" A CRITICAL ANALYSIS OF THE AFRICAN PEER REVIEW MECHANISM (APRM) ON GOVERNANCE IN KENYA"

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DECLARATION

This research paper is my original work and to the best of my knowledge has not been presented for the award of a degree in any other University.

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APPROVAL

This research paper has been submitted for examination with our approval as University supervisors.

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DEDICATION

To my late parents, Walter Ochieng Onyango and Mama Rosemary Akong'o Ochieng.
For making me who I am. You would have been very proud.

To my children, Wayne, Nicole and Nicholas, may you live to be blessed.

To my Husband, Apollo Ong'ara for providing this golden opportunity may God Bless You.

ACKNOWLEDGEMENTS

ABSTRACT

The main purpose of this study was to carry out a critical analysis of the African Peer Review Mechanism (APRM) on Governance in Kenya. A Combination of desk research and interviews with relevant informed key people in respective sectors was done. Some of these informed key people did not want to give information or their opinions altogether. There was use of evidence from existing reports which included APRM documents, Government of Kenya (GOK) documents, journal articles, theses and dissertations which were relevant to this study, books, newspapers, magazines and relevant internet sources.

The study found that APRM is viable to tackle the governance problem in Kenya. This will however depend on good and sound leadership coupled with the APRM putting in place mechanisms to ensure compliance with its standards of governance.

The study also established that the review process in Kenya was representative, with the APRM Task Force consulting with the members of the National Governing Council (NGC) which comprised civil society organizations, the media, political parties, academia, and faith based and human rights organizations, trade unions, women and youth groups, minorities, disadvantaged groups, persons with disabilities, persons living with HIV/AIDS and associations of journalists.

The above is evidence that indeed most stakeholders were represented, which includes policymaking, non-policy making and other groups in Kenya. Interviews with staff at APRM Kenya Secretariat that programmes are in place to further popularize New Partnership for Africa's Development (NEPAD) and its APRM.

It however emerged that the composition of the NGC was not proportionate with allegations that the NGO Council with eight members in the NGC were able to elect the chairperson from amongst them and they also gained advantage in deliberations due to their numerical advantage hence put the democracy of the process in question.

In view of these findings, the study recommended that the Government of Kenya (GOK) needed to tackle corruption decisively and the corrupt leadership problem by ensuring a screening process for leaders.

The study also recommended that the GOK implement the policies and procedures/structures that have been put in place under the National Rainbow Coalition (NARC) regime.

The study recommended for the APRM the formulation of mechanisms to ensure compliance for countries that have already acceded to the peer review process and have been reviewed. The APRM should come up with incentives to offer participating countries to meet its standards of governance. In the area of structure it was recommended that the APRM consider in future doing reviews independently of other organizations. Participation by stakeholders should be representative and proportionate. Mechanisms should be put in place to ensure countries pay up their contributions to enable the secretariat to be self reliant and sufficient financially to avoid manipulation by donors.

It was also recommended that in future independent reviews be put in place by organizations for example the vibrant civil society in Kenya to avoid the situation where the APRM is the 'only game in town'.

ABBREVIATIONS

ADB	African Development Bank and Employment Creation
APRM	African Peer Review Mechanism
AU	African Union
CPI	Corruption Perceptions Index
CRDA	Christian Relief and Development Association
CSA	Country Self-Assessment
CSO	Civil Society Organization
ECA	Economic Commission for Africa
ECA	Economic Commission for Africa
ECOSOCC	Economic, Social and Cultural Council (of AU)
EMU	Efficiency Monitoring Unit
GDP	Gross Domestic Product
GOK	Government of Kenya
HSGIC	Heads of State and Government Implementation Committee
HSIC	Heads of State Implementing Committee
IGAD	Inter Governmental Authority on Development
IMF	International Monetary Fund
IPEP	Independent Panel of Eminent Persons
IPERS	Investment Program for the Economic Recovery Strategy for Wealth
KACC	Kenya Anti Corruption Commission
KACC	Kenya Anti Corruption Commission
KADU	Kenya African Democratic Union

KANU	Kenya African National Union
MAP	Millennium Partnership for the African Recovery Program
MDGs	Millennium Development Goals
MNC	Multi National Corporation
MOU	Memorandum of Understanding
NAI	New African Initiative
NARC	National Rainbow Coalition
NCCK	National Council of Churches in Kenya
NEPAD	New Partnership for Africa's Development
NGC	National Governing Council
NGO	Non Governmental Organization
NGOs	Non Governmental Organizations
OAU	Organization for African Unity
OECD	Organization for Economic Co-operation and Development
PAC	Partnership Africa Canada
PAC	Public Accounts Committee
PAP	Pan African Parliament
POA	Program of Action
PRSP	Poverty Reduction Strategy Paper
SAP	Structural Adjustment Program
TI	Transparency International
UN	United Nations
UNDP	United Nations Development Programme

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CHAPTER ONE

BACKGROUND

The achievement of national liberation by the former African subjects of France, Great Britain and Belgium in the second half of the 1950s and early 1960s generated a euphoric sense of optimism. In May 1963 representatives of the new African countries assembled in Addis Ababa, Ethiopia, to found the Organization of African Unity (OAU). Inspired by the ideology of Pan-Africanism that had been popularized by the defiant charismatic leader of Ghana, Kwame Nkrumah, the OAU's charter enunciated a set of goals that were designed to strengthen the international position and protect the recently won independence of the fledging member states so that their peoples could thrive and prosper amid their newly acquired freedom.[1]

The heads of state and the heads of government of the OAU issued the Sirte Declaration on September 1999 calling for the establishment of an African Union. The Sirte Declaration was followed by summits at Lome in 2000, when the Constitutive Act of the AU was adopted and at Lusaka in 2001 when the plan for the implementation of the AU was adopted. The AU was launched in Durban on July 9, 2002 by its first president, South African President, Thabo Mbeki, at the first session of the Assembly of the AU. The AU like its predecessor the OAU is based in Addis Ababa Ethiopia, and has fifty-three members with the exception of Morocco who does not want to share membership with Sahrawi Arab Republic.[2]

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[1] William R. Keylor 'The Twentieth Century World An International History' 3rd Edition (New York: Oxford University Press, 1996) pp. 410-411

[2] http://www.africa-union.org

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The New Partnership for Africa's Development (NEPAD) is a programme of the African Union (AU). The NEPAD was adopted at the thirty seventh session of the Assembly of Heads of State and Government in July 2001 in Lusaka Zambia.[3]

NEPAD is defined as a vision and strategic framework for Africa's renewal, which is seen as African renaissance. It arose from a mandate given to the five founding states Algeria, Egypt, Nigeria, Senegal and South Africa by the Organization for African Unity (OAU) to develop an integrated social economic development framework for Africa.[4]

The primary objectives of NEPAD include eradication of poverty, the placement of Africa on a path of sustainable growth and development, to stop the marginalization of Africa in the globalization process and to accelerate the empowerment of women.[5] NEPAD is apparently viewed as Africa's Marshall Plan, a proposal to inject massive financial resources into Africa's development while reforming it politically and economically to be accommodated into the global world not as a dependant but as a partner.[6]

The African Peer Review Mechanism (APRM) is an instrument voluntarily acceded to by member states of the AU as a self-monitoring mechanism for African States. The mandate of the APRM is to ensure that policies and practices of the participating states conform to the agreed political, economic and corporate values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.

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[3] www.nepad.org
[4] Ibid
[5] Ibid
[6] Peter Anyang' Nyong'o, Aseghedech Ghirmazion and Davinder Lamba Eds. 'NEPAD A New Path?' (Nairobi: Heinrich Boll Foundation, 2002) p. 21

The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building.

Principles of the APRM stipulate that every review exercise carried out under the authority of the Mechanism must be technically competent, credible and free of political manipulation. These stipulations together constitute the core guiding principles of the Mechanism.[7]

PROBLEM STATEMENT

The APRM is an effort to enhance the quality of governance, and African leaders are aware now more than ever, that good governance is key if the continent is to achieve sustainable development.

The APRM is playing a vital role in Africa among the states, which have acceded to it. It is doing this by fostering the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated sub regional and continental economic integration.

APRM aims to use key indicators such as corruption indices, human rights indices, per capita income, Gross Domestic Product (GDP) growth rate, unemployment rates, infant mortality rates and life expectancy for countries under review.

Studies show that the APRM was created to promote better governance. (Wanyande 2004, Juma 2004, Nyong'o 2002, Cilliers 2002, Nabudere 2002 among others). Juma (2004) describes the APRM as 'the sharpest tool in the NEPAD box', which should enable leaders to 'look over each others shoulders' and to share best practice, as well as

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[7] African Peer Review Mechanism Country Review Report of the Republic of Ghana June 2005

advances in governance, socio economic development and in building the capacity of African countries.[8]

The APRM is fairly new thus there are limited studies focusing on specific areas and only Kenya, Mauritius, Ghana and Rwanda have completed their reports. This study focuses on APRM with an emphasis on governance in Kenya.

The purpose of this research project is to do a critical appraisal of the APRM with regard to governance in Kenya. Ian Taylor (2004) argues that it is nonsensical strategy, which relies on the 'Big Men' to be the engines of positive change in Africa. According to Taylor, whilst NEPAD remains so dependent upon corrupt dictators to miraculously embrace good governance and democracy, something which goes against the very logic of their own rules, its project to promote the continent's regeneration in the new millennium, will likely remain still born[9]. This research, therefore, will attempt to answer these questions:

1. Is the NEPAD through its APRM on the path of improving the quality of governance in Kenya?

2. How democratic and representative was the just concluded APRM process?

3. What enforcement strength is at the disposal of the committee of experts to ensure the success of its recommendations to individual states in Africa?

4. How financially independent is the APRM in so far as implementation of its principles and values of democratic governance in its political, economic and corporate dimensions are concerned?

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[8] Monica K. Juma 'Africa's Governance Audit: The African Peer Review Mechanism' New Economy 2004 p. 178

[9] Ian Taylor 'Why NEPAD and African Politics Don't Mix' (Washington DC: Foreign Policy in Focus, 2004) pp. 1-3

OBJECTIVES

OVERALL OBJECTIVE

The purpose of this study is to do a critical analysis of the APRM, specifically looking at governance in Kenya.

SPECIFIC OBJECTIVES:

1. To critically analyze the viability of the APRM to tackle governance problem in Kenya.

2. To assess whether the just concluded APRM process in Kenya was democratic and representative.

3. To analyze the response of the Kenyan policy makers to the APRM report.

4. To assess the popularity of NEPAD among the policymaking, non-policy making institutions and other groups in Kenya.

JUSTIFICATION OF THE STUDY

It is common knowledge that leadership is a problem in Africa. This has resulted in poor governance. The APRM is of interest because it was created to promote better governance in Africa. Juma (2004) notes that the success or failure of NEPAD will depend on the outcome of the APRM. It is a process therefore worth a critical examination.

The study will also contribute to the on going research and debate, since the APRM is a very important concept in Africa today.

Finally, the study will equip policy makers with a critical understanding of the APRM.

LITERATURE REVIEW

This section reviews relevant literature and will look at governance in Africa and Kenya in particular. We look at relevant studies that have been carried out, with an emphasis on the criticisms and positive features of NEPAD's APRM.

Governance in Africa

Sub Saharan Africa's economic growth never spectacular, has been the weakest among developing regions. Between 1965 and 1985 it's Gross Domestic Product (GDP) per capita increased by less than 1 per cent a year on average.[10]

It has been argued (Frederick O. Wanyama, Claude Ake, Thandika Mkandawire, Adebayo Olukoshi) that a meaningful search for solutions to the African Crisis ought to proceed from the political realm. They have suggested that the tackling of the Political Question is an important pre-condition for the resolution of the governance and development crises of the continent. The nature of governance in Africa is thus on the spotlight.

According to Archie Mafeje (2002), politically it is arguable that the present states in Sub Saharan Africa (excluding Ethiopia which fits in the oriental model) are a derivation of the colonial state per excellence. He further argues that it is extremely difficult to ignore the pervasive impact of European colonialism on Africa. The colonial political and economic heritage in African social formations runs deeper than most realize. Attempts to adopt liberal democracy after independence succeeded only in producing one party dictatorships under a veneer of European bureaucratic structures and procedures. This legacy has plagued virtually all African countries and accounts for a great deal of what

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[10] 'Adjustment in Africa: Reforms, Results and the Road Ahead' A World Bank Policy Research Report (New York: Oxford University Press, 1994) p. 17

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went wrong in the post-independent period. According to Mafeje, the debate on governance in Africa started off as a debate on good governance, a concept first introduced by the World Bank as a response to what was seen as gross mismanagement by African governments.[11]

Adebayo Olukoshi (2002) contends that African countries entered the period after the Second World War by gradually intensifying popular mobilization against continued colonial domination. The increasingly untenable politico-administrative framework that denied the colonized full unfetted participation and representation in the structures of governance was rejected and the intensive draining of the resources of the colonies without a corresponding/commensurate investment in the development of their physical and social infrastructure and in their human resources was vigorously challenged as unjust and exploitative. All these concerns crystallized into a concrete political agenda and momentum for the decolonization of Africa. The post independence political framework was eventually to take the form of the narrowing of the national political space as political pluralism gave way to political monopoly symbolized by rise of the one party state and military dictatorship. The International Monetary Fund (IMF)/ World Bank structural adjustment framework that triumphed in the quest for reversing the dwindling economic fortunes of Africa not only exacerbated the crisis of decline but also represented the final nail in the coffin of the post colonial model of the failure of the structural adjustment model to redress the crisis of decline facing the continent.[12]

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[11] Archie Mafeje 'Democratic Governance and New Democracy in Africa' in NEPAD: A New Path? 'Op cit' p. 72-73
[12] Adebayo Olukoshi 'Governing the African Political Space for Sustainable Development: A Reflection on NEPAD' in NEPAD: A New Path? Op cit pp. 90-93

Wanyande (2004) posits that security in the IGAD region is a function of the nature of governance, hence the need first to deal with governance issues in the region.[13]

According to P. Anyang' Nyong'o (2002), Africa enters the twenty first century, her people faced with basic problems of survival that they expected to have been overcome after almost half a century of political independence. At independence, almost every African country declared war against three enemies: poverty, ignorance and disease. Today we are poorer than we were forty years ago. He argues that governments that are not very gifted in identifying and serving national and continental needs seem to stay in power much longer than the people can bear. These governments are rarely in a hurry to implement policies that will help eradicate poverty, provide knowledge and give the people universal access to healthy living. To retain political power that is won illegitimately, to keep away from public hearing those who are opposed to the misdeeds of the rulers, the African ruling classes specialized in political repression and the settling of political disagreements in violent and destructive ways. All these have adversely affected possibilities and opportunities for development in Africa.[14]

Claude Ake (1981) argues that one important impulse for change in African economies is the desire of African leaders, apparently shared by their followers, for development. They are convinced that there is a link between the underdevelopment of their countries and the most fundamental problems which plague their states such as poverty, the high incidence of disease, unemployment, military weakness, ignorance, technological backwardness cultural deprivation, short life expectancy, social disorganization and the high incidence

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[13] Peter Wanyande 'NEPAD and Security in the IGAD region' in Makumi Mwagiru Ed. African Regional Security in the Age of Globalization (Nairobi: Heinrich Boll Foundation, 2004) p. 67
[14] P. Anyang' Nyong'o 'Unity or Poverty: The Dilemmas of Progress in Africa' in NEPAD: A New Path? Op cit. p. 19

of political instability. They see the development of their economies as the necessary condition for dealing decisively with these problems.[15]

African leaders, through the NEPAD document have therefore, perhaps for the first time, taken an open, collective commitment to promote and abide by the principles of "good" governance, complete with a "peer review" mechanism and a code of conduct.[16]

Criticisms of NEPAD and APRM

Dani Nabudere (2002) argues that while it is true that the African people have long demanded that their governments ensure peace, stability and democracy in their countries, these genuine democratic demands cannot be made a condition for improvement of the global system of governance, as NEPAD has done.[17] In his opinion, MAP, and later NEPAD was not to try to get a commitment from the African leaders to engage with globalization with a view to do things differently, but to question and demand the dismantling of those structures of economic and political relations between the North and the South that made African sustainable development almost impossible. Such an approach, he argues, would have enabled the African leaders to join with other countries of the South to demand a restructuring of the Breton Woods system and the World Trade Organization (WTO) as a precondition for Africa and the South generally engaging with globalization on a relatively favorable basis. Dani further argues that the APRM was created as a demand for good governance by the foreign powers. In his view,

[15] Claude Ake 'A Political Economy of Africa' (Nigeria: Longman Publishers, 1981) p. 141
[16] Adebayo O. Olukoshi 'Governing the African Development Process: The Challenge of the New Partnership for Africa's Development (NEPAD)'Paper Presented at the Panel Discussion on NEPAD at the University of Copenhagen (Alexandersalen: 2002) pp. 6-7
[17] Dani W. Nabudere 'NEPAD: Historical background and its prospects' in NEPAD: A New Path? 'Op cit' p. 66

in focusing on NEPAD as African scholars and civil society, there is need to address the issue of global governance.[18]

John Mukum Mbaku (2004) attempted to examine NEPAD's viability as a framework for effective poverty alleviation and sustainable development in the continent. In his findings he concluded that NEPAD is based on a few core principles which are considered to be the preconditions for economic, social and political renewal and like earlier initiatives, NEPAD is elite driven, none participatory and dependent on external resources for its success and is most likely to keep Africans dependent on the industrial market economies and push Africa further to the periphery of the global system unless thorough institutional reforms in both political and economic spheres are achieved by involving all relevant stake holders.[19]

Adebayo Olukoshi, (2002) suggests that the democracy and governance initiative of NEPAD raises more questions than answers and on more critical examination, seems designed more to pander to a donor audience than responding to or representing the concerns of the domestic political forces in the vanguard of the struggle for the reform of the African Political space and developmental agenda.[20]

Olutayo and Omobowale (2005) argue that the imposition of the new world economic agenda, midwifed especially in Africa, through the structural Adjustment Program and referred to as globalization is given supremacy only through liberal democracy. This is explicitly acknowledged in the NEPAD document without taking cognizance of the fundamental basis on which even liberal democracy subsists. They argue that the realization of Africa's development requires certain level of basic economic right for the

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[18] Ibid. p. 67
[19] John Mukum Mbaku 'Op cit'
[20] Adebayo Olukoshi 'Governing the African Political Space for Sustainable Development: A Reflection on NEPAD' in NEPAD a New Path? 'Op cit'. p. 88

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people within and sustainable economic and political empowerment in the new world order.[21]

Yash Tandon (2002) examines the proposed strategy of NEPAD in some depth and in particular looks at the value some African leaders have placed on foreign direct investments (FDIs) as their main source of funds from outside. He proposes an alternative strategy for self-reliant development that puts more faith in the people of Africa than on foreign capital.[22]

Further to Tandon's argument, Thandika Mkandawire (2002) also looks at the financing of the NEPAD and argues that the task of developing Africa must lie in African hands if for no other reason than (a) its unlikely that non Africans will allocate the necessary resources and attention required for the task (b) the lessons of history are that domestic resources are central to any sustained development efforts (external dependence is likely to lead to levels of economic dependence that are not politically sustainable and are unlikely to be the basis for credible policy initiatives to attract foreign capital) and (c) globalism not-withstanding, national sovereignty matters and to the extent that the likely forms of foreign funding are likely to impose an onerous burden on both nation-building and democracy, access to it must be measured. Mkandawire advocates for self reliance where funding of a country's investment is from own savings and also controlling of the capital inflows and outflows so that they comply with national priorities regarding development.[23]

Ernest Harsh (2003) argues that the NEPAD was first presented in a prominent way to leaders of the major industrialized powers, which gives the impression that it will rely

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[21] A.O. Olutayo and A. O. Omobowale 'Globalization, Democracy and the NEPAD' African Journal for the Psychological Study of Social Issues Vol. 8 (2) 2005 pp. 228-242

[22] Yash Tandon 'NEPAD and Foreign Direct Investments: Symmetries and Contradictions' in NEPAD A New Path? 'Opcit.' pp. 119-124

