

**Submission to the APRM Secretariat :
Review of the APRM questionnaire and process documents**

December 2007

AfriMAP, the Africa Governance Monitoring and Advocacy Project of the Open Society Institute, makes this submission to the APRM Secretariat following the workshop hosted by the Secretariat in Algiers in November 2007 at which it was announced that the APRM questionnaire and other documents would be reviewed by the Secretariat and other stakeholders.¹

This submission is based on AfriMAP's engagement with the APRM in the countries in which it has been implemented so far; and in particular on the reviews of the APRM processes that AfriMAP commissioned in Ghana, Rwanda, Kenya and Mauritius. These reviews are available (in English and French) on the AfriMAP website.²

AfriMAP believes that the APRM is, despite some challenges and set-backs, the most important effort yet by African leaders to improve governance on the continent and is strongly supportive of the initiative. However, improvements could be made to the APRM founding documents and process of implementation in order to increase the impact of the mechanism on governance in the countries that have signed up for peer review. These improvements fall under two broad headings: the content of the APRM questionnaire, and the process by which peer review is implemented.

Content : Revision of the APRM questionnaire

The four headings of the APRM questionnaire used to guide country self-assessments and review reports – democracy and good political governance; economic governance and management; corporate governance; and socio-economic development – give it many strengths compared to similar reviews. The questionnaire includes detailed questions based on an unusually wide range of benchmarks related to respect for human rights, good governance, the rule of law, democracy, gender equality and the rights of disadvantaged groups. These allow for governance to be assessed from a human rights perspective that favours pro-poor development models, going beyond the narrower framework of the NEPAD programme itself. However, there are also areas in which it could be substantially strengthened.

There have been many complaints from countries undertaking the APRM that the questionnaire tries to cover too many issues, has a somewhat confusing structure with questions that often overlap with each other, and is unmanageable both for governments and for civil society organisations seeking to respond to it. At the same time, there are questions that could usefully be added to in order to address some important issues that are currently not covered. The APRM secretariat has indicated its intention of reviewing the questionnaire that guides the self-assessment and country review reports.

The questionnaire opens with the section on democracy and good political governance. The first issue to be noticed in relation to the human rights content is that the opening list of 'standards and codes' to which states are invited to indicate their adherence is strangely random. Conventions are mixed up with declarations and other non-binding standards, and many important documents are omitted at both UN and African level. Among the African documents of relevance to human rights and good

¹ The workshop brought together those involved in APRM assessments at national level, the members of the eminent persons panel, and representatives of the APRM Secretariat and technical partners. The aim of the meeting was to carry forward the recommendations of the AGF-VI held in Kigali, May 2006, with a view to presenting revisions to the questionnaire and other documents for adoption by the APR Forum at the January 2008 AU summit. See, 'APRM Secretariat gears up for major implementation workshop in Algiers', *NEPAD Dialogue No.200*, 19 October 2007.

² See: <http://www.afriMAP.org/report.php>.

governance — adopted by the various AU institutions, including the African Commission on Human and Peoples' Rights — that are missing are:

- the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998);
- the AU Convention on the Prevention and Combating of Terrorism (1999);
- the Charter for the Public Service in Africa (2001);
- the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001);
- the Declaration of Principles on Freedom of Expression in Africa (2002);
- the Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (2002);
- the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa (2003); and
- the Protocol to the AU Constitutive Act on the Court of Justice of the African Union (2003).³

The Memorandum of Understanding on the African Peer Review Mechanism (2003) is also missing, but the fact that a country is completing the questionnaire means that it has signed.

Relevant documents adopted since the APRM questionnaire was first adopted include:

- the Solemn Declaration on Gender Equality in Africa (2004);
- the African Union Non-Aggression and Common Defence Pact (2005);
- the African Youth Charter (2006); and
- the African Charter on Democracy Elections and Governance (2007).

Sub-regional standards from the RECs are also absent: in particular, both the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS) have many standards relevant to issues of governance, democracy and human rights that would be important to apply to the countries in their regions. There are many important UN documents that could also be listed here. The absence of these documents is not just an omission from the list, but also appears to be reflected in an absence of some of the issues they consider in the questions that follow.

The questionnaire does not ask about cooperation with the monitoring mechanisms for these treaties, in particular the submission of state reports to the African Commission on Human and Peoples' Rights and compliance with the decisions of the Commission on individual complaints; as well as with the relevant UN bodies. This should be remedied.

