lower salience than membership of other groups (Herbst 2000: 130).

Finally, it is also worth mentioning that a number of early African attempts at inter-state cooperation have thus far failed. Examples of this include Ghana-Guinea-Mali Union and Senegambia (Franke 2007). Herbst claims that the reason for their failure is the fact that they have all, in one way or another, challenged the domestic authority exercised by political elites (Herbst 2000: 102). This evidence is seen as negative for the APRM. 'Peer review' definitely challenges the domestic authority of African elites, by attempting to fundamentally change their regimes and by establishing mechanisms necessary for 'good governance'. This, in turn, is likely to create a more transparent and accountable political environment, in which it will be much harder to conduct politics for personal gain in the

way African elites are doing at present. The question is whether the APRM is sufficient to overcome elite politics in Africa, or too weak for its efforts to create change.

2.6. Sovereignty

Former Secretary General of the United Nations (UN), Boutros Boutros-Ghali, once said that the “time of absolute and exclusive sovereignty has passed; its theory was never matched by reality” (Boutros-Ghali 1992: 7). This is particularly applicable to post-colonial African states, which have been recognised by the international community, although they have not necessarily met the preconditions for sovereignty. Although the gap between myth and reality of statehood is present in most states, it is most notable in all of the African states (Clapham 1996: 12). Once again, the legacy of colonialism is to blame here. The sudden change from colonialism to independence took place because it was normative – the international community decided that African colonies should become independent as soon as possible. It was not a case of developing the colonies to the point of satisfying positive criteria of sovereign self-government. Under the strong and increasing pressure of international egalitarianism this requirement was abandoned and every colony was granted independence by the colonial powers. Even though at the time of achieving independence many African states did not, and many still do not (for example Sudan), exhibit credible statehood by the empirical criteria of classical positive international law (Jackson 1990: 22), they were generally recognised by the international community and became members of the United Nations (Jackson 1990: 15).

Clapham (1996: 8-12) provides four useful ways of looking at statehood:

- The first way of looking at states is by equating them with governments, which exercise claims to sovereign jurisdiction over a particular territory and population. In this sense, states are seen as coercive and administrative institutions, whose sovereignty is the asserted right to act as the final arbiter of actions that take place within the territory that they are in control of. In order to gain sovereignty, the state as a government is required to have an institutional structure. Through this

structure, the state both provides services to its people and exercises political power. In this sense, the state is seen as both a provider of welfare and as a source of inequality.

- The second way of looking at states is through the 'idea of the state'. In this sense, states are seen as social constructions in the minds of people. This would at least include those who run the states, although it should apply to those who are governed by these states. This social construction in the minds of the governing and the governed provides legitimacy for the state, which is based in morality rather than force. The government has a right to act on behalf of its citizens because they have freely chosen their leaders through universal elections.
- The third way is defining states as territorial associations of people recognised for purposes of law and diplomacy as a legally equal member of the system of states. Even though a state might be able to control its territory, and population, in the modern international system, the international recognition is vital for a state. Such recognition allows it to participate in international relations, which is crucial for a state's well-being.
- The fourth way is seeing states as power structures, which are imposed on societies. Sometimes these structures are merely hanging on top of people and territories which they can do little to control, surviving only by desperate efforts.

Most African states fall into the third and fourth categories, as they possess international recognition of their sovereignty whilst domestically they merely impose power structures on their citizens and in many cases domestic politics become a struggle for survival as a state. Clapham (1996: 12-13) argues that the criterion that is most frequently not achieved in Africa is governmental legitimacy, which gives the government of a state the moral right to act on behalf of its population. Because of this, the moral relationship, which is assumed by the myth of statehood to exist between the population of the state and the people who run it, is nonexistent. Effectively, this means that African rulers do not, in

fact, govern on behalf of their populations, but instead govern simply on their own behalf and that of their supporters. Huntington (1968: 86) points out that the state is often seen as “an organisation for enabling the mass of men to realise social good on the largest possible scale.” Such a definition is dependent on “the existence of stable democratic processes and rational bureaucratic systems that hardly existed in Africa”. Because of this, this particular definition of a state was and still is problematic when applied to Africa.

After the demise of colonialism, African states have been granted international recognition. This means that they possess the same rights and responsibilities as all other sovereign states – described by the term ‘juridical statehood’ (Jackson 1990: 21). However, even though African states are recognised as sovereign units in the international system by other states, they cannot meet the demands of ‘empirical statehood’, which requires the capacity to exercise effective power within their territories and having the ability to defend themselves against an external attack. The juridical foundation of statehood is seen as a reversal of the classical historical pattern in which external recognition is based on empirical statehood (Jackson & Rosberg 1986: 2). Because of this, African states are often referred to as ‘quasi-states’, which have a ‘negative’ sovereignty, meaning that the sovereignty status is ascribed to them by fellow states, as opposed to ‘positive’ sovereignty, which originates in effective control of their territory (Clapham 1996: 15). It is argued that possessing negative sovereignty makes African states significantly weaker actors in international relations, because they lack in the essentials of statehood (Jackson & Rosberg 1986: 1).

The lack of empirical statehood and positive sovereignty has significant implications for the populations of these states, as they do not enjoy many of the same benefits and privileges typically associated with independent states. Governments of ‘quasi-states’ are often deficient in the political processes, institutional authority and organisation, protection and provision of welfare. Benefits may only be available to elites, as often is the case in many African states (Jackson 1990: 21). However, such ‘quasi-states’ enjoy

equal sovereignty, but they lack established institutions capable of constraining and outlasting the individuals who occupy their offices.

The post-colonial era in Africa saw the consolidation of personal rule, by which the serving Heads of State concentrated power in their own hands and constructed procedural defenses against being voted out of office. Political succession occurred infrequently and usually took place only when the military staged a coup d'état (See Table 1) or an African ruler installed a handpicked successor. One of the most common institutional arrangements in Africa was a plebiscitary system in which a personalistic leader, who had come to power by a military coup or similar means, had constructed a single ruling party that periodically ratified its limited political legitimacy through ritualistic, non-competitive elections (Bratton & Van de Walle 1997: 7-8) – a system in which the rulers were commonly known as ‘big men’, exemplified by rulers such as Robert Mugabe, Mobutu Seko Seko and Idi Amin. This provided for a stagnated stability in many African states, as the unaccountable government did little for its citizens since there was no danger of being voted out of office due to poor performance. Thus, Jackson (1990: 22) points out that throughout the history of post-colonial independence, African states have been under the control of rulers who were illegitimate and governments that were incompetent.

Table 1
African coups in the last decade

Date	Country	Description
1999	Niger	President (who himself came to power in a coup) is killed by his guards
1999	Comoros	President is overthrown by the military
1999	Ivory Coast	A military regime is set up by General Robert Guei

2003	Central African Republic	General Francois Bozize seizes power
2003	Sao Tome and Principe	President is overthrown while he is out of the country
2003	Guinea-Bissau	Military overthrows the President
2004	Equatorial Guinea	President announces that details of a coup against him have been discovered
2005	Mauritania	President is overthrown while he is out of the country
2008	Mauritania	A new coup takes place in the country

(News 24 2008)

In the post Second World War era governments effectively agreed among themselves to pretend, in many cases, that the criteria for legitimate statehood were met, regardless of how effectively fictitious this pretence may have been (Clapham 1996: 15). The international community was not particularly concerned about the legitimacy of African governments, as the survival of the African states was what really mattered to them. Who was in control of the government and how they achieved that control was secondary. Potential African rulers had a number of options: rigging an election; launching a military coup d'état; leading an insurgent movement to victory against the government (Clapham 1996: 23). The international community nevertheless would recognise the new rulers of African states, without discrimination against them with regard as to how they achieved their power. Clapham (1996: 20) speaks of 'letterbox sovereignty' in Africa – whoever opened the letters in the capital was considered to be the legitimate ruler of that state.

The international community did not question the legitimacy of these options and provided the new rulers with the same benefits as were available to previous ones. Quasi states and their international support demonstrate a doctrine of negative sovereignty which was created especially to allow numerous African states to become independent all at the same time (Jackson 1990: 25). The world community allowed any state, no matter how underdeveloped its political and economic institutions, to enjoy the full privileges of sovereignty (Herbst 2000: 109) and it was possible to possess juridical statehood while showing little or no evidence of empirical statehood (Jackson 1990: 25). However, in spite of the continuous efforts by the international community to compensate African states for their post-colonial condition, the majority of these states continued to remain inherently weak (Jackson 1990: 22). Clapham (1996: 43) points out that development aid could not compensate for the poverty of African states, while diplomatic support and military assistance could not improve the situation with regard to their internal divisions. The principle of sovereignty also made it hard for donors to ask “why African politicians are so little interested in building capable states, or why business people or voters are still so disinclined to punish leaders for poor performance?” (Booth 2005: 494).

The lack of questioning with regard to the legitimacy of African governments was not only practiced by the international community, but also by the African governments themselves, as African rulers were not willing to make judgments on the legitimacy of fellow governments (Herbst 2000: 110). The reasons for that were two-fold: their own status and African solidarity. African rulers did not want to question the legitimacy of other governments, as their own status could then be questioned as well. Apart from that, because of African solidarity, African leaders tried to stick together when it came to questions of sovereignty, international legitimacy, etc. African states were stronger in the international arena when they grouped together, as alone they were too weak to have a voice. Questioning each other’s legitimacy would undermine this unity and potentially cause the international community to also start questioning their status. This could take away the benefits enjoyed by the African leaders and start a chain reaction, after which a number of African states would lose their international recognition and the privileges that came with it. Even the main African supranational body – the (former) Organisation of

African Unity (OAU) only required minimal levels of domestic sovereignty – controlling the capital city (Herbst 2000: 110) - which helped to consolidate the system (Young 2000: 26).

In conclusion, it is possible to say that for African governments domestic survival mattered more than international survival, since the latter was basically guaranteed by the international community. Therefore, African rulers developed their national authority out of fear of losing control over important populations, organisations, or territories. (Jackson & Rosberg 1986: 15). The traditional authoritarianism of the African states began to change in the 1990s as the international community started implementing political conditionalities as a requirement for development aid. The changes required were movement towards democracy, improvement of human rights and insistence on ‘good governance’ (Leftwich 2000: 107). However, so far little has changed in the way the majority of African states are being governed. African sovereignty is being challenged at this point in time by the African Peer Review Mechanism. Reviews of governmental performance and the recommendations on the implementation of democracy and ‘good governance’ are requiring African governments to give up some of their previously monopolised and unchallenged sovereignty. However, African rulers have a record of coming down hard on those who challenge its power, authority, or threaten their accumulation process (Alubu 2007: 221). The APRM intends to challenge them in these areas. Therefore, the question is whether African governments are ready to participate in a political process in which they have to question the way their fellow states are run, thereby intervening in them and at the same time also making themselves vulnerable to a similar challenge?

2.7. Democracy

Less than a decade after the initiation of post Cold War democratisation in Africa, there is much less confidence that African states are becoming democracies (High Beam Research nd: 2). Currently, democratisation is seen as a political conditionality insisted upon by the international ‘partners’ of NEPAD. Critics such as Alubo (2007: 221) point

out that in order to get more foreign aid the same states that once supported autocracy and military rule, and other authoritarian practices now became avid supporters of democracy. However, the brand of democracy increasingly becomes more important than the actual process itself. One could point to the examples of such democracies as Uganda and Nigeria, where the democratic electoral process is full of intimidation and massive rigging.

In many ways, ‘democracy’ is a highly contested term. Various people have given it different meanings, which vary from “the rule of the people” to “a distinctive set of political institutions and practices, a particular body of rights, a social and economic order, a system that ensures desirable results, or a unique process of making collective and binding decisions” (Bratton & Van de Walle 1997: 10). However, it is generally agreed that there are certain criteria that a state has to meet in order to be considered democratic. One of the most influential academic definitions of democracy is Dahl’s concept of polyarchy, (quoted in O’Kane 2001: 133), which identifies the key democratic institutions as: elected officials; free and fair elections; inclusive suffrage, right to run for office; freedom of expression; alternative information and associational autonomy – which taken together provide the necessary means for consolidating democracy in practice.

Leftwich (2000: 138-146) claims that there are a total of five conditions for democratic survival, which include legitimacy, adherence to the rules of the game, policy restraint by winning parties and the elimination of poverty, ethnic, cultural and religious differences as obstacle to democratic consolidation. At present, the majority of African states suffer from major shortcomings when it comes to fulfilling the conditions listed by Leftwich, which are necessary for democratic survival. Apart from that, Kekic (2007: 1) lists four Freedom House criteria for democracy, which consist of the following: A competitive, multiparty political system; universal adult suffrage; regularly contested elections conducted on the basis of secret ballots, reasonable ballot security and the absence of massive voter fraud; and significant public access of major political parties to the electorate through the media and through generally open campaigning.

From these definitions it is possible to derive that the ability by the citizens to freely participate in political processes is seen as a crucial aspect of democracy. Apart from this, certain liberal theorists also identify several values and beliefs as crucial for stable and effective democracy: belief in the legitimacy of democracy; tolerance for opposing parties, beliefs, and preferences; a willingness to compromise with political opponents and, underlying this, pragmatism and flexibility; trust in the political environment, and cooperation, particularly among political competitors; moderation in political positions and partisan identifications; civility of political discourse; and political efficacy and participation, based on principles of political equality (Diamond, Linz & Lipset 1995: 19).

It is evident that there is not one single method which can be used for measuring democracy. A further problem is that the APRM base document does not provide a clear definition of democracy, although many of its standards refer to it. The absence of a single definition could potentially create problems, as it leaves much to interpretation. African governments may thus have the potential to exploit this shortcoming and argue that their state is democratic, as there is no universal standard that could be referred to determine whether this claim is accurate.

Generally, although different theorists agree on certain necessary aspects of democratic rule, such as free and fair elections and the ability of the public to participate in political processes, assessing democracy is difficult because a variety of factors has to be examined before making a judgment on whether a certain state is democratic or not. At present, one of the most widely accepted measurements for democracy is the Economist Intelligence Unit democracy index. Its 2007 edition categorises states into Full Democracies, Flawed Democracies, Hybrid Regimes and Authoritarian Regimes. Currently, only one African state is classified as a Full Democracy – Mauritius, ranking at number 25. South Africa comes close, ranking at number 29, but still being listed under the Flawed Democracy category. The other three African states that are signatories to the APRM which are listed under the Flawed Democracy category are Lesotho, Benin and Mali, ranking at 63, 71 and 80 respectively. The majority of APRM signatories

currently fall under the Hybrid Regime and Authoritarian Regime categories. Senegal, Ghana, Mozambique, Zambia, Tanzania, Uganda, Kenya, Malawi and Ethiopia are classified as Hybrid Regimes, while Egypt, Rwanda, Burkina Faso, Sierra Leone, Cameroon, Algeria, Sudan, Democratic Republic of Congo, Gabon and Angola are categorised under Authoritarian Regimes (Kekic 2007: 3-5).

Thus, although according to the APRM African states are striving towards democracy, celebrations for an African democratic revolution are premature, as very few African rulers have embraced democracy with either enthusiasm or commitment and few African societies yet exhibit the conditions that will sustain democracy (Leftwich 2000: 129). It is at times said that democracy in Africa is a ‘virtual’ democracy. ‘Virtual’ democracy is conceptualised as formally exhibiting the necessary institutions of democracy for representation and participation, but in practice protecting the interests of established dominant groups (O’Kane 2001: 129). Politicians must be able to enforce the rules without being captured by particular economic or bureaucratic interests – which is most often not the case in African states (Brett 2006: 7). The APRM intends to establish a political environment that is necessary for the development and growth of democratic processes in Africa. However, these processes remain Western ideas and concepts that are still considered to be rather alien to the realities of the African situation. It must be kept in mind that internal politics in the majority of African states should be seen as the utilisation of patronage, rather than the performance (or not) of legitimacy drawn from the sovereign will of the people (Taylor 2004: 29).

Citizen participation is an important aspect of democratic politics. However, politics in Africa has always taken a top-down approach (Clapham 1996: 247). In Africa, the ‘people’ or the average citizens have virtually no political power. Most often their only participation in governmental processes is restricted to periodic participation in a very limited form of representative democracy, the choice in which is often predetermined. Elections are seen as one of the main prerequisites for democracy. Bayart (1993: 166-167) points out that in Africa, the so-called ‘little people’ are excluded from the election race due to their lack of property. The elected bodies, assemblies and party organs are

therefore nothing but representatives of the dominant order. They serve as the privileged zone of unification for those engaged in the quest for hegemony. Largely, elections without choice are taking place in Africa, which rarely advance the cause of a true and genuine democracy (O’Kane 2001: 129). It is also worth mentioning that elections in Africa may easily co-exist with systematic abuses of human rights or the disenfranchisement of large segments of the population (Bratton & Van de Walle 1997: 235). In Kenya, the government is accused both internationally and domestically of gross human rights violations and denial of liberties. Although torture is prohibited under the Kenyan constitution, there have been numerous reports of police brutality and abuse of prisoners (Nangulu-Ayuku 2007: 154). Even democratically elected governments in Africa have generally performed quite poorly in respecting democratic norms and procedures (Bratton & Van de Walle 1997: 243), as the struggle for resources in Africa causes elites to monopolise power. A relevant example is Senegal in the 1990s, when the bosses of Senegal’s ruling Socialist Party did not allow the opposition parties a fully free and fair chance to compete for power in elections (Diamond, Linz & Lipset 1995: 32). A more recent example is that of Zimbabwe in 2008, already mentioned in 2.4. Although an election took place, Mugabe sponsored a campaign of voter intimidation and violence, causing the opposition candidate to withdraw from the second round.

Democracy is also not institutionalised in its Western meaning, as governmental and economic processes more often than not take place informally, between the patron and client along the lines of reciprocity. Power is thus personalised and exercised according to the interests of the elites rather than the public good (Taylor 2004: 29). There are those who want to reject ‘imported’ Western forms of democracy in favor of specifically African forms derived from indigenous traditions (Bratton & Van de Walle 1997: 38), such as Julius Nyerere’s idea of a state in which all debate takes place within one ruling party. However, it is not always clear what these traditional forms mean and how they are to be combined with modern concepts of statehood.

In Africa, traditional forms of societal organisation have always revolved around the idea of chieftaincies. The chief was referred to as the ‘big man’ who controlled a society and

in which he possessed ultimate and unchallenged power. It is argued that this traditional practice has been transformed into what is called ‘big man’ democracy. In such a form of rule, democratically elected elites manipulate political rules in order to consolidate their personal hold on power: “big man democracy can be described as one in which the formal trappings of democracy coexist with neopatrimonial political practice” (Bratton & Van de Walle 1997: 233). This has given rise to ‘elite politics’ in Africa, whereby the state is effectively controlled not by government institutions, but rather by a single ruler and his clients. Bayart points out that five political practices have been particularly conducive to the unification of elites and the creation of a dominant class in African states: ideology, chieftaincy, the bureaucracy, elections and the party (Bayart 1993: 163). As can be seen from the list of these five practices, traditional governing form (chieftaincy) is combined with modern governing forms (bureaucracy, elections and the party), which are brought together under a specific ideology to form a unique form of ‘African democracy’.

In this sense, the democracies of many modern African states can be seen as a sham. In order to exist in the contemporary international system they simply create the appearance of a modern democratic state. That means creating a checklist of all the basic democratic requirements: regular elections, a government, judiciary, bureaucracies, etc. However, in spite of the existence of these institutions and processes, the real power is held by a select few in that country, and the majority of relations and interactions take place according to the principle of clientilism, through which widespread networks of clients receive services and resources in return for support (Taylor 2004: 29). African governments are thus often characterised by the existence of a hidden and collective structure of power which surrounds, and even controls, the official tenants of state power (Bayart et al 1999: 20). As a result, politics in Africa tend to be a zero-sum game (Taylor 2004: 30). The APRM on the other hand, is trying to create a process of mutual learning, cooperative effort and shared benefits. However, is Africa, or rather are African rulers ready for this? Chabal and Daloz (1999: 16) claim that it is likely that African elites will use reforms intended to promote democracy in order to “secure both renewed legitimacy and access

to the new assets which the apparent liberalisation of the continent's economies makes available.”

Taylor (2004: 31) points out that the type of ‘good governance’ solution as advanced by NEPAD and the APRM would deprive corrupt African rulers of the means to maintain their patronage networks and continue with their principle of clientilism. In that sense, to establish APRM standards, values and ideals in Africa is to destroy the fundament that most African states are standing upon. Therefore, it would be highly naïve to think that the African leaders themselves would execute this paradigm shift by fully participating in the APRM process. Taylor further claims that the entire system in Africa is based on privatised patronage and the prevention of the practice of real, accountable democracy. Thus, trying to enlist the support of the creators and main beneficiaries of such a system to destroy it does not seem like a realistic option. It must be kept in mind that the implementation of the concept of ‘good governance’ would significantly undermine the personalised grip that the elites have on the system. This, in turn, would lead to the inability to provide services to their clients, eroding the support base of the leaders and eventually leading to their loss of power. The APRM seems a highly unrealistic project to execute from this perspective, as it is basically asking certain African leaders to commit a form of class suicide (Taylor 2004: 31). Apart from that, it is also claimed that the longer a democracy exists, and the more democracies are around it, the greater the chances of its survival (Leftwich 2000: 145). However, in Africa many democracies are relatively new and often surrounded by states with similarly new democratic, authoritarian or hybrid regimes.

According to this approach it is unrealistic to expect major changes from the establishment of the APRM. However, it is important to remember that not all African states are as corrupt and personalised as Taylor claims. The examples of Botswana, South Africa, Ghana and Mauritius show positive tendencies towards democracy and ‘good governance’. These countries need to act as leaders in the process and exercise ‘peer pressure’ on fellow states to change their systems of personalised and autocratic rule, as this is why the APRM was established in the first place. Africa is not being expected to

‘democratise’ overnight. This is going to be a long process and those states that have already shown potential to improve should act as leaders throughout the process. Currently, even minor improvements in the governance methods of certain African states will be considered a major achievement. However, it must be kept in mind that democracy is not possible without democrats (Bratton & Van de Walle 1997: 235), (Diamond, Linz & Lipset 1995: 53). It seems that Africa needs a new elite of leaders who would respect democratic processes and conduct their rule through them. Whether the rulers of the states that have become signatories to the APMR process are going to become this ‘new elite’ will only become evident at a later stage. African governments must strive to establish working democratic institutions and respect them in order to create ‘real’ as opposed to ‘virtual’ democracies.

2.8 Corruption

A World Bank study found that private companies rated corruption as the single greatest obstacle to doing business in Africa (Herbst 2000: 132). The Western media also have a tendency to portray Africa as ‘the’ corrupt continent. Why does the world have such a negative image of African states when it comes to corruption? Herbst (2000: 254) claims that at times African leaders have stolen so much from the state that they killed off the productive sources of the economy. Particularly, leaders in (the former) Zaire, Liberia, Somalia and elsewhere stole so much as to cause the state to dissolve (Herbst 2000: 133).

In order to have a discussion about corruption it is necessary to define and examine it. The term ‘corruption’ refers to a wide range of social activities that are universally rejected as dishonorable and harmful. Standing (2007) provides a basic definition of corruption as “abuse of public office for private gain”. Corruption could also be described as bureaucratic and political irregularities, such as personal favors, lack of objectivity, bias as a result of a bribe, etc. (Maloko 2007: 255-256). Bayart defines corruption as “a combination of positions of public office with positions of accumulation” (Bayart et al 1999: 8). These positions of power appear to be the key to understanding the way corruption works in Africa. Through positions of power it is possible to gain

monopolistic access to resources. Resources are not only used for financial gain and personal enrichment, but also for acquisition of more power, since diplomatic and military resources can be mobilised in order to alter the domestic power relationships (Bayart 1993: 74). Thus, corruption in Africa works not only according to the principle of acquisition of wealth, but also the attainment of personal power.

Because of this, distribution of state offices is legitimised by a set of political norms according to which the appropriation of such offices is not just an act of individual greed or ambition but also the satisfaction of the short-term objectives of the general population (Herbst 2000: 132). African publics seek access to public offices, as they are aware of the privileges and benefits that come with them. High profile jobs in the public sector come with very generous salaries and benefits, such as accommodation, cars, bursaries for children, health care and overseas travel. Apart from that, a public position makes it easier to obtain bank or political credits and positions of power can also be positions of predation, as their holders can use their monopoly of legitimate force to demand goods, cash and labor. Interconnections between the position of power and credit operate at all levels of the institutional pyramid (Bayart 1993: 76). Agents of the state can also find doors of appropriation opening up before them, since the exercise of administrative and political responsibilities does not at all preclude the possibility of accumulating and managing a personal business (Bayart 1993: 75). Ownership is also most readily available to agents of the state who are in the best position to know the administrative procedures, to anticipate the plans for urban growth, to profit from their influence and to overcome the long obstacle race associated with any acquisition. In fact, at times ministerial departments in Africa are neglected in favour of the pursuit of personal business (Bayart 1993: 81-82). In Kenya, political parties were used as commercial ventures, as they were registered through proxies and later sold to the highest bidder (Nangulu-Ayuku 2007: 140).

The political class can also acquire a luxurious lifestyle supported by the bribes paid by foreign businesses in exchange for commercial advantages (Jackson & Rosberg 1986: 23). For example, there have been instances when Kenya's government officials

demanded bribes from foreign investors (Nangulu-Ayuku 2007: 152). In fact, corruption could be seen as a part of the political culture in African states. To use the example of Kenya once again, Nangulu-Ayuku (2007:150) states that “corruption has become so rampant in the country that apart from the government, the police force, the judiciary and the private sector are now infested with corruption”. Once a public position has been obtained, it is easier to gain more power and/or financial benefits. “Any official decision affords an opportunity for gain, from fiscal control to technical verification, from the signature of a nomination form or a concessionary market to an industrial agreement or an import license” (Bayart 1993: 78). In Nigeria, former Head of State General Sani Abacha has personally accumulated \$ 505 million through oil revenue during his rule (Agbese & Kieh 2007: 12-13).

In what seems to be a new trend in African corruption, politics is becoming increasingly interconnected with crime. According to Bayart (et al 1999: 15-16), the criminalisation of politics and of the state may be regarded as the routinisation, at the heart of political and governmental institutions, of practices whose criminal nature is patent. A list of criminal practices includes various economic or financial malpractices which constitute forms of fraud and embezzlement (including, but not limited to: the pilfering of foreign aid, the illegal export of capital or natural resources, the large-scale counterfeiting of patented products, systematic tax evasion, the laundering of money from illegal transactions), or practices which are illegal in virtually every national legislation, such as the counterfeiting of banknotes; and the illegitimate use of the state’s coercive resources or of resources of violent coercion which are private and, hence, illegitimate. The 2005 World Report published by Human Rights Watch states that in the DRC armed groups which officially belong to the national army harass citizens and place them in illegal detention and subject them to torture in order to extract illegal ‘taxes’. Local and national government officials ignore this problem, since they either authorise this or receive a share of the profits. At the same time security forces in Cote d’Ivoire act with impunity while the government fails to hold them accountable (Agbese & Kieh 2007: 7).

It is also important to point to the international dimension of corruption in Africa. As it has been mentioned earlier, African governments derive a part of their legitimacy from the international community. They also use their links to this community in order to accumulate wealth for themselves. These foreign links are crucial, because they are the main conduits for the circulation of wealth. Apart from that, it is worth mentioning international trade - a major source of accumulation for the state, which derives a large part of its revenue from custom duties. Food aid (much more than development aid, which is quite tightly controlled by the donors) is to a considerable degree piped through private interests. For example, Malawi and Rwanda have in the past been known to subject emergency food aid to the usual import tariffs (Bayart 1993: 79-80). Many rulers in Africa also divert the surplus and the rent of agricultural exports into their own pockets (Bayart 1993: 63).

Transparency International's 2007 Corruption Perceptions Index gives each state a score based on the perception of corruption by business people and analysts. The scores range between 10 (highly clean) and 0 (highly corrupt). The scores then determine the ranking of a country, with 1 being given to the cleanest state and 178 given to the most corrupt state. The APRM signatories are given the following ranking and scores in the index:

Table 2.

Transparency International Corruption Perceptions Index (2007)

Rank	Country	Score
43	South Africa	5.1
53	Mauritius	4.7
69	Ghana	3.7
71	Senegal	3.6
84	Gabon	3.3
84	Lesotho	3.3
94	Tanzania	3.2
99	Algeria	3

105	Burkina Faso	2.9
105	Egypt	2.9
111	Mozambique	2.8
111	Rwanda	2.8
111	Uganda	2.8
118	Benin	2.7
118	Malawi	2.7
118	Mali	2.7
123	Zambia	2.6
138	Cameroon	2.4
138	Ethiopia	2.4
147	Angola	2.2
150	Democratic Republic of Congo	2.1
150	Kenya	2.1
150	Sierra Leone	2.1
172	Sudan	1.8

(Transparency International 2007)

As evident from the above table, currently the APRM signatories have an abysmal corruption record. South Africa and Mauritius have managed to get the highest scores of 5.1 and 4.7 respectively, but only the former has managed to get a score above 5. Six other states (Ghana, Senegal, Gabon, Lesotho, Tanzania and Algeria) scored 3 or above while the remaining 16 APRM signatories could not even get scores of 3. The worst case is Sudan, which scored less than 2. These statistics demonstrate the appalling corruption situation in Africa and show the need to establish appropriate measures to combat it.

In conclusion, it is evident that corruption is a major problem in African politics, as it is embedded into the political culture of most (if not all) of the African states. African public positions afford significant opportunities for illegitimate accumulation of wealth, whilst Africa's international relations also create possibilities for misuse of aid, resources

and revenues made. Corruption also goes a long way towards explaining both the governmental ineffectiveness of many African states, and their failure to generate political structures with any legitimacy or even public acceptability (Clapham 1996: 252). Thus far, most of the efforts to thwart corruption have been fruitless. Two relevant examples of this include Kenya and Nigeria. In Kenya, Mwai Kibaki was elected President in 2002 on a pledge to fight corruption. Kibaki appointed John Githongo as the chief of the anti-corruption crusade. However, Githogo was forced to resign three years later because of accusations that the government was not serious in its anti-corruption efforts (Nangulu-Ayuku 2007: 20). In Nigeria, Olesgun Obasanjo was elected President in 1999, also primarily because of an electoral promise to fight corruption. However, despite the establishment of an anti-corruption commission the country is still ranked amongst the most corrupt states of the world. Many Nigerians contend that even though corruption still flourishes in the country, only a few have faced charges for allegations of corruption (Agbese & Kieh 2007: 20-21). So far promises of transparency and accountability have remained empty, as corruption continues to be a large part of political culture in Africa.