[23] Thandika Mkandawire 'Financing of the NEPAD' in NEPAD a New Path? Op cit. pp. 105-106

mainly on external backing: more aid and debt relief, greater access for African exports to Northern markets and significant new inflows of foreign investment.[24]

African leaders who share that concern include: Muammar el-Qaddaffi who maintained that NEPAD seeks to impose the 'Western Democratic Model' on Africa contrary to African religions and traditions. Gambian President Yahya Jammeh who said that while he did not criticize NEPAD itself, he worried that its implementation seems dependent on 'begging' from outsiders 'people have had enough of begging' he said. Sam Nujoma of Namibia warned against 'succumbing to foreign ideologies and influences. Proponents of NEPAD like Abdoulayi Wade of Senegal however deny that they aim to perpetuate Africa's aid dependency.[25]

According to Zein Kebonang (2005) however, the challenge for NEPAD is to promote moral leadership in Africa, both national and continental level if it is to enhance investor confidence about the continent.[26]

John Oselenbalu Ekore (2005) examines the contribution of human resources towards achieving the NEPAD objectives and argues that attempts have been made at reviewing the focus of NEPAD and the importance highly skilled professionals in driving through the goals and objectives contained in the African Leaders approach to solving the continents problems. He also considers the current trend of brain drain to other continents and future prospect of retaining highly skilled manpower to help in meeting NEPAD objectives and concludes that human talents that abounds in the continent must be

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[24] Ernest Harsh, 'NEPAD Stimulates Debate on Development Democracy and Global Ties' <u>Africa Recovery</u> Vol. 16 No. 4, 2003 pp. 1-5
[25] Ibid.
[26] Zein Kebonang 'The NEPAD: Promoting FDI through Moral Political Leadership' <u>Africa Insight</u> Vol. 35, No. 1 (2005) pp. 3-13

harnessed to overcome the myriad of problems which confronts Africa than going up in hand to developed countries.[27]

Ian Taylor (2002) investigates what 'New Africa' is all about and contends that the new hearing being granted to the New Africa representatives (Algeria, Egypt, Nigeria, Senegal, and South Africa) is precisely because the message communicated fits the neo-liberal discourse and avoids blaming particular policies or global trade structures on Africa's marginalization but rather, if pushed, simply passes off the blame on mystical notion that is known as 'globalization'. In addition, the leading elements within the New Africa have gained the North's seal of approval regarding their outward commitment to liberal democracy and market economies, and are held up as models by which the rest of the continent can/should learn from.[28]

Ian Taylor (2004) argues that the type of good governance solutions advanced by the NEPAD would deprive the office holders. To have an Africa grounded on the governance principles of the NEPAD would actually erode the base upon which the state is predicated. According to him, we are expected to believe that the same African elites who benefit from the neo-patrimonial state will now commit a form of class suicide. The possibility seems improbable.[29]

The Foreign Affairs Minister of Namibia, Marco Hausiku, while speaking at a presentation of an APRM independent assessment of Namibia in Windhoek, said that Namibia remains opposed to the APRM but the country was committed to the AU decision to incorporate NEPAD activities and that if properly implemented, NEPAD

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[27] John Oselenbalu Ekore 'The Place of Human Resources in NEPAD Objectives' African Journal for the Psychological Study of Social Issues Vol. 8(2) 2005 pp. 327-334

[28] Ian Taylor, The New Partnership for Africa's Development and the Global Political Economy: Towards the African Century or Another False Start? http://www.twnafrica.org

[29] Ian Taylor 'Why NEPAD and African Politics Don't Mix' (Silver City, NM, and Washington DC: Foreign Policy in Focus, 2004) pp 1-3

would have 'tremendous' benefits for the continent. According to Hausiku, Namibia would not join the Bandwagon just for financial exchange, but would get into ventures that were for the good of the country. He further added that Namibia was against the concept of powerful countries dictating the process, wanting to make the APRM mandatory and linking it with bilateral agreements. The Minister maintained that Namibia had been developing on its own before the NEPAD initiative and would not just jump to anyone's whims.[30]

J.M. Mbaku (2004) argues that after the end of the Cold War and cessation of superpower rivalry, it had become evident that the Structural Adjustment Programmes (SAPs) and other such programmes had failed to effectively deal with poverty in Africa. As the new millennium approached, Africa remained pervaded by chaos, ethnic violence, poor economic performance, high rates of corruption and public apathy coupled with self-serving leaders.[31] He further argues that since the late 1980s, there have been renewed efforts by domestic and external actors to transform the continent and improve the African people's ability to engage in sustainable development in the new century. These include: (a) The Lagos Plan of Action for the Economic Development of Africa (1980-2000); (b) Africa's Priority Programme for Economic Recovery (1986-1990) (later converted into the UN Programme of Action for Africa's Economic Recovery and Development); (c) The African Alternative Framework to Structural Adjustment Programme for Socio- Economic Recovery and Transformation; (d) The African Charter for Popular Participation for Development; (e) The UN New Agenda for the Development of Africa in the 1990s; (f) New African Initiative (NAI); (g) Millennium Partnership for the African Recovery Program (MAP), which was sponsored by South

[30] The Namibian, Windhoek, March 13, 2006
[31] John Mukum Mbaku 'Op cit.' p. 13

African President, Thabo Mbeki, President Abdelaziz Bouteflika of Algeria and President Olusegun Obasanjo of Nigeria; (h) the OMEGA Plan for Africa, which was conceived and promoted by President Abdoulaye Wade of Senegal; and (i) the NEPAD. These initiatives according to him failed because they were sponsored by individuals who were often more interested in promoting themselves and their countries rather than in dealing effectively with the multifarious problems of the continent as a whole, that Africa is not a homogeneous society, many of these initiatives are often elite driven, sources of funds for the implementation of these initiatives are often not well spelled out in these documents, and finally that there is no realization that these initiatives cannot work effectively without significant domestic institutional reforms to provide a more enabling environment for both economic and political governance.[32]

Positive Features of NEPAD and APRM

Jakkie Cilliers (2002) contends that the APRM is generally considered the most innovative aspect of NEPAD. It represents an ambitious attempt by key African countries to lever themselves out of the cycle of poverty and instability to which the continent has been condemned, by taking responsibility for the maintenance of appropriate standards of conduct.[33]

Onyuma (2006) argues that employing NEPAD's peer pressure mechanism could be used to induce countries to improve their fiscal and monetary policies, stimulating growth and fostering good governance in Africa. According to him, applying the AU's NEPAD initiative of peer pressure within Africa can also help in improving economic growth, good governance and fiscal and monetary policies in Africa. He further contends that although it is early to determine whether NEPAD would be effective, it certainly holds

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[32] Ibid. p. 15
[33] Jakkie Cilliers 'NEPAD's Peer Review Mechanism' Institute for Security Studies Pretoria Occasional Paper No. 64. Nov. 2002

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the potential to tackle the most important causes for the failings of African policy making. Fostering good governance would in turn facilitate regional economic and monetary integration.[34]

According to Dr. Appia of Ghana, the APRM would deepen the process of democracy and also strengthen both public and private enterprises.[35]

Juma (2004) argues that if it works, the peer review will give African reformers the credibility they desperately need at a time of growing donor fatigue and deep cynicism abroad. It will legitimize the process of reform and ward off the external pressure that is usually associated with imposed conditionalities, often deemed insensitive to countries specific needs and circumstances. At home, peer review will be crucial in building credibility. It will reorient leaders to think beyond partnership with aid donors and restore the long neglected partnership between governments and citizens. The review process also provides a major opportunity for civil society to hold leaders accountable for their public promises. The APRM may return governance to the people of Africa.[36]

Rayner Ngonji (2005) argues that NEPAD provides an opportune time for African states to combine their efforts and counter the emerging conflicts and wars within and among themselves to contain security threats, impacts of globalization, debt crisis, HIV/AIDS and poverty.[37]

According to Jakkie Cilliers (2002) never before has Africa been the focus of so much engagement and support. He argues that, had it not been for NEPAD under the leadership of President Mbeki, Africa would have suffered severe marginalization after the events of

[34] Samuel O. Onyuma 'A Single Monetary Union in Africa: Gainers and Losers' OSSREA Bulletin Vol. III No. 1, Feb. 2006. p. 14
[35] Accra Mail, May 08, 2006
[36] Monica K. Juma 'Africa's Governance Audit: The African Peer Review Mechanism' New Economy 2004. p.179
[37] The Observer, April 02, 2005

September 11, 2001. Focus has also been placed on those features of globalization that perpetuate African poverty, such as agricultural subsidies, declining levels of development aid and strict enforcement of intellectual property rights. While not sufficient, NEPAD has done much to attract continued development assistance at a time when the attention of key donor countries has been diverted by military priorities. NEPAD has also spurred action within the AU reflected in the speed with which the protocol on the establishment of the AU Peace and Security Council was finalized. Eventually NEPAD will be seen to have made a key contribution in the transition from the OAU to the AU.[38]

John K. Akokpari (2004) sees the APRM as representing a radical departure from previous practices when commitments to good governance were made through the appending of signatures to multilateral agreements. In contrast the APRM represents the very first attempt by African states to subject their regimes to a monitoring process administered by fellow African states. In this regard, the APRM presents fresh opportunities for strengthening democracy to ensure that the basis of governance transcends the narrow confines of personal rule, patron-client relations or ethno-religious politics.[39]

The Governance Problem in Kenya

Ikiara, Nyunya and Odhiambo argue that whereas Kenya has remained politically stable for most of the post-independence period, there have been internal political dynamics with implications on the choice and implementation of policies in the country. For the first three decades after independence, Kenya remained largely a one-party state except

[38] Jakkie Cilliers 'NEPAD's African Peer Review Mechanism' Institute for Security Studies Occasional Paper 64. Nov 2002. p. 6
[39] John K. Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' Nordic Journal of African Studies. Vol. 13 No. 3, 2004. p. 253

for the brief periods between 1963 and 1964 and 1966 and 1969 when the Kenya African Democratic Union (KADU) and the Kenya Peoples Union (KPU), respectively, served as opposition political parties. The distinctive feature of this period being the existence of a centralized system of government partly inherited from the colonial rule. The government became central actors and left no room for other stakeholders.[40] This has a bearing on today's governance problem in Kenya.

The World Bank rated Kenya's economy as the largest in East Africa with a Gross Domestic Product (GDP) of about $10.6 billion in 1999. However, Kenya's performance has lagged despite political stability, an absence of internal and external conflicts, high domestic revenue collections, substantial donor assistance, and a relatively well educated labor force.[41] Kenya's GDP according to the World Bank stands at $16 billion in 2004 (these were the most recent figures as at the time of writing this paper).[42]

The Government of Kenya admits that good governance is a fundamental building block of a just and economically prosperous society and it is an essential component of action to reduce poverty.[43]

Poor economic governance, including high levels of corruption and poor management of public resources, is one of the key impediments to economic and social development. It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends. The harmful effects of weak governance are especially severe on the poor, who are most reliant on the provision of public services

[40] G. Ikiara, J. Olewe Nyunya, and W. Odhiambo 'Kenya: Formulation and Implementation of Strategic Trade and Industrial Policies' in Charles Soludo, Osita Ogbu & Ha-Joon Chang Eds. The Politics of Trade and Industrial Policy in Africa (Asmara: Africa World Press Inc, 2004) pp. 205-222
[41] The Republic of Kenya: Country Assistance Evaluation Report No. 28812, World Bank, May 21, 2004
[42] World Development Indicators 'The Little Data Book' (Washington DC: 2006) p. 121
[43] Poverty Reduction Strategy Papers (2001-2004) Prepared by the Peoples and Government of Kenya.

and are least capable of paying the extra costs associated with bribery, fraud and the misappropriation of economic resources.[44]

As has already been shown in earlier arguments by scholars about Africa, Kenya was not spared by the colonial political and economic heritage. Claude Ake argued that when the British saw that political independence for Kenya was inevitable, they decided to choose their successors. They tried to create an African subsidiary with a vested interest in neocolonial dependence, which would ensure that the new African government would be capitalist, docile and dependent.[45]

Similarly, Robert Maxon (1992) argues that the sixty plus years of colonial rule had an immense impact in determining the political shape of the modern nations of Kenya, Tanzania and Uganda. He contends that among the most significant aspects of the political heritage of colonialism were the emergence of an authoritarian structure of government and the statist policies of administrative control and centrally directed development. He further argues that the colonial powers did not entrench in East Africa liberty, equality and democracy. Rather, the colonial legacy was one of authoritarian administration, the absence of genuinely representative government, exploitation and underdevelopment, and social inequality. Maxon further argues that politics and administration in independent Kenya has demonstrated the great continuity that links it with the colonial past. Political system has been characterized by powerful central governments with equally powerful executives. Local government institutions have been underutilized or neglected and corruption has continued to be accepted as part of the political and administrative scene. Those who came to power after 'uhuru' continued and expanded the practice of using power to serve the ends of certain interest groups. Co-

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[44] Interim Investment programme for the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) Government of Kenya, 2003
[45] Claude Ake 'A political Economy of Africa' 'Op cit.' p. 123

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option of individuals, ethnic groups, or classes, the continued pattern of patronage and clientelism at the national and local levels, use of detention without trial represented return to colonial practice.[46]

According to the Poverty Reduction Strategy Paper (PRSP), for the period 2001-2004, Kenya's economic growth over the post independence era (1964- 2000) has transited from a high growth path in the 1960s (6.6 per cent average annual growth over 1964-72) to a declining path (5.2 per cent over 1974-79, 4.0 per cent over 1980-89 and 2.4 per cent over 1990-2000). This decline in economic performance has, since 1980, been accompanied by declining investment levels thus reducing the country's growth potential. This unsatisfactory performance was due to stop-go macro economic policies, the slow pace of structural reform, and governance problems. The lack of sustained economic recovery in the 1990s resulted in an overall decline in per capita income. Economic prospects in the late 1990s have been further aggravated by net outflows of external funding from the public sector and an increased appetite for government consumption (mainly wages and salaries), with the resultant effect that public investment declined more than overall investment.[47]

According to the Poverty Reduction Strategy Paper (2001-2004), an effective and socially responsible government is a critical factor in the attainment of sustained economic growth and poverty reduction. During the PRSP consultative process at the district level, communities in nearly all the regions pointed out poor and unaccountable governance as a key contributor to the high incidence of poverty in Kenya. Rigid and cumbersome laws and regulations are stated as major obstacles to the effective

[46] Robert Maxon 'The Colonial Roots' in Walter Oyugi O. 'Politics and Administration in East Africa' (Nairobi, Conrad Adenauer, 1992) p. 33
[47] Poverty Reduction Strategy Paper For the Period 2001-2004, Prepared by the People and Government of Kenya, Published in September 2001, p. 13-23

participation of small-scale traders and enterprises in the liberalized market economy. Communities and the poor cited lack of access to socially responsive and affordable legal and judicial services as critical issues that needed to be addressed by the Government. Also lack of appropriate infrastructure, especially roads, makes certain areas inaccessible seriously hindering the effectiveness of local and provincial administration.[48]

Kenya stands at a critical juncture in its post independence history. After two and half decades of deteriorating economic performance, Kenyan citizens elected a government committed to improving the living standards of all, especially the poor. Despite taking over with severe resource constrains, the government has begun implementing a wide range of reforms. Examples of these include measures to address poor governance that was deeply entrenched in the past and to provide free primary school education for all.[49]

THEORETICAL FRAMEWORK

The purpose of this section is to analyze the theoretical basis on which this study is based.

The review of literature brings out the interdependence school of thought. The primary objectives of NEPAD also show that the African States are becoming less concerned about power and security (high politics) and are more concerned with eradication of poverty, the placement of Africa on a path of sustainable growth and development and an integrated socio economic development framework for Africa (low politics).

Interdependence Theory

We live in a world of interdependence. The power of nations has become more elusive. 'Calculations of power are even more delicate and deceptive than in previous ages.'

[48] Ibid p. 33
[49] Interim Investment Programme For the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007), Published by the government of Kenya, 2003 p. 4

participation of small-scale traders and enterprises in the liberalized market economy. Communities and the poor cited lack of access to socially responsive and affordable legal and judicial services as critical issues that needed to be addressed by the Government. Also lack of appropriate infrastructure, especially roads, makes certain areas inaccessible seriously hindering the effectiveness of local and provincial administration.[48]

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[48] Ibid p. 33
[49] Interim Investment Programme For the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007), Published by the government of Kenya, 2003 p. 4

Though military interdependence has always existed, and military power is still important in world politics, the world has become interdependent in economics, in communications and in human aspirations.[50]

During the cold war, 'political realism' as its proponents labeled it became widely accepted by students and practitioners of international relations in Europe and the United States. These realists were slow to perceive the development of new issues that did not center on military – security concerns. Military force did not become obsolete, however, economic interdependence was gaining prominence. The traditional view was that military power dominated other forms and that states with the most military power controlled world affairs. The post war era has witnessed radical transformations in the elements, uses and achievements of power.[51]

The interdependence theory (1970s) is one of the three schools of liberal institutionalists. The other two schools under liberalism are functionalist integration theory (1940-1950s) and neofunctionalists regional integration theory (1950-1960s). They presented an optimistic analysis of the prospects for international institutions.

They argued that international institutions could help states co-operate. They believed that states are atomistic actors and they seek to maximize their individual absolute gains and are indifferent to the gains achieved by other states.

According to the liberalists cheating was the biggest impediment to co-operation but international institutions could help states overcome this barrier. They advance four propositions of world politics: 1) they reject the realism proposition of centrality of states in world affairs. For interdependence theorists (the focus of this paper) new actors are Multinational Corporations (MNCs), transnational and trans governmental co-operations.

[50] Robert O. Keohane and Joseph Nye 'Power and Interdependence World Politics in Transition' (Boston Toronto: Little, Brown and Company, 1977) p. 3
[51] Ibid. pp. 5-11

2) States are not unitary because authority is already decentralized in modern states. Multiple channels of access, which in turn weakens the grip on foreign policy previously held by central decision makers, characterize modern states. 3) They argue that states were becoming less concerned about power and security. Increasing interstate economic conducts have left states increasingly interdependent upon one another for growth, full employment and economic growth. They also argue that industrialization had created a social century where advanced democracies, developing countries and socialist countries were becoming more of welfare states, less oriented towards power and prestige but by welfare. States don't see each other as enemies but as partners needed to secure greater comfort and well being for their home publics. 4) Interdependence theorists argue that in a world of multiple issues imperfectly linked where coalitions are formed transnationally and transgovernmentally, international institutions are important for political bargaining.[52]

Kegley and Wittkopf (1997) contend that global interdependence lies at the heart of the external challenges states now face. As the range of global issues has expanded, interdependence has reduced states' ability to manage. Mutual vulnerabilities reduce states' autonomy by curtailing their control of their own fates. From one perspective, an awareness of the common destiny of all, alongside the declining ability of many sovereign states to cope with global problems through national means may energize efforts to put aside interstate competition. Conflict, according to this reasoning, will recede, as few states are able to disentangle themselves from the interdependent ties that bind them together. From another more pessimistic perspective, interdependence will not lead to transnational collaboration. Regardless of how compelling the need or how

[52] Joseph M. Grieco 'Anarchy and the Limits of Co-operation: A Realist Critique of the Newest Liberal Institutionalism' International Organization Vol. 42 No. 3, 1988 pp. 488-492

rewarding the benefits may be, contact and mutual dependence will breed enmity not amity. This view maintains that the temptation to achieve political and economic benefits by military force or by trade protection will continue thus the tightening web of global interdependence foretells danger not just opportunity.[53]

Russet and Starr (1989) argue that interdependence is a quality of all systems. They think of world politics in terms of a system and argue that interdependence emphasizes the links or interconnections among the units of a system. Such links may affect both the opportunities of states and the willingness of decision makers to act. Interdependence is one of the constraints that the system places on the state and other actors in terms of opportunities and on decision makers in terms of willingness.[54]

Khabele Matlosa (2003) notes that the liberal school of thought embraces liberal democracy as a key prerequisite for development and advocates the retrenchment of the state and supremacy of the market logic in development. According to him, this perspective is propounded predominantly by the political elite who hold that NEPAD, which also espouses African renaissance, will certainly assist Africa in general to realize regional co-operation and development through both economic and political liberalization.[55]

HYPOTHESES

This research sets out to test the following hypothesis:

1. NEPAD's APRM contributes to good governance.

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[53] Charles W. Kegley JR. and Eugene R. Wittkopf 'World Politics: Trend and Transformation' (New York: St. Martin's Press, 1997) pp. 12-13

[54] Bruce Russet and Harvey Starr 'World Politics: The Menu for Choice' (New York: W.H. Freeman & Company, 1989) p.485

[55] Khabele Matlosa 'New Regionalists Impulses: Implications of the NEPAD for Regional Co-operation in Southern Africa' Policy: Issues and Actors Vol. 17 No. 5, 2003. pp. 1-23

2. The just concluded APRM process in Kenya was marred by political manipulation.

3. The APRM lacks sufficient incentives to offer participating countries to meet its standards of governance.

4. The APRM is little understood by most people in Kenya.

DEFINITION OF TERMS

Governance

There is no universally accepted definition of governance. A variety of definitions have been advanced to define the concept of governance.

