

MALAWI AND THE AFRICAN PEER REVIEW MECHANISM: A BOLD STEP TOWARDS GOOD GOVERNANCE?

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ABSTRACT

This article analyses the APRM in light of Malawi's accession. It critically examines the institutional framework of the APRM by focussing on its founding documents and the manner in which it has operated since it was established. Drawing on the lessons learnt from the first five countries—Ghana, Kenya, Rwanda, South Africa and Algeria—that have undergone the peer review thus far, it evaluates whether the mechanism has the potential to foster compliance with human rights and inculcate the ideals of good governance and democracy on the continent. In particular, it considers whether Malawi, which was one of the first countries to endorse the APRM, stands to benefit anything from the APRM and, consequently, whether it should embark on the review which is now long overdue.

I INTRODUCTION

Few Malawians would be aware that their country acceded to the African Peer Review Mechanism (APRM). Even fewer have an idea of what the APRM is all about. This is not unique to Malawi. Most Africans remain unaware of what the APRM stands for. One of the daunting challenges facing the African Union (AU) is how to market itself, especially to Africans. In fact, African states as a whole have no proper strategies to market themselves to their own people. The institutions and programmes of the AU, for instance, sadly remain unknown to the African people for whom they are established.

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Curiously, the AU and particularly the APRM and the New Partnership for Africa's Development (NEPAD) are well-known in Western countries. This is a puzzling feature of African governance that, even before the Africans have been taken into confidence, authorities and citizens in Western countries have a better idea of what Africa is up to. Canada, for example, spent huge amounts of resources 'trading' the APRM to its population while Africans remain ignorant of the idea. Western governments are so informed of African programmes and activities that they would be in a better position to explain programmes like NEPAD and the APRM to Africans than Africans to their Western counterparts.

Nevertheless, Malawi's decision to join the APRM is an important milestone. Malawians suffered a great deal during Africa's dictatorships in the 60s through to the 80's. It is common cause that until 1994, Malawi had one of the most brutal regimes on the continent. Just like most African countries, the founding father Life President Dr Hastings Kamuzu Banda ruled the tiny southern African country of over 10 million people with an iron fist for three decades. The main difference between Malawi and other African countries at the time was that very little was known of this country and of the dire conditions people lived in. President Hastings Kamuzu Banda—the Destroyer of the Central African Federation—mixed very rarely with his colleagues and the people he governed. He was a reclusive person. He ignored regional and global meetings, conferences and activities at the Organisation of African Unity (OAU), the United Nations (UN) and other fora. During United States (US) President Ronald Reagan's policy of 'constructive engagement,' Banda's Malawi was the only southern African country that maintained full diplomatic ties with apartheid South Africa!

Taking full advantage of the cold-war, Banda used his very strong personality to silence every one of his people.¹ Popularly known as 'the Ngwazi' (eagle) by his confidants and political party followers, Banda would brag about during his ruling and only political party Malawi Congress Party (MCP) conferences that 'if you oppose me, I will feed you to crocodiles!' He held several of his country men and women in prisons for long periods without a charge; many were tortured, others including three cabinet ministers were subjected to extra-judicial killings.² Orton Chirwa, one of his closest political confidants at independence but who, with others, fell out of favour with him immediately after the country gained independence, was abducted from Zambia together with his wife Vera, charged with reason, and taken to a 'traditional court' presided over by chiefs for 'trial,' which

¹ See, eg, Human Rights Watch *Where silence rules: The suppression of dissent in Malawi* (1990).

² See Commission of Inquiry Mwanza road accident report (1994); JK van Donge 'The Mwanza trial as a search for a usable Malawian past' in KM Phiri & KR Ross (eds) *Democratisation in Malawi: A stocktaking* (1998) 21.

amounted to nothing short of a charade.³ The two were subsequently sentenced to death but, owing to intense international pressure, Banda ordered their release. Unfortunately, Orton died in prison under mysterious circumstances on the eve of his release.

During Banda's time, Malawi was a classical pariah state. The Life President brooked no nonsense from anyone. Malawi's Constitution did not have a bill of rights. With this, individual liberties were infringed at the whim of the 'Ngwazi.'⁴ Courts and judges had no role in protecting liberties. Politically, Malawi belonged to the self-declared Life President. Like most African countries, political parties other than the MCP were forbidden. It was a crime for anyone to form a political party.

However, all this changed in 1994. The 'Life President' was defeated and publicly humiliated at the first ever free and fair polls the country had had since independence in 1964. Against Banda's dreaded 'Young Pioneers,' a shadowy and deadly youth movement of the MCP, the Church, trade unions and students at Chancellor College in Zomba played instrumental roles in forcing Banda to make the historic u-turn and call for multiparty general elections.⁵ During the 1994 polls, Bakili Muluzi, one of Banda's Secretaries General under the MCP who later turned political opponent under the auspices of the newly formed United Democratic Front (UDF), resoundingly beat Banda out of his 'life presidency.'

The 1994 elections were held against the background of a new Constitution introduced as part of the pressure to reform. The Constitution guaranteed basic human rights and fundamental freedoms.⁶ Among other things, the Constitution provided for an independent judiciary and a system of government based on the sacred liberal principle of the separation of powers which provided for checks and balances. While there was no 'truth' commission in Malawi as was the case in South Africa, a mechanism was introduced for the victims of barbarous Banda misrule to lodge claims for compensation for the human rights violations they or their kins may have suffered.⁷

Since 1994, Malawi has peacefully changed governments at polls. After 10 years in office, President Muluzi was succeeded to power by a handpicked

³ *Achuthan & another (on behalf of Banda and others) v Malawi* (2000) AHRLR 144 (ACHPR 1995).

⁴ Human Rights Watch, above note 1; H Meinhardt and N Patel *Malawi's process of democratic transition: An analysis of political developments between 1990 and 2003* (2003) 3–7.

⁵ KM Phiri & KR Ross 'Introduction: From totalitarianism to democracy in Malawi' in Phiri & Ross, above note 2, 9; MS Mzunda & KR Ross (eds) *Church, law and political transition in Malawi 1992–94* (1995).

⁶ See generally AP Mutharika 'The 1995 democratic Constitution of Malawi' (1996) *Journal of African Law* 205; BP Wanda 'The rights of detained and accused persons in post-Banda Malawi' (1996) 40 *Journal of African Law* 221.

