

THE APRM PROCESS IN KENYA

A PATHWAY TO A NEW STATE?

Steve Ouma Akoth

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Preface

African states have undertaken a growing number of commitments to respect good governance since the African Union (AU) replaced the Organisation of African Unity (OAU) in 2002. By the Constitutive Act of the AU, African states are bound to promote human rights, democratic principles and institutions, popular participation and good governance. More specific commitments in relation to good governance are included in the framework of the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM).

In becoming one of the first four countries to open itself to the critical examination of the APRM, Kenya has contributed to the process of giving a practical form to the mechanism, which many other states have since adhered to. Now is the time to evaluate the credibility of the process and the extent to which it was a genuinely inclusive process, as required by the official guidelines for countries to prepare for and participate in the APRM.

This review of the APRM process in Kenya is one of series commissioned by AfriMAP, the Africa Governance Monitoring and Advocacy Project of the Open Society Institute's network of Africa foundations. The report – which was written by and represents the views of Steve Ouma Akoth, who participated in many of the meetings described here – analyses the extent to which the Kenyan process of self-assessment for the APRM respected the criteria of effectiveness and credibility defined by the APRM founding documents, in particular the extent to which it was open, participatory, transparent and accountable. Based on interviews with many of the participants, Ouma reviews the challenges faced during the process, including weaknesses in the National Governing Council and in civil society engagement, and problems with the conceptual framework of NEPAD and

the APRM itself. Though Ouma concludes that the APRM in Kenya was a 'state-centric process' he also believes that it has opened up an opportunity for dialogue between civil society and government that should be exploited during the implementation of the programme of action (PoA) formally adopted for Kenya in June 2006 by the APR Forum.

Kenyan civil society should be supported in its efforts to monitor the Kenyan government and its development partners as they set out to achieve the objectives set out in the PoA adopted as the culmination of the APRM review process.

Ozias Tungwarara
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Overview

This is a critical review of the self-assessment process conducted in Kenya for the African Peer Review Mechanism (APRM) from February 2004 through March 2006. The review identifies strengths and weaknesses of the APRM self-assessment in Kenya and examines the engagement of civil society organisations with the process.

The review concludes that, while the APRM process in Kenya did yield a significant amount of quality data and a valid report, the process was not as empowering and inclusive as it should have been. The preparation of the APRM self-assessment report in Kenya did not foster a significant dialogue between Kenya's government and its people. In part, this failure can be blamed on the way in which the self-assessment was carried out. But it was also because the focus of the report was on the efficiency and effectiveness of government, failing to assess a more critical issue: the design of Kenya's state and governmental structures and the dynamics of the struggle to establish democratic decision-making mechanisms and safeguard human rights. For this reason, the process did not encourage Kenyan citizens to use their full potential to influence the ways their government is structured and operates.

The review outlines specific recommendations for more active civil society engagement in the implementation of the PoA prepared to address the challenges identified by the APRM process in Kenya, which was endorsed by the heads of state participating in the APRM in June 2006. Although there were tensions among the civil society organisations that participated in the self-assessment process, the refinement and implementation of the PoA presents opportunities to advocate for a 'new moral governance code' for Kenya and to strengthen the ability of Kenyans to engage themselves in an effort to improve governance in their country.

For this to happen, however, both government and civil society will have to intensify their engagement with the APRM process. They will have to broaden their approach to the PoA in order to make it something more than a rebranding of existing government reform programmes. The departure of the former Minister for Planning and National Development, Peter Anyang' Nyong'o, the APRM's principal advocate inside the government, might make this more difficult. The National Governing Council for the APRM in Kenya was also dissolved at the end of 2005, and replaced by a steering committee dominated by government officials. Civil society organisations committed to democracy and human rights must organise to ensure that the opportunities presented by the APRM process and the PoA are not wasted.

Kenya and the APRM process

Kenya signed the memorandum of understanding committing it to a review by the APRM in March 2003, barely three months after elections ended over forty years of rule by the Kenya African National Union (KANU) and brought to power a new government led by the National Rainbow Coalition (NARC). In February 2004, when the APRM process was launched at a meeting of participating states, Kenya was one of the first four countries to be chosen to undertake a review.

The conduct of the APRM is a five-stage process, and results in two reports: a self-assessment report, completed in the country concerned through a participatory process led by the government; and a peer review report, compiled by members of the APRM 'panel of eminent persons', the APRM Secretariat and technical advisers. The bulk of the work for

Kenya's self-assessment report on the four areas covered by the APRM – political governance and democracy, economic governance and management, corporate governance, and socio-economic development – was carried out during 2005, and the report was submitted to the APRM Secretariat in September 2005. In October 2005, the member of the APRM panel assigned to Kenya, Dr Graça Machel, visited Kenya on a country review mission to consider the findings of the self-assessment and complete the APRM eminent persons' country review report. On 30 June 2006, Dr Machel presented the country review report and the PoA agreed with the government to the APR Forum, the committee of heads of state and government participating in the APRM, at the AU summit in Banjul, Gambia. The Forum debated and formally adopted the documents.

Of the self-assessments undertaken by the first four countries to engage in the APRM process (Kenya, Ghana, Mauritius and Rwanda) Kenya's has been rated as perhaps the most widely consultative. During the process, workshops were held throughout the country, and a wide range of opinions on the state of governance in Kenya were canvassed. Minister Nyong'o, the focal point for NEPAD and the APRM in Kenya, gave the process his full political and technical commitment, and his support was important in ensuring the success the self-assessment achieved. Also important was the establishment of a broadly representative National Governing Council (NGC) to guide the process and ensure a degree of independence from government control. The NGC in Kenya eventually had 30 members, though only 20 had the power to cast votes. Majority civil society participation in the NGC was achieved only after the intervention of Dr Machel. Although the NGC faced avoidable problems in practice, it proved to be a useful mechanism.

Methodological instruments

The four 'lead technical agencies' that were put in charge of data collection for the self-assessment developed instruments adapted to the Kenyan context and, for this purpose, modified the official APRM questionnaire developed by the South Africa-based APRM Secretariat.

These instruments consisted firstly of a *desk research instrument* designed to guide researchers to sources and help them focus on core issues of governance, both nationally and within the framework of the international codes and protocols to which Kenya is a signatory. Second, they developed an *expert panel instrument* to guide face-to-face interviews with experts and elicit responses that could be analysed quantitatively. Third, they organised a *national sample survey of households* and designed a questionnaire

to register the perceptions of ordinary citizens on governance issues. Enumerators from the Central Bureau of Statistics, locally based and fluent in vernacular languages, conducted personal interviews with 1 850 heads of household across the country during August 2005. Fourth, during August 2005, they organised 128 *focus group discussions* across the country, each with an average of 15 participants. Civil society organisations involved in the APRM process in Kenya also conducted specific stakeholder forums between March and August 2005. During these forums, farmers, women's organisations, business people, managers, church leaders, youth, and schoolchildren gave their views on various aspects of governance as they experience it.

Contribution to debate on governance in Kenya

This process and the instruments devised for the APRM research mean that Kenya's self-assessment yielded, in some respects, the most comprehensive documentation to date of the political, social, cultural and economic situation in Kenya. The APRM process has helped give ordinary Kenyans some voice to their concerns, and the process, coupled with the much contested constitutional review which was under way during the same period, shows that Kenyans want more say in how their country is governed.

The APRM panel's country review report also provides a critical analysis of the problems facing Kenya at this point in its history, and did not shy away from calling for difficult decisions to be made and implemented. (At this stage, only the APRM eminent persons country review report is publicly available; the self-assessment report has not been published, though it can be obtained from the NEPAD Kenya Secretariat.) Paired with the panel's report is the PoA agreed with the government and adopted by the APRM Forum, which identifies actions for the government to undertake, and is perhaps the most important component of the process.

Despite these strengths, there are concerns about the Kenya APRM self-assessment process. First, questions arose concerning the autonomy of the NGC, particularly after Minister Nyong'o dismissed three council members, including its chairperson, without a satisfactory procedure. This episode, combined with the difficulty of ensuring civil society involvement in the self-assessment process and failure of civil society organisations to engage effectively, shows that the state and its organs dominated Kenya's review process in a way that made it more of a data collection exercise than an effective appraisal intended to generate significant debate and follow-up.

Nonetheless, there are new possibilities in the APRM process. The process has supported the development of a culture of accountability, which is a core ingredient of human rights-centred democratic governance. This is an important shift in the tradition of the Organization of African Unity, now the African Union, which was initially characterised by a policy of 'non-interference'. The APRM process provides an additional political forum for civil society to address its traditional messages of social justice. Building upon the report's foundation, civil society organisations should now articulate specific demands aimed at reforming state structures, targeting such areas as the constitutional review, transitional justice, and the accountability of legislators and members of the executive.

The New Partnership for Africa's Development and the African Peer Review Mechanism

The New Partnership for Africa's Development (NEPAD) is a strategic framework setting out a vision for Africa's renewal. The heads of state of five countries – Algeria, Egypt, Nigeria, Senegal and South Africa – initiated NEPAD, and its founding document was formally adopted by the 37th summit of the Organization of African Unity (OAU) in Lusaka, Zambia, in July 2001. NEPAD is now a programme of the African Union (AU), successor to the OAU, and it has its own secretariat based in South Africa to coordinate and implement its programmes. Successive AU summits have proposed greater integration of this secretariat and NEPAD in general into the AU processes and structures.

NEPAD's four primary objectives are to eradicate poverty, to promote sustainable growth and development, to integrate Africa in the world economy, and to accelerate the empowerment of women. It is based on underlying principles of a commitment to good governance, democracy, human rights, and conflict resolution and the recognition that maintenance of these standards is fundamental to the creation of an environment conducive to investment and long-term economic growth. NEPAD seeks to attract increased investment, capital flows, and funding by providing an Africa-owned framework for development as the foundation for partnership at regional and international levels.

NEPAD is governed by a Heads of State and Government Implementation Committee (HSGIC). The HSGIC comprises three states for each region of the African Union, with

President Olusegun Obasanjo (Nigeria) as elected chair, and President Abdelaziz Bouteflika (Algeria) and President Abdoulaye Wade (Senegal) as deputy chairmen. The HSGIC reports to the AU Assembly of Heads of State and Government. There is also a steering committee, comprising 20 AU member states, to oversee projects and programme development.

