

**Was the APRM process in Kenya a waste of time?**  
*Lessons that should be learned for the future*

Bronwen Manby  
Senior Programme Adviser, AfriMAP, Open Society Institute  
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‘There is a need for a healing of the nation. The process of national healing and reconciliation is unlikely to proceed as long as society is still polarized. In addition, without also addressing past crimes, corruption, marginalization and poverty, it is unlikely that reconciliation can be achieved.’

This is not a quote from a report on the recent election violence in Kenya, but from the country review report of the African Peer Review Mechanism, presented two years ago by the APRM panel of eminent persons to African heads of state and defended by President Mwai Kibaki himself on the margins of the July 2006 African Union summit.

The report went on to consider previous violence in Kenya, making observations that are just as valid today as when its writers made them. The APRM eminent persons noted ‘the role of prominent members of the ruling party and high ranking government officials in fuelling the so-called ethnic clashes’. They complained that many of the people involved ‘have neither been investigated nor prosecuted. Some have continued to serve as senior officers, ministers, or members of parliament. The inability to act [against them] tends to underline general public perception of impunity, while at the same time constricting the ability of people to come to terms with the past experiences of injustice and violence thus further aggravating and reinforcing polarities and suspicion.’

All in all, the APRM country review report made a remarkably frank assessment of Kenya’s problems. The report did not shy away from highlighting issues of corruption, especially in land allocation, nor from the ethnic tensions that have been so horribly demonstrated in recent weeks. It identified ‘overarching issues’ that Kenya would need to address, starting with ‘managing diversity in nation building’, and going on to filling the ‘implementation gap’ between policy and action on the ground; addressing poverty and wealth distribution; land reform; action against corruption; constitutional reform; and addressing gender inequality and youth unemployment.

Finally and notably, the report called for ‘transformational leadership’ – leadership that ‘recognizes the need for dramatic change in a society’ and that ‘entails not simply directing change but managing it in a way that ensures broad ownership, legitimacy and self-directed sustenance and replication of change in all associated systems.’

Thus, just two years ago, Kenya was being lauded as one of the first countries in Africa to complete the process of examination by the APRM, while the resulting report provided a hard-hitting analysis of the challenges the country faced and made some important recommendations on the way forward. The country’s decision to sign up for the APRM was supposed to be an indication of commitment to good governance and respect for the principles of democracy and human rights. Had the problems the APRM report then highlighted been tackled, it is possible that the violence and distress of the 2008 crisis could have been avoided. And yet nothing was done. What went wrong?

The Kenyan APRM report does have some weaknesses. Most importantly, it does not identify the issues relating to the independence of the Electoral Commission of Kenya that were so critical on election day and in the following period. This in turn reflects a weakness in the APRM questionnaire that guides the reviews, which does not focus on electoral management and its independence, but rather the simple fact of holding elections.



A much greater weakness lies in the gap between the country review report and the programme of action which is supposed to set out concrete, costed actions that will address the problems identified in the report.

For example, the review report decries the lack of independence of the judiciary, and especially the vulnerability to executive influence of the process for nomination and appointment of judges. The eminent persons noted that during their visits to Kenya, they had received reports of incidents in which prominent government officials either disobeyed court orders or expressed an intention to disobey them. They state forthrightly that, 'The Chief Justice being an appointee of the President is not trusted to be able to take an independent decision' – the very reason why Raila Odinga and his ODM party rejected the insistence by the incumbent PNU that any challenges to the election results should take place in court.

Yet the programme of action talks only of 'enforcement of judicial reforms and existing administrative measures to ensure members of the bench improve efficiency, accountability and monitoring of judicial functions'. There is no mention of steps to end executive interference and ensure respect for the rule of law.

In other areas too, the programme of action shies away from the difficult political issues, focusing rather on capacity building and resource mobilisation; matters to which even President Kibaki could happily agree – and in many cases had already done so as part of ongoing donor-financed reforms.

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

A journalist and member of Kenya's national NEPAD secretariat was present at the APR Forum (the meeting of all the heads of state who have signed up for the APRM) when it met to review the Kenya report. His account gives us a clue as to what the 'peer review' element of the APRM really means:

'I counted the number of leaders who spoke after President Kibaki had responded to Dr Machel. They were from Ghana, Ethiopia, South Africa, Rwanda and Nigeria. Not one posed a question to Mr Kibaki.

They all praised the report and commended Kenya for being candid, thorough and open. They pledged to support Kenya in seeking solutions to its constitution review and diversity problems.

When it was all over, presidents Obasanjo and Mbeki and Prime Minister Meles Zenawi of Ethiopia expressed relief and promised to go on with the process, after realising that it was not a life-and-death situation.'<sup>1</sup>

Thus, though Kibaki was said to be 'committed to addressing all the issues, among them tribalism, poor corporate management and corruption, which were raised' by the APRM report,<sup>2</sup> he need not expect too critical a review from the other heads of state on his follow-up in practice.

Although each country that has undergone the APRM process is supposed to report back to the APR Forum on its progress, there is no serious monitoring exercise of how effectively this is done. Nor any sanctions for failure to act. Nor, apparently, is there any real system to ensure that the commitments the government makes address the most important problems highlighted in the APRM review. Certainly, no individual or institution at the African level, least of all the APR Forum, raised

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<sup>1</sup> Jerry Okungu, 'Kenya passed 'ordeal' with flying colours', *The Nation*, 14 July 2006.