⁷ See chapter XI of the Constitution creating the National Compensation Tribunal; KR Ross 'Does Malawi (still) need a truth commission?' in Phiri & Ross, above note 2, 334.

successor President Bingu wa Muthalika, a former UN civil servant and Secretary-General of the Common Market for Eastern and Southern Africa. Bingu wa Muthalika has since turned against the man who single-handedly picked him from outside the UDF to be President.

Malawi has since acceded to several regional and global human rights treaties President Banda had ignored. And the country's human rights record has shown tremendous improvement. When the APRM was adopted in 2003, Malawi was one of the first AU states to quickly embrace it. Although a number of states have ignored the mechanism, among them Botswana and Namibia, Malawi decided it was worth being 'inside' than 'outside.'

This article analyses the APRM in the light of Malawi's accession. It critically examines the institutional set-up of the APRM and its *modus operandi*. The analysis is based on the founding documents of the mechanism and the normative and operational frameworks that have been adopted since the APRM came into force. Crucially, the analysis draws on the lessons learnt from the first five countries that have undergone the peer review thus far. The ultimate goal of this examination is to answer the critical question whether Malawi stands to benefit anything from the APRM. With five countries having gone through the APRM, are there any reasons why countries such as Malawi that have displayed hesitancy to undergo the review process should do so now?

II INSTITUTIONAL FRAMEWORK OF THE APRM

At the 6th Summit⁸ of the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD, held on 9 March 2003, the HSGIC adopted or confirmed the following documents, which establish and provide for the operational arrangements of the APRM:

- The Memorandum of Understanding on the African Peer Review Mechanism (MOU),⁹ which is the accession document for the APRM;
- The Declaration on Democracy, Political, Economic and Corporate Governance (Declaration of Democracy)¹⁰;
- The APRM Base Document¹¹;
- The APRM Organisation and Processes¹²;

⁸ NEPAD/APRM/Pane113/guidelines/11-2003/Doc8.

⁹ NEPAD/HSGIC/03-2003/APRM/MOU, 9 March 2003.

¹⁰ 6th Summit of the NEPAD, 9 March 2003, NEPAD/HSGIC/03-2003/APRM/MOU/ AHG/235 (XXXV111) Annex 1.

¹¹ AHG/235(XXXV111) Annex 11, 16 September 2003.

¹² NEPAD/HSGIC/03-2003/APRM/Guideline/O&P, 9 March 2003.

- Objectives, Standards, Criteria and Indicators for the APRM¹³; and
- The Outline of the Memorandum of Understanding on Technical Assessments and the Country Review Visit¹⁴.

These instruments constitute a basic source of guiding principles for the APRM. As the APRM was not established by treaty, the MOU is the closest instrument that provides the legal basis of APRM. The question whether or not to create the APRM by means of a legally binding treaty was raised at the Abuja Summit the HSGIC in October 2003 by the former President of Nigeria and former chair of HSGIC, Olusegun Obasanjo.¹⁵ This question was not addressed systematically and in the end the APRM was adopted as a loose arrangement with no clear legal standing in international law.

In the following paragraphs, we provide a snapshot of the APRM and the manner in which it operates before delving into a critical appraisal of the mechanism. In the conclusion, we consider the implications of the mechanism for Malawi.

III THE APRM BASE DOCUMENT

Besides the Declaration on Democracy, the Base Document is the most authoritative instrument on the establishment and implementation of the APRM. However, the Base Document should be read in conjunction with the Declaration and related documents, instruments as well as APRM decisions. Reading it in isolation is bound to mislead the issues. For example, paragraph 15 of the Base Document, which provides for periodic reviews of the policies and practices of participating states, refers to the Declaration as the main source of the values, codes and standards of governance against which the process of review is to be measured and considered. Therefore, a proper understanding of the Base Document is only possible in the context of the Declaration as well as other instruments. While it is normal that participating states like Malawi are more likely to find the Guidelines¹⁶ to be of particular importance, the Base Document is nevertheless the basis of the mechanism.

Paragraph 28 of the Base Document states that ‘the Conference of participating countries shall review the APRM once every five years.’ This provision evidently makes the APRM a living document. The question has

¹³ NEPAD/HSGIC/03–2003/APRM/Guideline/OSC1, 9 March 2003.

¹⁴ NEPAD/HSGIC/03–2003/APRM/Guideline/Outline, 9 March 2003.

¹⁵ Speech by His Excellency, President Oulusegun Obasanjo, Chairman of the HSGIC, October 2003, Abuja, Nigeria

¹⁶ Guidelines for Countries to Prepare for and Participate in the African Peer Review Mechanism (APRM Guidelines).

been raised: 'What is the lifespan of APRM?'¹⁷ Given that the APRM is now five years old, the mechanism itself is up for review, which includes the possibility that fundamental changes bearing on its nature and process may be made. There is nothing in the Base Document that precludes a recommendation, as part of the review, for its dissolution.

The Base Document provides several features relevant to the APRM including the mandate of the APRM; the purpose of the APRM; the principles of the APRM; participation in the peer review process; leadership and management structures; periodicity and types of peer review; the APRM process; stages and duration of the peer review process; and funding of the peer review mechanism.

IV THE APRM

A Mandate

The question is often asked: 'What exactly is the purpose of the APRM?' The simple answer is that the APRM is a framework for monitoring policies and practices of participating states to ensure their conformity to agreed political, economic and corporate values, codes and standards which are enshrined in the Declaration on Democracy.¹⁸

This answer takes us to the March 2003 Declaration on Democracy. What is the source of the Declaration? It originates from the inaugural Assembly of the AU where, for the first time, the Summit considered the report of the HSGIC, which was established in July 2001 at the OAU Summit in Lusaka, Zambia. The Assembly, after considering various decisions it had taken at its successive meetings, decided to adopt the Declaration whose primary purpose was to eradicate poverty as well as to foster socio-economic development on the continent. This was broken down into four themes:

- Democracy and good political governance;
- Economic and corporate governance;
- Socio-economic development; and
- African Peer Review Mechanism

The first three themes latter became the thematic areas under the APRM Base Document.¹⁹ Furthermore, each of these themes was elaborated in the form of values, codes and standards basically reflecting the dominant liberal

¹⁷ This question was raised at an Expert Meeting on the APRM organised by the UN Adviser on Africa held in November 2007 in Addis Ababa, Ethiopia.

¹⁸ Para 2 of the APRM Base Document.

¹⁹ As above.

ideology implicit in the NEPAD.