Objective three, question 1 in the democracy and good political governance section is a 'catch all' question on 'what measures have been put in place to promote and protect economic, social, cultural, civil and political rights?' The breadth of this question is not helpful in prompting a clear response, especially since other questions also touch on some of these concerns. This question includes the only mention in the entire questionnaire of freedom of speech, as one in a list of six rights whose recognition by law is to be described (the others are employment, education, health, housing, and freedom of religion). There are no follow up questions relating to freedom of expression more generally, including freedom of the press and broadcast media⁴; nor of freedom of assembly and

³ There is an agreement in principle to merge the African Court of Human and Peoples' Rights (ACtHPR) with the African Court of Justice (ACJ) to create a single African Court of Justice and Human Rights with two chambers. A draft protocol to achieve this has been on the table since 2006 but has not yet been adopted. In the meantime, the ACtHPR protocol has entered into force (in 2006) and the judges have been appointed, but the ACJ protocol is not yet in force.

⁴ Although the APRM questionnaire does not refer to it, the reference in the NEPAD Declaration to 'responsible' free expression is also unfortunate in this regard: the international standards relating to freedom of

association, including questions that could be derived from the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Also missing from this section are questions related to discrimination and equal citizenship (apart from discrimination against women) and access to information. The questions on elections have little detail on election management and do not draw on the existing best practices (SADC in particular, and its Parliamentary Forum, has guidelines here that could be drawn on, as well as the newly adopted African Charter on Democracy Elections and Governance). All of these issues are critical to the development of accountable and responsive government and should be included under new headings in any revision of the questionnaire.

The section of the questionnaire dealing with economic governance and management is notable for not mentioning the process of drafting PRSPs that (however problematically in practice) have been the principal tool for ensuring that the national economic policies move towards a fairer distribution of national wealth and also involve participation of a wider set of actors in their development than simply government officials and aid agencies. Again, the list of standards and codes at the outset of the chapter seems lacking in comprehensiveness: among others, the right to development is not mentioned. The questions in the chapter are – as has been widely noted by civil society commentators – quite focused on macroeconomic orthodoxy with little if any attention to distributive justice. Although objective one, question 1 refers to ‘sustainable development’ there is no definition of this term, and the need for models for development that adapt to climate change and a low carbon future is not addressed (including the national adaptation programmes of action required by the UN Framework Convention on Climate Change (FCCC)). Subsequent questions refer to public financial management, yet do not address the well known challenges of management of primary resource revenues (especially from oil) that afflict many African states: the Extractive Industries Transparency Initiative would be an important source of best practices in this area.

The inclusion of the third section, on corporate governance, is an important and unusual recognition of the importance of holding powerful private sector institutions to account. However, the opening list again omits many relevant standards and codes, including the rapidly increasing number of (largely voluntary) standards that apply to the operations of multinational corporations operating in African countries, which could be drawn on even if not specifically addressed to African governments: for example, the OECD Guidelines for Multinational Enterprises. These omissions are reflected in some lack of detail and preciseness in the questions that follow.

It is in the fourth section of the questionnaire, on socio-economic development, that questions are asked about outcomes in social and economic rights, especially health, education and other indicators of relevance to the millennium development goals (MDGs), including in relation to vulnerable groups. Though once again, the list of standards and codes is not exhaustive, the APRM thus makes an important contribution to ensuring accountability in achieving these goals, in a way that is often not integrated into ‘governance’ assessments (even though they may be the subject of separate reviews). Objective one, question 1, asks about participation in the design and implementation of national development programmes, which would allow for discussion of the PRSPs and similar initiatives – this should be expressly encouraged. Objective six, question 1, also asks about mechanisms to ‘encourage broad-based participation in development by stakeholders at all levels’. However, it is unfortunate that this discussion is segregated from the second section of the questionnaire on economic governance and management: these are important additions which should be integrated into the questions about economic strategies and not regarded as separate from macroeconomic policy and the other issues dealt with under that heading.

expression contain no requirement that the use of the freedom should be ‘responsible’. The Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights in 2002, provides definitive guidance in this area.

Process

Access to information

A critical aspect of a rights-based approach to development is that citizens should have access to information about decisions that are being taken on their behalf. NEPAD is formally committed to ensuring such access to information, yet in practice it is extremely difficult to find out what NEPAD is doing: the website is rarely updated and extremely uninformative. Even the communiqués of the meetings of the HSGIC are not readily available. The *NEPAD Dialogue* newsletter does provide updates on public events, but is not available online in an easily accessible archive and is difficult to subscribe to.⁵ The APRM website is also out of date and fails to include many relevant documents, including APR Forum communiqués and several of the core texts (especially the French versions). It is left to the UN Economic Commission for Africa (UNECA) and especially non-governmental organisations like the Institute for Security Studies, South African Institute for International Affairs and AfriMAP to provide useful background information on how the NEPAD initiatives are progressing – but these organisations do not have access to all relevant documents.