The African Development Bank (ADB), which was the first regional multilateral development bank to adopt an official governance policy in 1995, defines good governance as 'sound development management' based on four interrelated 'pillars': accountability, transparency, predictability and participation.[56]

The World Bank defines governance as the institutional capability of public organization to provide public and other goods demanded by a country's citizen or their representatives in an effective, transparent, impartial and accountable manner, subject to resources.[57]

The United Nations Development Programme (UNDP) defines governance as the exercise of political, economic, administrative and legal authority in the management of a country's public affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.[58]

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[56] www.gdrc.org
[57] www.worldbank.org
[58] Peter Wanyande 'NEPAD and Security in the IGAD Region' in Makumi Mwagiru Ed. African Regional Security in the Age of Globalization (Nairobi: Heinrich Boll Foundation, 2004) p. 67

Democracy

Contrary to the views expressed by some African leaders and at times supported by some academics, democracy cannot have more than one meaning and does not change like a chameleon to suit particular conditions. Even if we concede and are prepared to allow different interpretations of democracy, there are certain underlying factors, which must be considered within any such interpretation. Among them are the following: 1) there should be rule of law 2) the will of the people is paramount 3) the participation of the people in the government of their nation is essential 4) participation of the people in government is exercised through free and fair elections, from which elected representatives assume leadership positions 5) the government is in power only for the purpose of serving the people and the nation 6) the government is therefore subject to the power of the people who should be able to remove the government in terms of the laws of the nation 7) separation of powers, on the basis of checks and balances, should be enshrined and respected 8) flowing from the rule of law, and presumably the most important, is the respect for human rights and fundamental freedoms.[59]

Indicators of democracy and political governance: prevention/reduction of intra and inter country conflicts, constitutional democracy, human rights, separation of powers, accountability of public office holders and civil servants, rights of women, children, minorities, and refugees, etc.

Economic Governance

Good economic governance entails, among other things, state capacity to engage in transparent management, to implement internationally acceptable standards and

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[59] Kwame Frimpong 'Some Pitfalls in Africa's Quest for Democratic Rule and Good Governance' in Kwameh Frimpong and Gloria Jacques Eds. Corruption Democracy and Good Governance in Africa (Botswana: Lightbooks, 1999) pp. 31-32 also NEPAD Declararion on Democracy, Political, Economic and Corporate Governance (Durban 8 July 2002) Par. 7

mechanisms related to public accountability in fiscal policy, public expenditure management, debt management, monetary policy, banking regulations, and data dissemination, and to develop and empower institutions to prevent and combat fraud and embezzlement of public funds and the laundering of ill-gotten gains or other monetary rewards.[60]

Indicators of economic governance: macro economic policy, sustainable development, transparent, predictable and credible economic policies, sound public finance management, international accounting and auditing standards, fighting corruption and money laundering, regional integration, etc.

Corporate Governance

Corporate governance refers to the mechanisms through which corporations – whether private, publicly traded, or state-owned – and their managers are governed. It involves a set of relationships among a company's management, its board, its shareholders, and its stakeholders, and also provides the structure through which the objectives of a company are set and the means of attaining those objectives and the monitoring of performance are determined. Good corporate governance entails the pursuit of objectives by the board and management that represent the interests of a company and its shareholders, including effective monitoring and the efficient use of resources.[61]

Indicators of corporate governance: enabling environment and effective regulatory framework, social and environmental responsibility, good business ethics, international accounting and auditing standards, stakeholders rather than shareholders, accountability of corporations and directors, etc.

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[60] Kempe Ronald Hope Sr. 'From Crisis to Renewal: Towards a Successful Implementation of the NEPAD' African Affairs 101 2002. p.391

[61] Ibid.

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Socio-Economic Development

Socio – Economic development has no universally agreed definition but at a conceptual level, it entails a healthy environment of good living conditions with freedom and capacity of society to make human life advancement endeavors. The operationalization of socio-economic development involves a process within an economy with a society that is healthy where the sick receive proper medical care free from discrimination with tolerable levels of equality, respect of human rights, equality in the distribution of the national cake and average high standards of living. This means that there is an entire multitude of yardsticks of socio economic development to include among others, the removal of poverty and under nutrition, access to sanitation, clean water, health and education services and subsequently an increase in life expectancy.[62]

Indicators of socio-economic development: self-reliance, capacity building, poverty eradication, improved delivery mechanism of education, combating HIV/AIDS, affordable access to water/energy, micro finance, broad based participation, etc.

The Africa Peer Review Process

The OECD describes peer review as "the systematic examination and assessment of the performance of a state by other states with the ultimate goal of helping the reviewed state improve its policy making, adopt best practices and comply with established standards and principles". By and large, this tallies with the objectives of peer review as stated by African countries in the base document of the APRM, which styles the mechanism as "an

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[62] Frederick R. M. Bogere 'Continuity and Change in the OAU/AU. A Critical Assessment of the AU as an Instrument for Democratic Governance in Africa' MA in International Studies Dissertation, IDIS, University of Nairobi 2004. p. 22

instrument voluntarily acceded to by member states of the AU as an African self monitoring mechanism".[63]

In this research paper, the African Peer Review Mechanism (APRM) widely heralded as the crown jewel of the NEPAD, will be understood to mean a mutually agreed instrument, which members of the AU have voluntarily acceded to as part of an African self-monitoring mechanism.[64]

Sustainable Development

The term 'sustainable development' is generally considered to have been coined by the 1987 Brundtland report, which defined it as 'development that meets the needs of the present without compromising the ability of future generations, to meet their own needs.'[65]

Decleris defines sustainable development as 'an increase of a country's wealth production, in other words of its gross income, which does not entail parallel reduction or degradation of its natural capital.[66]

An examination of international instruments and scholarly writings embodying the concept highlight the fact that a common definition of sustainable development has been adopted. Sustainable development implies the pursuit of economic development, environmental protection, and social development as non-hierarchical objectives of international society[67].

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[63] Candice Moor 'Regional Integration and Regional Governance under the New African Initiatives: A Critical Appraisal' Policy: Issues and Actors Vol. 17 No. 3 May 2004. p. 12

[64] APRM Country Review Report of Ghana June 2005 p. xi

[65] Philippe Sands 'Principles of International Environmental Law I: Frameworks, Standards and Implementation' (Manchester University Press. 1995) p. 198

[66] Michael Decleris 'The Law of Sustainable Development: General Principles' (Luxembourg Office for Official Publication of European Community, 2000) p. 45

[67] Johannesburg Plan of Implementation 2002

METHODOLOGY OF RESEARCH

The study will rely on secondary data which will be collected through review of available documents like APRM documents from inception to date, journal articles, periodicals, theses and dissertations relevant to this study, government documents, books, newspapers and relevant internet sources.

Chapter Outline

Chapter one of the study constitutes the introduction, statement of the problem, justification of the study, objectives of the study, the literature review, theoretical framework, hypothesis and research methodology.

Chapter two will give a detailed discussion of the NEPAD's APRM.

Chapter three will discuss the governance problem in Kenya.

Chapter four will constitute a critical analysis of the APRM on governance in Kenya.

Chapter five will constitute the conclusions and recommendations.

CHAPTER TWO

INTRODUCTION

This chapter will further discuss the structure and development of the APRM, its objectives and principles, the uniqueness and process of APRM and challenges facing the APRM. It will also give a general assessment of APRM, which is a new initiative to foster the adoption of policies and practices as already discussed in chapter one of this research project.

THE AFRICAN PEER REVIEW MECHANISM

The Development of the APRM

The 37th Summit of Heads of State and Government of the Organization of African Unity (OAU) adopted the New African Initiative (NAI) subsequently renamed NEPAD in July 2001 in Lusaka Zambia. At the point NEPAD became officially a program of the OAU and the Summit meeting of Heads of State and Government became the governing structure of NEPAD to which it reports annually.

In October 2001 the first meeting of the NEPAD Heads of State Implementing Committee (HSIC) met in Abuja Nigeria and '...agreed that African leaders should set parameters for good governance to guide their activities at both the political and economic levels. In this regard, it decided that at its next meeting, it would consider and adopt an appropriate peer review mechanism and a code of conduct'

The next HSIC meeting of March 2002 adopted the APRM. The third HSIC meeting in Rome, in June 2002 subsequently approved a declaration on Democracy, Political, Economic and Corporate Governance. Both the APRM and the Declaration were

eventually submitted to the AU Summit in Durban as the final governing authority of

NEPAD.[68]

NEPAD APRM Structure

The APR Heads of State Forum (APR Forum)- is the highest decision making authority

of the APRM. The APR Forum has the ultimate responsibility for oversight of the APRM

organization and processes, for mutual learning and capacity building, and for applying

peer pressure required to make the APRM effective, credible and acceptable.

The Panel of Eminent Persons (APR Panel)- appointed to oversee the review process to

ensure the integrity of the process, to consider the review reports and to make

recommendations to the APR Forum.

The APRM Secretariat (APR Secretariat)- provides the secretarial, technical,

coordinating and administrative support services for the APRM. The APR Secretariat is

supervised by the chairperson of the APR Panel at the policy level and is run by an

executive officer and is located in South Africa.

A Country Review Team (APR Team)- Appointed to visit the country to review progress

with the country's programme of Action and produce the APRM report on the country.[69]

Objectives and Principles of APRM

The APRM recognizes the central role of good governance to the development of a

country. The APRM therefore aims to help the country undergoing review to improve its

policy-making and comply with established codes, standards and principles of good

governance. It intends to achieve these objectives by sharing of experiences,

reinforcement of successful practices, identification of capacity deficits, and assessment

of the needs for capacity building of participating countries. The APRM thus seeks to

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[68] Jakkie Cilliers 'NEPAD African Peer Review Mechanism' Institute for Security Studies Occasional Paper No. 64 pp. 2-3 Pretoria: Nov 2002
[69] African Peer Review Mechanism Organization and Process, NEPAD/HGSIC-3-2003/APRM/Accord

promote peer learning and capacity building by facilitating constructive peer dialogue and persuasion thereby making the process effective, credible, and acceptable.

The broad objectives of APRM (Masai 2005) could be summarized as follows:

- Facilitating a popular participatory exploration and identification of the key governance issues, gaps, obstacles, and problems related to economic growth, development and democratization, facing member countries.

- Encouraging and promoting the formulation of appropriate policies, programmes, and projects, strategies and best practices.

- Mobilizing human and material resources, and fostering partnerships in order to rectify the identified problems – including the challenges of continental economic integration and globalization.

- Ensuring implementation, monitoring, evaluation and sustainability of the formulated appropriate policies and programmes, projects and practices.

Performance and progress are measured and monitored in four substantive thematic areas: democracy and political governance, economic governance and management, corporate governance and socio-economic development.

The guiding principles of APRM are that every review should be technically correct, transparent, credible and free of political manipulation. People who are technically competent, credible and free from political influence are expected to undertake the country review in as transparent a manner as possible.

Heavy responsibility falls on the shoulders of the Panel of Eminent Persons, consisting of well known, professionally distinguished, respectable, credible and independent Africans. The Panel reports to the APR Forum, a Committee of Heads of State and Government who are members of the APR process. Depending on the findings of the

report and, after consultations with the country concerned, the APR Forum prescribes what needs to be done in support of the report.

The Uniqueness of the APRM

President Thabo Mbeki describes NEPAD as a homegrown initiative, which represents the determination of African leaders to assume ownership of the development process in Africa. An important ingredient of such ownership, and a novel departure for Africa, is the agreement to establish the APRM to monitor progress in implementing agreed development agendas. The APRM is a groundbreaking initiative of NEPAD, which is unique in its scope and breadth. The APRM is a critical part of the AU's NEPAD program and is an instrument agreed upon by the participating Member States as an African 'self monitoring' mechanism. The APRM Process is designed as a mechanism whereby countries voluntarily 'open their books' to be examined within a formal structure according to NEPAD guidelines. The peer review was established by NEPAD to counter Africa's reputation for bad governance.[70]

What is different about NEPAD and its APRM is the growing need in this globalizing world to have a strong and credible Africa-wide voice – a vice that draws its legitimacy and authority from being rooted in democratic principles. There are two directions in which this voice needs to speak: internally to African nations and externally to the court of world opinion. This suggests a fairly narrow focus for NEPAD as an institution-a

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[70] Wafula Masai 'Search for Democracy and Good Governance: Kenya's Africa Peer Review Self-Assessment Process' in Abdalla Bujra Ed. Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005) p.254

mechanism for peer review on governance and rule of law, and a mechanism for representing Africa on key global issues.[71]

According to Peter Anyang Nyong'o (2002) NEPAD seems to be more sensitive to the role of subjective factors in the process of social change. The issue of good governance is taken more seriously by NEPAD and institutional mechanisms proposed to deal with include the APRM.[72]

The Process of APRM

The APRM is an instrument voluntarily acceded to by Member States of the AU as an African self-monitoring mechanism. The mandate of the APRM is to ensure that the policies and practices of participating states conform to the agreed political economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.

The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building.

Principles of the APRM stipulate that every review exercise carried out under the authority of the Mechanism must be technically competent, credible and free of political manipulation. These stipulations together constitute the core guiding principles of the Mechanism.

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[71] Ibid. pp. 255-256
[72] Peter Anyang Nyong'o 'Unity or Poverty: The dilemmas of progress in Africa Since Independence' in Peter Anyang' Nyong'o, Aseghedech Ghirmazion and Davinder Lamba (Eds). NEPAD a New Path? (Nairobi: Heinrich Boll Foundation, 2002) p. 32

Participation in the APRM is open to all member states of the AU. After adoption of the Declaration on Democracy, Political, Economic and Corporate Governance by the AU, countries wishing to participate will notify the Chairman of the NEPAD Heads of State and Government Implementation Committee. This will entail an undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance. Leadership and management structure of the APRM entails that a panel of between five to seven Eminent Persons direct and manage the operations of the APRM. The members of the Panel must be Africans who have distinguished themselves in careers that are considered relevant to the work of the APRM. They must also be persons of high moral stature and demonstrated commitment to the ideals of Pan Africanism. Members serve for a period of up to four years and retire by rotation. The Heads of State and Government of participating countries appoint one of the members of the panel as chairman. The chairperson serves for a period of five years. The Panel will exercise the oversight function over the review process, in particular to ensure the integrity of the process.

Periodicity and types of Peer Review- At the point of acceding to the peer review process, each State clearly defines a time bound Programme of Action for implementing the Declaration on Democracy, Political, Economic and Corporate Governance, including periodic reviews. There are four types of reviews. The first country review is the base review that is carried out within eighteen months of a country becoming a member of the APRM process. Then there is a periodic review that takes place every four two to four years. A member country can also ask for a review that is not part of the periodically mandated reviews. Early signs of impending political or economic crisis in a member

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country would also be sufficient cause for instituting a review. Participating Heads of State and Government can call for such a review in a spirit of helpfulness to the Government concerned.

The APRM Process will entail periodic reviews of the policies and practices of participating states to ascertain progress being made towards achieving mutually agreed goals and compliance with agreed Political, Economic, and Corporate Governance. It will spur countries to consider seriously the impact of domestic policies not only on internal political stability and economic growth but also on neighboring countries. Bearing in mind that African countries are at different levels of development, on joining the Mechanism, a country will be assessed (the base review) and a timetable (Programme of Action) for effecting progress towards achieving the agreed standards and goals must be drawn up by the state in question, taking into account the particular circumstances of that state.[73]

Stages of the Review Process of the APRM

There are five interrelated stages in the peer review process. The duration in the review process per country should not be longer than six months. (The 6th HSGIC document does away with this requirement) Instead the APR Forum is now required to 'transmit the APRM Reports to the appropriate African Union structures in a timely manner' and 'make public through the APR Secretariat, country review reports and press releases pertaining thereto' (par 2.2).

These stages are defined in the APRM Base Document, and are briefly described below.

Stage One involves a study of the political, economic, and corporate governance and development environment in the country to be reviewed, based principally on up to date

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[73] www.nepad.org

background documentation prepared by the APRM Secretariat and material provided by National, sub regional, regional and international institutions. The background document is shared between all partners including the country being reviewed. On the basis of the background paper the APR Secretariat prepares an issue paper setting out the main challenges in the APRM areas of review, sharing this with all partners. The APR Panel approves the work plan and composition of the APR Team. In response the country to be reviewed will prepare a draft plan of Action to improve its governance and socio-economic development and submit this to the APR Secretariat.

Stage Two sees the APR Team visit the country concerned armed with the issues paper and plan of action, where it will meet with and brief key stakeholders on 'the APRM process, spirit and guiding principals' and seek to build consensus with the stakeholders on the challenge areas. These stakeholders include government officials, parliaments, representatives of political parties, parliamentarians, the business community, representatives of civil society organizations (including the media, academia, trade unions, NGOs) rural communities and representatives of international organizations. The main focus of the Country Review Visit will be on identifying whether the country's draft programme of Action is adequate to address the assessed challenges and if not how the country can best be assisted in strengthening its final draft Programme of Action and its capacities to implement it.

Stage Three involves the preparation of APR team country review report based on the background documentation and country visit. The report will focus on recommendations that would improve, accelerate and resource the program of action through time-bound additions to it. The Team's draft country review report is first discussed with the

Government concerned. The Government's responses will subsequently be appended to the Team's report.

Stage Four begins when the Team's final report and the country's final Program of Action (POA) are sent to the APR Secretariat and the APR Panel. The Panel then submits them to the APR Forum of Participating Heads of State and Government for consideration and formulation of actions deemed necessary in accordance with the Forum's mandate. If the country shows a demonstrable will to rectify the identified shortcomings, then it will be incumbent upon participating governments to provide the assistance they can, as well as to urge donor governments and agencies to come to the assistance of the country under review.

Stage Five is the final stage of the APR process. Six months after the report has been considered by the Heads of State and Governments of the participating member countries, the report is formally and publicly tabled in key regional and sub-regional structures such as the Regional Economic Commission to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the envisaged Peace and Security Council, and the Economic, Social and Cultural Council (ECOSOCC) of the AU.

The time-line for these processes is expected to vary considerably among countries, depending on each country's specificity. The anticipated duration of each peer review from the start of stage one to the end of stage four is between six and nine months.

Participation in the APRM

Ghana has been a trailblazer and a shining example in the APRM process, being among the first group of countries to sign the Memorandum of Understanding (MOU) on 9 March 2003; it suffices to note that the final review report is out. Ghana subsequently

created a Ministry of Regional Cooperation and NEPAD in May 2003, and the Head of

this Ministry is the designated focal point for the APRM in the country.[74]

In June 2004, Ghana became the first African country to launch a country review after

satisfying the necessary conditions to engage with the process. It has created an elaborate

policy and co-ordination infrastructure to facilitate the APRM review. The start of the

process seems to have encouraged other countries to accede to the APRM.