Within this context, the adoption of the Declaration on Democracy was historical. Participating states went out of their way to detail a plethora of values, codes and standards the purpose for which NEPAD was formed. These include: democracy and its core values; the rule of law; individual and collective basic human rights and freedoms; equality of opportunity for all; the inalienable right of the individual to participate by means of a free, credible and democratic political processes in periodical elections; and the principle of the separation of powers, including the protection of the independence of the judiciary and of effective parliaments.²⁰

Furthermore, participating states expressed their strong belief in the importance of a just, honest, transparent, accountable and participatory system of government as well as probity in public life.²¹ Precisely, these are the values that until now have eluded societies in Africa. To imagine that an African state would say this at all is simply unbelievable. NEPAD marked a turning point. It represents a completely new beginning; a renaissance in Africa's pursuit of a society based on respect for human dignity.

They did not end here. Corruption came in for specific rebuke. In an unprecedented stance, governments undertook to combat and eradicate corruption.²² It was bold of African leaders to say this. It is common knowledge who is behind corruption in Africa. With what Africa has gone through in the last 50 years or so, few people will believe the undertaking to combat and eradicate corruption. Corruption has since been the subject of a whole convention—the AU Convention on Prevention and Combating Corruption.²³

The issue of conflict was also specifically addressed. Participating states promised to find speedy and peaceful solutions to current conflicts and to build Africa's capacity to prevent, manage and resolve all conflicts as well as to ensure the restoration of stability, peace and security on the continent.²⁴ Conflict, instability and insecurity have been Africa's greatest enemies. Each year, innocent African children, women and men perish owing to the cruel hand of conflict. But the Declaration on Democracy promises to make all this history.

On economic and corporate governance, the Declaration on Democracy notes that good economic and corporate governance, including transparency in financial management, are a prerequisite for promoting economic growth

²⁰ Para 7 of the Declaration on Democracy.

²¹ Para 8 of the Declaration on Democracy.

²² As above.

²³ Adopted in Maputo, Mozambique in July 2003.

²⁴ Para 9 of the Declaration on Democracy.

and reducing poverty.²⁵ Thus, participating states approved eight prioritised codes and standards for achieving good economic and corporate governance.²⁶ The eight codes represent what the Declaration on Democracy calls the “fundamental” internationally, regionally and domestically accepted codes and standards that all African countries should strive to observe.²⁷ They include:

- the Code of Good Practices on Transparency in Monetary and Financial Policies;
- the Code of Good Practices on Fiscal Transparency;
- Best Practices for Budget Transparency;
- Guidelines for Public Debt Management;
- Principles of Corporate Governance;
- International Accounting Standards;
- International Standards on Auditing; and
- Core Principles for Effective Banking Supervision.²⁸

Poverty fronts the third objective—socio-economic development.²⁹ The document states candidly that poverty can be tackled through the promotion of:

- democracy, good governance, peace and security;
- the development of human and physical resources;
- gender security;
- openness to international trade and investment;
- allocation of appropriate funds to social sector; and
- new partnerships between governments and the private sector and civil society.³⁰

The above, in a nutshell, are the values, standards and codes approved by the AU in the Declaration on Democracy, which the APRM is mandated to implement.

The responsibility of the APRM is to encourage self-monitoring of members so as ‘to foster the adoption of policies, standards and practices that lead to human security and political stability, high economic growth, sustainable development, and accelerated sub-regional and continental

²⁵ See para 16.

²⁶ As above.

²⁷ Para 17.

²⁸ Para 18 of the Declaration on Democracy.

²⁹ See para 20 of the Declaration on Democracy.

³⁰ As above.

economic integration.³¹ Against the background of failed governance, the APRM is both a confession to the failure of governance and, simultaneously, a call for better governance in Africa. It is an acknowledgement of the fact that one of the key reasons behind Africa's deepening poverty, and therefore of insecurity, is the lack of an effective and appropriate governance framework.

A key feature of the APRM is that it is a 'self-monitoring' procedure,³² which means that a country cannot be forced to undergo the process. Peer review is seen as the systematic examination and assessment of the performance of a state in the first place by itself, that is, government and stakeholders and in the second place by other participating states. A country must be willing to undergo the review. It cannot be forced. Perhaps, the only question is: Should a government decide to subscribe to the APRM without consultation with its population? Thus far, decisions to join the APRM have been taken by governments according to internal constitutional and other processes. As the APRM review is voluntary, it cannot be applied to countries undergoing turmoil who have not accepted the mechanism. AU membership per se does not render a state liable to the APRM.

The primary goal of the APRM is to improve the governance system of a country through sharing experiences, reinforcing successful and best practices, identifying deficiencies, and assessing the needs for capacity building.³³

B Procedure

As alluded to above, the actual process of review is conducted on the basis of the four thematic areas listed below:

- Democracy and political governance;
- Economic governance and management;
- Corporate governance; and
- Socio-economic governance

Based on these themes, the review is conducted over five stages. The first stage is basically desk research. During this stage, the APRM Secretariat initiates a desk study or research of the country concerned in which it develops a background and issues paper. This is a bid to try and understand the country to be reviewed before embarking on the review itself. It is

³¹ Para 3 of the APRM Base Document.

³² Para 2 of the APRM Base Document.

³³ South Africa review report, 5 September 2007, 33, available at <http://www.nepad.org/aprm> (accessed 7 April 2008).

basically a library activity at the APRM Secretariat in Midrand in South Africa. The Secretariat mostly uses consultants based in various countries across the world. This is also the stage the country concerned prepares the self-assessment report and programme of action.

Stage two is the country review mission. Led by a panel member—who is responsible for the country concerned—the Secretariat, experts, strategic partners and other prominent personalities with some connection to the country concerned are assembled together for the visit. The visit is at the invitation of the host country communicated to the APRM by the national focal person. Normally, the latter is a group of about 20 people. The Base Document states that the visit's priority is 'to carry out the widest range of consultations with the Government, officials, political parties, parliamentarians and representatives of civil society organisations (including the media, academia, trade unions, business, professional bodies).'³⁴ It is not clear what 'the widest possible range of consultations' means given that in all the five countries to which visits have been made thus far, consultations lasted for about 14 days only; clearly not enough. In fact, consultations during the visit are restricted to the programme set by the host Governing Council. It is well-known that information from independent sources is usually more credible than that from official sources.

After the visit comes stage three, which basically entails compiling the report. In the case of Ghana, the process started during the visit. The team would meet to discuss the issues and draw some broad parameters. According to the APRM Base Document, 'the report is prepared on the basis of briefing material prepared by the APRM Secretariat and the information provided in-country by official and unofficial sources during the wide-ranging consultations and interactions with stakeholders.'³⁵ In practice, consultations as indicated above have not been broad based because of the limited time set aside for them and certain ethical rules preventing free searches of information in the host country.

