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An Assessment of the impact of African Peer Review Mechanism as an Incentive for Improved Governance: A Case Study of Kenya, 2003-2009

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DECLARATION

I Gideon Kinuthia Ndungú hereby declare that this research project is my original work and has not been presented for a degree in any other university.

Signed.. Date.........1/11/2011..........

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This project has been submitted for examination with my approval as University Supervisor;

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ABSTRACT

In Africa, technical interventions of capacity strengthening and mechanistic building of governance institutions, including through the African Peer Review Mechanism (APRM) had failed to rapidly produce the desired effects. The purpose of the study was therefore to understand the causes and processes of APRM as a tool for advancing good governance. The focus was to assess, and particularly targeting, some emerging conditions vis-à-vis the implementation of the APRM process in Kenya. It investigated the extent to which APRM has provided Kenya with solutions to address the issues of governance and the impediments to the process from 2003-2009. The key research questions that guided the study included what factors led to Kenya acceding to the APRM? Does the implementation of APRM favor improvement of institutions of governance? Is the APRM demand driven responding to the people's demands, needs and aspirations? What value has the APRM process added on governance in Kenya? Both the primary sources and secondary sources of data were utilized in the study.

The study findings indicated that there was great support for APRM as a continental owned and led initiative that represents an opportunity for accelerated political governance, economic governance, corporate governance and socio-economic development. The APRM has the potential for realising its primary objectives, however the required political will to steer the process was severely lacking. There was need for genuine dedication by African Governments to governance reform processes by providing support and commitment to the implementation of the post-review recommendations.

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ABBREVIATIONS

APRM- African Peer Review Mechanism
AU- African Union
CRM- Country Review Mission
NARC- National Rainbow Coalition
KANU- Kenya National African Union
NEPAD- New Partnership for Africa Development
NGC –National Governing Council
NPOA- National Programme of Action
ODM- Orange Democratic Movement
PNU- Party of National Unity
PEV- Post Election Violence

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1. Introduction.

The end of the Cold War had important ramifications for the African Continent with the triumph

of liberal capitalists over socialists and communists ideologies[1]. The Cold War interest in Africa

declined with the end of the super power rivalry and it became possible for political factions in

Africa to try to resolve their problems without outside interference. However, the World leading

international financial institutions, notably the World Bank and IMF had realized that the

region's plight could not be resolved without governments becoming accountable to their

actions. [2]

In the early 1990s, there were numerous significant developments in Africa. This included the

gradual decolonization and independence of African States such as Namibia and South Africa;

the shift from interstate wars to intrastate conflicts in the ethnic splintered states, transitory states

and developing states such as Rwanda, Burundi, Somalia, Cote d'ivoire, Sudan, Zaire, Sierra

Leone, Angola and Mozambique among others[3]. These were compounded by the high levels of

poverty, Military Coups, widespread political corruption, economic mismanagement,

infringement of basic human rights by governments and lack of gender equality at the dismay of

donor countries leading to the halting and dwindling of aid support for Africa Countries[4]. At the

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[1] Wenger, A. and Zimmermann, D.: *International Relations: From the Cold War to the Globalized World,* (New Delhi, Viva Books Private Limited, 2004) p.242

[2] McWilliams, W.C. and Piotrowski, H.: *World since 1945: History of International Relation,* (Boulder, Lynne Reinner Publishers, 1993) p. 261.

[3] McWilliams, W.C. and Piotrowski, H.: *World since 1945: History of International Relations* (Boulder, Lynne Reinner Publishers, 1993) p. 264

[4] Murithi, T.: "Institutionalising Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143.* June 2007 p.3

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end of the 20th Century, Africa's economic and social development lagged behind and remained marginalized subject in the global development discourse[5].

The shift of global power to unipolarism in the 1990s led to the rise and agitation for multiparty democracy which was espoused by some Africa leaders. However, some had ulterior motives for participating in democratic reforms of either to legitimize and extend their own rule, to appease the opposition and foreign critics, or/and to avoid economic retribution from aid granting nations[6]. Despite the professed acceptance of political reforms, some leaders retained the means to subvert the realization. Strikes, protest marches, riots and civil wars escalated in the continent with significant consequences on dictators who were intolerant of the opposition and impervious to criticism. In many Africa countries declarations of democratic progress proved hasty. Elections held were relatively free, but they did not themselves constitute democracy nor did they guarantee that political stability, social justice and economic recovery would follow[7]. Hence, Africa suffered from unprincipled form of governance in which people's rights to free participation and choice of leadership was subverted.

This led to the dawn of the new Millennium in Africa being marked by new visible institutional changes with respect to Continental policy both at the level of concepts and perceptions from African leaders[8]. The transformation from the Organization of Africa Unity to the Africa Union and the adoption of the Constitutive Act of the Africa Union signaled a paradigm shift in the

[5] Masterson, G.: "An Analysis of the Implementation of the Africa Peer Review Mechanism in Ghana, Kenya and Mauritius" *EISA Occasional Paper Number 29.* February 2005. p. 1
[6] McWilliams, W.C. and Piotrowski, H.: *World since 1945: History of International Relations* (Boulder, Lynne Reinner Publishers, 1993) p. 263
[7] McWilliams, W.C. and Piotrowski, H.: *World since 1945: History of International Relations* (Boulder, Lynne Reinner Publishers, 1993) p. 262
[8] Gruzd, S.: "Peace, Security and the African Peer Review Mechanism: Are the tools up to task?" *African Security Review Vol. 16 no 3 September 2001*, Pretoria, ISS. P.55

International Relations of African States towards increased collective responsibility in matters of human security particularly with the shift from the principle of non-intervention to non-indifference[9]. The paradigm shift also manifested itself in formation of an institution, the New Partnership for Africa Development (NEPAD), for furtherance of Africa's development agenda[10]. NEPAD was formed with emphasis on Africa led strategies and programmes on democracy, human rights and good governance as substantive prerequisites for socioeconomic development[11]. In acknowledging the essence of good governance as key for human security, political stability, high economic growth, sustainable development and accelerated sub-regional and continental integration, the operationalisation of NEPAD led to the institutionalization of the African Peer Review Mechanism (APRM) as a quest by African States to create a continental order with good governance according to their ideological preferences and national interests.

The African Peer Review Mechanism (APRM) was intended to strengthen African countries constitutional political order in which democracy, respect for human rights, the rule of law, the separation of powers and effective responsive public service are realized to ensure sustainable development, and a peaceful and stable society[12]. In the APRM process these are expressed with specific objectives, accompanied by standards primarily international treaties and declarations, indicative criteria and examples of indicators. The actions in APRM are overseen under the aegis of the APR Heads of State Forum, by a Panel of Eminent Persons on the basis of a report from a

[9] Murithi, T.: "Institutionalising Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143*, June 2007. p.4

[10] Murithi, T.: "Institutionalising Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143*, June 2007. p.6

[11] Masterson, G.: An Analysis of the Implementation of the Africa Peer Review Mechanism in Ghana, Kenya and Mauritius, *EISA Occasional Paper Number 29*, February 2005 p. 2

[12] Lombarderde, P.: *Assessment and Measurement of Regional Integration* (New York,Routledge,2006) Edward Best: Regional Integration and (good) regional governance: Are Common Standards and indicators possible, p. 188

Country Review Team. This is presented not as a vehicle for pressure from outsiders but as an instrument voluntary acceded to by members of the Africa Union as an African self-monitoring mechanism.

1.2   Problem Context

A Country's decision to sign up for the APRM is assumed to be an indication of its commitment to the principles, values, codes, and standards as multilaterally agreed[13]. The underlying assumption behind the peer review process is that it will stimulate countries to ensure respect for International commitments and promote mutual accountability, as well as compliance with best practice through peer pressure. Some of the pioneer countries to volunteer for the APRM audit were Kenya, Ghana, Mauritius, South Africa and Rwanda[14].

The lessons from the pioneer countries have been contradictory. The APRM has been marked by unprecedented level of ambition and complexity which is compounded by its methodology, processes, and political challenges. The technical process has been highly political, the APRM process that would take six to nine months to complete has taken between 33 and 39 Months[15]. The 2006 APRM report on Kenya identified a number of overarching issues and recommended the country address them as a priority, these including poverty and wealth distributed, land reform, corruption, constitution reform, gender equality and youth unemployment. Kenya's failure to implement recommendations might have contributed to the emerging situation of

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[13] Kanbur, R.: "Africa Peer Review Mechanism: An Assessment of Concept and Design", January 2004. p.3
[14] Murithi, T.: "Institutionalising Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143*, June 2007. p.7

[15] See, Herbert, R. and Gruzd, J.: *Africa Peer Review Mechanism: Lessons from the Pioneers* (Johannesburg, The South Africa /Institute for International Affairs,2008)

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violence following the disputed 2007 General elections[16]. APRM identifies that while challenges are comparable across countries, the principles of good governance being widely accepted there is room for different approaches, national priorities and institutional solutions to achieve transparent, accountable and open government.

1. 3 Statement of the Research Problem

Overtime many institutions have come up and others have been modified with the aim of re-orienting the political will of African leaders but have rarely accumulated into significant changes with a coherent direction. The APRM as a systematic examination and assessment of the performance and practices of a state by other states represents an evolution of the political and economic thought. The governance agenda in the APRM is tied to overarching continental agenda pioneered by the Africa Union (AU) and NEPAD. APRM is a political process aiming at institutionalization of national and continental dialogue and consultation processes around key governance issues, and implementation of the projects and programmes that are identified to stimulate the national development processes.