The other states that were among the first sixteen states to accede to the APRM in March

2003 are Algeria, Burkina Faso, Cameroon, the Democratic Republic of Congo, Ethiopia,

Gabon, Kenya, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa

and Uganda. Benin and Egypt signed the Memorandum of Understanding of accession at

the extraordinary summit of the AU held in Sirte, Libya in February 2004. The last five

countries Angola, Lesotho, Malawi, Sierra Leone and Tanzania acceded during the AU

Summit in Addis Ababa, Ethiopia. However, Ghana, Kenya, Mauritius and Rwanda were

the first countries in which reviews were launched.[75]

There are states, which have not acceded to the APRM, prominently on the list include:

Namibia - The Foreign Affairs Minister of Namibia, Marco Hausiku, while speaking at a

presentation of an APRM independent assessment of Namibia in Windhoek, said that

Namibia remains opposed to the APRM but the country was committed to the AU

decision to incorporate NEPAD activities and that if properly implemented, NEPAD

would have 'tremendous' benefits for the continent. According to Hausiku, Namibia

would not join the Bandwagon just for financial exchange, but would get into ventures

that were for the good of the country. He further added that Namibia was against the

concept of powerful countries dictating the process, wanting to make the APRM

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[74] APRM Country Report of Ghana June 2005 p. xi
[75] Ibid p. 2

mandatory and linking it with bilateral agreements. The Minister maintained that Namibia had been developing on its own before the NEPAD initiative and would not just jump to anyone's whims.[76]

Botswana - According to Mr. Modise, Permanent Secretary for Development, many considerations were taken into account which included strategic considerations, added value of membership, feasibility of attaining the set objectives, long term sustainability, capacity to service the institution, relationship with existing institutions, to which Botswana belongs, cost considerations, etc. According to him, the APRM is not the totality of NEPAD. Also that on some issues that the APRM is concerned with, such as economic matters, there may be already institutions that African countries belong to, such as the ADB, Economic Commission for Africa (ECA), World Bank, International Monetary Fund (IMF), UN, whose reports could be utilized to avoid duplication. He concludes that there is the possibility that Botswana's position with regard to APRM may be reconsidered in the context of changing circumstances.[77]

Civil Society Participation - Verwey (undated) urges civil society organizations to insist on the active participatory role, which the NEPAD and APRM policy documents articulate rather than adopting a wait and see approach.[78]

Cilliers (2003) contends that the debate on peer review has opened up considerable space for African civil society organizations to seek out and establish parallel processes to hold

[76] The Namibian, Windhoek, March 13, 2006
[77] Modise Modise 'Botswana and NEPAD and the APRM: Two Official Perspectives' Tautona Times Vol. 2 No. 9 2004
[78] Len Verwey 'NEPAD and Civil Society Participation in the APRM' IDASA Occasional Papers p. 1 http://www.idasa.org.za

African governments and leaders accountable to their stated commitments and decisions.[79]

Challenges facing the APRM

At the inception of the APRM there was controversy (Cilliers, 2002) around both the NEPAD and APRM. The debate was whether the APRM would be limited to economic and corporate review leaving the AU to be responsible for political review.

The other challenge is the practically unrealistic and politically impossible expectations created by the NEPAD partners and the G8 in particular.

Another key challenge is resources. The APRM is a complex and expensive process. Compared to other review mechanisms such as the OECD, the African approach to peer review is a 'multi-objective process, defined by multiple criteria and standards, covering multiple countries, involving multiple stakeholders and reporting to multiple principals'. In principle, all AU member states have agreed to finance the APRM initiative[80]. However, it is unlikely that non- participating countries will make financial contributions. Experience also suggests that countries are often reluctant to make full and prompt payments to multilateral organizations. In addition, Akokpari contends on the financial implications that, South Africa and Nigeria which are the key driving forces behind the project, and who bear the greatest financial burden of the AU and NEPAD initiatives, presumably have disproportionately stronger voices in the running of the NEPAD and the APR system. He further argues that their bigger financial contributions afford them a larger degree of control in the appointment of AU and NEPAD officials, which enhances the ability of these countries to exercise some 'behind the scenes' control over these

[79] Jakkie Cilliers 'Peace and Security Through Good Governance A Guide to the NEPAD APRM' Opcit p.22
[80] African Peer Review Mechanism (APRM): Base Document (Abuja, 9th March 2003) p. 7

officials and potentially compromise the autonomy, neutrality and objectivity that should ideally characterize their work.[81]

Another challenge is to secure the necessary political commitment to stay the course and not to manipulate the process for political gains. Success in this process will depend on the extent to which political actors conceive of it as a process that can add value and tackle the real obstacles to better governance. Independence of the reviewers from those being reviewed or from forces extraneous to the review is key. Much therefore will depend on the personal authority of the APRM Panel.

The other challenge is that, the extent to which the process will work will depend on the collective resolve to exert pressure for good governance. As Pagani argues "the effectiveness of peer review relies on the influence and persuasion exercised by the peers during the process. The effect is known as 'peer pressure'. The peer review process can give rise to peer pressure through for example: (1) a mix of formal recommendations and informal dialogue by the peer countries, (2) public scrutiny, comparisons and in some cases even ranking among countries, and (3) the impact of all of the above on domestic public opinion, national administration and policy makers"[82]

NEPAD's mandate is too wide and this makes it difficult for the debate to narrow down to specifics. The APRM examines four thematic areas, which are very broad. In comparison, the OECD reviews according to Pagani (2002) are usually specific focusing on particular sectors or particular policies, for example Ireland's aid program was recently peer reviewed through the Development Assistance Committee of the OECD.

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[81] John K. Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' Nordic Journal of African Studies Vol. 13 No. 3 pp. 256-257

[82] Fabrizio Pagani 'Peer Review: A Tool for Cooperation and Change – An Analysis of the OECD Working Method' in Ravi Kanbur 'The African Peer Review Mechanism (APRM): An Assessment of Concept and Design' (Cornell University: January 2004) p. 6 www.people.cornell.edu/pages/sk145

Ravi Kanbur (2004) argues that the APRM should greatly narrow the scope of its reviews if it is to deliver competent assessments.[83]

Africa and APR must also contend with the absence of genuine commitment by external creditors to honor pledges under agreements with Africa. This is a major hurdle further limiting the prospects of APR induced good governance in Africa.[84]

An Assessment of NEPAD's APRM

It is important to note that the APR represents the very first attempt by African states to subject their regimes to a monitoring process administered by fellow African states. In this regard, Akokpari argues that the APR represents fresh opportunities for strengthening democracy to ensure that the basis of governance transcends the narrow confines of personal rule, patron-client relations or ethno-religious politics. [85]

The NEPAD Framework document brings out the notion of new partnerships, in particular, new partnerships between Africa and the rest of the world, and between African states and their people. The new partnership with the international community is conceived as one based on mutually beneficial exchange rather than on soliciting further handouts from the rich states of the world to the poor. This is in line with the theory of interdependence, which this research paper is based on.

What is envisaged is a paradigm shift away from the patterns of post-independence dependency to interdependence. Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions and are convinced

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[83] Fabrizzio Pagani Ibid.
[84] John K. Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' Nordic Journal of African Studies Vol. 13 No. 3 p258
[85] John K. Akokpari Ibid p. 253

that an historic opportunity presents itself to end the scourge of underdevelopment that afflicts Africa.[86]

Professor Gutto (2002) points out that the vision of partnership between the people and the government on one hand and the partnership between African governments and the rest of the world on the other hand is an important agenda for Africa. In this regard, he sees the APRM as being of importance in its elements of political, economic and corporate good governance.[87] Maina Kiai's (2002) main theses during the Indaba meeting was that the AU-NEPAD structure provides new opportunities and called on civil society groups in particular to get engaged to push the Peer Review Mechanism.[88]

In the NEPAD vision, significant improvements in governance, driven by a new political will among the African leadership, will create the enabling conditions for a renewal of entrepreneurial activity by African people and a concomitant increase in trade and investment on the continent.[89]

The NEPAD APRM core documents are shaped by the recognition that there can be no development for the continent in isolation from the increasingly univocal rules of global politics and economics in the post-Cold War era, and that the required support from the developed world will only be forthcoming if governance improves.[90]

According to the APRM Base Document, 'the primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub regional and continental economic integration through sharing of experiences and reinforcement of successful and

[86] The New Partnership for Africa's Development (NEPAD) (Abuja, Oct 2001) p.1
[87] Prof. Shadrack Gutto 'The AU-NEPAD and the Principles of Changing Relations Between Africa and Northern Countries' during a high level meeting, the Indaba entitled Setting Africa's Agenda: Critical Dialogues on Human Rights and Development Cooperation in Africa (Maastricht, 16-17 Dec 2002) pp. 5-6
[88] Maina Kiai during the Indaba meeting (Maastricht, 16-17 Dec 2002) p. 6
[89] Len Verwey Opcit pp. 6-7
[90] Ibid.

best practice, including identifying deficiencies and assessing the needs for capacity building'.[91]The concept of peer review and peer learning assumes that a non-coercive, gradual convergence of policy and practice in participating countries is preferable to attempts to impose 'desirable' policies on countries. Verwey (undated) contends that the fact that APRM is a voluntary mechanism has led observers to ask whether it can ever possess sufficient clout to enforce the governance improvements NEPAD offers in exchange for greater integration into the global economy.[92]

Those states that support the APRM recognize that in order for Africa to approach the 21st century with confidence, they will have to rebuild the continent, change its image and accelerate performance through better democratic rule and democratic governance. They realize that governance problems have been key determinants of Africa's development challenges. African leaders have begun to realize that political order and progress on the continent will not be possible without the formation of partnerships among themselves.[93]

Of the countries who have not yet signed the APRM memorandum of understanding, Ayesha Kajee of South African Institute of International Affairs cites a number of reasons why they may be holding back: (a) some countries governance failures are pervasive if not institutionalized (b) in some countries increased transparency and accountability that peer review generates would be detrimental to those who benefit from the current state of affairs (c) some countries prefer to get their own house in order before acceding to the process (d) others like Somalia have been destabilized by war (e) others have been in election periods and have preferred to shelf their reviews until later. According to Kajee, many African leaders still view the APRM with suspicion and fear

[91] APRM: Base Document (Abuja, 9th March 2003) par. 3
[92] Len Verwey Opcit pp. 8-9
[93] Malachia Mathoho 'An African Peer Review Mechanism: A Panacea for Africa's governance Challenges?' Policy Brief 29 (Undated) pp. 1-2

that it will lead to an erosion of national sovereignty. Such perceptions point to a need for continued widespread sensitization of the APRM's aims and methods, particularly the fact that that it has been conceptualized a cooperative, mutual learning mechanism rather than a means of coercion.[94]

According to Verwey, the NEPAD vision is not the product of broad national consultation and regional deliberations, but was conceived and articulated by a few African leaders, unveiled initially in the West, and subsequently brought back and 'marketed' to the African people. Hence some African leaders are unhappy with the manner in which it was conceptualized and drafted by a few. [95]This has led NEPAD to be accused of being an elite initiative in some quarters, which is more likely to benefit governments and big business than ordinary citizens.

Other scholars have also argued that, NEPAD is elite-driven and non-participatory. For example, as argued by Tandon, after the Presidents of South Africa, Nigeria, Senegal and Algeria had discussed NEPAD among themselves in Abuja, they first consulted policy makers in the developed western industrial countries and representatives of the international financial community before making any contact

with the African people whose lives would be directly affected by NEPAD. In fact, the civil society in Africa got most of the information about NEPAD from foreign press and not from the architects of the initiative. Representatives of many historically marginalized and deprived groups consider NEPAD as yet another external imposition (which is only different from the SAPs in that it claims to

safeguard services, especially to the poor) designed to generate benefits primarily for

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[94] Len Verwey Opcit.
[95] Len Verwey Ibid p. 11

foreign capital, the metropolitan economies and a few privileged indigenous elites.[96]

According to Malachia Mathoho (undated), numerous African leaders are opposed to

NEPAD's APRM because the resources for its evolution depend heavily on the wealthy

nations outside the continent.[97]These have been an arguments raised against joining the

APRM.

According to the guidelines to prepare for and participate in the APRM[98], incentives for

joining APRM are as follows: (a) firstly, where reviewed countries demonstrate a will to

address their governance and developmental shortcomings, it will be incumbent upon

participating governments to provide what assistance they can, as well as urge donor

governments and agencies to also come to the assistance of the country reviewed. (b) its

potential use as an evaluative device to determine preferred investment and aid

destinations for investors, particularly foreign investors who may not have sufficient

information when distinguishing between African countries and who consequently lump

them all into the 'high risk' category. If the initial reviews are credible and technically

competent, the APRM may provide investors with information on which countries are

seriously committing themselves to improving their governance environment.[99]Negash

contends that other than the 'collective goodwill' of the present generation of African

leaders and/or the effort to win donors' sympathy, the rewards and penalties from

engaging in APRM are unclear.[100]

Verwey argues that Civil Society organizations influence policy formulation as well as

monitor policy implementation and evaluate outcomes. He further argues that civil

[96]John Mukum Mbaku, Opcit
[97] Malachia Mathoho Opcit
[98] 'African Peer Review Mechanism (APRM): Base Document Par 24
[99] Len Verwey Opcit
[100] Minga Negash 'Public Sector Accountability, NEPAD and Africa's Transition: A Score Card Approach' University of Witwatersrand. (Johannesburg undated) p. 8

society organizations can act as a necessary constraint on the power of government and facilitate governance improvements through its calls for, amongst other things, greater transparency and accountability. He emphasizes that without civil society participation and scrutiny it is unlikely that decision-makers and officials will consistently place the public good before their private good when confronted with opportunities for self-enrichment.[101]

The above general considerations provide reasons why civil society participation in the APRM is paramount. Verwey contends that civil society participation in the APRM is crucial to the credibility of the review process, as it will help to ensure that the review report represents a consensus of views on a country's quality of governance, rather than being limited to what the government in question would like to make public. Ayesha Kajee indicates the concern that a largely government controlled process in the first countries to be assessed will culminate in a review that is neither credible nor independent. The civil society is therefore potentially uniquely placed to act as a watchdog over political manipulation of the review process.[102]

Malachi Mathoho argues that the active involvement of civil society organizations in each country in the review process will help to reduce the potential for the peer review to generate into an 'old boys club' type situation where countries have an unspoken accord to exchange good reports regardless of the situation on the ground.[103]

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[101] Ibid pp. 20-22
[102] Ibid.
[103] Malachi Mathoho Opcit p. 8

Ravi Kanbur (2004) argues that NEPAD should devote significant resources to allow civil society in the reviewed country to do assessments of their own, and to critique the APRM assessment.[104]

Ravi Kanbur further compares the APRM to the OECD peer review mechanism and asks why the OECD peer review has generally been perceived to be a success. A crucial aspect of the success is that OECD peer reviews enter an already rich domain of policy dialogue in a country. The peer review is not the 'only game in town' on which everything depends. The majority of African countries lack the richness of policy dialogue and available contestational space of OECD member countries. Most policy dialogue occur behind closed doors within the executive or between the executive and multilateral institutions such as the IMF. Under such circumstances the APRM may become if not the only game in town then one of the big ones. This situation may lead to attempts at manipulating the APRM.[105]

The African Union and NEPAD have set themselves multiple and rather ambitious goals. There are approximately thirty stated objectives in the NEPAD 'base' document. Negash (undated) argues that assuming the APR objectives as outlined in the 'base' document are coherent and achievable, the multiplicity of objectives requires a multi dimensional performance assessment system that takes cognizance of improvements in the delivery of services.[106] According to Kanbur (2004), indicators that are currently being considered by APRM are almost one hundred. He contends that the list is too long to implement completely. The capacity required to actually carry out a comprehensive exercise is considerable, and care has to be taken to ensure the whole effort does not sink under its

[104] Ravi Kanbur 'The African Peer Review Mechanism (APRM): An Assessment of Concept and Design' (Cornell University, Jan, 2004) p. 1 www.people.cornell.edu/pages/sk145
[105] Len Verwey Opcit pp. 27-28
[106] Minga Negash 'Public Sector Accountability, NEPAD and Africa's Transition: A scorecard Approach' University of Witwatersrand, Johannesburg (undated)

own weight. Kanbur further argues that one fundamental issue that is already clear is that

the APRM review is too broad and too detailed to be simply handled. It can be argued

that some or much of its work will be contracted out, but this has its own dangers and

does not in any event absolve the secretariat from managing and crucially synthesizing

the input from the subcontractors.[107] This puts to test the technical competence of the

APR. Negash examines the APR self assessment questionnaire which becomes the basis

for the visiting delegation's report and argues that it is little more than a checklist to

identify whether international conventions and standards are ratified by the country

concerned. Negash further argues that the system has no independent external monitoring

mechanism.[108]

On independence and APRM, much depends on the personal authority of the APRM

Panel. Very distinguished Africans have been chosen for the panel. An assessment of

independence must await the findings of the actual process and chapter four of this

research paper. However, Akokpari (2002) raises concerns about the democratic

credentials of some of the appointed Independent Panel of Eminent Persons (IPEP). He

argues that six of the seven members appointed into the Independent Panel of Eminent

Persons in May 2003 are individuals who at one point in their careers had various ties

with the ruling elite in their countries. These include Ms. Graca Machel, a Mozambican

and wife of a former Mozambican president and the current wife of former president of

South Africa, Nelson Mandela, Professor Adebayo Adedeji, a Nigerian and former

executive director of the ECA but who also served as a minister under the regime of

General Yakubu Gowan during the 1970s, Ms Maria-Angelique Savane, a Senegalese

and former head of the UN Population Fund's Africa Bureau, Mr. Bethwel Kiplagat, a

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[107] Ravi Kanbur Opcit pp.9-10
[108] Minga Negash Opcit

former Kenyan diplomat during the reign of Daniel Arap Moi, Ms. Dorothy Njeuma, a

Cameroonian and a former minister of education under Paul Biya and Mr. Chris Staals, a

former governor of the South African reserve bank who according to one observer 'was

embroiled in several serious governance controversies in the 1990s that should have

disqualified him from being a 'peer'. There is therefore concern that with such previous

connections with governments, objectivity could be compromised in the work of the

IPEP.[109]

The peer review process has never been attempted in Africa before and unlike judicial

proceedings, the final outcome of a review is not legally binding, so the impact from this

process will probably be limited.[110]Governments will not be compelled to make the

necessary changes required in order to improve their governance programmes. According

to Akokpari (2004) governments who initially joined the peer review can withdraw if it

proves irksome, the challenge therefore is how a regime persisting in human rights

violations, for example, can be made to reform if it withdraws from the APR or simply

refuses to sign up. Akokpari further argues that the APR lacks any definite elements of

compulsion; the process has no clearly defined ways of obligating deviant states to

reform. He contends that this rather loose set up with seemingly no internal coercive

mechanisms has failed to compel African countries into the APR.[111]

The United States, Britain and other G8 countries including Russia have pledged support

for NEPAD; this is just some of the evidence used by African leaders who see the peer

review under NEPAD as an un-African artifact. They are wary that those who pledge and

provide support to NEPAD will insist on attaching conditionalities for providing these

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[109] John K. Akokpari Opcit p. 254
[110] Malachia Mathoho Opcit p. 3
[111] John K. Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' Nordic Journal of African Studies Vol. 13 No. 3 p. 253-254

resources. They fear that this could result in a donor dictated agenda rather than an African negotiated agenda – driving NEPAD.[112]

Some critics have also expressed fears that external actors could attempt to use the APRM to sanction leaders selectively as has occurred with Zimbabwe. Critics also suspect that the peer review mechanism could become a means through which donors impose collective penalties on Africa in cases where African leaders fail to sanction African peers who are declared pariahs by external actors.[113]

Civil society groups and leaders have criticized APRM because they perceive it to be elitist and exclusionary. They argue that it is being driven by the continent's leadership and has completely bypassed African civil society.[114]

The APRM as currently conceived comprises of a series of best practices culled from international institutions, many of which would require substantive state resources to implement. Many suspicions are also cropping up suggesting that the support president Mbeki and other leaders sought from the G8 might be a lasso around APRM, it might turn the APRM into a puppet instrument of wealthy nations. If such conditions are attached and adhered to, NEPAD and the APRM will cease to be African-owned and independent. It will no longer serve the interests and expectations of Africa. The effect of the APRM in practice will therefore be conditional and minimal and African states might find themselves back in colonial conditions of dependence on external support. They may also lose the independence to deal with their own problems.[115]

The concept of peer pressure relies on the influence and persuasion exercised by the peers over each other during the process. Peer pressure does not take the form of legally

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[112] Malachia Mathoho Opcit p. 5
[113] Malachia Mathoho ibid
[114] Malachia Mathoho ibid p. 6
[115] Malachia Mathoho Ibid

binding acts backed by sanctions or other punitive measures. It also lacks enforcement

mechanisms. Instead, it is a means of soft persuasion, which can become an important

driving force to stimulate a state to change, achieve goals and meet standards.[116]Akokpari

(2004) does not see peer pressure working in Africa under the current circumstances and

argues that generally, African leaders seem to share membership in a cryptic club, what

sandbrook (1984) humorously yet aptly characterized as a 'presidential brotherhood' in

which there is little inclination to castigate but greater tendency to empathize with

members. This brotherhood bond, according to Akokpari was affirmed during the launch

of the AU where the AU heads of states refused to recognize Marc Ravalomanana as the

winner of the December 2001 elections instead threw support for the old and long time

leader Didier Ratsiraka whose controversial victory was annulled by the country's

highest constitutional court in April 2002. The other incident was where again the

African leaders acknowledged Obasanjo even after local and international observers

dubbed the April 2003 Nigerian election as characterized by serious irregularities.

