

Comparing Peer Reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism

Edward R. McMahon

Research Associate Professor

Department of Community Development and Applied Economics

Department of Political Science, University of Vermont

Email: emcmahon@uvm.edu

Kojo Busia

Senior Development Management Officer

Chief, APRM Support Section, Governance and Public Administration Division

United Nations Economic Commission for Africa, Addis Ababa, Ethiopia

Email: kBusia@uneca.org

Marta Ascherio

University of Vermont

Abstract

The Universal Periodic Review Mechanism (UPR) of the UN Human Rights Council and the African Peer Review Mechanism (APRM) reflect a growing trend in international organizations to utilize peer review processes to assess and improve member state governance and human rights performance. The two mechanisms are distinct in many ways. For example, the APRM undertakes a more in-depth and rigorous examination of a broader range of issues. Both review mechanisms, however, also have similarities e.g. they emphasize follow-up and actions to be taken as a result of the reviews and are products of a consensus decision-making process based on voluntary engagement. They represent an evolutionary process by which international norms can be integrated in a national context.

Keywords

Human rights; United Nations; Peer reviews; Globalization; National sovereignty

Introduction

The central challenge facing all standards-based intergovernmental organizations (IGOs) is how to promote adherence to commonly agreed-upon

norms.¹ In recent years this has become an increasingly salient question with the growth of globalization in general and the number and impact of IGOs in particular. One method, which in recent years has been adopted by a few international organizations, and which has begun to attract heightened attention more broadly, is the development of peer-based initiatives to assess performance and make recommendations on improving adherence to shared norms.

This tendency reflects, in this era of globalization, more flexible interpretations of the national sovereignty concept. These mechanisms reflect a willingness of states to submit themselves to the examination, judgment and recommendations by other states on how to improve performance in the subject areas of focus. Some examples include the Development Assistance Committee peer review process of the Organization of Economic Cooperation and Development (OECD), the African Peer Review Mechanism (APRM), the Universal Periodic Review Mechanism (UPR) of the UN Human Rights Council (HRC), and the Inter-American Convention Against Corruption.

These systems of peer review are at an early stage of development and implementation. The jury, in general, is still out on their effectiveness.² They are not all the same; for example the UPR's structure varies significantly from both the APRM and OECD processes in part because its information development component occurs remotely, with submissions from States under Review (SuRs) and other interested parties vetted by the HRC at its headquarters in Geneva rather than by country visits by a team of experts. Notwithstanding these differences, all peer review mechanisms are by definition creations of the member states of the organization undertaking them; they have in common a tendency to be the products of consensus. This in turn, means that they almost invariably rely, at least initially, more on the carrot of positive reinforcements and inducements rather than the stick of punitive measures.

To help advance understanding of the effect and utility of the contemporary peer review process, this paper compares the current state of implementation

¹ See Trine Flockhart, *Socializing Democratic Norms: The Role of International Organizations for the Construction of Europe*, New York: Palgrave Macmillan, New York, 2005; Jon C. Pevehouse, *Democracy from Above: Regional Organizations and Democratization*, New York: Cambridge University Press, 2005; Edward R. McMahon and Scott Baker, *Piecing a Democratic Quilt: Universal Norms and Regional Organizations*, Bloomfield: Kumerian Press, 2006.

² See, for example, Fabrizio Pagani, 'Peer Review: A Tool for Cooperation and Change – An Analysis of the OECD Working Method', OECD SG/LEG, 2002, retrieved from: <http://www.oecd.org/dataoecd/33/16/1955285.pdf>; Ross Herbert and Steven Gruzd, *The African Peer Review Mechanism: Lessons from the Pioneers*, Johannesburg: South African Institute for International Affairs; Marie Chene and Gillian Dell, *Comparative Assessment of Anti-Corruption Conventions' Review Mechanisms*, U4 Expert Answer, Transparency International, 2008.

of the APRM with the UPR. Other peer review processes focus particularly on economic issues, and although the APRM has a broader 'good governance' mandate than the UPR, these two mechanisms focus on human rights. This paper addresses the following aspects of these two processes: 1. how they were developed and function; 2. how they have evolved; 3. their actual and potential impact; and 4. the broader context in which international processes are moving away from traditional north-south conditionality-based patterns of interaction, which have led in the past to polarization and stalemate.³ We conclude that the two mechanisms, while different, share some core weaknesses and that expectations concerning their impact should be realistic. We also argue, however, that they represent a step ahead in institution-based approaches to expanding international norms concerning human rights and good governance.

Background and Structure

African Peer Review Mechanism (APRM)

In 2001, the New Partnership for Africa's Development (NEPAD) was launched and officially adopted as Africa's development vision by the Summit of Heads of State and Government of the Organization of African Unity (OAU), now the African Union (AU).⁴ NEPAD was created as a vision and a framework for addressing Africa's myriad development and governance challenges. Key among NEPAD's principles included: good governance as a basic requirement for peace, security, and sustainable political and socio-economic development; African ownership and leadership, as well as broad and deep participation by all sectors of society; acceleration of regional and continental integration; building the competitiveness of African countries; forging a new international partnership to change the unequal relationship between Africa and the developed world; and ensuring that all partnerships with NEPAD are linked to the United Nations Millennium Development Goals (MDGs) and other agreed goals and targets. The priority program areas of NEPAD included peace and security; democracy and good governance; regional cooperation and integration; and capacity building.

³ See Table 1 at the end of the next section for a summary comparative overview.

⁴ Declaration on the New Common Initiative, AHG/Decl.1 (XXXVII), 2001 (Lusaka); Declaration on the Implementation of the New Partnership for Africa's Development (NEPAD), ASS/AU/Decl.1(I), 2002 (Durban).