In July 2002, the Durban summit of African heads of state – the first of the African Union – supplemented NEPAD with a Declaration on Democracy, Political, Economic and Corporate Governance. According to the Declaration, states participating in NEPAD 'believe in just, honest, transparent, accountable and participatory government and probity in public life'. Accordingly, they 'undertake to work with renewed determination to enforce', among other things, the rule of law; the equality of all citizens before the law; individual and collective freedom; the right to participate in free, credible, and democratic political processes; and adherence to the separation of powers, including protection for the independence of the judiciary and the effectiveness of parliaments.

The Declaration on Democracy, Political, Economic and Corporate Governance also committed participating states to establish an APRM to promote adherence to and fulfilment of its commitments. The Durban summit adopted a document setting out the stages of peer review and the principles by which the APRM should operate.

In March 2003, the NEPAD HSGIC met in Abuja, Nigeria, and adopted a memorandum of understanding on the APRM. This memorandum of understanding effectively operates as a treaty. It entered into effect immediately when six states agreed to be subject to its terms, including Kenya; as of June 2006, 25 countries had acceded. Those that have not are not subject to review. The March 2003 meeting also adopted a set of 'objectives, standards, criteria and indicators' for the APRM. The meeting agreed to the establishment of the APRM Secretariat, also based in South Africa, and the appointment of a seven-person 'panel of eminent persons' to oversee the conduct of the APRM process and ensure its integrity.

The APRM Secretariat, which began functioning by late 2003, developed a survey questionnaire based upon a wide range of African and international human rights treaties and standards to guide the participating states' self-assessments of their compliance with NEPAD's principles. Its questions are grouped under four broad thematic headings: democracy and political governance, economic governance and management, corporate governance, and socio-economic development. The questionnaire was formally adopted in February 2004, in Kigali, Rwanda, by the first meeting of the APRM Forum, which is made up of representatives of the heads of state or government of all states participating in the APRM. At this point, the formal process of peer review was ready to start. The meeting identified the first four countries to undergo review as Ghana, Kenya, Mauritius and Rwanda.

Each country to be reviewed is assigned to one of the panel of seven 'eminent persons' who consider and review reports and make recommendations to the APRM Forum. The seven eminent persons are: Marie Angélique Savané (Senegal), chair; Adebayo Adedeji (Nigeria); Bethuel Kiplagat (Kenya); Graça Machel (Mozambique); Mohammed Babes (Algeria, replacing the original Algerian appointee, Mourad Medelci); Dorothy Njeuma (Cameroon); and Chris Stals (South Africa). At the national level, participating countries establish a national focal point and a national coordinating committee to drive the review process and liaise with the APRM Secretariat.

The APRM documents identify five stages in the review process. The first and most important is that of self-assessment. A country support mission from the APRM secretariat led by the assigned eminent person visits the participating country to ensure a common understanding of the rules, processes and principles of the APRM. The team liaises with the country focal point and organises working sessions and technical workshops with stakeholders; the eminent person signs a memorandum of understanding with the government on modalities for the country review mission.

The country then begins its self-assessment report, based on the APRM questionnaire. The country is also expected to formulate a preliminary PoA based on existing policies, programmes and projects. The self-assessment is supposed to involve the broad participation of all relevant stakeholders, including civil society organisations as well as government ministries and departments.

Second, a country review team – also led by the eminent person and made up of representatives of the APRM Secretariat and of the APRM partner institutions, which include the UN Economic Commission for Africa (UNECA), the African Development Bank and other institutions – visits the country to carry out broad consultations, clarify any issues that may require discussion, and help to build national consensus on the way forward.

During stage three, the country review team drafts a report based upon the information it has gathered during its review mission and on independent issues papers developed by the APRM Secretariat; the team then shares its findings with the government. Based on the self-assessment report and the country review team's report, the country finalises its PoA outlining policies and practices for implementation. In the fourth stage, the country review team's report and the PoA are presented at the APRM Forum by the eminent person and the country's head of state or government for consideration by the other participating heads of state and government. Finally, after the report has been considered by the APRM Forum, it is tabled at the AU Summit before being made public.

Implementing the APRM in Kenya

A benchmark for the new government

A National Steering Committee for NEPAD was established in Kenya in September 2002, during the last months of the KANU government led by President Daniel arap Moi.¹ After decades of arbitrary misrule and dramatic elections in December 2002, a new government of the National Rainbow Coalition (NARC) came into office, completing the first electoral transfer of power in the country's history. One of the early acts of the new government was to reconstitute the NEPAD Steering Committee, to be chaired by the Minister for Planning and National Development, Professor Peter Anyang' Nyong'o. In March 2003, the new government was among the first to sign the memorandum of understanding establishing the APRM review process. The APRM appeared to offer the NARC government a benchmark by which it could measure its success in leading Kenya out of the 'wilderness and malaise' in which the country found itself after KANU and President Moi were swept aside.²

The new NEPAD National Steering Committee included nine permanent secretaries of ministries,³ the vice chancellor of the University of Nairobi, a representative of a private university, two representatives of the private sector (the head of the Kenya Association of Manufacturers and a

representative of the Kenya Association of Bankers), and two representatives of non-governmental organisations (NGOs).

In April 2003, the NEPAD Steering Committee established the national NEPAD Kenya Secretariat, with an allocation in the country's national budget. This secretariat comprised three people: a chief executive officer (CEO), recruited competitively from the private sector, a public relations/communications coordinator and a personal assistant seconded from the Ministry of Planning. Pete Ondeng was appointed as the first CEO. Later that year, the Eastern Africa NEPAD summit held in Nairobi on 28 October 2003 mandated Kenya to undertake the coordination function of NEPAD activities in Eastern Africa.⁴

The Ministry of Planning was at the same time involved in the development of the Economic Recovery Strategy for Wealth and Employment Creation (known as the ERS), which was launched by the government in June 2003. Minister Nyong'o stated that the government saw the ERS as realising some of the objectives of the NEPAD agenda and therefore linked with its commitment to NEPAD.⁵

The APRM process in Kenya also took place during the same period as a re-energised constitutional review, many of whose debates were relevant to the issues being considered by the self-assessment. In March 2004, the NARC government convened a National Constitutional Conference to consider the work of the Constitution of Kenya Review Commission appointed by the former KANU government in 2002. Following this conference, a number of new texts

1 NEPAD Kenya Secretariat, Strategic Framework (revised), March 24, 2004, Nairobi, Kenya. The Committee was then chaired by the Head of Public Service and Secretary to the Cabinet: Ministry of Planning and National Development, 'Appointment of National NEPAD Steering Committee', Gazette Notice No. 9526.

2 H.E. Mwai Kibaki, President of Kenya, Inauguration Speech, 30 December 2002.

3 From the Ministries of Planning and National Development, Tourism and Information, Finance, Trade and Industry, Foreign Affairs and International Cooperation, Energy, Environment and Natural Resources, and Works and Public Works.

4 Report of the NEPAD Eastern Africa Region Ministerial meeting, 28 October 2003.

5 Interview with Professor Nyong'o, 17 September 2005.

were produced by parliamentary and cabinet committees, culminating in a referendum held on 21 November 2005, in which 57 per cent of the electorate rejected the draft constitution proposed by the government.

The government's high-level task force

In February 2004, Minister Nyong'o informed the first meeting of the committee of participating heads of state and government in the APRM, known as the APRM Forum, that Kenya was ready to begin the formal review process. Kenya thus entered a relationship with the APRM Secretariat and the panel of seven 'eminent persons' responsible for overseeing the implementation of the APRM. The panel member assigned to follow the Kenya process was Dr Graça Machel.

In preparation for this process, the government published an 'African Peer Review Mechanism Implementation Strategy for Kenya', which confirmed the Ministry of Planning and National Development as the host ministry for the APRM process and announced the establishment of an APRM Task Force at national level.⁶ The key functions of the Task Force were to: propose 'a detailed timeline' for the process; develop the terms of reference and guidelines for the various structures of the APRM in Kenya, including the National Governing Council which was to oversee the process; set its overall direction; and ensure that the APRM process in Kenya was not solely government-driven. Chaired by the permanent secretary in the Ministry of Planning and National Development, David Nalo, the Task Force was initially made up of government officials from the Ministries of Justice and Constitutional Affairs, Finance, Foreign Affairs, Trade and Industry, and Agriculture and from the Office of the President and the Central Bureau of Statistics. After its first three meetings, held between February and March 2004, the Task Force decided to invite as members representatives from the private sector, civil society organisations (CSOs), universities and independent research institutes, and faith-based organisations. Some of the civil society organisations invited at this stage included the Kenya Human Rights Commission (KHRC), Transparency International, and the Federation of Women Lawyers (FIDA-Kenya).

Relations between the government and CSOs about the implementation of the APRM got off to a bad start. At a workshop on the APRM organised during April 2004 in Nairobi by the South African Institute of International Affairs (SAIIA), Minister Nyong'o confirmed that the review was

going ahead and said that the government would select representatives from among the CSOs to take part in the Task Force. This was news to many of the CSOs at the workshop.⁷ The National Council of Non-Governmental Organizations (the NGO Council) – a statutory membership body that represents all registered NGOs in Kenya and has a mandate to enhance self-regulation of its members and their adherence to the law – immediately wrote to the minister, protesting that it was the right of CSOs independently to agree both on their representatives and on their mode of engagement with the government. Grace Akumu, director of Climate Network Africa, who had been elected by CSOs to be their 'focal point' in their dealings with NEPAD and the APRM, wrote separately to the minister, arguing that it was the NGO Council and the CSOs' NEPAD focal point, and not the government, that should have been mobilising and organising the participation of CSOs in the APRM process.⁸ On 8 May, Grace Akumu hosted a NEPAD CSO Stakeholders' Consultation Forum in order to start identifying CSO representatives who were interested in taking part in the review. By June 2004, she had received thirty-six nominations and submitted a list to the Ministry of Planning and National Development.⁹

The APRM Task Force that was inaugurated by the minister in June 2004, included all the members of the NEPAD National Steering Committee, plus prominent CSOs – the KHRC, Transparency International, FIDA-Kenya, the NGO Council, and the African Youth Parliament – as well as the government-funded Kenya National Commission for Human Rights.