2.9. Neopatrimonialism

Neopatrimonialism is the core feature of politics in Africa (Bratton & Van de Walle 1997: 62) and neopatrimonial practices are considered to be one of Africa's worst problems. Many African states are regimes of highly personal rule that are severely deficient in institutional authority and organisational capability (Jackson & Rosberg 1986: 1-2). Because of this, corruption flourishes, and the achievement of democracy and 'good governance' seem far from achievable. According to Bratton and Van de Walle (1997: 242), neopatrimonialism is not specific to certain states, but is rather embedded in the African political environment. Most pessimistically, neopatrimonialism could be used to explain African politics as no more than a process in which competing interests rationally "instrumentalise the resources which they command within a general political economy disorder" (Chabal & Daloz 1999: 155).

Neopatrimonialism refers to what classical modernisation theorists describe as ‘dualism’, which is the co-existence of traditional and modern political institutions in a state (Brett 2006: 4-5). Jackson and Rosberg (1986: 2) define neopatrimonialism as “derived from the concept of patrimonial authority, which is used to designate the principle of authority in the smallest and most traditional polities. In patrimonial political systems, an individual rules by dint of personal prestige and power; ordinary people are treated as extensions of the ‘big man’s’ household, with no rights or privileges other than those bestowed by the ruler. The ‘state’ may be little more than a sham for the promotion of personal, familial, communal, and other private interests by the rulers, their supporters and other ‘elites’” (Jackson & Rosberg 1986: 2). Neopatrimonial states are thus characterised by “personalistic leaders unconstrained by norms or institutions... (and) officeholders who treat public resources as their personal patrimony” (Kohli 2004: 10).

It is also important to mention patron-client relations, which are another characteristic of neopatrimonial states. These relations underpin African politics cannot be effectively understood or analysed by state-centric approaches (Dunn & Shaw 2001: 53). Authority is entirely personalised, shaped by the ruler’s preferences rather than any codified system of laws. The ruler ensures the political stability of the regime and personal political survival by providing a zone of security in an uncertain political environment and by selectively distributing favors and material benefits to loyal followers who are not citizens of the polity so much as the ruler’s clients” (Bratton & Van de Walle 1997: 61). The above description constitutes an ideal patrimonial state, which is not present in the international system. Even the smallest and most underdeveloped states in the contemporary international system have some sort of political and bureaucratic institutions and written laws. However, many African nations retain (although in a modified form) many characteristics of the patrimonial rule. It is thus useful to characterize as neopatrimonial those hybrid political systems in which the customs and patterns of patrimonialism co-exist with, and suffuse, rational-legal institutions (Bratton & Van de Walle 1997: 62).

In particular, Bratton and Van de Walle (1997: 65-66) identify three key institutions of modern neopatrimonial states:

1) Presidentialism: this institution implies the systematic concentration of political power in the hands of one person, who refuses to share his power and delegate major decision making. Such a system is deeply personalised and it creates absolute power, through which personal rulers dominate their political systems to a much larger extent than is the case in bureaucratic polities. An important factor here is that the power of such leaders is not constrained by the constitution, judiciary, parliament or any sort of a system of checks and balances.

2) Clientilism: the ‘big men’ in neopatrimonial systems all rely on the award of personal favors. These favors typically include prestigious public sector jobs, possibility of obtaining resources, licenses, contracts and projects. At the very top of the hierarchy, the ruler’s most faithful supporters were awarded with control of public offices, monopoly rents, and thus the possibility of creating their own clientelist networks (Bratton & Van de Walle 1997: 65-66). For example in Kenya, the top civil servants and administrative officials have treated their duties as a personal service to the president and have consistently behaved in a manner that suggested that their obedience to the president was more important than their allegiance to the state. Such bureaucratic principles as hierarchical authority, expertise, neutrality and efficiency were ignored and as a consequence a significant number of civil servants became corrupt (Nangulu-Ayuku 2007: 165-166).

3) State resources: African rulers in neopatrimonial states typically did not distinguish between their own private resources and those of the state, and thus they routinely used the state’s resources and funds for their own political needs. Because of this, it is possible to speak of personalisation of African states and economies (Bratton & Van de Walle 1997: 66). African rulers exploited public enterprises and financial institutions for their own purposes, by means which included privatisation, fraud and smuggling (Bayart et al 1999: 21). Alubo (2007: 205-207) states that in Nigeria, the state is crucial to the

accumulation process, particularly because of corruption, and the entrepreneurial role played by the state with regard to its oil resources.

After achieving independence from the former colonial powers, certain African rulers started the creation of monopoly states, in which their power was ultimate. Such monopoly states were made to be dependent on personal leadership. The entire system revolved around the ruler and depended on his maintenance of political power. The right to rule was therefore ascribed to a person rather than to an office or a position, despite the existence of a written constitution. One individual (the 'big man'), often a president for life, dominated the state apparatus and stood above its laws (Bratton & Van de Walle 1997: 62). The state was thus needed only as a kind of license, which provided access to resources (Clapham 1996: 250). The 'big men' have always been at the heart of the political system (Dunn & Shaw 2001: 53). The ruler in such a state was often both omnipotent and insecure. In that sense, although the ruler had absolute power and there were no constitutional mechanisms through which he could be removed, there was the constant threat that at any time he could be removed by a coup d'état (Clapham 1996: 58; see also Table 1).

As these monopoly states were established in Africa, the range of the people who had the capacity to influence the political process has diminished. Furthermore, African rulers gained such powers that they could now decide which groups, individuals, or interests would be included in the political process and which would be excluded. Therefore, political processes were turning into relationships of loyalty and dependence, superseding the formal political and administrative rules. Officials would occupy public positions less to perform public service, and more to acquire personal wealth and status (Bratton & Van de Walle 1997: 62). Politics thus started turning into a patronage operation, which is what the concept of neopatrimonialism is established on. African political processes began to be governed by the need for control on the part of the ruler, and the need for access to state benefits on the part of the subordinates and those whom they sought to represent (Clapham 1996: 59). Neopatrimonialism is so pervasive in Africa because through the patron-client networks that it creates all who are involved are able to get access to crucial

resources. Africans gain employment, political position, and help in a crisis from their patron-client networks. In the extremely insecure African political environment these networks provide the best available means of social and economic security (Orvis 2001: 33).

Bayart et al (1999: 21) explain that politics in Africa entails managing factional intrigues for personal interest. The political life of the state is often structured around the conflict of interests between the dominant factions. The conflict of interests typically arises because of competition for resources. These resources can vary from power to finance, access, diplomatic, military, etc. But at the end of the day they all give their owner an opportunity for financial enrichment and accumulation of more political influence and power. It is because of these factional conflicts that African rulers are not always able to provide answers for questions asked by aid donors. Because, as mentioned earlier, African rulers manage these conflicts for personal benefit, they do not always make choices that are beneficial for the country as a whole. Rather, they make choices that will benefit them and the elite groups that they have chosen to favor. The post-colonial state is therefore actually similar to its colonial and pre-colonial predecessors. It functions through personal networks and assures the centralisation of power in the hands of the elites through the agencies of family, alliance and friendship (Bayart 1993: 261).

The real political institutions in Africa are the ones which constitute informal relations of loyalty and patronage established between ‘big men’ and their personal followers. In Africa, ‘private’ interests rooted in personal ambitions and patron-client ties have infringed upon the democratic processes in order to pursue their own needs (Jackson & Rosberg 1986: 22). The politics in such states function according to unwritten rules of neopatrimonialism, and shapes the decisions of leaders, engender compliance from citizens and pervade the performance of bureaucratic organisations. The domination of political patrons and the subordination of their clients are formally expressed in the monopolistic political organisations of military oligarchies and civilian one-party states (Bratton & Van de Walle 1997: 44). Therefore, when talking about the African state, one is more often than not referring to the power concentrated in the hands of individuals or

groups, who are preoccupied with maintaining and increasing their control over the territory and population that they control (Bayart 1993: 263). This personalism directly affects the conduct of foreign policy, as many African rulers conduct much of their foreign relations themselves (Clapham 1996: 58). Furthermore, having political power provides a hold over the economy, much more than the opposite (Bayart 1993: 70). In Ghana, for many years the government was led by individuals who used the rhetoric of economic growth, yet denied the people any access to wealth (Kwesi-Aning 2007: 107).

Reno (1999: 2) speaks of 'shadow states' in Africa. Such states have a "very real but not formally recognised patronage system that (is) rigidly organised and centered on ruler's control over resources". 'Shadow states' are characterised by a system of personal rule, which is typically constructed behind the façade of formal statehood. They are established not on accepted concepts of legitimacy and the processes of governmental political institutions, but rather on the control of the markets, and as mentioned previously, on the ruler's successful ability to manage and manipulate factional interests and their access to resources available through those markets. A successful ruler manages and manipulates these interests in such manner that his own power is subsequently increased (Clapham 1996: 250). Such states lack any sort of capacity to create a sense of moral community amongst those who participate in them, let alone among those who are excluded. They also do not encourage production, because they give incentives in the form of economic benefits or political participation to those who create wealth. They are seen as a consumption-oriented form of political management, which depends on the diversion of consumption opportunities to those groups which offer more help to people in power (Clapham 1996: 59). They also do not create unity amongst the population, as the government or rulers only reward those who are considered to be clients, which generates inequality. All African neopatrimonial regimes promoted much social stratification and inequality (Bratton & Van de Walle 1997: 76) as a citizen's social status, position in relationships to the economy and access to material power and resources is determined by his or her position in relation to the apparatus of the state (Bayart 1993: 70). Even transition to democratic rule is not always helpful. This is exemplified by the case of Nigeria, where the establishment of a democratic rule (instead

of a military one) merely resulted in the change of the state's clients, and not the improvement in accountability and transparency or decrease in corruption (Alubu 2007: 221).

Clapham (1996: 56-57) makes an interesting point by demonstrating how neopatrimonialism has served to eliminate political opposition to African rulers. According to him, opposition parties were initially permitted to remain only when the government did not have sufficient resources to crush them, or when they were so weak that they did not pose any real threat to challenge government's power. Subsequently, both the opposition and the governing parties atrophied as their mobilising functions were removed, their electoral organisation became redundant, and their leaders were appointed to governmental positions which depended on the favor of the head of state rather than the support of their constituents. Once the political parties were removed as participants from African politics, states emerged as the only viable mechanisms through which African leaders could maintain their power and seek other goals. These 'monopoly states' were characterised by weak administrative structures and fragile economies. However, after the elimination of political parties, the rulers were able to maintain their grip on the state and use its machinery to eliminate any other potential opposition – be it an opposition leader, a trades union, or even a major corporation. Also, taking into account the context of neopatrimonial states, one would have to question whether the opposition's concern for rule change is merely a way for them to get access to privileged state institutions and public wealth (Bratton & Van de Walle 1997: 162). Khan (2000: 25) argues that democratic processes and rules, such as free and fair elections, merit-based bureaucracy and competitive markets are not possible in neopatrimonial states, because the public service is affected by nepotism, favoritism and clientilism, and access to public institutions of the state is seen as an opportunity for personal enrichment.

In conclusion, it is worth mentioning that neopatrimonialism is the most salient type of authority in Africa because it corresponds to the normal forms of social organisations in pre-colonial societies (Bratton & Van de Walle 1997: 62). Even though personal relationships take place in all the bureaucratic systems, they constitute the foundation and

superstructure of political institutions in Africa (Bratton & Van de Walle 1997: 62). The political approach in Africa is the impositions of control from the top, rather than the mobilisation of support from below (Clapham 1996: 56). In neopatrimonial states, the ruler and his ‘elite’ undermine the effectiveness of the nominally modern state administration by using it for systematic patronage and clientelist practices in order to maintain political order. Moreover, parallel and unofficial structures may well hold more power and authority than the formal administration. To summarise, the main feature of neopatrimonialism is the incorporation of patrimonial logic into modern bureaucratic institutions (Bratton & Van de Walle 1997: 62), the presence of which will not allow African states to establish democracy and ‘good governance’. Neopatrimonialism is therefore one of the main obstacles to the APRM, as it is clear that neopatrimonial practices can and do exist hand in hand with modern institutions. In African states, rulers and their supporters typically take precedence over the formal rules of the political game, and these rules do not effectively regulate political behavior (Bratton & Van de Walle 1997: 63). Therefore, the APRM should be concerned with eradication of neopatrimonial practices in order to ensure its own success.

2.10. Conclusion

Apart from providing a historical-descriptive account of the state of the state in Africa, this chapter focused on four specific themes of African politics: sovereignty, democracy, corruption and neopatrimonialism. The APRM recognises the fact that all African states suffer from similar problems, but are currently in different stages of progress in solving them. Thus, it is assumed that the creation of a common standard for all African states will allow them to move towards the achievement of a common goal from their own position and at their own speed. This research demonstrates that the contemporary state faces a number of significant problems with regard to governance. The problems of ‘negative’ sovereignty, democracy (or the lack of it), corruption and neopatrimonialism are relevant to most of the states in Africa – albeit to different extents. Although not all of these themes directly correspond to objectives 2, 4, 5 and 6 of the APRM, they do provide a framework of practical problems faced by the African state.

Arguably the biggest problem in the politics of the African state is the practice of neopatrimonialism. It is the foundation of all other problems, such as corruption, lack of respect for institutional rules, the constitution, etc. Neopatrimonialism creates personalized networks of powers and access in Africa, which create inequality and social stratification. Furthermore, these networks undermine existing government institutions, thereby creating ‘monopoly’ or ‘shadow’ states, which function not according to formalised processes, but according to the rules which suit the ruler and his elite. The APRM needs to overcome neopatrimonialism, because if clientelist practices continue to dominate politics and if political elites are wedded to democracy only insofar as it enhances their power and influence, it is difficult to imagine much progress in the institutionalization and legitimation of democracy. Thus, even if the APRM manages to get the formal rules right, this would not guarantee an improvement either in democracy or in ‘good governance’. Democratic rule in Africa will not survive if the political elites manipulate democratic rules in pursuit of personal interests (Bratton & Van de Walle 1997: 235-236). African states need to show a commitment to the values of democracy and good governance. Although the APRM shows this effort on the part of African leaders, the question remains whether the APRM will in fact be a genuine attempt to improve democratic and governance standards in Africa or just another empty declamation.

Chapter 3:

African Peer Review Mechanism: description and analysis

3.1 Introduction

This chapter deals with the APRM and its related concepts. As such it is largely descriptive and provides a background to and context for the analysis in chapters four and five. The first part deals with the APRM's historical development, which is necessary to examine in order to gain insight into why the African leaders decided to adopt it as a means of furthering democratisation on the continent. Relating to that, the concepts of 'good governance' and 'peer review' are analysed and contextualised in the African political environment. These concepts are crucial to the APRM's process and a discussion of what they entail provides a deeper understanding of what the APRM is trying to achieve and how it plans on doing that. A detailed description of the process is provided in order to show how the reviews are conducted. Such description provides an insight into possible structural shortcomings of the APRM, which relate to the case studies of Rwanda, Kenya, South Africa, and Ghana (see chapter five). Apart from that, four of the APRM's objectives that relate to 'good governance' and were identified in chapter 1.1, are made available as they are crucial for the APRM's standards (discussed in chapter four), as they often provide more clarity with regard to the APRM's goals. The second part of this chapter provides a critical analysis of the APRM and attempts to identify some of its shortcomings. Such analysis is necessary for the case studies in chapter five, and it relates to the overall assessment of the APRM as a standard for 'good governance'.

3.2. APRM: a brief history of origins

NEPAD is an economic development program that was adopted at the 37th summit of the Assembly of Heads of State and Government of the OAU in July 2001 in Lusaka,

Zambia. NEPAD can be described as an economic development programme that arose out of merging three parallel initiatives that were launched in 2000-2001 (de Waal 2002: 466).

The first of these initiatives is the Millennium Partnership for Africa's Recovery Programme (MAP), which was inspired by South Africa's President Thabo Mbeki. MAP was started by the OAU mandate given to a number of African leaders, including Mbeki, to investigate how Africa could overcome its debt crisis. In addition to that, Mbeki was already promoting his vision of the 'African Renaissance', which encompasses not just economic development, but also cultural, political and social regeneration. As a result of this, the opening paragraphs of the NEPAD document virtually replicate certain components of the MAP document, as they stress the importance of Africa's artistic and cultural heritage. The second initiative was the OMEGA Plan, created by Senegal's President Abdoulaye Wade. This document largely focused on regional infrastructure and educational projects. The third initiative was the Compact for African Recovery, initiated by the executive secretary of the UN Economic Commission for Africa – K.Y. Amako, which was formulated in a response to a mandate provided by African ministers of finance in 2000 (de Waal 2002: 466).

These three seemingly different initiatives were merged together into one in May 2001, at the joint conference of Africa's ministers of finance and economic planning, which took place in Algiers. The resulting hybrid was initially labeled as the New African Initiative (NAI), and the OAU summit which took place in July 2001 mandated its implementation to a committee of 15 heads of state, whose first major decision was changing its name to 'New Partnership for Africa's Development' (NEPAD 2007).

One of the reasons for the merging of the three initiatives was the fact that MAP was created and supported by African anglophone states, while OMEGA was worked out by African francophone states. Thus, there was a fear about the possibility of a clash between anglophone and francophone states, which would enforce a false political divide among African countries on account of mere linguistic association (Landsberg 2002). A

compromise was therefore inevitable in order to accommodate both sides. This way, the new framework was intended to include all African states – provided that they qualified for the ‘new’ and ‘enhanced’ initiative. In particular, African leaders claim that the ‘new’ in NEPAD is the importance of political will implied in the framework of the initiative. NEPAD is founded on the principles of good governance in African countries, especially with regard to the adoption of a sound macro-economic policy framework, as well as improved political, economic and corporate governance.

One of the most important ‘new’ elements NEPAD promises to deliver is the enhancement of democratic political governance through the APRM. African states that are signatories to the APRM will monitor each other and assess the extent to which their peers are implementing the pre-agreed NEPAD framework. By becoming an APRM signatory, the state gives its consent to being examined by fellow African states and agrees to enter into a potentially difficult political dialogue regarding its performance and the way forward. It is important to stress that participation in the APRM is voluntary, and countries are not compelled to accept monitoring and assessment of their performance (NEPAD 2007).

The introduction of the APRM into NEPAD is claimed to have been implemented as a means of pleasing Africa’s development ‘partners’, who have placed a strong emphasis on ‘good governance’ since the early 1990s (Edozie 2004: 162). Given the continent’s problems of mismanagement, corruption and human rights abuses, it is no wonder that Africa’s development partners saw democratisation as a panacea. As mentioned in 2.4, the global community expected the newly created African states to follow the Westphalian model of statehood. The next step was to implement a familiar political system in African states. Thus, since the 1990s the industrialised democracies of the North have stressed the adoption of the ideals of liberal democracy in African states as a solution to their problems.

It is also worth mentioning that the APRM has caused a conflict early on between NEPAD and the G8. In the initial stages, the APRM was advertised as an element that

distinguished NEPAD from the Lagos Plan of Action, by placing an emphasis on the need for African governments to identify and promote common practices for political liberalisation of African states (Edozie 2004: 163). However, in 2002, South African president Thabo Mbeki announced that the APRM would be taken over by the African Union (AU), which caused the G8 to issue a statement that its 6 billion US Dollars in support of NEPAD were conditional upon the APRM remaining and functioning under NEPAD's auspices (Business Day, November 20, 2002). G8's Africa-Action Plan Chairman Michael Gahler stated that his organisation did not trust the AU, as it was "too soon to say whether it will be any different from its predecessor, the OAU" (Edozie 2004: 163). This incident highlighted the fact that it was too early to speak of a 'partnership' NEPAD intended to create between African states and the Western donors, as the latter were still able to dictate their rules. The initial reactions to the APRM were two-fold: some critics saw the APRM as a voluntarily imposed condition in exchange for more aid (Edozie 2004: 164); while others praised the fact that the APRM is an Africa-wide and self-conscious democratic initiative (Kanbur 2004: 157).

In March 2003, the NEPAD Heads of State and Government Implementation Committee adopted the Memorandum of Understanding on the APRM. As of July 2008, a total of 29 African countries had signed up to be reviewed by their 'peers'. These states are: Algeria, Angola, Benin, Burkina Faso, Cameroon, Egypt, Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Mali, Malawi, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Senegal, Sierra Leone, Tanzania, Uganda, Sao Tome & Principe, Sudan, Zambia, Djibouti, Mauritania and Togo. Ghana was the first country to be reviewed, followed by Kenya, Mauritius, Rwanda, South Africa, Algeria and Benin (New Partnership for Africa's Development 2008).

3.3. APRM: process description

The APRM is a voluntary and mutual learning mechanism of NEPAD (Verwey nd: 7). It is divided into four specific areas that need to be reviewed in order to assess a country's performance: Democracy and Political Governance; Economic Governance and

Management; Corporate Governance; and Socio-Economic Development. The APRM base document (2005: par 1) defines the mechanism as “an instrument voluntarily acceded to by member states of the African Union as an African self-monitoring mechanism”. Thus, the process is voluntary in nature and it is open to all member states of the African Union. The voluntary nature of the APRM has raised a number of concerns, which are discussed in 3.9.2. The fact that the APRM is an African self-monitoring mechanism has been praised, as even though the APRM is important for relations between Africa and its international donors, it remains an African initiative that is to be carried out by Africans themselves, without outside interference.

The primary 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 accelerate sub regional and continental economic integration through the sharing of experience and reinforcement of successful and best practices, including identifying deficiencies and assessing the needs of capacity building” (APRM base document 2005: par 3). Here the key words are “sharing of experiences and reinforcement of successful and best practices”. The APRM recognises the fact that many African states suffer from similar, if not the same problems. Therefore, instead of treating them individually and in isolation, the APRM provides a way through which these problems could be solved collectively, through a mutual mechanism of learning. In that sense, the APRM reinforces the understanding that Africans hold the solutions to their own problems.

3.4. APRM: organisational components

3.4.1. Committee of Participating Heads of State and Government

The APRM Organisation and Processes document (2003: par 1.1.a) describes the Committee of Participating Heads of State and Government (also known as the APR Forum) as “the highest decision making authority in the APRM”. It consists of the African Heads of State and Government who have chosen to accede to the ‘peer review’ and thus it assumes overall responsibility for the process. The APR Forum is required to

oversee the mutual learning and capacity dialogue, as well as creating constructive dialogue between African states that are a part to the process, and ensuring the credibility of the APRM (APRM Organisation and processes 2003: par 2.1). Its responsibilities include persuading development partners to assist African states both technically and financially (APRM Organisation and processes 2003: par 2.2).

3.4.2. Panel of Eminent Persons (APRM Panel)

The APR Panel is responsible for the review process, particularly for overseeing the process and ensuring its integrity, as well as for considering the country reports and subsequently making recommendations to the APR Forum (APRM Organisation and processes 2003: par 1.1.b). Apart from the oversight of the APR process, the APRM Panel is also responsible for the selection and appointment of the APR teams to conduct the reviews as well as recommendation of institutions and individuals to conduct technical assessments (APRM Organisation and processes 2003: par 3.1).

3.4.3. APR Secretariat

The Secretariat of the APRM is responsible for the provision of secretarial and technical assistance, as well as coordinating the process and providing administrative support (APRM Organisation and processes 2003: par 1.1.c). Apart from that, the APR Secretariat is vested with the responsibility of maintaining a database four thematic areas of the APRM, and keeping it up to date with the latest political and economic developments that take place in the participating countries. Finally, the APR Secretariat is in charge of preparing background documents and information for the APR Teams; proposing performance indicators and monitoring the performance of participating countries; preparing and organizing the Country Review visits; and, organising workshops which would enable countries to share their experiences and best practices (APRM Organisation and processes 2003: par 4.1-4.2).

3.4.4. APR Teams

The APR Teams are entrusted with conducting country reviews. Particularly the APR Teams are responsible for visiting the country to review the progress of its Programme of Action and subsequently producing a review report on that country (APRM Organisation and processes 2003: par 1.1.d). These Teams are to be composed for the Country Visit only, and designed to ensure an integrated, balanced, technically competent and professional review of the country. The Guidelines for the conduct of each specific Country Visit are to be provided to the APR Team by the APR Secretariat (APRM Organisation and processes 2003: par 5.1-5.3).

3.5. APRM: five stages of the review process

There are a total of five stages to the APRM process which a state has to undergo once it has signed up to be reviewed. The APR process is then seen as a collaborative effort between the participating state and the APRM, which aims at improving governance and socio-economic development in that specific state, as well as in Africa as a whole (APRM Organisation and processes 2003: par 7.1-7.2).

3.5.1. Stage one

The state which is to be reviewed needs to undertake the necessary steps to prepare for the APR process, supply the information to the APR Secretariat, and, most importantly, prepare the Programme of Action (APRM Organisation and processes 2003: par 7.3), which should be clearly defined and time-bound for the implementation of the Declaration on Democracy, Political, Economic and Corporate Governance (APRM Base Document 2002: par 12). At the same time, the review team is to conduct a study of the political, economic, corporate governance and development environment of the state that is to be reviewed by them. This study is to be based on background documentation provided by the APR Secretariat, as well as various materials provided by national, regional and international institutions. Stage One ends once the state that is to be

reviewed has submitted the draft Programme of Action to the APR Secretariat and the latter has prepared a background document and issues paper on the former (APRM Organisation and Processes 2003: par 7.4,7.6)

3.5.2. Stage two

The APR Team conducts the Country Review Visit, and it interacts and consults with government officials, parliamentarians, representatives of political parties, the business community, CSOs, and representatives of international organisations. Discussions with the above-mentioned parties are intended to: give the opportunity to the APR team to interact with the main political actors and inform them about APRM processes; discuss the draft Programme of Action and provide constructive criticism; and, build consensus with the main political actors on issues or problems that need to be addressed. These discussions form the foundation of the Team's recommendations on required improvements in the final Country Programme of Action. Throughout Stage Two, the state under review is to do everything possible to make sure that the APR Team has access to information and stakeholders (APRM Organisation and Processes 2003: par 7.7-7.11).

3.5.3. Stage three

The APR Team prepares a draft report of the state it has reviewed. This report includes both their findings as well as the background information, which was provided earlier by the APR Secretariat. This report is to include analysis of its findings, specifically their implications for governance and socio-economic development. Apart from that, the report should include recommendations made by the APR Team, with regard to how the Programme of Action drafted by the reviewed state can be improved and address challenges more effectively. The APR's draft report is then discussed with the government of the country which has undertaken the review. These discussions are intended to ensure that the government of the reviewed state can both verify the accuracy of the information and have an opportunity to make their own suggestions on how to

address the identified problems and challenges. The response of the government is included in the Team's final report (APRM Organisation and Processes 2003: par 7.12-7.14).

3.5.4. Stage four

The APR Secretariat submits the APR Team's final country review to the APR Panel. The APR Panel reviews the report and submits it, along with recommendations to the APR Forum. The APR Forum then considers the report and the recommendations before deciding what action to take. The Chairman of the APRM Forum then informs the Head of state or the Government of the state which was reviewed of the decisions taken by the APR Forum (APRM Organisation and Processes 2003: par 7.15-7.16).

3.5.5. Stage five

The final report is made public, and is tabled formally in key regional and sub-regional structures such as: the Summit of the African Union; the Pan African Parliament; the African Commission on Human and People's Rights; the Peace and Security Council; the Economic, Social and Cultural Council of the African Union; and, the Regional Economic Community which the reviewed country belongs to. Although Stage Five completes the first cycle of the APRM process, it is important to have a follow up, which monitors the progress made by a state with regard to the implementation of its Programme of Action. The follow-up stage entails the following: the state reviews and measures its success in the implementation of the Programme of Action, modifies it and proceeds to implement it; the APR Secretariat monitors the state's progress and assists it where necessary; the APR Secretariat organises regional workshops on issues discovered throughout the review and facilitates the sharing of experiences and best practices amongst the countries that are participating in the APRM process; and, the APR Secretariat, Partner Institutions and Development Partners continue to support the state with technical assistance and capacity building in order to ensure its successful

implementation of the Programme of Action (APRM Organisation and Processes 2003: par 7.17-7.19).

3.6. 'Peer review'

'Peer review' has been described as examinations that are systematic in their nature, of a state by another state(s), specifically designated institutions or a combination of the two (Mathoho nd: 2). The term 'peers' implies those who are equal in stature, therefore implying some sort of equality between the parties that are participating in the process. Because of this, 'peer review' is thus conducted on a non-adversarial basis and relies on mutual trust of those participating in the process, as well as in common commitment to and shared confidence in the outcome. 'Peer reviews' are typically characterised by mutual dialogue and interactive investigation, but can also take the form of questionnaires designed to make an assessment of the reviewed state (Pagani 2002: 4-5). The APRM takes the form of all three, with the emphasis on mutual dialogue and questionnaires.

It is important to bear in mind that "peer review assumes that participants will act in good faith and that their development problems have risen from lack of resources and capacity. But that assumption is clearly false for several of the countries that have signed up (to the APRM)...A rigorous peer review will, therefore, have to confront states that deny what is patently obvious: that the leadership knowingly violates the rules for self-enrichment" (Herbert 2003: 9). Such an approach to 'peer review' is more than relevant for the current African situation and the APRM Panel must keep this in mind, as countries that have signed up for the mechanism do not necessarily want to truly improve the situation within their state, but may rather have signed up to undergo the review because of possible incentives, such as development aid and investments.

Altogether, given the international experience with 'peer reviews', the APRM as a mechanism that measures and monitors progress towards 'good governance' and sustainable development has the potential to provide a number of benefits to those

African states that are signatories to the process. Apart from that, through a multiplier effect, the APRM can also improve the situation on the continent as a whole. It is often argued that most of the problems Africa is suffering from arise from ‘bad governance’. Given the examples in African history that show disastrous effects of ‘bad governance’, lack of transparency, and corruption, the accession to the APRM represents a significant change in the way of thinking of African leaders and thus provides hope for the improvement of the situation in Africa (Hope 2005: 295-296).