African Heads of State and Government adopted the APRM – a key component of NEPAD – in Durban, South Africa in July 2002⁵ as a systematic peer learning and self-assessment mechanism based on the NEPAD foundational document, the 'Declaration on Democracy, Political, Economic and Corporate Governance'. It is a mutually agreed instrument voluntarily acceded to by AU member States as an African self-monitoring mechanism. The APRM 'is often described as "Africa's unique and innovative approach to governance" with the objective of improving governance dynamics at the local, national, continental and international levels'.⁶ Since its adoption, the APRM has become the most visible achievement of NEPAD in promoting good governance in Africa.

The AU Constitutive Act (2002) signified the willingness of African States to relinquish some measure of sovereignty in pursuit of continental political and economic integration. This marked a clear departure from the OAU stance whereby the sovereignty of African States was paramount. The creation of the AU inaugurated a new principle of 'non-indifference' whereby the internal affairs of each Member State were the collective responsibility of all member States. It also marked the increasing awareness among African States of the need for commonly shared values to shape and determine individual and collective actions.

The creation of NEPAD showed that African leaders realized that previous development paradigms and strategies had failed and that they needed to take the leadership role in designing the necessary reforms to improve the development situation in Africa. It also epitomized the emphasis on the need for African ownership of policy reform based on the recognition that externally imposed conditionalities were insufficient and were a defective means of achieving reforms.

NEPAD inaugurated a new approach by linking poverty reduction and development to issues of a political nature such as democracy, human rights and good governance. Using the tool of the APRM, African States voluntarily agreed to accede to a self-imposed scrutiny by other African States in a stated commitment to improving governance systems, policies and developmental practices. The document outlining NEPAD endorsed "setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and compliance with mutually agreed standards."⁷

⁵ Declaration on Democracy, Political, Economic and Corporate Governance (Declaration on Democracy and Governance), AHG/235 (XXXVIII) Annex I, art. 15.

⁶ African Partnership Forum, "The APRM Progress and Challenges," presented to the APF Meeting, Addis Ababa, May 2008.

⁷ Declaration on Democracy, Political, Economic and Corporate Governance (Declaration on Democracy and Governance), AHG/235 (XXXVIII) Annex I, art. 18.

The APRM is composed of a set of bodies that support and coordinate implementation of the review process both at the continental and national levels.

Forum of Heads of State and Government of Participating Countries

The APR forum is the highest decision-making body in the review process, which is composed of all Heads of State and Government of participating countries. The APR Forum considers and makes recommendations for the review reports on the member States and authorizes publication of the APRM reports. It is also responsible for nomination and selections of members to the APR Panel.

The Panel of Eminent Persons

The APR Panel is the executive body of the APRM, in charge of directing and managing its operations. It leads and oversees the country review processes, provides ad hoc guidance to the country teams to ensure the integrity of these processes, and is ultimately responsible for the contents of the report. The APR Panel is composed of five to seven Africans of “high morale stature and committed to the ideals of Pan-Africanism”, who have distinguished themselves in areas relevant to the work of the APRM such as political governance, macro-economic management, public financial management and corporate governance. They are nominated by participating countries, short-listed by a Committee of Ministers and appointed by the APR Forum to reflect a regional, gender and cultural balance.

The APRM Secretariat

The secretariat based in South Africa supports the APRM Panel, and is in charge of providing “secretarial, technical, coordinating and administrative support” to the APRM process. It is headed by an executive director who is supported by a team of experts in the four review areas. Among other functions, the secretariat maintains an extensive database on political and economic development in participating countries, prepares background documents for the peer-review teams, and tracks the performance of individual countries. It is also responsible for constituting the APR Country review teams to conduct the country visits, the composition of which is intended to ensure a “balanced, technically competent and professional assessment of the reviewed country”.

APRM National Structures

Participating states are required to set up an APRM focal point, a national mechanism to play a communication and coordination role and serve as a

liaison between national and continental structures. The form and profile of the focal point is left to the discretion of the participating countries, but it is recommended that it should be composed of high-level officials reporting directly to the Head of State or Government and with access to all national stakeholders. Each participating state is also required to set up a national coordinating structure, often in the form of a National Governing Council, in which key stakeholder groups are represented, including government, civil society and the private sector. This body is responsible for conducting the country's self-assessment through a "broad-based and all-inclusive" consultation of key stakeholders in the public and private sectors. Countries have a relative margin of discretion as to how they implement this requirement.

Review Process

According to the various official documents, APRM reviews can be initiated by four major triggers: 1. a base review, when a country officially accedes to the APRM process 2. follow up reviews which are meant to be conducted every two-four years; 3. upon a special request by an APRM Member State; and 4. at any moment when early warning signs suggest an impending political, economic or social crisis in an APRM member State. The APRM covers 91 indicators in four governance areas: Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development. The review process includes country self-assessments questionnaire, and on-site visits by expert review teams which consult with government, and private sector and civil society representatives. An expert review team also organizes active plenary discussions and revision of country reports and action plans. The review process involves five major stages:

1. Preparations of the Country Self-Assessment Review and Report
2. Country Review Mission by APRM Panel and External African Experts
3. Compilation of a final Country Review Report
4. Submission to the APR Forum for Heads of State Peer Review
5. Report made available to the Public and tabled at pan-African institutions

In line with the African Union Strategic Plan for 2010-2015, the AU Commission has been mandated by a declaration adopted by the Assembly of Heads of State to facilitate the establishment of architecture for the promotion of good governance on the continent. The envisioned African Governance Architecture (AGA) will consist of three pillars: a set of norms that constitute a governance vision for the continent; a set of governance institutions and organs

with a mandate in governance; and an interactive mechanism and processes to constitute an African Governance Platform to give operational expression to the governance agenda.

Although not all AU member States subscribe to the mechanism, the APRM can potentially serve as one of the core frameworks for upholding and deepening the shared values of the AU. The process of peer review is premised on the establishment of institutions, structures and systems that are based on AU-shared values, codes, norms and standards in political, economic and social governance, human rights, the rule-of-law, and the socio-political culture. The mechanism seeks to emphasize the interdependency of democracy and development and their mutual reinforcement. Viewed in the context of Constitutive Act of the African Union, therefore, the APRM is designed to promote three fundamental values of the African Union: Freedom and Human Rights, Participatory Development, and Accountability.