<sup>2</sup> 'Issues raised by peers to be tackled, say ministers', *The Nation*, 10 July 2006.

the implementation of the APRM commitments as critical issues during the recent Kenyan crisis – or, perhaps more importantly, during the lead up to the election, when such a focus could perhaps have averted the near-catastrophe into which Kenya was drawn.

At national level, meanwhile, the implementation of the APRM programme of action is also left entirely to the executive, with no formalised role for parliamentarians or civil society to hold the government's feet to the fire should it fail to perform. As in other countries, the APRM process has not been well-integrated into other national development planning processes – a problem recognised by the APRM secretariat in South Africa – and it does not appear to have informed other important reform programmes under way at the same time.

Moreover, the systems in place to monitor the implementation of other national policies (however imperfect) are also not mobilised to engage with the implementation of the APRM programme of action. President Kibaki did not report back to parliament on the APR Forum meeting and on the actions he had committed to take, nor was the report tabled for debate. Though there was some coverage in the media of the APR Forum discussion of Kenya, it did not generate a real national debate on the report and programme of action and their implications. The conclusions and recommendations were not widely disseminated throughout the country by the NEPAD-Kenya secretariat or other means. Although a meeting hosted by the NEPAD-Kenya secretariat in mid-February 2008 aimed – encouragingly – to involve civil society in the process of preparing the country's progress report to the next APR Forum, the report of the meeting is surreal in its lack of any suggestion that this review might be relevant to, or affected by, the national political crisis.<sup>3</sup>

Even the continental APRM secretariat failed to engage in any serious way with national institutions, such as the Electoral Commission of Kenya or the Kenya National Human Rights Commission, in order to brief them on the conclusions relevant to them and the follow-up role they might play.

Without this sort of integration into other national planning systems, debates and oversight mechanisms, the APRM process seems doomed to become little more than a cosmetic exercise without effect in the real world of policy and decision making.

There is no demand from civil society in Kenya or elsewhere for the APRM to issue condemnations of countries' performance on governance or to 'take action' on the behaviour of recalcitrant governments (as some international commentators have suggested—for example, in the case of Zimbabwe): the APRM is not a human rights monitoring body, but rather a tool for mutual learning, and there are other AU institutions that are more appropriate for the more obviously critical and political role. Nevertheless, civil society groups do feel strongly that while peer review by fellow heads of state is all very well, it should be backed up by a greater effort by the APRM Secretariat or other independent groups to monitor performance of governments against the programmes of action to which they have signed up. The Pan-African Parliament could also be brought in to play this role.

'National ownership' – which everyone agrees is critical for the success of the APRM project – should not be interpreted to mean that the only actions agreed are those that ruffle no feathers and disturb no vested interests. And whatever actions are undertaken should be subject to monitoring and enforcement by institutions that are independent of executive control – at both continental and country levels, by national parliaments, constitutional oversight bodies and civil society coalitions.

There are now 29 countries that have acceded to the APRM – Mauritania being the most recent, after signing the APRM memorandum of understanding at the January 2008 AU summit. To date, the process has exceeded the expectations of many observers. The eminent persons appointed when the

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<sup>3</sup> Ronnie Ojwang, NEPAD Kenya Secretariat Research Officer, 'NEPAD Kenya keeps busy during difficult times', *NEPAD Dialogue*, 7 March 2008.

APRM was established here, by and large, done a good job in establishing its credentials: many civil society activists were taken aback that the level of criticism directed at Kenya could have emerged from the APRM process.

But lessons should be learned as the mechanism takes on its next countries. The APRM process needs a stronger connection to three critical constituencies: to the citizen in whose name it is being undertaken (through outreach by government, media and civil society); to the political class (through policy planning processes, parliament and political parties) and to the wider African and international community (through African continental institutions as well as the structures through which development assistance is channelled).

The new members of the APRM panel due to be appointed in 2008 will have to take on board the lessons learned so far – and be strong enough to resist the pressure placed on them to conform to executive wishes. The heads of state themselves should have the courage to stick to their original commitment that the process be independent and effective, as they select the next members and agree the budget for the secretariat.

For Kenya, meanwhile, the 2006 conclusion of the APRM report remains relevant today:

‘From all indications, it is obvious that the challenge in Kenya is beyond the mere adoption of a new constitution. The challenge remains that of resolving the following contentious issues: the nature and character of executive powers, devolution of power, constitutional provisions for religious courts, and the mode of transition to the new constitution. These issues, among others, cannot be resolved by simple technicalities or constitutional legalese, but will require a modicum of political sagacity to evolve necessary political solutions. Current prognosis suggests that a carefully managed mediatory and conciliatory intervention under the aegis of the African Union may prove crucial in facilitating the much needed political compromise and solution in resolving these issues and minimise loss of face by the different power centres and factions. The sustainability of the proposed outcome will be hinged on the ability to devise a win-win formula while simultaneously responding to the collective aspirations of a highly divided society.’

The important and serious effort that went into producing these recommendations must not go to waste. If the official oversight institutions are neglecting to ensure that they are implemented, then civil society organisations must step into their place.

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For more analysis of the APRM process in Kenya and elsewhere see [www.afrimap.org](http://www.afrimap.org)