Akokpari further argues that the natural proclivity of African leaders for condoning bad

governmental practices of their peers is a way of insulating themselves from future

criticisms.[117]

A further concern according to Akokpari is the possibility of African leaders shying away

from condemning their peers even in the unlikely cases of the Independent Panel of

Eminent Persons producing damning reports. The call by the democrat and former

president of Botswana, Ketumile Masire, to subject Zimbabwe to the APR is highly

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[116] Malachi Mathoho Ibid p. 7
[117] John K. Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' Nordic Journal of African Studies Vol. 13 No. 3, 2004 p.256

unlikely to be heeded by AU and especially South Africa, which rejects calls for a tougher stance on Harare.[118]

For those countries prepared to accept changes, peer review processes can result in a mix of formal recommendations and informal dialogue between countries, public scrutiny, and comparisons and in some cases ranking among countries. There could also be an impact on domestic public opinion, national administrations and policy making in general.[119]

Way Forward and Factors that will Influence the APRM's Success

The APRM must not spread itself too thin. It must initially at any rate narrow down the scope of its reviews and focus on what it can do well. There are two ways to do this: (a) cut down on the broad areas (b) cut down on coverage within each area. Ravi Kanbur suggests an initial focus on democracy and political governance.

The success of the APRM depends on the seeds of its assessment of a country falling on the fertile soil of a vibrant civil society dialogue in that country. This requires a civil society that is itself competent to understand and respond to the APRM assessments. The success of a peer review mechanism depends on its being only one of a range of reviews that are carried out by the civil society of a country. So as a part of the APRM process NEPAD should set aside significant resources to allow civil society in the reviewed country to do assessments of its own and to critique the APRM assessment.[120]

Critics and proponents of NEPAD agree that awareness is still low on the part of the civil society. Considering the important role of the civil society in the APRM process, there is need to sensitize all from the grassroots level on NEPAD and APRM.

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[118] John Akokpari Ibid p. 255
[119] Malachi Mathoho Opcit p. 7-8
[120] Ravi Kanbur Opcit p.11

The intention of NEPAD is to do two country reviews every quarter for 2005 and 2006 fiscal years. This means the APRM process is likely to gain momentum and attract increased attention over the next few years. Verwey contends that civil society organizations in countries due for review need to help ensure credibility of the process. They need to scrutinize these processes to learn from them and help ensure that the reviews are 'technically competent, credible and free of political manipulation' [121]

The civil society should play a very active role in the APRM process. Recognizing the role of civil society in APRM, the Christian Relief and Development Association (CRDA) and Partnership Africa Canada (PAC) in collaboration with the Economic Commission for Africa (ECA) organized a workshop where it was recommended to the African civil society (a) that it creates its own opportunities for dialogue and discussion in order to identify common objectives and plan strategies to strengthen its participation in the APRM (b) that it strengthens cooperation with governments and the private sector in order to identify problems as well as solutions respecting national, regional and pan-African interests (c) that it strengthens technical and institutional capacities in the areas democratic, political, economic and corporate governance (d) that it develops networks within African civil society to work on NEPAD and the APRM (e) that it brings to the APRM evaluations the experience gained through advocacy and the implementation of national development policies.[122]

NEPAD's APRM envisages setting such good standards for review that those donor countries will substitute their own monitoring and conditionality processes with it and accept the outcomes of the APRM.[123]

[121] Len Verwey Opcit p. 29
[122] Addis Ababa APRM Workshop 'The African Peer Review Mechanism and Civil Society' The APRM Monitor No. 1 (Addis Ababa, April 2006) p.2
[123] Malachia Mathoho Opcit p. 10

The APRM broadly echoes the OECD peer review mechanism, which is regarded as a successful means of identifying and promoting best practice among partner countries. Peer review in the OECD is not bound to any conditions from any other continent. Participating states own the programme. The rationale for a peer review mechanism in Africa should be that Africa should move away from donor imposed conditionalities – a practice that has been found to be ineffective and burdensome. There should instead be a move towards mutual accountability among development partners – specifically in the areas of poverty reduction.[124]

A peer review of political governance is a novel practice, never before tried anywhere in the world. It is the most challenging aspect of review as many African conflicts are the result in part of poor governance practices. Political governance peer review requires the resolution of major questions. The Accord on the APRM (January 2003) singles out issues such as electoral democracy, human rights, and an active civil society, that need to be addressed. It also raises questions about what institutions and mechanisms should be established in African countries to realize the APRM's objectives.[125]

Mbaku (2004) argues that to generate the wealth that they need, Africans must equip themselves with institutions that support market activities. Such institutions are critical in the fight against poverty. For example, market-supporting institutions determine access to credit and either enhance or constrain the ability of the poor to use their talents and resources in productive ways. It is now well known that weak institutions encourage and sustain corrupt bureaucracies, making it quite difficult for the poor to have access to life sustaining public goods and services (for example, clean water, health services, education, etc). If the police and the judiciary are corrupt, investors (both domestic and

[124] Malachia Mathoho Ibid p. 11
[125] Malachia Mathoho Ibid.

foreign) are likely to see the state as unwilling to protect their property rights and hence are not likely to engage in those activities that create wealth and provide resources for poverty elimination. If, for example, a country does not have mechanisms for the effective and fair resolution of trade disputes, the development of trade and markets is likely to be stunted. On the other hand, the presence of legal systems that adjudicate disputes in a fair and impartial manner usually encourages firms to undertake riskier (but critical) investment activities.[126]

APRM should therefore encourage establishment of institutions and mechanisms that will help in realizing its objectives.

The effectiveness of the APRM will also depend on the states under review. It is likely to be ineffective where a state is repressive, has a weak civil society, and an unorganized private sector. This condition is common to many African states. The fact that the findings and recommendations of the APRM will not be binding, and implementation not obligatory, may result in states not taking seriously the recommendation that flow from the process.[127]

In order for APRM to be credible and effective, it will need to be transparent and accessible to all components of the state, inclusive of the civil society. If it is run in a professional (unpartisan) and transparent manner, the APRM can be a major regional instrument for promoting democracy.

Cilliers (2003) argues that the NEPAD peer review will be a closed state-to-state process with no room for non-official input or consultation apart from the ability to comment on country reports at the point they are released in whatever format. According to Cilliers, although the various country reports will be tabled in institutions such as the Pan African

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[126] John Mukum Mbaku Opcit p.
[127] Malachia Mathoho Opcit. P. 12

Parliament (PAP), the PAP does not exist and even if the protocol is ratified in the next year, it will take some years before it functions as an integral structure of the AU. He further argues that only one factor will determine the impact of the APRM and that is a deep and genuine commitment by African leaders and their governments at every level to reform.[128]

Conclusion

African leaders agreed in 2001 to set parameters for good governance to guide their activities at both the political and economic levels and decided to adopt the peer review mechanism and a code of conduct. Kenya was the fourth country to voluntarily accede to the peer review process because it recognizes the central role of good governance to the development of the economy.

Proponents of NEPAD and its APRM view the peer review as a tool for promoting governance in Africa. The APRM aims to help the country under review to improve its policymaking and comply with established codes, standards and principles of good governance.

Arguments have been advanced for architects of NEPAD's APRM to adopt a more consultative approach at all stages of the APRM incorporating the civil society and women, which is in accordance to the APRM Base Document. They should also undertake to sensitize APRM at grassroots level and funds should be set-aside for this. APRM should put mechanisms in place to give it enforcement strength to ensure the success of its recommendations. This should include encouraging AU member states that have not acceded to peer review to do so. Consideration should also be made to streamline the factors under review or to reduce the depth of the factors under review.

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[128] Jakkie Cilliers 'Peace and Security through Good Governance.' Opcit p. 22

Institutions and mechanisms should also be established in African countries to realize the APRM's objectives especially countries that have acceded to the peer review. Finally, there should be a genuine commitment by all stakeholders to support the establishment of NEPAD's APRM to eradicate poverty and to place Africa on a path of sustainable growth and development and at the same time to participate actively in the world economy and body politic on equal footing.

CHAPTER THREE

THE GOVERNANCE PROBLEM IN KENYA

INTRODUCTION

This chapter will give a historical, political and economic overview of Kenya. It will then trace the governance problem in Kenya by looking at the legacy of colonialism, the crisis of governance, the war against corruption, challenges in the fight against corruption and finally the GOK's comprehensive anti corruption strategy.

Historical Overview

Kenya achieved independence in December 1963. In 1969 Kenya became a de facto one party state, under the country's first president, Jomo Kenyatta. Kenyatta's Kenya African National Union (KANU) established and maintained political dominance. Kenyatta died in 1978 and was succeeded by Daniel Arap Moi who ruled Kenya for twenty-four years. His reign ended in 2002.[129] President Mwai Kibaki took over power in December 2002 and is the reigning president to-date.

Political Overview

Kenya has been and remains a relatively stable country. However in the early 1990s politically instigated ethnic clashes resulted in the deaths of hundreds and displacement of thousands of people.

Political pluralism was re-introduced in 1992 leading to the emergence of opposition parties based on ethnicity. In 1997 general election, combined vote for the opposition parties exceeded that for KANU but the separate parties were unable to control parliament or win the presidency. Further ethnic clashes occurred on the Coast in 1997, adversely affecting tourism. President Moi served his last term, which ended in 2002. The

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[129] The World Bank World Development – Africa, p. 82-83

current president Mwai Kibaki became the president under the umbrella of National

Rainbow Coalition (NARC).[130]

Economic Overview

The economy is reasonably diversified, although agriculture employs the majority of

people. Kenya is the world's third largest exporter of tea. Tea, coffee and horticultural

products comprise about half of the merchandise exports. Tourism accounts for fifteen

per cent of the foreign exchange earnings and is the third most important source of

foreign exchange after tea and horticultural products. The industrial sector is a growing

source of exports. Since the 1970s Kenya has undergone a slow down in economic

growth. The average GDP growth rate declined to 2 per cent in 1990-1999. Which was

below the average population growth rate of 2.5 per cent per year.[131]

The Background of Governance Problem in Kenya

Today Kenya is ranked in the category of countries with poor governance by

Transparency International (TI), which has consistently placed Kenya among the top ten

most corrupt countries in the world that it has studied each year during the period. TI's

latest report (2006) on global corruption places Kenya at number 144 ranking it among

the most corrupt in the world.[132] Also according to TI corruption perception index (2004),

which relates to the perceptions of the degree of corruption as seen by business people

and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt); Kenya

is rated at 2.1[133]

[130] Ibid
[131] Ibid.
[132] The Daily Nation Nov. 07 2006
[133] www.transparency.org/surveys

The legacy of Colonialism

To properly explain the governance problem in Kenya requires an understanding of the entrenchment of colonialism and colonial practices that took root in the past and exemplifies itself in the present.

Mulinge and Lesetedi (1999) describe colonization as a process that starts with the conquest of a people, passes through a period of domination of these people by the conquerors and extends beyond the granting of independence by assuming a new form commonly referred to as neo-colonization.[134]

The impoverishment of the African continent and Kenya by extension was accentuated primarily by the legacy of colonialism, the Cold War, the workings of the international economic system, and the inadequacies of and shortcomings in the policies pursued by many countries in the post-independence era.

For centuries, Africa has been integrated into the world economy mainly as a supplier of cheap labor and raw materials. This has meant the draining of Africa's resources rather than their use for the continent's development. This started during the industrialization period in Europe and was part of the reason for the partitioning of Africa. Colonialism subverted traditional structures, institutions and values or made them subservient to the economic and political needs of the imperial powers. Postcolonial Africa inherited weak states and dysfunctional economies, which were further aggravated by poor leadership, corruption and bad governance in many countries including Kenya.

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[134] Munyae M. Mulinge and Gwen N. Lesetedi 'The Genesis and Entrenchment of Corruption in Sub-Saharan Africa: A Historical and International Contextualization' in Kwameh Frimpong and Gloria Jacques Eds. Corruption, Democracy and Good Governance in Africa (Gaborone: Lightbooks, 1999) p. 23

There has therefore been a vicious circle in which economic decline, reduced capacity

and poor governance reinforce each other, thereby confirming Africa's peripheral and

diminishing role in the world economy.[135]

Kwame Frimpong (1999) argues that colonialism had a role to play in laying the

foundations for undemocratic rule. He describes African politics, as politics of

vindictiveness where the opposition has been seen as the enemy and is, therefore, to be

hunted like an animal. Many have been forced into exile and countless others have been

either maimed or killed. This situation has been replicated in Kenya where opposition

parties have been banned in the past especially before 1992 when Kenya became a multi

party state.[136]

Wanyande (2005) notes that postcolonial leaders, like their predecessors, continued to

play one ethnic group against another as a strategy of political survival.[137]This was

facilitated by the divide and rule tactic which aroused the ethnic identities of the African

and also fermented class and social stratifications in African Societies.

Okello and Owino (2005) posit that the experience in the colonial Kenya was that a

dominant settler class, using the cloaks of 'civilization' and 'development' established a

socio-economic framework that equated its interest with those of the country as a whole.

It followed in the post independence Kenya where the African elite, justified its

'excesses' and controversial projects on the basis that they had 'suffered' and were

therefore justified to preferential treatment even if it was not in the interest of the

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[135] The New Partnership for Africa's Development (NEPAD) Abuja Nigeria Oct. 2001
[136] Kwame Frimpong 'Some Pitfalls in Africa's Quest for Democratic Rule and Good Governance' in
Kwame Frimpong and Gloria Jacques Eds. Corruption, Democracy and Good Governance in Africa
(Gaborone: Lightbooks, 1999) p. 33, see also Okello and Owino (2005)
[137] Peter Wanyande 'Evolution of Governance Practice in Kenya: An Overview' in Abdalla Bujra Ed.
Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa:
African Center for Economic Growth & Development Policy Management Forum, 2005) p. 49

nation.[138] They further argue that the colonial system was characterized by state patronage which led to economic discrimination where Africans paid most of the tax while Europeans usually received most of the benefit of government services-railways, roads, schools, extension services etc. This led to uncompetitive behavior and set the stage for unevenness in development, which in turn set the pattern for the postcolonial development framework.[139]

According to Okello and Owino, the new elite's (ruling class) inability to reconceptualize and reconfigure the state from its Marxist 'dominant class instrument' record to a liberal impartial one is what accelerated the process of 'rigged development' in Kenya in the post independence period. The policy instruments that it chose to use to try and correct the errors of the colonial policy regime such as the Africanization policy were the very ones it relied upon to rig development. Consequently, the socio economic formation has perfectly followed the colonial pattern.[140]

Ombati and Wainaina stress this point of development pattern by arguing that Kenya has one of the largest inequality gaps between the rich and the poor in the world and is perhaps only third to that of South Africa and Brazil. They further argue that Kenya has been an arena for flagrant human rights violations and massive corruption, and according to them, neither has been conclusively resolved or punished creating an environment of apathy.[141]

The origins of the above kind of development pattern, which is skewed, can be traced to colonial masters like Governor Sir Charles Eliot and Lord Delamere who were both large-scale farmers in Kenya. They paved the way for the immigration of European

[138] Dan Okello and Kwame Owino 'Socio-Economic Context of Governance in Kenya' in Abdalla Bujra Ed. Ibid. p. 64
[139] Dan Okello and Kwame Owino Ibid p. 71
[140] Dan Okello and Kwame Owino Ibid p. 72
[141] Kepta Ombati and Ndungu Wainaina 'In Search of Transformation: Kenya's Constitutional Crisis'

settlers to Kenya, influencing both the form of colonial rule and future social structures. The White Highlands in the Rift Valley became an enclave of the European Landowners, while African peasants were confined to densely populated reservations. Harsh taxation compelling many Africans to work as hired laborers on the settlers' farms.[142]

Although sessional paper no. 10 of 1965 embraced Africanist values as key objectives of society, it nonetheless pursued a discriminating policy of development for certain areas. Okello and Owino (2005) posit that this approach was colonial in origin and it set the stage for the disparity in socio-economic development in Kenya. According to them colonial administrative institutions and laws were established to be discriminatory, to concentrate political and economic power and impose inconvenience to the majority of Kenyans. These structures were replicated in the post-colonial administration directly contradicting the promises of independence. These led to the differential treatment of regions and people of Kenya.[143] The Sessional Paper no. 10 proclaimed the Africanization of the economy by recognizing that commercial activity in Kenya was largely in the hands of other Kenyan races but not Africans. It declared that ' a system of trader's licensing will be considered to restrict certain types of trade and business to citizens with a deliberate bias, in the case of new licenses, in favor of African applicants.' Instead of addressing African disadvantages, it heralded the politicization of trade licensing that has pervaded the Kenyan economy ever since because it was left to bureaucrats to determine whether a license would be issued or not. While this policy could be defended as affirmative action programme, the lack of specific backing in law means that it was definitely an unconstitutional practice. Its implication is that the government adopted the tendency to override the law for pragmatic reasons. It is

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[142] Dirk Berg-Schlosser and Rainer Siegler 'Political Stability and Development: A Comparative Analysis of Kenya, Uganda and Tanzania' (Colorado: Lynne Rienner Publishers Inc, 1990) p. 31
[143] Dan Okello and Kwame Owino Opcit. pp. 65, 97-99

significant that the Africanization policy was challenged in court in 1967 in the case of Madhwa versus City Council of Nairobi, the high court held that the resolution of the council was discriminatory to the extent that it showed preference to those termed Africans against others termed non Africans.[144]

According to Robert Maxon (1992) the colonial states were instruments of primitive accumulation by introducing taxation, creating markets and financial structures (they had a monopoly in the banking sector) appropriating land and livestock, instituting forced labour and building port facilities and railways.[145]

Arthur Hazlewood (1979) argues that the independent Kenya inherited an economy the structure of which had been fashioned largely in response to the existence of a non-African population. When economic growth took place, it was firmly within the structure established in the colonial period.[146]

Colonialism is a factor that has both directly and indirectly contributed to the problem of governance in Kenya. Effects of colonialism are felt in the political, economic, corporate and social governance areas. To-date, we rely on exports of tea, coffee and horticultural products as was designed by the British colonial economic policy. This has enormously affected our local industry. The years since independence have seen enormous changes, but there has also been a noteworthy continuity with the past.