3.7. ‘Good governance’

Since the early 1990s, the establishment of ‘good governance’ in Africa has been one of the biggest priorities for its development partners. There are many different variations of interpretation of the concept of ‘good governance’, but in general, the World Bank view is the dominant model in Africa. The concept ‘good governance’, as theorised and popularised by the World Bank, defines it as: “the manner in which power is exercised in the management of a country’s economic and social resources for development” (Deme nd: 11). Campbell, quoted in Deme (nd: 10) distinguishes between three aspects of governance as discussed in World Bank’s *Governance and Development*: The form of a political regime; the processes by which authority is exercised in the management of a country’s economic and social resources; and, the capacity of a government to design, formulate and implicate policies and the general way in which it discharges its functions. It is important to point out that the APRM and its standards do not provide a definition of ‘good governance’, a topic which is discussed in much more detail in 4.3.2.1.

The four focus areas of APRM broadly echo the aspects of governance as set out by the World Bank, with Democracy and Political Governance corresponding to “the form of a political regime”, Economic Governance and Management together with Socio-Economic Development being equivalent to “the processes by which authority is exercised in the management of a country’s economic and social resources”, and finally, Corporate Governance being parallel to “the capacity of a government to design, formulate and implicate policies and the general way in which it discharges its

functions”. Thus, it is possible to see that the APRM was designed with the World Bank definitions of what ‘good governance’ is in mind. Since the World Bank is one of the main development partners of Africa, it was important to design a ‘peer review’ mechanism that incorporated the ideas of ‘good governance’ generated by those to whom it was (arguably) marketed to in the first place.

Another useful definition of ‘good governance’ is put forth by Bowao and Samb, as quoted in Deme (nd: 10), who describe it as “...the desire constantly renewed over time, for liberty, justice and growth that fuels the drive and determination, admittedly controversial, but never incomplete, of human society. This contradictory yet universal human quest which, under diversified and historically changing forms, merges with the refusal to accept any kind of oppression, alienation, social hardship or moral decay”. Such a definition stresses the universality of the human quest for ‘good governance’, points out that it is an historical process and places an emphasis on the ever-lasting and constant will behind this process.

Certain aspects of ‘good governance’ are also laid out in the NEPAD policy document, which calls on its members to strive for good governance in the political, economic and corporate spheres. Politically, member states are expected to respect global standards of democracy, which include: political pluralism, the existence of a number of political parties, worker’s unions, and regular, free and open democratic elections. Economic and corporate governance, on the other hand, stress capacity building for the state. Governments need to manage economic development and social programmes more effectively, as well as oversee and regulate various financial processes. Through this, NEPAD sets out ‘good governance’ to be a precondition for development, which also forms the basis of the APRM process (Shilimela 2004: 3).

3.8. Governance standards

The APRM is based on a large number of both international and African standards that the participating states have to meet. Participating states have agreed that they must

establish clear codes, standards and indicators of ‘good governance’ and monitor each other’s performance. Thus, by participating in the APRM, African states are going to work together in order to overcome their weaknesses and shortcomings. The idea is that through ‘peer learning’ and cooperation, participating African states will collectively raise the democracy bar in Africa (UNDP nd: 1). The APRM also shows an understanding of different levels of development amongst its members and therefore another key idea of the process is different countries moving at different speeds in order to meet common goals (Cilliers 2002: 1).

The APRM base document states a series of specific objectives, under which specific standards are listed. Many standards are applicable to more than one objective. Thus, the APRM sets out certain objectives that have to be met by its member states and provides standards through which the accomplishment of these objectives can be measured. The use of these standards as a means to measure performance indicates an absolute minimum of performance norms that are expected from the APRM member states. It also implies a form of universality, as all APRM members are to be judged by the same standards. The use of both African and international standards could indicate either that the APRM intends to please its development partners by making an attempt to comply with the standards for ‘good governance’ as understood in the West, or, that it believes that such standards are necessary for the improvements of governance in Africa. Both possible reasons are discussed later in this chapter, together with the motives which could underline African states signing up to the process.

For the purposes of this dissertation the focus will be on objectives 2, 4, 5 and 6 of the Democracy and Good Governance theme (APRM Objectives, standards, criteria and indicators 2003: par 2.4, 2.6, 2.7, 2.8). These objectives provide an indicative criterion for evaluation purposes and indicate which standards one serve to uphold the goals of the APRM. The standards referred to are extensively discussed in chapter four, often in conjunction with the objectives listed below:

3.8.1. Objective 2

Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, Citizen Rights and Supremacy of the Constitution

Standards:

- Constitutive Act of the African Union (2000), AU
- Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU
- African Charter on Human and Peoples' Rights (1981), OAU
- Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999)
- NEPAD Framework Document (2001), AU

Indicative Criteria:

- Are the provisions of the constitution for democracy, human rights, the rule of law and the supremacy of the constitution clear and firm with adequate provisions for enforcement?
- Are the constitutionally mandated institutions for democracy, human rights, the rule of law and the supremacy of the constitution properly constituted and resourced for their effective functioning?
- What is being done to create an enabling environment for meaningful popular participation in all forms and levels of governance?
- What is the resulting state of democracy and political governance in the country?
- How easy or difficult is it to change the Constitution of the country?

Examples of Indicators:

- Adequacy of express provisions in the constitution
- Effectiveness of democracy and law enforcement institutions
- Independence and effectiveness of Electoral Commission to ensure fair and free elections

- Adequacy of legal framework for free association and formation of non-governmental organisations and unions
- Effectiveness of independent media in informing the public and providing freedom of expression
- Public perceptions of and the degree of satisfaction with democracy and political governance
- Congruence of the national Constitution with the Constitutive Act of the African Union

3.8.2. Objective 4

Uphold the separation of Powers, including the protection of the independence of the judiciary and of an effective Parliament

Standards:

- Constitutive Act of the African Union (2000), AU
- Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU

Indicative Criteria:

- What is being done to ensure effective separation of powers between the various arms of government? How is the independence of the judiciary assured? What measures have been taken to ensure the effectiveness of Parliament?
- What is the state of the country with respect to the separation of powers, the independence of the judiciary and the effectiveness of Parliament?

Examples of Indicators:

- Security of tenure of the judiciary and its access to resources
- An effectively independent judicial services commission to ensure professionalism and integrity with responsibility for the appointment of judges

- Inter-party committees within Parliament exercising effective oversight functions over various areas of public interest
- Overall assessment of state of governance in these areas

3.8.3. Objective 5

Ensure accountable, efficient and effective public office holders and civil servants

Standards:

- Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU
- NEPAD Framework Document (2001), AU

Indicative Criteria:

- Are the provisions in the constitution and other laws and regulations effective in ensuring accountability of public office holders?
- Are the institutions, such as the public services commission, effectively structured and resourced to ensure professionalism and integrity in public service?
- Is there a code of conduct for public office holders or a citizens' charter?
- What is the overall efficiency, effectiveness and transparency of delivery of service?

Examples of Indicators:

- Mandated reports by the Executive branch of Government to the country
- Provisions for public hearings to which public officials can be called to account
- A constitutionally mandated public service commission that is effectively structured and resourced
- A legal instrument embodying a code of conduct for public office holders
- Results of overall assessments or citizen charter reports

3.8.4. Objective 6

Fighting corruption in the political sphere

Standards:

- United Nations and African Union anti-corruption codes
- Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU
- NEPAD Framework Document (2001), AU

Indicative Criteria:

- Are there independent and effective institutions, mechanisms and processes for combating corruption?
- Are there precedents for dealing effectively with proven cases of corruption?
- What is the overall assessment of the level of corruption in the country?
- Are there measures for enhancing integrity and probity in public life?
- Are there measures for enhancing integrity and probity in public life

Examples of Indicators:

- Constitutional provision for fighting corruption and effectiveness of institutions carrying out the mandate
- Accessibility of the proceedings of Parliament and the reports of its various committees to the public
- Requirements for periodic public declaration of assets by public office bearers and senior public officials
- Results of overall assessment of corruption in the country

3.9. APRM: a critical analysis

This section provides an extended overview of the APRM and some of the challenges that were pointed out by critics prior to its commencement of 'peer reviews'. Particularly, the focus is on the APRM's structural and procedural shortcomings, which is necessary to

provide a background for case studies of Rwanda, Kenya, South Africa and Ghana presented in chapter five. Through an examination of the pre-review fears and an analysis of what actually happened, it is possible to make a more accurate assessment of the APRM, critically analyse its shortcomings and make suggestions with regard as to how the mechanism could be improved. Critics have pointed out that potential problems might arise due to the concept of ‘peers’ as utilised by the APRM, the mechanism’s voluntary nature, possible manipulation of the civil society’s involvement, unwillingness to pose difficult questions to African governments, and the alleged Western influence.

3.9.1. ‘Peers’?

Very often the concept ‘peer review’ is taken as a given in the academic debates around the APRM. However, Ojienda (nd: 28) points out that the term ‘peers’ refers to persons that are equal in rank or merit. He then proceeds to question the validity of the applicability of such a term to African states. The APRM base document itself does not explain the term ‘peers’ or provide a sufficient explanation of why such a term has been used. By implication, all participating states are ‘peers’ because they are members of the AU and because they suffer from similar problems. However, in spite of the similarity of their problems, it must be kept in mind that the states are vastly different in terms of their democratic development.

Democracy and good political governance are true preconditions for and the foundation of sustainable development and eradication of poverty (New Partnership for Africa’s Development base document 2001: par 79). However, the term democracy can take on different forms and meanings on the African continent (see 2.7). No African ruler will willingly call his state undemocratic, but there are vast differences between the kinds of ‘democracy’ that exist in South Africa and Rwanda, who are both signatories to the APRM review. Apart from that, it is also important to remember that Africa as a continent has been characterised by political turbulence, with many cases of ethno-political conflict, coups, military takeovers and civil wars. Although there are examples of non-violent political transitions, such as in South Africa and Ghana, there are also

examples of Kenya and the DRC to counter them. It must also be pointed out that African leaders are still, in many instances, reluctant to accept political pluralism, a necessary element of ‘good governance’ but also a threat to their political leadership. Thus, Ojienda (nd: 30) points out that African states are ideological opposites and therefore cannot be considered ‘peers’ in the political sense.

Although the use of the term ‘peers’ by the APRM does not have a fundamental impact on the overall idea or the processes, it does nevertheless raise an interesting question about possible disagreements that could arise among African governments that are signatories to the mechanism. The dangers of such implications are obvious: how could African states agree on what constitutes a democratic state, if they have different understandings of the term democracy? The obvious answer is that the APRM base document refers to a number of international and African standards that must be adhered to, together with the objectives of the APRM listed earlier in this chapter. In order to avoid possible disagreements on the nature of ‘good governance’ and democracy, the APRM must provide clear standards and definitions, which could be referred to in the case of a dispute (see 4.3.2.1.)

3.9.2. Voluntary nature

One of the purposes of the APRM is to create external sources of pressure on weaker states. African states are intended to monitor each other and make assessments on the extent according to which their fellow states are following the NEPAD framework and implementing the pre-agreed political and economic governance standards. Although this is an entirely new concept in African relations, where countries previously were unwilling to interfere in each other’s domestic policies and sometimes were even reluctant to comment on them, one must remember that the nature of APRM is voluntary and by no means enforced.

Thus, in the context of the APRM, the concepts of ‘peer review’ and ‘peer learning’ take on a voluntary nature in the African political environment. As a result of this, African

states are free to choose whether they want to participate in the review process or not. Not only is participation in the APRM voluntary, but the mechanism also assumes that a non-coercive and gradual convergence of policy and practice in participating states is more desirable to attempts to impose policies on countries (Verwey nd: 8). Those participating in the APRM process will mostly be making recommendations on how their ‘peers’ could improve their policies, based on the success of these policies elsewhere in Africa.

There are some concerns due to the APRM’s voluntary nature. The fact that the process is voluntary and does not include sanctions raises fears that it will be largely ineffective, due to its ‘toothless’ nature. If one looks at the past record of African governments, which includes severe human rights abuses, corruption at the highest levels and other undemocratic practices (see 2.6; 2.7; 2.8 and 2.9), it does not seem realistic that these governments will decide to change their malpractices unless they will be forced to do so. It is also important to note the unwillingness of African leaders to criticise each other in the past, even in severe cases, such as Robert Mugabe’s rule in Zimbabwe. Therefore, the danger of possible APRM ineffectiveness lies in the possibility that African Heads of State will be unwilling to criticise each other, and will merely pay lip service to the concept of ‘peer review’. The APRM’s critics claim that a voluntary and non-coercive ‘peer review’ in an African context can never be stringent and penetrating enough to ensure that governance will be improved even in those cases where it is contrary to the interests of the elite that is influential in that state (Verwey nd: 8). Here, it is worthwhile to quote Taylor (2002:3), who states that “the self-interest of African elites under threat from democracy (linked surreptitiously in their eyes to the notions of good governance) should not be played down. Nor should notions of solidarity and resentment at perceived ‘neo-imperialist’ interference in the affairs of fellow African countries”. Therefore the question is: how can the APRM ensure that African leaders will genuinely make an attempt to improve governance in their states and establish more transparent and democratic processes even when it is against their own interest to do so? The APRM base document does not provide an answer, as it is very vague about the kind of ‘actions’ that the African governments intend to take if an APRM signatory state does not demonstrate

the will to correct the problems identified in the report (Deme nd: 11). Thus, the main question is exactly how far African leaders that have agreed to APRM are willing to take their partnership in order to make the process successful.

However, the other side of the argument would be that given African rulers' history of being unwilling to criticise each other and each other's policies, and taking into account the principles of sovereignty and non-intervention, it would be difficult to envisage a coercive mechanism, as opposed to the APRM's voluntary one. Firstly, because of the principle of sovereignty, it would not be possible to enforce such a method on African states. Secondly, due to the concept of non-intervention, it would be impossible to dictate rules and policies to member states. Even if African states voluntarily agreed to follow all 'good governance' prescriptions from outside their borders, it could lead to disastrous effects – it is worth bringing up the example of voluntarily and self-imposed 'one-size-fits-all' SAPs, which have lead to disastrous economic consequences. The APRM thus represents an acceptable compromise in African politics. Given the need to democratise Africa and establish 'good governance' throughout the continent, but having to work around the principles of sovereignty and non-intervention, the APRM's voluntary nature provides an opportunity for collective discussion of democratic processes, learning of most efficient practices from 'peers', and subsequent adoption of most appropriate policies, taking into account the unique internal situation. Questions of commitment remain, but a mechanism such as the APRM would not be likely to exist in Africa (or elsewhere in the world) if it was not for its voluntary nature. In order to solve the possible commitment problems, the APRM must utilise its 'peer pressure' (see 5.3.5. and 5.4.4.).

3.9.3. Civil society organisations

Domestically, an important 'partnership' is formed between the local African governments and various Civil Society Organizations (CSOs). Once a country has agreed to undergo 'peer review', an important part of the process is the interviews that the visiting team conducts with the country's CSOs and the questionnaire that the latter fill out, regarding their country's performance. Before going into a discussion about the

CSOs and their role in the APRM process, it is necessary to define what the term ‘civil society’ actually entails.

There are many different definitions of the term civil society that are used in different ways. Sometimes the term is used to define those who are in opposition to a political society, sometimes it refers only to non-governmental organisations, and at times the private sector is included in the definition. One of the most accurate definitions is proposed by Diamond (1995: 9-10), who describes it as “the realm of organised social life that is voluntary, self-generating, self-supporting, autonomous from the state, and bound by legal order or set of shared rules... it involves citizens acting collectively in a public sphere to express their interests, passions and ideas, exchange ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials accountable. It is an intermediary entity, standing between the private sphere and the state”. This definition encompasses all those CSOs that are participating in the APRM process.

There are two different opinions regarding the participation of CSOs in the APRM process: an optimistic one and a skeptical one. Clearly, civil society has a lot of potential to influence the APRM process and make it more efficient, but at the same time the APRM process itself provides the governments under review with an opportunity to manipulate the civil societies to its own benefit.

The role of the CSOs in APRM process is seen as a crucial one by the optimists, as civil society participation in development should be seen as an end in itself, as the democratic channels of participation should not be limited to elections. Apart from that, the participation of CSOs in the APRM process can ensure higher objectivity of the results identified by the research team by providing an opposite force to the government of the country under review.

Verwey (nd: 20) points out that “on the assumption that even a decentralised governance system suffers from informational constraints which hamper effective policy formulation

and the adaptation of policy to local circumstance, we can argue that civil society organisations are often well-placed to ameliorate these effects through their closer proximity to the intended beneficiaries of development policies”. This argument further highlights the importance that the CSOs can have in the process of development. Following the same line of argument as set out by Verwey, one can also assume that CSOs can also be more informed about the situation in the country, particularly on the implementation of policies in different areas. African governments rarely, if at all, admit the failure of their own policies, and thus a self-assessment questionnaire about the effects of policies that is filled out by a government employee is likely to be biased and not necessarily accurate with regard to the actual situation in the country. In this case, the CSOs can provide a different point of view, which is also independent, as they are not employed by the government who implemented the policy, and therefore not compelled follow the official guidelines with regard to what one can say about the outcomes of the policy. Finally, the CSOs could act as a counterweight to the power of the government and improve government performance through calls for greater transparency and accountability (Verwey nd: 20).

Skeptics, on the other hand, point out that the focal point set up by the government determines which civil society groups will participate in the questionnaire, thus increasing the chances that the government will choose those groups that are less likely to criticise it. This could compromise the entire process, as the lack of criticism would prevent the APRM from making a correct assessment of the situation in that state. It has already been pointed out that the participation of the CSOs in the APRM could serve to create greater objectivity within the process and ensure that both sides of the story are heard. The fact that a host government determines which of the CSOs are to participate gives it the chance to manipulate the process. Such rules can be seen as a clear misconception on behalf of APRM’s architects. Thus, it is likely that the role that civil society plays in the APRM will vary from country to country, to a large extent depending on the government under review. More democratic states are likely to choose a bigger variety of the CSOs and give them more room, while less democratic states will probable

choose government-friendly CSOs and attempt to control most of their actions and statements.

Former South African President Mbeki has claimed that the APRM:

Is a country review rather than merely a review of government performance. This is simply because national development in any country is driven by a variety of social forces, and not just the government (Mail and Guardian, September 30, 2005).

Therefore, the participation of the CSOs in the APRM is absolutely vital for the process to be fair and impartial, in other words for its credibility. Only if both sides of the story are heard by the team conducting the review, can the real situation in the country be discovered, and the final report will then represent a consensus of views on the country's quality of governance, rather than being limited to what the government under review would like to make public. The nature of the partnership between the participating government and its CSOs is largely going to be determined by the former's attitude towards the APRM. If a government is participating in the process merely for 'show' and does not actually intend to discover potentially status-damaging problems, it is likely to dominate the partnership and hardly give the CSOs any room to participate. It is also important to bear in mind that the APRM's reviews can potentially act as screening devices for aid and investment. If that is indeed the case, governments will definitely have more than enough incentives to make sure that any critical and negative opinions about its performance are not voiced. However, if the government does in fact want to undergo the APRM review for the right reasons, it will seek to establish a partnership in which a consensus will be looked for in conducting the internal review (Verwey nd: 20).

It can also be added that the APRM's official guidelines give far too much responsibility to the governments of the countries that participate in the process. It is understandable that the governments must play the biggest role, as it is after all their decision to undergo the review. However, the official guidelines provide these governments with an opportunity to manipulate the entire process to their benefit and advantage. Apart from signing the APRM memorandum of understanding and contributing fully to the funding

of the APRM, the government must also develop a national programme of action and ensure the participation of all stakeholders in the process. The danger of governmental manipulation lies in the fact that it assumes the responsibility of the national programme of action and making sure all stakeholders participate in the process. The government needs to set up a Focal Point, which then has to “draw up a list of stakeholders (government, private sector, civil society) that would respond to the questionnaire” and then “distribute the entire questionnaire to all stakeholders through their representatives in the focal point” (African Peer Review Mechanism Country Self Assessment 2005: par 2). Nothing in the official guidelines prevents the government under review to only choose those CSOs that are friendly to the government and not likely to undermine the report of its performance.

In any case, the CSOs must act as watchdogs throughout the APRM process, whether they have been included or not. They are the only instruments available to the African people through which they can participate in the review process of their own country. Verwey (nd: 20) suggests that the CSOs must ensure that monetary and time pressures do not force the APRM to cut corners. It has been suggested that the APRM takes on too much and stretches itself out too thinly. Thus, once the review process itself actually starts, the review team might find itself being overwhelmed by the amount of work that needs to be done. The CSOs must thus watch over the process and alert the media if the review is not as thorough, fair or impartial as it should be.

Finally, it is also important to note that most African CSOs have learned about APRM from their Western colleagues, and were not consulted in the creation of the process, even though they were given a role in it. Therefore, Deme (nd: 16) states that in order for the APRM to be successful, civil society must be associated with its implementation and improvement. NEPAD is seen to be a ‘partnership’ on a number of different levels. Yet, the one ‘partnership’ that is seen to be neglected is the one between African governments and the people of Africa. In this sense, the contribution made by CSOs towards the APRM process can not only make the process more objective, but also fill the gap created due to neglect of African people in the NEPAD’s ‘partnerships’ thus far.

3.9.4. Difficult questions

The government of a state under review, together with members of the civil society of that country, will have to complete a self-assessment questionnaire, regarding their country's performance. According to Herbert (nd: 16), the questionnaire itself is an area of concern. Herbert's states that the South African Institute of International Affairs (SAIIA) participated in the technical experts meetings that advised on the questionnaire. According to him, the questionnaire only bore a modest resemblance to the experts' recommendations, as most of the sharp questions about the balance of powers, political rights and corruption were removed, and in some cases very soft questions not discussed by experts were inserted instead. As an example of this, Herbert points out that questions about the right to work and decent salaries were included, but questions recommended by experts for inclusion, e.g. on the freedom of association, the powers of parliament to compel testimony and financial accountability from the executive and the right of opposition to access state media were taken out. Members of the APR Secretariat pointed out that the questionnaire had to be softened in order to make it acceptable to all African governments and not just those participating in the APRM process. In response to this Herbert wonders whether the APR Secretariat will feel compelled to make the final report 'acceptable' to all African governments as well. Since the APRM is a voluntary process established for those countries that choose to work and learn together in order to overcome common problems by entering into an honest dialogue with each other and with their respective CSOs, there is no need to soften the questionnaire to make it 'acceptable' to those states who are not even participating in the APRM. Such an attitude undermines the goals of the APRM and those countries that have signed up to it, and makes the entire process more superficial. Leaving out important questions on the realities of a political situation of a state under review is not likely to improve its governance methods or democratic processes. If sharp questions are not asked, how can a state's governance methods be assessed?

A further concern is brought up by Ojienda (nd: 31-32), who points out that according to the APRM base document, the research team's draft report is first of all discussed with

the government under review. This is “meant to ensure the accuracy of the information and to provide the government with an opportunity both to react to the team’s findings and to put forward its own views on how the identified short comings may be addressed” (APRM base document 2005: stage 3). The existence of this clause could potentially provide the government under review with a way to manipulate the APR Team and its report, in order to give a more favorable report of the country, the result of which could be an improved position on the international arena and the consequent receipt of more aid from the international donor community. Discussion of the draft report with the government of a state under review could possibly jeopardise the report’s objectivity and neutrality, thus compromising the entire process.

3.9.5. Western influence

Finally, it is worth mentioning that numerous criticisms exist due to the alleged Western influence in the APRM’s ideas. ‘Good governance’ is seen as being associated with transparency, accountability, institutional diversity, participation and the rule of law (Deme nd: 10), which are democratic elements that tend to be absent in many African states. It is important to examine an argument made by Edozie (2004: 162), who points out that democracy can be seen a prescription to Africa by the West, and is thus another neo-colonial policy. A global system of democratic states, overseen by the leading Western democratic states, provides the most ideal situation for the processes of the global economy, which ensures global economic and political hegemony of the West. Thus, through labeling African states as undemocratic and by prescribing ‘good governance’ policies as a cure, the West achieves its aim of intervening in the continent. Critics of the APRM thus pointed out that it promotes a Western agenda that will fail to meet the needs of Africans (Mathoho ND: 1), that the “Western and IMF-World Bank structures of democracy and good governance are hollow and hypocritical” (African Social Forum 2005), and that NEPAD/APRM are supported most energetically by those leaders who are considered to be friendly to the West (Mathoho nd: 6). Therefore, the key concern of the critics is any sort of identification with the West. Perhaps because many Western attempts to help Africa have not only been unsuccessful, but often made the

situation worse. The possibility of implementation of Western standards of ‘good governance’ in Africa is thus met with reluctance, as many believe that Africa should follow its own path rather than copying Western practices which are not necessarily suited for its unique situation (see 2.4). Furthermore, the evolution of principles of ‘good governance’ in Africa is likely to require resources that lie outside the continent and come from the Western donors. In that sense, the APRM is not seen as desirable, since not only it follows a Western model of development, but its implementation and success also depends on financial contributions from the West. Even though the APRM process itself is to be funded by African states, the evolution of ‘good governance’ and democracy principles will require Western funding.

Nabudere (2002: 12-13) brings attention to this by pointing out that the NEPAD Implementation Committee stated that African leaders should set up parameters for ‘good governance’ to guide their activities at both the political and economic levels. The Implementation Committee has also expressed the hope that Africa’s development partners will complement these efforts by playing their part. Nabudere points out that this statement shows that the parameters for ‘good governance’ as well as the APRM were not tailored to free the African people, but to please development partners, so that they can play their part in financing NEPAD. While Nabudere’s view may be considered too radical, nevertheless it is evident that the APRM was not established for the improvement of the African situation alone. NEPAD and the APRM creators clearly have a bigger agenda and they do plan to gain as much investment and aid as possible from their intentions to improve the governance situation on the continent.

3.10. Conclusion

It is evident that the APRM is not an ideal mechanism for the concept of ‘peer review’, mostly due to shortcomings in its design, which can jeopardise the process, as they potentially give an opportunity to the governments to manipulate the review in their own favour. In that sense, much depends on each particular government in question and on their real intentions with regard to the APRM. Governments that genuinely want to

improve democratic and governance processes in their countries will do so, but others may attempt to influence the process for their own benefit and are likely to get away with it. However, in spite of the shortcomings in the APRM's design and structure, it does create a way through which 'good governance' would be promoted on the African continent. Most importantly, the APRM would create a dialogue amongst different partners and set a precedent of open discussions regarding a state's internal problems. Although many fears exist because of the potential shortcomings discussed earlier in this chapter, it is important to examine whether these fears have materialised as the actual reviews were conducted.

Chapter 4:

African Peer Review Mechanism: Analysis of Democracy and Political Governance Standards

4.1. Introduction

This chapter provides an analysis of the APRM as a standard for ‘good governance’. It consists of an examination of the documents referred to in objectives 2, 4, 5 and 6 of the APRM base document, which, as mentioned in chapter two, are directly related to the establishment and promotion of ‘good governance’ in Africa. The examination of the documents consists of determining whether a clear definition of ‘good governance’ and related terms and concepts is provided, how these are to be measured and finally, whether a recommendation is given on how a better state of affairs could be achieved. A total of six documents are analysed: the Constitutive Act of the African Union; Conference on Security, Stability, Development and Co-operation in Africa; African Charter on Human and Peoples’ Rights; Grand Bay Declaration and Plan of Action for the Promotion and Protection of Human Rights; African Union Convention on Preventing and Combating Corruption; and the NEPAD Framework Document.

It is important to note that all of the documents utilised by the APRM in order to promote ‘good governance’ in Africa refer to previous efforts, declarations, conventions and frameworks that were signed in order to attempt to improve the continental situation. These declarations are very important for the purposes of the APRM as they are its antecedents and represent an African historical effort to improve governance on the continent. Therefore, the APRM represent an evolution of thinking in African politics. Maloka (2002: 6-7) describes how African development thinking has evolved according to four notions in the last 40 years. The first of these was the idea of self-reliance which developed throughout the 1970s. This was followed by the plan of a ‘partnership’ with the developed countries of the North in the 1980s. The 1990s brought the idea of popular participation in development. Finally, the new millennium established democracy and

‘good governance’ as inseparable from development. The APRM includes aspects of all four of these notions: its documents stress individual and collective self-reliance by African states, development ‘partners’ of the North, popular participation in the process by CSOs, and most importantly, the improvement of democratic and ‘good governance’ practices in its member states. As a result, the APRM creates a unique collection that is intended to serve as a standard necessary to improve the African situation with regard to ‘good governance’ and thus aid NEPAD in achieving its overall goal of development.

This chapter is focused on determining exactly which parts of the above-listed documents could be used by the APRM as standards for ‘good governance’. Specifically, an attempt is made to merge identified standards with problems of the African continent identified in Chapter 2. The four core problems that affect most, if not all, of the states in Africa have been identified as the following: sovereignty, democracy, corruption and neopatrimonialism. The term ‘standard’ as used here means that a document must provide the APRM with the ability to evaluate the current situation in the reviewed state and consequently be able to improve it, if deemed necessary. Thus, a standard must be specific, define its components, and have a normative aspect to it, which would enable the improvement of the current situation.

4.2. APRM standards: an analysis

4.2.1. Constitutive Act of the African Union

The Constitutive Act of the African Union (2000) starts by re-affirming the ideological principles that are called for by the new generation of African leaders - unity, solidarity, cohesion and cooperation amongst the peoples of Africa and African States. This is followed by a reference to Africa’s history and highlighting of the heroism of those who have helped to liberate Africa from colonialism, which brought about political independence, human dignity and economic emancipation. The Constitutive Act then recognises the multifaceted challenges that confront Africa because of the current process

of globalisation, which here is implied by the words *social, economic and political changes taking place in the world*. The following aims are then stated:

- *build a partnership between governments and civil society*
- *promote peace*
- *security and stability as a prerequisite for development*
- *promote and protect human rights; consolidate democratic institutions and democratic culture*
- *ensure good governance and the rule of law*
- *strengthen common institutions*

The stated aims are broad and could be applicable to any of the four objectives discussed in chapter three (see 3.8). Taken together, they represent a culture of respect for the individual, a healthy political climate, and an accountable government. However, the problem here is that the terms used in these objectives are not defined. Terms such as human rights, development, democratic culture and ‘good governance’ are thought to be universally understood; yet they differ significantly depending on the context and on the person(s) using them. Thus, the terms democracy and ‘good governance’ pose a definitional problem. They are spoken of as though everyone has the same understanding of what these concepts are and what they imply. Yet, without a precise definition, these concepts could be open to interpretation due to the different ways of understanding them. This could also provide potential problems for future assessments, as without a precise definition, African governments may have an argument of whether certain aims have been achieved or not. Even if the African governments do all agree that the aims have been achieved, NEPAD’s international partners might not necessarily agree with them, as the understanding of ‘democratic culture’ in Africa and the West is likely to differ.