Aside from the availability of information online, neither NEPAD nor the APRM have made significant efforts to publish and disseminate material about what they are doing to a wider audience than those who are specifically invited to their meetings or to report back on the inputs received. In part, this is no doubt due simply to a question of capacity: more staff are needed to allow an effective communications strategy.

The self-assessment reports are only published at the discretion of the governments of the countries concerned. In practice, though a select few have been able to access these documents, they are not generally available, meaning that there is no way for civil society to see how individual inputs were reflected in the report submitted to the APRM Secretariat: the excuse often given, that the material is extremely voluminous and publication is not practical, is not a sufficient response to this criticism. It is also problematic that the publication of the country review report and PoA is delayed by six months after the APR Forum meeting that adopts it, while the discussions of the report by heads of state at the APR Forum are held in camera and are only fed back to national level in a haphazard way depending on the efforts of independent journalists and the willingness of each head of state to brief them. AfriMAP suggests that the APR Forum should adopt public ‘concluding observations’ on each country review report and plan of action, and that a press conference should be held after each meeting.

Independence and status of the review processes

A great strength of the APRM process is the role of the eminent persons, whose competence and credibility and willingness to criticise states undergoing review has been of critical importance in establishing the usefulness and legitimacy of the process to a wider audience than only heads of state. The eminent persons have not been afraid to speak out when they have believed that national self-assessment processes have been insufficiently participatory or lacking in content. At national level, the establishment of an independent governing council outside the control of the executive to govern the APRM process and validate the self-assessment reports has also been of key importance – though not implemented in every case. The APRM documents should insist on the need for the national governing council to be autonomous of the executive and with a majority of non-government members.

⁵ The copies on the NEPAD website are almost two years out of date; up to date versions are available at the website www.triomediamedia.co.za, but only by searching the internet, not as a link from the NEPAD website or even the Triomedia front page, so that you have to know the newsletter exists to find it. Emails to Triomedia to subscribe do not always bring results.

Similarly, the fact that heads of state consider and debate the country review reports and programmes of action – which are then made public, enabling others also to comment on them – gives them a status and importance across African countries that is not present in any other development assessment process. On the other hand, there is criticism that the fact that the formal debate is only before heads of state – and not, for example, the Pan-African Parliament (PAP) – means that the process is at risk of complete political capture by individuals with no interest in seriously addressing the issues at stake. This weakness should be addressed at African level by requiring the reports also to be debated before the PAP.

Finally, the initial concept of the APRM included the aim of including officials from other governments in the peer review of their counterparts in countries undertaking the APRM process: yet in practice this aspect of peer engagement has not been implemented and the technical advice to the APRM Secretariat has come from the partner agencies like UNDP, UNECA and the African Development Bank. It would be good to explore the possibility of bringing into effect this level of peer review – not just at the level of review by heads of state – in the APRM processes and reports.

Participation

One of the strengths of the APRM process has been its emphasis on national level participation in the completion of the self-assessment reports. Each one of the review processes so far has had weaknesses in this regard, but, overall, they have generally provided new space for national dialogue that did not previously exist, especially for civil society groups that are not among the leading policy think tanks invited to other meetings. The involvement of national parliaments has been more mixed. As the country review reports and programmes of action are adopted, the role of national parliaments and civil society groups in monitoring their implementation will be critical: it should be a requirement that they are more fully involved, and in particular that the final reports and programmes of action should be presented to the national legislature by the executive and their conclusions debated. The APRM Secretariat should also insist on the extension of the participatory ideal to the implementation phase, with regular involvement of civil society and parliamentarians in monitoring and evaluation of progress in achieving the programmes of action.

In addition, as the revision of the APRM questionnaire is undertaken, the outcomes could be greatly strengthened by making this a public rather than a closed process: although the initial drafting of the questionnaire did include some consultation (far more than the NEPAD document did), those who participated were members of a relatively limited circle. For the proposed revisions, the APRM Secretariat could invite submissions about the questionnaire, and make these available on its (upgraded) website. Although the review meeting held in Algiers in November 2007 included representation from national APRM governing councils, which include civil society representation, this is not a sufficient opportunity for wider civil society to make a contribution.

Furthermore, a useful way to improve the APRM questionnaire would be to provide an adaptation in language that can be used by non-technical specialists, and thus enhance participation in the processes of self-assessment. This is already well-recognised, and several of the countries that have carried out self-assessments for the APRM have adapted the questionnaire for use at national level in focus groups and opinion poll surveys. While this methodology has been shared among participants by the APRM Secretariat, it is not available publicly. Making it so available would be very useful to others who are seeking to make contributions to the APRM process.