The APRM seeks to achieve its objectives through constructive peer dialogue and persuasion to change the civil order, the polity, particular law norms and authoritative roles through which interests are manifested. Many Governments quest for maintenance of traditions representing popular interests, present goals, and reconstructing society with future orientation. States seek to minimize the cost of governance and to forgo long-term adjustment gains inorder to conserve short term political costs. If the impetus for change is internally driven, cooperation towards implementation of the reviewed activities and the resulting recommendations would be

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[16] Deegan. H, *Africa Today: Culture, Economics, Religion and Security* (New York, Routledge, 2009) p. 63

accelerated. If externally driven, there would be numerous pockets resistance and an indifferent attitude that is characterised by hesitancy towards the whole process.

The assumption is that the APRM impact on governance will depend on its ability to assertively explore and establish itself as a distinct programme backed by the political will of leaders to address governance issues; and on the extent to which the design of the APRM allows it to enhance mutual accountability within and between African states by including public, private, and civil society in the review process. Further APRM is more likely to impact positively on governance if consideration is given to contextual realities of socio-political relations within a state. Governments accede to the APRM process due its important diplomatic ramifications while its implementation involves elements of subjectivity and relativity.

1.4 Study Objectives

The main objective of the study will be to provide an understanding of the causes, means and effects of the APRM process on governance and assessing the challenge it meets of political nature, of processes and operational nature within a state.

The specific objectives of the study were:-

i.   To identify the push and pull factors for state participation in the APRM process.

ii.   To stimulate and generate deeper understanding of the essence of APRM as a tool for improved governance.

iii.   To uncover the route and structure of participation in the APRM process and the challenges it poses.

iv.   To formulate informed recommendations to stimulate compliance to the APRM process.

1.5 Justification of the Study

The academic justification for the study was to contribution to the discipline of international relations particularly in states relations and governance. The African Peer Review Mechanism has been embraced over time with over half of the African States acceding to the process. Several scholars have conducted studies on the African Peer Review Mechanism focusing on the process and the challenges it faces of logistical nature and capacity, while little has been done to evaluate on its impact on governance and the political challenges that arise. This study intended to fill this gap.

The policy justification for the study emanates from the fact that in a given interventionist programme for development, the process of implementation becomes a leading principle in the translation process from idealistic policy goals to realistic variables. In Africa, the concept of APRM has increasingly been debated at various levels given that it is regarded as an ambiguity, complex and expansive with complicated policy goals. At the same time, the concept of APRM as a vehicle for governance re-engineering appears promising and aspiring. The results of the study will provide significant policy recommendations on the application of APRM to which its design allows it to enhance mutual accountability within and between African states to improve governance.

1.6 Literature Review

1.6.1   The Concept of Peer Review

Peer review is a methodical assessment of the performance of a state by other states with the ultimate goal of enabling the reviewed country to improve its policy making, adopt best practices

and comply with various established standards and principles[17]. In Africa, the aim of APRM is to institutionalize a set of implicit and explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in their relations[18]. These include mutual expectations, rules, regulations, plans, organizational energies and financial commitments which have been accepted by a group of states.

The aims and purposes of peer reviews have been identified as; to assist countries exchange information, attitudes and views on policy decisions, and their application. This dialogue provides the basis for further co-operation through, for example, the adoption of new policy guidelines, recommendations or even negotiation of legal undertakings. In the mutual learning process, peer reviews are believed to serve as capacity-building instruments for both countries under review and the examining countries through the exchange of best practices[19].

Peer reviews are non-adversarial and rely greatly on mutual trust among actors involved in the appraisal and shared confidence in the process[20]. The effectiveness of peer review depends on peer pressure exerted by states carrying out the assessment and the willingness of the state concerned to acknowledge the process. Peer reviews are commonly undertaken within the framework of an international organization, with the secretariat of the organization supporting and stimulating the process. These elements create a reciprocal evaluation process resulting in a system of accountability.

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[17] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.2
[18] Little, R. and Smith, M.: *Perspectives on World Politics* (London & New York, Roughtledge,1991) p.108
[19] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.6
[20] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.2

The above explanation distinguishes the concept of peer review from judicial proceedings, fact finding missions, and simple reporting or data collection of which make important components of the process. Fundamentally the effectiveness of peer reviews depends on the influence and persuasion exercised by the peers during the process. For instance through formal recommendations and informal dialogue by the peer countries, public scrutiny, comparisons , ranking among countries, and the impact of the preceding on domestic public opinion, national administration and policy makers.

1.6.2 The APRM Process

African Peer Review Mechanism is a novel system created to improve governance by promoting compliance with global and continental standards to foster development[21]. The process is voluntarily and conducted on the basis of partnership and participation between the governments and other stakeholders. It seeks to establish standards and monitor political, economic and corporate governance standards in Africa. It acknowledges the importance of political institutions in promoting development and entails a multidimensional monitoring on government accountability and transparency concerning several entities each with priorities and approaches[22].

The APRM process is exceptionally sensitive because it touches on the quality and commitment of political leaders, their leadership and political will. APRM is about governance and related political, economic and social issues, and deals with power, how power is used and ought to be used, by whom, for what purpose, and on whose behalf and how those exercising that power can

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[21] Gruzd, S.: "Peace, Security and the African Peer Review Mechanism: Are the tools up to task?" *African Security Review Vol. 16 no 3 September 2001*, Pretoria, ISS,P.54

[22] Masterson, G. E.T., "Governance Quality and Government Commitment to the NEPAD Africa Peer Review Mechanism", *EISA Research Project Report No.5*, 2004. p. 10

be accountable to those on whose behalf is being used[23]. However, the APRM process design takes into account the different levels of development in participating states to ensure respect for international commitments and promote mutual accountability, as well as compliance with best practice. Nevertheless, while joining APRM is a voluntary matter, when membership is acknowledged performance according to the principles and practices of APRM process is obligatory.

APRM process begins with an appraisal involving popular representation on how well the government has discharged its obligations to the public on political governance, economic governance, socio-economic goals and corporate governance[24]. The review process commences with an in-house preparation of the roadmap to a highly consultative and independent internal review of the government in collaboration with the NEPAD Secretariat and its group of Eminent Persons[25]. The review team prepares a report on the basis of the briefing material prepared by the APRM Secretariat and the information provided in country by official and unofficial sources during the wide-ranging consultations and interactions with all stakeholders. The Review Team report is later submitted to participating Heads of State and Government for consideration and to make the necessary decisions and adopt the final report. A National Programme of Action (NPOA) that identifies the gaps and deficiencies in the governance system is developed of which the reviewed country is expected to implement.

[23] Adejumobi,S and Olukoski,A., *The African Union and New Startegies for Development* (New York. Cambria Press, 2008) p.247.
[24] Nyong'o, P. A, *Aleap into the future: A vision for Kenya's Socio-political and Economic Transformation* (Nairobi, African Research and Resource Forum, 2007) p.203.
[25] Nyong'o, P. A, *Aleap into the future: A vision for Kenya's Socio-political and Economic Transformation* (Nairobi, African Research and Resource Forum, 2007) p.204.

Through voluntary participation, submission to peer pressure, accountability and sharing best practices, it is believed that APRM will engender improvement on governance, growth, development and regional integration in Africa[26]. By encouraging more transparency, dialogue, stakeholder participation, accountability, and the emergency of stronger national institutions, APRM is expected to reinforce good governance and result in sustainable socioeconomic development.

Both the inputs and the eventual outputs of the APRM process are anticipated to be the efforts of African countries working together on the basis of equality and partnership in pursuit of agreed common objectives. The success or failure of APRM would consequently reflect on Africans competence and commitment of the leadership and political will to deliver on self imposed obligations. Such failures or successes are also likely to affect the perceptions of the rest of the world particularly the development partners on Africa.

1.6.3 Identified Challenges in the APRM Process

There are five identified essential criteria for successful and effective functioning of peer review mechanisms. APRM covers a vast range of objectives, standards and criteria, and therefore competence, independence, competition, ownership and communication are key to the process.

The first formidable challenge facing the APRM process is competence. The APR Secretariat has inadequate financial, human and institutional capabilities due to the inability of the African countries to muster the required resources. APRM process requires sufficient funding and sustainability of the funding. The APRM Secretariat does not fund the process nor does the

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[26] Adejumobi, S and Olukoski, A., *The African Union and New Strategies for Development* (New York. Cambria Press. 2008) p.216.

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NEPAD Secretariat or the Africa Union[27]. Participating states are expected to bear the cost of their own reviews. Due to budgetary constraints, most African countries are not in a position to meet their obligations in the APRM. Lack of professional staff for implementation of the APRM both at the APRM Secretariat and at the national level has also been identified as a challenge. The competence of the APRM Secretariat has been an issue of concern[28]. The APRM Secretariat has experienced not only staff shortage but also the quarter system of staff recruitment has led to the recruitment of incompetent staff to the secretariat hence slowing down the review process. This is worsened by the weak institutional structures in some African states. The lack of resources has led to delayed implementation the Programmes of Action and in the reviewing process in participating Countries. The APRM process also lacks legal and institutional status in the participating country.

The second identifiable challenge facing the APRM is the prolonged process consuming several months before the peer review. The APRM process is considered too long; from the prolonged support missions to the finalization of the Country Review Report. At the country level this has been attributed to the extensive process of planning and consultations among multiple stakeholders[29].

Another notable challenge is harmonizing the APRM National Programme of Action with the existing national processes and agenda. There exists incompatibility of goals between the two processes. There is absence of a formula to incorporate the National Programme of Action in

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[27] Fombad, C.M. and Kebonang, Z, "The Africa Peer Review: Challenges and Prospects" AU,NEPAD and the APRM: Democratization Efforts Explored, *Current Africa Issues no.32, 2006.*p.49
[28] Fombad, C.M. and Kebonang, Z, "The Africa Peer Review: Challenges and Prospects: AU, NEPAD and the APRM: Democratization Efforts Explored", *Current Africa Issues no.32, 2006.*p.50.