Article 3

The objectives of the Union shall be to:

- (b) *Defend the sovereignty, territorial integrity and independence of its (African Union’s) Member States*

- (g) *Promote democratic principles and institutions, popular participation and good governance*
- (h) *Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments*

The above objectives suffer from very similar shortcomings as do the aims of the Constitutive Act of the African Union. They are not specific and do not define their components. Although they do address two out of four problems identified throughout chapter two (sovereignty and democracy, but not neopatrimonialism or corruption), they nevertheless fail to provide adequate measures of combating these problems. Thus, even though objective (b) *Defending of the sovereignty, territorial integrity and independence of African states* is crucial in the African context, no indication is given of how it is to be achieved in practice and through what institutions. Africa has a long history of internal conflicts which tend to 'spill' over into other states' borders. Presumably this is what preserving 'territorial integrity' and 'independence' refers to. However, these terms could also refer to external control exercised over certain African states by international actors, particularly through forms of neo-colonialism. It could also be said that multinational corporations and international financial institutions threaten the independence of African states due to the significant control that they exercise over certain governments, such as in Zambia, where the state virtually does not profit from its natural resources of copper, due to foreign Multi National Corporations (MNCs) ownership of the mines (Paul & Berbato 1985: 10). Thus, the document is not specific about the problems of sovereignty that it states as an objective.

As mentioned in 2.6, African states suffer due to the fact that they possess attributes of 'negative' sovereignty as prescribed by the international community, rather than demonstrating characteristic of 'positive' sovereignty which stems from the governments ability to be in control of its internal situation and protect its citizens (Clapham 1996: 15). The objective thus does not specify how sovereignty should be strengthened in Africa. No indication is given with regard to the APRM's acknowledgement that sovereignty is a problem in certain African states due to their government's inability to provide stable

internal conditions for its citizens. Perhaps the planned African Standby Force (ASF) could be utilised by the APRM in the future in order to deal with such problems. The ASF is a planned African Union continental military force designed to be employed in times of crisis in Africa. Neethling (2005: 68) states that Africa is currently suffering from instability that arise due to armed conflict and that establishing the ASF would provide the APRM/AU with the capacity to quickly react to conflicts and having the personnel, funding and the capacity to do so.

Objective (g) *Promote democratic principles and institutions, popular participation and good governance* fails to define its key concepts, which makes their implementation difficult. Once again, this is a problem of assuming that democracy is a universal term. In fact, as pointed out in 2.7, ‘democracy’ is a highly contested term that varies across cultures and political systems (Bratton & Van de Walle 1997:10). Without a specific definition and/or reference to an established democratic practice elsewhere it is impossible to determine exactly what democratic institutions and principles need to be promoted in Africa. The same goes for popular participation and ‘good governance’. The former could mean a variety of things. In a general understanding it would constitute the participation of people in the political processes of their country. However, there are different levels of such participation. The most basic level of popular participation would be participation through voting in elections. An advanced level would be lobbying the government through interest groups (Heywood 2002: 273-274). Therefore, the Constitutive Act of the African Union does not specify what kind of popular participation it intends to promote. Apart from that, it is not enough to ensure popular participation if the government is authoritarian and corrupt. As mentioned in 2.7, elections could be rigged, predetermined or only have a limited choice, which would negate popular participation in them. Objective 2 of the Democracy and Political Governance initiative of the APRM provides some clarity to this issue by stressing the independence and effectiveness of the Electoral Commission to ensure free and fair elections as possible indicators.

It must also be mentioned that objective (g) fails to give the term ‘good governance’ significant attention. Unlike democracy, ‘good governance’ is a relatively new term that is not assumed to have the same general meaning. Failure to specify its meaning is another shortcoming of this objective. Although a precise definition of ‘good governance’ remains elusive, the essence of the term appears to be embedded in the notions of Western liberal democracy. The most commonly used definition is theorised by the World Bank and defines ‘good governance’ as “the manner in which power is exercised in the management of a country’s economic and social resources for development” (Demend: 11). Taking into account that NEPAD and the APRM incorporate the World Bank’s ideology with regard to the link between democracy and development, the APRM should refer to a ‘standard’ that also incorporates its definition of ‘good governance’.

Finally, objective (h) *Promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments* is thus far the most specific in the Constitutive Act of the African Union as it makes a specific reference to a detailed standard of human rights. Thus, no significant problems may arise with regard to its interpretation as the specific guidelines and rules for protection of human rights are embedded in the African Charter on Human and Peoples’ Rights, which is discussed later in this chapter.

Article 4

The Union shall function in accordance with the following principles:

- b) *Respect of borders existing on achievement of independence*
- c) *Participation of the African peoples in the activities of the Union*
- p) *Condemnation and rejection of unconstitutional changes of government*

The above principles guide the African Union and its members in their dealings and procedures with each other. Objective (b) *Respect of borders existing on achievement of independence* is a continuation of the agreement that was made upon the establishment of the OAU, which respects the artificial borders created by colonial powers in order to maintain stability and systems of administration that were established in African states

(Herbst 2000:135). However, this might become problematic in the future due to the existence of border disputes Africa, such as the disagreement between Nigeria and Cameroon over the Bakasi peninsula (Somerville 2002). It is unclear how objective (c) *Participation of the African peoples in the activities of the Union* is to be achieved in practice, and particularly how such participation is to be ensured by the African Union and its member states. Here, a supporting document could be the statutes of the Economic, Social and Cultural Council of the African Union (ECOSOCC). Although the document itself does not form a part of the APRM's Democracy and Good Governance Standards, its goals and objectives are inextricably connected to those of the APRM. Particularly, articles 2(2) *Forge strong partnerships between governments and all segments of the civil society, in particular women, the youth, children, the diaspora, organised labor, the private sector and professional groups* and 2(3) *Promote the participation of African civil society in the implementation of the policies and programmes of the Union* (Statutes of the Economic, Social and Cultural Council of the African Union (2005: art 2) could be seen as a more detailed and practical outline of the Constitutive Act's objective.

Objective (p) *Condemnation and rejection of unconstitutional changes of government* is very significant implications for democracy in Africa, taking into account that African states have a long history of coups and military takeovers. This was particularly evident in Nigeria between 1966 and 1998 (Institute for Security Studies 2008). The existence of such phenomena bring instability to the states and thus the political will on behalf of the members of the African Union to condemn and reject such unconstitutional changes of government is a very important step in a democratic direction. This means that African states are no longer willing to keep their eyes shut at internal disorder in fellow states and they intend to ensure that governmental changes take place in accordance with the constitution. However, such political will must be supported by means of enforcement. In the case of the Constitutive Act of the African Union, Article 30 plays this role as it states that governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union. This article backs the political will of the African leaders as they agree not to accept those who achieve their power in an unconstitutional manner into their community. Such an approach is likely to further

the cause for democratisation in Africa and decrease political instability throughout the continent. However, at the moment this remains embedded in theory, but not practice, as there are no examples of a state's suspension from the African Union due to an unconstitutional change in a government, in spite of a number of coups and military takeovers that have taken place on the continent. Ngoma (2004) points out that there have been 80 successful coups, 181 failed ones, and an unknown number of coup attempts between 1961 and 2004 on the African continent (also see table 1).

Nevertheless, Article 30 could be utilised as a standard by the APRM, as it provides clear rules concerning the suspension of those governments that have come to power through unconstitutional means. This is easy to check and is not open to debate as if a government did not come to power in a general election (or other means established in the constitution), it has not gained its power in a constitutional manner and is thus suspended from the AU. A strong stance on this by the AU would ensure the advancement of democratic culture in Africa, as governments will be forced to respect the constitutions of their states.

4.2.2. Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA)

The CSSDCA (also known as the Solemn Declaration) begins by re-stating the main achievements of the Organisation for African Unity, particularly the Declaration on the Political and Socio-Economic Situation in Africa (1990), Declaration establishing the Mechanism for Conflict Prevention, Management and Resolution (1993), the African Charter on Human and Peoples' Rights (1981), and the Decision on Unconstitutional Changes of Government (1999). These declarations are important for the APRM, as they deal with the establishment of 'good governance' in Africa. As mentioned earlier, this represents a continuation of previous African efforts to combat the continent's problems.

The general principles of the Solemn Declaration that are relevant for 'good governance' are as follows:

- (a) *Respect for the sovereignty and the territorial integrity of all Member States.*
- (b) *The security, stability and development of every African country is inseparably linked to that of other African countries. Instability in one country affects the stability of neighboring countries and has serious implications for continental unity, peace and development*
- (h) *Democracy, good governance, respect for human and peoples' rights and the rule of law are prerequisites for the security, stability and development of the Continent*
- (i) *Africa's resources should be used more effectively to meet the needs of African peoples and to improve their well-being*

Objective (a) *Respect for the sovereignty and the territorial integrity of all Member States* closely resembles a similar objective in the Constitutive Act of the African Union, with the exception that it does not mention independence of the African states. It therefore suffers from the same problems as its counterpart. None of the APRM's Democracy and Political Governance objectives discussed in 3.8. provide any support or clarity either.

Objective (b) *The security, stability and development of every African country is inseparably linked to that of other African countries. Instability in one country affects the stability of neighboring countries and has serious implications for continental unity, peace and development* makes a link that is echoed by the APRM – that is of the interdependence and integration of states in Africa and the necessity of working together in order to help states individually, which as a result will improve the situation on the continent as a whole.

Objective (h) *Democracy, good governance, respect for human and peoples' rights and the rule of law are prerequisites for the security, stability and development of the continent* recognizes the link between 'good governance' and development, stating that the former is a prerequisite for the latter. In this, it follows the same ideas as voiced by NEPAD and the APRM, but fails to add to them or explain them sufficiently. In this

sense, it is merely a repetition of the two frameworks and is inadequate as a standard, since it does not elaborate.

Finally, objective (i) *Africa's resources should be used more effectively to meet the needs of African peoples and to improve their well-being* is very unclear in what its implying and how its trying to achieve it. Misuse of resources is a problem that is evident in the majority of African states. It is a result of corruption and neopatrimonialism, two core African problems identified in 2.8. and 2.9. respectively. In Africa, positions of power and authority often provide an opportunity for illicit enrichment through favoritism in provision of services. Bayart (1993: 74) states that corruption in Africa works through an acquisition of wealth and personal power. The same could be said of neopatrimonialism, which undermines the democratic process due to an informal system of rule whereby a leader provides favors in exchange for political support (Bratton & Van de Walle 1997: 61). The objective in question does not specify corruption and neopatrimonialism as root causes of the problem, but merely states that resources should be used more effectively. Objective 5 of the Democracy and Political Governance Initiative provides some clarity here through its indicative criteria that stresses provisions for accountability in national constitutions as a means to regulate behavior of public servants. Possible indicators include the existence of legal codes of conduct for public officials, the existence of a public service commission, and provisions for public hearings where politicians could be held accountable. These measures do not constitute a standard, as they are not useful for evaluative purposes of a state's effort in fighting corruption and neopatrimonialism, and its normative implications are not precise.

There are also a number of specific principles that are relevant for 'good governance' in Africa, specifically the following:

(11) Noting that stability requires that all States be guided by strict adherence to the rule of law, good governance, peoples participation in public affairs, respect for human rights and fundamental freedoms, the establishment of political organisations devoid of sectarian, religious, ethnic, regional and racial extremism;

We affirm that:

- (a) The Executive, legislative and judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability*
- (b) The active and genuine participation of citizens of every country in the decision making processes and in the conduct of public affairs must be fostered and facilitated*
- (c) All rights and freedoms of citizens should be promoted and protected*
- (d) There shall be no hindrance to the promotion of political pluralism*

These principles serve as broad guidelines to the establishment of ‘good governance’ in Africa. An example of this is principle (a) *The Executive, legislative and judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability.* This provides for a separation of powers in African states, as well as the rule of law and principle of constitutionalism. The establishment of these democratic principles and strict adherence to them would be a strong building bloc for the establishment of a democratic culture in African states. Objective 4 of the APRM’s section on Democracy and Political Governance echoes the standard without providing anything more substantial with regard respect of the separation of powers. Possible indicators include the existence of Parliamentary committees for oversight purposes and independent judicial services commission.

Principle b) *The active and genuine participation of citizens of every country in the decision making processes and in the conduct of public affairs must be fostered and facilitated* once again calls for popular participation but also does not indicate how this is to be achieved in practice. It could then be open to interpretation by member states and thus does not provide an adequate common standard for democracy and ‘good governance’, since it does not include any specifics on how it is to be achieved. Unlike in the case of the Constitutive act of the African Union, ECOSOCC does not provide more

clarity on how such participation could be accomplished, as its article 2(3) vaguely calls to promote such participation without going into detail on how this could be done.

Principle (c) *All rights and freedoms of citizens should be promoted and protected* suffers from a similar shortcoming as it does not list rights and freedoms of citizens (the composition of which is a subject to debate amongst political philosophers and it does not make a reference to a specific standard that does. Thus, it is unknown what exactly constitutes rights and freedoms of the citizens according to the Solemn Declaration. Perhaps the AU needs to create a Bill of Rights that could be utilised by the APRM as a standard. Such a Bill of Rights exists in the South African Constitution and incorporates a variety of human rights, including: freedom, security, equality, housing, education, access to information and access to courts. The South African Constitution (1996: art 7-39) lists those in detail, thus providing a sufficient legal framework for monitoring of whether these rights are respected in practice.

Finally, even though the last principle (d) *There shall be no hindrance to the promotion of political pluralism* fails to go into detail, it nevertheless provides another building bloc for establishment of a democratic culture in Africa and can thus be considered as a good standard for the APRM. The principle is simple, yet effective, because it prohibits any possible interference that could obstruct political pluralism. The majority of African societies are ethnically plural and many of them have previously suffered from the domination of politics by one ethnic political group. Promotion of political pluralism could eradicate this problem and encourage the adoption of power-sharing mechanisms in African states. Thus, the APRM should be concerned with seeking out and eradicating any obstacles to political pluralism, such as policy based on ethnicity, lack of freedom of press, and limitation of choice in elections, in African states in order to promote ‘good governance’.

Principles (a) and (d) could both be utilised as standards by the APRM Principle (a) creates a standard for the separation of powers, in accordance to the national constitutions. It is therefore flexible enough to accommodate the unique domestic

situation of the APRM's member states, yet sufficient to serve as a standard, since it refers to the national constitution which could be examined in order to determine whether it is being followed. At the same time, although principle (d) does not specify the term political pluralism, it is clear in the context that it is being referred to, that is allowing a multiplicity of views and political parties in ethnically diverse African states. In that sense, hindrance of political pluralism such as banning of the opposition parties and lack of press freedom would indicate that the standard is not being followed in a given state.

Following from the above stated principles is a plan of action that goes into more detail with regard to their achievement and implementation:

(a) Intensify efforts aimed at enhancing the process of democratisation in Africa. In this regard, the strengthening of institutions that will sustain democracy on the continent including the holding of free and fair elections should be encouraged

(c) Encourage the participation and contribution of Civil Society in our States, to the efforts to bring about further democratisation in our Continent

(e) Encourage civic education on good governance and the promotion of African values in African institutions and schools

(f) Uphold and guarantee the rule of law, the protection and defense of the rights of citizenship as acquired at independence and as provided for in national constitutions

(i) Protect and promote respect for Human Rights and Fundamental Freedoms, such as the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy

(j) Ensure the equitable distribution of national income and wealth, as well as transparency in the exploitation of Africa's resources. In this regard, the negative impact of external and internal interests in the exploitation of Africa's resources and corruption, which continue to fuel continents on the continent, should be addressed in a more cohesive and effective manner

The above plan of action goes further into the creation of practical objectives that would be able to enhance the development 'good governance' initiatives in Africa. However, it

still suffers from a number of shortcomings. Objective (a) *Intensify efforts aimed at enhancing the process of democratisation in Africa. In this regard, the strengthening of institutions that will sustain democracy on the continent including the holding of free and fair elections should be encouraged* fails to provide a definition of ‘democratisation’ or list the specific institutions that would sustain democracy in Africa. The only specific reference included here is the one to free and fair elections should be encouraged. Although elections are often talked of as one of the most important principles of ‘democracy’, alone they are not sufficient for its achievement as discussed earlier in 2.7. Furthermore, the Solemn Declaration fails to specify that elections should be ‘pluralistic’, ‘open to all’, etc. As mentioned earlier, through its documents the APRM provides important guidelines and symbolic goals to its members which direct them towards common goals. However, it is also important to bear in mind that the APRM’s other purpose is to evaluate the current political condition of its member states in order to assess its shortcomings and identify the areas which need to improve. Without something more concrete, such as democratic checklists, such an evaluation is virtually impossible as most of the APRM’s documents are too broad to be utilised for the purposes of evaluation. Thus, objective (a) is inadequate as a standard since it does not provide sufficient detail with regard to holding of elections and the methods available for measuring the extent to which they are ‘free and fair’.

Objective (c) *Encourage the participation and contribution of Civil Society in our States, to the efforts to bring about further democratisation in our Continent* makes a very important reference to civil society. In any given state, a strong civil society has the potential to act as the backbone of democracy, through acting as a watchdog on the government and providing alternative information to citizens (Demend: 30). However, objective (c) does not specify how participation and contribution of civil society is to be encouraged, thus making it difficult for the APRM to check its fulfillment. Another problem here is that the term civil society is not defined. As mentioned in 3.9.3, civil society is often defined in different ways, which at times creates problems of categorization since some definitions include private sector, while others do not and at times only Non-Governmental Organisations (NGOs) are included in this category.

Establishing a single definition would be beneficial not only for the APRM, but also for the AU in general, since the ECOSOCC also fails to provide such a definition (Bekele 2006:10).

Objective (e) *Encourage civic education on good governance and the promotion of African values in African institutions and schools* is crucial for the people of Africa. Knowledge empowers and if the citizens are educated about what ‘good governance’ is, they are less likely to tolerate ‘bad governance’ and undemocratic practices within their states. However, objective (e) is unspecific since it merely says that such education should be encouraged. Such a word does not represent a firm commitment to these educational practices and does not attach responsibilities to African states. Here, the general problem of voluntarism discussed in 3.9.2 could be referred to. APRM functions in a way according to which African states volunteer to sign up to it, but are free to disregard any recommendations made by the APRM Panel. Thus, the ‘peer review’ mechanism does not compel member states to do anything. The issue of voluntarism is a major one in the APRM’s process. Although it is understandable that the states voluntarily accede to the APRM, once they do so they should be obliged to follow its recommendations in order to comply with the common standards. The APRM could prove to be too weak to change the situation in Africa in spite of its best efforts. Although it could potentially identify all the problems and provide all the necessary solutions, its member states could disregard them, thus rendering all of its efforts obsolete. For example, South Africa disregarded the majority of the recommendations made by the APRM (Boyle 2007).

Objective (f) *Uphold and guarantee the rule of law, the protection and defense of the rights of citizenship as acquired at independence and as provided for in national constitutions* makes an important statement with regard to the rule of law, which is a problem in many African states due to unfair and unequal treatment of citizens, such as in Zimbabwe, where the rule of law was ignored as war veterans invaded farms and were supposed in doing so by President Mugabe and his government (EISA 2000). Objective (f) could serve as a standard, whereby the national constitution could be referred to for

evaluation purposes by the APRM. The existence of constitutional rules provides the APRM with a tool that could be used for the purposes of evaluation. However, one must bear in mind that the existence of a constitution does not necessarily guarantee that the rules it sets out are going to be followed in practice (Heywood 2002: 301). Thus, while the ‘standard’ makes a specific reference to national constitutions in accordance with which the rule of law must be upheld, it is important to note that if a problem of upholding the rule of law exists, then clearly the national constitution is inadequately equipped to deal with it. The case study of Ghana (see 5.5) provides a deeper look into the situation with regard to respect of constitutions in Africa.

Objective (i) *Protect and promote respect for Human Rights and Fundamental Freedoms, such as the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy* gives a number of examples of the rights and freedoms that it refers to but fails to cover them to a full extent. The same goes for the second part of the objective, as although a reference is made to *political and trade union pluralism*, this is followed by *other forms of participatory democracy*. What forms of participatory democracy are referred to here? It is unclear why the creators of the document failed to include a full list of democratic practices and human rights that they intend to promote and protect. This is thus inadequate as a standard for the APRM since it is problematic to evaluate other forms of participatory democracy without having an indication of what they entail.

Finally, objective (j) *Ensure the equitable distribution of national income and wealth, as well as transparency in the exploitation of Africa’s resources. In this regard, the negative impact of external and internal interests in the exploitation of Africa’s resources and corruption, which continue to fuel continents on the continent, should be addressed in a more cohesive and effective manner* correlates to principle (i) of the Solemn Declaration discussed earlier in this chapter, which states that Africa’s resources should be used more effectively to meet the needs of African peoples and to improve their well-being. However, as opposed to the earlier criticism of the very vague principle, this objective does in fact state that there is a negative impact on Africa’s resources due to negative

internal (neopatrimonial) and external (neocolonial) interests, as well as mentioning the problem of corruption. Political power and the ownership of resources are inextricably linked in African politics. However, apart from the internal dimension of corruption and neopatrimonialism, there are also external factors present here. The case of the Democratic Republic of Congo (DRC) is particularly relevant here. Aust and Jaspers (2006: 10-11) point out that in the context of weak or failed states rebel organisations, weak government and external actors all compete over the ownership of valuable resources. This was exactly the case in the DRC between 1998 and 2002. Uganda and Rwanda backed the rebellion against a weak government in the DRC and have subsequently both benefited from the war, because of looting and exploitation of the country's resources. The DRC is not the only example of a resource war in Africa, as similar warfare has occurred in Liberia, Angola and Sierra Leone. The fact that the Solemn Declaration recognises the problem is welcome, yet the fact that it merely states that these problems should be addressed in a more cohesive and effective manner is unsatisfactory.

4.2.3. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (1981) is also known as the Banjul Charter. It begins with a reference to the Charter of the now defunct OAU, which states that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples. The preamble then mostly focuses on the recognition of the necessity of a culture of human rights and for a total elimination of any forms of discrimination on the continent. For the purposes of this dissertation the focus of the analysis of the Charter will be on political rights, or rights which could be related to the establishment of 'good governance' in Africa, and how these are to be achieved. These are found in part 1 of the Charter – Rights and Duties.

Article 3

- 1. Every individual shall be equal before the law*
- 2. Every individual shall be entitled to equal protection of the law*

This article states the definition of the rule of law. It is effective because it is specific and not open to multiple and clashing interpretations. Establishment of the rule of law is vital for any democratic state. The establishment of and respect for the rule of law is particularly important in Africa, where practices of corruption and neopatrimonialism persist. This definition should be embedded into the constitution of the states participating in the APRM. However, a mechanism for monitoring that the rule of law is respected is still needed for the APRM to assess the practical situation in African states. Such a mechanism would be difficult to establish as high-ranking public officials, often disregard the rule of law due to the existence of neopatrimonial practices (Bratton & Van de Walle 1997: 65). Article 3 could serve as a useful standard for the purposes of the APRM, but in order to be successful, African CSOs need to play a part in it by helping the APRM through reporting incidents of the violations of the rule of law in their respective states.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Freedom of assembly is one of the most important rights that are available in a democratic state. Citizens should have the opportunity to meet and discuss important political issues and be able to hold protests and demonstrations if they feel that the government is not living up to democratic standards. However, the provision of a clause that states this right is subject to limitation by the law in the interest of national security could prove to be problematic, since a government can then disperse or brutally put down protests, claiming it has done so in the interest of national security. The Odi Massacre that took place in 2000 in Nigeria serves as an example of this. The Nigerian government originally sent troops to put down a rebellion by a gang of unemployed youths. However, these troops also killed dozens of civilians and destroyed virtually every building in the city, except a bank, a health centre and a church (Alubo 2007: 223).

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 19 flows out of the legal rights of Article 3. Following that people are all equal before the law, it means that they are also equal socially and have the same rights. The second part of the article holds a special significance for African states that have a number of different ethnic groups. Equality is one of the most fundamental principles of democracy which follows its rule of one person-one vote. Adherence to this rule and eradication of inequality is an important step that should be monitored by the APRM. The recent political turmoil in Kenya as a result of allegedly fraudulent elections shows the significance of this issue. Fears of ethnic domination fuelled the tensions, which subsequently resulted in post-election violence (Ong'ayo 2008). This would not have happened if the people were certain that they would be treated equally irrespective of the ethnicity of the winning candidate. Elections must not be seen as a 'winner takes all' situation, as in this scenario politicians and their supporters are competing not only for power but also for the benefits that come with it. The case study of Kenya will be discussed in more detail in 5.3.2.

4.2.4. Grand Bay Declaration and Plan of Action for the Promotion and Protection of Human Rights

The Grand Bay Declaration and Plan of Action for the Promotion and Protection of Human Rights of 1999 acknowledges that observance of human rights is a key for promoting collective security, durable peace and sustainable development, and reaffirms its commitment of the principles and purposes enshrined in four other documents that have significance for the promotion and respect of human rights: The OAU Charter; the UN Charter; the Universal Declaration of Human Rights; and the African Charter on Human and Peoples' Rights.

The Plan of Action of the Declaration has a number of points that directly relate to ‘good governance’, particularly the following:

The (Ministerial) Conference further affirms the interdependence of the principles of good governance, the Rule of Law, democracy and development. The Conference recognises that the development of the rule of law, democracy and Human Rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.

5 (a) *The Conference is aware that violations of Human Rights in Africa are caused, among others by:*

- (g) Mismanagement, bad governance and corruption*
- (h) Lack of accountability in the management of public affairs*
- (i) Monopoly in the exercise of power*
- (k) Lack of independence of the judiciary*
- (l) Lack of independent human rights institutions*
- (m) Lack of freedom of press and association*
- (p) Unconstitutional changes of governments*
- (r) Nepotism*
- (s) Exploitation of ethnicity*

Paragraph 3 *The (Ministerial) Conference further affirms the interdependence of the principles of good governance, the Rule of Law, democracy and development* states a perceived link between its listed concepts, particularly ‘good governance’ and development, which ties in to the larger thinking and ideas behind NEPAD and the APRM. However, similarly to the documents analysed previously, it also fails to provide a definition or a reference to a definition of the concepts that it utilizes. The APRM’s objectives also do not provide the necessary clarity.

The subsequent paragraph 4 *The Conference recognises that the development of the rule of law, democracy and Human Rights calls for an independent, open, accessible and*

impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions provides partial implications of paragraph 3, focusing specifically on the judiciary as an aspect of ‘good governance’. However, the judiciary is the only aspect that is mentioned here by the Grand Bay Declaration, and no references are made to separation of powers, governmental accountability, parliamentary oversight, etc. Although the goal is stated as an independent, open, accessible and impartial judiciary, no methods of achieving such a state of affairs are given. The APRM’s Governance Objective 4 *Uphold the separation of Powers, including the protection of the independence of the judiciary and of an effective Parliament* must be taken into consideration together with the standard here, as it provides examples of indicators for assessing the situation. Particularly the judiciary’s access to resources and the existence of an independent judicial services commission could be used as indicators for the purposes of both evaluation and improvement of the situation.

Paragraph 5(a) proceeds to correctly identify a large number of problems that are persistent in African states, identifying all the problems mentioned throughout chapter two. As such, corruption, neopatrimonialism (nepotism) and ‘democracy’ issues (mismanagement, bad governance, lack of accountability, monopoly in the exercise of power, lack of independence in judiciary, unconstitutional changes of government and lack of press freedom) are mentioned here. However, even though the main problems that are common to the African continent are identified here, no possible solutions are given and no methods through which the APRM would be able to measure the extent of these problems are given either.

Finally, paragraph 15 *The Conference reiterates the fact that the primary responsibility for the promotion and protection of Human Rights lies with the State. It therefore urges States to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence* is significant as it vests the responsibility for protection of human rights within each individual state. This is obvious as all African states are sovereign and thus no other bodies are able to interfere in their

internal proceedings. However, given the atrocious human rights record in certain African states, such as the DRC and Cote d'Ivoire (Agbese & Kieh 2007: 7), it would be beneficial to also establish a strong continental human rights organisation that would be responsible for monitoring the situation in all states that have agreed to join it. Both ECOSOCC and the African Court on Human and Peoples' Rights (ACHPR) provide some hope here. The idea behind the former is that it would act as a platform between the AU and the African governments on the one hand, and African human rights CSOs on the other, thus enhancing the promotion and protection of human rights on the continent (Bekele 2006:3). The latter was specifically created to support the African Charter on Human and Peoples' Rights which was discussed earlier in this chapter. The jurisdiction of the Court extends to "*all cases and disputes submitted to it concerning the interpretation and application of the Charter*" (Protocol on the Establishment of an African Court on Human and Peoples' Rights 1998: art 3). Both those organizations thus provide support to the existing APRM's standards with regard to the promotion and protection of human rights and subsequently 'good governance' in Africa.

4.2.5. African Union Convention on Preventing and Combating Corruption

This document begins with a recognition of the principles of the African Union, particularly human rights; democracy; and 'good governance' and states its concern for the negative effect that corruption has on political stability in African states, as well as the devastating effects it has on the development in Africa. The Convention then acknowledges the need for transparency and accountability and the need to address root causes of corruption in Africa. Finally, a 'partnership' is proposed between national governments and all segments of civil society to fight corruption.

Article 1

Definitions

"Corruption" means the acts and practices including related offences proscribed in this Convention.