Universal Periodic Review (UPR)

The UPR's *raison d'être* is to promote and deepen respect for human rights through the provision of feedback to UN member states on their human rights performance. At its core the UPR thus represents a nascent and untested forum in which states make policy recommendations to each other. A number of key questions serve as a useful point of departure for consideration of the structure of the UPR process. How has the UPR been shaped to fulfil these ambitious mandates? How does it function? What compromises and trade-offs does this represent?

In 2006 UN General Assembly Resolution 60/251 established the Human Rights Council and mandated the establishment of the UPR. It emphasized that the UPR mechanism should be cooperative, constructive, non-confrontational and non-politicized. U.N. General Assembly (UNGA) Resolution 60/251 authorized the establishment of the UPR "based on objective and reliable information". The Resolution further states that the UPR should be conducted "in a manner 'which ensures . . . equal treatment with respect to all States'". HRC Decision 6/102 states that UPR reports should identify country "achievements, best practices, challenges and constraints". The process was also designed to be inter-governmental in nature, UN member-driven, and reasonable in requirements of time, human and financial resources, and expectations. The lack of punitive sanctions attached to the process was very likely a *sine qua non* for the support of many G-77 states, which feared that the UPR could turn into a one-sided mechanism for OECD member states to criticize their human rights records, warranted or not. At the same time, however, a key founding

document emphasized that the process should be “action-oriented” and “not diminish the Council’s capacity to respond to urgent human rights situations” (A/HRC/5/21, 2007).

The June 2007 ‘Institution-building Package’ defined the functioning of the UPR. This included the process by which states would be selected for review, the sequence of the reviews, and the general guidelines for the preparation of relevant documentation. The June 18, 2007 text established that all member States of the Council would be reviewed during their term of membership. In addition, non HRC member states would also be reviewed, as the mechanism is designed to examine all UN member states.

During the selection phase of the first UPR cycle, states were split per regional group. The number of states chosen for review was in proportion to their number in regional groupings. Each regional group list was then organized such that the first states to be reviewed were those whose terms of membership had ended in June 2007, followed by those whose terms of membership were to end in June 2008, and then those who volunteered for examination in the UPR process. The list of countries was then assigned in alphabetical order starting with the country drawn by lot by the HRC President. All 192 member states of the UN were reviewed in 12 sessions between 2008 and 2011. Similarly to the APRM, the UPR has several bodies which vary in structure and formality that each have a role in the review and recommendation process:

State Under Review

The SuR prepares a self-study, according to general guidelines laid out by the HRC (A/HRC/6/102, 2007). The SuR government is supposed to involve the non-governmental sector in this process, although to date there appears to have been wide variance concerning the extent of SuR adherence to this important proviso.⁸

Working Group (WG). A Working Group composed of all member-States of the HRC and chaired by the President of the Council then examines the SuRs human rights record and performance. Each Working Group session lasts three hours and includes a presentation by the SuR of its national report as well as the answers to the written questions and issues it had received in advance. The WG participates in an interactive dialogue in which States can ask questions and make recommendations about the human rights situation

⁸ A number of reports on the UPR’s functioning have been issued in 2010 which emphasize the need for greater NGO involvement. See, for example, the Friedrich Ebert Stiftung “Report on The Human Rights Council’s Performance To-date”, November 2010 <http://library.fes.de/pdf-files/iez/07625.pdf>.

in the SuR – NGO's can attend the WG but cannot speak. During this dialogue member States of the HRC have three minutes of speaking time while observer states have two minutes.

Troika. The Troika is composed of representatives from three state delegations, which are selected by the drawing of lots among members of the HRC and from different regional groups. It functions as a secretariat for the WG and is responsible for preparing a summary of state adherence to various human rights treaties and commitments. It also receives questions/issues from states in WG prior to the review, compiles them, and submits them to the SuR at least 10 working days prior to the review.

The WG session is followed by a summary report of the interactive dialogue prepared by the Troika with the involvement of the SuR and the assistance of the HRC Secretariat. The SuR then responds indicating which comments it accepts and which it rejects. It may also make a general response or not respond at all, a fact which emphasizes the voluntary and non-coercive nature of the process. After the report has been adopted in principle, states have two weeks to request any modifications. The process is finalized and approved at a plenary session of the Human Rights Council by a resolution or decision. Thus, like the APRM, the UPR process involves five major stages:

1. Preparation of self-study national report
2. Assessment of national report and preparation of recommendations
3. Review of SuR in Working Group
4. Preparations of document containing recommendations by states and voluntary commitments by the State
5. Preliminary then final adoption of report during plenary session of the HRC

The SuR has the primary responsibility to implement the recommendations contained in the final outcome. In principle the UPR's aim is to ensure that all countries are accountable for progress or failure in implementing these recommendations. As the second round of UPR reviews began in 2012, SuRs have begun to provide information on actions to implement the recommendations they accepted during their first review four years earlier.⁹

⁹ Some states have begun to file reports on a mid-term basis.

Table 1
APRM and UPR at a glance

	APRM	UPR
Background	In 2002 was adopted a component of NEPAD as a mutually agreed instrument voluntarily acceded to by AU member States as an African self-monitoring mechanism.	In 2006 the UN General Assembly Resolution 60/251 established the HRC and mandated the establishment of the UPR to promote and deepen respect for human rights through the provision of feedback to member states on their human rights performance
Functioning	<ol style="list-style-type: none"> 1. Preparations of the Country Self-Assessment Review and Report 2. Country Review Mission by APRM Panel and External African Experts 3. Compilation of a final Country Review Report 4. Submission to the APR Forum for Heads of State Peer Review 5. Report made available to the Public and tabled at pan-African institutions 	<ol style="list-style-type: none"> 1. Preparation of self-study national report 2. Assessment of national report and preparation of recommendations 3. Review of SuR in Working Group 4. Preparations of document containing recommendations by states and voluntary commitments by the State 5. Preliminary then final adoption of report during plenary session of the HRC
Evolution	Pace of country reviews have increased, incorporation of systemic and structural issues	Increasing numbers of recommendations, and recommendations accepted, increasing specificity of recommendations being made.
Systemic issues/ top recommendations	<ol style="list-style-type: none"> 1. Managing Diversity 2. Corruption 3. Land Resource Management and Governance 4. and Elections 	<ol style="list-style-type: none"> 1. Recommendations to adhere to international instruments regarding human rights (20%) 2. Women's Rights (17%) 3. Rights of the Child (16%).