Harmonisation

Many commentators have noted the potential or actual overlap between the APRM process and other governance and development initiatives in Africa: this was recognised also by the AGF-VI

discussions on implementation of the APRM.⁶ To be most effective in promoting the right to development, the APRM programmes of action need to be appropriately integrated and harmonised with other national development plans, including PRSPs, ‘sector wide approaches’ for reform and development assistance, the national adaptation programmes of action required under the FCCC, and other processes. This will also put a premium on the quality and rigour of the APRM documents, so that they become the major source of information for bilateral and multilateral donors who themselves seek to assess governance performance. Consensus on what the key measures of governance and what needs to be done will greatly assist in the agreement of a rights-respecting national development framework which development partners can successfully fund.

The APRM has also not been able to coordinate effectively with the bodies responsible for monitoring compliance with Africa’s human rights treaties, in particular the African Commission on Human and Peoples’ Rights; at least in part this is due to capacity limitations from the side of the African Commission. However, the African Commission has a longstanding tradition of good relations with civil society organisations, who would certainly be able to assist in providing input to national self-assessment processes, revision of the APRM questionnaire, and other tasks. The state reports to the African Commission could also provide useful source material for the APRM review reports – and vice versa.

Monitoring and enforcement

One other concern that has been raised about the APRM is its voluntary nature. In favour of this approach is the argument that countries are not signing up because they feel compelled, or as an empty exercise (as sadly seems to be the case with many human rights treaties), but because they see real value in the process. The counter argument is that NEPAD is premised on the notion that Africa’s development has to be approached from a holistic perspective that recognizes a more integrated approach: making the APRM voluntary undermines the integration efforts. There are merits in both sides of this debate; however, the voluntary nature of the APRM should not detract from the need to ensure that it is more than a talking shop and that its conclusions have a real impact on national development strategies.

Civil society groups also feel strongly that peer review by fellow heads of state is all very well, but should be backed up by a greater effort by the APRM Secretariat as well as 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 play an important role in this respect. The progress reports from the countries that have completed the APRM review process are an important contribution, but need closer attention than has so far been paid. Both the APRM Secretariat and civil society groups, as well as national parliaments and PAP, would need resources to enable them to undertake an effective monitoring exercise.

Concluding remarks

The review of the APRM documents is being carried out during a major discussion about the future direction of continental integration in Africa and the creation of a ‘Union Government’. Both NEPAD and the APRM were developed as part of a process already under way towards strengthening continental integration in both the economic and political spheres; yet their application and impact will be played out in the national arena. The future institutional structures of the African Union and the procedures by which the member states interact with each other may have a profound impact on their implementation. The status of NEPAD within the AU has been a point of debate since it was first established; the relationship of the APRM to other AU structures is also not clear, which has relevance for its impact in other AU decision-making fora; many states are also holding onto concepts

⁶ *Implementing the APRM: Challenges and Opportunities*, Report of the Sixth Africa Governance Forum (AGF-VI), Kigali, Rwanda, May 2006, p.38.



of national sovereignty that are no longer tenable and that undermine the integrationist ideal – and others are so fragile that their chances of implementing any collective vision are slim. The contribution of NEPAD and the APRM to the improvement of governance on the continent will depend also on the outcome of these discussions over the restructuring of the AU itself and the extent to which its existing or new structures themselves conform to the core values of participation, respect for human rights and fairness.

AfriMAP

AfriMAP, the Africa Governance Monitoring and Advocacy Project, was established in 2004 by the Open Society Institute (OSI)'s four Africa foundations — the Open Society Foundation for South Africa and the Open Society Initiatives for Southern, West and East Africa (OSISA, OSIWA and OSIEA) — as a response to the transformation over the previous few years of the Organisation of African Unity into the African Union (AU), and the AU's adoption of new commitments to standards of democracy and governance, in particular the APRM. AfriMAP is based at the offices of OSISA in Johannesburg, South Africa.

AfriMAP's main mandate is to work with the OSI foundations' national partners to produce systematic audits of government performance in three areas — the justice sector, democracy and political participation, and an effective public service — in countries that have signed up for the APRM. To date, AfriMAP has worked in Malawi, Mozambique, South Africa, Ghana and Senegal, and is just beginning its monitoring in Kenya. The reports are written by nationals of the countries concerned working with civil society organisations interested in the issues, and are revised and finalised after discussions that have mobilised a wide range of interested parties, including civil society, academia, government and donors. In addition to this work, which can be seen as complementary to the APRM's own reporting, AfriMAP has commissioned and published reviews of the first APRM processes in Kenya, Mauritius, Rwanda and Ghana, and will be doing so in other countries on an ongoing basis.

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