Throughout this chapter, the APRM documents have been criticised due to a lack of definitions of important terms. The main difference between the African Union Convention on Preventing and Combating Corruption and the other APRM documents discussed thus far is the fact that the former provides definitions of important concepts. Thus, the Convention states that the term corruption refers to a range of illicit activities described in it. Possible misinterpretation is therefore avoided, since although there are many definitions of corruption, the document makes it clear that for its and the APRM's purposes 'corruption' means the following:

Article 4

1. *This Convention is applicable to the following acts of corruption and related offences:*
- a) *The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.*
 - c) *Any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party*
 - g) *Illicit enrichment*
 - i) *Participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any other collaboration or conspiracy to commit, any of the acts referred to in this article*

Through a list of definitions of what the term corruption entails, the Convention provides the APRM and its member states with a concrete scope of application, thus creating a uniform method of determining what corruption is. These definitions could aid those who participate in the Country Self-Assessment and also the Country Review Team to determine whether corruption exists in a state and if it does, what forms it takes. This also provides a legal principle that could be utilised by the APRM's member states in their domestic constitutions. This would create a common standard for all African states that

are a part of the ‘peer review’ process, and collectively raise the anti-corruption measures.

Article 3

- 1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance*
- 3. Transparency and accountability in the management of public affairs*
- 5. Condemnation and rejection of acts of corruption, related offences and impunity*

The first principle echoes the other standards of the APRM, by promoting respect for democratic institutions and ‘good governance’, among others, once again demonstrating the fact that all APRM’s standards share a common spirit. Following from this Principles 3 and 5 specifically relate to promotion of anti-corruption measures as a part of this spirit.

Article 5

- 1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in Article 4 paragraph 1 of the present Convention*
- 2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a State Party shall be subject to the respect of the national legislation in force*
- 3. Establish, maintain and strengthen independent national anticorruption authorities or agencies*
- 4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services*
- 5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities*
- 6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals*

7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences

8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, an awareness in the fight against corruption and related offences, including school educational programmes and sensitisation of the media, and the promotion of an enabling environment for the respect of ethics

The above Article 5 provides very important measures which could be utilised by APRM's member states as a standard in order to fight corruption. In contrast to other documents discussed in this chapter, the African Union Convention on Preventing and Combating Corruption provides practical recommendations to African governments, as opposed to vague statements about the promotion of human rights/democratic institutions/independent judiciary. Incorporating the above recommendations into the national constitutions would significantly strengthen anti-corruption strategies in African states and would help to create an anti-corruption culture in them. Objective 6 of the APRM's Democracy and Political Governance section adds on to it by proposing constitutional provision for fighting corruption and effectiveness of institutions carrying out the mandate as a possible indicator to be used for purposes of evaluation.

Principle 3 recommends establishing or strengthening anti-corruption authorities or agencies. This recommendation is sufficiently open for states to be able to create agencies that would be appropriate in terms of its structure and legislation. The important point, though, is that the recommendation is made to create such agencies in the first place, as they would strengthen anti-corruption measures. Equally important is the establishment of an anti-corruption culture which paragraphs 5, 6 and 7 make specific recommendations to, particularly regarding the protection of citizens who report instances of corruption. At this point in time too many people in African states such as Kenya are afraid to report cases of corruption because of possible reprisals (Wangui 2007). The case study of South Africa (see 5.4.) specifically shows that protection of such persons is not adequate enough in that country. All of the above principles could thus be utilised as standards,

since they both provide an evaluating mechanism for the purposes of the APRM, as well as providing normative recommendations on the improvement of the current situation.

Article 7

1. *Require all or designated public officials to declare their assets at the time of assumption of office during an after their term of office in the public service*
4. *Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service*
5. *Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the persecution of such officials*

Article 7 provides further measures to help prevent corruption in the public spheres, which are all relevant to the African situation. Paragraph 1 establishes a degree of control over public officials to ensure that they do not use their terms in public position for the purposes of illicit enrichment. Paragraph 2 could address both problems of corruption and neopatrimonialism, whereby public positions are given to relatives or supporters of certain leaders. Unfortunately, no specific recommendations are provided with regard to the establishment of transparent procedures in hiring of public officials. Finally, if implemented in national legislation, paragraph 5 has far-reaching implications for the anti-corruption battle. Many African public officials hide behind their public immunity in order to escape being prosecuted for crimes of corruption. Removal of immunity if an official is under investigation for corruption would enable the appropriate authorities to prosecute those who were previously untouchable due to their immunity. Currently Nigeria's anti-corruption agency is challenging the immunity of politicians in order to be able to investigate them for allegations of corruption (British Broadcasting Corporation 2008b). This demonstrates the relevance of the African Union Convention on Preventing and Combating Corruption as a standard to fight corruption as well as neopatrimonialism in Africa.

Article 10

- a) *Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties*
- b) *Incorporate the principle of transparency into funding of political parties*

Finally, paragraph 10 has great significance for the transparency of politics in Africa. Rose-Ackerman (1999: 133) points out that the problem with funding of political parties is often favoritism, which undermines democratic values. If a private groups funds a party that wins the election and subsequently the interests of the group collide with those of the public, there are negative implications for the democratic process. The public should have the right to know who funds the political party that they are voting for, and what implications this might have on future policy. Objective 6 of the Democracy and Political Governance section of the APRM further supports this by stating that requirements for periodic public declaration of assets by public office bearers and senior public officials should be used as an indicator of the country's anti-corruption measures. Together these create a standard that would enable the establishment of a transparent environment, ensuring that political parties are funded in a translucent manner and that politicians are not able to enrich themselves using public resources during their terms in the office.

4.2.6. NEPAD Framework Document

The final text referred to under objectives 2, 4, 5 and 6 of the Democracy and Good Governance section of the APRM base document is the NEPAD framework document (2001). It begins by calling itself a pledge by African leaders, based on a common vision and a firm and shared conviction that African states need to eradicate poverty and advance further through sustainable growth and development. One of the key points made here is that African states need to strive towards these goals both individually and collectively. This applies to the APRM as well, since individual states determine their problems and then proceed to solve them. However, there is a collective dimension to this

as well, as other signatories to the mechanism aid states in determining their problems and then combining their efforts to solve them.

The following sections are applicable to the APRM as they deal with ‘good governance’:

Section 2 of the document places the current African situation in a historical context and claims that the impoverishment of the continent took place because of the legacy of colonialism, the Cold War, the international economic system, and the inadequate policies pursued by many states in the post-colonial era. The NEPAD document particularly points out that after the demise of colonialism, Africa inherited weak states and dysfunctional economies which were exacerbated by bad governance, corruption and inadequate leadership, which combined with the effects of the Cold War stifled the development of accountable governments across the continent. The conclusion is that as a result of this, African states have entered into a cycle where economic decline, reduced capacity and poor governance reinforce each other.

This section echoes the background to the contemporary African states discussed in 2.5, particularly the problem of weak states that have emerged in the post-colonial era. Problems of corruption, bad governance and inadequate leadership are also mentioned here, showing that the creators of NEPAD recognise the internal troubles of the African continent, rather than just shifting the blame for Africa’s current situation towards external factors. The conclusion of section 2 is very important as it shows that, according to the African leaders behind NEPAD, economic decline, reduced capacity and bad governance all reinforce each other. This reinforces the idea behind the concept of ‘good governance’ which was discussed in 3.7. According to the view of the World Bank, which forms a part of NEPAD and the APRM’s ideology, ‘good governance’ must be established in order to facilitate economic development. Thus, the establishment of ‘good governance’ through the APRM is set to help NEPAD to achieve its other goals. Creating a stable political situation is going to aid African states in developing their economies. This shows the holistic thinking behind NEPAD/APRM, which focuses on improving all aspects of governance and quality of life in Africa, as well as the consistency in the

application of the ideas behind them. Shilimela (2004: 3) points out that NEPAD attempts to implement ‘good governance’ as a precondition for development, which also forms the basis of its APRM process.

Section 3 proceeds to affirm the new political will of African leaders, stating that democracy and state legitimacy are now understood as including an accountable government, a culture of human rights and popular participation in politics. It states that there are more democratically elected leaders in Africa and democracy is on the increase, which is complemented and reinforced by the rise in civil society and independent media. NEPAD is intended to increase these efforts in order to achieve the renewal of the continent and one of its main objectives is promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels.

The above section attempts to describe the term democracy as used in this document, stating that it includes an accountable government, a culture of human rights and popular participation in politics. However, a precise definition of democracy is still lacking. At the same time, no definitions or explanations are provided with regard to the terms the NEPAD framework document uses to provide a description of what ‘democracy’ implies in its context. Section 3 also states that NEPAD intends to promote and protect democracy and human rights through the establishment of clear standards of accountability, transparency and participatory governance at the national and sub-national levels. These clear standards are precisely what the APRM needs in order to achieve its aims. Nevertheless, although the development of such standards is stated as a main objective of the NEPAD framework document which was created before the APRM, they have not been included in the latter’s base document.

Section 4 appeals to the peoples of Africa, claiming that NEPAD will only be successful if it is owned by the African peoples united in their diversity. The question of NEPAD’s ownership referred to here is a controversial one. There have been many critics who

claimed that NEPAD was tailored as a plan to get more aid from the West, in spite of its claims that it is an initiative aimed at the people of Africa and intended to achieve a better of state of affairs for the continent as a whole. Fourie and Vickers (2003: 12) state that it is a well-known fact that at the onset of NEPAD's creation African leaders expected an annual contribution of \$64 billion from their Western 'partners' in exchange for their efforts in establishing 'good governance' in Africa.

Another argument used by critics is the fact that NEPAD was presented to the West before it was brought to the people of Africa. Many African CSOs found out about NEPAD from their Western colleagues and a large number of Africans still remain uninformed about NEPAD and its objectives (Tandon 2002). NEPAD has previously stated that it sees popular participation as one of the main components of democracy. Although NEPAD and the APRM frameworks provide an opportunity for African CSOs to participate in their processes, their creators did not give them an opportunity for popular participation with regard to creation, development and establishment of NEPAD to the people of Africa. Furthermore, there are fears about the possible manipulation of the process by African governments. As discussed throughout chapter three, the government is very much in control of the entire process and it could choose to limit the participation and input from the CSOs, thus diminishing their contribution and participation. CSOs that have participated in the APRM's process thus far have already pointed out that governments have taken key decisions, such as budgets, time frames and staffing without consulting with them, thus limiting their involvement in the country review (SAIIA 2006:3)

Section A. *Conditions for Sustainable Development includes sub-section (ii) Democracy and Political Governance Initiative, that is crucial for the analysis of the APRM as a standard for 'good governance'.*

79. *It is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the New Partnership for Africa's Development, Africa undertakes to respect the global standards*

of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organized to enable people to choose their leaders freely.

Section 79 refers to *true democracy*. Perhaps the creators of the document should have avoided using this term without explaining it or providing examples of states where 'true democracy' is found. Problems of conceptualisation of the term democracy have been discussed in 2.7 and using the term *true democracy* complicates matters further, since it is neither defined nor explained. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Panel on Democracy and Development, chaired by Boutros Boutros-Ghali, although not a listed standard of the APRM, could provide some clarity on these issues. The Panel stated that genuine democracy is characterised by the rule of law, respect for human rights and a recognition of the intrinsic dignity of all human beings and requires a minimum acceptable standard of living, which requires a certain level of development (Boutros-Ghali 2003: 5). Apart from shedding some light on what *true democracy* could mean, this view also supports the link made between democracy and 'good governance' as being preconditions for development. This view refers to the ideas generated by the World Bank and later adopted by NEPAD and the APRM. The second part of section 79 refers to global standards of democracy and identifies its core components as political pluralism, with specific reference to political parties and workers' unions, as well as fair, open and democratic elections. Therefore, the NEPAD framework document provides two standards for the APRM to examine in its 'peer reviews'.

82. *The states involved in the New Partnership for Africa's Development will also undertake a series of commitments towards meeting basic standards of good governance and democratic behavior while, at the same time, giving support to each other. Participating states will be supported in undertaking such desired institutional reforms where required.*

This section is a reference to the APRM, as it refers to states striving towards standards of ‘good governance’ both individually and collectively, through providing support to each other and sharing of experiences. The second part of section 82 once again suffers from a major shortcoming because of its vagueness, since it mentions undertaking desired institutional reforms where required, without specifying what these institutional reforms are. It is likely that these reforms would be implemented on an individual basis, taking into account the existing differences in the structures and levels of development of the states. However, a failure to refer to something specific is a shortcoming in this section, as it is not specific enough to serve as a ‘standard’ for the APRM.

83. *In order to strengthen political governance and build capacity to meet these commitments, the leadership of the New Partnership for Africa’s Development will undertake a process of targeted capacity-building initiatives. These institutional reforms will focus on:*

- Administrative and civil services*
- Strengthening parliamentary oversight*
- Promoting participatory decision-making*
- Adopting effective measures to combat corruption and embezzlement*
- Undertaking judicial reforms*

Section 83 provides a list of five reforms that, in the opinion of the African leaders behind NEPAD, are necessary in order to achieve ‘good governance’ in Africa. Although the proposed reforms cover the main democratic institutions in a given state (Bureaucracy, Legislature, Judiciary), they are insufficient for the APRM, since in their current form they could not be used a standard for ‘good governance’. Once again the problem of non-specific recommendation and failures to create checklists is evident here.

84. *Countries participating in the initiative will take the lead in supporting and building institutions and initiatives that protect these commitments. They will dedicate their efforts towards creating and strengthening national, sub-regional and continental structures that support good governance.*

Finally, section 84 places the initiative in the hands of the states that participate in NEPAD. The stated goal is the establishment of national, sub-regional and continental structures that will serve to support the establishment of ‘good governance’ in Africa. This section is also too unspecific to serve as a standard for the APRM, since it provides too broad of a vision for the participating states. This section fails to focus on exactly what sort of national, sub-regional and continental structures does Africa need in order to achieve ‘good governance’ and what efforts are needed in order to achieve them.

4.3. APRM standards: an assessment

This section provides an analysis of common positive and negative aspects that are prevalent in the standards referred to in objectives 2, 4, 5 and 6 of the Democracy and Political Governance Section of the APRM base document.

4.3.1. Positive aspects

4.3.1.1. Vision of a democratic Africa

All the documents referred to by the APRM base document have one thing in common: they all call for democratic, human rights and governance improvements on the continent. The Constitutive Act of the African Union calls for its member states to build a partnership between the governments and civil society, promote and protect human rights; consolidate democratic institutions and democratic culture; ensure good governance and the rule of law. The Solemn Declaration asks for respect for the sovereignty and the territorial integrity of all Member States, and recognises that democracy, ‘good governance’, respect for human and peoples’ rights and the rule of law are prerequisites for the security, stability and development of the Continent. The African Charter on Human and Peoples’ Rights begins by acknowledging that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples. The Grand Bay Declaration affirms the desires of African peoples to live in a state which secures the full enjoyment of Human Rights and

fundamental freedoms for all peoples, regardless of their gender, race, place of origin, religion, social status, ethnic background, political opinions or language. Finally, the NEPAD framework document states a pledge by African leaders, based on a common vision and firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development.

Through the above statements of intent, the new generation of African leaders demonstrates a political will to improve the political and governance situation on the African continent. As mentioned earlier in this chapter, the APRM represents a culmination of Africa's development thinking which now incorporates 'good governance' and democracy as a pre-condition for development. The APRM thus represents a collection of historical and contemporary African efforts to improve the situation on the continent, adding to it with its own vision of a more democratic continent. It therefore demonstrates a continuation of the African leaders' efforts to fight the problems that plague the African continent.

4.3.2. Negative aspects

4.3.2.1. Lack of definitions

Arguably the biggest problem that is relevant to all the documents discussed in this chapter is the fact that none of them provides definitions of core concepts that they utilize. This is particularly applicable to the terms democracy and 'good governance'. They are the most important to APRM's section on Democracy and Political Governance, and yet they are not defined anywhere. The NEPAD framework document comes closest as it identifies the core components of (democracy)... include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely. However, this is still not a precise definition as it merely lists several important aspects of what a democratic state should possess. As mentioned throughout this chapter,

the lack of universal definitions could provide problems in terms of monitoring and evaluating the establishment of democracy and ‘good governance’ in the APRM’s member states.

4.3.2.2. Lack of specifics

A further problem with the documents analysed earlier is the fact that in most instances they provide a very broad vision that is not detailed enough to be used practically as a standard by the APRM. For example, The Constitutive Act of the African Union states that one of its objectives is to promote democratic principles and institutions, popular participation and good governance; Solemn Declaration affirms that there shall be no hindrance to the promotion of political pluralism; and, NEPAD framework document claims that its member states will dedicate their efforts towards creating and strengthening national, sub-regional and continental structures that support good governance.

Although all of these represent a will to establish democracy and ‘good governance’ practices in Africa, they are simply not detailed enough for the APRM to use as standards, as no details are provided as to exactly what the states are compelled to do in order to achieve this. Failure to provide an outline of what these objectives entail and they are to be achieved withdraws from the APRM’s ability to ensure the establishment of democracy and ‘good governance’ practices in its signatory states, as it is unrealistic to expect it to monitor the implementation of very broad principles and objectives. Thus, the lack of specifics is likely to significantly undermine the APRM, as it would not be able to use broad statements of intent as standards.

4.3.2.3. Lack of reference to other documents

In many cases the problem of specifics and lack of measuring standards is aided by reading the APRM standards in conjunction with other documents, such as the Statute of the AU’s ECOSOCC. However, these necessary combinations are not explicitly pointed

out in the standards or the base document of the APRM. This is partially understandable, since the Statues of ECOSOCC have come into existence after the establishment of the APRM. The APRM should have thus updated the list of its standards or its base document in order to incorporate new documents, as they significantly aid in gaining a deeper understanding of its standards, and in some cases provide much more clarity with regard to measuring the levels of democracy and ‘good governance’.

4.5. Conclusion

This chapter was concerned with the analysis of six major documents identified as standards in the APRM base document. Although the documents provide a good vision for the political state that African countries intend to achieve, mere theory is not enough here, as substantial practical methods and indicators must be developed in order to reach this state of affairs. What currently remains embedded in theory needs to be implemented in practice in order to achieve this new state of affairs in Africa. A firm commitment is a necessary first step to the realisation of a vision, but practical implementation is absolutely crucial if a positive change is to take place. The majority of the documents discussed do not succeed in adequately addressing all four of the core problems of African states identified in chapter two, particularly due to their vagueness and lack of practical recommendations. Although some do provide standards that could be utilised for the purposes of evaluation and improvement of the state of ‘good governance’ in Africa, overall there are not enough specific standards that could be utilised by the APRM.

Thus, only one standard from the Constitutive Act of the African Union about unconstitutional changes of government and the resulting suspension from the African Union could be related to the problem of sovereignty, which is inadequate, considering the fact that coups and military takeovers occur frequently in Africa. The case of sovereignty is further discussed in the chapter five with a specific reference to the genocide in Rwanda (see 5.2). The problem of democracy is more efficiently addressed through standards of the Solemn Declaration regarding the separation of powers and

eradication of hindrance to political pluralism, the NEPAD framework document's reference to global standards of true democracy and the African Charter on Human and Peoples' Rights articles about equality and the rule of law. Currently there is a fear that Western style democracy is not suitable for Africa (Bouquet 2004: 241). This is exemplified by the failure of democratic process in Kenya (see 5.3)

The most successful standards put forth by the APRM refer to the problem of corruption in Africa. The African Union Convention on Preventing and Combating Corruption provides definitions of what corruption practices entail as well as recommendations on measures that need to be taken in order to fight them. The case study of South Africa is used to discuss corruption in Africa in chapter five (see 5.4). Lastly, although the problem of neopatrimonialism is not discussed in any of the standards, certain corruption standards could be effectively utilised to address it. The case of neopatrimonialism in Africa is discussed in the next chapter with specific reference to Ghana (see 5.5).

Chapter 5:

Case Studies: ‘Peer-Reviewed’ States

5.1. Introduction

This chapter is concerned with the practical side of the APRM. Having discussed the theory behind the democracy and ‘good governance’ standards prescribed by the APRM in chapter four, it is now necessary to analyse precisely how these standards could help African states solve the four major problems identified in chapter two: sovereignty, democracy, corruption and neopatrimonialism. Apart from that, in order to further examine the APRM’s role in the strengthening of ‘good governance’ in its signatory states, the Country Review Reports are taken into account when the practical implications of the APRM are scrutinised. Four African states that are signatories to the APRM have been selected as case studies, each corresponding to a specific African problem identified in chapter two. Rwanda’s problems with regard to sovereignty, Kenya’s recent turmoil that directly impacts democracy, South Africa’s recent struggles against corruption and elements of neopatrimonialism in Ghana’s political society are discussed and critically analysed. After presenting the case study and the specific problem, the analysis that follows is two-fold – incorporating both the applicable APRM standards, as well as the final Country Report produced by the APRM Review Team. Through this examination it is possible to determine whether the APRM recognizes the above-listed problems of African states and provided that it does, whether it is able to help states to address them. Through this examination both strengths and weaknesses of the APRM become evident, providing an assessment of the APRM as a standard for ‘good governance’.

5.2. Sovereignty

5.2.1. Case study: Rwanda

As discussed in 2.6, sovereignty is a major problem in many African states, due to the fact that they possess ‘negative’ sovereignty and not ‘positive’ sovereignty. Authors such as Clapham (1996: 15) and Jackson and Roseberg (1986: 1-2) argue that many African states suffer from only having attributes of ‘negative’ sovereignty, meaning that sovereignty is ascribed to them by the international community, without necessarily possessing attributes of ‘positive’ sovereignty, which is the ability to have a control of legitimate violence within their borders and maintain order. The problem of the implications of ‘negative’ sovereignty in Africa was particularly evident in 1994, during the Rwandan genocide. The government of Rwanda failed to prevent the civil war that took place and resulted in genocide. Because of the principle of sovereignty and the subsequent principle of non-intervention, other African states and the international community were not able to intervene in Rwanda and prevent or manage the conflict. Rwanda has been chosen as a case study because although the genocide took place fourteen years ago, it is necessary to examine how the APRM and its standards could make sure that it would not happen again. There are many ethnic tensions and conflicts in Africa and thus it is obligatory to determine whether the APRM is sufficiently equipped to deal with conflicts of this nature.

5.2.2. Rwanda: a brief history

Rwanda has a history of violent ethnic conflict. In 1959, when it was still a Belgian colony, the majority ethnic group, Hutus, overthrew the Tutsi king. Over the next years thousands of Tutsi were massacred by the Hutus and hundreds of thousands were forced to seek exile in neighbouring states. Decades later, the children of those who went into exile formed the Rwandan Patriotic Front (RPF) and subsequently started a civil war in 1990, with the stated aims of securing repatriation for all Rwandan refugees and ending ethnic discrimination in Rwanda (Central Intelligence Agency 2008c).

The trigger cause to the genocide took place on April 6, 1994, when two missiles shot down a plane which was carrying Rwanda's Hutu President Juvenal Habyarimana along with the President of Burundi, Cyprien Ntaryamana. Hutu extremists exploited this event to mobilize themselves and capitalize on three years of preparations for a massive Tutsi massacre. The civil war in Rwanda culminated on April 7, 1994. Between April and mid-July 1994 it is estimated that at least 800,000 Tutsis and moderate Hutus who were trying to protect them, were killed. The 1994 genocide was intended to exterminate the Tutsi population of Rwanda and was the eighth, though by far the biggest, large-scale massacre since 1959 (Muvumba 2004: 2).

The organisers behind the genocide were known as Hutu Power, a group that opposed any sort of reconciliation with the RPF through their connections in the military and political spheres. Apart from distributing weapons to its supporters and creating a secret communications network, Hutu Power had also used the media (particularly newspapers and radio) to create a culture of fear and hostile ethnic relations in the country. All this was done in order to prevent the establishment of a government of national unity and to pave way for a massacre of Tutsis (Muvumba 2004:3). High-ranking government and military officials participated in the organisation and helped in carrying out of genocide (Africa Renewal 2006).

Most disturbingly, the genocide was carried out in full view of the international community which failed to act to prevent it. When the genocide began on April 7, 1994, the United Nations Assistance Mission in Rwanda (UNAMIR), a peacekeeping mission, was in the country with 2,000 troops (Africa Renewal 2006). Originally, the troops were there to monitor the Arusha Peace Agreement, according to which a parliamentary system would be established under a government of national unity. The UN Security Council planned to dispatch 8000 soldiers, but due to the UN's catastrophic peacekeeping mission to Somalia in 1993, only a quarter of the planned troops were sent to Rwanda (Muvumba 2004:2). After the genocide began, ten Belgian peacekeepers died trying to protect Prime Minister Agathe Uwilingiyimana and the then UN Secretary-General

Boutros Boutros-Ghali proposed three options to the Security Council: reinforce UNAMIR, scale it down, or withdraw entirely (Africa Renewal 2006).

The Security Council voted to scale down the force by almost 90%, leaving only 270 troops in Rwanda. By mid-May a decision had been taken to increase the force and dispatch 5,500 more troops. However, it was too little too late and only a few arrived before the massacre ended in July when the RPF defeated the Hutu regime and as a result 2,000,000 Hutus fled the country fearing reprisals from the new government (Africa Renewal 2006). The situation stabilised in the late 1990s, as Rwanda's first local elections took place in 1999 and first post-genocide presidential and Parliamentary elections took place in 2003. However, many problems still remain, due to perceived Tutsi political dominance. Furthermore, Kigali's increasing centralisation, intolerance of dissent, and the threat of Hutu extremist insurgency further destabilise the situation (CIA 2008).

The genocide that took place in Rwanda in 1994 relates to the problematic connection between the rules of sovereignty and non-intervention. The rules of sovereignty and non-intervention form the basis of modern international relations and date back to the Westphalian system (Russett et al 2006: 60). Taken together, they mean that a state is free to pursue whatever policies and actions it deems necessary within its borders and other states in the international community are not allowed to interfere in its domestic affairs. However, in Africa, states often fail in their sovereignty, yet the non-intervention rule makes it difficult for other states to intervene. Possibly, the concepts of sovereignty and non-intervention need to be re-examined by the APRM and its member states. The APRM already erodes away some of the states' sovereignty by placing them under a scrutinising review. However, this is voluntary on behalf of the states, as they agree to undergo the concept of 'peer review' in the first place. Here, an examination of how the APRM deals with the problem of sovereignty is necessary to determine whether it needs to re-examine the concepts of sovereignty and non-intervention in the African context.

5.2.3. The APRM: how could it help?

The implications of ‘negative’ sovereignty in Africa continue to pose problems for the continent. Many states are unable to provide minimal standards of governance, but in spite of their failure they continue to claim that no outside party has the right to criticise or interfere (Wilton Park Roundtable 2005). Problems such as the genocide in Rwanda in 1994 remain relevant today, as demonstrated by the situation in Darfur. If the APRM is to promote ‘good governance’ in Africa, it needs to ensure the prevention of such problems and in case of their occurrence, a quick and successful resolution of the conflict before lives are lost. The APRM could not challenge the sovereignty of its member states, but it could establish and implement mechanisms necessary for the African Union to do so.

Currently, the APRM has neither the standards nor mechanisms to deal with this problem. The only standard that indirectly deals with the problem of sovereignty is as follows:

Constitutive Act of the African Union

Article 30 Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union

This standard is intended to keep the membership of the African Union closed to those states that have ‘illegitimate’ governments. This is a welcome change from the so-called ‘letterbox sovereignty’ referred to in, whereby the international community accepted those governments that opened the letters in the capital (Clapham 1996: 20). Thus, having a standard to exclude those governments who have achieved their power through unconstitutional means from the African Union would send a strong message in the change of the acceptance of the principle of sovereignty.

However, while appropriate for the condemnation of unconstitutional changes of government, this standard does not serve to prevent genocide from happening while the unconstitutional change of government takes place. In May 1994 Nigerian Nobel

Literature Laureate Wole was quoted as saying that "all notions of sovereignty with respect to Rwanda should be completely forgotten and we should just go in and stop the killing" (Federal Debt Relief System 2008). Eleven years later, the then Secretary-General of the United Nations, Kofi Annan said that "no legal principle – not even sovereignty – should ever be allowed to shield genocide, crimes against humanity and mass human suffering... but without implementation, our declarations ring hollow" (Africa Renewal 2006). That is precisely the problem at this moment – in spite of the fact that genocide continues to be a threat, there are no formal mechanisms to prevent it.

It is also important to discuss the implications of Article 4(g) *The Union shall function in accordance with the following principles: non interference by any Member State in the internal affairs of another*. This article supports the international norm of non-intervention that was discussed in 5.2.2. Although this demonstrates the intent of African states to act in accordance with the rules and norms of the international community, it does not serve to help address the problem of sovereignty in Africa. Given the fact that many states in Africa suffer from 'negative' sovereignty, such interference or even intervention is necessary in certain cases, such as Rwanda. Although rules supporting sovereignty and non-intervention are necessary, clauses should exist that allow for collective intervention in cases of 'failed' and 'murderous' states, or violent ethnic conflicts that cannot be stopped by the state.

Possibly, the ARPM should have incorporated standards from the International Commission on Intervention and State Sovereignty. The Commission was set up as an independent body to support the UN and argued for a redefinition of sovereignty to include the obligation of all governments to protect their citizens, and for the obligation of the international community to intervene, if necessary, and militarily if absolutely necessary, where this duty is violated. The main argument of the Commission was that every sovereign state should ensure equal protection of all of its citizens from harm (Berry 2004: 1). Such protection would require the exercise of 'positive' sovereignty, which was described in detail in 2.6, and which most African states lack.

Establishment of new rules with regard to sovereignty and intervention would require a fundamental reformulation of international law and would be difficult to achieve. It is also important to bear in mind that even if principles redefining sovereignty and justifying intervention would be agreed upon, such reformulation could open up doors for other states to interfere for reasons that are not primarily humanitarian. This can be exemplified by the French intervention that took place in Rwanda in July 1994. Although France emphasised the humanitarian character of the operation, it was widely contested that the intervention took place primarily due to the desire of French President Francois Mitterand to restore diminishing French credibility in Africa and prevent the RPF victory in Francophone Rwanda, which would result in the country coming under the influence of Anglophone states.

The APRM Report on Rwanda begins by making a clear link between ‘bad governance’ and the genocide that took place in Rwanda, stating how through ‘bad governance’ social differences were transformed into ethnic tensions (APRM Country Review Report of the Republic of Rwanda 2005: Art 72). Similar to the problems of corruption and neopatrimonialism, this shows the inherent link between Africa’s problems and lack of ‘good governance’ in African states. In turn, this once again reinforces the ideals behind the APRM and strengthens its ideological ground in promoting democracy and ‘good governance’.