CSOs developed a clear sense that they were, in the main, being excluded from the direction of the review. On 23 June, the KHRC announced it was seeking a mechanism for expanding the prominence of CSOs in the review process. It urged CSOs to prepare themselves for the national stakeholders' meeting, or APRM Consultative Forum, which the government was planning for mid-July.

In the meantime, the APRM Task Force had begun to hold discussions with leaders from the media, civil society and the private sector. It was the Task Force's responsibility to identify stakeholders for the July meeting, and send out invitations.

⁶ Government of Kenya, *Africa Peer Review Mechanism Implementation Strategy for Kenya*, 14 February 2004.

⁷ This was reported by Grace Akumu during the CSO planning meeting on the APRM held at the Kenya Human Rights Commission on 23 June 2004.

⁸ Interview with Oriie Rogo Manduli, 20 April 2006.

⁹ Climate Network Africa, *NEPAD Civil Society Engagement Workshop Report*, Nairobi Safari Club, 1 October 2004.

On 12 July, two days before the forum was due to begin, CSOs attended a preparatory meeting convened by Grace Akumu as the CSO focal point for NEPAD. Many CSO representatives said their organisations had not received invitations to the forum. Grace Akumu reported that she had been invited to the forum only three days earlier by Permanent Secretary Nalo – by telephone and not by a letter or other more appropriate written communication.¹⁰

The APRM Consultative Forum

The APRM Consultative Forum in July 2004 launched the APRM as a public process. In his opening address, on 14 July, Minister Nyong'o said one of its primary goals was to create a sense of national ownership of the review. The Forum was intended to introduce the APRM questionnaire, the various research instruments developed by the Task Force, and the four thematic review groups – political governance and democracy, economic governance and management, corporate governance, and socio-economic development – whose conveners had been pre-selected by the Task Force mainly on the advice of the Ministry of Planning.¹¹

At this initial stage, it would probably have been better for either the NEPAD Secretariat or the Task Force to convene the forum and for the government to attend as a stakeholder. Although the government did not seek deliberately to exclude CSOs, it had not taken the time to organise structured dialogue with, and inclusion of, the CSOs. In the opinion of Grace Akumu, leaving it to the government to choose whom to involve in the review would compromise collective action by the CSOs.¹² It is fair to say that consensus in support of the APRM process at this stage was weak.

The problematic issues raised at this first stakeholder forum demanded rapid responses, and a second forum was convened within a week to 'complete the domestication of the APRM questionnaire', agree on who would be the conveners of the four thematic review groups, and nominate the National Governing Council.¹³ This was a heavy agenda for a one-day meeting; the reason for the rush was a forthcoming visit by the APRM country support team, which

was scheduled to begin on July 26. The second forum took an important decision: that it would be the members of the thematic working groups, and not the minister or the Ministry of Planning, who would nominate the members of the National Governing Council. Nonetheless, NGOs were angry that they had received their invitations to the forum only the day before, and in fact only three were present at the forum.

After consultations, the NGOs decided that Grace Akumu, in her capacity as the CSO NEPAD focal point, should lead a protest walkout by CSOs. In her subsequent letter to Permanent Secretary Nalo, Akumu complained that, among other things, the NGOs had only received the text of the revised APRM questionnaire during the course of the forum. She alleged that the government was favouring 'some groups within the Civil Society Organizations' who had 'been effectively empowered by adequate and timely information, which allowed them to participate effectively', while others were being excluded.¹⁴

This walk-out and Grace Akumu's letter had the effect of making it difficult for other NGOs to get involved in the review process for fear of being seen to contradict the CSO NEPAD focal point, particularly since Akumu announced in her letter to Nalo that 'unless the Government reassures our constituency that it will treat all stakeholders equally... our group will remain outside the Kenya Review process as a matter of principle'.¹⁵ NGOs were reluctant to be seen contradicting her.¹⁶

The country support mission

The APRM country support mission began its work in Kenya on 26 July 2004. It was headed by Dr Graça Machel and included senior personnel from the African Development Bank, the United Nations Development Programme (UNDP), the United Nations Economic Commission for Africa (UNECA), and the NEPAD and APRM Secretariats in South Africa. In line with APRM procedures, the task of this mission was to assess Kenya's readiness to undertake the review and offer technical assistance; if the support mission determined that preparations were in place, Dr Machel would sign a memorandum of understanding with the government of Kenya which would commit the government to producing its self-assessment report within the next nine months.

10 Email from Grace Akumu to CSOs, 'Yesterday's APRM Stakeholder Meeting – 14 July 2004', 15 July 2004 (on file with the author).

11 *Draft Report: Inaugural African Peer Review Mechanism (APRM) Consultative Forum, Kenya Institute of Monetary Studies, 14 July 2004.*

12 Comments during the meeting between the Permanent Secretary Ministry of Planning and National Development and members of the NGO Council at the NGO Council offices, 9 August 2004 (notes on file with the author).

13 African Peer Review Mechanism (APRM) second consultative forum, Kenyatta International Conference Centre, Nairobi, 21 July 2004.

14 Letter from Grace Akumu to David Nalo, 21 July 2004 (on file with the author).

15 *Ibid.*

16 Interviews with representatives of the NGOs in the National Governing Council, March 2006.

The Ministry of Planning had produced a 'Task Force road map' for the review, which it proposed should begin on 5 August, with the announcement of a National Governing Council for Kenya's APRM process, and end on 25 February 2005, with the presentation of the self-assessment report to the APRM eminent persons panel. Dr Machel's team praised the road map as well as a number of the other actions taken to date, including the appointment of the Ministry of Planning and National Development as the national focal point for the APRM process; the establishment of the APRM Task Force pending the appointment of the National Governing Council; and the consultative forums of 14 and 21 July, which had 'culminated in the proposal of nominees to the National Governing Council'.¹⁷

On the morning of the second day of their mission, 27 July 2004, Dr Machel and the country support team met with CSOs. The official note of the meeting is diplomatic; it says 'The Africa Youth Parliament and the Kenya NGO Council expressed their views on the unfolding of the national process so far.'¹⁸ Some 300 CSOs attended; their views were put principally by Francis Ang'ila, chief executive of the NGO Council; Grace Akumu, in her capacity as the CSO NEPAD Focal Point; and Steve Ouma Akoth of the KHRC, as a member of the Task Force. The first point the CSOs made was that they were concerned that the review process was being rushed. They said that the country had not had enough time to consult and that, if the process was hurried, it would make a mockery of the exercise. They also insisted that the review should not be simply an urban affair; other regions had to be involved in the process. Grace Akumu gave an account of CSOs' relations with the NEPAD/APRM process up to that point and warned that the government had failed to involve CSOs effectively.¹⁹

Dr Machel then requested Permanent Secretary Nalo to organise a follow-up meeting with NGO Council members in order to devise the best possible mechanism for ensuring full participation by CSOs in the APRM process.²⁰ According to the communiqué of the support team visit, Dr Machel 'reiterated the importance of establishing a national commission that was inclusive of all stakeholders including religious organizations, women organisations, rural populations, urban poor and other key stakeholders'. The communiqué also recorded a decision of the Task Force and the country support team to delay the announcement of the

National Governing Council from 5 August to 20 August. The memorandum of understanding was, however, signed.²¹ Kenya committed itself to deliver its self-assessment report by the end of March 2005.

Increasing CSO representation in the National Governing Council

The APRM National Governing Council was officially launched by Minister Nyong'o in October 2004 – though some members were only finalised in December 2004 – and the full body held its first meeting in January 2005. Why did the process take so long? There is no question that initially there had been no clear plan on the part of government to involve CSOs in the review in a structured way.²² Despite the instructions from the continental NEPAD and APRM Secretariats that the APRM self-assessment process should be participatory,²³ only intensive lobbying by CSOs and the intervention of Dr Machel during the APRM country support mission had brought them on board. In addition, there were challenges in relation to administrative capacity, as well as the distraction of ongoing disputes among politicians and civil society over the long-running constitutional review process. The resignation of Pete Ondeng as CEO of the NEPAD Kenya Secretariat in late 2004, followed by an interregnum of a few months under an acting director until the new CEO, Grace Ongile, was appointed in early 2005, may have contributed to these problems.

On 9 August 2004, two weeks after Dr Machel's visit, members of the NGO Council met with David Nalo and members of his APRM team from the Ministry of Planning. David Nalo presented an update on the structures and processes that had been established to that point to support the review, and emphasised that it was important for CSOs to participate. After he and his team had left the meeting, held at the NGO Council offices, it was decided that the

17 *The African Peer Review Mechanism (APRM) Support Mission to Kenya, 26 to 27 July 2004, Communiqué signed by Dr Graça Machel and David S.O. Nalo, Nairobi, 27 July 2004, attached as Annex 3.*

18 Ibid.

19 Memorandum submitted to the Country Support Mission/CSO Consultations, Intercontinental Hotel, Nairobi, 27 July 2004 (on file with the author).

20 This meeting took place on 9 August 2004.

21 *The African Peer Review Mechanism (APRM) Support Mission to Kenya, 26 to 27 July 2004: Communiqué, 27 July 2004.*

22 Interview with Kennedy Masime, CEO, Centre for Governance and Democracy, 29 April 2006.

23 AU-NEPAD, *Guidelines for Countries to Prepare for and Participate in the African Peer Review Mechanism (APRM)*, NEPAD/APRM/ Panel3/guidelines/11-2003/Doc8. According to Principle 13 of the Guidelines, 'The APRM process is designed to be open and participatory. Through a participatory process, the APRM will engage key stakeholders to facilitate exchange of information and national dialogue on good governance and socio-economic development programmes, thereby increasing the transparency of the decision-making processes, and build trust in the pursuit of national development goals.' (Underlined in the original text.) The Guidelines were adopted at the 6th Summit of the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD on 9 March 2003.

best way to organise CSOs to participate was to select CSO conveners for the four thematic groups. In this way, NGOs and the community could be mobilised to participate in the APRM process. NGO Council members offered to be transitional conveners in order to make the process credible and transparent and enable wider participation by the NGO membership.

The four organisations that presented themselves as transitional conveners were:

- for democracy and political governance, the Kenya Human Rights Commission (KHRC);
- for economic governance and management, the Centre for Governance and Development (CGD);
- for corporate governance, Climate Network Africa (CNA); and
- for socio-economic development, the Family Support Institute (FASI).