[29] APRM, "Africa Peer Review Mechanism: Africa Innovative Thinking on governance" *Paper presented at the 8th Gathering of the Africa Partnership Forum ,Berlin Germany,22nd -23rd May 2007* p.4

existing programmes, plans and activities. The divergence in processes and goals has slowed down implementation of APRM. APRM also advocates for multiple participation of various stakeholders in the process to ensure integrity. However, this has posed a major challenge to the APRM process. It is supposed that the lack of information has led to poor participation by the civil society, and the lack of transparency in evaluating a government performance[30].

There are significant technical challenges facing the APRM process. In the APRM appraisal of the participating countries, the process is undertaken through a complicated questionnaire which is insensitive to the local situations and circumstances. The process has adopted a standard methodology that is unable to encapsulate specific needs[31]. The APRM process also lacks monitoring and evaluation networks leading to some participating countries showing reluctance to undergo the process after the support mission.

1.6.4 Governance

The concept of governance has over the years gained momentum and wider meaning. Apart from being an instrument of public affairs management or a gauge of political development, governance has become a useful mechanism to enhance the legitimacy of the public realm and an analytical framework or approach to comparative politics, and a dominant topic in development policy discourse [32]. Despite the concept popularity, there is lack of conceptual consensus among both theoreticians and practitioners. Hence governance has multiple definitions. The review of literature suggests the concept derives its meaning from the study of institutions, networks theory and corporate governance.

[30] Akoth, S. O.: "APRM Process in Kenya: A Pathway to a new state", *Open Society Initiative for East Africa, OSIEA, March 2007.* p.16
[31] See, Report from the United Nations Expert Group meeting on promoting partnerships in support of the African Peer Review Mechanism Implementaion,15th-16th November 2007, Addis Ababa.
[32] OECD: *Modernizing Government: The Way Forward* (Paris,OECD,2005) p.16

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The perspectives and tendency towards institutionalism were set in the 1990s after the realization that the macroeconomic and fiscal policy reforms by International Monetary Fund and the World Bank as applied to developing Countries during the 1980s failed to produce the anticipated changes. World Bank defines governance as "the traditions and institutions through which authority in a country is exercised for the common good. This includes the process by which those in authority are selected, monitored and replaced; the capacity of government to manage its resources effectively to implement sound policies, and the respect of citizens and the state for the institutions that govern interactions among them"[33].

The problem of governance is particularly pressing in Africa, where institutions in which political competition and public scrutiny of the executive can occur are weak. The bases of good governance have been identified as accountability, transparency, institutional capacity, popular involvement and adherence to rules. It's urged that institutions are important for governance since they structure political and administrative behavior. Institutions in this context refer to rules which are formal or informal, defining who is able to participate in the particular political arena, to shape the various political actors which involve political strategies, and to influence the preferences of actors including the possible and desirable actions. Institutionalism conceptualizes governance as the exercise of authority and control.

According to liberalists, Governance embraces a collective process of rule making, monitoring and implementation conducted by diverse social actors and institutions at levels above and below nation-state. Thus governance goes beyond the formal authority of government institutions and

[33] Masterson, G. E.T., "Governance Quality and Government Commitment to the NEPAD Africa Peer Review Mechanism", *EISA Research Project Report No.5*, 2004. p.6

policy-making to include informal non-governmental organizations operating within the public realm that are increasingly involved in decision making and in the implementation of policy[34]. Hence, the purpose of a governance system is to regulate the exercise of authority, setting up incentive schemes and commitment mechanisms. A governance system is characterized by agency relationships.

From the networks approach, Governance is viewed to take place in networks involving various actors and multiple institutions that need negotiation and cooperation for positive outcome in the bargaining process. The networks theory presumes that public policies are made and implemented in networks of interdependent actors including public agencies, private businesses, non profit organizations, and individuals, often with conflicting rationalities, interests and strategies. The networks include interagency cooperative venture, intergovernmental programme management structures, complex contracts and public-private partnerships. Therefore, formulation and implementation of policies often require negotiations, bargaining and cooperation among various actors. Governance according to this model takes place in networks and consists of cooperation for successful realization of policies.

Political governance is singled as the major factor undermining sustainable development in African countries. The APRM is an implementation mechanism and a tool for encouraging African states to adopt polices and practices of good governance, which are expected to bring about political stability on the continent, high economic growth rates, sustainable development and regional integration. The Governance agenda in the APRM process involves creative

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[34] Steans, J. and Pettiford, L.: *Introduction to International Relations: Perspectives and Themes* (Harlow, Pearson Education Limited,2005) p.41

intervention by political actors to change structures that inhibit the expression of human potential.

1.7 Theoretical Framework

The study was guided by the realist theory of international politics. Realism is a rich tradition of thought which became acceptable in international relations after the Second World War[35]. Some of its leading proponents include E.H. Carr and Hans Morgenthau. However, its origins are linked to the works of Thucydides on the Peloponnesian wars, the thoughts of Niccolo Machiavelli in the Sixteenth –Century and Thomas Hobbes through his works, the Leviathan, in the Seventeenth Century.

Realism ascertains facts and gives them meaning through reason. Realists urge that the nature of a policy is ascertained by examining political acts performed and of the foreseeable consequences of the acts[36]. According to realists, political reality is approached with the kind of rational outline that suggests the possible meaning of a policy, the alternatives available and which of rational alternatives statesmen are likely to choose under the circumstances.

Realists argue that there exist unchanging laws that regulate individual and state behavior. Hence, Politics is managed by objective laws that have their roots in human nature and therefore in order to improve society it is first necessary to understand the laws by which society lives[37]. In the case of APRM is the acceding African state. Realists observe that States are the main actors

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[35] Steans, J. and Pettiford, L.: *Introduction to International Relations: Perspectives and Themes* (Harlow, Pearson Education Limited,2005) p.50
[36] Morgenthau, H.J. and Thompson, K.W., *Politics Among Nations: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers,2004) p.4
[37] Morgenthau, H.J. and Thompson, K.W., *Politics Among Nations: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers,2004) p.4

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in international relations. States are self interested and aggressive by nature in pursuing their own interests to the detrimental of others and without regard to constrains of law or morality[38]. The motivating factor is interest defined in terms of power.

In realism the central characteristics of the modern state are its defined territory and a government which is vested with sovereign authority and exercises power over its people. Two types of sovereignty have been identified. The internal sovereignty which is the holding of authority within a given territory and over a given people. Secondly, is the external sovereignty which is being recognized by other states as legitimate and having a right to act independently in international affairs. Realists argue that the principle of sovereignty being the cornerstone of the international system bestows exclusive jurisdiction over a territory and a people. To intervene in the affairs of the other states is to risk undermining the sovereign independence and autonomy of states. Hence the universal moral principles cannot be applied to the actions of states in their abstract universal formulation, but ought to be filtered through the concrete circumstances of time and place[39]. States judge political action by universal moral principles such as that of autonomy, but the state has no right to allow moral misappropriation of the violation of autonomy get in the way of successful political action itself inspired by the moral principle of national survival[40].

[38] Steans, J. and Pettiford, L.: *Introduction to International Relations: Perspectives and Themes* (Harlow, Pearson Education Limited,2005) p.45

[39] Morgenthau, H.J. and Thompson, K.W., *Politics Among Nations: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers, 2004) p.12.

[40] Morgenthau, H.J. and Thompson, K.W., *Politics Among Nations: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers,2004) p.12

Hence, according to realism international relations is one of anarchy with no sovereign authority higher than the state to enforce the rule of law and punish contraveners. The focus of research in world politics should be on discovering the important forces that drive relations between states which are the pursuit for power and national interests[41]. Political realism maintains the autonomy of the political sphere, and if interests are defined interms of power the question that arises is, how a policy does affect the power of the nation. Hence, States have no grounds to comment on or criticize the domestic political, social or economic order of other states. Interference with internal sovereignty can cause instability. For this reason, internationally a state can proclaim itself as being democratic and peaceful, with other states having no political or moral right to judge the actions of other states in regard to its own people. This view is contrary to the core principle of the APRM process which is to foster democracy and good governance within a state through monitoring by peers.

For realism, a state primary obligation is to its citizens not an abstract international community. However, it recognizes the moral significance of political action, and the inevitable tension between moral command and the requirements of successful political action. According to realism, there can be no political morality without prudence, that is, without consideration of the political consequences of seemingly moral action. Prudence weighs the consequences of alternative political actions to be the supreme virtue in politics. For realism, ethics in abstract judges' action by its conformity with the moral laws, political ethics judges action by political consequences. Realist accept that laws and morality are apart of the working of world politics,

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[41] Wenger, A. and Zimmermann, D.: *International Relations: From the Cold War to the Globalized World* (New Delhi, Viva Books Private Limited, 2004) p.48

however it refuses to identify the moral aspirations of a nation with the moral law that govern the universe[42].

According to realism the respect of law would only be achieved if it were backed by the threat of force[43]. International institutions and international law are only effective if backed by force or effective sanction[44]. In realism enforcement actions are subject to a complicated test of the interests involved and the power available to either side and of the bearing of one or the other course of action upon these interests and power. This creates a dilemma for the APRM process. APRM does not provide specific sanctions which will be adopted by the participating Heads of State and Government for lack of compliance by a state.