The Report applauds the government of Rwanda for establishing a significant number of mechanisms and institutions established for preventing, reducing and managing conflict at national and regional levels. It also points out that the government should be praised for coming up with innovative laws to address the sources of conflict in Rwanda. Apart from that, through a political commitment manifested in the 2003 Constitution, the government has shown determination to fight the ideology behind genocide in all its manifestations (APRM Country Review Report of the Republic of Rwanda 2005: Art 93). In spite of that, Rwanda currently continues to face challenges of intra and interstate conflicts, which stem from ethnic, religious and other divisions in society. (APRM Country Review Report of the Republic of Rwanda 2005: Art 5).

It has also been pointed out that Rwanda faces challenges in attaining the APRM's standards of 'good governance' due to the structure of its Constitution (APRM Country Review Report of the Republic of Rwanda 2005: Art 76). Particularly, Rwanda's Constitution emphasises consensus rather than competition in order to avoid divisionism which has led to the 1994 genocide. Although on the one hand, it would help to attain national unity and inclusiveness, on the other hand it means that structures that allow for peaceful expression of dissent and different ideas are missing. The problem with that is that it could lead to groups or individuals seeking out violent means of expression.

Altogether, the APRM Review Team reported a very positive state of affairs with regard to addressing the legacy of genocide in Rwanda, in spite of the existing challenges. Yet, taking into account the fact that it has brought attention to the challenges Rwanda currently faces due to ethnic and other divisions in its society, it is surprising that its final report has only provided three vague recommendations: deepen national reconciliation efforts based on its policy of dialogue and consensus; strive to ensure that Rwanda's policy of inclusiveness wins the trust of all citizens; and, tighten regional security links, promote social relations between populations in border areas, and contribute towards finding sub regional mechanisms to curtail trafficking of small arms (APRM Country Review Report of the Republic of Rwanda 2005: Art 93).

The APRM Review Team was very thorough and specific in identifying the exact nature of problems that Rwanda currently faces. It is therefore surprising to see such vague recommendations at the end. One possible explanation for this is political sensitivity on behalf of African states towards their 'peer'. Rwanda has suffered a humanitarian tragedy fourteen years ago and continues to suffer from its aftermath. The APRM and its member states possibly considered it to be politically incorrect to criticise Rwanda given its past. However, and in spite of that, better recommendations could have been made in order to help Rwanda to ensure that the tragedy would not repeat itself. For example, having specified that a policy of consensus could lead to other problems due to the lack of institutions and mechanism that would allow a group or an individual to express other

ideas, the report stresses deepening of reconciliation based on consensus. Apart from that, having mentioned governmental efforts in creating institutions aimed at prevention of conflicts in future, no specific recommendations are given with regard to how they should be strengthened. Thus, having successfully identified Rwanda's problems, the APRM has subsequently failed to help it strive for higher levels of democracy and 'good governance'.

5.2.4. Rwanda and the APRM: an assessment

The case study of Rwanda shows two problems in the APRM process. First, it is not helping the country enough through making concrete and practical recommendations necessary to strengthen 'good governance'. The Review Team has taken the time to identify the problems but did not do enough to help with advice on how they could be addressed. In that sense, the report is actually contradictory, which is illustrated by the example of consensus in Rwanda. The Report criticises the policy of consensus, as it does not allow for the free expression of competitive views, which could potentially lead to problems. However, the Report then states that the policy of consensus should be deepened, instead of recommending measures through which competitive views could be voiced and incorporated. Perhaps the final part of the report was rushed in order to meet a deadline, which would explain the vagueness and inadequacy of recommendations. That shows that enough time needs to be allocated for the writing of the report, as although it is necessary to identify the problems of a state, it is equally important to take the time to come up with solutions for solving them and strengthening existing achievements, as after all that is the main goal of the APRM.

Second, the APRM does not have adequate standards to deal with the problem of sovereignty that is present in Africa. Although the APRM lacks the necessary resources to deal with this problem, the AU does not. Thus, the APRM should work in conjunction with the AU to solve this problem. The APRM's standards could be enforced by the peacekeepers of the AU, which would make them much stronger. There are many countries in Africa where the potential for ethnic conflict and genocide is high. Through

continental action by the APRM and the AU this could be addressed, as a state signing up to the APRM progress would also voluntarily acknowledge the right of the AU to intervene in the case of such a conflict. This would serve to make both the APRM and the AU stronger and allow them to play a more efficient role in managing conflict in Africa.

The APRM's difficulty of dealing with the problem of sovereignty is not exclusive. Although the UN has a Security Council which is able to collectively exercise force in order to stop an ongoing conflict, as pointed out in the case study of Rwanda, often too late and too little is done in order to address the crisis. As mentioned earlier in 5.2.2, the problem of sovereignty is interconnected with its consequential rule of non-intervention. It is important to bear in mind that the rule of non-intervention is a basic norm of international law, which affects both order and justice and is considered to be one of the important norms which international relations are based upon (Nye 2003: 153).

Earlier a suggestion was made that perhaps the APRM and its member states need to re-examine the concepts of sovereignty and non-intervention in an African context. Ethnic conflicts and state failure occur frequently on the continent. The APRM should consider working in conjunction with the AU's Peace and Security Council (PSC) and utilising the proposed African Standby Force in order to deal with violent conflict in Africa. This could be particularly useful at present, as war rages on in the eastern DRC (which is an APRM member). The PSC's establishing protocol, article 3(b) states that its aim is to anticipate and prevent conflicts. In circumstances where conflicts have occurred, the PSC shall have the responsibility to undertake peace-making and peace-building functions for the resolution of these conflicts (Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2002). Cooperation between the APRM and the PSC would be beneficial, as the former could aid the latter by acting as an early warning tool and through utilising peer pressure of its members to force action when a conflict takes place. However, Cilliers and Malan (2005: 16) point out that the PSC itself needs strengthening, as although the necessary protocols and frameworks are in place, the operational capacity remains very limited. Thus, the APRM, PSC and the ASF all need to

be strengthened in order to be able to provide an adequate response in case of a conflict, where the questions of sovereignty and non-intervention are involved.

African leaders may genuinely value and respect sovereignty and non-intervention, as it often helps African states to deal with the colonial legacy, as well as various cultural and ethnic differences. However, there are cases of African leaders using the rules of sovereignty and non-intervention as a shield to protect themselves from criticism due to severe human rights abuses and non-democratic practices – most notable examples of which would be Zimbabwe and Sudan in the recent years. Humanitarian interventions are always difficult since they require moral judgements, as well as the necessary resources, personnel and finances to be carried out. Cooperation on behalf of the APRM's members would be crucial here as African leaders could make the necessary moral decisions and who would then commit to financing the peacekeeping operation through the PSC and the ASF.

5.3. Democracy

5.3.1. Case study: Kenya

As stated previously in 2.7, the term 'democracy' poses a significant challenge, as although the term is used as though it has a universal meaning, there is no agreed definition or framework through which it could be measured. Section 4.3.2.1 has identified the lack of a precise definition and/or checklists when it comes to democracy as one of the main weaknesses of the standards of the APRM framework document. The case study chosen for the democracy section of this chapter is Kenya, due to the problems the country has suffered as a result of disputed elections in December 2007. Being one of the first African states to undergo 'peer review', it is necessary to examine and analyse its situation and the reasons why the APRM's review and subsequent recommendations did not help to prevent its recent crisis, instigated by the contestation of the 2007 election results.

5.3.2. Democracy in Kenya: a brief background

Kenya is an East African state which gained independence from Great Britain in 1963. Echoing the point raised in 1.2, which stated that “the basis of the post-colonial state in Africa is the colonial state” (Herbst 2000: 29), Ong’ayo (2008) argues that when Kenya gained independence it inherited non-democratic institutions and cultures, which fell into the hands of corrupted politicians. The result was corruption and political repression that promoted inequality in the Kenyan state. The inequality was grounded in ethnic privileging – a problem that has significantly undermined democratisation in many African states (Agbese & Kieh, 2007: 291).

Between 1969 and 1982 Kenya was a *de facto* one-party state as the Kenya African National Union (KANU) made itself the only party. In 1982 the constitution was amended, outlawing the existence of all political parties with the exception of the ruling KANU. Cancellation of the amendment in 1991 was seen as a part of the African third wave of democracy and gave hope to both Kenyans and the outside world that a time of change has come. According to its current constitution, the President is elected for a five-year term and is eligible for a second term (Central Intelligence Agency 2008b).

Like many of its fellow African counterparts Kenya is a multi-ethnic state with over 40 different ethnic groups. This has significant implications for its politics, particularly because of the emergence of elite interests representing different ethnic groups. Nangulu-Ayuku (2007: 129-130) points out that ethnic relations in Kenya are conducted within the context of the state and its superimposing structure. Before colonialism, Kenya’s ethnic groups had little interaction with each other. This was transformed through colonialism, which formalised the relations between different ethnic groups and paved a way for the Kenyan state as a single political entity under which different groups compete for power. The Kikuyu were able to benefit most from ethnic politics, particularly during the period when Kenya was a one-party state. President Kenyatta and his clients were from the Kikuyu tribe, which alienated other ethnic groups from political and economic power (Ong’ayo 2008).

Political change arrived in Kenya in 2002 when the Rainbow Coalition defeated the seemingly invincible KANU, which had ruled Kenya since independence. Although new President Mwai Kibaki had previously been associated with KANU, he called himself a born-again democrat and promised to reconstitute the state through promoting multiparty democracy, ethnic pluralism, respect for human rights and fighting against corruption (Nangulu-Ayuku 2007: 164-165). Although the initial promises were immense, soon the citizens of Kenya started to become disillusioned with their new President and Kibaki's government started losing public support.

Kenya's problems are numerous and have emerged partially because of the stagnated political system as a result of KANU being in power for 39 years. One of the main problems is corruption. According to Transparency International, Kenya is one of the most corrupt countries in the world (Transparency International 2007, see also table 2). Soon after taking office, President Kibaki established the Anti-Corruption Commission (ACC) which was entrusted with investigating and redesigning some of the most corrupt state institutions – particularly the judiciary. However, according to common perceptions and the Transparency International's index, the ACC has failed in its task and the rampant corruption in Kenya continues to take place. Some argue that in spite of all the promises made by Kibaki, he did not demonstrate a serious commitment to fight the problem (Nangulu-Ayuku 2007: 165).

Another evident problem is neopatrimonialism. Throughout the years, the civil service and administration was filled with those who were loyal to the party or who had personal ties with the President. The result was a creation of personal networks packed with people who saw their duties as a personal service to the President. Principles that are necessary for a bureaucracy to function in a fair and impartial way were disregarded, paving the way for corruption in the country (Nangulu-Ayuku 2007:165-166).

Finally, there is the problem of sovereignty. In Kenya this problem materialised through the erosion of its autonomy by the international community. The reason for that was governmental inefficiency and corruption – problems with both partially arose out of

KANU's extended rule and neopatrimonialism which accompanied it. Kenya was inefficient with the funds received from international donors due to two reasons: it failed to act as an agent that sets a direction for socio-economic development and much of the funds were misused for personal gain by the bureaucrats (Nangulu-Ayuku 2007:135-136).

Therefore, the Kenyan state was plagued by a number of significant problems. Ong'ayo (2008) points out that modern day Kenya is characterised by ethnic struggle for power, fears of ethnic domination, neopatrimonial ethnic political elites, and undemocratic processes and institutions. In order to eradicate these problems and improve its 'democracy' and 'governance' levels, Kenya chose to become a signatory to the APRM process and was the second state to be reviewed in the process. As the report and key finding of the review in Kenya were being disseminated, the country found itself in a major crisis because of a disputed Presidential election. This section examines Kenya as a case study in order to answer the following questions: Was the potential for a conflict discovered by the APRM in its review process? What mechanisms do the APRM standards offer to resolve the conflict? And finally, what implications does it have for the APRM as a standard for 'good governance'?

5.3.3. Disputed elections: democratic implications

On December 27, 2007, Kenyan voters went to the polls in order to elect both the President and the Parliament of the Republic. The two main candidates for the post of the Head of State and Government were the current President Mwai Kibaki, running for a second term, and the opposition's Raila Odinga, leader of the country's Orange Democratic Movement (ODM). Initially, the International Republican Institute praised Kenya for the peaceful manner of the Election Day. However, Election Day is only the first part of an electoral process. In order for elections to be considered democratic, the winners and losers, as well as their supporters have to gracefully accept the outcome (Baxter 2008). Three days later, the electoral commission announced the results: Odinga's ODM won the parliamentary election and gained the most seats in the

Parliament, but he had lost the Presidential election to Kibaki by 2% (230,000 votes). The opposition immediately disputed the result of the Presidential election and the country descended into political turmoil (Financial Times 2008). The outcome of the election brought about the emergence of ethnic violence between the two political camps. “Mobs armed with machetes and clubs roamed the streets, hacking and beating those who held opposing political views, and pillaging the areas they destroyed” (Baxter 2008).

It is important to note that this was not the first time that elections were disputed in Kenya. On two previous occasions, in 1992 and 1997, elections were characterised by violence and claims of fraud from the ethnically fractured opposition (CIA 2008). This shows that Kenya had already had a history of ethnic clashes and conflict during election time and that there was a precedent of potentially tainted elections. Ong’ayo (2008) claims that election fraud is made possible because of Kenya’s electoral system. Politicians have manipulated the country’s constituency system in order to achieve desirable outcomes. Kenya’s constituencies are represented by a member of Parliament and a number of local authority officials. The electoral commission determines the boundaries of these constituencies. However, the decision is taken without consulting the local communities. Furthermore, the President appoints the electoral commission without approval of Parliament and is able to give it the task of changing the boundaries of the constituencies.

Post-election violence took place in Kenya because the opposition leader Raila Odinga claimed that the election was rigged in favour of the ruling President. Early polls showed that Odinga was winning, but at the end, Kibaki was declared winner by 230,000 votes. Adding to the suspicion was the fact that Odinga’s party won the Parliamentary elections that were taking place at the same time. International observers also questioned the election results, claiming that both sides committed fraud - “...there was rigging... there were problems with the vote counting process...both parties could have rigged” (Baxter 2008). Consequently, Odinga refused to accept the outcome of the election and accused Kibaki of rigging the election in his favour. In turn, Kibaki claimed that the election was fair and accused the opposition of stirring up violence instead of disputing the result in a

constitutional manner (Bryson-Hull 2008). The country is in turmoil and the two leaders are not able to come to a consensus. Since Kibaki won the Presidential election but Odinga's party won 95 parliament seats and Kibaki's party only won 43, the country is going to remain stifled politically even if the violence is resolved (Baxter 2008).

In order to address the political problems a Constitutional change was proposed. The two sides could not agree on the form of change either. The opposition, headed by Odinga wanted a new chapter in the Constitution, according to which power will be shared and a new election will be held within two years. The government, headed by Kibaki opposed this and instead proposed constitutional and applicable changes that would only be applicable to the next election – scheduled to take place in 2012 (Bryson-Hull 2008). However, after extended negotiations, and with the assistance of mediation, a power-sharing agreement was signed according to which Kibaki would become President and Odinga Prime Minister – a post that currently does not exist under the Kenyan Constitution. Although this did put an end to violence in Kenya, much work needs to be done in order to avoid its recurrence (British Broadcasting Corporation 2008a).

5.3.4. The APRM: how could it help?

The two sides were at a deadlock in Kenya and a solution was needed to resolve the political crisis. The APRM sets itself out to improve and resolve the problems in Africa that are related to democracy. Therefore, based on the applicable standards identified in chapter four, an analysis is necessary of what the APRM could practically offer to Kenya in order to resolve its political impasse.

The following standards are applicable to the situation in Kenya:

Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU
Paragraph 11

- a) *The Executive, Legislative and Judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability*
- d) *There shall be no hindrance to the promotion of political pluralism*

Paragraph 11(a) refers the government back to their national Constitutions, stating that the Constitution should be the same for all governmental organs. The subsequent section (b) states that political pluralism should not be hindered. Currently, Kenya is suffering precisely because the Constitution was not adhered to and because political pluralism is being obstructed. Kenya's Constitution (2001: par 42(a)) is concerned with the conduct of elections. It specifically states that the electoral commission is responsible for the registration of voters and the maintenance and revision of the register of voters as well as for promoting free and fair elections.

According to the reports, the electoral commission has not lived up to the guidelines set out in the Constitution and failed. However, the Constitution of Kenya does not specify what measures are to be taken should the electoral commission not live up to the standards set in the Constitution. Thus, the national Constitution referred to by the APRM fails to solve the problem. In order to resolve this problem, the APRM should have a universal guideline that could be used should the national Constitution prove inadequate, such as in the case of Kenya. Apart from that, Kenya's Constitution (2001: par 2) states that the Republic of Kenya shall be a multiparty democratic state, and a hindrance to the promotion of political pluralism was taking place, which is warned against by the APRM. The problem here is that although the Constitution promotes political pluralism, it is not respected in practice. Thus, once again the APRM should provide measures that could be taken if unconstitutional practices take place. This brings one to one of the most inherent weaknesses of its 'peer review' mechanism – it is voluntary and 'toothless', meaning that it is not enforced by any supranational bodies and no sanctions could be taken against the state that fails to act on its problems.

The NEPAD Framework Document (2001)

Paragraph 79.

It is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the New Partnership for Africa's Development, Africa undertakes to respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely.

The above paragraph is important with regard to its spirit and what it intends to promote and subsequently achieve in Africa. If both President Kibaki and opposition leader Odinga acted in the spirit of democracy, good governance, 'human rights' and peace, Kenya would not have been in a political crisis right now. However, the spirit of democracy and 'good governance' is not something that could be easily enforced. The APRM is considered to be a mutual learning process – thus it intends to promote such spirit until it takes root in African states, which will help others to adopt the same attitude. The crisis in Kenya highlights how far this attitude is from settling in Africa – especially if one takes into consideration that Kenya was considered to be a positive example after its peaceful transition of power in the 2002 elections. In this light, the creators of the APRM must realise how difficult their job is, given the APRM's current voluntary status and possibly make adjustments to the mechanism in order to make it stronger.

African Charter on Human and Peoples' Rights (1981), OAU

Article 3

- 1. Every individual shall be equal before the law*
- 2. Every individual shall be entitled to equal protection of the law*

The above paragraph provides very direct rules when it comes to human rights. Because of this, it is evident that the state in Kenya has failed to act in accordance with them. Firstly, if the government respected the rights of every individual according to citizenship

and not ethnicity, ethnic violence would not have taken place after the elections. When a lot is at stake, the losing party is much more likely to turn to violence to dispute a lost election. It is also important to clarify that ethnicity was not the reason for the post-election violence in Kenya. The root of the problem lies much deeper and is primarily socio-economic. The violence in Kenya erupted because not all ethnic groups were enjoying the same privileges and therefore some felt that they did not have an equal status in the country. This is exacerbated by the systematic exclusion of some groups from national political leadership (Ong'ayo 2008). A combination of political and socio-economic marginalisation led to post-election violence because as Leftwich (2000: 140) points out, it is unlikely that a political party (or an ethnic group) would accept its defeat according to the rules of the electoral politics if the defeat means losing too much. If too much is at stake, a potential for violence is created, and politics should not be radicalised in this manner. Thus, violence broke not because of ethnic differences but rather because of socio-economic differences that were rooted in the state's unequal treatment of different ethnic groups.

5.3.5. Kenya and the APRM: an assessment

One of the most discouraging things about the Kenyan situation is that the state was one of the first to undergo the 'peer review'. In spite of the fact that the APRM's final report acknowledged problems of ethnic divisions and political manipulation, overall it referred to Kenya as a "bastion of stability" (APRM Country Review Report of the Republic of Kenya 2006: 14). The report did mention inequalities that existed based on ethnic divisions and even went as far as making recommendations to the government of Kenya to create a conflict resolution mechanism that would defuse ethnic tensions as well as a framework for the management of diversity of the Kenyan society (APRM Country Review Report of the Republic of Kenya 2006: 42). However, the existing potential for electoral fraud through the system of constituencies was not mentioned in the report. If one looks at election fraud and ethnic tensions as a result of socio-economic inequality as the two factors that have led Kenya to a political crisis, the APRM should be both praised

for bringing significant attention to the problem of ethnic divisions, and criticised for failing to mention electoral problems, in spite of their existence in 1992 and 1997.

Here, the important point is the fact that the government of Kenya has failed to act on the recommendations of the APRM with regard to implementation of a mechanism for conflict resolution and a framework for management of ethnic divisions. The final report was published in May of 2006, meaning that the Kenyan government had more than a year and a half to act on the recommendations. This once again highlights the inherent weakness of the APRM – its incapability of enforcing its recommendations. This is especially problematic if the political will is lacking on behalf of the government under review. Herbert and Grudz (2008: 106) say that many governments argue that they have shown themselves to be fully committed to the APRM by simply signing up to the process. This is one of the dangers of the process pointed out in 3.9.2, regards the APRM's inability to act beyond providing recommendations due to the voluntary nature of the process.

The way that the process is structured at the moment is that Kenya's government has to report back every six months with regard to progress on its Plan of Action and another review of Kenya would be taken in about four to five years. As it is evident from the case study of Kenya, a stronger stance on implementation of recommendations is needed in order to avoid potential problems. The strongest tool that is available to the APRM is its concept of 'peer review'. Fellow APRM members need to exercise more diplomatic pressure and persuasion in order to convince the government of a state under review to implement the APRM's recommendation. The problems of voluntarism and sovereignty once again become evident here. States voluntarily choose to accede to 'peer review' and no other state or organisation is able to force them to act on a certain issue or matter. African leaders must thus utilise their diplomatic skills in order to convince their counterparts about the necessity of implementing certain recommendations.

Kenya's precedent has many important lessons that the APRM should analyse and ensure that such a situation would not be repeated in the future. The APRM, after all is focused

on mutual learning. Lessons on conflict prevention, mediation and conflict resolution must be derived and a framework designed that would deal with conflict prevention and resolution that could be applied in the future. Although the APRM is not designed with the intention of acting as a tool for conflict prevention and/or peacekeeping, nevertheless it is a role that it could take on. After all, the APRM did provide an indication of a possible conflict in Kenya and could be strengthened and subsequently utilised for such purposes. It is therefore, at the very least, a form of early warning. Apart from that, a similar recommendation could be made as with regard to the APRM's assessment of Rwanda, that is the possible incorporation of the ASF into the mechanism.

Although the focus in the case study of Kenya was on the problem of democracy, or the inability of a state to act in accordance with democratic processes, in the end it has led to the problem of sovereignty, whereby violent conflict erupted and little apart from mediation was done by external actors. While the current role of the APRM does not envisage such functions, their inclusion would strengthen the mechanism in its goal of promoting and establishing 'good governance' in Africa.

It is also important to discuss the fact that the APRM's standards are insufficient for dealing with a conflict of this kind. Firstly, as mentioned earlier, they refer the governments back to their constitutions, but what if, as in the case of Kenya, the national constitution is inadequate? Secondly, although the spirit of the APRM when it comes to democracy and 'good governance' is worthy of praise, something stronger is needed when it comes to its enforcement. Both of these problems could be eradicated through the establishment of universally applicable standards that would set a criterion for dealing with problems of democracy. Thirdly, a mechanism must be established that would observe the difference between constitutional theory and practice in a state. It is possible to have a democratic constitution that states respect for human rights, but which would be a sham in practice, whereby people are treated differently according to their ethnicity and where the concept of citizenship exists in theory but not in practice. Such a mechanism could take the form of a questionnaire given to civil society, which could then be compared to the national constitution. Fourthly, more effort should be made to

encourage governments of states under review to implement the APRM's recommendations.

As mentioned earlier, the APRM's 'peer pressure' tool should be utilised more in order to achieve the goal of 'good governance'. Thus, the APRM creators should derive an important lesson from the post-election crisis in Kenya and possibly re-think the mechanism with the intention of making it stronger and more effective. Specifically, more attention needs to be given to the implementation of the Plan of Action (POA), created by the government after the review. According to procedure governments are required to report on its implementation to the APRM Forum of Heads of State every six months. Herbert and Gruzd (2008: 96-97) claim that the reporting amounted to being more about intention rather than the actual implementation. They go on to suggest that the process would be more effective if the POA was designed from the start to be more closely integrated with the already existing budget and monitoring, before stating that "the POAs have not measured up well to the declared APRM guidelines".

It is evident that the APRM and its standards are currently too weak for dealing with a conflict such as the one that occurred in Kenya. They refer the governments back to their constitutions, but what if, as in the case of Kenya, the national constitution is inadequate? Although the spirit of the APRM when it comes to democracy and 'good governance' is worthy of praise, something stronger is needed when it comes to its enforcement. A mechanism must be established that would observe the difference between constitutional theory and practice in a state. It is possible to have a democratic constitution that states respect for human rights, but which would be a sham in practice, whereby people are treated differently according to their ethnicity and where the concept of citizenship exists in theory but not in practice. It is also important to give more attention to the POAs and their implementation.

5.4. Corruption

5.4.1. Case study: South Africa

The term ‘corruption’ is covered extensively in the APRM standards. Corruption is clearly defined and a list of criminal activities and practices that constitute corruption is provided. However, the problem is that it is by nature clandestine and therefore could be difficult to determine or measure. People might be afraid to speak of it either because they had to give a bribe to gain something which was not attainable by any other means or because they would be afraid of repercussions that would follow from corrupt officials. The APRM thus intends to create a culture that does not accept any form of corruption. Thus, the case study will examine the extent to which such an approach succeeds in South Africa. Corruption in South Africa is discussed taking into account the arms deal corruption allegations about Jacob Zuma, the case of Jackie Selebi and the disbanding of Scorpions special unit. Specifically an analysis will be made of the extent to which the APRM could aid South Africa in the creation of the above-mentioned anti-corruption culture in the state.

5.4.2. Corruption in South Africa: a brief background

Although South Africa is often considered to be a model state amongst its African counterparts, corruption remains to be a serious problem that the country is facing. One of the problems is the existence of a dominant party – the African National Congress (ANC) which has won every election since apartheid ended in 1994. The ANC has become synonymous with the government and accusations of corruption are mounting on its members. Maloka (2007:234) points out that the majority of the governments of the post-colonial states have made their fundamental principle to create privileges for the governing elite, who are also members of the ruling party. Thus, there is a perception of the accumulation of private wealth by those who preside over the state, which has been recently increasing in South Africa. “The media in democratic South Africa publish

almost daily new instances of the abuse of entrusted power for private benefit” (Faull 2007:1).

South Africa is a unique example of a dominant party system, since it has a constitutional and legal framework for a multi-party system. It has a significant number of parties that compete in elections but they only get a small proportion of the votes as compared to the ANC. Thus, although these parties do get representation in Parliament, and opposition does exist in the state, overall it is insignificant in numbers and is thus not able to truly challenge the ruling party on policy issues. Because of the lack of a strong opposition, there are increasing fears that the ANC is becoming unaccountable in its use of the state machinery as other parties are not able to challenge it. Because of this, South Africa can be classified as a multi-party state which has increasing elements of a one-party state, taking into account the significant presence of the ANC in every sphere of political life in the country (Maloka 2007:249-250). Regarding what the concept corruption means, as mentioned in 2.8, it refers to “a combination of positions of public office with positions of accumulation” (Bayart et al 1999:8). Corruption refers to irregularities that range from personal favours when making a decision to purposeful maladministration done in order to enrich oneself or a third party that could have dangerous consequences on the well-being of a nation. Broadly speaking, corruption is described as a range of conduct on behalf of public servants that is considered to be dishonourable and harmful to the interests of a state (Maloka 2007:255-256; see also 2.8.). Faull (2007:1), states that corruption in South Africa affects public services, such as housing, education and policing.

Since 2005, three events have occurred in South Africa which made the public question their government’s stance on corruption and the negative implications of the unchallenged power of the ANC. The first event refers to the corruption trial (which started in March 2005) of Shabir Shaik, who was a personal financial advisor to the then deputy President Jacob Zuma. Because of the link between the two, Zuma was dismissed from his post, but nevertheless came back in a capacity as the elected President of the ANC – a position which would allow him to become the President of South Africa should

the ANC win the general elections in 2009. This creates an uncomfortable political situation due to the potential future President's implications in corruption. According to Moloi of the Institute for Security Studies (quoted in Nduru 2006), "this perception (of Zuma's implications in corruption) is likely to remain there for a very long time". Although Zuma was removed from his post as deputy President as soon as allegations of corruption surfaced against him, he was subsequently re-elected to the post of the President of the ANC, and due to South Africa's dominant party system is now the most likely candidate to become the country's next President. Election of a President who is perceived to have been involved in corruption is not going to send out a strong message about the promotion of 'good governance'.

The second event took place in January 2008 when accusations and subsequent charges of corruption and defeating the ends of justice were made against National Police Commissioner Jackie Selebi. Specifically, the charges related to Selebi's relationship with Glenn Agliotti, who is accused of murder. Allegedly, Selebi turned a blind eye to Agliotti's involvement in a drug transportation case and has subsequently received a large bribe from him (Mail & Guardian, January 11, 2008). The worrying aspect of this case is Selebi's position. The fact that the top police officer in the country is facing serious charges of corruption has implications with regard to the integrity of the entire police force. However, the efforts of South Africa's National Prosecuting Authority (NPA) in charging the National Police Commissioner of the state demonstrate the correct application of the rule of law. In many African states, public figures are rarely charged with corruption or any other crimes. In the case of Selebi, South Africa has demonstrated an adherence to the rule of law and principles of democracy and 'good governance'. It is important to point out that the Selebi case was made possible due to the existence of different branches of power within the South African policing services – the police and Scorpions, which is a special investigative unit. The Scorpions were able to investigate Selebi and gather enough evidence for the NPA to charge him – something that the police would not have done. The South African police seem heavily affected by corruption. Faull (2007: 5) cites a study conducted by the Centre for the Study of Violence and Reconciliation, during which a 21 police station survey was conducted in 2004 in

Johannesburg. 92% of the respondents (who are police officers) agreed that corruption is a serious challenge facing the South African Police Service (SAPS) and 68, 6 % believed that most members would not report colleagues that were involved in corruption.

The third event (which also took place in January 2008) had thrown the future of the existence of different branches of policing services in South Africa into doubt, as an announcement was made regarding the ANC's intention of disbanding the Scorpions. The ANC stated that Scorpions are to be integrated into SAPS. The ANC intended to accomplish this by June 2008, by passing the necessary legislation through the Parliament, although this was not accomplished by the set deadline. The Scorpions unit was considered to be the most effective anti-corruption agency in South Africa, due to its prominence in charging Zuma and Selebi with corruption. Cape Town Mayor Helen Zille, who is also the leader of the opposition party Democratic Alliance (DA), claimed that this is a move on behalf of the ANC to protect its members. According to Zille, at least two of the members on the ANC's National Executive Committee (NEC) - Ngoako Ramathlodi Thaba Mufamadi - are currently being investigated by Scorpions. Zille's conclusion is that the government is getting rid of the Scorpions to protect prominent ANC members from corruption charges (Hamlyn 2008).