The major purpose of these conveners was to coordinate a participatory process of selecting CSOs to engage in the APRM process. The meeting also decided the procedure to choose the long-term conveners (who would also become non-voting members of the National Governing Council). All members of the NGO Council were to be emailed and asked to nominate a convener for the thematic group into which their activities naturally fell. The Family Support Institute was to coordinate nominations and organise the vote.

As a result of this process and of the nominations made at the two consultative forums that had taken place in July 2004, the National Governing Council for the APRM, when it was finally launched, did have a high degree of CSO participation. Moreover, the process of establishing it had become reasonably participatory and inclusive, under CSO pressure and through the intervention of Dr Machel.²⁴ In addition to sixteen civil society representatives on the NGC, the permanent secretaries of the five ministries directly involved in the review were voting members,²⁵ as was the solicitor-general and the chair of the Electoral Commission of Kenya. Representatives of the lead technical agencies directing research in the four thematic areas were non-voting members. The conveners of the four thematic groups were also on the council, but without votes. All members of the NGC were officially appointees of the Ministry of Planning and National Development.

The Kenya APRM National Governing Council held its first meeting on 26 January 2005, and Grace Akumu of Climate

²⁴ Full details of the names and organisations appointed to the National Governing Council can be found in Annex 1.

²⁵ Planning and National Development, Foreign Affairs, Governance and Ethics, Justice and Constitutional Affairs, and Finance.

Network Africa, the CSO NEPAD focal point, was elected chair.

Appointment of the lead technical agencies

Quite early on in the Kenya process it was decided to appoint lead technical agencies to direct research, write the self-assessment report, and develop the PoA that would follow it. Nominations to take on these positions had been made at the two consultative forums in July 2004 and were approved by the Ministry of Planning and National Development and the APRM Kenya Secretariat. The organisations chosen were reputable independent research institutes:

- for democracy and political governance, the African Centre for Economic Growth (ACEG);
- for economic governance and management, the Kenya Institute for Public Policy Research and Analysis (KIPPRA);
- for corporate governance, the Centre for Corporate Governance (CCG); and
- for socio-economic development, the Institute for Development Studies (IDS).

Stakeholder forums – taking the African Peer Review process to the citizens

In the months after the appointment of the National Governing Council, stakeholder forums were organised by the NGO thematic conveners and others, in conjunction with the NEPAD Kenya Secretariat.²⁶

Even though many of these meetings were well attended, they did not necessarily serve to enhance dialogue between the government and the governed. The meetings were designed to generate credible information; but too often they failed to provide an equally needed platform for ‘national dialogue on good governance and socio-economic development programmes’ of the government, as required in the APRM Guidelines. The key drivers of the APRM process must combine the scientific nature of the process and create an environment of dialogue. There should be a balance between the technical – the scientific rigour of the research tools and process; and the political – the ability of the process to create popular space for interaction between the governors and the governed. While most stakeholder forum meetings were well

²⁶ A sample of forums organised by the National Governing Council is attached as Annex 2.

sampled to provide the required data through clear criteria, they failed to promote open dialogue because, during the meetings at the provincial level, most government officials resorted to defensive positions instead of constructively engaging participants' concerns.

Nonetheless, consultation with a wide cross-section of Kenya's citizens regarding their experience of governance and the development of research instruments to allow these consultations to take place in an effective, consistent, and scientifically verifiable form were key achievements of the APRM process in Kenya. Central to this was the 'domestication' of the questionnaire developed by the APRM Secretariat in South Africa.

Focus group discussions and the national householder survey: 'domesticating' the APRM

The decision to find ways to make the generic questionnaire developed by the APRM Secretariat to assist countries to undertake their self-assessment relevant and comprehensible in the Kenyan context was taken during the two consultative forums in July 2004, after the idea had emerged within the APRM Task Force. As a result of intense activity by the lead technical agencies, the thematic groups and their conveners, four research instruments were developed. On the one hand, these instruments effectively captured a wide range of Kenyan public opinion and experience in relation to governance; and on the other, they allowed for scientific analysis of these opinions and the other material generated during the review.²⁷

The desk research instrument. The lead technical agencies set up a working group to develop a questionnaire that would guide researchers to focus on core issues of governance in the four thematic areas, and the desk research instrument was the result. The aim was to generate material that would enable the authors of the self-assessment report to describe trends and, where possible, back up their assertions with analytical tables. The structured nature of this questionnaire did contribute significantly to the gathering of data.

The expert panel instrument. This was developed to guide face-to-face interviews with a cross-section of experts in each of the four thematic areas. Questions were formulated to elicit answers that could be analysed quantitatively (yes/no; scoring on a scale of 1 to 5; and so forth), and to avoid inadequate responses. The experts were expected to answer

all the questions, and the questionnaire was sent to them in advance. Guidelines were developed to help interviewers assure the reliability of the responses.

Experts were selected with due attention to age, gender, level of education, degree of involvement in public affairs and/or standing in society, regional representation, socio-economic group, religious affiliation, and so on.²⁸ They were agreed on by the lead technical agencies, the CSOs involved in the four thematic groups, and their conveners. Interviews were conducted by members of the lead technical agencies, staff of the Central Bureau of Statistics and, where possible, CSO members of the technical groups.

The national sample survey instrument. The development of a questionnaire for sampling public opinion and its deployment in interviews with nearly 2 000 households across the country were significant achievements. The household survey questionnaire was developed using NEPAD's guidelines for the APRM process; it was designed for the specific purpose of recording the perceptions of Kenyan citizens on governance issues. This demonstrated a significant commitment on the part of all stakeholders in the APRM process to have the review reflect the experiences and opinions of a representative cross-section of the public; as the APRM Secretariat has suggested, the household survey might very well serve as a blueprint for other countries embarking on the peer review process.

In order to reach a genuine cross-section of the Kenyan public, the Central Bureau of Statistics provided census and other information that enabled 1 850 households to be identified across the country. Central Bureau of Statistics enumerators – locally based, and speaking local languages – were to carry out the interviews. Heads of household were to be the respondents; this of course gave a gender bias to the replies, since heads of household are mostly men. After enumerators had been trained to translate key terms in the questionnaire into vernacular languages, and after the enumeration clerks from the Central Bureau of Statistics who were to process the questionnaires had received a week's training at the end of July 2005, the household survey went ahead throughout the country (except in the province of Marsabit, where there had been clashes). Completed questionnaires were dispatched by courier to the survey office in Nairobi on a weekly basis and were subjected first to manual editing and the data were then digitised for analysis.

Focus group discussions. The conveners of the four thematic groups were responsible for executing country-wide focus group discussions and reporting their outcomes to the NGC. Core governance issues were identified by the

²⁷ See generally, NEPAD Kenya: *Kenya country report on the APRM: challenges, solutions and lessons learned* (report prepared for the African Governance Forum, Kigali, Rwanda), April, 2006, p.10.

²⁸ *Ibid.*, p.11.

thematic groups, together with the causes of the problem, magnitude of the problem, challenges faced, and suggested solutions.²⁹ The conveners developed guidelines for the focus group discussions in an attempt to ensure consistency and allow for comparison of information and data.³⁰ They also identified appropriate people to lead the discussions, particularly people who were fluent in local languages.³¹

These facilitators were trained in Nairobi at the beginning of August, and the discussions began on 7 August 2005. Most had taken place by 12 August, except those in Eastern Province and North Eastern Province, which faced unique logistical challenges because of the remoteness of the territory and lack of good infrastructure; they were completed by the end of the third week of August. Overall, in each of the eight regions of Kenya, thirty-two focus group discussions were held in school halls, community centres, church halls and local hotels.³² Each large group of participants was broken down into smaller groups: young women (14–25), young men, adult women (26–65), and adult men. Thus, 128 focus groups, each comprising an average 15 people, met and participants presented their views on economic, political, socio-economic and corporate governance as they experienced it.³³

APRM Follow-Up Mission

From 13 July to 15 July 2005, Dr Machel paid a follow-up visit to Kenya. By this time, Kenya had missed both the original March 2005 deadline and a revised deadline of June for the presentation of its self-assessment report. Dr Machel expressed her disappointment at what appeared to be the stalling of Kenya's APRM process; she set another deadline – 31 August 2005.³⁴ With nearly 2 000 households due to be surveyed across the country during July, and an elaborate schedule of focus group discussions to be rolled out across eight provinces in August, this was a highly ambitious target.

29 Interview with Peter Kimani member of the NGC, February 2006.

30 Mongo Nelson, Wanyama Evalyne, *Focus group discussion checklist for APRM self-assessment survey – Kenya*.

31 Minutes of the 2nd LTA and convener convergence meeting, 29 February 2005, held at the NEPAD Kenya Secretariat, Liaison House (on file with the author).

32 NEPAD Kenya Secretariat, *Kenya country report on the APRM: challenges, solutions and lessons learned*, report prepared for the African Governance Forum, Kigali, Rwanda, April, 2006, p.17.

33 Ibid.

34 Background information provided by Peter Kimani, member of the NGC, March 2006.

Tensions over the management of the Kenyan APRM process

Among the reasons for delays in the completion of the self-assessment report were tensions over the management of the National Governing Council that was supposed to guide the implementation of the peer review process.