1.8 Hypotheses

i. APRM's impact on governance depends on the political will of the leadership to address governance issues.

ii. APRM's impact on governance depends on the extent to which it's established as a distinct programme to enhance mutual accountability.

iii. APRM is less likely to impact positively on governance if it does not take into consideration the contextual realities of socio-political relations within a country.

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[42] Morgenthau, H.J. and Thompson, K.W., *Politics Among Nations: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers, 2004) p.13
[43] Steans, J. and Pettiford, L.: *Introduction to International Relations: Perspectives and Themes* (Harlow, Pearson Education Limited,2005) p.51

[44] Steans, J. and Pettiford, L.: *Introduction to International Relations: Perspectives and Themes* (Harlow, Pearson Education Limited,2005) p.54

1.9   Operationalisation of Terms

The African Peer Review Mechanism is an instrument for self-monitoring and evaluation voluntarily acceded to by member states of the Africa union. Its mandate is to ensure policies and practices of participation Africa States conform to the agreed political, economic and corporate governance values, codes and standards as contained in the Declaration on democracy, political, economic and corporate governance.

A peer review is the systematic examination and assessment of the performance of a country by other countries or by designated institutions or by a combination of the two. The goal of a country under review is to improve its policy-making to adapt to the best practices and to comply with established standards, principles and other agreed commitments.

This study espouses governance as an action and a process. Governance is envisaged as effective rule of law, accountability, public participation, and transparency in the management of the public realm. Governance is the art of providing leadership and exercising authority in a manner to achieve shared societal goals and interests in a complex institutional setting. They are the formal and informal arrangements that determine how public decisions are made and how public actions are carried, from the perspective of maintaining a country's constitutional values in face of changing problems, actors and environment.

Socio-political relations refer to the interplay of social and political factors that characterizes the politics, particularly the influence of the society on people's perception of politics, and the relation between ideological preferences and political attitudes towards governance expressed by populations and the political context of the community where they live.

1.10 Research Methodology

1.10.1 Research design

The research was a case study and utilizes the qualitative research approach. Case studies examine in depth decisions, programmes and other entities with unique characteristics. According to Yin, R. K., "a case study is an empirical inquiry that investigates a contemporary phenomenon within its context, when the boundaries and its context are not clearly evident, and in which multiple sources of evidence will be used." Case study explains causal links in existing interventions and describes the context in which an intervention has occurred. They are utilized to explore situations in which the interventions being evaluated have no clear single set of outcomes[45]. It allows an inquiry to retain the holistic and meaningful characteristics of events such as international relations, organization processes and managerial processes[46]. Case studies also allow for a combination of research strategies particularly the descriptive and explanatory designs[47].

1.10.2 Methods of data collection

The study utilized both the primary sources and secondary sources of data. The primary and secondary techniques were significant since the concept of APRM is a new phenomenon of various perceptions, studies and interpretations which are unquantified numerically. The two will demarcate the true value of the study to obtain relevant background knowledge and offer empirical verification of facts.

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[45] Yin, R. K.: *Case Study Research: Design and Methods* (London, Sage Publications, 1989) p.25

[46] Yin, R. K.: *Case Study Research: Design and Methods* (London, Sage Publications, 1989) p.14

[47] Yin, R. K.: *Case Study Research: Design and Methods* (London, Sage Publications, 1989) p.15

The collection of primary data was through personal interviews that allowed for greater flexibility in clarification of terms, probing of additional information and details from the respondents, it also allowed for collection of supplementary information essential for interpreting the results[48]. In personal interviews both scheduled-structured interviews and focused interviews were conducted. Scheduled structured interviews are based on the assumption that for any research objective the respondents have sufficient manner of vocabulary and it is possible to formulate questions which have the same meaning to each of them and ensures all questions are equally meaningful to each respondent. It also ensures that any variations between responses are as a result of actual differences between respondents and not variations in the interviews.

Some of the targeted respondents for the study were involved in the APRM process in Kenya; hence focused interviews were flexible to establish a follow up on emergent leads and standardized enough to register strong patterns. It also allowed respondents considerable liberty in expressing their definition of the situation that is presented to them[49]. However, the use of personal interviews was limited by interviewer bias and lack of anonymity particularly in situations of interviews with Government officials.

1.10.3 Sampling Methods

Non-probability sampling methods of Purposive sampling and Snowball sampling methods facilitated data collection. Purposive sampling allowed for selection of respondents familiar with the APRM and its operations. Snowball sampling involves the selection of a small number of respondents who then identify others with similar characteristics or interests. Snowball sampling

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[48] Kothari, C.R.: *Research Methodology: Methods and Techniques* (New Delhi, New Age International Publishers Limited, 2004) pp. 98-99.

[49] Nachmias, C.F. and Nachmias, D.: *Research Methods in the Social Sciences* (London, Arnord, 1996) p. 234.

is useful in identifying the members of the target group who are difficult to locate[50]. For example the lead advisors of the APRM process in Kenya. Also some of the respondents targeted were heterogeneous in terms of professional background, levels of education, work experiences, exposure to issues of international relations and governance. Heterogeneous groups are assumed to be valuable in specialized studies due to the advantages of high response rates and are also likely to identify with the goals of the study and motivated to respond[51].

1.10.4 Secondary data

Secondary data sources the study included relevant textbooks, journals, government and official publications, reports contained in official publications/articles, NEPAD and APRM documents, published reports and articles. Secondary data provided the background work that has already been carried out and enable in establishing the gaps that exist.

1.11 Scope and Limitations of the Study

The study was limited to the African Peer Review Mechanism (APRM) process with specific reference on its impact on governance. It examined the APRM process in Kenya as a tool for improved governance and its challenges. A limitation of the study included the fact that APRM is a unique phenomenon which renders the object futuristic, prospective, and conjectural in scope, context and concept. The concept of APRM has been a subject of various perceptions and interpretations by the elitists. This created divergences in response vis-avis the understanding of the concept.

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[50] Carlson, J. M. and Hyde, M. S.: *Doing Empirical Political Research* (Boston, Houghton Mifflin Company, 2003). p.210
[51] Nachiamas, C.F. and Nachiamas, D.: *Research Methods in the Social Sciences* (London,Arnord,1996) p.230

Secondly, the investigation involved a single case study. This may limit the generalization of findings of the study. A Study of several countries might give a different perspective to the problem. Some respondents particularly public officials targeted to be interviewed were suspicious of the objectives of the study and for fear of victimization were unwilling to give sufficient information on the problems they encounter. The study also targeted the elitists and professionals in different fields as respondents, some of whom had difficulties in accessibility.

It should be noted that interviewees often produced contradictory answers, and may not have been utterly sincere due to their positions in the Kenyan administration. Being based on qualitative data, the study therefore might not exclusively produce empirical, widely applicable policy prescriptions; rather could highlight new areas of study.

1.12   Chapter Outline

Chapter one is the Introduction to the Study. It provides the logical sequence with regard to the background of the study, statement of the problem, the objectives of the study, a review of the related literature, justification of the study, theoretical framework, hypothesis, methodology of research and chapter outline.

Chapter two is Governance and African Peer Review Mechanism. It examine the concept of Governance and the Africa Peer Review Mechanism, the APRM process, comparison between the African Peer Review Mechanism and other peer reviews , significance of peer reviews and finally, challenges of the APRM Process.

Chapter three is governance in Kenya since independence from 1963-2008. It's a historiography of governance in Kenya and highlights the major trends. Chapter four is analysis of the Africa

Peer Review Mechanism process and its impact on governance in Kenya. Chapter five is summary, conclusions and recommendations.

CHAPTER 2

GOVERNANCE AND THE AFRICAN PEER REVIEW MECHANISM

2.1 Introduction

This chapter examines the concept Governance and the African Peer Review Mechanism (APRM) and their application in Africa States.

2.2 Governance

The quality of governance at all levels is seen as the most important factor for success of both the politico-economy and its institutions. The United Nations Development Programme (UNDP) defines "Governance as the exercise of political, economic, administrative and legal authority in the management of a country's public affairs at all levels. It comprises of mechanisms, processes, and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences"[52]. The UNPD definition indicates that governance needs to be inclusive such that all individuals have the right and the opportunity to participate in the management of those affairs that affect them.

Other scholars have given a variety of meaning to the concept of Governance as follows. Governance entails the nature of interactions between the formally distinct institutions such as the constitution, legislature, executive and the judiciary and those of civil society[53]. Governance is also the means in which power is exercised in the management of economic and social resources for sustainable human development. Governance is a fundamental aspect in the

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[52] Wanyande, P.: *NEPAD and Security in the IGAD Region. Security in the Age of Globalization*, Makumi Mwagiru (edit) <u>African Regional Security in the Age of Globalization.</u> (Nairobi, Henrich Boll Foundation Regional Office for Eastern Africa, 2004) p.67

[53] Lombarderde, P.: *Assessment and Measurement of Regional Integration* (New York,Routledge,2006) Edward Best: Regional Integration and (good) regional governance: Are Common Standards and indicators possible, p. 185

maintenance of a dynamic balance between the need for order and equality in society, the efficient production and delivery of goods and services, accountability in the use of power, the protection of human rights and freedoms, and the maintenance of an organized communal structure within which each citizen can contribute fully towards finding innovative solutions to common problems.

The basic principles of good governance are; accountability with the prospect of identifying and holding public officials to account for their actions; transparency through ensuring reliable, relevant and timely information about activities of the government is accessible to the public; openness of the government by allowing public participation when designing and implementing public policies.[54]

There are six identified dimensions of Governance[55]. First, is voice and accountability measured by the extent to which country citizens are able to contribute to select their Governments, as well as freedoms of expression, freedom of association and free media. The second is political stability and absence of violence assessed by the perception of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means including violence and terrorism. Third is government effectiveness assessed by the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitments to such policies. Fourth is regulatory quality which is the ability of government to formulate and implement sound policies and regulations that permit and promote private sector development.