Functioning and Evolution: APRM

Process and Engagement

Since its first mention in the NEPAD official documents in 2001 and the subsequent adoption of the accession of the Memorandum of Understanding (MoU) in 2003, the APRM has made considerable progress in terms of the number of countries acceding, the rolling-out of the structures, institutions and organization of the review process, as well as the degree of active participation and engagement of stakeholders, both nationally and continentally.

Participation in the APRM process rate has been growing steadily since 2003. By July 2010, twenty-nine countries had voluntarily acceded by signing the MoU – representing about 75 per cent of the continent's population. Member countries include Algeria, Angola, Benin, Burkina Faso, Cameroon, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia. Others, including Cape Verde and Burundi, are considering joining, with the former already submitting all accession documents except the signing of the MOU.

The pace of country reviews has also increased since the early days of implementation in the three pioneer countries of Ghana, Rwanda and Kenya. As of September 2013, sixteen countries have been 'peer reviewed' including, Ghana, Rwanda, Kenya, South Africa, Benin, Nigeria, Burkina Faso, Algeria, Uganda, Lesotho, Mali, Mozambique and Mauritius. The mechanism has registered some success in that the majority of African countries have now embraced it and many of the reviews conducted thus far have earned a reputation for integrity and forthrightness and are being taken seriously by the participating countries.

Despite this progress, a notable achievement in and by itself, a significant proportion of the acceded countries have yet to set the review process in motion due to a number of reasons, including lack of political will and capacity, logistical challenges and preparations for elections which take priority over all other governance concerns. Although these countries have the benefit of the experiences of reviews to date, the number of acceded countries 'sitting on the fence' with no serious signals to kick-start the review process could dilute the initial enthusiasm and effectiveness of the mechanism overall.

Another element of progress is the establishment of national structures in the marshalling of organizational capacity for undertaking the country self-assessment processes. In addition, while country experiences have varied

both in terms of political will and commitment to the participation of stakeholders, there is undoubtedly a certain amount of respect for the rules and regulations underlying the 'APRM game'.

The nature and quality of civil society participation in the APRM process is directly linked to the political context in each country. Some governments, for example, have dominated their review process, raising concern about the objectivity of outcomes. Other countries have fully complied with the precepts of the APRM process without blatant government attempts to manipulate the process. Generally, three models of APRM structures and processes have emerged, with Ghana and Rwanda as two distinct models and that of South Africa somewhere in between the two.

In Ghana, the Governing Council for the self-assessment process was composed of a small group of distinguished individuals working through independent research institutions. This model allowed for freeing the process from political manipulation and promoting strong involvement of citizens and civil society groups. This led to production of a robust self-assessment and a detailed plan of action that was subsequently adopted by the Government. The Ghana National APRM Governing Council has been given the responsibility for monitoring implementation of the national POA.¹⁰

The Rwanda review process, by contrast, has been described as being essentially government driven: the self-assessment process was conducted by technical teams under the direction of Government and the NEPAD Secretariat. Despite the government-driven process, a number of civil society organizations (CSOs) expressed appreciation at the nature of the Country Self-Assessment Report, and its importance in the context of the tightly controlled political system.¹¹

In South Africa, the initial National Governing Council set up by the Government was predominantly staffed by senior government ministers until the Country Support Mission team urged the Government to set up a more representative structure. While technical support agencies were contracted to compile technical reports for each of the four APRM focus areas, the reports were based on public calls for submissions using the CSAR questionnaire, rather than on extensive national surveys.. The strength of the South African model was that it introduced some innovations to the process and was able

¹⁰ See Herbert, Ross and Steve Grudz, *The APRM: Lessons from the Pioneers*, SAIIA, 2008; Bing-Papoe, Adotey, *Ghana and the APRM Process: A Critical Assessment*, AfriMap, June 2007.

¹¹ AfriMap, *A Critical Review of the APRM Process in Rwanda*, 2007.

to make changes once concerns from the APRM Panel were raised during the Country Support Review Mission.¹²

Regardless of the weaknesses attributed to the more government-dominated reviews, overall the process has widened political space to involve citizens in assessing the strengths and weaknesses of governance and development policies and to propose remedies. The APRM has contributed to the quality of national dialogue between government and non-government actors by way of inclusiveness and meaningful engagement.

The main output of the APRM national process is production of programs of action. These are designed to identify governance areas that need to be improved, to mobilize the country's efforts to implement the necessary reforms and to contribute to enhancing the state of governance and socio-economic development. The APRM guidelines stipulate unequivocally that the resulting National Plan of Action (NPOA) from the APRM process should: be designed by all stakeholders with firm commitment from government; cover major gaps and deficiencies identified in the APRM process; set parameters for costing and time-frames; and allocate monitoring and implementation responsibilities. These objectives can be achieved only if NPOAs are fully integrated into the existing national development plans or strategies.