The Period after Independence

At the center of governance and development is the state. The state takes center stage of the development process. The assumption is that the state is a neutral actor whose primary interest is to promote the welfare of the citizens. In this, it has the blessing of the

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[144] Dan Okello and Kwame Owino Ibid pp. 74-75
[145] Robert Maxon 'The Colonial Roots' in Walter O. Oyugi Op cit. p. 36
[146] Arthur Hazlewood 'The Economy of Kenya: The Kenyatta Era' (New York: Oxford University Press, 1979) p. 13

international community, especially the donor community. Donors channeled all assistance through the state. It did not occur to the postcolonial leaders that the state could easily be a captive of particularistic interests that might derail it from its development. Nor did it occur to the leaders that the state was not efficient enough to meet these challenges. There was a lot of faith on the state and its leaders. Kenyatta in particular enjoyed enormous support. One of the main tasks of the new state was to promote national integration or national unity. The other postcolonial task was improving the welfare of the people. It required enormous resources that the leaders soon realized were not readily available locally. This led to the decision two years after independence to rely on foreign aid as a way of meeting the national budget requirements. Wanyande however contends that the reliance on foreign aid, which was informed by the modernization theory, did not result in any meaningful socio-economic development.[147]

After independence, there was bitter opposition between those who sympathized with, or fought for, the Mau-Mau guerilla and the Africans who fought against them as "loyalists" on the side of the British, and the rivalry between the KANU and the KADU split the society in a variety of directions. Its racial and ethnic groups were also deeply divided as anywhere in Africa.

KADU had pressed for a federal constitution – the Majimbo constitution – that would make regional assemblies responsible for wide areas of policy, such as housing, local government, social services, education and the police, leaving the National Assembly in Nairobi with the responsibility of defense, foreign affairs and central finances.[148]

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[147] Peter Wanyande 'Evolution of Governance Practice in Kenya: An Overview' Op cit. p. 47
[148] Ibid. p. 32 See also David Throup 'Elections and Political Legitimacy in Kenya' Africa: Journal of the International African Institute Vol. 63 No. 3, 1993 p. 372

During the 1963 May elections, KANU defeated KADU and Jomo Kenyatta moved rapidly to consolidate his position within KANU and over the state. In December 1964, the opposition dissolved itself and the de facto single-party state was created.

The transformation of Kenya into a presidential and unitary system of government under one political party coupled with the systematic constitutional amendments between 1964 and 1968 resulted in the concentration of state powers in the executive, especially the presidency. [149]

KANU exercised strict control over the political process like its colonial predecessor, which had obstructed the development of national political parties throughout the 1950s. The new regime made life difficult for the Kenya People's Union (KPU), which was in existence briefly from 1966-1969. The regime's monopoly of sanctions and economic rewards meant that the KPU could not openly compete with the dominant party or overtly recruit supporters.

The authoritarian face of the Kenyatta regime was exposed and Kenya's brief experience of multi-party politics had ended. KANU became the sole political party for the next twenty-two years. Critics of the Kenyatta regime and of Kikuyu hegemony secured a hearing and forced their way into parliament as dissident KANU backbenchers.

Since President Moi came to power, elections became increasingly expensive, violent and "rigged". The 1988 election was the most "rigged" in Kenya's history. The Ministers were promoted, demoted and disgraced with increasing frequency as the neo-patrimonial system created by Kenyatta decayed. President Moi favored relatively inexperienced individuals whose political position depended almost entirely on his patronage. By early1990 disillusionment with the Moi government was widespread and most Kenyans

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[149] Crispin Odhiambo-Mbai 'Accountability in Governance' in Abdalla Bujra Ed. Op cit. p. 111

outside the Kalenjin heartlands of the Moi state had lost all confidence in the political process. President Moi's reluctant abandonment of KANU's monopoly of power was forced upon the regime by pressure from the west, including the decision of Kenya's foreign donors at the Paris group meeting in November 1991 to suspend aid until the regime instituted political reforms and permitted opposition parties to compete in free elections. The party therefore repelled section 2(a) of the constitution on 10, December 1991. This paved way for the formation of several political parties, which included Forum for Restoration of Democracy (FORD) and Democratic Party (DP) among others with FORD later splitting into Ford Kenya and FORD Asili.

Wanyande (2004) notes that there are some countries, which even after having conducted democratic elections continue to view politics as zero sum game. He cites the Kenyan example where many were disappointed when after removing the authoritarian regime of president Moi in 2002 elections, the leaders slipped back to the undemocratic politics associated with the former regime. According to him, attempts to dismantle the coalition through which the regime came to power and to replace it with a single all-powerful political party attests to this. The recent attempts by some politicians to dissolve NARC affiliate parties in order to make NARC a political party with individuals as opposed to corporate membership illustrates this point. [150]

Wanyande further notes that some leaders in the Kibaki regime are determined to either scuttle the constitutional review process or to retain some of the undemocratic features of the current constitution, such as an all powerful presidency. Such approaches, according to governance can only lead to ethnic polarization, tension, and conflict. Wanyande notes

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[150] Peter Wanyande 'NEPAD and Security in the IGAD Region' in Makumi Mwagiru Ed. African Regional Security in the Age of Globalization (Nairobi: Heinrich Boll Foundation, 2004) p. 74

also that failure to democratize has generated conditions of insecurity that have implications for successful implementation any development strategy including NEPAD. Wanyande (2005) notes that since the 1990s, the political discourse in Kenya and indeed in other sub-Saharan African countries has centered on issues of governance. This is because of the emerging consensus in the country, especially among scholars, that the major social, economic, political and human rights problems that Kenya is experiencing emanate from the nature of governance in the country. As a result a number of initiatives to improve governance have been and continue to be undertaken in Kenya. These initiatives cover the four dimensions of governance, namely: political, economic, administrative and legal.[151]

Abdalla Bujra (2005) argues that good governance has a double edged function – mainly to ensure that foreign investors and large corporations conduct business quickly and efficiently in Kenya as well as to ensure that these investors and foreign companies get their maximum profit without having to share it with local elites through corruption. One third of good governance – political governance – is for the benefit of an important section of the elite, especially the faction that is outside state power. This faction of the elite cannot function properly in a system of bureaucratic anarchy and corruption but needs a more efficient and transparent management of the state in order for them to effectively compete for power. He further argues that there are many reasons why Kenya cannot develop a full liberal democracy and that at best it will remain at the level of practicing a minimal liberal democracy focusing on multi-party elections. He contends that this form and level of liberal democracy is suitable to and benefits both the donor community and the Kenyan elite, since it excludes the masses of the Kenyan people: this

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[151] Peter Wanyande 'Evolution of Governance Practice in Kenya: An Overview' Op cit. p. 43

is why it is being advocated strongly by these two groups. This minimum liberal democracy, good governance and the economic system has not only excluded the masses politically, exploited them economically and created a highly unequal society, but this situation has consequently produced serious tension and insecurity in the society and that the leadership of the working people (urban and rural) are beginning to ask for serious social transformation in their favour. Through new political parties that are likely to emerge, they will struggle hard against the minimalist democracy protecting the propertied class and will advocate for social democracy in order to acquire their economic rights and bring about a level of equity as well as cultural diversity and nationhood.[152]

Kenya attained political independence in 1963 and according to Wanyande (2005) the governmental system inherited at that time had the potential to promote democratic governance. To begin with, the independence constitution incorporated the principle of checks and balances and the democratic principle of separation of powers among the three arms of government namely the executive, the judiciary and the legislature. The country became independent with a federal structure that resulted from a compromise between the unitarists and the federalists. The unitarists organized themselves around the KANU with the federalists organizing themselves around the Kenya African Democratic Union (KADU). The country also inherited a centralized and powerful administrative structure. The Provincial administration was particularly powerful.

The Crisis of Governance

Bribery and corruption, patronage, embezzlement, influence peddling, the use of public office for self-enrichment, ethnicity, nepotism and the abuse of public office currently

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[152] Abdalla Bujra Ed. Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy Op cit p. 6

characterize the country's public service. The government has failed to provide for basic human needs to ensure the security and well being of the people. There is therefore lack of health services, clean water, educational services, roads, housing and outright starvation for a majority of Kenyans. The rule of law is not observed and there are numerous cases of violation of human rights. This is evidenced by the concept of mob justice, which is rampant in Kenya today.[153]

Lengwe-Katembula J. Mwansa (1999) argues that the theory of crisis of governance is one of the approaches that have been advanced to explain the incidence of corruption and to form the framework of action against it. He attributes corruption as significantly contributing to the failure of governance.[154]

Githu Muigai (1993) examines the crisis of governance and legitimacy in Kenya in the context of the rise of opposition parties and the reemergence of multiparty competitive politics before the December 1992 elections and contends that ultimately it is the opposition politics that will stabilize governance in Kenya. Ten years down the road, the governance crisis is intact and there has been a proliferation of opposition parties in Kenya.[155]

Julius Wambua Mbithi (2003) argues that governance has been ruined by the lack of commitment and honesty by the Kenyan rulers. The political and economic woes characterized by the collapse of vital institutions, infrastructure, misuse of natural resources are virtually attributed to rulers. Lack of commitment to good governance was

[153] The Standard July 6th 2006 p.1
[154] Lengwe-Katembula J. Mwansa 'Corruption and Social Services in Africa' in Kwame Frimpong and Gloria Jacques Eds. Corruption Democracy and Good Governance (Gaborone: Lightbooks, 1999) pp. 123-124
[155] Githu Muigai 'Kenya's Opposition and the Crisis of Governance' A Journal of Opinion Vol. XXI/1-2 1993 pp. 26-34

the root cause of the woes of Kenya. The rulers 'brewed' laws or policies to their advantage ignoring the common good of all.[156]

According to Mueller (1984) many of the tools of repression, which were articulated under colonialism and then refined by a new ruling class following independence, are still being used to consolidate the state against its detractors. She argues that the general point concerning the effect on political competition of a state owned or controlled economy — supports the assertion that ' the circumstances most favorable for competitive politics exists when access to violence and socio economic sanctions is either dispersed or denied to both opposition and government. The least favorable circumstances exist when violence and socio economic sanctions are exclusively available to government and denied to oppositions.'[157]

The inequitable distribution of resources between the government and opposition contributes to the problem of governance today. Mueller (1984) argues that this problem was ensured with the inception of colonial rule. According to her, with the imposition of a 'common authority', the colonial government developed a highly authoritarian set of institutions, laws, and tactics designed to administer the country and to repress emerging African associations opposed to its rule. She argues that it was this 'common authority' and this centralized authoritarian apparatus that was transferred from whites to blacks at independence. She contends that in Kenya as well as the rest of Africa, one of the most important legacies of the colonial period was the creation of 'institutions of governance with a near monopoly of authority' and 'absence of counterveilling institutions'. She further argues that African nationalists were bequeathed a legacy designed to provide the

[156] Julius Wambua Mbithi 'Good Governance and Human Rights: A Philosophical Appraisal of the Kenyan Experience' MA in Philosophy, University of Nairobi 2003. p. 43
[157] Sussane D. Mueller 'Government and Opposition in Kenya' The Journal of Modern African Studies Vol. 22 No. 3 (1984) pp. 399-400

government with a monopoly of coercive sanctions and resources that could be used to maintain law and order, to repress opponents and ultimately to discourage dissent or politics itself.[158] It is these authoritarian institutions and laws that were passed on at the beginning of multi party era in Kenya in 1992.

Kahl (1998) argues that by early 1990s, Kenyan civil society was relatively strong compared with many of its sub – Saharan African neighbors because of the relatively advanced state of capitalism in the country. Prominent civil society groups included churches, legal associations, university students, and private voluntary organizations advocating environmental and development causes, women's interests and civil liberties. These groups, Kahl argues, were and remain the main domestic proponents of political reform.[159]

In late 1991, Kenya saw its long standing reputation for tranquility shattered by a wave of rural ethnic violence that swept over large portions of the country's fertile Rift Valley, Western and Nyanza provinces. By the end of 1993 at least 1,500 people had been killed and more than 300,000 internally displaced as a result of ethnic clashes. Every major report on the clashes concluded that high-ranking government officials within the then president Moi's inner circle, purposefully set out to incite ethnic violence in a desperate attempt to keep the president and his fragile coalition of minority groups in power. As Kenya's urban population soared and it's urban social and economic problems worsened, pressure mounted on Moi's regime to allow a return to multi partyism. In a desperate bid to stay in power, Moi sought to discredit the democratization process and consolidate his rule by orchestrating ethnic violence in Rift Valley, Nyanza, and Western Provinces. State elites capitalized on and manipulated a set of demographically, environmentally,

[158] Sussane D. Mueller Ibid pp.401-402
[159] Colin H. Kahl 'Population Growth, Environmental Degradation, and State Sponsored Violence: The Case of Kenya, 1991-93' International Security Vol. 23 NO. 2 (1998) p. 117

and historically rooted land grievances involving pastoral groups and farmers from other ethnic communities who had moved onto traditionally pastoral land during the colonial and postcolonial periods.[160]

The trend towards consolidating authority in the office of the presidency, the Kalenjin community and KANU continued unabated for almost ten years. This culminated in the repealing of the section 2 (a) under growing domestic and international pressure to democratize, including the suspension of aid from World Bank and bilateral donors. This opened the way for multi party elections in late 1992.[161]

Atieno-Odhiambo (2002) argues that the current struggles for a new and democratic political order in Kenya are part of the 'third wave of democratization' that has swept through the African continent and beyond. According to him, the year 1990 was crucial in the construction of alliances that brought the debate about democracy to the streets of Nairobi for the first time since the opposition Kenya Peoples Union (KPU) was banned in 1969. He further argues that the international community was calling for accountability and good governance.[162]

The transition to democratic governance has been derailed by the tension between ethnicity and the state. Atieno-Odhiambo argues that Kenyan Africans do not speak of ethnicity in their offices, on public platforms, or in whispers along the streets. They talk and think about tribalism as the regular experience of their every day lives, in its many enabling capacities, its incapacitating impediments upon hopes of individuals, and its

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[160] Colin H. Kahl 'Population Growth, Environmental Degradation, and State-Sponsored Violelnce: The Case of Kenya, 1991-93' International Security Vol 23 No. 2 (1998) pp. 93-94

[161] Colin Kahl Ibid p. 95

[162] Elisha Stephen Atieno-Odhiambo 'Hegemonic Enterprises and Instrumentalities of Survival: Ethnicity and Democracy in Kenya' African Studies Vol. 61 No. 2 (2002) pp. 225-226

blocking of opportunities for whole communities. They use tribalism as a practical vocabulary of politics and social movements.[163]

Oyugi (2004) argues that the crisis in governance and the consequent agitation for democratization of the body politic eventually led to the emergence of a number of civil society organizations and other traditional Non Governmental Organizations (NGOs) agitating for openness in the way the government conducted its activities. This development had to be seen within the broader context of the donor pressure for 'good governance' in economic management and the opening up of the political space for fair competition.

Taking their cue from these developments a number of local NGOs especially the church ones – the National Council of Churches of Kenya (NCCK) the Catholic Peace and Justice Commission began to adopt a critical posture vis-à-vis perceived state excesses against the citizens. The advocacy organizations that emerged from the late 1980s to the present have been responsible for putting a great deal of pressure on the state to allow the citizens directly or indirectly to have more say in the way they are governed.

Oyugi further argues that it is this movement for good governance and the fact that most of its funding does come from foreign donor sources that has largely been responsible for the discomfort of the state and the state accusing the donor organizations of undermining its authority. This is exemplified by the frequency with which the state through the provincial administration has interfered with civic education seminars organized by pro-democracy NGOs. On the whole, however it cannot be denied that a combination of donor intervention and the agitation by locally based NGOs/Civil society organizations

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[163] Elisha Stephen Atieno-Odhiambo Ibid p.230

has been largely responsible for making Kenya a relatively more open society than it was in the period before the 1990s.[164]

A recent survey (2005) by the Kenya Anti Corruption Commission (KACC) revealed that the office of the President is perceived to be the most corrupt among the thirty ministries. This report was launched within a background of renewed concern that the war on corruption had either stalled or progress was painstakingly slow. The World Bank Country Director Colin Bruce also aired his concerns of resurgent graft and was of the view that Kenya's fight against corruption had stagnated. Local Government Minister Musikari Kombo attributed the slackening in the war to the corrupt fighting back.[165]

In February 2005, the civil society and private sector associations and organizations expressed their anger and outrage at the implications of the resignation of John Githongo a respected anti corruption campaigner from the Kenya Government. They feared that Githongo's resignation 'sounded the death knell on this government's purported anti corruption effort'.[166]

Morris Odhiambo (2006) the Executive Director, Center for Law and Research International argues that from 2003 this country has gone full cycle: from a focus on dealing with the past to a focus on apologizing to the architects of that past. According to him, in the middle of the tension between continuing to benefit from bad governance and trying to create an impression of resolving the past, one hundred and one commissions of enquiry and task forces have been appointed. He further argues that the result is a growing anti corruption industry, the loser is the public while the beneficiaries are the dry eyed apologists of the system most of them former reformist lawyers. The current power

[164] Walter Oyugi 'NGOs as Development Actors in Africa' African Development Vol XXIX, No. 4, 2004 pp. 26-27
[165] The Standard, July 6, 2006. pp. 1-2
[166] Statement by Civil Society and Private Sector on the Resignation of the Permanent Secretary, Governance and Ethics, Office of the President (Nairobi, Feb 8, 2006) p.2

mandarins only had the intention of replacing the Moi political elite. Their problem was not with the corruption and bad governance, but with the fact that that corruption was not benefiting them.[167]

According to William Mclean (2005) Kenyans' rejection of the proposed new constitution was a damning verdict on Kibaki's performance and the biggest political reverse of his three years leading the coffee growing East African country of 32 million people.[168]

When United States (US) Senator Barrack Obama visited the country recently (August 2006), he gave a public lecture on governance at the University of Nairobi. Obama expressed concern over endemic corruption saying it had reached crisis levels and must be tackled if the country is to develop. Without fighting corruption, said Obama, Kenya could not gain the respect of the international community or achieve full economic development. He insisted that in Kenya corruption was a crisis because over 50% of the people live in poverty. He said corruption erodes the justice system and poisons the police force 'until the police become a source of insecurity rather than security'. He expressed disappointment that some of those who had championed the fight against graft had changed tune after getting senior government positions. He lamented that politicians made promises to voters only to renege on them on being elected.[169]

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[167] The Standard, August 7, 2006 p. 13
[168] Reuters Dec 08 2005
[169] The East African Standard (Nairobi) August 29th 2006

The War Against Corruption

Corruption is the single largest contributor to the decayed state of the economy, extreme levels of poverty and unemployment in Kenya and the greatest obstacle to economic and social development.[170]

The table below gives a comparison for control of corruption across a number of countries[171]

Country	Percentage %
Sweden	97.5
Netherlands	95.1
Tanzania	36
Uganda	30
Kenya	18.7
Zimbabwe	11.8
Nigeria	8.9

The above table shows that corruption levels are controlled in developed countries as opposed to developing countries, where there is very little or no control of this vice.

Huther and Shah[172] carried out studies and ranked countries on governance quality in three categories: good governance, fair governance and poor governance. In the category

[170] Reforms in Governance in Kenya: Establishing/Strengthening anti-corruption Institutions, Creating the enabling Policy/Legal Environment and Enhancing the rule of Law. Sectoral Paper Ministry of Justice and Constitutional Affairs (Nairobi: 2005) p. 1

[171] The source of these figures is World Bank Governance Research Indicator Country Snapshot available at www.worldbank.org/wbi/governance/data

[172] Jeff Huther and Anwar Shah 'Applying a Simple Measure of Good Governance to the Debate on Fiscal Decentralization' This paper was presented during USAID Seminar on Democracy and Governance held in Venezuela

of good governance OECD countries dominated with no African country in this category. Kenya features in the category of poor governance. The above sources are independent of each other.

Peter Eigen (2002), Chairman of Transparency International argued during the launch of Corruption Perceptions Index (CPI) 2002, that corrupt political elites and unscrupulous investors kill sustainable growth in its tracks. He further argued that political elites and their cronies continue to take kickbacks at every opportunity. Hand in glove with corrupt business people, they are trapping whole nations in poverty and hampering sustainable development. Corruption is perceived to be dangerously high in poor parts of the world. According to him, politicians increasingly pay lip service to the fight against corruption but they fail to act on the clear message of TI's CPI: that they must clamp down on corruption to break the vicious circle of poverty and graft. Data shows that seven out of ten countries score less than 5 out of a clean score in the CPI 2002, (Kenya's score is 1.9) which reflects perceived levels of corruption among politicians and public officials. Eigen further argues that corrupt political elites in the developing world, working hand in hand with greedy business people and unscrupulous investors, are putting private gain before the welfare of citizens and the economic development of their countries.[173]

According to the new index (CPI), Kenya is one of the countries where corruption is perceived to be rampant, with a score of less than 2.