[54] Lombarderde, P.: *Assessment and Measurement of Regional Integration* (New York, Routledge, 2006) Edward Best: Regional Integration and (good) regional governance: Are Common Standards and indicators possible, p. 186

[55] Kaufmann, D., Kraay, A. and Mastruzzi, M., *Governance Matters V: Aggregated and Individual Governance Indicators for 1996-2005* (Washington, World Bank Policy Research Working Paper 4012, September 2006) p.1.

Fifth is the rule of law, observed by the extent to which the population has confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police and the courts, as well as the likelihood of crime and violence. Last but not least, is control of corruption assessed by the extent to which public power is applied for private gain, including both petty and grand forms of corruption, as well as the use of the state by elites for private interests[56].

There various reasons have been given on the importance of governance including the following. The citizens use measures of governance to hold governments accountable for their actions at various levels. At the micro-level, governance is measured by the quality of service provision and the investment climate. At the aggregate level, governance is measured by the responsiveness of the government action to the public interest, and at all levels governance is measured for the probity of using resources[57].

Also donor countries and multilateral institutions seeking to provide technical support use governance measures to improve the design of a policy, for instance by providing actionable guideposts for operational efforts to improve governance. Donors seek assurances that the resources they provide are being well used not misappropriated. Whereas some governance weaknesses are an inevitable part of underdevelopment, providers of resources anticipate evidence that systems are improving. Hence, donors use governance measures for cross country comparisons and to monitor the trends within each country overtime[58].

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[56] Ibid, p.4.
[57] Levy, B.: *Governance Reform* (Washington DC, IBRD/World Bank, 2007) p.4.
[58] Levy, B.: *Governance Reform* (Washington DC, IBRD/World Bank, 2007) p.4.

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Hence, Governance can be described as the multimechanism for socialization and social control by which human conduct is regulated. Development is linked to the existence of an efficient and accountable government, the involvement of the society as a whole with the rule of law and a system of rights which are essential ingredients of good governance.

2.3   Historiography of Governance in Africa

Many African countries attained independence in the 1960's with some commonality including; being ex-colonial with few exceptions, they were old societies with a pre-colonial history of their own, and searching for new identity as nation-states[59]. The new states acquire statehood but the task remained of wielding into a nation variety of people with diversity in languages and in different stages of social and political development, with significant differences between them including geographical, cultural, size, population, and the levels of economic development. The populations were also poor, predominantly rural and over dependent on the vulgarities of the world market[60].

In the post independence era, most African countries moved from political pluralism towards the centralization of power into single power into a single party, and by the early 1970s few countries had retained multi-party systems. Power had been centralized in a single party and personalized in the hands of the party leader who became state president and elevation of president's own thought into the official ideology[61]. Authoritarianism was coupled with lack of accountability and transparency, grand corruption and political manipulation being the characteristics of one-party regimes in the post-independent period. This is as opposed to the West where industrialization had taken place before full democratic practices were introduced

[59] Tordoff, W.: *Government and Politics in Africa* (New York, Palgrava Macmillan,2002) p. 5
[60] Tordoff, W.: *Government and Politics in Africa* (New York, Palgrava Macmillan,2002) p. 5
[61] Tordoff, W.: *Government and Politics in Africa* (New York, Palgrava Macmillan,2002) p. 5

into the political process. These meant that resources were available to meet the most pressing needs of the populations.

The independent states in Africa have had unsettled political culture. At independence the political leadership had limited knowledge on operating a government system on national scale and the institutions through which they had to work were also relatively new and weak. However this has changed over the years with considerable progress that the continent has achieved.

In the 1960s the emerging private sector in Africa was underdeveloped with the state assuming a major entrepreneurial role leading to increase in the number of public enterprises with bureaucratic power. The weaknesses of the private sector inevitably led to the dominance of the state in economic management that provided state personnel with the opportunity to abuse their office, enrich themselves and benefit their supporters[62].

Hence, the overall picture of governance in Africa is one of little progress[63]. There is consensus in Africa that better governance is the key element in promoting growth and development[64]. The democratic culture in Africa is yet to be institutionalized, as vestiges of authoritarianism threaten the democratic process, and the politics of constitutionalism and political accommodation are yet to be rooted in the polity. In several African countries multiparty system flourishes but with

[62] Tordoff, W.: *Government and Politics in Africa* (New York, Palgrava Macmillan,2002) p. 6
[63] Economic Commission for Africa (ECA): *Africa Governance Report II 2009* (New York, Oxford University Inc., 2009) p.1
[64] Economic Commission for Africa (ECA): *Africa Governance Report II 2009* (New York, Oxford University Inc., 2009) p.ix

poor institutionalization and hence political tensions, conflict and crises emerge as patterns of electoral politics in Africa[65].

Post conflict countries like Liberia, Sierra Leone and the Democratic Republic of Congo (DRC) are joining the ranks of democracies in Africa with multiparty systems. The democratic space in the continent is expanding nevertheless ruling parties continue to suppress opposition parties with different degrees of severity. Elections are held more regularly but their credibility in some countries is low and the quality of elections remain suspect often they are less peaceful means of transferring power than a trigger of conflict. Violence frequently follows elections in Africa as evidenced by the experiences in Kenya in 2008 and Zimbabwe which does not indicate a positive sign of the growth and consolidation of democracy.

Further, adherence to constitutionalism and the rule of law remains a major challenge, though on increase but still limited in Africa. In some countries the executive has endeavor to change the Constitution to stay in power. For instance between 1990 and 2008, the constitution was amended in eight African States to elongate the team of office of the President mostly against the popular opinion[66].

Africa is plagued in institutional weaknesses with many countries being trapped in a vicious cycle of low-quality institutions. Weak institutions have been identified as being central of the problems the continent is experiencing. Institutions constitute the root cause and explain the fundamental differences in prosperity between countries. Institutions have dominant influence on economic performance, are critical for development process, sustained growth and development.

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[65] Economic Commission for Africa (ECA): *Africa Governance Report II 2009* (New York, Oxford University Inc., 2009) p.2

[66] Economic Commission for Africa (ECA): *Africa Governance Report II 2009* (New York, Oxford University Inc., 2009) p.3

Failure of policy implementation in Africa is largely attributed to distribution issues and institutional weaknesses rather than lack of knowledge[67].

The most unrelenting challenge facing Africa is under development characterised by low economic growth, deteriorating human welfare, and lack of economic social and structural transformation. It is estimated that as at 2004, Africa had 13% of the world's population but less than 2% of the GDP and with the biggest population living below poverty line[68]. Sustained growth has been elusive in the majority of African countries for several years. Human welfare degraded considerably during the 1980s and 1990s, compounded by heavy disease burden and conflict. To date many African countries are off tract to achieve the Millennium Development Goals (MDGs).

Slow economic development in Africa is attributed to poor management of public economic affairs by the state leadership[69]. Despite its meager resources endowment, the resource available in Africa is capable of generating economic development if harnessed and utilized efficiently. Visionary, dedicated and rational political leadership is key in appropriating resources for purposes of national development and well being of the citizens. Africa faces special structural and associated problems which lie largely within the ambit of governance, specifically the quality of political leadership which the continent has had since independence. Debate on good

[67] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.207

[68] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.207

[69] Mutoro, H., Chweya, L. and Nasongo, W., *Political Leadership and the Crisis of Development in Africa, Ghosh,R. etl al eds. Good Governance Issues and Sustainable Development: The Indian Ocean Region.* (New Delhi: Atlantic Publishers and distributors,1999) pp. 67-82:p 67

governance means little to a population struggling to survive until deep-seated economic and political grievances are addressed.

2.4 The New Partnership for Africa's Development (NEPAD)

Faced with enormous challenge of poverty, persistent underdevelopment, poor governance and low institution quality, the African Union Heads of State and Government established New Partnership for Africa Development (NEPAD) in 2001[70]. NEPAD was a new African initiative to foster development in the continent that recognizes socioeconomic development could not be achieved without effective institutions and good governance besides reducing poverty, improving infrastructure, agriculture, strengthening regional integration and building human capital. The overarching agenda for NEPAD were sustainable human development, eradication of poverty, continental economic and political integration, and global competiveness.

From its commencement, NEPAD stipulated principles and goals that highlighted the need for good governance in Africa and fostering of international partnerships to be linked to the continents agreed-upon development targets. Domestic manmade inadequacies in Africa had played their own contributing roles, such as ubiquitous official and unofficial corruption across the continent, leadership failures and oppressive and/or inefficient regimes, poor/bad policies and practices.

In July 2002, the African Union Summit of African Heads of State and Government in Durban South Africa, named the African Peer Review Mechanism (APRM), and placed it under NEPAD, to promote institutional change and good governance to foster growth that generates

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[70] Murithi, T.: "Institutionalizing Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143*. June 2007 p.7

sustainable socio-economic development and greater regional integration. The mandate of APRM was to encourage the participating countries conform to NEPAD's basic declaration on democracy, political governance, economic governance and management, corporate governance, and socioeconomic development, and that they adapt the appropriate policies and practices in the promotion of these objectives[71]. The main objective of APRM is to promote the adoption of policies and practices that are likely to promote the overarching objectives of NEPAD, by sharing experiences and reinforcing the proven and appropriate best practices and also assess the needs for capacity building of the participating countries.

APRM recognizes unequivocally that good governance and effective states underpinned by appropriate institutional framework can provide vital infrastructure and basic services, provide security, secure property rights and prevent conflicts, are vital for development, economic growth and improvements in human welfare. APRM involves periodic reviews of policies and practices of participating states to ascertain progress made towards achieving mutually agreed goals of and improvements in political, economic and corporate governance[72].