In some countries participatory processes have been instituted for monitoring implementation of the NPOAs. Ghana presents a best practice case which is being emulated by many other countries. The challenge of decentralization of the APRM process necessitated establishment of district oversight committees in all the 170 districts of the country. The approach appears to have had three main effects: first, it has raised the profile of the APRM in the popular conscience of civil society and community organizations; second, it has tended to make reporting of the implementation of the NPOA about public perception and participation in the process; and thirdly, it has shifted the locus of debate from the capital where national CSOs and NGOs often dominate to the regional and local levels where that often is not the case.¹³

Cross-cutting and Emerging Systemic Issue

One of the most significant achievements of the APRM has been the diagnosis of systemic and structural issues that confront most African States in their governance systems. These issues require a holistic approach in the search for solutions because of the wide impact they have on the quality of governance in all its dimensions. Generally, the APRM Country Review process has unveiled

¹² Nobuntu Meblle, *The APRM Process in South Africa*, AfriMap, 2010. Herbert Ross and Steve Grudz, *Ibid.*

¹³ *Ibid.* pp. 10.

four major systemic issues: a) Managing Diversity; b) Corruption; c) Land Resource Management and Governance; and d) Elections. The APRM process flags these systemic issues and can create opportunities for African leaders and their citizens to have open and frank discussions, analysis, and find collective solutions through the sharing of best practices and peer learning.

Managing Diversity. Nearly all the peer-reviewed countries have challenges in managing diversity, which is reflected in the form of race, ethnicity and/or religion. If managed properly, this type of diversity can be beneficial to the country's political, economic, and social wellbeing. The APRM reports tend to view this as a formidable pre-condition for ensuring democratic and well-governed States in Africa.

Land, Resource Management and Governance. A finding in a number of the APRM reports is that the countries which have been reviewed have significant proportions of their population with no access to land, which is vital for the livelihoods of the citizenry. Management of land distribution and the security of tenure are at the forefront of the land situation. Several African countries have not articulated a comprehensive land policy, taken the impact of land governance into account in their strategies for development and poverty reduction, or allocated sufficient resources for land development and management. The consequences of poor planning and poor land use management continue to manifest themselves in land degradation, abject poverty, food insecurity, war, and famine.

Corruption. Reviews have also revealed considerable problems related to a lack of transparency, and the existence of corruption. This poses a serious development challenge for Africa, and seriously undermines democracy and good governance. In elections and in legislative bodies, corruption reduces accountability and representation in policy-making; and in the judiciary, it erodes the rule of law. Corruption undermines fair-play, justice and equal opportunities, equity and non-discrimination, which are underlying principles of human rights. Corruption also pulls public investment away from priority sectors and into projects where bribes and kickbacks are more plentiful. Corruption lowers compliance with construction, environmental, and other regulations; reduces the quality of government services; and, increases budgetary pressures on government. In corporate governance, it undermines economic development by increasing the cost of doing business through bribes, the management cost of negotiating with officials, and the risk of breached agreements or detection.

Elections and Electoral Management. Although legitimate elections are increasingly the norm in Africa, some recent elections have been plagued with serious irregularities. This demonstrates, as illustrated in APRM reports, that both the electoral system and process of elections clearly require additional

support and safeguards. The reports have generally also raised concerns regarding a qualitative decline in the conduct of some successive multiparty elections, coupled with a low and declining level of participation.

While these issues are not entirely new, the overriding message from these systemic issues has been that ignoring them could be costly and damaging to a country's governance system as well as to the project of nation-state building that is still on-going in many African countries. The APRM constitutes one of the most ambitious and innovative governance exercises undertaken in Africa and provides important opportunities for public policy dialogue. Its approach is unique in both its scope and breadth, and the consultation process involved is both technical and political in nature. It marks a paradigm shift by providing a new mechanism and with a participatory process that identifies governance deficiencies, verifies the adoption, consolidation and prescription of appropriate policies for achievement of the socio-economic and political objectives of NEPAD.

While the APRM is not a panacea by any means to all African governance problems, it is showing that by taking a longer-term approach and overcoming leadership challenges – including vision, commitment, continuity and technical capacity – the process can make a tremendous contribution towards identifying and addressing many such systemic issues underlying African governance problems.

Functioning and Evolution: UPR

The extent to which governments undertake meaningful initiatives resulting from UPR recommendations will be the most determinative test of the mechanism. Given that by mid-2013 the UPR was only halfway through its second cycle of country reviews, the jury is likely to be out on this question for several more years. We can, however, examine the process to date and draw some preliminary conclusions on its dynamics. The following are a few elements of the UPR functioning through the first nine sessions of the first cycle.

Through the first 9 sessions there were a total of 14,435 recommendations. This resulted in an average of 1600 per session, and approximately 100 per State under Review (SuR). The number of recommendations increased from the earlier to the later sessions as states became more familiar with the process. UPR Recommendations can be described as fitting into 5 distinct categories, ranging from the mildest to those that require the most specific and verifiable actions by the SuR (see Table 2).

Table 2
Action category definitions and examples

Category	Examples	Examples
Category 1 – Recommendations directed at non-SuR states, or calling upon the SuR to request financial or other assistance from, or share information with, non-SuR states.	Seek contributions from the international community in the Government's efforts to promote rights (Ghana to Botswana, Session 3)	Share its experiences and best practices with other countries in establishing national legislation and mechanisms and pursuing international cooperation to curb human trafficking (Philippines to United Arab Emirates, Session 3)
Category 2 – Recommendations emphasizing continuity in actions and/or policies (other verbs in this category include continue, persevere, maintain).	Continue its efforts to develop the work of its national institution for human rights, as an effective human rights watchdog (Egypt to Bangladesh, Session 4)	Continue the efforts to combat trafficking in persons with a special emphasis on women and children (Canada to Japan, Session 2)
Category 3 – Recommendations to consider change (consider, reflect upon, review, envision)	Consider subsequent measures towards the complete abolition of the death penalty (Switzerland to Cuba, Session 1)	Consider becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Azerbaijan to Mauritius, Session 4)
Category 4 – Recommendations of action that contains a general element (take measures or steps towards, encourage, promote, intensify, accelerate, engage with, respect, enhance)	Further improve the professionalism of the police force (Netherlands to Barbados, Session 3)	Take the necessary steps to reduce discriminatory practices and violence against women (France to Mali, Session 2)
Category 5 – Recommendations of specific action (undertake, adopt, ratify, establish, implement, recognize -in international legal sense).	Abolish the death penalty (Chile to Burkina Faso, Session 3)	Take necessary steps to establish a national human rights institution (New Zealand to Netherlands, Session 1)

Through the first four sessions, 63% of recommendations were accepted, compared to a 70% acceptance out of all 14,435 recommendations made through session nine. The rise in both the number of recommendations and the percentage of acceptances suggests greater acceptance of and willingness to use the procedure. It does not, however, provide information on the effectiveness or utility of the recommendations.