It is clear that fighting corruption is central to economic recovery, wealth creation and ultimately the struggle to establish democracy in Kenya. TI Kenya Chapter issuing a public statement on the political will to fight corruption in Kenya, noted that 'now is not the time to send the signal that the political will to fight corruption from the top is

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[173] Peter Eigen TI Corruption Perceptions Index 2002 p. 1

waning, by transferring one of the few champions out of the office of the president and under-funding the only independent anti-corruption institution'.[174]

Corruption in Kenya has reached epidemic proportions. It has become a way of life and accepted in official circles as a means of accumulating wealth and power. The war against corruption has generated intense debate among Kenyans as well as our development partners[175]. NARC was elected on its promised commitment to fight corruption and restore integrity and accountability in the management of public affairs. Very early in its war against corruption, the government realized that the war could not be won without effective institutions to develop appropriate [policies, conduct investigations, undertake prosecution, determine cases and create awareness against the vice. The government therefore immediately commenced the process of creating or strengthening anti corruption institutions. It also started developing the enabling policy and legal environment for a sustained war against corruption.[176]

The Ministry of Justice and Constitutional Affairs was created to develop anti corruption strategies, coordinate and facilitate the fight against corruption. The cabinet committee on anti corruption was established at the first cabinet meeting and is chaired by the Minister for Justice and Constitutional Affairs and comprised of Minister of State for Provincial Administration and National Security, Minister for Finance, Minister for Planning and National Development, Minister for Roads and Public Works and the Minister for Local

[174] Gladwell Otieno 'Public Statement on the Political Will to Fight Corruption in Kenya' (Nairobi, Thusrday July 2004) p. 3
[175] Reforms in Kenya Opcit.
[176]'Reforms in Governance in Kenya: Establishing/Strengthening anti-corruption institutions, creating the enabling policy/legal environment and enhancing the rule of law' Consultative Group Meeting for Kenya Sectoral Paper Ministry of Justice and Constitutional Affairs 2005 p. 1
http://siteresources.worldbank.org/intkenya/resources/governance_brief.pdf

Government. The committee's mandate is to oversee the implementation of government policies on corruption and review the progress in the fight against corruption.[177]

Legislation has also been enacted for the fight against corruption. In April 2003, the government passed a new law – the Anti-Corruption and Economic Crimes Act, 2003. This legislation expands the definition of corruption and economic crime to cover various forms of abuse of office, conflict of interest, misappropriation, theft and plunder of office resources. It also establishes a powerful anti corruption commission with investigative, prevention, public education and asset recovery functions.[178]

Parliament has also enacted the Public Officer Ethics Act, 2003 which legislates mandatory separate codes of conduct for all public officers, including members of parliament, the judiciary, Civil Service, Cooperative societies, Local Government and the public sector corporations. The codes of conduct, which are legally enforceable, prohibit dishonesty, conflict of interest, tribalism, and nepotism in the public service. The Act also makes it mandatory for all public officers from the messenger to the president to declare their assets and liabilities at the end of every financial year.[179]

The government has also either established or strengthened other bodies involved directly or indirectly in the war against corruption. These include: The Kenya Anti Corruption Commission (KACC), the Public Accounts Committee (PAC), the Efficiency Monitoring Unit (EMU), the State Law Office/Department of Public Prosecutions, and the Judiciary/Special Anti-Corruption Courts.[180]

Dealing with the past was the first of the government's strategies in the fight against corruption. In 2003, the government appointed two commissions to investigate mega

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[177] Ibid.
[178] Ibid.
[179] Ibid. p. 2
[180] Ibid pp. 2-3

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corruption scandals in the previous regime. These were the Judicial Commission into the Goldenberg Affair and the Judicial Commission of inquiry on illegal and irregular Allocation of Public Land (The Ndungu Committee).[181]

The Goldenberg Commission was quite successful in uncovering the intricate web surrounding the looting of public funds from the Central Bank of Kenya. A court rubbished the resulting report, which was dubbed 'the Bosire report'. This begs the question- how far is the Kibaki Government committed in fighting corruption?

Challenges in the Fight against Corruption

The government immediately upon election into office adopted a zero-tolerance to corruption policy, which has since then faced fundamental problems of implementation. Networks of the past have captured some civil servants, who have perpetuated the culture of corruption in the Government procurement systems.[182]

The transition process has also complicated the fight against corruption. The NARC victory brought into power a coalition Government made up of political parties with diverse interests, political agenda and vision. While a common understanding of the need to fight corruption was generally assumed, there were and still are many in the coalition who stand to lose from an effective campaign against corruption, such persons are not enthusiastic in their support in the war against corruption. Many corrupt individuals have found political comfort and support among such persons. This has denied the government critical support, which has slowed down the operationalization of the anti corruption programme. Unfortunately the political realities of transition politics necessitate political accommodation of all significant political interests.[183]

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[181] Ibid.
[182] Ibid. pp. 10-12
[183] Ibid.

The constitutional review process has also undermined the government's anti corruption programme. It has made it difficult for the government to speak with one voice against corruption. The delay in realizing the new constitution has also denied the fight against corruption a solid foundation.[184]

Over the years, almost all institutions of governance had been run down and were hence not useful in the fight against corruptions. Initial efforts in the fight against corruption were therefore focused on restoring institutional integrity and capacity in the judiciary, police, central bank, treasury and many other vital institutions.[185]

The corrupt elements of our society accumulated huge amounts of wealth, which is used to control and influence the media and political activity in Kenya. Corruption is fighting back. There is widespread perception that corruption is rampant in the government, and the government is doing nothing about it.[186]

Today, there is evidence of new and emerging corruption in the name of the 'Anglo Leasing Affair'. The main player in the saga is a foreign company, Anglo Leasing and Finance Company Ltd who had been contacted by the government through the Office of the President on two separate projects.[187]

Government of Kenya's Comprehensive Anticorruption Strategy

The government of Kenya is committed to fighting corruption and improving governance and has identified specific time bound actions that it plans to implement during April 2005-June 2006 in the following five areas:

Enactment of the necessary legislation to establish a legislative platform on which to anchor the war on corruption, vigorous enforcement of anti-corruption laws through

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[184] Ibid.
[185] Ibid.
[186] Ibid.
[187] Ibid.

investigation of offences of corruption and economic crimes as well as recovery of corruptly acquired property, identification and sealing of corruption loopholes through institution of effective public sector management controls, national public education aimed at stigmatizing corruption and inducing behavior change, and implementing macroeconomic and structural reforms to reduce the incidence and demand for corruption by scaling down the role of the public sector and bureaucracy.[188]

The government plans to review existing provisions governing the conduct of public servants to ensure that they support the effective implementation of the action plan. The government is also asking donors to join this effort inter alia, by examining and reporting on the progress reports in implementing their commitments as they relate to Kenya.[189]

Kenya's accession to the APRM in March 2003 is further evidence of the government's commitment to fight corruption and improve governance. The government recognizes that corruption has largely been responsible for Kenya's miserable economic performance in the past two decades as stated in the progress report on governance reform programme.[190]

The Government of Kenya has implemented bold reforms to institutionalize good governance and the rule of law in the country's development process. These reforms have been implemented as part of the Economic Recovery Strategy (ERS), which was launched by the government in 2003.

Although good progress has been registered in the fight against corruption, the government is fully aware that accelerating reforms in this area remains critical for achieving broad based economic growth and poverty reduction.

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[188] Government of Kenya's Comprehensive Anticorruption Strategy Action Plan for April 2005- June 2006
[189] Ibid
[190] Kenya Progress Report on Governance Reform Programme Presented by Kenya Government at the Consultative Group Meeting for Kenya, Nairobi 11th –12th April 2005

It is important for the government to fight corruption because the vice is a stifling factor to economic growth as it distorts market fundamentals and public expenditure decisions, it discourages local and foreign investment by increasing the cost of doing business, it diverts public resources into undeserving hands, it increases the tax burden, it reduces the revenue collection, it weakens the institutions of Governance and is completely subversive of the rule of law as i8t undermines impartial and certain enforcement of the law, it undermines public service delivery and it undermines the very legitimacy of Government.[191]

Despite the anticorruption strategy and campaign by the Government of Kenya, there are new cases of corruption as follows: United National Security IT Link, Infotalent Systems Pvt (E-COPS), Maize Importation – Famine Relief, Kenya Ports Authority – Procurement of 3 Tug Boats, Kenya Ports Authority – Procurement of Port cranes, Second National Landline Operator, Third GSM Telecommunications System Provider, City Hall Waste Management, and Kenya Pipeline Company Debt Refinancing.[192]

Conclusion

The effects of colonialism are with us to-date and efforts are being made to depart from these bad effects such as the passage of laws and constitutional review, which is in progress. The institutions inherited from the colonial government, which perpetuate authoritarianism rather than democracy are also being reviewed by GOK. This should enable a fair playing ground for both the ruling party and opposition to prevent the tendency for the state to be the chief dispenser of all kinds of economic and political patronage.

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[191] Ibid
[192] Report on Alleged Cases of Corruption Presented at the Consultative Group Meeting for Kenya, Nairobi 11th–12th April 2005

The war on bad governance in Kenya is far from being won. The Kibaki government (2002-2007) came to power with an overwhelming mandate to fight corruption, which is a by-product of weak governance. The coalition government of President Mwai Kibaki took several steps in fulfilling its campaign promises to reduce official corruption and improve public sector governance.

The Government of Kenya has put in place policies/structures, a comprehensive anticorruption strategy and set up commissions of inquiry into past and present corruption. We can indeed say that efforts have been made to improve governance and yet, as Ndung'u Wainaina argues 'four years after it was elected on a platform of reforms, the coalition has failed to spearhead them that Kenyans wanted'[193]. It is with this backdrop that the study seeks to critically analyze the just concluded APR process which Kenya voluntarily acceded to review ourselves as we are today in the context of what we want to be when we fulfill the NEPAD dream.

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[193] The Kenya Times Nairobi, May 24, 2006

CHAPTER FOUR

A Critical Analysis of the APRM on Governance in Kenya

INTRODUCTION

This chapter is an attempt to link the issues that have emerged throughout the research. It will start by giving the link between APRM and governance in Kenya, briefly stating how the process was carried out in Kenya and the stakeholders involved. It will also present critical issues about APRM and Governance in Kenya and critically analyze these issues on the basis of the theory of interdependence. It will then focus on a critical analysis in three distinct areas of Independence of the African Peer Review process in Kenya, Competence in as far as quality of the APRM secretariat and its enforcement strength, and Competition.

THE APRM PROCESS IN KENYA

"In order to revive the economy and meet the expectations of Kenyans for better living conditions, better governance, improved security in the country and restoration of the rule of law is the starting point,"[194]

It is appreciated that good governance is one of the prerequisites for development. Chapter three of this research paper was an attempt to show the pathetic situation of governance in Kenya. The APRM is one of the tools that has been championed to get Kenya out of the quagmire. The importance of better governance in the recovery of an economy like that of Kenya cannot be overemphasized and according to Anyang Nyong'o (2004), 'we have chosen as a nation to make a transition from an authoritarian to a democratic government, and from a closed to an open society. The APRM will be an

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[194] Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) in www.nepad.org

essential element in both of these. The findings from the review will show us clearly where we are in the first transition, from the authoritarian to a democratic regime. The process by which we undertake the review will tell us clearly where we are in the second transition, from a closed to an open society.'[195]

The link therefore between governance and APRM is important and Kenya having voluntarily acceded to the peer process in 2003 recognized this fact. The actual technical review was done in Kenya with membership drawn from the civil society, business and government to measure performance and benchmark Kenya regionally and globally in the areas of political governance, and democracy, economic management and governance, socio economic development, and corporate governance.

Leadership and Management of the APRM process in Kenya was by Ministry of Planning and National Development as the National Focal Point, National Governing Council (NGC) for direction setting and was made up of 33 members (drawn from NGOs, Academia, Faith Based Organizations, Youth Representatives, Women's Organizations and some line ministries), APRM Kenya Secretariat was providing technical services, Lead Technical Agencies providing technical assessment and finally open ended Thematic Groups/Convenors.

The APRM in Kenya falls under the portfolio of the Ministry of Planning and National Development. The Minister for Planning and National Development created an APRM inter-ministerial task force that subsequently co-opted widely representative private sector and civil society representatives to lay the groundwork of the APRM process in Kenya. This task force prepared an integrated project implementation plan to execute the APRM. Two National Stakeholders' conferences were held for that purpose. At these

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[195] Opening statement by Hon. Prof. Anyang Nyong'o, MP, Minister for Planning and National Development during the APRM support mission public forum at the Kenyatta International Conference Centre on 26th July 2004

meetings, participants nominated representatives to the future APRM Governing Council along its four thematic areas: Democracy and Political Governance, Economic Governance, Corporate Governance and Socio Economic Development.[196]

Organizational Challenges with Kenya APRM Implementation

During the implementation of the APRM process in Kenya, certain challenges were encountered as outlined below:

The National Governing Council (NGC) inherited a road map that had already been prepared by the Task Force and this was the basis for financing. The inability to re-negotiate the activities for the implementation of the APRM in Kenya, to an extent eroded the mandate of NGC.

The TRIs and Convenors who were tasked with the execution of the technical aspects of the self-assessment were members of the NGC. While this helped to keep all the parties up to date on relevant issues, it also meant that the TRIs and Convenors though non-voting, were somewhat players and umpires on the same game. In addition the TRIs and Convenors where paid from the national APRM Trust Fund to support the execution of the questionnaire and other technical aspects of the review. This led to discontent among some members of the NGC who were not tasked with any of the technical aspects of the review.

The NGC was alleged to have held a number of meetings (upto eight) without making any appreciable progress in the self-assessment process, yet they collected honoraria for these meetings.

There was a tendency for stakeholders in the NGC to champion the interest of their constituencies within the NGC rather than build consensus for the common good. The

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[196] www.nepadkenya.com/APRM

NGO Council, for example, with eight members in the NGC, was able to elect the chairperson from amongst them and in many cases; these members were alleged to have gained advantage in deliberations due to their numerical advantage.

The various structures, Ministry as Focal Point, NGC, National Secretariat, TRIs, Convenors, Finance Committee etc, presented some challenges relating to co-ordination and appropriate reporting lines. The National Secretariat seemed to have responded more to the ministry that created it than the NGC. This was further compounded by the fact that the Permanent Secretary in the Ministry of Planning and National Development was also the Chair of the Finance Committee in charge of disbursement of funds.

Granting of legal status through a gazette notice gives the gazetting Minister discretion to revoke the legal status or life of the NGC. While gazetting gives the government a practical and simple modality to institutionalize the APRM, nonetheless it may be liable to abuse. A framework that guarantees the existence and independence of the NGC for follow up activities even after the review process is clearly desirable.[197]

These challenges may have contributed in the distortion in some way of the results of the review and hence the true picture of Kenya's governance problem. They provide a launching pad for our critical analysis.

Critical Issues that have emerged Throughout the Research

It is evident from the literature in chapter three of this research paper that the governance problem in Kenya has reached crisis levels. It is equally evident that the GOK under the current President Mwai Kibaki is making efforts to stamp out this problem. In this regard, there are forward steps and backward steps that have been noted during the time when this research project was in progress. An important forward step in solving the problem

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[197] African Peer Review Mechanism Country Review Report of the Republic of Kenya, May 2006

of the crisis of governance is Kenya's accession to and implementation of the peer review process. The GOK realizes that good governance is a first step in realizing her goal of good governance and sustainable development. Another forward step was that the peer review process in Kenya provided a platform for all stakeholders to discuss governance issues. This was indeed a first one as the APRM was all encompassing.

Another issue that emerged was the colonial heritage that ensures to date, that Kenya's conformity with the democracy and political governance thematic focus of the APRM continues to be constrained. It also ensures Kenya's integration in the world economy as a supplier of cheap labor and raw materials.

Corruption has emerged as a major constraint in attaining good governance in Kenya. This paper has noted the past governments incidents of corruption. The current government came to power on the platform of fighting corruption and employed the policy of 'zero tolerance of corruption'. The main concern is the new incidents of corruption that are emerging during the reign of a government with policy of zero tolerance of corruption.

At this juncture, this paper will point out that Kenya committed to observe standards of governance as outlined in various NEPAD and APRM Documents including the Declaration on Democracy, Political, Economic and Corporate Governance.[198]Therefore if Kenya is committed to observe these standards, then the new incidents of corruption and the lack of implementation of recommendations by various commissions of inquiry which include prosecution of individuals who have perpetuated corruption is very worrying and can be seen as backward steps. These also raise concern as to the level of

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[198] see: The Declaration on Democracy, Political, Economic and Corporate Governance, APRM Base Document, The Memorandum of Understanding on the APRM "THE MOU", and the NEPAD Document

commitment of the current regime to indeed ensure good governance as recommended by the APRM. Manipulation can then not be ruled out.

This research paper argues that the APRM will indeed steer Kenya in the right direction for development. In order to do so, the starting point will be a look into the leadership steering the process. Scholars argued as was noted in chapter one and two of this research paper that leaders who have benefited from the corrupt practices of the past regimes are still embedded in the current regime. APRM's reliance on the corrupt dictators as has been noted to embrace good governance and democracy is indeed a tall order. It has also been noted that the APRM lacks mechanism to ensure compliance with its standards of governance. This makes it a toothless bulldog.

A Critical Analysis of the APRM process in Kenya

The critical issues will be assessed from the point of view of competence, independence, and competition that according to Kanbur (2004) are the requirements for success.[100]

Competence

Technical competence is essential and a crucial issue is not just a technically competent staff, but that the review mechanism not take on too much, and not be stretched too thinly across a wide range of issues. In the area of competence, the APR Panel of Eminent Persons was drawn from across participating countries and are experts in their various fields. This research paper will echo Kanbur's sentiment and concur after looking at available literature on APRM process generally (see chapter two) and the Kenyan Country Review Report in particular that 'the APRM review was too broad and too detailed'. The analysis here is on the impact of APRM given the lack of focus on particular sectors. This brings with it issues such as will this compromise the intended

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[100] See chapter two

goal of improving the quality of governance in Kenya? Subcontracting as happened where we had lead technical agencies, which did not according to Kanbur (2004) absolve the secretariat from managing and synthesizing the input from the subcontractors. Our concern is the impact of incompetence on realization of good governance.

The lack of genuine interdependence because of vested national interest perpetuated by political appointees or influence to the panel of eminent persons. These are competent people but as advanced earlier in this project paper, Taylor (2004) argues 'the type of good governance solutions advanced by the NEPAD would deprive the office holders...'[200]The interdependence is not genuine because even when Kenya was reviewed there was leniency and forthright challenge was not forthcoming from the states that wait also to be reviewed at a later stage.

Independence

The critical issue here is whether there was conflict of interest between the reviewers and other stakeholders. The APRM Task Force selected four reputable Nairobi based research institutions to lead the review process. One of the challenges outlined in the Country Review Report of Kenya was 'the tendency for stakeholders in the NGC to champion the interest of their constituents within the NGC rather than building consensus for the common good.' This leads to lack of control of the process by the APRM secretariat. The other issue here was the criteria of selection of members into the NGC and the proportion of membership. It emerged that the NGO Council was able to elect one of their own as chair of the NGC because thy were many (8 out of 33) and in many cases these members were alleged to have gained advantage in deliberations due to their numerical advantage.

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[200] See Chapter one p. 12

This puts the independence of the just concluded review process into question because of the NGOs manipulation for its own gain and not for interest of all.

The other issue that emerges from the Country Review Report is finance element and the Country Review Report of Kenya reveals that 'the NCG with the assistance from the Ministry of Planning, successfully negotiated funding from a consortium of donors, which included the Government of Kenya (GOK)...' It is also evident from the APR Country report of Kenya that the NGC became increasingly fractious with some members preoccupied with matters of finance rather than the self-assessment exercise. This caused inordinate delay in the execution of the national process. This undermined the integrity of the review.[201] The APRM Base Document also looks outward to donors for funds.[202] This kind of donor dependence leads to manipulation, which results in complication of the whole process and hence distorted results. When the GOK contributes directly to the APRM Kenya secretariat and not to the APRM secretariat common kitty for Africa, it makes the process vulnerable to manipulation. These in effect are the anti good governance effects of donor intervention. This presents the problem of asymmetrical interdependence. Though APRM is associating with donors/partners, the relationship is asymmetrical. That is whoever owns the money owns the decision.