The ANC refers to South Africa's Constitution, according to which "the security services of the Republic consist of a single defense force, a single police service" (Constitution of the Republic of South Africa: section 199 (1)), as an argument to disband the Scorpions. Thus, the ANC intends for the Scorpions to be incorporated into the police force in accordance with the Constitution, in order to implement a single police force. However, the same section 199(1) also explicitly states that the security services of the Republic also consist of "any intelligence services established in terms of the Constitution". Because of their functions, the Scorpions should be seen as intelligence services and thus do not have to be incorporated into the police force. Nevertheless, in spite of protests from the public, the National Assembly of South Africa voted to disband the Scorpions and incorporate them into SAPS on October 23, 2008 (Bearak 2008). It must be noted

that the Bill on disbanding of Scorpions still needs to be approved by South African Parliament's second chamber – the National Council of Provinces (NCOP).

From these three events it is evident that South Africa is currently facing corruption problems. Although the extent of the problem is not drastic, since high-ranking officials are facing corruption charges, the situation may change for the worse if the Scorpions unit is disbanded. The Scorpions were the state's most important anti-corruption measure. The success of any anti-corruption strategy should be coupled with 'good governance' (Maloka 2007:256). This principle works the other way around too and disbanding the Scorpions would have negative implications for 'good governance' in South Africa, especially if one takes into account the questionable circumstances under which the ANC has carried this out. Corruption undermines democracy (and subsequently 'good governance') (Faull 2007:1) and efforts to combat it should be intensified, not diminished. It is also important to point out that timing for disbanding of the Scorpions could not be worse as it took place soon after corruption allegations were made against Zuma and Selebi, top ranking public officials who were both investigated by the Scorpions. Disbanding the unit brings into question the integrity of the South African government, since according to Zille's accusations stated earlier; the unit was investigating some of its members.

5.4.3. The APRM: how could it help?

South Africa was generally given a positive report by the APRM team. It was noted that perceptions of corruption were worse than it is in reality (APRM Country Review Report of the Republic of South Africa 2006: par 234). However, it was also noted that a number of problems do exist in the South African society with regard to corruption, specifically the absence of legislation disclosing sources of private funding for political parties, (APRM Country Review Report of the Republic of South Africa 2006: par 240). The following standards are applicable to the South African situation:

The African Union Convention on Preventing and Combating Corruption

Section 2(5). *Establish the necessary conditions to foster transparency and accountability in the management of public affairs.*

This objective is necessary to establish the necessary political conditions in South Africa. However, it is not precise enough to encourage the South African government to do something specific. Thus, it is more of a goal towards which the South African government must strive through legislative measures recommended in the Convention.

The recommendations listed below provide practical ways in which anti-corruption strategies could be strengthened in South Africa.

Section 5(3). *Establish, maintain and strengthen independent national anticorruption authorities or agencies*

Currently, the South African government is not only failing to implement the above recommendation, but is actually going against it. Although the South African government has established a number of anti-corruption strategies, particularly the adoption of a Public Service Anticorruption Strategy, as well as the establishment of an Independent Constitutional Office of the Director of Public Prosecutions, Scorpions, and the National Anti-Corruption Forum (APRM Country Review Report of the Republic of South Africa 2006: par 234,235,237). However, the South African government decided to disband the Scorpions, which the opposition claims was the last effective anti-corruption agency in the country (Mail and Guardian, February 5, 2008). Therefore, anti-corruption measures in the country are weakened currently weakened, and one could argue that a wrong message was sent out both internally and externally. Anti-corruption culture is strongly linked to 'good governance', and a decline in the former is going to lead to a decrease in the latter.

5. *Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities*

6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals

7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences

One of the points made by the APRM team compiling the report was that “whistleblowers are not adequately protected, particularly from physical harm” (APRM Country Review Report of the Republic of South Africa 2006: par 238). The measures proposed by the Convention thus need to be incorporated in South Africa. These measures will help to establish a corruption-free culture, whereby citizens are not afraid to report cases of corruption for fear of retaliation or revenge on behalf of corrupt officials. The public has a very important role to play when it comes to combating corruption, as it can bring attention to cases that would otherwise not be known. Thus, necessary steps must be taken for the citizens to feel that they will be safe even if they report cases of corruption on behalf of public officials.

8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, an awareness in the fight against corruption and related offences, including school educational programmes and sensitization of the media, and the promotion of an enabling environment for the respect of ethics

These are arguably the most difficult legislative measures to adopt as they refer to the general establishment of an anti-corruption culture in a state. The APRM’s shortcoming in this regard is a failure to state specific measures which should be taken. Although the South African media does inform the public of the extent of corruption that exists (APRM Country Review Report of the Republic of South Africa 2006: par 239), particularly at the Department of Home Affairs, many citizens continue giving bribes to public officials. Inefficiency of public officials is also to blame here, as giving a bribe can be a simpler way of achieving the desired outcome for the citizens. Thus, once again this shows the link between corruption and ‘good governance’. The two are inextricably linked and a decrease in one would cause an increase in the other. Altogether, the South

African media is serving an important role in exposing the amount of corruption present in the public sphere. However, this indicates the extent of the corruption in the country, which must be addressed through appropriate mechanisms.

Section 7

Fight Against Corruption and Related Offences in the Public Service

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service

The APRM Review team highlighted the fact that there is a lack of restrictions on public service officials who move immediately to the private sector. Although it was not noted as a severe problem, nevertheless the issue remains. Combination of private and public roles or movement between the two could create possibilities for illicit enrichment through the exploitation of public resources.

5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the persecution of such officials

Clearly this does not represent a problem in the South African state the ANC President and the National Police Commissioner both faced charges of corruption. There are, however, fears that the government is not doing enough to combat corruption (APRM Country Review Report of the Republic of South Africa 2006: par 241), as 63% of those surveyed in Gauteng agreed with the statement “there is lots of corruption in the Departments” (sic) and 44% said that “bad performance of civil servants is not corrected”. Thus, although public officials are being prosecuted for committing acts of corruption, there is a common opinion that not enough is being done in order to eradicate the problem.

Section 10

Funding of Political Parties

- a) *Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties*
- b) *Incorporate the principle of transparency into funding of political parties*

The APRM Team has discovered that in the South African public's mind, one of the most important issues with regard to corruption is the lack of legislation that would require the disclosure of private sources of funding for political parties (APRM Country Review Report of the Republic of South Africa 2006: par 240). Thus, the South African government must implement the rules with regard to the funding of political parties into its legislation, in accordance with the Convention. Financing of parties could force the elected Members of Parliament (MPs) to subsequently follow the policies of the private individual(s) who have given them the money needed for the electoral campaign as a result of which their party gained seats in the legislature. The current South African legal stipulations are insufficient to deal with the problem, private funding of political parties is not regulated and public disclosure of party income and expenditure is not mandatory (Fick 1997).

5.4.4. South Africa and the APRM: an assessment

Overall it is evident that South Africa already successfully incorporates a number of the standards proposed by the APRM. Cases of corruption charges against Zuma and Selebi demonstrate that the 'rule of law' exists in the country and that no immunity protects them against being investigated for charges of corruption. Cases of prosecution against top public officials demonstrate that South Africa is on the path towards 'good governance', as it is successful when it comes to implementing the rule of law within the state. Corruption has always been a problem in Africa and the fact that South African demonstrates a strong stance on it is a positive factor for the APRM. Effectively it creates a standard that South Africa's APRM 'peers' need to learn from and strive towards. One could express hope that through the process of mutual learning other APRM member states would take the necessary measures to establish the rule of law in a similar way to South Africa.

However, one must also bear in mind the fact that the ANC-led government decided to disband what was considered by many to be the most successful anti-corruption agency in the country – the Scorpions. As pointed out in 5.4.3, the Scorpions unit was responsible for investigating Zuma and Selebi, as well as gathering the necessary evidence which has led to charges being laid against them. Disbanding the Scorpions could thus negate all the positive advances made by the South African government so far in fighting corruption and establishing an anti-corruption culture within the state. If the allegations made by opposition's Zille are true and that the reason for the ANC's intent to disband the Scorpions is the unit's investigation of its members then 'good governance' in South Africa is not in such a positive state as suggested in the above paragraph. Regardless of the ANC's reasons to disband the Scorpions, the decision does not serve to promote 'good governance' in South Africa. As mentioned earlier, the existence of the Scorpions unit provided for a separation of power in South Africa's policing services, which allowed for investigation of one by another. Such separation is democratic in its nature, as it allows for a system of checks and balances to be established. Incorporation of the Scorpions into SAPS for the purposes of establishing a single police service would make it much less likely, if not impossible, for investigation of top police officials. Whether the new police force would be able to investigate politicians in the same manner that the Scorpions did also remains to be seen.

Initially, critics expressed fears that the establishment of the APRM would erode African sovereignty. However, these fears have not materialised. Through the proposed disbanding of the Scorpions, the South African government is going against the recommendations made by the APRM team to further strengthen its anti-corruption efforts. Thus, similarly to the example of Kenya, a case could be made for the strengthening of the APRM, particularly by emphasising the concept of 'peer pressure'. The APRM is not able to do much if the government under review is unwilling to implement its recommendations. Although 'peer pressure' could help, it is unclear whether of a state such as South Africa, which in many aspects is a continental hegemon and was one of the creators behind the APRM itself. In that sense, the APRM's voluntarism is both its strong and a weak point, since although it helps to create dialogue

amongst African leaders with regard to their state's problems, it confines them to making recommendations which could not be enforced. The official APRM guidelines state that "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 the process technical and other appropriate assistance" (APRM Secretariat 2003: par 23). This is something that needs to be done more often, particularly in the stage five of the process.

However, it is important to point out that in order for the APRM's member states to achieve the desired levels of 'good governance', the APRM recommendations must be adhered to. As pointed out earlier, South Africa is successful in some aspects with regard to fighting corruption, but it must continue with its efforts. Thus, the South African government should have implemented the APRM's recommendations with regard to strengthening anti-corruption institutions, instead of going against them and deciding to disband the Scorpions. After having the recommendation turned down, the APRM is currently only able to comment on the disbanding of Scorpions and the negative consequences it would have on the fight against corruption in South Africa, since it has no authority to force its member states to comply with its suggestions. In that sense, the APRM is only as strong as its members want it to be, which at this point is confined to doing reviews and making recommendations, but not having the capacity to enforce the latter.

5.5. Neopatrimonialism

5.5.1. Case study: Ghana

As stated in 2.10, neopatrimonialism is arguably the biggest obstacle to the implementation of 'good governance' in Africa. However, the APRM does not have any specific standards that are intended to address its negative implications and attempt to eradicate it. Although closely linked to corruption, neopatrimonialism is a much bigger threat as it creates informal political networks amongst political elites. Although such

structures exist in all political systems, in neopatrimonial systems they are used for illicit enrichment of public officials and favoritism when it comes to making key appointments. More often than not the real political power in Africa is situated in neopatrimonial networks and not in the democratic institutions. The further danger of neopatrimonialism is that it often coexists with these democratic institutions. In such a system, the latter serve to merely legitimise a regime in order for a neopatrimonial state to gain access to international resources and financial aid. Neopatrimonialism is a parasite that concentrates political and economic power in the hands of the elite and prevents the citizens from having an influence on the decision-making process. As discussed in 2.9, neopatrimonialism is a persistent problem in African states. Ghana has been chosen as a case study for this chapter as although it is generally considered to be an example to its fellow states in Africa, it does to a certain extent suffer from problems of neopatrimonialism. Thus, an examination is necessary of what these problems are and how they could be addressed through the APRM.

5.5.2. Ghana: a brief history

In 1957 Ghana became the first state in Africa to achieve independence from its former colonial masters. However, its newly established democratic system survived for less than 10 years. A military coup brought the National Liberation Council to power in 1966, which were followed by political instability and economic decline. A change of power occurred in 1982 when Jerry Rawlings took his Provisional National Defense Council (PNDC) to power through another coup. Further political stagnation took place as Rawlings dissolved the Parliament and imposed a ban on political parties (Miguel & Zaidi 2003: 6-7).

Bratton and Van de Walle (1994: 480) classify Rawling's regime in Ghana as neopatrimonial. Like many of its African counterparts, Ghana was affected by the third wave of democracy particularly because of the pressure exercised on Rawlings by domestic pro-democratic groups. Positive democratic change thus started taking place in Ghana, which began with the formation of District Assemblies and local elections in

1988 and were followed by the election of an Assembly to draft a new democratic Constitution in 1991. As a consequence in 1992 Rawlings lifted the ban on political parties, thus allowing multiple parties and candidates to compete in elections (Miguel & Zaidi 2003: 7-8). Simultaneously Rawlings amended the constitution in order to protect himself and other members of the ruling PNDC from possible prosecution by future governments.

A total of five parties competed for power in 1992 and Rawling's party, which was now called the National Defense Council (NDC), won in a landslide (Miguel & Zaidi 2003:8). Thus, although multi-party rule was finally allowed in Ghana, according to observers the elections that took place were fraudulent (Bratton & Van de Walle 1994:482). As a result of this, the following Parliamentary elections in November 1992 were boycotted by the opposition parties, who cited fraud, bribes and voter intimidation by the NDC as reasons why they chose not to take part. Following from the boycott, the NDC won 189 out of 200 parliamentary seats (Miguel & Zaidi 2003:8).

More recently, no party won the majority of seats in the 2000 elections, as Ghanaians were faced with a troubled economy and a neopatrimonial government that used the rhetoric of economic growth while denying its citizens any access to wealth (Kwesi-Aning 2007:107). Rawlings was constitutionally denied the chance to run again and John Kufour, of the New Patriotic Party (NPP), was inaugurated as President early in 2001 (Central Intelligence Agency 2008a). He was re-elected in 2004 and proceeded to become one of the most important African leaders in continental affairs. However, in spite of a positive change in Ghanaian politics, it still faces a number of problems and Kwesi-Aning (2007: 120) points out that the government is slowly developing an intolerance that sees criticism as undermining rather than constructive.

5.5.3. Neopatrimonialism in Ghana

Although the transition to multi-party democracy was expected to provide a positive change in Ghana, it was evident that old rules of neopatrimonialism were still applicable.

Sandbrook and Oelbaum (1997: 615) point out that centralisation of power, personal loyalties, patron-client relations, governmental corruption, patrimonial traditions, and informal Presidential control of coercive force characterised the post-1991 Ghana. Thus, in spite of alleged democratisation, Ghana was still characterised by “neopatrimonialism, a culture of political patronage and corruption” (Gyimah-Boadi 2004: 2). As discussed in 2.9, neopatrimonial states often combine the simultaneous existence of democratic institutions and processes with informal structures of power, patron-client relations and unwritten political rules. This was the case in Ghana, where, as Sandbrook (nd:10) claims, liberalism and neopatrimonialism coexisted in an uneasy tension.

Almost a decade after the establishment of multiparty democracy in Ghana, the society was disillusioned with the NDC and following the 2000 elections the NPP became the new ruling party. The new government declared its commitment to positive change, and although much legislation was passed to improve transparency, reduce corruption, and increase accountability, little has changed in practice. In a case study for Transparency International, Gyimah-Boadi (2004: 2-3) points out that political patronage, dysfunctional public institutions, corruption and lack of accountability (which, taken together constitute a neopatrimonial system) remain. He goes on to argue that the state’s Constitution is instrumental in fostering neopatrimonialism, as it grants the President a monopoly control over public expenditure as well as unrestricted powers to appoint ministers and Supreme Court judges. Oquaye (2000:57) agrees with this, and says that the President’s appointing powers are extensive and unchecked. The President’s powers of appointment are not subject to a system of checks and balances, thus creating a possibility of patron-client relations, whereby the President is able to reward his supporters with ministerial positions within the government.

Another key governmental institution - the Parliament - is far from flourishing in Ghana in spite of the state’s democratic advances. Constitution of Ghana (1992: art 93) states that “the legislative power of Ghana shall be vested in the Parliament”. Thus, in theory, legislation is supposed to be passed through the Parliament which will thereby influence policy outcomes. In practice, though, policy outcomes are determined by informal

consultations between Members of Parliament (MPs) and Cabinet Ministers, and they are not openly debated on the floor of the Parliament. Thus, Lindberg (2008: 5-6) points out that although there are formal provisions that make the Parliament strong in theory they are not materialised in practice. He goes as far as to say that none of the bills has been initiated from within the legislature by the MPs. Thus far, the legislature has been put forth by the Executive with the Parliament's role diminished to merely making changes in it. The current problem is that the Ghanaian Parliament is weakened because legislation is not passed *by* it and is rather passed *through* it.

Apart from that, Lindberg (2003: 121) claims that Ghana's MPs are themselves involved in neopatrimonial politics. According to him, most of Ghana's MPs are involved in patron-client relations with their constituents. Although these relations also exist in Western liberal democracies, in Ghana they take on a very personalised form. Instead of providing for the constituencies in the form of building schools, improving healthcare and delivering services, Ghana's MPs focus on distribution of personal favors, such as financial help to individuals, finding jobs, and making arrangements for weddings and funerals. Because of 20-30 daily meetings with their constituents, Ghana's MPs neglect their Parliamentary responsibilities, which results in low attendance for the sessions. A total of 33 out of 34 MPs interviewed by Lindberg admitted to "having spend substantial amounts on personal handouts, paying of bills and sponsoring various social events" (Lindberg 2003: 130). In his study, Lindberg has interviewed a number of Ghanaian MPs and provides a number of quotations that, such as "if you support me and then need a contract I'll have to give you one, that's Africa!" (Lindberg 2003: 134), which reaffirm patron-client relations within the state.

Finally, it is also important to note that there are questions raised with regard to the budget of Ghana. Killick (nd: 7-8,20-21) claims that data for budgeted and actual governmental expenditure is not publicly available and was only obtained with special access. He further states that in the majority of cases, the budget under-estimated on salaries and over-estimated on all other areas, such as education and health. Killick's conclusion is that Ghana's closed budget serves to decrease accountability and therefore

to uphold the state's neopatrimonial system. Apart from that, under-estimation on salaries and over-estimation on everything else gives precedence to reward of public officials while neglecting overall development, which is another element of neopatrimonial politics.

5.5.4. The APRM: how could it help?

Laxmi Singhi (quoted in Maloka 2007: 244) makes an important point by saying that “written constitutions do not create democracy; democracy is something that the political leaders of a nation decide to introduce and respect and this is done at the instance of the public and enforced by the public”. Neopatrimonial structures, which merge the existence of formal and informal rules and processes, serve to undermine ‘good governance’. The problem here is not about incorporating the standards proposed by the APRM into the constitutions or other formal written rules of a state, but rather respect for and compliance with them.

The Ghanaian Constitution explicitly states the principle of separation of powers, by assigning executive power to the President (Ghana Constitution 1992: art 58(1)), and Legislative power to the Parliament (Ghana Constitution 1992: art 93(2)). However, the APRM Team has acknowledged that there are “major deficiencies...in the practical workings of Constitution and democracy” (APRM Country Review Report of Ghana 2005: par 9). As mentioned in 4.5, the APRM standards do not actually provide specific recommendations that could be used to implement anti-neopatrimonial strategies in a state. Thus, the only standards that could be used in this case are anti-corruption standards and general standards that promote the spirit of democracy and ‘good governance’. The implementation of the latter would create a democratic culture which would prevent the practice of neopatrimonialism. Once again the problem here is with the existence of formal rules and their practical implementation. The review stated that Ghana's 1992 Constitution contains provisions that affirm the supremacy of the Constitution (APRM Country Review Report of Ghana 2005: par 30). Yet, it is important to bear in mind that democracy is not possible without democrats. While this may not be

the case with Ghana, as the state has a generally good democratic record and was one of the initiators behind the APRM programme, it is important to keep in mind that governments are often over-sensitive when it comes to criticism and have a tendency to deny allegations. A government must be willing to listen to constructive criticism and make changes, where necessary, which would serve to strengthen ‘good governance’.

The applicable APRM standards for battling neopatrimonialism are as follows:

Constitutive Act of the African Union

Article 3(g) *Promote democratic principles and institutions, popular participation and good governance*

The above article has a very wide approach that should be generally applied in Ghana. The establishment of a democratic culture would prevent acts of neopatrimonialism from taking place as they go against the main principles of democracy. With regard to popular participation, one could also claim that it is necessary to establish a system of checks and balances in the Parliament and encourage the creation of CSOs. This would ensure that if cases of neopatrimonialism occur in the Ghanaian society, these would be discovered and subsequently reported. The biggest problem when it comes to neopatrimonialism is the fact that since it operates as an informal power structure within a state, it is not often questioned by those who reside within that state – especially if they benefit from it. The Ghana Report stated that checks and balances are essential for prohibition of excessive use of power and curbing the power of the executive (APRM Country Review Report of Ghana 2005: par 55). Strengthening of the democratic culture through a system of checks and balances and CSOs would address this problem to an extent by bringing the public’s attention to unfair benefits reaped by individuals and groups close to the ruling elites. Elites would find it harder to illegally bestow benefits on their supporters if the public’s attention is brought to it.

Conference on Security, Stability, Development and Co-operation in Africa - Solemn Declaration (CSSDCA, 2000), OAU

Article 9(h) Democracy, good governance, respect for human and peoples' rights and the rule of law are prerequisites for the security, stability and development of the Continent

This is another guiding principle that needs to be understood and utilised in Ghana. The key point here is that through 'good governance' and thus the establishment of a democratic culture in a given state other improvements are likely to follow. As discussed earlier in the chapter in the case study of South Africa, the increase in democracy and 'good governance' is likely to lead to a decrease in corruption. Thus, although the APRM does not provide specific guidelines against neopatrimonialism, an assumption could be made that the problem of neopatrimonialism would decrease once a democratic culture is established.

Article 11(a) The Executive, Legislative and Judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability

The above standard is very important with regard to the problem discussed earlier in this case study – namely more education funds being given to provinces where support for the NDC was strongest, in spite of the existence of legislation according to which all provinces were to be given equal funding. However, the main problem with this standard is that it provides no practical measures on how to implement and enforce it. As mentioned earlier, Ghana's problem with regard to both the existence of neopatrimonialism and the weakness of the Parliament is not in the absence of formal laws; rather it is the violation of those laws by the government. For instance, Ghana's Constitution (1992: par 71) protects the Parliament from control or influence of the Executive, but this principle is not translated into practice, which was recognised by the APRM review team which stated that "the Parliament is neither effective nor independent of the Executive branch" (APRM Country Review Report of Ghana 2005: art 63). As a result, the APRM team has made the following two recommendations to the government of Ghana: revise the power of the President, and, provide appropriate capacity to

Parliamentary committees so that they could provide an effective system of checks and balances against the Executive (APRM Country Review Report of Ghana 2005: art 64). Unfortunately, in its current position, the APRM is only able to point out the existence of problems and make recommendations on how they could be addressed. It is not able to ensure compliance, which significantly weakens its potential contribution.

Article 14(j) *Ensure the equitable distribution of national income and wealth, as well as transparency in the exploitation of Africa's resources*

The first part of the above article is more than relevant to the problem evident in Ghana. The distribution of income should benefit all provinces and peoples equally and irrespectively in spite of their ethnicity, social status and political preferences. African politics has often been a competition for resources between different groups. Precisely how one could ensure this equitable distribution remains an unanswered question. If the APRM indicated that this needed to be addressed through the appropriate legislation, one could rebuff this suggestion with the earlier finding of how rules on paper do not always translate into rules in practice. Thus, the APRM's failure to provide concrete methods of monitoring remains one of its biggest shortcomings thus far.

5.5.5. Ghana and the APRM: an assessment

Neopatrimonialism is contrary to democratic processes and it is important to understand how deeply it is ingrained in certain African states (see 2.9). Sandbrook and Oelbaum (1997:604) state that in neopatrimonial societies formal political institutions are often honoured in public but disregarded in private by the politicians. Vice versa, politicians in such societies publicly condemn informal rules and institutions, and yet these informal processes shape policy and behaviour. The existence of neopatrimonialism could thus be hard to prove since politicians could deny it and point to the existence of formal institutions within their state. Unwritten rules of the game are essentially social constructs that only exist in the minds of those who abide by them. How then, could be APRM

prove the existence of neopatrimonial structures and networks, taking into account that it does not even identify neopatrimonialism as a problem in Africa?

Neopatrimonialism has very negative implications for the African state. Precisely because of its existence, the state in Africa is perceived as an instrument for the accumulation of private wealth by the elites, rather than an instrument of delivery of social welfare and security to its citizens (Maloka 2007:234). Such systems are hard to abolish, because as long as some reap unfair benefits from this type of a system, they will continue to concentrate their efforts to support it. As mentioned in 2.10, neopatrimonialism is arguably the biggest challenge facing the state in Africa at this point in time and it is a major shortcoming on the part of the APRM to fail to address it in any of its standards.

One could argue that it would be possible to eradicate neopatrimonialism through the establishment of a democratic culture in Africa, through the implementation of ‘good governance’, democracy and the rule of law. Thus, if the goals of the APRM will be successful, indirectly neopatrimonialism would also be addressed. The lack of democratic accountability is arguably one of the most important factors that need to be addressed in order to eradicate neopatrimonialism from African states. Neopatrimonialism yields uneven benefits for the citizens of a state. Those who are excluded by neopatrimonial leaders should be able to bring them to account. However, instead of demanding for accountability, most often those who are excluded from benefits in a neopatrimonial system concentrate their efforts on getting their own ‘big man’ into power, thus reinforcing the system.

The case study of Ghana exemplified that neopatrimonialism is often ingrained in the culture and the minds of the people. As mentioned in 5.5.3, one of Ghana’s MPs spoke of neopatrimonial practices as norms which are accepted by them and the society at large. As argued 2.9, neopatrimonialism is indeed often the norm in African states, which exists in conjunction with democratic processes and institutions, and usually negating them in favour of informal rules and structures. In that sense, passing the necessary legislation for

the establishment of ‘good governance’ may prove to be insufficient, because of the difference between theory and practice in neopatrimonial states.

Thus, although the APRM could provide safeguards against the political manipulation of public funds by national ruling parties, there is strong evidence that political manipulation of funding still occurred in Ghana despite these safeguards. This example shows that it is not enough to have rules on paper, as they can be easily broken. These rules need to be strictly adhered to in practice. This is another area where the APRM is currently failing. It is intended to be a standard for ‘good governance’. However, as a standard, it does not provide enough methods to measure the respect of democracy and ‘good governance’ in its signatory states. Although the intention is to review a country every three to four years and thus monitor its progress, perhaps the establishment of day-to-day mechanisms, with the help of civil society, for the most crucial aspects, such as the respect of the constitution should be implemented in order to provide a more constant observation of a state’s progress.

The case of Ghana demonstrates practical workings of neopatrimonialism in spite of the existence of democratic barriers. In such a system, neopatrimonialist leaders overwrite democratic rules and procedures by allocating ‘more’ to their supporters, although in theory and on paper everyone should receive an equal share. Safeguarding against this is very problematic precisely because in this case neopatrimonialism works within the system and on paper there is nothing wrong. This shows one of the possible pitfalls that the APRM should be aware of – namely that implementing institutional reforms according to its standards would not necessarily improve the situation and problems will remain due to the discrepancy between theory and practice.

5.6. Conclusion

This chapter was concerned with the practical implications of the APRM. Through an examination of both the APRM’s standards and Country Reports an assessment was made of the APRM as a standard for ‘good governance’. It is clear that in most cases the

APRM is on the right track. However, at this point in time, the ‘peer review’ mechanism is simply not strong enough to truly make a positive change in Africa. APRM could serve to strengthen ‘good governance’ in Africa, but in order for that to happen, the mechanism needs to be strengthened with the incorporation of definitions and checklists, the ability to follow up on the implementation of most important recommendations, and a possible cooperation with the ASF.

From the presented case studies it is evident that the APRM is likely to face a struggle in the achievement of its objectives unless its tool of ‘peer pressure’ is utilised more effectively. Apart from that, it should also consider taking collective actions in order to solve the problems of sovereignty in Africa. Perhaps the PSC and the ASF should be incorporated into the APRM in order to increase its strength as an international actor, and allow to deal with the problem of sovereignty. It is also important to bear in mind that the APRM is voluntary, and in some cases the governments of signatory states have lacked commitment to the implementation of its recommendations. This has been demonstrated in the case studies of Kenya and South Africa, where the APRM made the necessary recommendations, which were disregarded by the respective governments. In Kenya the establishment of the recommended conflict resolution mechanism could have prevented the ethnic violence that broke out late in 2007 following the allegedly fraudulent elections. The South African government’s decision to disband one of its anti-corruption units, instead of strengthening anti-corruption efforts, has not yet materialised and therefore its repercussions are yet to be seen. However, since corruption is one of the major problems in Africa, such a decision by the continental hegemon sets a negative precedent for its ‘peers’.

The problem of neopatrimonialism is likely to be the most difficult to deal with. The APRM does not recognise the problem through its standards and does not provide solutions to combat it. The existence of neopatrimonialism is also difficult to prove, due to its informal nature and the fact that much of it is a social construct. Civil society could play a crucial role in reporting instances when practice in African states does not correlate to the established democratic rules and regulations. As mentioned earlier in this

chapter, it would be possible to eradicate or at least diminish the impact of neopatrimonialism indirectly, through the establishment of ‘good governance’ in Africa. Altogether, the APRM often has the right idea but lacks implementation. In order to correct this problem, certain improvements need to take place as a result of which the mechanism would be strengthened. These recommendations are discussed in chapter six, which also serves to summarise this dissertation and discuss its main findings.

Chapter 6:

African Peer Review Mechanism: An Evaluation

6.1. Introduction

This chapter is concerned with an evaluation of the APRM as a standard for ‘good governance’. It is structured into three parts. The first part is a summary of this dissertation. The second part deals with the main findings of the dissertation with reference to the research questions and propositions indicated at the outset. The analysis is concerned with comparing the problems of African states identified in chapter two with the theoretical and practical solutions provided by the APRM that were discussed in chapters four and five respectively. The third part of this chapter is based on the research findings of the first part and is concerned with making recommendations to strengthen and improve the notion of ‘peer review’ in the APRM, and to enhance its effectiveness in establishing ‘good governance’ in Africa. As it currently stands, the APRM needs significant strengthening to become an adequate standard for ‘good governance’ in Africa.