Significant variation in acceptance rates depended on the type of issue. Not surprisingly, the more sensitive and politically charged issues resulted in lower acceptance rates. For example, only 20% of death penalty, 30% of sexual rights, and 50% of Special Procedures (mostly requests for permission for visits by relevant UN human rights experts) recommendations were accepted.

There was a great diversity of recommendation issues; over 50 separate types can be identified. Of these, the top three included: recommendations to adhere to international instruments regarding human rights (19% of the recommendations); Women's Rights (17%); and Rights of the Child (15%).

In terms of regional distribution, the West European and Others Group (WEOG) far outpaced the other regions, with fully 41% of recommendations made. Asia, Africa, East Europe and Eurasia (EEG), and GRULAC (Latin America) each made between 13% and 16% of the total recommendations made. This may be due in part to the larger size and staffing advantages enjoyed by many of the WEOG member states. It could also, however, be taken to represent WEOG's focus on the UPR.

Analysis of the types of recommendations made clearly demonstrates a regional differentiation in approach to utilization of the UPR process. Recommendations were directed in highest numbers to Asia (31%) and Africa (27%). GRULAC, WEOG and EEG received 16%, 14%, and 12% respectively. OECD countries, and to a somewhat lesser extent those in Latin America and eastern Europe and parts of the former Soviet Union, seek to make a more robust use of the mechanism with a relative emphasis on making specific and actionable recommendations. Asian and African states, by contrast, tend to make 'softer' recommendations, especially to each other by relying on positive statements and more gentle recommendations. Initial data, however, suggest that the more democratically-inclined states in Africa and Asia take a somewhat more energetic approach.

A few states began to voluntarily issue mid-term or other reports prior to the end of the first cycle. These included Bahrain, Colombia, the Czech Republic, the Republic of Korea, Romania, Switzerland, the United Arab Emirates and the United Kingdom.

Many states, especially in the south, appear to view the concept of 'cooperation' by expressing praise or positive statements regarding the conduct of

certain other states.¹⁴ This is especially true for states with significant political, policy or other affinities or interests in common. States thus have a tendency to ignore or downplay poor human rights situations in certain other states. Abraham, amongst others, suggests that the long-term success of the HRC will depend upon states being able to recognize that criticism can be a component of cooperation.¹⁵

The process, by which compliance with UPR recommendations is identified, along with other processes, remains a work in progress. The initial documents establishing the UPR were vague on this point. Many observers at the time and subsequently have identified this lack of specificity as a major weakness.¹⁶ Most have suggested that compliance would take the form of self-reporting by governments, in addition to reports from human rights organizations and other quasi or non-governmental actors. This issue began to receive increased attention as the UPR moved into its second cycle of reports.

Reform Issues

Most observers see the HRC, and the UPR, as providing some value added to the promotion of human rights, although significant differences exist regarding the extent of this positive impact. Given that the UPR is likely to continue, the challenge has mainly been one of achieving consensus on how to improve it.

After much discussion and consideration the 2011 review of the UN Human Rights Council concluded with the adoption by the UN General Assembly of the proposed reform package. Over the previous two years there were a number of specific initiatives designed to stimulate thinking about the HRC's performance and possible reform. Much of this was focused on the UPR. Deliberations took place at Wilton Park in the UK, in Algiers, Montreux, Mexico City, Bangkok, Seoul and Paris. Many ideas on how to reform the recommendations process were raised during this review process by various member states and NGOs interested in strengthening the mechanism. Some individual states separately issued views against significant reform; they appeared to be content with the system and believed that it served their purposes

¹⁴ Meghna Abraham, *Building the New Human Rights Council: Outcome and analysis of the institution-building year*, International Service for Human Rights, Geneva, 2007.

¹⁵ Paul Lauren, "To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council", *Human Rights Quarterly*, vol. 29, #2, 2007 p. 329.

¹⁶ See, for example, Abraham, *A New Chapter for Human Rights*, International Service for Human Rights, 2006, p. 83 and Lauren Vriens, "Troubles Plague UN Council", *Council on Foreign Relations*, 2009, p. 2.

It is worth initially noting some of the salient positive attributes that these reviews have assigned to the UPR. It is indeed universal and innovative in nature. It creates domestic momentum for human rights strengthening. It provides legitimization and entry points for NGO stakeholder engagement with governments. It is a forum for the exchange of best practices. Countries have taken it seriously, in that no state has refused to be reviewed. The process and tenor of proceedings have been relatively non-political in nature. It assists in the promotion of ratification of human rights instruments and the creation of national human rights institutions based on the Paris principles. It creates further precedent for self and mutual assessment. The UPR is also seen as providing a forum and impetus for expanded human rights dialogue between the State under Review (SuR) and recommending states, and the SuR and international institutions.

Notwithstanding the above comments, many ideas surfaced on how to strengthen the mechanism. Of the proposals summarized below, the three most frequently cited were 1. increased international support for the UPR; 2. UPR recommendations to be made more specific and action-oriented; and 3. more coherent consolidation and thematic organization of UPR recommendations.