The fourth stage is the submission of the country review report to the participating heads of state and government (APR Forum), which is done through the APRM Secretariat.³⁶ This is the peer review conducted by heads of state and government. In practice, the APR Forum is hosted towards the end of an AU Summit. Thus, unless the Summit is taking place in the country to be reviewed, the review by the APR Forum invariably does not take place in the country being reviewed, and this is what happened in respect of the first five countries that have been reviewed.

What happens during the actual review is that the Chairperson of the

³⁴ Para 19 of the APRM Base Document.

³⁵ Para 20.

³⁶ Para 23 of the APRM Base Document.

APR Forum welcomes the leaders present and introduces the country to be peer-reviewed. Then, the lead Panel Member or one of the seven Eminent Persons responsible for that country is called upon to present the country review report. In the main, the Panel Member will highlight both the strengths and challenges identified in the report. This is followed by a response from the head of state of the country under review.

The first challenge regarding the effectiveness of the APRM is how to ensure that the heads of state and government play an active role in reviewing each other's records. Thus far, they have tended to be defensive and reluctant to criticise reports of their peers. For example, President Mbeki, in his response to the presentation of the country review report for South Africa did not shy away from strongly criticising the report produced by the experts and even rejected parts of it.

There have been very few instances in which heads of state have engaged critically with the reports of their peers. For example, President Obasanjo asked President Paul Kagame during the review of Rwanda's report³⁷ to elaborate on the Gacaca courts, which dispense justice in accordance with traditional principles of justice in post-genocide Rwanda and had attracted stern criticism from the experts. Another exception took place when Ethiopian Prime Minister Meles Zenawi congratulated the Panel that had compiled the South African report, agreeing with most of the findings of the report and the methodology used, in direct confrontation with President Mbeki who had just criticised the report. These, however, were isolated events. The general trend has been for heads of state either to keep quiet or to be carefully measured in their commentaries.

In order for the peer review to be effective, the APR Forum should hold its meetings in the home country of the state under review. While it would be expensive to fly heads of state and government to the country concerned for only one and half hours of the review, this is exactly what will convince the population that the review and the APRM are real. A peer review in a distant country is not convincing to most people.

In addition, the peer review must open up to the citizens. Civil society should have access to the peer review and the APR Forum should be open to the public. Heads of state need to understand that their people want to see them being peered or peering fellow heads of state and this must not be done in secrecy, away from the country under review as is the case at the moment. Imagine the impact if the peer review of Sudan, for instance, was to be conducted in the open right in Sudan!

As indicated above, the fifth and final stage is the tabling of the report

³⁷ Country Review Report of Rwanda, June 2006, available at <http://www.nepad.org/aprm> (accessed 30 March 2008).

after consideration by the heads of state and government before sub-regional structures such as the Pan-African Parliament (PAP), the African Commission on Human and Peoples' Rights (African Commission), the AU Peace and Security Council and the Economic, Social and Cultural Council (ECOSOCC) within the AU.³⁸ While this has been done in respect of the PAP, the African Commission has not yet had the benefit of receiving the APR report as provided.

This stage is vitally important. It confirms the collective ownership of the process by the AU which authored the concept. Even those AU states that have not yet volunteered to accede to the mechanism will, through their officials in these bodies, get to know the mechanism and participate in its collective monitoring and implementation, which could trigger interest in their own countries.

Report tabling also constitutes publication and therefore fulfils the sacred principles of transparency and accountability. In the case of the Ghanaian report, publication was not easy. Like the game of ping pong, the Ghanaian Governing Council and the APR Panel shifted the responsibility of publishing the report to each other. The Base Document does not state clearly who between the Governing Council, the participating state or the APR Panel should table the report to the prescribed bodies. The controversy delayed publication of Ghana's Report.

The five-stage process has often been criticised for being too prolonged to be efficient and this has been cited as the reason behind the unsatisfactory progress since the mechanism started. Thus far, only five countries have been reviewed.

On closer look, however, it is not entirely accurate that the delays experienced emanate solely from the five stages. What seems to be the case instead is that delays are caused by factors often not stated. For example, prior to stage one, there is the support mission. Experience has shown that there often is a long lapse of time between accession and the participating state invites the APR Panel to conduct the support mission.

In fact, Malawi is an example of this problem. After she acceded to the APRM, further activity was stalled. Besides Malawi, progress in most participating countries has been halted at this the stage. While duration is regulated by the Base Document, which states that 'the process per country should not be longer than six months commencing on the date of inception of stage one up to the date the report is submitted for the consideration of the Heads of State and Government,'³⁹ this in practice is not complied with.

³⁸ Para 25 of the APRM Base Document.

³⁹ Para 26.

V GUIDELINES FOR PARTICIPATING COUNTRIES

As indicated earlier, the APRM Guidelines assist participating states in their preparation and participation in the APRM.⁴⁰ They set out the principles governing the review. They vest the overall responsibility for the mechanism in the Committee of Participating Heads of State and Government and the responsibility to oversee the conduct of the APR process and ensure its integrity in the Panel of Eminent Persons.⁴¹ Paragraph 12 of the APRM Guidelines regards the APRM as a holistic process which is so flexible as to dovetail with other national programmes and processes. This is an important paragraph because it harmonises the APRM with existing and ongoing programmes. Therefore, the existing programmes of action in these areas could be adapted and adopted for the APRM to maximise efforts instead of treating them separately or in competition. The APRM is primarily there to close gaps where these exist.

Also, the Guidelines have been set out to guide participating states during country missions as to how to develop the self-assessment based on the questionnaire and indicators as well as how to develop a realistic programme of action incorporating synergises as can be identified from existing programmes; how to implement a country support mission with all the various stakeholders; and how the five stages of the APR processes operate. They provide guidance both to participating states and the APR organs on how to prepare their respective reports to ensure a balanced self-assessment and how to prepare a realistic programme of action.

Based on what we have alluded to before, the APRM Guidelines will need to be changed drastically to make the mechanism more responsive to local circumstances by amending the questionnaire and compiling it after the APRM Secretariat and consultants have undertaken visits to the country to be reviewed.

VI NATIONAL FOCAL POINT

The APR Forum endorsed the recommendation that a Focal Point be established in each participating country. The APRM National Focal Point should be at the Ministerial level or a High-Level Official reporting directly to the Head of State or Government and with access to all national stakeholders.⁴²

The National Focal Point (NFP) is a critical link in the APRM process. It is

⁴⁰ Para 3 of the APRM Guidelines.