On 20 July 2005, Minister Nyong'o announced that he was 'degazetting' (that is, dismissing) the chair of the NGC, Grace Akumu, and two other members, Ambassador Orié Rogo-Manduli, the chair of the NGO Council, and Professor Shanyisa Khasiani of FASI. The minister asserted that these three had made the work of the NGC almost impossible by constantly alleging that funds for the APRM process were being allocated unfairly and that the minister himself and his permanent secretary were involved in these 'irregular' budgetary allocations.³⁵

Press reports of these events immediately noted the apparent breakdown in the Kenya peer review process and raised concerns over possible interference by the minister in what was supposed to be an independent body. They reported that police had sealed off the NEPAD Kenya Secretariat office to prevent the three dismissed members from entering.³⁶

In a press release dated 22 July 2005 responding to these allegations, Dr Grace Ongile, the NEPAD Kenya Secretariat CEO, said: 'This office has read with dismay adverse reports in the local press attributed to one Ms Grace Akumu, former Chairperson of the National Governing Council. ...We wish to respond as follows: This office has not been closed or barricaded by any security agents at any one time either today, yesterday or the day before... It is incorrect and misleading to insinuate that the Hon. Minister for Planning ... or any other government official for that matter has attempted to micromanage, control or have undue influence on the APRM process or its funds... We hereby confirm that the operations of NEPAD Kenya Secretariat cannot be paralysed by the government's degazettement of just three council members out of a total thirty-three.'³⁷

A subsequent meeting of the NGC, on 27 July 2005, appeared to endorse the sackings. The minutes state, 'Members of the NGC were informed that on the basis of feedback the minister had received on the workings of the NGC, and some of the challenges the process was encountering, he had taken the decision to degazette the former Chair of the NGC and two other members of the NGC. The meeting was briefed that in so doing, the minister as the appointing authority had acted

35 *East African Standard*, 20 July 2005.

36 'Police Block NEPAD Members From Their Offices', *The Nation*, 22 July 2005; 'AU review body halts Kenyan operations over government interference', AFP, 22 July 2005.

37 Press Statement, NEPAD Kenya Secretariat, 22 July 2005.

within the full range of powers delegated to him by the Head of State.³⁸

The meeting's participants do not appear to have discussed in detail the reasons for and the circumstances surrounding the sacking of Akumu and her colleagues. However, they confirmed the appointment of a replacement chair, the Reverend Jephthah Gathaka of the Ecumenical Centre for Justice and Peace. The minutes of the 16 August meeting reported a discussion on the replacement of the three dismissed members as follows: 'Members decided to strike off from the agenda the issue related to replacement of NGC members... They felt that decisions on the composition of the NGC were beyond their mandate. They however indicated that should the minister require their advice on the replacement of the former NGC members they would be willing to advise him.'³⁹

Reverend Gathaka is a respected figure and also a legitimate representative of civil society, but the circumstances of his election dented the reputation of the National Governing Council and made it more difficult for CSOs to engage positively with the review process. According to members of the NGC, disciplining the first chair should have been the responsibility of the NGC itself. Some members of the NGC criticised what they called the 'blatant spinelessness' of their own body in its relations with the minister.⁴⁰

People within the ministry have argued that the minister acted within his powers, since the NGC was 'gazetted' (officially listed) as a committee under the direction and supervision of the Minister of Planning and National Development.⁴¹ But the minister's action did not follow a proper process, and it confirmed the fear among many CSOs that the APRM process in Kenya was 'state-centric'.

However, a review of the activities of the chair of the NGC since her election in January 2005 also suggests that her focus was less on the conduct of the review itself and more on the status of NGC members. Grace Akumu's attempts to clarify the legal status of the NGC were followed by questions regarding sitting allowances, travel expenses, third-party and public liability insurance, and so on. She also demanded that CSO educational activity in support of NEPAD and the review process be funded from the dedicated 'basket fund' provided for the official APRM process. After several months

of wrangling, at a meeting on 30 May 2005, she ruled as chair that all activities of the NGC – such as the stakeholder forums – would be halted, pending formal communication from the Attorney-General on the various issues she had raised. Individuals from both the government and civil society side have expressed the view that Ms Akumu's contribution to the process had not been entirely constructive.⁴²

After their 'degazetting', Grace Akumu and Ambassador Orie Rogo-Manduli sued the minister for wrongful dismissal. In their suit, they claimed that the minister and the permanent secretary of the Ministry of Planning had failed to facilitate funding of the APRM NGC to enable it to fulfil its mandate and had excluded the NGC and civil society from the APRM process. This case was dismissed by the High Court in October 2005,⁴³ a result that was well received by the government, the NEPAD Kenya Secretariat, and other members of the NGC.⁴⁴ However, the fall-out of this episode included the collapse of the NGO Council, whose chair had been Orie Rogo-Manduli.

Completion of the self-assessment report and the programme of action

By the third week of August 2005, most of an initial draft of the Kenya self-assessment report had been produced by the lead technical agencies. The NEPAD Kenya Secretariat and the Ministry of Planning had organised a team of independent experts to critique this first draft and write the final version. This team, mainly Kenyan, was led by Professor Michael Chege, who had been funded to work at the Ministry of Planning by UNDP and was in turn seconded to the APRM process to provide technical advice, especially during the writing of the report. The team comprised Professor Njuguna Ng'ethe, Professor Shem Odholla, Dr J.O. Oucho, Professor Willis Oluoch Kosura, Professor Peter Wanyande, Dr Job Kihumba, Professor L.P. Murithii, and Professor T. Ryan, who came together in what was billed as a 'report writing retreat' from 25 August to the middle of September. This retreat was interrupted by an unattributed claim in the *Standard* newspaper on 2 September that the group of experts had rejected the initial draft of the report.⁴⁵ They categorically rejected this claim.⁴⁶

38 Minutes of the APRM National Governing Council meeting, 27 July 2005 (on file with the author).

39 Minutes of the APRM National Governing Council meeting held on 16 August 2005 at the NEPAD Kenya Secretariat, Liaison House (on file with the author).

40 Interviews with members of the NGC, March 2006.

41 Interviews with an official of the Ministry of Planning and National Development, March 2006.

42 Interviews with members of the NGC, April 2006.

43 Jillo Kadida, 'Anti-Nyong'o suit on NEPAD is thrown out', *Daily Nation* (Nairobi), 8 October 2005.

44 Interview with Peter Kariuki, member of the NGC, February 2006.

45 Ken Ramani, 'Experts Reject Kenya's NEPAD Report', *East African Standard*, 2 September 2005.

46 Interview with Prof. Michael Chege, economic adviser, Ministry of Planning and National Development, May 2006.

In early September, delegates from every district attended a consultative forum to validate the self-assessment report. Many of the delegates had attended the provincial forums in July and had a clear understanding of the APRM process. They were given copies of the presentations summarising the findings of the report, but not the report itself, and were invited to comment. After this consultative forum had approved (what it had heard of) the Kenya self-assessment report,⁴⁷ it was delivered to the APRM Secretariat in South Africa.

Country Review Mission

Dr Graça Machel subsequently led a country review mission to Kenya to conduct interviews and do research that would test the findings of the self-assessment report. Between 3 and 17 October 2005, Dr Machel's team visited all eight provinces of Kenya. The information collected in this way, together with independent information compiled by the APRM Secretariat in South Africa, was intended to enable the APRM Panel to submit its own country review report to the APRM Forum responsible for finalising each country's completion of the process.

In May 2006, *The Nation* newspaper reported that the APRM Secretariat in South Africa had 'demanded more information from the Kenyan team following the referendum that led to the rejection of the draft constitution and the exposing of the Anglo-Leasing scandal in which billions of shillings were paid for fictitious security deals'.⁴⁸ The paper quoted Evelynne Change of the APRM Secretariat in Kenya as saying that the secretariat needed 'to understand the context of the country's socio-economic governance' in light of these two developments.⁴⁹

Examination of Kenya's APRM report

On 30 June 2006, Dr Graça Machel presented the country review report finalised by the APRM panel of eminent persons to the APRM Forum, which was meeting in the margins of the African Union summit held in Banjul, Gambia. President Mwai Kibaki also presented Kenya's PoA⁵⁰ and response to the panel's report.

47 The self-assessment report has been available to a restricted audience but has never been posted on the NEPAD Kenya Secretariat or other website.

48 Jeff Otieno, 'Kenya First to Complete Peer Review', *The Nation*, 2 May 2006.

49 Ibid.

50 Available at <http://www.APRMkenya.org/downloads/KenyaNPOA.pdf>

The APRM eminent persons' country review report described Kenya as a 'bastion of stability', though it noted that ethnic strife remained a real possibility given prevailing patterns of ethnic politics and regional inequalities.⁵¹ The report expressed particular concern over neglect of the North Eastern Province, a policy inherited from colonial times and observed by successive post-independence governments.⁵² While crediting the former KANU rule 'for keeping Kenya together as one entity when some of its neighbours in the region were facing internal fragmentation', the APRM report noted the deeply divisive governance of the KANU period and the consequent 'deep-seated disillusionment among the public, and hence a very high price tag in terms of expectations put on the new government'.⁵³ The report noted with great concern the lack of adequate measures to protect economic, social, and cultural rights, which resulted in over 56 per cent of the population living in poverty.⁵⁴ It stressed that poverty-reduction efforts continue to be frustrated by persistent corruption. It deplored the fact that efforts by the government to combat corruption had hardly gone beyond putting in place 'legal instruments, investigative and enforcement machinery'.⁵⁵ Kenya was, however, commended for accepting its shortcomings, in what was reported as a broadly positive review, and the government stated that it was committed to addressing all the issues raised.⁵⁶

To date the self-assessment report has been circulated by the secretariat in electronic format (on CD) to a limited audience. The secretariat, however, decided that, so as not to cause confusion, it would only make the official country review report adopted by the APR Forum in June 2006 available for wide circulation. There are also efforts supported by the German development agency GTZ to develop a popular version of this report.⁵⁷

Funding of the APRM process

The Ministry of Planning, the lead technical agencies and the APRM Secretariat developed a budget of KSh65 168 000 (about US\$896 000) for the implementation of the peer

51 African Peer Review Mechanism, *Country Review Report of the Republic of Kenya*, May 2006 (available at <http://www.APRMkenya.org/downloads/Kenyareport.pdf>)

52 Ibid., p.48.

53 Ibid., p.53.

54 Ibid., p.80.

55 Ibid., p.48.

56 'Issues raised by peers to be tackled, say ministers', *The Nation*, 10 July 2006; Fred Oluoch, 'Africa's peer review faults country over corruption, tribalism and governance', *The East African*, 11 July 2006.