In order to increase accountability it was suggested that recommendations be more specific, with increased clarity of which recommendations end up being accepted and which are not. There was also focus on the strengthening the role of the Troika, although this was sensitive topic because of the subjective judgements involved in how to organize and streamline recommendations. Considerable attention was paid to how to organize and rationalize what is currently a hodgepodge of recommendations to SuRs; recommendations include clustering them thematically and merging identical recommendations. Relatedly, much attention was focused on rationalizing the process for signing up to make recommendations to the SuR (which must be done orally).¹⁷ A consensus was that that the speaker's list management does not function well, and states that are most sympathetic to the SuR tend to have a preponderance of the speaking time. Based as it is on a first-come first-serve policy, the current process for presenting recommendations can bias the number of recommendations made and who makes them, and risks delegitimizing the entire UPR. Evidence also exists of some SuRs lobbying friendly countries to be sure to make 'softball' recommendations. Brett (2009) also noted this problem when China, Cuba and Russia each had their reviews.¹⁸

¹⁷ <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx>.

¹⁸ Rachel Brett, "A Curate's Egg: The UN Human Rights Council, Year 3", Quaker United Nations Office, Geneva, 2009.

Much concern was expressed about time management, and recommendations were made regarding how the interactive dialogue could be more effectively managed, both from the time allocation and equity of perspective viewpoints. Some believed that the four-year period between reviews was either too long or too short, and there is a question of what action steps the Council or the SuR should take after periodic reviews. Most specifically, whether at subsequent reviews, the SuRs should present a progress report on previously accepted recommendations or simply focus on the current human rights situation. Many proposals emphasized the utility of mid-term reviews, in which SuRs would issue a self-assessment.

Recommendations included that the HRC should acknowledge and promote the important role that NGOs have to play in terms of observing, as well as providing information, input, and feedback to the HRC's proceedings. NGOs assert that they are not given sufficient advance notice of meetings and HRC sessions. Concerns were also expressed that the UPR remains too much in a 'Geneva bubble' with insufficient focus at the national and regional level.

In June 2011 the UN General Assembly approved the final reform package. Its key elements include:

- *Responses to Recommendations*: States should clearly communicate to the Council, in a written format preferably prior to the Council plenary, its positions on all received recommendations (para. 16, resolution A/HRC/RES/16/21)
- *Role of NGOs*: States are encouraged to conduct broad consultations with all relevant stakeholders on the follow-up (para. 17, resolution A/HRC/RES/16/21) Other relevant stakeholders are encouraged to include in their contributions information on the follow-up to the preceding review (para. 8, resolution A/HRC/RES/16/21)
- *Duration of the Review*: Each review will last 3.5 hours. The State under Review (SuR) will be given 70 minutes and other States 140 minutes (part III, decision A/HRC/17/L.29).
- *List of Speakers*: The list of speakers will open on the Monday of the week preceding the beginning of the Working Group session. For each review, States will be arranged in English alphabetical order and the beginning of the list will be drawn by lot (part IV, decision A/HRC/17/L.29)
- *Role of National Human Rights Institutions*: National Human Rights Institutions (NHRIs) with A status will have a dedicated section in the summary of other stakeholders' information (para. 9, resolution A/HRC/RES/16/21. NHRIs will be given the floor directly after the SuR during the adoption at the HRC plenary session (para. 13, resolution A/HRC/RES/16/21)

- *Mid-term Reports*: States are encouraged to provide the Council, on a voluntary basis, with a midterm update on follow-up to accepted recommendations (para. 18, resolution A/HRC/RES/16/21)
- *Focus of the next cycles*: The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the SuR (para. 6, resolution A/HRC/RES/16/21)

As with other aspects of the HRC, the UPR's structure represents a compromise between states with greater and lesser commitments to human rights protection, and between states with vastly differing perceptions of what should be the role and function of the HRC and the UPR.

There is, as the saying goes, much about which to be modest when assessing the UPR reform process. Perhaps the best that can be said is that it did not end up weakening the HRC. But many of the important reform ideas brought up in the process leading up to the adoption of the final report were not addressed. And many of those that were resulted only in minor fixes or adjustments. For example, no reforms emerged regarding Situations of Concern. And potentially important UPR reforms, such as strengthening the role of the Troika, or mandating mid-term reports, also failed to achieve the needed consensus to be included.

Comparison and Conclusions

The UPR and APRM represent two parallel processes which flow from a common desire to enhance international norm-setting and to bring a comparative perspective to the challenges of human rights and good governance. There are many similarities, which may be instructive for other peer review mechanisms. Both mechanisms were created at times of significant organizational change and systemic shifts in global politics. They were established by new entities that replaced predecessors which had been discredited as toothless and lacking in results – the APRM emerged with the birth of the African Union following the dissolution of the Organization of African Unity while the UPR was established after the dissolution of the Commission of Human Rights and the formation of the Human Rights Council. Both the APRM and the UPR were presented as key elements of the new mandate and commitment of the nascent organizations to impact positively on governance and human rights. The APRM in particular was created partly in response to shifts in development paradigm and also post-cold war dynamics marked by emphasis on democracy, good governance and accountability in national systems. The UPR, similarly, responds to seismic

shifts in post-cold war geopolitical axis stressing human rights over political centralization and totalitarianism.

Both initiatives are products of consensus decision-making processes, in which the lowest common denominator tends to prevail. Without this approach, however, it is difficult to believe that they would have ever seen the light of day. Both emphasize follow-up and actions to be taken as a result of the reviews. The APRM emphasizes NPoAs which are designed to encapsulate and operationalise the mechanisms major findings on a country basis. The rough equivalent in the UPR are the accepted recommendations, followed up by mid-term (voluntary) and country reports in preparation for the next four-year global assessment cycle. In both cases the extent to which civil society is permitted to be engaged varies.

Both are at their core voluntary systems. They reflect evolving concepts of national sovereignty as being relative rather than absolute in nature. States adhere by choice to the APRM; they do not have to accept recommendations in the UPR. Incentives for participation for both are largely reputational, as countries often participate to burnish their good governance credentials. Poor reviews affect states credibility on the international scene. In both systems how much real impact the mechanisms produce is related to the level of both openness of the governance system and the willingness of the political leadership to take the exercise seriously.