⁴¹ Paras 7 & 8.

⁴² Communiqué of the First Summit of Participating Heads of State and Government in the African Peer Review Mechanism (APR Forum), Kigali, Rwanda, 13 February 2004.

crucial to the success of the mechanism. An inaccessible NFP means stakeholders cannot communicate. It is important for it to enjoy the confidence of all stakeholders.

However, the concept has been challenged particularly by the political decision to station the NFP too close to the head of state or government and, therefore in the eyes of other social formations, in 'enemy territory.' Heads of state entertained the idea of a NFP who was a politician and particularly one they could control through the power of appointment. In Ghana, for instance, the focal point originally, was Minister of Regional Cooperation and NEPAD whereas in Rwanda, it was the Minister of Finance. When the Minister of Finance resigned to take up a new job as President of the African Development Bank, President Kagame's Special Representative and Advisor on NEPAD took over as the focal point. In Kenya, the Minister of Economic Planning was the focal point. In South Africa, the Minister of Public Administration is the country's APRM focal point.

Unfortunately, this decision has serious implications for the integrity, efficiency and effectiveness of the process. The Executive Secretary of the UN Economic Commission for Africa (UNECA) is quoted to have observed that the structures of the APRM 'would work better and its credibility guaranteed if [the NFP] were independent and not attached to political pressures of government.'⁴³

Though not settling for any particular model, it is clear from the above that progress in national coordinating bodies would depend on the extent to which the NFP enjoys the respect of all stakeholders. But, the practice in most participating countries has been to settle for a member of an incumbent government instead of settling for an independent individual that enjoys the respect of all. In some African countries, the opposition and government cannot talk. Similarly, there is a permanent state of war between civil society and labour on one hand and government on the other. How can a minister or senior government official in these circumstances approach labour or opposition politicians and vice versa?

In a critical review of the APRM process in Rwanda, a respected NGO complained that the location of the NFP in the Office of the President affected the objectivity of the process in Rwanda.⁴⁴ Appointing a minister or civil servant as most participating countries have done creates the impression that the APRM is government business which puts off non-governmental formations. In any case, appointing a cabinet minister means there will be

⁴³ See 'Independence of APRM needed for good governance in Africa' African Monitor, 29 October 2006, available at <http://www.africanmonitor.org/node/62> (accessed 7 April 2008).

⁴⁴ LDGL Critical review of the APRM process in Rwanda January 2007, available at <http://www.afrimap.org/english/images/report/APRM%20Rwanda%20ENG.pdf> (accessed 7 April 2008).

constant changes due to changes of personalities in cabinet, which do not augur well for the effectiveness of the APRM.

VII GOVERNING COUNCILS

The APR Forum also approved the recommendation of the APR Panel that participating countries immediately take steps to identify or establish broad-based and all-inclusive APRM National Coordinating Structures where they do not exist.⁴⁵

Before the participating state prepares the country's self-assessment report and programme of action and immediately after the support mission, it must establish the national coordinating committee or, literary, the APRM in the country. While the Base Document suggests the basic principles to govern how this body is to be constituted, the practice has varied from country to country depending on a mix of factors. As indicated above, Ghana established what it called 'the Governing Council.' The term was borrowed from Kenya and South Africa with some slight variation.⁴⁶ On the other hand, the Ghanaian model was not replicated in Rwanda both formally and substantively. Rwanda preferred to call its body the 'APRM National Commission' and to take a different route in providing for its composition.

Appointment to the national APRM bodies has been controversial. Ghana chose to stick to the practice in force at the continental APRM which has a panel of seven eminent members. It is widely agreed that the seven individuals in the Ghanaian Governing Council command great respect in the academia, legal practice, international diplomacy and civil society.⁴⁷ There was a Catholic Bishop among them. There was no doubt about their individual competences and technical capacities.

However, these were not chosen in a popular process and this irked the generality of the Ghanaian civil society. The Kenyan process 'corrected' Ghana's apparent pitfall to involve the public in the identification of individuals suitable to serve on the Council. Instead of seven, Kenya's

⁴⁵ First summit of participating heads of state and government in the African Peer Review Mechanism (APR Forum), Kigali, Rwanda 13 February 2004.

⁴⁶ The nomenclature though not important is nevertheless already getting diverse. In Kenya, it is known as National African Peer Review Mechanism National Governing Council (NGC) while in South Africa it is known as South Africa APRM National Governing Council (NGC). Unlike the Ghanaian and the South African ones, Kenya's Governing Council underwent a tumultuous period leading to prolonged delays in submitting the country self-assessment report to the continental APRM. At the height of these controversies, the Council had to change chairpersons.

⁴⁷ Led by Prof Adjeompong who chaired the Council. Others included a former law society chairperson, ex-professors of political science and education, a long-time serving ambassador, Catholic Bishop and representatives of NGOs and especially women's organisations.

Governing Council comprised an odd 33 members⁴⁸ 'nominated by stakeholders.'⁴⁹ The Kenya Governing Council has been described as a 'trilateral institution' drawing membership from government, civil society and the private sector.⁵⁰

South Africa, on the other hand, had a total of 15 members in addition to reserves. Initially, South Africa's Governing Council was dominated by government.⁵¹ Government appointed cabinet ministers to sit on the Council, the first time this had happened since the exercise started in Ghana and Rwanda. Subsequently, after some stern criticism from civil society, room was created for more civil society members to join the Council.

VIII CRITICAL ANALYSIS OF THE APRM

Given Africa's troubled post-colonial past, the mere adoption of the APRM by the AU is nothing short of something historical. Through the mechanism, heads of state and government of participating countries not only review each other's records but also share experiences in such vital areas as problem solving. Previously, due to the exaggerated importance they accorded to the principle of internal affairs, African states within the OAU had to tread carefully in regard to issues arising from each other's countries. Non-interference effectively prevented African countries from raising questions about each other's internal affairs.

This is changing, but very slowly. There is still a lot of resistance to openness and frankness among heads of state and government as regards problems facing their countries. The most recent example is Kenya. Following disputed elections, which were rejected both by the opposition and by most election observers, violence broke out after President Mwai Kibaki was swiftly sworn in for his second and last term. However, the 'government' rejected the early mediation efforts led by the then Chairman of the AU Ghanaian President John Kufour. Ghana and Kenya have both gone through the APRM.