57 Interview with Grace Ongile, chief executive, NEPAD Kenya Secretariat, August 2006.

review process in Kenya.⁵⁸ On 11 November 2004, at a meeting of the Royal African Society in London, Minister Nyong'o said the APRM process would cost an estimated US\$1 million, of which UNDP had contributed US\$100 000. He said the NEPAD HSGIC had recommended that governments fund the process, to avoid the complications that might arise due to donor funding. But, he added, 'What option do we really have? I am keen to learn from our colleagues in Ghana, Rwanda and Mauritius about how they are handling the financial aspect of APRM. This issue should be subjected to greater debate and analysis than it has been so far, since good peer review does not come cheap.'⁵⁹ A report by the government to an APRM workshop in Algiers later in November 2004 said that, on 9 November, 'the Ministry of Planning and National Development (had) met with interested development partners in Nairobi to explore ways of co-sponsoring APRM'.⁶⁰

A 'basket fund' was established, into which all those wishing to contribute to the APRM process in Kenya would pay their funds. The government was said to have promised KSh10 000 000 (about US\$139 000), but it was unclear whether this sum was actually paid in to the basket fund. UNDP was asked to manage the fund; it agreed to do this through its business services centre. However, the bureaucratic financial procedures of UNDP led to a number of delays in releasing funds for APRM activities, which contributed to the successive failures to meet deadlines.⁶¹ The NEPAD Kenya secretariat had sometimes to use its own financial resources in order to enable activities to be executed when they were planned.⁶²

An APRM Basket Fund Steering Committee was established.⁶³ The British Department for International

Development (DFID) and the Swedish International Development Agency (SIDA) were members and also contributed. This steering committee was tasked with reviewing monthly financial reports provided by UNDP and with providing substantive support for the implementation of the APRM process in Kenya. Grace Akumu and Abdullahi Abdi (of Northern Aid) represented the APRM National Governing Council and CSOs on the Basket Fund Steering Committee.

At the time of writing, a final accounting of how much money came into the basket fund was not available in spite of repeated queries made to the NEPAD secretariat.

58 NEPAD Kenya Secretariat, *Strategic Framework*, Revised March 24, 2004, Nairobi, Kenya and African Peer Review Mechanism: *Country Self-Assessment, Financial Progress report*, August 2005.

59 Speech by Professor Peter Anyang' Nyong'o to the Royal African Society at the School of Oriental and African Studies, London, 11 November 2004 (on file with the author).

60 Workshop on Sharing National Experiences on APRM Implementation Process, organised by the African Governance Forum of UNDP, Algiers, 20–21 November 2004.

61 According to the NEPAD Kenya Secretariat, however, 'the hosting of the basket fund by the United Nations Development Programme (UNDP) proved to be a useful and convenient measure to centrally and professionally manage resources provided to the APRM process': NEPAD Kenya: *Kenya country report on the APRM: challenges, solutions and lessons learned* (report prepared for the African Governance Forum, Kigali, Rwanda), April 2006, p.9.

62 Interview with Prof. Michael Chege, April 2006.

63 Comprising the Permanent Secretary of the Ministry of Planning, one representative from each of the donor organisations, two nominees from the Ministry of Planning, one nominee from UNDP, two representatives from the NEPAD Kenya secretariat, and two representatives of the National Governing Council.

Critical assessment of the APRM process and the Kenya report

Poor access to information and a lack of transparency

One of the much-touted features of the APRM process is its capacity to create greater participation in national debate. But this requires transparency and access to information. Transparency in government activities is a basic norm of a democratic state. Knowing what the government is doing is a paramount right for individuals in a free society. However, in spite of the new spirit abroad in the country with the election of the NARC government, researchers for the lead technical agencies compiling the self-assessment report experienced difficulty in accessing documents, both from government and from the private sector.

According to a member of the NGC, ignorance of the APRM process by officials in government and key private sector institutions, compounded with unwarranted suspicion and the secrecy encouraged by years of misrule, led, in some instances, to outright refusal of access to government and private sector documents.

In addition to difficulties in accessing information, the APRM process seems to have suffered from a lack of internal transparency that reinforced its 'state-centric' nature. The work product of the process seems to have been exclusively controlled by a group of state representatives in the governing institutions. According to an NGO representative, most of the members of the National Governing Council did not see the full country self-assessment report submitted to the APRM Secretariat. Nor had they seen the country issues paper, prepared by the Ministry of Planning at the start of the review process.⁶⁴

64 Interviews with several former members of the NGC and NEPAD Kenya Secretariat, March 2006.

Weak civil society engagement

Although there is a vibrant civil society network and nascent broader-based 'movement' of human rights and social justice in Kenya, the APRM process does not appear to have galvanised CSOs or brought them together effectively.

Beyond the 27 July 2004 meeting presided over by Dr Machel, there was no other constructive gathering where the CSOs agreed on how to utilise the APRM process as a tool to promote their agenda. Some of the reasons for this lie in the government's reluctance to relinquish control of the process to all stakeholders. Of the 15 members of the NEPAD National Steering Committee set up following the signing of the APRM memorandum of understanding, 10 represented government agencies, including nine permanent secretaries of ministries, and only two represented NGOs. The APRM Task Force, established in February 2004 to draft a detailed timeline for the review process and set up the structures of the process, was initially composed exclusively of officials from government ministries before it eventually invited representatives of civil society and the private sector to its activities. This resulted in an inadequate opportunity for participation by CSOs, and their lack of ownership of the process.

But CSOs have also been slow to understand the opportunities offered by the APRM, and their participation has remained by and large passive. Only two CSO organisations⁶⁵ have

65 The Ecumenical Centre for Justice and Peace and the Centre for Governance and Development.

developed programmes aimed at promoting NEPAD and the APRM agenda. The others have maintained a sporadic and uncoordinated involvement, mainly consisting of attending meetings. Even the NGO Council has no history of having programmes and projects in this area.

Because of tight deadlines requested by the APRM Secretariat in South Africa, the review process was relatively rushed and there was not enough time for CSOs to develop projects and mobilise the kind of financial support they would have needed to campaign on APRM issues.⁶⁶ Most CSOs are dependent on donor funds and would need time to develop proposals and market them to potential donors. The slow disbursement of funds by UNDP did not help in this regard. Due to the bureaucratic hurdles between the Ministry of Planning and the UNDP, monies were not released to the NGC on time to commence the awareness campaign and mobilisation for the review. Greater public awareness and sensitisation before the process began would in turn have led to demands for CSOs to engage more effectively with the APRM, as has been the case around the use of public funds for development more generally.

The Kenyan media did a good job of putting the APRM on the agenda. It is however unfortunate that much of the coverage was sensational and of poor quality substantively speaking. The media could have done more to provide informed coverage that highlighted the potentials of the APRM process; this would have helped both the public and CSOs to be more engaged. The NEPAD Kenya Secretariat in turn could have done better at briefing the media on what was being planned and undertaken.

But perhaps the most important lesson that emerged from the process is that the CSOs in Kenya must now become more proactive and self-driving. The Africa Youth Parliament demonstrated such ability by taking up the agenda of APRM and using it to organise and mobilise young people. In so doing, they were always a step ahead in the process and did not wait to be organised by the NGC as the other CSOs did.

A state-centric conceptual framework

The country self-assessment and the APRM review reports provide the most comprehensive documentation ever undertaken of the political, social, cultural and economic situation in Kenya. Both documents are organised based on the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance adopted at the 2002 AU summit in

⁶⁶ Like Ghana and Rwanda, Kenya was unable to complete its country self-assessment report within the suggested six-to-nine-month timeframe.

Durban and one of the founding documents for the APRM.⁶⁷ The documents address some of the major obstacles to good governance in Kenya and provide much-needed insights into the realities of life in Kenya, prepared in a 'one stop' review produced through a participatory process.

Despite these strengths, the report and the APRM process in general have several flaws. Some of these are related to limitations in the Declaration on Democracy, Political, Economic and Corporate Governance itself. There seems to be a fundamentally erroneous assumption that the African states that acceded to the APRM process support the paradigm and philosophy of open government, which assumes that the government is the agent and that members of the citizenry are the principals. It is assumed in the Declaration that the government and the state in question are well organised, well designed, and intent upon realising human and political rights and improving the welfare of the citizenry. From the experience of the Kenyan situation, this has not been always the case.

The other assumption within the Declaration is that what Africa requires is to negotiate faster integration to the neo-liberal system. This is a 'developmentalist' focus that does not define the obligations as accurately as is done in the human rights framework. It is because of this developmentalist orientation that the self-assessment report submitted by Kenya to the APRM country review team presented poverty, rather than rights and freedoms, as the problem for Kenya and Kenyans. By so doing, impoverished people like slum dwellers, squatters and street vendors are presented as the problems. Furthermore, neither the self-assessment nor the country review reports present information on the various struggles that Kenyans have undertaken, both privately and publicly, to demand greater freedom. The popular movement that led to the ousting of President Moi and the Kenya Africa National Union (KANU) regime in 2002 demonstrated that Kenyans are not the mute and mindless multitude the report depicts. Absent from the self-assessment and the country review report, however, are images of Kenyans actively engaged in resistance to corporate impunity and a government that was neither accountable nor transparent.

The NEPAD economic programme in practice has also lacked a human rights agenda. For long-term sustainable development, this is not acceptable. The APRM self-assessment report presents, for instance, problems like

⁶⁷ The Declaration is organised into three themes: democracy and good political governance; economic and corporate governance; and socio-economic development. The APRM Questionnaire and the reports based on it split these into four themes: democracy and good political governance; economic governance and management; corporate governance; and socio-economic development.

land grabs, the forcible eviction of people, and their hounding as squatters as technical governance issues. They are not. These are issues of systematic exclusion and violation of human rights, and only when the diagnosis is framed in these terms will a proper remedy be generated.

Kenya's programme of action (PoA), developed from the self-assessment report and discussion with the APRM Secretariat team, prescribes a series of actions, including adoption of laws, policy changes, and new standards and practices. There have been efforts to harmonise these recommendations with already-existing broad-based reform initiatives, but the PoA designated government and state institutions to be the implementing agencies for most of these recommendations.⁶⁸ Only a handful of the recommendations for change outlined in the PoA require implementation by or through partnership with non-state actors. One of the weaknesses of the PoA, therefore, is that it assumes that the state is the single, dominant actor involved in bringing change and that change will come about through legal and policy reform, with only limited concerted advocacy or action on the part of civil society organisations to make duty bearers enact reforms.