2.5 The Concept of the Africa Peer Review Mechanism.

The Africa Peer Review Mechanism (APRM) is an inventive mutually agreed instrument for self-monitoring at national and continental level among members states of the Africa Union whose underlying principle is to advance the adoption of best practices, policies, and standards by governments that lead to political stability, high economic growth, sustainable development,

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[71] Murithi, T.: "Institutionalising Pan-Africanism: Transforming Africa Union Values and Principles into Policy and Practice" *ISS Paper 143*. June 2007 p.7

[72] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.210

accelerated sub-regional and continental economic integration, as granted under the Africa Union

Declaration on Democracy, Political, Economic and Corporate Governance[73].

In joining the African Peer Review Mechanism, each of the participating countries agrees to be periodically evaluated by a multinational mission of African reviewers, acting on behalf of the association as a whole. The central purpose of APRM is to address poor governance by promoting political, economic and social best practices in public affairs overtime. The requisites that constitute the core guiding principles of the APRM process are technical competence, credibility and independence from political manipulation.

The genesis of a country participation in APRM is by notification to the New Partnership for Africa Development (NEPAD) top organ, the NEPAD Heads of State and Government Implementation Committee. These entail undertaking to submit to periodic peer reviews, to facilitate such reviews, and to be guided by the agreed parameters for good political governance, good economic governance and corporate governance[74]. When formally acceding to the peer review process, a country clearly defines a time-bound Programme of Action (POA) for implementation that commensurate with the Declaration on Democracy, Political, Economic and Corporate Governance, including periodic reviews[75]. The role of APRM is not to replace the existing national processes but to audit them and subsequently reinforce them by identifying capacity needs required for successful implementation. It exams the policies, the mechanisms to
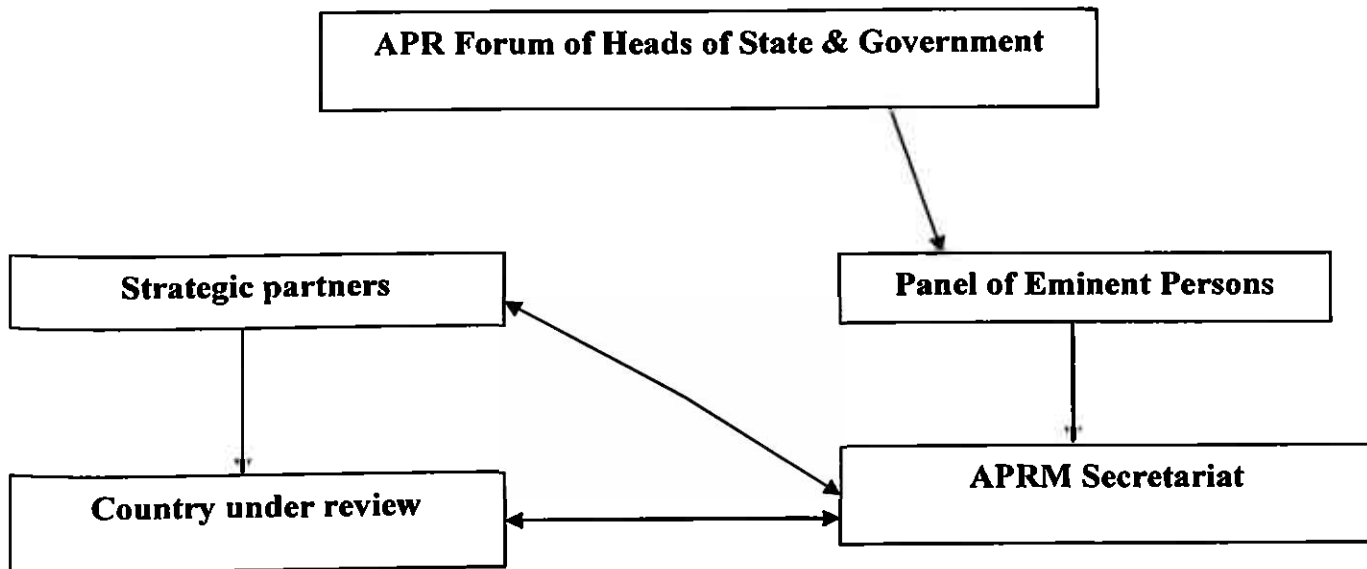
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[73] Chikwanha, A.B., The APRM: A case study in democratic institution building? *ISS Paper 151*, October 2007, p.3
[74] APRM (Africa Peer Review Mechanism) .Base document AHG/235 (XXXVIII), Durban, NEPAD Secretariat, 8th June 2002, p.3
[75] APRM (Africa Peer Review Mechanism) .Base document AHG/235 (XXXVIII), Durban, NEPAD Secretariat, 8th June 2002, p.4

implement them and their results[76]. Hence APRM could be conceptualized as an international agreement cum organization.

Figure 1 Organization structure of the APRM

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          ┌──────────────────────────────────────────────┐
          │   APR Forum of Heads of State & Government    │
          └──────────────────────────────────────────────┘
                                      │
                                      ▼
┌──────────────────────────┐              ┌──────────────────────────┐
│   Strategic partners     │◄─┐           │   Panel of Eminent Persons │
└──────────────────────────┘  │           └──────────────────────────┘
          │                    │                        │
          │                     ╲                       │
          │                      ╲                      ▼
┌──────────────────────────┐      ╲      ┌──────────────────────────┐
│   Country under review   │───────────► │     APRM Secretariat      │
└──────────────────────────┘◄────────────└──────────────────────────┘
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Source: Adejumobi, S and Olukoshi, A.: *The African Union and new strategies for development in Africa.* Nairobi: CODESERIA&DPMF, 2009. P142

2.6   The African Peer Review Mechanism Process

The African Peer Review Mechanism attempts to ascertain developmental solutions by encouraging and facilitating dialogue among various stakeholders in a process consisting of several stages[77]. The APRM is democratic such that each country formats its own review

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[76] Atieno, R., Jama, M. and Onjala, J., "Do think tanks benefit from APRM work? Kenya's experience", *SAIIA Occasional Paper 6 Governance and International Affairs, December 2008.* p.2

[77] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007,* p.1

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process, even though homogeneous questions on democratic procedures are raised across countries[78].

The APRM is organised as a dual process of governance involving the internal self-assessment by the participating countries, and external evaluation by the APR panel of eminent persons, culminating in a peer-review by the leaders of those countries. The review process consists of five main stages and for each stage, a key APRM institution assists and monitors progress. Individuals who are technically competent and free from political manipulation or influence are expected to undertake every review process of a country in as transparency manner as possible[79]. A Panel of Eminent Persons (APRM Panel) consisting of well known, professionally distinguished, respectable, credible and independent Africans, lead and oversees the entire process, supported by the Secretariat (APRM Secretariat).

The first stage of APRM is a Country Review which is the base review that is carried out within eighteen months of a country becoming a member of the APRM process. This is followed by a Periodic Review that takes place every two to four years[80]. In addition to these, a member country can request for a review that is not part of the periodically mandated reviews, for instance in cases of early signs of impending political or economic crisis would be sufficient cause for instituting a review. Generally, the APRM process consists of five main stages as follows[81].

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[78] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007*, p.3

[79] Mohhidin, A, The National Process of the African Peer Review Mechanism: Challenges and Opportunities, p.247

[80] NEPAD/HGSIC, African Peer Review Mechanism: Organization and Processes. *APRM Base Document*, 9 March 2003 pp. 10-15

[81] See, NEPAD/HGSIC, African Peer Review Mechanism: Organization and Processes. *APRM Base Document*, 9 March 2003

Stage one of the APRM is an initial background study of the political, economic and corporate governance and development environment in the country to be reviewed. The APRM Secretariat, the institutions technical wing, prepares the background technical situation report based principally on the latest documentation and materials presented by national, sub-regional, regional and international institutions. This is for guiding the Country Review Team as well as assisting the technical preliminary activities the review[82].

The APRM stage two involves the appointed Review Team visit to the country under review to hold consultations, with the aim of assessing a country compliance with the APRM standards with a wide range of stakeholders including Government officials, political parties, and parliamentarians, representatives of civil society organizations which include the media, academia, trade unions, business, and professional bodies on order of priority. The in-country dialogue by country review team generates a Country Self Assessment Report (CSAR)[83].

At Stage three the review team prepares its report on the basis of the briefing material prepared by the APRM Secretariat and the information provided in the country by official and unofficial sources during the wide-ranging consultations and interactions with all stakeholders. The Panel of Eminent Persons reviews the in-country report and writes its country draft report. Governments have an opportunity to react to the report before it moves to the next stage.

[82] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007*, p.3

[83] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007*, p.3

The onset of the fourth stage is the submission of the review team report and a Programme of Action to the participating Heads of State and Government, the APRM Forum, through the APRM Secretariat. The participating Heads of State and Government consider, make the necessary decisions and adopt the final documents.

The process culminates at the fifth stage which takes place within six months following the consideration of the report by the Heads of State and Government of the participating member countries. The report is formally and publicly tabled in key regional and sub-regional structures such as the Pan-African Parliament, the African Commission on Human and Peoples ' Rights, the Peace and Security Council and the Economic, Social and Cultural Council ECOSOCC) of the African Union[84].