6.2. Summary of findings

This dissertation was focused on critically assessing the APRM as a standard for ‘good governance’. Specifically, the research topic dealt with determining whether the APRM recognises the core problems of African governance, and provided that it does, whether it offers sufficient theoretical and practical solutions to its member states.

The first task of the dissertation was determining the core governance problems of African states. The theoretical chapter of the dissertation provided a background of the contemporary state in Africa from both an international and a domestic prospective. When discussing the state in Africa it is important to bear in mind that the basis for the contemporary state is the colonial state, which explains many aspects of both the

international and domestic implications of politics in Africa. The main problem that arises out of the African colonial background is the problem of sovereignty. In most cases African states were granted ‘negative’ sovereignty – that is sovereignty granted by the international community of states, without possessing attributes of ‘positive’ sovereignty – that is the ability to control legitimate violence within their territories, provide for their populations and keep an internal order. When the process of decolonisation started, the international community saw it as crucial to grant independence to all African states as soon as possible. As a result of that, sovereignty was granted to states that were not ready for it, thus causing significant problems for the post-colonial states. Apart from the fact that the political and economic infrastructure of the post-colonial states was not developed sufficiently, they also suffered from ethnic divisions as a result of the creation of artificial boundaries during the period of colonialism. Although the (former) OAU made a decision to keep those boundaries due to the existence of some form of state machinery within them, this decision proved to stifle the development and evolution of some African states because of ethnic conflict that often spilled into other states. Thus, sovereignty was identified as the first core problem of African states.

The post-colonial state was also modeled after the Westphalian state, in spite of the differences in time and place of its creation, and most importantly in spite of the differences in the international systems of the time. African states were not allowed to develop according to the same organic approach that took place in Westphalia. For example, war was no longer considered a legitimate method of statecraft. African states could also not experiment with systems of governance as the international system expected these states to follow a democratic system. The result was often a mix between the pre-colonial forms of organisation where a society was structured around a ‘big man’ or a chief and a modern democratic system. The mix was typically unsuccessful, since formal democratic institutions and processes were not followed according to the Constitution and the state instead functioned according to personalised networks, whereby the ‘big man’ rewarded his subjects in exchange for support. This often also exacerbated the existing ethnic divisions if the society was multi-ethnic and the ruler represented the interests of his group, thus excluding others. This created problems of

democracy and neopatrimonialism in Africa, as democratic rules were not being followed and instead informal structures of power were emerging.

The fourth problem of the contemporary African states - corruption - went hand in hand with a neopatrimonial system of rule. Due to a scramble for resources and privileges public posts were often viewed as positions of material accumulation. Public officials were granted the opportunity to make decisions and have access to state resources, which enabled them to enrich themselves, either through soliciting bribes or from theft of resources and/or revenue. This took place on all levels from local to national governments and further jeopardised the stability and socio-economic development of African states. Furthermore, wealth and power reinforced each other in African societies, further fuelling the competition for resources. Corruption took unprecedented heights in African societies, as at times the rulers stole so much that the state was caused to dissolve.

The theoretical framework for the dissertation thus consisted of four core governance problems of African states, consisting of the following: sovereignty, democracy, corruption, and neopatrimonialism.

The historical chapter was concerned with providing a history of the APRM, along with a description of its processes and an overview of the problems raised by critics with regard to the APRM and its processes. It is also considered to be the 'new' in NEPAD and African politics in general, as it establishes the concept of 'peer review' which has previously been unprecedented in Africa. The APRM creates common 'good governance' standards for its member states and helps them achieve these standards through regular 'peer reviews' and subsequent recommendations. A total of four APRM objectives have been identified as relevant for the purposes of this dissertation, as they are directly related to the idea of 'good governance'. These objectives are as follows: Objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, Citizen Rights and Supremacy of the Constitution; Objective 4: Uphold the separation of Powers, including the protection of the independence of the

judiciary and of an effective Parliament; Objective 5: Ensure accountable, efficient and effective public office holders and civil servants; and Objective 6: Fighting corruption in the political sphere. The APRM standards listed under these objectives form the basis of this dissertation in terms assessing the APRM's effectiveness in addressing and solving Africa's governance problems.

The chapter also pointed out a number of potential shortcomings in the APRM's structure. The first issue is that of voluntarism. African states are free to choose whether to accede to 'peer review', have the ability to disregard any recommendations made by their 'peers', and are free to withdraw from the process at any time. The second issue is the APRM's 'toothlessness'. The 'peer review' mechanism confines itself to the role of making recommendations but has no capacity to act on their enforcement or punishing member states who fail to strive for or comply with its standards of 'good governance'. Taken in conjunction, these two shortcomings leave the government of the African state that is a member to the process in the driving seat. The government of the state under review decides how its state participates in the peer review process and how it reacts to the recommendations made by its 'peers'. This creates the third issue of extensive governmental control throughout the APRM process. Having so much control potentially enables a government to manipulate the APRM process to its own advantage. There is a danger that certain governments will only accede to the APRM process for 'show', in order to demonstrate intent to improve its governance and attract donors and/or investors, without necessarily willing to implement positive change within their states. Thus, although African civil society is given an important part in the process, the government of the state under review is able to choose only civil society organisations that are more likely to portray it in a favorable light.

The fourth chapter was concerned with the analysis of documents that the APRM classifies as standards under the four objectives relating to the establishment of 'good governance' in Africa which were identified in chapter three, and bearing in mind the four core governance problems recognized in chapter two. A total of six documents were analysed: Constitutive Act of the African Union; Conference on Security, Stability,

Development and Co-operation in Africa; African Charter on Human and Peoples' Rights; Grand Bay Declaration and Plan of Action for the Promotion and Protection of Human Rights; African Union Convention on Preventing and Combating Corruption; and, the NEPAD Framework Document.

The analysis of the documents has shown that in most cases the APRM fails to define what it is trying to promote and fight against. The concept of 'democracy' is not defined in any of the standards. Furthermore, the documents do not provide a list of democratic institutions and practices that need to be established in the APRM's member states. The concept of 'sovereignty' is given inadequate attention, with only one standard referring to it. The problem of neopatrimonialism is not mentioned in any of the documents. Only one out of four core governance problems - corruption - is addressed sufficiently in the APRM's standards, as it is both defined and practical recommendations are provided to member states on how to combat it. Altogether, the standards provide a vision of a democratic Africa and represent the culmination of 'development thinking'. However, in most cases they do not provide the necessary guidance of how 'good governance' could be achieved on the continent. While the standards aid APRM member states in their fight against corruption, they fail to establish similar strategies for solving the problems of sovereignty, democracy and neopatrimonialism.

Finally, chapter five focused on the more practical side of the APRM, particularly how its standards and country reviews are helping African states solve their problems. A total of four case studies were taken, each representing a core governance problem identified in chapter two: Rwanda and sovereignty; Kenya and democracy, South Africa and corruption; and, Ghana and neopatrimonialism.

Rwanda has suffered a genocide that took place in 1994 and is still affected by its aftermath. The APRM has demonstrated contradictions in providing practical recommendations to the government of Rwanda, as it both criticised the existence of its practice of consensus policy and at the same time suggested that the policy should be deepened. Apart from that, it is also evident that the APRM is inadequately equipped to

deal with the problem of sovereignty should genocide occur in another African state. Thus, the case study of Rwanda has shown that in the case of sovereignty the APRM lacks in both theory and practice, as its recommendations are not sufficient enough and since it has no practical means of addressing the problem.

The second case study was concerned with Kenya and its problem of democracy, which became evident early in 2008 after an allegedly fraudulent election. Civil violence broke out as two Presidential candidates accused each other of rigging the election. The case study has demonstrated that according to Kenya's constitution the President is able to manipulate voting through the constituency system. However, the APRM review team has failed to recognize this problem when conducting its study of Kenya and gave a generally positive review, even referring to Kenya as a "bastion of stability". The case study also showed that Kenya's government did not act on its 'peers' recommendations to establish a conflict resolution mechanism. Thus, in the case of Kenya the APRM has suffered from two problems: failure to identify a potential problem of electoral fraud, and the inability to convince a government to act on its recommendations.

South Africa and its problem of corruption presented the third case study of chapter five. In the last few years South Africa was rocked by corruption scandals involving its then Deputy President Jacob Zuma and National Police Commissioner Jackie Selebi. The case study has shown that the APRM provides enough theory and practical recommendations to battle the problem of corruption. It has extensive standards addressing corruption and it has suggested that South Africa needs to strengthen its anti-corruption agencies. However, although South Africa seems to incorporate many of the APRM's anti-corruption standards, instead of acting on its recommendation, it instead disbanded the country's most important anti-corruption institution – the Scorpions. Once again the case study shows the APRM's weakness of not being able to enforce its member states to act on its recommendations.

The fourth and final case study was concerned with Ghana and the problem of neopatrimonialism. Research has shown that in Ghana there is a significant gap between

theory and practice. Thus, having adequate constitutional safeguards is not sufficient to eliminate the problem. This problem relates to the APRM in a similar manner, as its standards do not guarantee that their implementation will improve the situation in the country. Because of that, civil society has a vital role to play in the APRM process, by monitoring the situation in the country and reporting cases when official rules are not being followed. Altogether the case study of Ghana has demonstrated that a potential shortcoming of the APRM is that although its standards might be implemented in the domestic legislation of its member states, they will not necessarily be followed in practice.

As it currently stands, the APRM is a vision of African states that follow principles of ‘good governance’. However, in order to become more than a vision and manifest itself in reality, the mechanism needs to be sufficiently strengthened in three areas: incorporation of a peacekeeping force; improved monitoring mechanisms; and, the ability to convince its member states to follow its recommendations.

6.3. The APRM as an international organisation: an assessment

Chapter four presented an analysis of the APRM’s standards, thus presenting the theory of how it intends to deal with the problems of African states. The case studies presented in chapter five provided an examination of the APRM’s practical dealings with its member states. Yet, in order to gain a comprehensive understanding of the APRM and its concept of ‘peer review’, it is also important to view it as an international organisation or institutions. Archer (2001:68) provides a framework that analyses international organisations according to three roles performed by them: instrument, arena and actor.

6.3.1. Instrument

An international organisation or institution could be used as an instrument to achieve a goal by its members. States agree to work cooperatively with the aim of achieving this goal. Leaders sign an agreement that outlines how this goal is to be achieved. Consent is

voluntary – it is not possible to force a state to strive for a specific goal. It thus implies that the participating states are like minded and prepared to work together in order to achieve a common goal or purpose. Myrdal, as quoted in Archer (2001: 69) states that “when an intergovernmental organisation is set up, this implies nothing more than that between the states a limited agreement has been reached upon an institutional form for multilateral conduct of state activity in a certain field”.

This quote helps to put the APRM into perspective with regard to its limitations and shortcomings. The limited agreement refers to the intent to promote ‘good governance’ on the continent through the concept of ‘peer review’. Yet, the influence of the APRM with regard to this is significantly limited because of the sovereign nature of its members. Two of the APRM’s problems identified in this chapter – the inability to deal with large-scale violent conflict in African states and failure to enforce the implementation of its recommendations on its member states are directly related to Myrdal’s assessment of international organisations as an instrument. African states that are signatories to the APRM, for various reasons, are interested in the promotion and establishment of ‘good governance’. As discussed in chapter three, one of the potential problems of the APRM is that a voluntary and non-coercive ‘peer review’ would not be enough to improve governance (Verwey nd: 8). The cases of Kenya and South Africa thus demonstrate the APRM’s potential to foresee problems and make the necessary recommendations, but highlight its shortcomings with regard to the inability to implement them. Because of that, the APRM’s effect on the establishment of ‘good governance’ in Africa is limited, as it is only able to do so much in its capacity before reaching its limits due to its voluntary nature, lack of sanctions and the principle of sovereignty. Thus, although there is a formalised agreement amongst 29 African states to strive towards ‘good governance’, it is not enforceable, and depends in its entirety on the will of the members. Unfortunately this will seems to be lacking at the moment. Although there was much enthusiasm about the APRM initially, it is clear that the participating governments are not doing enough to follow up on the APRM’s recommendations following the review.

6.3.2. Arena

The role of the arena performed by an international organisation implies that it serves as a forum or a talking shop, which could be utilised by African governments to discuss common problems. As discussed in 3.5.5, Stage 5 of the APRM process allows for African leaders to discuss and ‘peer review’ a government that has undergone the review. According to Herbert and Gruzd (2008: 180), some have expressed disappointment with this stage, which was meant to be the “climax of the entire process”. The reviews have been rather short, with Ghanaian President John Kufuor interviewed for four hours, and Kenyan and Rwandan Presidents (Mwai Kibaki and Paul Kagame respectively) interviewed for just two hours each (Herbert & Gruzd 2008: 207). The intention was for the APRM to open up dialogue amongst African governments. Ojienda (nd: 30), stated that African governments are ideological opposites, which have vastly different interpretations of the term ‘democracy’ (also see 3.9.1). The APRM thus provides a forum that could be used for debates regarding the meaning of democracy and what its processes entail. As extensively discussed in Chapter four, the current APRM standards are very vague in describing both democracy and democratic processes. The APRM as a forum provides an opportunity for discussion and clarification of these terms. Through the concept of ‘peer learning’, the APRM’s member states would be able to discuss the best democratic practices of others and subsequently adopt them.

The problem though, is that it leaves much for interpretation and vests all the responsibility in the government of the member state, which relates, in a sense, to the problem of sovereignty. It is possible that some African states will accede to the APRM for the wrong reasons - namely to demonstrate the willingness to democratise in order to receive donor funding. While such problems are unavoidable due to the APRM’s current structure, it is also important to bear in mind that African states opening up to outside scrutiny and criticism of their domestic situation is unprecedented in African politics. Making problems public is an important element of democratic politics, which creates societies that are more open to a plurality of views and opinions. Thus, the APRM’s role as an arena is in itself significant in promoting ‘good governance’ in Africa, due to its

creation of dialogue amongst African governments regarding their problems and possible solutions to them. In the light of the facts presented in the preceding paragraph, it is necessary for African governments to fully utilise the potential of the APRM as an arena, rather than limiting it to short interviews of Presidents of reviewed states.

6.3.3. Actor

The final role, and, due to sovereignty, the most challenging, fulfilled by an international organisation is that of an independent actor. Claude, as quoted in Archer (2001:79), states that “an international organisation is most clearly an actor when it is most distinctly an “it” entity distinguishable from its member states. It is difficult to categorise the APRM as an independent actor. As discussed in 3.4, the structure of the APRM includes the Committee of Participating Heads of State and Government, The Panel of Eminent Persons, the APRM Secretariat, and the APRM Review Teams. The three latter structures of the APRM allow it to act as an independent actor when it comes to reviewing member states and subsequently making recommendations. Since the Committee of Participating Heads of State does not play a role until the review has been concluded, influence from the APRM’s member states is minimised. Furthermore, members of the Panel of Eminent Persons do not participate in the reviews of their home countries (Stals 2008). Thus, the APRM was designed with the intention of avoiding country bias during its reviews and recommendations.

Although the APRM is independent from its members when it comes to conducting reviews, due to its current structure it is not able to act, apart from dissimulation of information. Suggestions with regard to possible incorporation of the AU’s PSC and the AFS were made earlier in this chapter regarding the APRM’s structure. Their inclusion would allow the APRM to become more of an independent actor in African politics, although it would still be confined to the decisions of its members. At the moment, the APRM is only independent administratively, but it is by no means able to act in any manner when it comes to politics. Arguably, a stronger role for the APRM would put more force into its recommendations, which would then be more likely to be

implemented by its members. Thus, an enhancement of the APRM through the incorporation of the PSC and the ASF for the purposes of solving problems that arise in Africa because of the problem of sovereignty would also increase its political standing on the continent and increase its capacity as an independent actor.

6.4. Research findings

The main research question posed at the onset of the dissertation is two-fold a) Does the APRM recognise all the core governance problems of African states? b) Provided that it does, are the measures to be taken according to its standards sufficient to improve the situation or eradicate the problems completely?

Through examining the main research question this dissertation also addressed three sub-questions: What are the core governance problems of the African states? How does the APRM intend to solve these problems? And, what does the term ‘good governance’ mean in an African context? The answers to these questions form a part of the main research question by clarifying its components.

The first part of the research question relates back to chapters two and four. The former was concerned with the identification of the problems faced by the African states and the latter was aimed at the analysis of standards put forth by the APRM. Chapter two identified four main problems of the contemporary African state as follows: sovereignty, democracy, corruption and neopatrimonialism.

The problem of sovereignty refers to the fact that many African states possess attributes of ‘negative’ sovereignty, as granted by the international community, but not ‘positive’ sovereignty, which is having the domestic capacity to have the control of legitimate violence over its territory and being able to establish and maintain order within state borders. The result of this is the existence of failed states, spill-over conflicts, coups and military take-overs. The principle of sovereignty makes it difficult for other African states and the AU to intervene in the case of a humanitarian crisis. In the case of Rwanda

too little was done too late to prevent the loss of lives and stop the conflict. Given the potential for such conflict as a result of ethnic divisions and cases of usurpation of power by one group at the expense of another, the problem of sovereignty remains largely ignored in Africa. Establishment of a unified African peacekeeping force could solve the problem of sovereignty in Africa.

The problem of democracy, or the lack of it, refers to the fact that all too often African states are not democratic in the Western sense of the term. Thus, the existence of democratic institutions and processes such as the separation of powers, regular elections and fixed office terms often coexist with systematic abuses of the system, whereby the existence of the judiciary exists theory, but not practice, elections are rigged and Presidents often take the term for life. Thus the problem of democracy in Africa is often not the absence of formal rules and institutions, but the government's inability or unwillingness to follow them and at times a disregard for them. This creates a situation where constitutionalism is ignored by the main political actors, thus creating unaccountable governments. A further problem with democracy is that the term is not sufficiently defined although it is often taken to have a universal meaning. This gives an opportunity for any African leader to claim that his state is democratic. Creation of a common standard for what democracy entails is thus necessary to improve the overall situation in Africa.

The problem of corruption exists on many levels in Africa – from local officials demanding bribes, to Heads of State abusing their position to accumulate wealth, often at the expense of the state. The problem is that in many cases positions of power are seen as positions of privilege and accumulation in African politics. Those who have achieved these positions often work for their own benefit and not for the benefit of their state. In many cases citizens are afraid to report cases of corruption as they fear repercussions that would follow against them. Corruption is thus a very difficult problem to eliminate in African states as it could be argued that corruption forms a part of the political culture of these states. Much work needs to be done in order to eradicate it as a negative cultural phenomenon, since the mere existence of formal rules is typically insufficient. The

establishment of an anti-corruption culture is a long process, but once it is achieved it would also provide positive implications for the problems of democracy as well as neopatrimonialism.

Finally, the problem of neopatrimonialism combines certain parts of the problems of democracy and corruption and refers to the existence of informal structures of power in African states. Although such informal structures exist in most, if not all, political systems, in Africa they are used for illicit enrichment of public officials and gaining of political support through a system of rewards, whereby politicians reward their supporters and exclude others. This leads to preferential treatment of certain groups and as a result politics often becomes a ‘zero-sum’ game. This has negative implications for democracy, as elections become too important for politicians, since losing them means losing positions of accumulation of wealth. Thus, elections are often fraudulent, which in turn leads to group conflict, coups, and military takeovers. These events reinforce the problem of sovereignty in Africa, demonstrating the fact that Africa’s core governance problems are often interrelated.

This dissertation was concerned with a critical analysis of the APRM as a standard for ‘good governance’. At the moment, the lack of ‘good governance’ in African states is caused by the existence of the problems listed above. Many of these problems are interconnected and at times the line between them is blurred. Recognition and addressing of these problems is crucial if the APRM is to be successful in what it intends to achieve. The standards proposed by the APRM were extensively discussed in chapter four. It is clear that the four core governance problems of African states are not equally addressed by the APRM. Although the standards have clearly and extensively identified the problems of democracy and corruption in Africa, only one standard referred to the problem of sovereignty and neopatrimonialism was not mentioned at all. Thus, the answer to the first part of the research question is as follows: The APRM successfully recognizes the core governance problems of democracy and corruption, as present in African political environment, but pays inadequate attention to the problem of

sovereignty and fails to identify neopatrimonialism as a threat to ‘good governance’ in Africa.

The second part of the research question refers to the extent to which the APRM’s standards and solutions are adequate for the elimination of the core governance problems in Africa. Chapters four and five were concerned with the analysis of the APRM’s standards (theory) and ‘peer review’ (practice) as a means to assess the relevance of solutions proposed to solve the problems of the African state. The research shows the following:

The problem of sovereignty is inadequately addressed by the APRM, in spite of its relevance in the African political environment. The only APRM’ standard that refers to it is the Constitutive Act of the African Union which states that those governments that have come to power using unconstitutional means will be excluded from the activities of the union. However, in spite of the existence of numerous coups and military takeovers in Africa, there is not a single example of such suspension. Governments that come to power through unconstitutional means are only one part of the problem of sovereignty. The APRM fails to address other sovereignty related problems of genocide, humanitarian crises, failed states and the inability of governments to control the internal situation within their states.

The problem of democracy is addressed in numerous standards of the APRM, but the majority of them lack substance and only attempt to promote the spirit of democracy in Africa. In other words, the APRM’s democracy standards state the intention of establishing democratic institutions and ensuring that states function in accordance with democratic rules and procedures, but do not demonstrate much practical commitment. One of the major shortcomings of the APRM’s standards, as extensively discussed in chapter four, is the lack of a precise definition of the term democracy and the non-existence of checklists of democratic institutions and procedures that need to be established. The APRM’s standards also often refer governments back to their own domestic constitutions instead of creating common standards for all member states.

Although this approach provides flexibility for the APRM's member states as they could adapt democratic standards in accordance with their domestic constitutions. However, the case study of Kenya demonstrates that if the national constitution is inadequate these standards fail to provide an additional source of which democratic rules and procedures need to be followed.

The problem of corruption is extensively covered in the APRM's African Union Convention on Combating and Preventing Corruption standards. A list of definitions of what entails corruption is provided and practical recommendations are given with regard to the provisions that should be incorporated into national legislation in order to fight corruption and establish an anti-corruption culture in the APRM's member states. Thus, on the theoretical side the APRM is successful in adequately addressing the problem of corruption in Africa. The practical side was demonstrated by the case study of South Africa, where the APRM identified the areas where the government must improve on its stance against corruption. However, the South African government chose to disregard all but one of the recommendations made by its 'peers'. Thus, although the APRM is successful in both theory and practice when it comes to dealing with corruption in Africa, the problem lies in the fact that its recommendations are not mandatory for a state to follow. This problem refers to the overall structure of the mechanism and not to the APRM as a standard for corruption with regard to 'good governance'.

As stated throughout this dissertation, the problem of neopatrimonialism is not recognised by the APRM. It could be argued that the spirit of 'good governance', as established in the APRM's standards is intended to eradicate the problem of neopatrimonialism. However, it is a shortcoming on behalf of the creators of the APRM not to identify this problem and refer to a standard that would strengthen the formal political structures of African states, and create provisions that would make it difficult to continue with neopatrimonial practices. Establishing formal accountability in African states would be a key first step towards eradicating neopatrimonialism in Africa. Currently, the APRM's failure to recognise and address the problem of neopatrimonialism has negative implications for the African states. As pointed out in

chapter two, critics claim that democratic rule in Africa will not survive if the political elites manipulate democratic rules in pursuit of personal interests. Furthermore, as pointed out earlier in this chapter, Africa's core governance problems are interrelated and the APRM's inability to address the problem of neopatrimonialism is likely to affect its solution of problems of sovereignty, democracy and corruption.

The research shows that the APRM's fails to address core governance problems in Africa in an equal measure. While the problem of corruption is effectively addressed both in theory and in practice, the three other problems of sovereignty, neopatrimonialism and democracy are not dealt with to the same extent. Even though extensive references are made to the problem of democracy, most of them are concerned with the spirit of democratic governance and fail to provide more practical means of establishing it in Africa. Only one part of the problem of sovereignty is referred to by the APRM's standards and practical methods of dealing with it are severely lacking at this point in time. Finally, the problem of neopatrimonialism is not addressed directly at all. Altogether the answer to the second part of the main research question is as follows: the APRM successfully addresses the problem of corruption in Africa, but fails to provide adequate practical solutions for the problems of democracy, sovereignty and neopatrimonialism.

It is also important to point out that the APRM's standards do not provide an exact answer to the question of what 'good governance' means in an African context. It could be argued that taken together they constitute what 'good governance' should entail. However, taking into account that three out of four core African governance problems identified in chapter two are not adequately addressed by the APRM, it means that currently the establishment of 'good governance' in Africa would be difficult to achieve through the APRM's standards. In that sense, the definition of 'good governance' suffers from the same problems as the problem of democracy discussed earlier in this chapter, due to the lack of a precise definition of what it entails. Altogether, it is a shortcoming on behalf of the APRM to leave an idea that it is trying to promote undefined.

6.5. Recommendations

As mentioned throughout chapter five, it is clear that in many cases the APRM is on the right track, but the mechanism needs strengthening in order to be able to improve governance in Africa.

The first issue that needs to be addressed is the lack of definitions of ‘good governance’ and democracy. The APRM is successful in creating a vision of a democratic Africa, but it needs to be precise when it comes to its key concepts. Having precise definitions would eradicate possible disagreements about what democratic institutions and processes entail and whether a state of ‘good governance’ has been achieved. For the purposes of monitoring and/or assessing the situation it is also recommended that the APRM should incorporate a checklist of democratic institutions: an independent judiciary; parliamentary oversight, regular multiparty elections, and others that it deems necessary. Such a checklist would give both the state under review and its ‘peers’ a good indication of what still needs to be accomplished. For the purposes of the APRM, the World Bank definition of ‘good governance’ could be recommended, which defines it as: “the manner in which power is exercised in the management of a country’s economic and social resources for development” (Demend: 11). When it comes to the definitions of ‘democracy’ and a list of ‘democratic’ checklists, the concept of polyarchy put forth by Robert Dahl could serve both purposes. It identifies the key democratic institutions as: elected officials; free and fair elections; inclusive suffrage, right to run for office; freedom of expression; alternative information; associational autonomy (O’Kane 2001:133). Taken together, these institutions could provide a definition of democracy, as well as providing a checklist of what still needs to be established or achieved for a state to be classified as democratic.

The second issue is related to the voluntary nature of the APRM. Firstly, states are not compelled to sign up for the ‘peer review’ process. Secondly, if they do sign up, they are not obliged to follow the APRM’s recommendations. The latter can significantly undermine the APRM and its effect on African politics, as in the case of South Africa,

where the government of the state under ‘peer review’ chose to disregard all but one of the recommendations made by its ‘peers’. As pointed out in 3.9.2, African governments tend to be sensitive about criticisms of their performance and prior to the establishment of the APRM critics predicted its doom due to the previous unwillingness of African leaders to criticise each other. As it turned out, criticising is not the problem; rather the problem is accepting the criticism and following up on the recommendations made by ‘peers’. It would be difficult for the APRM to make its decisions mandatory, since it would effectively mean eroding the sovereignty of African states. However, the APRM needs to make more use of its ‘peer pressure’.

Currently the APRM is structured in a way that discussions between the APRM and the reviewed government take place every six months to discuss progress on the POA. Apart from that, the current rules also allow for full follow-up reviews to take place three to four years after the initial review. As pointed out in 5.3.5, the government of Kenya had one and a half years to establish a conflict resolution mechanism as recommended by its ‘peers’ and yet it has failed to do so, which could partially be blamed for the turmoil that followed a disputed Presidential election. The APRM thus needs to be more thorough in following up on the progress made by the government of the reviewed state. There are obviously limitations to this because of the principle of sovereignty, but the APRM needs to exercise more diplomatic and ‘peer’ pressures in order to ensure that progress is made on its recommendations.

The third issue relates to persistent conflict on the African continent. In most cases, too little and too late is done in order to stop it. The case studies of genocide in Rwanda and post-election conflict in Kenya support this statement. As pointed out in chapter four, there have been 80 successful and 181 unsuccessful coups in Africa between 1961 and 2004 (see also table 1). Conflict is a recurring problem in Africa that needs to be dealt with, since it could undermine all the effort taken with regard to the establishment of ‘good governance’. The recommendation here is that the APRM needs to incorporate or work in conjunction with a peacekeeping force in order to prevent the loss of life in Africa as a result of conflict. Perhaps the APRM should look at employing the AU’s ASF

for this purpose. Having a peacekeeping force on its side would make the APRM a stronger force in African politics and enable it to step in where governments have failed. The problem of sovereignty could be solved by an agreement which would have to be signed by states wanting to sign up to the APRM process. Such an agreement would give the APRM and its peacekeeping force a right to intervene in its member state in case of a violent conflict. In that sense, if one takes the definitions of a state as controlling legitimate violence within its borders, the governments of APRM's member states would agree to abdicate this right in the favour of the APRM and its 'peers' should it fail in doing so. Preventing conflict would thus enable member states of the APRM to work together in order to maintain order and 'good governance' on the African continent.

6.6. Conclusion

The APRM is a good first step towards good governance in Africa. However, it is relying on its members to become a strong force for change in African politics and it is evident that its members are not willing to follow the APRM's rules when it is not in their own interests to do so. The APRM is a collective vision of a more democratic Africa. But, in order to be successful it needs to become a collective will to create a more democratic Africa. Without such a will it will remain little more than a collection of standards and a forum for discussing problems of African states. The APRM cannot force its members to do anything as it is a voluntary mechanism, and therefore it must utilise other processes to establish 'good governance' in Africa. As it currently stands, more 'peer pressure' should be exercised to convince APRM's members to implement their peers' recommendations. Apart from that, through establishing precise definitions and democratic checklists, better standards need to be created, that should become universal goals for all African states. In its current form, the APRM is too weak and too reliant on its members to be an adequate standard for 'good governance' in Africa. However, a change of its rules and processes with regard to establishing definitions and checklists, creating annual follow up reviews with regard to implementation of its recommendations following the initial review would strengthen it sufficiently to act as a strong force for the establishment of 'good governance' in Africa.

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