Ironically, this weakness of the PoA is part of a pattern of 'exclusion of critical stakeholders and institutions' identified in the APRM country review report as one of major reasons for the poor record of implementation of policies and programmes in Kenya.⁶⁹ The report warned that 'the media as well as the political parties need to be carried along as stakeholders in examining achievements as well as impediments at the policy implementation level. Ignoring them, or treating them as foes, is most likely to be counterproductive. The citizenry/critical stakeholders should be further encouraged to demand more accountability from their government.'⁷⁰

In addition, the list of recommendations included in the PoA offers nothing significantly new. It is the same catalogue that has been presented in existing or planned governance reforms or programmes in Kenya, some of which the government referred to in its response to the recommendations contained in the country review report.⁷¹ These include the Economic Recovery Strategy, the draft National Land Policy, the Economic Recovery Programme for North Eastern Province, the Police Oversight Board, the Public Service Reform Programme, the Local Authority

Service Delivery Action Plan, the National Anti-Corruption Plan, etc.⁷²

Non-inclusive follow-up structures

The APRM National Governing Council was dissolved in December 2005 and at the same time Minister Nyong'o was relieved of his post as minister and became a back-bench MP. However, before leaving office he did appoint a new National Steering Committee for NEPAD. As part of its mandate, this committee assisted in preparations for the presentation of the Kenya self-assessment report to the APRM Forum and it is responsible for follow-up on the PoA. More specifically, the role of the NEPAD National Steering Committee includes coordination of priority projects identified in Kenya's poverty-reduction strategy paper; monitoring and evaluation of the Millennium Development Goals (MDGs); and monitoring and evaluation of the implementation of the APRM national PoA.⁷³

The existence of this committee is not well known, and, as was the case in the initial stages of the APRM process, it is dominated by government representatives and was appointed in a non-consultative manner. The committee is chaired by the Minister of Planning and National Development. This defies the principle that APRM should be more inclusive than other on-going government development programmes.

The government needs to work with civil society to broaden the composition of the steering committee to include representatives of the private sector and NGOs. A more inclusive steering committee will be best equipped to carry out more effective monitoring and evaluation of the implementation of the PoA recommendations, including actions that are to be implemented by non-state actors.

68 The Kenyan Programme of Action, available at <http://www.APRMkenya.org/downloads/KenyaNPOA.pdf>

69 Africa Peer Review Mechanism, *Country Review Report of the Republic of Kenya*, May 2006, p.242.

70 Ibid., p.243.

71 *APRM Country Report of the Republic of Kenya*, Government of Kenya Response, pp.253–322, May 2006.

72 Ibid.

73 Ministry of Planning and National Development, 'The New Partnership for Africa's Development (NEPAD) Appointment of National Steering Committee', Gazette Notice No. 9526. The steering committee's membership is listed in Annex 4.

Conclusion: The way forward for civil society organisations

The APRM self-assessment illustrates how complex the process of transition is in Kenya. Here we have a system of government which seeks a break with the past while it remains entangled in the 'calculus of power' that has ruled Kenya for decades. The Kenyan government seems to have seen the APRM as another part of its state-centric reform strategy, using the APRM PoA as a glue to hold together existing reform programmes, such as the MDGs, the ERS, and the Governance, Justice, Law and Order Sector (GJLOS) reform programme, rather than the blueprint based upon a national debate on governance that the APRM process was supposed to generate.⁷⁴

What is happening in Kenya is what could be called 'transition in a closed society'. CSOs are key to making it less closed. It is critical that CSOs do not continue to miss the opportunities the APRM provides to make government and all other duty bearers accountable to the citizens. The disarray among CSOs must therefore be addressed, primarily by the CSOs themselves. The collapse of the NGO Council following the confrontation with the minister over the APRM National Governing Council needs to be urgently remedied. To achieve this goal, CSOs might:⁷⁵

- publicise the country self-assessment and give Kenyans a sense of their ownership of the process and the report;
- simplify and adapt the PoA for the benefit of local communities;
- hold local forums through CSO networks to keep the PoA on the agenda of the CSOs and the government;
- promote local ownership of the PoA and ensure that the government links PoA implementation to existing local initiatives in order to avoid duplication of efforts;
- lobby the government to commit adequate funds for implementation of the PoA;
- develop standardised tools for participatory monitoring and evaluation, e.g., citizens' report cards and other social accountability mechanisms; and
- lobby to expand the use of APRM beyond the executive arm of government, for example, through pressure to involve the Kenyan parliament in implementation of the PoA.

It is critical for civil society to take the opportunities that will become available once the APRM country report is launched in order to ensure that those elements of the PoA which reflect civil society's concerns are effectively implemented.

In broad terms, the APRM process will remain fundamentally hollow if it does not deal with the essential causes of bad governance and the misery that Africa's men, women and children now suffer. The state cannot be allowed to hide behind the notion of 'inadequacies of governance' while the unjust and unequal manner in which the state is now

74 Wafula Masai, 'Kenya's experience in preparing the Programme of Action,' presented at the Experts' Conference on Making the African Peer Review Mechanism Work, organised by the Hans Seidel Foundation, Nairobi, 25–27 April 2006.

75 Kennedy Masime, 'Role of Civil Society in the African Peer Review Mechanism (APRM) Process', presented at the Experts' Conference on Making the African Peer Review Mechanism Work, organised by the Hans Seidel Foundation, Nairobi, 25–27 April 2006.

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constituted is ignored. This will in time relegate the APRM to the dustbin in which so many other ritualistic processes, enthusiastically adopted for Africa and then dropped, have already been abandoned. In any case, NEPAD's economic programmes are widely dependent on external donor funding. (The estimated US\$64 billion needed to fulfil its aspirations annually will, the NEPAD secretariat says, come from outside the continent.) This vitiates the concept of 'African renewal' which inspired NEPAD in the first place and makes it vulnerable to policy fads and political manoeuvring.

Nevertheless, for CSOs the APRM process does provide a platform within which the traditional concerns of civil society can be addressed. CSOs can organise themselves to receive the country report when it is released officially. The report can also be used as a starting point to demand participation in the impending constitutional review process, transitional justice mechanisms, and institutionalising the rights of the Kenyan men and women to participate in the governance of their public affairs.

Annex 1: APRM National Governing Council

The APRM National Governing Council in Kenya had 33 members, divided into six categories.⁷⁶

I Eight members nominated by the NGO Council, to represent CSOs and NGOs

Rev. Jephthah Gathaka, Ecumenical Centre for Justice and Peace (Economic Governance); Mr Peter Orawo, Climate Network Africa (Corporate Governance); Mr Muhib Noorani, Kenya Paraplegic Organization; International Commission of Jurists (Political Governance).⁷⁷

II Eight proposed by the consultative forums held in July 2004

Mr Geoffrey Omedo, National Youth Parliament and Mr Abdullahi Abdi, Northern Aid (Political Governance and Democracy); Ms Fatma Ibrahim, Kenyan National Commission on Human Rights and Mr Osendo Omoro, Transparency International Kenya (Economic Management and Governance); Ms Rose Ogega, Institute of Certified Public Accountants and Ms Winnie Kinyua, KEPSA (Corporate Governance); Ms Juliet Makokha, National Council of Women of Kenya and Mr Nduati Kariuki, Kenya National Federation of Agricultural Producers (Socio-economic Development).

III Four conveners (one for each thematic area, non-voting)

Ms Esther Ndisi Bertolli, Bertolli and Associates; Mr Joseph Kimani, African Youth Parliament; Ms Victoria Kioko, Kenya

Episcopal Conference (Catholic Secretariat); Dr Mbui Wagacha, Independent Consultant.

IV Four lead technical agencies (also non-voting)

Prof. Wafula Masai, African Centre for Economic Growth (Political Governance and Democracy); Dr Hezron Nyangito, KIPRA (Economic Management and Governance); Mr Karugor Gatamah, Centre for Corporate Governance (Corporate Governance); Prof. Mohammed Jama, Institute of Development Studies – University of Nairobi (Socio-economic Development).

V Seven representing line ministries and key public institutions, ex officio

Permanent Secretary, Ministry of Foreign Affairs; Permanent Secretary, Governance and Ethics; Permanent Secretary, Ministry of Justice and Constitutional Affairs; Permanent Secretary, Ministry of Finance; Dr Jeremiah Ng'eno, Permanent secretary, Ministry of Planning and National Development; Solicitor General, Office of the Attorney General; Chairman, Electoral Commission of Kenya.

VI Two others appointed at the discretion of the Minister of Development and National Planning, to correct imbalances of gender, region, religion or 'any other criteria'.

Mr Bernard Aende Ogada.⁷⁸

⁷⁶ APRM Kenya website, www.APRMkenya.org/NGCmembers.php 'NGC Members'.

⁷⁷ Philip Kichana was the original representative from the International Commission of Jurists, but after he left that organisation, the NGO council was not able to decide whether membership was through organisations or as individuals, and he was not replaced. The other four members from the NGO council were removed from the governing council and are not listed as members. They were also not replaced.

⁷⁸ The other person appointed by the minister resigned and was not replaced.

Annex 2: Stakeholder forums from March to July 2005

- On 2 March 2005, the African Youth Parliament organised a forum for around 50 high school students in Nairobi through its partner, the National Students Council for Peace. The students expressed the wish to be afforded more space for their concerns in the governance of their schools.
- On 14 April, a media breakfast, aimed at demystifying the APRM and gathering the support of the press for the process, was organised at the Grand Regency Hotel in Nairobi.
- On 25 April, around a hundred farmers and civil servants from agricultural ministries taking part in a workshop in the Sirikwa Hotel in Eldoret in the Rift Valley were invited by the convener of the APRM socio-economic group (FASI) to express their views. The farmers raised a huge number of concerns, including lack of access to credit, difficulties with marketing, the high cost of farm inputs, and the closing-down of the agricultural extension service, which they said should be re-established.
- On 27 and 28 April, around a hundred farmers and civil servants at a workshop in Kakamega, Western Province, expressed similar concerns and requested technical assistance to diversify their production, so they could escape the poverty caused by low sugar prices.
- On 5 May, all 29 Catholic bishops, meeting under the aegis of the Kenya Episcopal Conference, pledged their support to the APRM process and expressed the hope it would give new momentum to the quest for good governance in Kenya.
- During May, June and July, the FASI convened meetings with young people in 23 wards of the city of Nairobi. An average of 50 young people attended each of these meetings. Their demands were, amongst others, for young people to be represented equitably in decision-making bodies, including Constituency Development Fund committees (responsible for overseeing expenditure of funds allocated to members of parliament), and for young people to be encouraged to put themselves forward for civic seats and leadership positions in churches and schools.
- Between 11 and 15 July, stakeholder forums were held in all the provinces.
- On 29 July, a forum of Maendeleo Ya Wawanake, the national women's organisation, was held at the Comfort Inn in Nairobi; women from all districts attended.
- On 11 August, a forum targeting members of the Marketing Society of Kenya was held at the Milimani Hotel in Nairobi. Participants expressed the hope that the APRM would act as a vehicle for boosting fair trade practices from all players in the market. Should the review, and the programme of action, achieve their purposes, they said, marketing Kenya would be much easier, and socio-economic development would be accelerated.
- Also during August, a forum was held for members of the Kenya Institute of Management.
- On 20 August, pastoralists from all the main pastoral districts converged on Nairobi for a forum on the APRM. They decried the marginalisation of their community, and expressed the hope the APRM would prove a watershed in correcting this injustice and according them rightful recognition.