Competition

The APR process that took place in Kenya recently was one of a kind. So far there has never been a self-analysis of this magnitude in Kenya. The APR process therefore provided a forum for discussing governance issues, a mirror for Kenya to see itself as Anyang Nyong'o put it, the voluntary peer review allows us to see ourselves as we really are so that in areas where we are excelling or doing well, we are inspired on by the results

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[201] APRM Country Review Report of the Republic of Kenya, May 2006 p. 33
[202] See the APRM Base Document

of the review to do even better, and outdo what we think is our best effort. In areas where we are mediocre, the findings of the review are a wake up call to us in Kenya to fight on for a better society.[203]

As Kanbur (2004) argues, peer review mechanisms work best when they are part of a wide range of assessments. According to him when a review is or is perceived to be 'the only game in town' or 'too big a game in town', the high stakes set up a dynamic of pressures that can undermine trust.[204]

The aim of interdependence is a win-win situation. Unless we have a genuine competition, a win - win situation may not be realized. If the APRM is the only body and no other bodies assessing, results could be tilted either to themselves or to the dictates of the donors and this will not reflect the true position of governance.

There are other initiatives in Kenya which even though they have not undertaken to review where we are, they have undertaken to review where we want to be such as the Investment Program for the Economic Recovery Strategy for Wealth and Employment Creation (IPERS), which represents Kenya's Poverty Reduction Strategy Paper (PRSP) and the MDGs compact

Conclusion

It is evident from government documents that the Kenyan Policy-makers are committed to improving governance in accordance with the APRM standards. It is also evident that there are numerous challenges on the way to attaining good governance in Kenya. It has also been noted that for the APRM to succeed it should carefully safeguard competence and independence. Other organizations like the vibrant civil society in Kenya should also consider doing similar reviews independent of the APRM. This will bring about

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[203] The opening statement by the then Hon. Prof. Anyang' Nyong'o during the APRM support mission public forum at the KICC on 26th July 2004
[204] See Chapter 2.

competition and also provide point of comparison with the APRM reviews. It is also important to note that the APRM Country Review Report of the Republic of Kenya was very comprehensive and outlined the recommendations of the panel in each of the four thematic areas. It also outlined Kenya's Programme of Action (POA), which is a major output of the review process. However it remains to be seen whether these positive efforts will actually be implemented.

CHAPTER FIVE

Conclusion and Recommendations

Kenya is committed to improved governance and for this reason; Kenyans perceive the APR process as an important contributing factor in achieving the national aspiration to good governance.[205]

NEPAD and APRM are premised on interdependence as seen in the NEPAD Document (2001) 'this NEPAD is a pledge by African leaders, based on a common vision and a firm pressing duty to eradicate poverty and to place their countries both individually and collectively on a path of sustainable growth and development and at the same time to participate actively in the world economy and body politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalizing world'.

Kegley and Wittkopf Contend that mutual vulnerabilities reduce states autonomy by curtailing their control of their own fates and African leaders recognized this which is evident in both the Memorandum of Understanding on the APRM ("The MOU") and the APRM Base Documents which have both declared that 'the mandate of the APRM is to encourage participating states in ensuring that the policies and practices of participating states conform to the agreed political, economic, and corporate governance values, codes and standards and achieve mutually agreed objectives in socio-economic development contained in the Declaration on Democracy, Political, Economic and Corporate Governance'. [206]

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[205] APRM Country Review Report of the Republic of Kenya, May 2006
[206] See Memorandum of Understanding on the APRM p. 2, see also the APRM Base Document par 2

This study sought to do a critical analysis of the APRM specifically looking at the governance problem in Kenya and focused on: Critically analyzing the viability of the APRM to tackle governance problem in Kenya. Assessing whether the just concluded APRM process in Kenya was democratic and representative. Analyzing the response of the Kenyan policy makers to the APRM report. Assessing the popularity of NEPAD among the policymaking, non-policy making institutions and other groups in Kenya.

In chapter two, the study noted that architects of the APRM should adopt a more consultative approach at all stages of the APRM incorporating the civil society and women according to the APRM Base Document. They should also undertake to sensitize APRM at grassroots level and funds should be set-aside for this. APRM should put mechanisms in place to give it enforcement strength to ensure the success of its recommendations. This should include encouraging AU member states that have not acceded to peer review to do so. The depth of the factors under review should also be reviewed.

In chapter three, the study noted that the governance problem in Kenya stems from the entrenchment of colonialism and colonial practices that took root in the past and exemplifies itself in the present. It also noted that colonization led to Africa being integrated wrongly in the world economy. Colonialism also led to rigged development, which resulted in the inequality gap in Kenya. Postcolonial Africa inherited weak states and dysfunctional economies, which were further aggravated by poor leadership, corruption and poor governance. Corruption features as significantly contributing to the failure of governance in Kenya. It was noted also that over the years almost all institutions of governance had been run down and were hence not useful in the fight against corruption. Initial efforts in the fight against corruption were therefore focused on

restoring institutional integrity. The war against corruption is on and yet corruption is fighting back. The government of Kenya is committed to fighting corruption and improving governance. That is the reason why Kenya in the spirit of interdependence acceded to the APR process, which allows us to see ourselves as we really are with the aim to improving our weak points and strengthening our strong points as a country and thereby improving our policy making and complying with established codes, standards and principles of good governance.

This study therefore recommends the immediate implementation of the policies and procedures/structures put in place under the NARC regime by the GOK.

This study also recommends that the GOK tackle the corrupt leadership problem by ensuring a screening process for individuals who would like to be in realm of leadership in Kenya.

This study recommends for the APRM to formulate mechanisms to ensure compliance for countries that have already acceded to the process and indeed been peer reviewed. These should include incentives to offer participating countries to meet its standards of governance.

This study also recommends that reviews be carried out in future by examining one thematic area at a time instead of reviewing all the four thematic areas of Democracy and Political Governance, Economic Governance, Corporate Governance and Social Development. This will lead to increased efficiency and better results.

This study also recommends that the APRM employ its own mechanisms to do the review process and avoid reliance on other organizations (whose competence is not in question) like the selection of the four reputable Nairobi based research institutions to lead the review process. This is to avoid the dangers of subcontracting.

This study also recommends independent reviews to avoid the situation where the APRM is 'the only game in town'. These can be carried out by other organizations for example the vibrant civil society in Kenya. This will also provide for comparisons, results can be compared and the process can be more democratic.

BIBLIOGRAPHY

Bujra, A Ed. 'Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy' (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005)

Olukoshi, A 'Governing the African Political Space for Sustainable Development: A Reflection on NEPAD' in Peter Anyang' Nyong'o, Aseghedech Ghirmazion and Davinder Lamba (Eds). NEPAD A New Path? (Nairobi: Heinrich Boll Foundation, 2002)

Mafeje, A 'Democratic Governance and New Democracy in Africa' in Peter Anyang' Nyong'o, Aseghedech Ghirmazion and Davinder Lamba (Eds). NEPAD A New Path? (Nairobi: Heinrich Boll Foundation, 2002)

Russet, B and Starr, H 'World Politics: The Menu for Choice' 3rd Edition (New York: W. H. Freeman & Company, 1989)

Wilber, C.K and Jameson, K.P 'The Political Economy of Development and Underdevelopment' Fifth Edition (Singapore: Mc Graw-Hill Book Company, 1992)

Ake, C 'A Political Economy of Africa' (Nigeria: Longman Publishers, 1981)

Odhiambo, C.M 'Accountability in Governance' in Abdalla Bujra Ed. Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005)

Nabudere, D.W 'NEPAD: Historical Background and its Prospects' in Peter Anyang' Nyong'o, Aseghedech Ghirmazion and Davinder Lamba (Eds). NEPAD A New Path? (Nairobi: Heinrich Boll Foundation, 2002)

Narayan, D 'Empowerment and Poverty Reduction: A Source Book' (Washington DC: A World Bank Publication, 2002)

Berg, D.S and Siegler, R 'Political Stability and Development: A Comparative Analysis of Kenya, Uganda and Tanzania' (Colorado: Lynne Rienner Publishers Inc., 1990)

Okello, D and Owino, K 'Socio-Economic Context of Governance in Kenya' in Abdalla Bujra Ed. Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005)

Ikiara, G., Nyunya, J.O and Odhiambo, W 'Kenya: Formulation and Implementation of Strategic Trade and Industrial Policies' in Charles Soludo, Osita Ogbu and Ha-Joon Chang Eds. The Politics of Trade and Industrial Policy in Africa (Asmara: Africa World Press Inc., 2004)

Roxborough, I 'Theories of Underdevelopment' (London: Macmillan Education Ltd., 1979)

Taylor, I 'Why NEPAD and African Politics Don't Mix' (Washington DC: Foreign Policy in Focus, 2004)

Mbaku, J.M 'Viability of NEPAD' (Ogden: Weber State University, 2004)
Lengwe-Katembula J. Mwansa 'Corruption and Social Services in Africa' in Frimpong, K and Jacques, G Eds. Corruption Democracy and Good Governance (Gaborone: Lightbooks, 1999)

Light, M and Groom, A.J.R 'International Relations A Handbook of Current Theory' (London: Frances Pinter Publishers Limited, 1985)

Decleris, M 'The Law of Sustainable Development: General Principles' (Luxembourg Office for Official Publication of European Community, 2000)

Mulinge, M.M and Lesetedi, G.N 'The Genesis and Entrenchment of Corruption in Sub-Saharan Africa: A Historical and International Contextualization' in Frimpong, K and Jacques, G Eds. Corruption, Democracy and Good Governance in Africa (Gaborone: Lightbooks, 1999)

Nyong'o, P.A., Ghirmazion, A and Lamba, D (Eds). 'NEPAD A New Path?' (Nairobi: Heinrich Boll Foundation, 2002)

Wanyande, P 'Evolution of Governance Practice in Kenya: An Overview' in Bujra, A Ed. Democratic Transition in Kenya: The Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005)

Wanyande, P 'NEPAD and Security in the IGAD Region' in Mwagiru, M Ed. African Regional Security in the Age of Globalization (Nairobi: Heinrich Boll Foundation, 2004)

Sands, P 'Principles of International Environmental Law I: Frameworks, Standards and Implementation' (Manchester University Press, 1995)

Little, R and Smith, M 'Perspectives on World Politics' 2nd Edition (London & New York: Routledge, 1991)

Keohane, R.O and Nye, J 'Power and Interdependence World Politics in Transition' (Boston Toronto: Little, Brown & Company, 1977)

Mkandawire, T 'Financing of the New Partnership for Africa's Development (NEPAD)' in Nyong'o, P.A., Ghirmazion, A and Lamba, D (Eds). NEPAD A New Path? (Nairobi: Heinrich Boll Foundation, 2002)

Masai, W 'Search for Democracy and Good Governance: Kenya's Africa Peer Review Self-Assessment Process' in Abdalla Bujra Ed. Democratic Transition in Kenya: The

Struggle from Liberal to Social Democracy (Nairobi, Addis Ababa: African Center for Economic Growth & Development Policy Management Forum, 2005)

Oyugi W.O. 'Politics and Administration in East Africa' (Nairobi, Conrad Adenauer, 1992)

Keylor, W.R 'The Twentieth Century World: An International History' 3rd Edition (New York: Oxford University Press, 1996)

Tandon, Y 'NEPAD and Foreign Direct Investments: Symmetries and Contradictions' in Nyong'o, P.A., Ghirmazion, A and Lamba,D (Eds). NEPAD A New Path? (Nairobi: Heinrich Boll Foundation, 2002)

Journals

Olutayo, A.O and Omobowale, A.O 'Globalization, Democracy and the NEPAD' African Journal for the Psychological Study of Social Issues Vol. 8 (2), 2005

Moor, C 'Regional Integration and Regional Governance under the New African Initiatives: A critical Appraisal' Policy: Issues and Actors Vol. 17 No. 3, May 2004

Kahl, C.H 'Population Growth, Environmental Degradation, and State-Sponsored Violence: The Case of Kenya 1991-1993' International Security Vol. 23 No. 2 (1998)

Throup, D 'Elections and Political Legitimacy in Kenya' Africa: Journal of the International African Institute Vol. 63 No. 3, 1993

Atieno, E.S.O 'Hegemonic Enterprises and Instrumentalities of Survival: Ethnicity and Democracy in Kenya' African Studies Vol. 61 No. 2, (2002)

Harsch, E 'NEPAD Stimulates Debate on Development, Democracy and Global Ties' Africa Recovery Vol. 16 No. 4, Feb 2003

Muigai, G 'Kenya's Opposition and the Crisis of Governance' A Journal of Opinion Vol. XXI/1-2, 1993

Murunga, G.R 'Civil Society and the Democratic Experience in Kenya: A Review of Constitution-Making from the Middle Civil Society and Transition Politics in Kenya 1992-1997 by Willy Mutunga, Sareat & Mwengo' African Sociological Review Vol. 4 No. 1, 2000

Melber, H 'NEPAD and Namibia' Namibia Review Vol. 12 No. 1, March 2003
Joel D. Barkan and Michael Chege 'Decentralizing the State: District Focus and the Politics of Reallocation in Kenya' The Journal of Modern African Studies Vol. 27 No. 3 (1989)
Barkan, J.D and Chege, M 'Decentralizing the State: District Focus and the Politics of Reallocation in Kenya' The Journal of Modern African Studies Vol. 27 No. 3 (1989)

Akokpari, J.K 'The AU, NEPAD and the Promotion of Good Governance in Africa' <u>Nordic Journal of African Studies</u> Vol. 13 No. 3, 2004

Oselenbalu, J. E 'The Place of Human Resources in NEPAD Objectives' <u>African Journal for the Psychological Study of Social Issues</u> Vol. 8(2), 2005

Hope, K.R Sr. 'From Crisis to Renewal: Towards a Successful Implementation of the New Partnership for Africa's Development' <u>African Affairs</u> 101, 2002

Matlosa, K 'New Regionalists Impulses: Implications of the New Partnership for Africa's Development (NEPAD) for Regional Co-operation in Southern Africa' <u>Policy: Issues and Actors</u> Vol. 17 No. 5, Feb. 2003

Modise, M 'Botswana and NEPAD and the APRM: Two Official Perspectives' <u>Tautona Times</u> Vol. 2 No. 9, 2004

Juma, M.K 'Africa's Governance Audit: The African Peer Review Mechanism' <u>New Economy</u> 2004

Oyugi, W. 'NGOs as Development Actors in Africa' <u>Africa Development</u> Vol. XXIX No. 4, 2004

Onyuma, S.O 'A Single Monetary Union in Africa: Gainers and Losers' <u>OSSREA Bulletin</u> Vol. III No. 2, Feb. 2006

Brown, S 'Authoritarian Leaders and Multiparty elections in Africa: How Foreign donors helped to keep Kenya's Daniel Arap Moi in Power' <u>Third World Quarterly</u> Vol. 22 No. 5

Mueller, S.D 'Government and Opposition in Kenya' <u>The Journal of Modern African Studies</u> Vol. 22 No. 3, (1984)

Kebonang, Z 'The NEPAD: Promoting FDI through Moral Political Leadership' <u>Africa Insight</u> Vol. 35 No. 1, (2005)

<u>Occasional Papers</u>

Olukoshi, A.O 'Governing the African Developmental Process: The Challenge of the New Partnership for Africa's Development (NEPAD)' <u>Center of African Studies</u> University of Copenhagen (September 2002)

Cilliers, J 'NEPAD African Peer Review Mechanism' <u>Institute for Security Studies Occasional Paper No. 64</u> (November 2002)

Cilliers, J 'Peace and Security Through Good Governance A Guide to the NEPAD African Peer Review Mechanism' <u>Institute for Security Studies Occasional Paper No. 70</u> (April 2003)

Kanbur, R 'The African Peer Review Mechanism (APRM): An Assessment of Concept and Design' Cornell University (January 2004)

Schmidt, R 'Ownership and Partnership in Africa's Development Strategy' The North-South Institute (June 12th 2002)

Undated Papers

Verwey, L 'NEPAD and Civil Society Participation in the APRM' IDASA Budget Information Service

Mathoho, M 'An African Peer Review Mechanism: A Panacea for Africa's governance Challenges?' Policy Brief 29

Newspaper/Magazines

Accra Mail. May 08, 2006

The APRM Monitor. No.1, April 2006

The Daily Nation. Nairobi, Nov. 7, 2006

The Kenya Times. Nairobi, May 5, 2006

The Namibian. Windhoek, March 13, 2006

The Observer. April 02, 2005

The Standard. Nairobi, August 7, 2006

The Standard. Nairobi, July 6, 2006

Reports

Adjustment in Africa: Reforms, Results and the Road Ahead A World Bank Policy Research Report (New York: Oxford University Press, 1994)

Government of Kenya's Comprehensive Anticorruption Strategy Action Plan for April 2005 – June 2006

Interim Investment programme for the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) Government of Kenya, (2003)

Kenya: Consultative Group Meeting. Joint Donor Statement on Legal, Judicial and Anti-Corruption Reform, (April 2005)

Kenya: Progress Report on Governance Reform Programme. Presented by Kenya Government at the Consultative Group Meeting for Kenya, (Nairobi: 11th – 12th April 2005)

Opening Statement by Hon Prof. Peter Anyang' Nyong'o during the APRM Support Mission Public Forum at the KICC, (26th July 2004)

Poverty Reduction Strategy Paper for the Period 2001-2004 Government of Kenya, 2001 Report on Alleged Cases of Corruption Presented at the Consultative Group Meeting for Kenya, (Nairobi: 11th –12th April 2005)

Reforms in Governance in Kenya: Establishing/Strengthening Anti-Corruption Institutions, Creating an Enabling Environment and Enhancing the Rule of Law. Sectoral Paper, Ministry of Justice and Constitutional Affairs, (Nairobi 2005)

The Fight Against Corruption: A Donor's Perspective. Excerpts from an address by the German Ambassador, Mr. Bernd Braun on the Occasion of the annual dinner of the Law Society of Kenya, (March 19 2005)

The Johannesburg Plan of Implementation (2002)

The Republic of Kenya: Country Assistance Evaluation Report No. 28812, World Bank, (May 21, 2004)

Transparency International Corruption Perception Index, (Berlin: 2002)

Transparency International Kenya Public Statement on the Political Will to Fight Corruption in Kenya, (July 1st 2004)

World Development – Africa A World Bank Publication (2003)

APRM Documents

African Peer Review Mechanism (APRM) Country Review Report of the Republic of Kenya May 2006

African Peer Review Mechanism (APRM): BASE DOCUMENT, 9th March 2003

African Peer Review Mechanism Organization and Process, NEPAD/HSGIC-3-2003/APRM/Accord

African Peer Review Mechanism: An Independent Preliminary Assessment of Namibia, (Namibia: Hans Siedel Foundation) March 2006

APRM Country Review Report of Ghana, June 2005

Declaration on Democracy, Political, Economic and Corporate Governance, 9th March 2003 Abuja, Nigeria
Memorandum of Understanding on the African Peer Review Mechanism, 9th March 2003
NEPAD Framework Document, Abuja Nigeria, Oct. 2001

Internet Sources

http://www.nepad.org/2005/files/aprm.php

http://www.nepad.org/2005/news

http://web.africa.ufl.edu/asq/v6/v6i3a4.htm

http://www.adb.org

http://www.allafrica.com

http://www.dfa.gov.za/au.nepad

http://www.nepad.org/en.html

http://www.worldbank.org/wbi/governance/htm

http://www.siteresources.worldbank.org/inkenya/resources/governance-brief.pdf

http://www.tikenya.org/documents/political_will_to_fight_corruption_kenya.pdf

http://www.transparency.org/pressrelease_archive/2002.08.28.cpi.en.html

http://www.cornell.edu/pages/sk145