The final report is measured against the applicable political, economic and corporate governance commitments made and the Programme of Action. If the Government of the country under review shows a demonstrable will to reform, the participating Governments offer assistance as well as advocate for donor governments and agencies to assistance the country reviewed. Incase of lack of political will from the Government, the participating states endeavor to engage in constructive dialogue, offering in the process technical and other appropriate assistance. If dialogue is counter productive, the Heads of State and Government may resolve to put the Government on notice of their collective intention with a timeframe to proceed with appropriate measures. The interval provides a further opportunity for addressing the identified shortcomings

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[84] NEPAD/HGSIC, African Peer Review Mechanism: Organization and Processes. *APRM Base Document*, 9 March 2003 pp. 10-15

under a process of constructive dialogue. This state provides for intervention in appropriate manner for non-compliance by an APRM signatory member[85].

2.7 Comparison between the NEPAD'S APRM and OECD Peer Review.

The concept of peer review was pioneered by the Organization for Economic Cooperation and Development (OECD)[86]. Like APRM peer review in OECD is characterized by systematic examination of the performance of a country by other countries with the objective of assisting the state to improve its policy making and adopt best practices. The process is non-adversarial, relying on mutual trust between the states involved in review, as well as their shared commitment to the process. The reciprocal evaluation process is aimed at creating a system of mutual trust and accountability[87].

Both peer reviews processes aim at fostering accountability, transparency and capacity building through the process of open dialogue between the states. The reviews measure progress overtime rather than a score based on rewards and punishment.

In both peer reviews, there is no standard peer review mechanism for countries but they share certain structural elements including a basis for proceeding, agreed set of principles, standards and criteria against which a state performance is reviewed, and a set of procedures leading to the final result[88].

[85]NEPAD/HGSIC, African Peer Review Mechanism: Organization and Processes. *APRM Base Document*, 9 March 2003 pp. 10-15

[86] Masterson. G.: An Analysis of the Implementation of the Africa Peer Review Mechanism in Ghana, Kenya and Mauritius, *EISA Occasional Paper Number 29*, February 2005 p. 2

[87] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.2

[88] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.3

However, there are significant differences between the two peer reviews. While, there are three phases of the OECD peer review, the APRM consists of five stages. The first phase of OECD review is the preparatory phase which corresponds to the APRM first stage; the second phase is the consultation phase that corresponds to the APRM second and third stages. The third phase of the OECD peer review corresponds to the fourth stage of the APRM process[89].

Another dissimilarity is that the OECD peer reviews are specific, focusing on particular sectors or particular policies mainly on economic matters. This is as opposed to the APRM process that focuses on a range of issues regarding political, economic and corporate governance, and their contribution towards regional integration.

2.8   Significance of Peer Reviews.

Peer reviews are considered useful tools given that in the process countries exchange information, attitudes and views on policy decisions and their application. This dialogue could be the basis for further collaboration through, for example, the adoption of new policy guidelines, recommendations or even the negotiation of legal undertakings[90].

Further as a mutual learning process, peer reviews serves as a capacity-building mechanisms for both Countries under review and the examining countries through the exchange of best practices[91]. The APRM process has some unique identifiable benefits. First, the APRM exposes Africa's governance institutions as well as their management and leadership to transparent public scrutiny on major and potentially sensitive political, economic and social issues, and also

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[89] Kanbur, R.: "Africa Peer Review Mechanism: An Assessment of Concept and Design", January 2004. pp.6-7
[90] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.6

[91] OECD, Peer Review: A tool for Co-operation and Change, *Policy Brief*, January 2007. P.6

involves a major undertaking by both the secretariat of APRM and the government of participating Countries[92].

The APRM has contributed enormously to the empowering of people in the countries that have joined the process through participation and hence deepens the understanding of the principles of democracy and good governance. It explains the sources of bad governance and their consequences on the economy and societies[93]. APRM endeavors to establish development solutions within the local communities by encouraging and aid dialogue between the state and the society[94].

The APRM has helped African states to forge African perspectives on governance and democracy. APRM has provided the opportunity for Africans to share experiences and explore possibilities of forging and promoting democracy, good governance appropriate for African cultural realities and socio-economic conditions in a world that is rapidly changing.

2.9   Challenges to the APRM Process.

While APRM provides the opportunity for reforming governance climate, the design of the process and the approach of its roll out pose serious challenges to the depth and integrity of the final review report and its real impact on improving governance[95]. The APRM was intended to direct the new shift in values and priorities which will lead to organizational reform and policy implementation by encourage the adherence of adopted policies, principles and proposed

[92] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.256
[93] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.270
[94] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007,* p.1

[95] Kajee, A, Nepad's APRM: A Progress Report limitations and challenges, SA Yearbook of International Affairs 2003/2004, p.252.

practices that enhance economic growth and facilitate transitions to democracy by identifying capacity gaps and propose alternative causes of action[96].

However, the APRM process is slowing down with observations that possibly part of the problem is that the process of the inculcalation of the common values on which sustainable development was designed as a top-down approach or the locating of much power to drive transformation in the political leadership, and the design was faulty from the beginning[97].

The performance of the ARPM progress in response to the a variety of challenges encountered from the participating countries, which are at different levels of economic and political developments in which critical issues and concerns are likely to emerge. Some of the issues that have emerged in the process of implementation include the following.

The first challenge a participating country faces is getting organised for the review. It includes the clarification of the objectives, the comprehensive laying out of all the processes and mobilization of resource[98].

There have been poor perceptions of the APRM objectives. There is still confusion among the populations on the objectives of APRM. It is important to note that APRM is not a cleansing mechanism for the international private sector or development partners intended to make Africa safe for investment and business or ensuring that development assistance is effectively utilized[99].

[96] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007,* p.3

[97] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007,* p.1

[98] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007,* p.3

[99] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.265

APRM need to be perceived as a self-assessment process to gauge the progress, problems and challenges of the governance systems.

Some African countries are also faced with the problem of proliferation of commitments and find themselves torn between fulfilling obligations to NEPAD and the APRM requirements. For instance, some countries consider themselves addressing most of the APRM concerns in the National Governance Programmes through the IMF pioneered poverty reduction strategies[100].

The lack of transparently undertaking the process has often led to the domination by the executive which has been identified as an obstacle to the APRM process. Governance is about power and in lack of constraining forces such as the constitution, political or conventional; those who are in command can do whatever they desire. In most of African countries the containing forces have proven to be ineffective or weak in constraining the powers of the executive branch. APRM is expected to be led and not controlled or manipulated by the government. Governments are viewed as one of the stakeholders, however they are powerful institutions that control resources, employ a large number of people, enforce law and order, and provide basic services.

Logistical constrains have poises a great challenge to the APRM process resulting into delays. The shortage of funds and the lack competent personnel continue to affect the quality of the review particularly by delaying the process[101].

Another challenge is the great deal of misunderstanding among the stakeholders, particularly between governments and civil society organizations. These hostilities are historical and mainly

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[100] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007*, p.4

[101] Chikwanha, A.B., The APRM: A Case Study in Democratic Institution Building? *ISS Paper 151, October 2007*, p.3

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regarding their respective roles and responsibilities in the governance system. There is also the issue of identifying and allocating the different roles and responsibilities in the formulation and implementation of the National Programme of Action.[102]

Implementation of the National Programme of Action (NPOA) has posed considerable challenges to the participating countries. The National Plan of Action cannot be equated to the 5-year developmental plan or government plan which is designed and implemented authoritatively, top-down by governments. The NPOA is a comprehensive programme of voluntary actions and commitments involving all stakeholders in its formulation, and are likewise expected to participate in its implementation. Governments are expected to offer overall stewardship and leadership. For this reason the major challenges confronting participating countries in implementation are voluntary mobilization and organization of human and material resources, establishing and promoting partnerships, collaboration and coordination, capacity building across the entire government system including all stakeholders, committed leadership with political will across the stakeholders spectrum, and formulation of the appropriate policy framework for all those activities to take place in peace, security and stability[103].

Last but not least, is the legal status and political status of the Memorandum of Understanding (MoU). Clarification is required as to whether the MoU is a legal binding document on the signatory or a mere legal convention with no consequences in the event of violation or mere political affirmation of intentions. These leaves much room for non-compliant behavior.

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[102] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.265

[103] Adejumobi ,S. and Olukisho, A., *The African Union and New Strategies for Development in Africa* (New York, Cambria Press, 2008) p.265

2.10   Conclusion

Good governance is based on attitudes, ethics, practices and values of the society regarding accountability of power, democratic values, continuing corporate social responsibility, efficient and effective use of resources for the production of goods and services. Others are protection of human rights and freedoms, recognition of the government as the only entity to which the society gives authority to use coercive power to maintain public order and national security, and the attitudes towards the generation and accumulation of wealth through hard work and personal effort.

The African Peer Review Mechanism has at its epicenter the objectives of deepening democratic practices, strengthening of the achievements, and dissemination of best practices and the rectification of underlying deficiencies in governance and socio-economic development process among the AU member states. APRM is considered to be Africa-owned, non-adversarial and voluntary. Neither sanctions nor coercive measures are contemplated against a reviewed state whose public life falls short of standards of open democratic practice, and whose leaders overlook APRM recommendations designed to facilitate their countries closer to its objectives. The aspirations and expectations of APRM participating countries is that by subjecting themselves to such reviewing they will individually voluntarily choose to became better governed overtime and, so choosing they will singularly and as a group of states earn increased international respect and favor internationally.

CHAPTER THREE

GOVERNANCE IN KENYA SINCE INDEPENDENCE (1963-2009)

3.1   Introduction

Kenya's experience in implementation of APRM cannot be isolated from its political and economic history. This chapter presents an overview of the historiography of political, economic and corporate governance in Kenya.