Most notably, the APRM is based on the Declaration on Democracy. It is

⁴⁸ Both the principles and process of composing the Kenyan Governing Council is exhaustively discussed by Steve Ouma Akoth 'The APRM process in Kenya: A pathway to a new state?' (OSIEA & AfriMap, 2007).

⁴⁹ Government of the Republic of Kenya 'Country review report of the Republic of Kenya,' June 2006, 9.

⁵⁰ As above.

⁵¹ A member of civil society called the author a week after the composition of the Governing Council was unveiled to find out whether based on my experience in the APRM as consultant it was in order for South Africa to appoint members to the Governing Council and secondly to appoint mostly government ministers.

trite that declarations do not have binding effect in international law.⁵² This means the Declaration on Democracy is not binding on the states that adopted it and therefore such states cannot legally be called upon to deliver on their promises contained in it.⁵³ The best that can be done if they renege on their commitments is that they could be politically shamed, but nothing more than this. It follows from this that the foundation and coordination of the peer review system is shaky and may be ill-suited to support such an ambitious scheme as the APRM, grappling with issues as complex as democracy, development, governance, conflict, and human rights. In other words, the APRM could disappear as it came—without fanfare or fuss. The fate of this mechanism lies in the goodwill of the participating states and, ultimately, heads of state and government.

It must be noted that the peer review is undertaken almost in complete disregard of the existing reporting mechanisms under the African Charter on Human and Peoples' Rights (African Charter)⁵⁴ and the African Charter on the Rights and Welfare of the Child.⁵⁵ The APRM to a large extent assumes to be an independent regime concerned with unique ends.⁵⁶ By running a parallel system, the APRM simply duplicates existing efforts, and in a continent faced with the problem of resources, such duplication is uncalled for.⁵⁷

Another major concern with this duplication lies in the fact that the PEP, which steers the APRM process, is not composed of persons with the necessary human rights competence akin to, say, Commissioners of the African Commission. The latter are 'chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights.'⁵⁸ By contrast, the PEP is constituted by between five and seven Africans who have distinguished themselves in careers that are considered relevant to the work of the APRM.⁵⁹ These persons may easily lack the competence to analyse the human rights component of the review. The

⁵² MN Shaw *International law* (1996) 93.

⁵³ See also CFJ Doeblér 'A complex ambiguity: The relationship between the African Commission on Human and Peoples, Rights and other African Union initiatives affecting respect for Human rights' (2003) 13(1) *Transitional Law and Contemporary Problems* 24.

⁵⁴ Adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev5, 21 ILM 58 (1982), entered into force 21 October 1986.

⁵⁵ OAU Doc CAB/LEG/24.9/49 (1990), entered into force 29 November 1999.

⁵⁶ This criticism is shared with NEPAD itself, see C Mbazira 'A path to realising economic, social and cultural rights in Africa? A critique of the New Partnership for Africa's Development' (2004) 4(1) *African Human Rights Law Journal* 51.

⁵⁷ E Baimu 'The African Union: Hope for better protection of human rights in Africa?' (2001) 1(2) *African Human Rights Journal* 301.

⁵⁸ Article 31 of the African Charter.

⁵⁹ Para 6 of the APRM Base Document.

human rights issues contained in the questionnaire are complex and may take a body of experts to review them appropriately. Moreover, the existing reporting system under the African Charter has already developed capacity and competence based on the numerous decisions taken and the resolutions authorised.

It is also worth the note that the APRM is principally based on a state's self-assessment (and consequently review by peers) rather than on external or independent influence. This approach has been hailed as being original, African and non-confrontational.⁶⁰ True, it is less adversarial compared, say, to the judicial approach to human rights enforcement. In addition, it is voluntary. Currently, out of the 53 members of the AU, 27 have signed up with the mechanism. The APRM is also a method of conscious internal data collection, collation and assessment. If utilised well, genuinely and sincerely, it has potential to be a momentous occasion for critical self-evaluation; and it offers an opportunity for a country to understand and discover itself, and to interrogate its own policies and procedures. In theory, the APRM has potential to foster national dialogue involving all stakeholders.

However, one wonders whether this approach is as germane as is popularly suggested because human rights at international, regional and national levels already provide for the mechanisms of self-introspection and self-control. Therefore, the problem seems to be more of a lack of implementation than of having the norms and procedures. If the existing standards of governance and especially human rights were implemented, there would be fewer human rights problems than is the case now.

Consequently, introducing new models such as the APRM in fact may not be the solution that has long eluded governments and the people in Africa. Rather, it is the 'magic' of how to govern with the principles of good governance and liberties, basic freedoms and fundamental human rights that is key to stable societies.⁶¹

The pressing issue for the APRM is how to trust the state with the mandate to objectively review its own record? In human rights, states have not only emerged as guardians of human rights; they have, ironically, also proved to be the principal violators of these very entitlements. Victims of human rights violations question the wisdom of calling on the same state

⁶⁰ See, eg, GJ Naldi 'Future trends in human rights in Africa: The increased role of the OAU' in M Evans & R Murray (eds) *The African Charter on Human Rights: The system in practice, 1986-2000* (2002) 12, where the author alludes to an erstwhile position where the decision to exclude a court in the African human rights system was justified on the ground that the African conception of dispute settlement is based on negotiation and conciliation rather than on an adversarial or confrontational system.

⁶¹ M Piechowiak 'What are human rights? The concept of human rights and their extra legal justification' in R Hanski & M Suksi (eds) *An introduction to the international protection of human rights* (1997) 9-10.

that has violated rights to serve as the judge of its own human rights record. Relying on states to assess their own progress is tantamount to entrusting monkeys with the task of judging matters of the forest.

There is one other cardinal danger in the APRM approach: it is possible that a regime, keen on creating impressions, may truncate information so as to appear 'civilised' in the eyes of its peers. There is no mechanism in the APRM to guard against such abuse.

Given this, how objective is the country's self-assessment under the APRM? Is it possible for a country under review to accept its own failures?

So far, this has not happened. And all the five countries that have been reviewed, as we have already pointed out, used the mechanism as an opportunity to defend their records. In short, states are unlikely to concede that their democracy records are poor. Given an opportunity, they all would claim to be democratic. Political scientist, Afrifa Gitonga, has observed that the term democracy has become so fashionable that even antithetical regimes claim the adage 'democratic.'⁶² He observes:

The term has become more and more 'honorific' with an unequivocal 'laudatory' meaning attached to it. Supporters or apologists of all kinds of regimes and systems are therefore quick to attach the tag 'democratic' unto them. It is not even uncommon to find the term used to signify and thereby to sanctify perfectly antithetical realities and practices.⁶³

Furthermore, the APRM is but government in a different cloak. Its inception was initiated by governments who also initiate its establishment at home. The decision to join the mechanism is an act of the executive branch unsolicited by non-governmental forces. Therefore, there is a strong sense in which the APRM can be viewed as an initiative of government by government for the purposes of government. Otherwise why would government through the NFP drive the process?