Annex 3: Communiqué of the APRM support Mission to Kenya 26–27 July 2004

On 26 to 27 July 2004 Dr Graça Machel, eminent member of the APRM panel, led an APRM Support Mission to Kenya. The team was comprised of the following: Dr Michael Mah'moud, Senior Financial Sector Adviser, NEPAD Support Unit, African Development Bank; Mr Paul Andre de la Porte, UNDP Regional Coordinator (Kenya Country Office); Dr Okey Onyejekwe, Regional Adviser on Governance, United Nations Economic Commission for Africa (UNECA); Dr Shamika Sirimanne, Senior Economist, Economic and Social Policy Division, UNECA; Mr Gaston Bushayija, Manager, Technical Support Facility, NEPAD Secretariat; and Ms Evelynne Change, Coordinator for Corporate Governance, APRM Secretariat.

Ambassador Bethuel Kiplagat, the Vice Chairman of the APRM Panel, who is based in Kenya, also participated in the mission.

The purpose of the Support Mission was to assess the processes and mechanisms put in place by Kenya to undertake its self-assessment and subsequently draft its programme of action. The support mission was also to conclude negotiations and sign the Memorandum of Understanding on the Technical Assessment Missions and the Country Review Visit.

The team noted the following progress made by Kenya in implementing the APRM:

- Pioneering in appointing a Focal Point for the APRM, the Ministry of Planning and National Development. This was an appropriate choice owing to the focus of

the APRM on socio-economic development. It was noted that the Minister for Planning and National Development was very active in steering the national APRM process.

- Establishing an APRM Task Force comprised of stakeholders from both government and non-government actors to conduct the national process pending the appointment of the National Governing Council.
- Organising various consultative sessions on the APRM process and tools, in particular those of 14 and 21 July 2004. These fora culminated in the proposal of nominees to the National Governing Council. Stakeholders also elected convenors for the four thematic areas and technical lead institutions.
- Proposing to the Secretariat a road map for the implementation of the APRM at national level.

Briefing session at the Ministry of Planning and National Development

On Monday 26 July 2004, the team had a briefing session with the Focal Point and Members of the APRM Task Force. Honourable Prof. Peter Anyang' Nyong'o provided an update on the APRM process at national level.

Dr Machel emphasised the issues of national ownership and broad-based participation in the implementation of the APRM. She reiterated the importance of establishing a national commission that was inclusive of all stakeholders including religious organisations, women organisations, rural populations, urban poor and other key stakeholders.

Open stakeholders forum

An open stakeholders forum bringing together about three hundred participants from, amongst others, senior government officials, civil society participants, the private sector, media, academia and members of the diplomatic corps, was held on the morning of 26 July 2004.

The formal address for this meeting was delivered by Hon. Moody Awori, the Vice President of the Republic of Kenya. He reiterated the commitment of the government of the Republic of Kenya to the successful implementation of the APRM. Ambassador Bethuel Kiplagat, eminent member of the panel, was present during the opening session. Also in attendance were Hon. Peter Anyang' Nyong'o, Minister of Planning and National Development, and Hon. Amos Kimunya, Minister for Lands and Housing, who chaired the meeting.

Dr Machel provided an overview of the progress made in the APRM at continental level. She noted that this was the fourth mission of its kind, support missions having already been sent to Ghana, Rwanda and Mauritius. She reiterated the concepts of national ownership and broad-based participation for the successful implementation of the APRM.

Stakeholders provided feedback and sought clarification with regard to the modalities for their participation including:

- institutions and structures to manage the process at national level; the national governing council; the convenors and the technical lead institutions;
- how to address country-specific issues in the questionnaire; and
- information dissemination and reaching grass-roots populations.

Working session with the technical review teams

The support mission also met with the convenors and technical lead institutions, which made presentations on the four thematic areas: corporate governance, democracy and good political governance; economic governance and management; and socio-economic development.

The Support Mission Team expressed its appreciation for the work undertaken by these institutions in such a short time. They commended the ownership and leadership demonstrated by stakeholders in the process.

Deliberations were held on the way forward, including appropriate processes, methodologies and participation and representation of stakeholders.

Meeting with stakeholders

On Tuesday 27 July 2004, interactions were organised with various stakeholder groups, including: the Africa Youth Parliament; the Kenya NGO Council; business community and media owners; and parliamentarians.

The Africa Youth Parliament and the Kenya NGO Council expressed their views on the unfolding of the national process so far and their involvement and participation. They also highlighted key issues that needed to be addressed in the review process, for example, youth, gender, employment, rural and marginalised communities, disabilities, poverty and national debt.

The business community and media owners emphasised the importance of improved governance for economic growth and development, in particular with regard to attracting investment flows. They also underscored the importance of more positive reporting on issues.

Hon. Francis Ole Kaparo, the Speaker of the National Assembly, delivered an opening statement in the session with parliamentarians. He provided reassurance on the commitment of parliamentarians to the successful implementation of the APRM. Hon. Bonaya Godana, on behalf of the official leader of the opposition, underscored the importance of improved governance, in particular respect for rule of law. Hon. Oloo Aringo, Chairman of the Parliamentary Service Commission, emphasised the importance of democratising the budgeting process.

Dr Machel called on all these stakeholders to take ownership and shape the implementation of the APRM in the country. She urged them to involve their constituencies, particularly at the grass-roots level.

Courtesy call on the President

On the afternoon of 27 July 2004, the support mission paid a courtesy call on His Excellency the President of the Republic of Kenya, Hon. Mwai Kibaki. The President welcomed the team and reiterated his country's commitment to the effective implementation of the APRM. Dr Machel commended the President for acceding to the APRM and noted that Kenya had volunteered as one of the first four countries to

be reviewed. She noted that the team had interacted with a broad range of stakeholders and in particular had been particularly invigorated by the interaction with the Kenyan youth, which could be shared as best practice.

Signature of MOU

The Memorandum of Understanding (MOU) on the Technical Assessment Mission and the Country Review Visit was signed on 27 July 2004 between Dr Graça Machel, eminent member of the APRM panel on behalf of the APRM Forum, and Hon. Prof. Peter Anyang' Nyong'o, Minister of Planning and National Development on behalf of the government of the Republic of Kenya.

Closure

A wrap-up session between the support team and the members of the national APRM Task Force was held at the national NEPAD Secretariat offices. The meeting was chaired by Mr David S.O. Nalo, Permanent Secretary Ministry of Planning and National Development. Also in attendance was Mr. Pete Ondeng, Chief Executive, NEPAD Kenya Secretariat. The meeting reviewed the outcome of the support mission. It was indicated that the National Governing Council would be formally announced on 20 August 2004. It was agreed that the timeline of activities be adjusted to allow the review visit in the first quarter of 2005.

Appreciation

The Government of Kenya expressed its gratitude to the Support Mission Team for its contribution to the launching of the national APRM process. Dr Machel, on behalf of the Support Mission, expressed her profound appreciation to the government of Kenya for the warm hospitality and the enthusiasm with which Kenya has embraced the APRM process. She also noted the hard work done by the support mission team members and the country level stakeholders.

Signed at Nairobi this 27th day of July 2004

Dr Graça Machel, eminent member of the APRM panel,
David S.O. Nalo, for national APRM focal point.

Annex 4: NEPAD National Steering Committee appointed in December 2005

- | | |
|---|--------------------------------|
| 1) The Minister for Planning and National Development (Chair) | 13) Atieno Amadi Ndede (Prof.) |
| 2) The Assistant Minister for Planning and National Development | 14) Deborah Ongewe |
| 3) The Permanent Secretary, Ministry of Planning and National Development | 15) Yusuf Murigu |
| 4) The Chief Executive Officer, NEPAD Kenya Secretariat (Secretary) | 16) Chrispus M. Kiamba (Prof.) |
| 5) The Permanent Secretary, Ministry of Education, Science and Technology | 17) Moses Mwangi |
| 6) The Permanent Secretary, Ministry of Environment and Natural Resources | 18) Mahmud A. Visram |
| 7) The Permanent Secretary, Ministry of Agriculture | 19) John Oucho (Prof.) |
| 8) The Permanent Secretary, Ministry of Transport | 20) Karanja Kabage |
| 9) The Permanent Secretary, Ministry of Information and Communications | 21) Mohamed Elmi |
| 10) The Permanent Secretary, Ministry of East Africa and Regional Cooperation | 22) Beatrice Sabana |
| 11) The Permanent Secretary, Ministry of Roads and Public Works | 23) Mohamed Ali Jama |
| 12) Chris Kirubi | |

Annex 5: List of persons interviewed for this report

Abdullahi Abdi, Northern Aid

Esther Bertoli, Bertoli and Associates, member of the NGC

Evelynne Change, APRM Secretariat, South Africa

Michael Chege, economic adviser, Ministry of Planning and National Development

Peter Kariuki, member of the NGC

Joseph Kimani, African Youth Parliament

Alfred Kombudo, NEPAD Kenya Secretariat

Amb. Orie Rogo Manduli, former member, APRM National Governing Council

Kennedy Masime, director, Centre for Governance and Development

Peter Anyang' Nyong'o, former Minister of Planning and National Development

Jerry Okungu, NEPAD Kenya Secretariat

Grace Ongile, NEPAD Kenya Secretariat