Both mechanisms represent potentially significant steps forward in the use of international organizations to promote universal norms in that they are designed to utilize peer review – and its attendant public exposure – to effect changes that promote human rights. In both mechanisms, however, compliance is an evolving question; at the beginning the compliance piece was poorly defined, but through practice it is becoming somewhat more institutionalized.

There are incentives and perceived rewards in both processes. They offer an opportunity for states to burnish their human rights profiles. They both represent a process through which participating members states can learn from best practices of other states. In fact, there has been considerable interest generated on the part of participating African states to learn more about 'developmental' states and how to use governance to impact positively on development. The APRM also has the effect of achieving more domestic accountability for governance reforms as opposed to the conditionality imposed western donors which have dominated the development scene for far too long, i.e. the experiences of structural adjustment conditionality for reforms.

They are, however, also distinct in many ways. One basic difference between the two mechanisms is that as regional and global norm setting organizations,

they employ two different approaches towards fulfilling their mandates. The UPR adopts a legal route to norm setting – meaning, it is a formal and full state membership organization with the aim for states to implement new or reinforce existing norms into laws. The APRM is a multi-stakeholder initiative, comprising governments, international organizations (AU/NEPAD), civil society and the private sector, with the aim of seeking solutions to governance problems through inclusive and deliberative approaches. With fewer countries to examine, the APRM instead is able to undertake a much more in-depth and rigorous examination of a broader range of issues. The mandates of each organization vary as the HRC focuses on human rights and NEPAD emphasizes governance.¹⁹

While all UN member states are subject to the UPR reviews, states are not required to participate in the APRM. In methodological terms, the APRM relies on in-depth assessment by experts, while the UPR process is more ad-hoc in nature. Non-state actors in the UPR are excluded from directly making recommendations. The APRM has set standards it strives collectively to achieve; its methodology is specific, with clear long- and short-term mandates and objectives with a clear governance and funding structure. It is more inclusive and uses a deliberate approach to norm setting and implementation. The UPR uses advocacy, negotiations, and dialogue to build consensus for norm setting. Finally, while the UPR represents in many ways a North-South dialogue forum on human rights standards, the APRM is a South-South cooperation framework on improving governance in Africa.

The major question is whether these mechanisms will gain their own momentum and evolve into processes that will have their own expectations and activities through practice, rather than imposed rules. For example, in the UPR it is becoming a practice that countries submit ‘mid-term reports’ to the HRC as they near 2 years after having a review. This was able to happen because of the voluntary nature of the process, rather than through coercion or other forms of overt pressure being exercised upon states which were reluctant to move ahead with this practice.

Both the APRM and the UPR’s support may be broad, but it is not necessarily deep among member states. Many may feel that they have to ‘go along’ with it, but they are either skeptical of its impact or, on the other hand, may fear it and have little interest in seeing it further develop. The job of reforming these instruments is thus one of working from the inside, and strengthening both specific functions such as the UPR and more generally shoring up their

¹⁹ There is considerable overlap as many of the UPR recommendations actually address governance issues and some APRM findings deal with human rights.

supporting constituencies. Developing and successfully implementing a strategy for increasing these mechanisms ability to effectively promote and protect good governance and human rights globally is a sensitive and delicate task, which must be done very carefully. It must take into account the multi-polar context in which the various regional groupings hold veto power.

To succeed, these initiatives will need to show that they bring meaningful change. Strengthening them will invariably be evolutionary rather than revolutionary. Reforms could help enable the APRM and UPR to escape the ignominious fate of other consensus based international initiatives such as the HRC's predecessor, the Commission on Human Rights or, more historically, the League of Nations and empower them to fulfill their common mandate to improve the quality of life, whether it be universally, or in Africa.

References

- Abraham, Megna. *A New Chapter for Human Rights*, International Service for Human Rights, 2006.
- . *Building the New Human Rights Council: Outcome and analysis of the institution-building year*, International Service for Human Rights, Geneva, 2007.
- African Union. *Declaration on the New Common Initiative*, AHG/Decl.1 (XXXVII), 2001 (Lusaka).
- . *Declaration on the Implementation of the New Partnership for Africa's Development (NEPAD)*, ASS/AU/Decl.1(1), 2002 (Durban). Chene, Marie and Dell, Gillian. *Comparative Assessment of Anti-Corruption Conventions' Review Mechanisms*, U4 Expert Answer, Transparency International, 2008.
- Brett, Rachel. "A Curate's Egg: The UN Human Rights Council, Year 3", Quaker United Nations Office, Geneva, 2009.
- Flockhart, Trine. *Socializing Democratic Norms: The Role of International Organizations for the Construction of Europe*, New York: Palgrave Macmillan, New York, 2005.
- Friedrich Ebert Stiftung. "Report on The Human Rights Council's Performance To-date", November 2010, <http://library.fes.de/pdf-files/iez/07625.pdf>.
- Herbert, Ross and Grudz, Steven. *The African Peer Review Mechanism: Lessons from the Pioneers*, Johannesburg : South African Institute for International Affairs, 2008.
- Lauren, Paul. "To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council", *Human Rights Quarterly*, vol. 29, #2, 2007.
- McMahon, Edward R. and Baker, Scott. *Piecing a Democratic Quilt: Universal Norms and Regional Organizations*, Bloomfeld: Kumerian Press, 2006.
- Meblle, Nobuntu. *The APRM Process in South Africa*, AfriMap, 2010.
- Pagani, Fabrizio. 'Peer Review: A Tool for Cooperation and Change – An Analysis of the OECD Working Method', OECD SG/LEG, 2002.
- Papoe, Adotey. *Ghana and the APRM Process: A Critical Assessment*, AfriMap, June 2007.
- AfriMap, *A Critical Review of the APRM Process in Rwanda*, 2007.
- Pevehouse, Jon C. *Democracy from Above: Regional Organizations and Democratization*, New York: Cambridge University Press, 2005.
- Vriens, Lauren. "Troubles Plague UN Council", Council on Foreign Relations, 2009.