While involvement of civil society members is envisioned, the mechanism is tightly controlled by governments. For example, civil society does not attend the APR Panel and the APR Forum, the most crucial stages of the process. Lack of public participation is a charge that has also been brought against NEPAD itself.⁶⁴ From the five completed reviews, it is quite evident that heads of state cannot be trusted to critique each other's records. The APR Forum, in particular, has turned out to be a sham as leaders hardly

⁶² AK Gitonga 'The meaning and foundations of democracy' in WO Oyugi & others (eds) *Democratic theory practice in Africa* (1988) 5.

⁶³ As above.

⁶⁴ E Baimu 'Human rights in NEPAD and its implications for the African human rights system' (2002) 2 *African Human Rights Journal* 308.

comment on each others' records let alone critically.⁶⁵

Without the necessary teeth to bite non-performers, it would appear that the only means to enforce the APRM is through moral approbation and, particularly, naming and shaming. From experience, however, these are not realistic sanctions in Africa. For example, enforcement of human rights norms, like public international law principles, has largely relied on the combination of pressure particularly from independent and external organisations and the element of shame on governments that do not adhere to these norms. It has, therefore, been observed that, historically, what has spawned reversals in the domestic and foreign policies of African states has been pressure from the international donor community which use the threat of suspension of development aid, or international NGOs which use the influence of their home states.

There is an additional controversial point which defines the APRM in the eyes of the general public. Much as the APRM is seen from the eyes of the officials as a typically African enterprise, its marriage with donors is unmistakable. Though the APRM is funded by participating states to the tune of 60%, reliance on donor assistance to fund APRM programmes effectively means that the initiative's progress may have to be at pace and with the conditions of foreign missions and agencies.⁶⁶ This casts a negative image on the mechanism. Economic problems have bedevilled most AU initiatives in the past. Due to lack of resources, some of the most promising programmes have been killed in their infancy. Therefore, if participating states are not ready to fund both the APR structures and consequent national programmes, success is least likely.

IX THE APRM QUESTIONNAIRE

The APRM questionnaire is the soul of the mechanism. The whole process of self-assessment culminating in the country review report and the peer review itself is based on the results of the questionnaire. It is not very clear why the method of a questionnaire was settled for. In practice, the questionnaire has not endeared itself well to the users. It is not 'user-friendly.' Apart from it being too long, it is repetitive in a number of areas. Owing to its desire as much as possible to reflect universal standards, it

⁶⁵ See also J Akokpari 'Policing and preventing human rights abuses in Africa: The OAU, the AU & the NEPAD peer review' (2004) 32 *International Journal of Legal Information* 469—470.

⁶⁶ Already, Western powers have demonstrated their interests in the APRM process. During the WEF African Summit in Maputo in 2004, for instance, Western leaders expressed criticism of the reluctance of African countries to implement the peer review mechanism. Thus, Venter and Neuland argue that pressure from foreign governments has already made a substantial contribution to the APRM. D Venter & E Neuland *NEPAD and the African renaissance* (2005).

is inflexible and generally not responsive to the actual needs on the ground. Consequently, states have adapted several parts of it, which threatens uniformity and comparative analysis.

A The APRM questionnaire and human rights

Generally, the APRM questionnaire is designed to answer to the AU objectives of NEPAD. Though it does not pretend to encapsulate all of the manifestations of the Declaration on Democracy, it nevertheless tries to respond to most of the NEPAD's objectives. The design provided is by way of a series of objectives based on the four thematic areas. Since there are many, we shall only randomly consider a few of them here.

1 *Objective three*

Objective three focuses on the promotion and protection of economic, social, cultural, civil and political rights as enshrined in African and international human rights instruments.⁶⁷ The objective seeks to elicit information concerning the environment in which human rights, as regionally and globally secured, protect citizens in the participating countries. It states:

The promotion of economic, social, cultural and political liberties ensures that the integrity and rights of people are respected by the state which should also take necessary steps to protect the citizens' rights from violation either by its agents and/or a third party. In this connection, the institutionalisation of a system of due process involving judges who are able to apply the law independent of outside pressures and with impartiality is critical. Indicators related to this objective are underpinned by the principle of ensuring that the will of the people constitutes the basis of authority of the government. The popular will is measured, inter alia, through the rights of citizens to participate directly and freely in the election of representatives and the equality of access to public service. Other indicators that are relevant for consideration include the capacity of the state to provide the people with an adequate standard of living, education, housing and health care.⁶⁸

In the first instance, the objective seeks to extract information on the measures that have been put in place to implement economic, social, cultural, civil and political rights as well as the legal provisions that have been enacted in the respective state to implement these rights including the rights to equal access to employment, health, freedom of speech, freedom of

⁶⁷ Country Self-Assessment for the African Peer Review Mechanism: Master Questionnaire, 2.

⁶⁸ As above, 19-20.

religion, and education.⁶⁹

Furthermore, it requires the participating state to assess the effectiveness of those legal provisions and the mechanisms put in place to promote and protect these rights and also to provide evidence of major cases concerning human rights entertained by the courts over the preceding five years.⁷⁰

The next question under this objective requests information on the steps taken to facilitate equal access to justice for all.⁷¹

2 *Objective seven*

Objective seven provides for the promotion of the rights of women and the mainstreaming of gender equality.⁷² The primary concern under this objective is to ensure that, contrary to historical and other factors, women have a legal and practical status in the country under review.⁷³ It calls for concerted efforts to include women in socio-economic development through effective political and other forms of participation.⁷⁴ Some of the indicators under this objective seek to encourage governments to provide evidence of women's empowerment in the domain of access to and control of productive resources and services, as well as their role in decision-making including in conflict prevention and resolution.⁷⁵

Based on the human rights framework, two questions have been posed in this regard. The first one seeks to understand the measures a participating state may have taken to promote and protect the rights of women in the country.⁷⁶ Secondly, it asks for measures that have been put in place to enhance the participation of women in society.⁷⁷

3 *Objective eight*

This objective is concerned with the promotion and protection of the rights of children and young persons. The main question posed is: 'What concrete measures have been taken to promote and protect the rights of the child and young person?'⁷⁸

A set of measurable indicators have been developed which require states

⁶⁹ As above, 32.

⁷⁰ As above, 32.

⁷¹ As above, 33.

⁷² As above, 37.

⁷³ As above, 21.

⁷⁴ As above.

⁷⁵ As above, 37-38.

⁷⁶ As above, 37.

⁷⁷ As above, 38.

⁷⁸ As above, 39.

to come up with an indication of the developments in several fields including health care and welfare; child education; custody and guardianship; the right to seek and receive information; and measures taken to eliminate child slavery and child labour, child prostitution and child pornography.⁷⁹ Furthermore, the state is required to assess the measures taken to improve the status of children and young persons in the country over the preceding five years.⁸⁰

4 *Objective nine*

Objective nine focuses on the promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees. Participating states are required to respond to one question only: 'What measures has the country taken to promote and protect the rights of vulnerable groups including refugees, internally displaced persons and displaced persons?'⁸¹

5 *Economic governance and management*

The section on democracy and good political governance commences by establishing a series of standards and codes that are to apply to the framework of the APRM. These (standards and codes) are based on major international and African regional human rights instruments. Given Africa's history as a pariah of human rights, the inclusion of these codes and standards is a welcome surprise. The key question states are expected to answer is: 'To what extent has the country taken measures to sign, ratify, adopt and comply with these standards?'⁸²

B Critique of the questionnaire

In spite of its broad nature, the questionnaire has not recalled all the recognised human rights. It has settled for the so-called *a la carte* model in deciding the standards to which the participating states must conform. For example, the typically African values espoused in the African Charter have been captured only indirectly in the provisions dealing with such institutions as chiefs or traditional leaders. Several collective rights were denied explicit statement in the questionnaire.

Then, too, the questionnaire lays more emphasis on civil and political

⁷⁹ As above.

⁸⁰ As above.

⁸¹ As above, 40.

⁸² As above, 45.

rights than on economic, social and cultural rights and third generation rights. This oversight has elicited the concern that perhaps NEPAD and the APRM were not actually intended for African people but rather meant to attract direct foreign investment and aid from the West. This point has been raised sharply by Baimu in relation to NEPAD:

While the initiative might be African, its human rights content is largely Eurocentric in perspective, especially in its overly strong focus on civil and political rights. The 'African human rights fingerprint' is conspicuously missing in its content. The Eurocentricity of NEPAD is evident in the placement of human rights issues under democracy and political governance initiative. This serves to reinforce the European conception by laying emphasis on civil and political rights, but failing to mention socio-economic rights.⁸³

What Baimu refers to as 'the African human rights fingerprint' in this quote is probably the African-based values of human civilisation alluded to in the African Charter. An example of such values is that of open discussion. Traditional African societies allowed for open discussion of issues, unconstrained by time or other conditions: anyone with anything to say had the opportunity to contribute.

However, Baimu's argument, though largely valid against the NEPAD itself, cannot apply without qualification to the APRM questionnaire because the latter does mention economic, social and cultural rights. Besides, civil and political rights are also relevant to Africans, who have suffered from various forms of political oppression and violations of their civil and political rights. It is also encouraging that the APRM questionnaire goes a little further and concerns itself with children rights, women rights and vulnerable groups over and above the conventional civil and political rights.

It thus appears as if the APRM is concerned with human rights more than NEPAD itself. But the APRM does not pass muster either: its selective approach may create the false impression that some rights are more important than others. As early as the 1950's, when the international bill of rights was being drafted, the international community established that human rights are indivisible, interrelated and interdependent. Since then, this principle has been echoed and reiterated in a number of instruments including the 1993 Vienna Declaration⁸⁴ and the Maastricht Guidelines.⁸⁵

The APRM questionnaire has another shortcoming. As designed by the APR Secretariat and the PEP, it is not tailored to fit all possible scenarios. In

⁸³ Baimu, above note 57, 309.

⁸⁴ The World Conference on Human Rights, The Vienna Declaration and Programme of Action, UN Doc A/CONF. 157/23, part 1, para 5.

⁸⁵ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, para 4.

recognition of this fact, participating states have been given freedom to include whatever information they consider relevant to supplement the questionnaire.⁸⁶ In effect, therefore, guidance in the form of the questionnaire is only meant to grease the process and not bind states. This freedom may produce the desired results from well-meaning states, but it may have the undesired consequence of allowing states leeway to omit self-incriminating information.

X CONCLUSION

To conclude, the point can be made that by joining the APRM, Malawi has taken the right decision. The APRM and NEPAD are the most visible signs of a rapidly changing Africa. Though it has not yet been accepted by all the 53 AU member states, it is important that the APRM is nevertheless a reality. Anything that seeks to improve good governance in Africa should be welcomed.

But it is even more important for Malawi and Malawians to understand what the country is going into in joining the mechanism. Previously, Africans have had inflated expectations from some of the concepts that had been crafted. This 'inflated expectation' is quite visible in most, if not all, of the five countries that have been reviewed thus far. The South African country review report, for example, cited the capacity of the country to distribute electricity to the majority of the people as one of the country's 'best practices.' Hardly a year after South Africa's review, the country was plunged into darkness—it had no capacity to provide power to the country's population. The Kenyan country review report identified tribal politics as a major hindrance to its stability and development. There were no practical suggestions on precisely how this problem could be dealt with. Indeed, two years after Kenya's review and passing of the APRM litmus test, the country was down on its knees after a rigged election marred by tribal violence. These examples highlight the failures of the APRM.

Like Malawi, her neighbour Zambia initially expressed interest to go through the process as quickly as possible but has since reneged on it and has decided to take its time. Signs from the guinea pigs—Ghana, Rwanda, Kenya, South Africa and Algeria—are that the process, especially in as far as implementation of the APRM national programmes of action is concerned, has been rather disappointing. Therefore, Malawi's 'cautious approach' may be the right approach to avoid creating inflated expectations from the citizenry.

⁸⁶ Marie-Angelique Savané 'Implementing the African Peer Review Mechanism (APRM) – An initial assessment,' available at <http://www.inwent.org/ef-texte/africa/savane.htm> (accessed 7 April 2008).

However, since she has joined the mechanism, Malawi has to implement the obligations arising from that membership and cannot afford to waver for too long. While it is important to be cautious, there is a point at which assumed obligations have to be implemented. Elections in Malawi are now around the corner and it would be important that the country gets reviewed as part of this dispensation.

It is time for President Bingu wa Muthalika and the government of Malawi to complete the route they started by joining the mechanism.