3.2   Political Development

1963-1978

At independence in 1963, the Kenyan Constitution had created competitive politics characterized by opposition political parties namely the Kenya African Democratic Union (KADU) and the Akamaba Party (APP), but after independence only KADU remained a major opposition political party. KADU was eventually disbanded within a year after independence through a systematic undermining of constitutional provisions[104]. These led to a merger between the Kenya National African Union (KANU) political party and KADU which engendered a bitter ideological polarization within KANU, between the radicals (socialists) and the conservatives (capitalists).

The ensuing power struggle led to the conservatives under Jomo Kenyatta entrenching themselves to be in charge of the country's political destiny[105]. This led to a breakaway faction of KANU led by then Vice President Oginga Odinga and Bildad Kaggia amoung others reigning from KANU and forming the Kenya Peoples Union (KPU). A number of parliamentary backbenchers joined the opposition prompting the government to rush to parliament a

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[104] Barkan, J.D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers, 1994) p.80
[105] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services, 2006) p.47

constitutional amendment requiring those who defected to resign their seats and go back to the electorate, this culminated in the by-elections of 1966 that so the majority of those who had defected back in parliament[106].

The final showdown between the two political groups came in 1969 during a presidential visit to Nyanza province that sparked riots allegedly orchestrated by the KPU which was later proscribed for the rest of President Jomo Kenyatta reign. Increased criticism against the state from the mid-1970's led to the change of governance towards autocracy, the ideology of nation building tended to justify and emphasize bureaucratic centralization of power rather than its dispersion to other organs of the state[107]. Kenya remained a defacto one party political system[108].

1978-1990

The rise of Vice President Daniel Arap Moi to power following the demise of Jomo Kenyatta in 1978 represented only a change in personality, but the system of rule was marked by continuity. Political opposition approach was suppression. Attempts of formation of opposition political parties in 1982 were rejected. The measures succeeded only in forestalling any formal challenge to Moi's presidency but did not make any future guarantees especially in view of the attempted coup d'etat in August 1982[109]. This was followed by Constitutional Amendments that transformed Kenya into a de jure single party state and a systematic arrest and detention of political opponents and dissenters.

[106] Barkan,J.D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers,1994) p.80

[107] Nasongo, S.M., *The Illusion of Governance in Kenya"*, Dibie, R., Politics and Policies of Sub-Saharan Africa(Maryland, University Press of America,2001)pp.117-130:123

[108] Ahluwalia, D. P. : *Post-Colonialism and the Politics of Kenya* (New York, Nove Science Publishers Inc, 1996) p.150

[109] Nasongo, S.M., *The Illusion of Governance in Kenya"*, Dibie, R., Politics and Policies of Sub-Saharan Africa(Maryland, University Press of America,2001)pp.117-130:123

In 1983, the administration began clamped down on competitive politics which saw sedition and treason. The regime gradually became intolerant of the freedom of press, expression and assembly leading to the legislation making Kenya a dejure one party state thereby facilitating the supremacy of KANU over parliament in decision making[110]. The introduction of section 2A in the Constitution relegated parliament to an advisory role.

The culmination of the onslaught on democracy in Kenya came when the secret ballot process of voting was replaced by queue voting, put in effect in the 1988 general elections[111]. The 1988 elections went down as the most rigged elections. These led to a lot of discontent and disaffection among democratic forces and eventually to championing of the cause for multi-party democracy.

The proponents multiparty found favour within the international political environment with the end of cold war. The oppressive actions of the Government incensed the international community particularly donors who hard-pressed the government to undertake reforms. The depth of disenchantment within the Governmental and among the citizens encouraged a variety of social forces rooting for reforms leading to among others crystallization and formation of the Forum for Restoration of Democracy (FORD) [112].Further, supplementing and reinforcing the internal forces of democratization were external pressure inform of aid crunch against Kenya by both bilateral and multilateral donors as well as diplomatic pressure premised on contention.

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[110] Dibie, R. : *The Politics and Policies of Sub-Saharan Africa* (Boston, University of America Press,2001) p. 123
[111] Nasongo, S.M., *The Illusion of Governance in Kenya"*, Dibie, R., Politics and Policies of Sub-Saharan Africa(Maryland, University Press of America,2001)pp.117-130:124
[112] Murunga, G.R and Nasongó, S. W. : *Kenya: The struggle for democracy* (New York, Zed Books Ltd,2007) p.98

Consequently, the forces led to various forms of protests and the infamous Saba Saba riots of 1990 and in 1991. The government repealed section 2A of the Constitution leading to formation of opposition political parties that competed for the control of state apparatus with KANU[113].

However, the political parties that emerged with the changing political environment were formed under conditions that were driven by different social and political forces, amongst them ethnicity. The vision of the political parties remain devoid of any coherent ideology, the quality of political parties in Kenya could not be judged on ideological or policy differences but rather from social cleavages that they draw their support[114]. The ethnic tilt was evident in 1992 and 1997 General elections in which parties support followed distinct ethno-regional patterns.

Following the outcome of the 1992 elections, the state tied development assistance to communities and districts that had voted for the ruling party, KANU. This led to political defections mainly from the opposition parties to the ruling party. State patronage became manifestly ethnical based with expenditure outlay in different parts of the country tied closely to the support that different ethnic groups and regions gave to the ruling party.

Opposition parties in Kenya remained weak and faced pressure of fragmentation due to internal discontents. Among the factors that affected the performance of opposition parties were lack of institutionalization, factionalism within political parties, absence of internal party democracy and

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[113] Nasongo, S.M., *The Illusion of Governance in Kenya"*, Dibie, R., Politics and Policies of Sub-Saharan Africa(Maryland, University Press of America,2001)pp.117-130:125

[114] Murunga, G.R and Nasongó, S. W. : *Kenya: The struggle for democracy* (New York, Zed Books Ltd,2007) p.99

openness, dominance of party founders and parochial interests, refusal of state to level the playing field, lack of resources, cultural diversity and lack of ideology[115].

Between 1992-2002, the KANU government was reluctant to level the playing field with the opposition parties being perceived as foreign imposed illegimate entities. These divisive politics led to tensions and largely account for the 1992 and 1997 ethnic clashes in the Rift Valley and Coast Provinces. These clashes are believed to have been instigated by the ruling party to intimidate opposition's supporters.

After being defeated in the 1992 and 1997 General elections, the opposition parties finally accepted the reality that their only chance to leadership was the unity of the myriad opposition parties[116]. Finally, through the unity of opposition, the National Rainbow Coalition was formed and dislodged KANU from power in the 2002 elections and Mwai Kibaki became the third President of Kenya.

2003-2009

The post-2002 elections scenario was expected to lead to more accountable democratic governance. While the 2002 elections marked a significant democratic transition in Kenya, the task of democratic consolidation became a gigantic task for the new administration[117]. The ruling coalition was faced with persistence internal wrangling due to the non implementation of the pre-

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[115] Murunga, G.R and Nasongo, S. W. : *Kenya: The struggle for democracy* (New York, Zed Books Ltd,2007) p.100

[116] Murunga, G.R and Nasongó, S. W. : *Kenya: The struggle for democracy* (New York, Zed Books Ltd,2007) p.177

[117] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.53

election Memorandum of Understanding. This led to increased opposition from within the ruling party. The opposition politics took two distinct dimensions, that is, internal opposition emanating from the ruling party itself and the traditional opposition from the parties out of the government. This largely accounted for the loss by the government in the vote for the proposed constitution in the year 2005 referendum. The scenario led to the formation of a Government of National Unity, following the sacking of some cabinet Ministers and after which opposition members of parliament joined the government, which ensured President Kibaki's administration security and survival. Co-optation and blatant disregard of party protocols were used to achieve this goal, which if unchecked would perhaps lead to political monolitism, decay of party politics and a dominant party system.

The breakaway opposition within the Government built on the momentum of the 2005 referendum and founded the Orange Democratic Movement (ODM) as a political party to challenge President Kibaki in the 2007 elections. The ODM later split into the ODM led by Raila Odinga, and ODM-Kenya led by Kalonzo Musyoka. President Kibaki and his allies, on the other hand, formed the Party of National Unity (PNU), which was a coalition of allied political parties including KANU[118]. At the time, the Government had lost substantive popularity due to the perceived failure to tackle corruption, inequalities and the economic reforms implemented were perceived to have led to insignificant growth. Going into the 2007 General elections, opinion polls of various research institutions indicated that it was too close to call.

Kenya held its general elections on 27th December 2007. Soon after the Electoral Commission of Kenya announced the incumbent President Mwai Kibaki was re-elected while his bitter rival

[118] Norad: *Norad Report 19/2009 Discussion: Political Economy Analysis of Kenya.*(Oslo, Norwegian Agency for Development Cooperation, June 2009) P.10

Raila Odinga of ODM was second, spontaneous violence along ethnic lines broke out in most parts of the country. Despite of the fact that Kenya had some formidable instruments for accelerating good governance, including a strong and vibrant civil society, a strong and independent media, sizeable and influential middle class, and competitive politics where no political party dominated over the long term. The level of violence and counter violence that broke out in Kenya after the December 2007 elections was unprecedented. The country's long standing stability was at stake[119].

The post-election violence (PEV) led to estimated deaths of 1,133 people and another 3,561 people suffered injuries[120]. During the violence a recorded total of 117,216 private properties (including residential houses, commercial premises, vehicles and farm produce) were destroyed, and 491 Government owned properties (including offices, vehicles, health centres, schools and trees) were destroyed[121]. The post election violence (PEV) led to displacement of approximately 350,000 persons from their normal abodes of residence and/or business. Internally Displaced Persons (IDPs) were concentrated in Western, Nyanza, Rift Valley, Central, Nairobi and Coast Provinces. An estimated 1,916 Kenyans became refugees in Uganda[122].

In rural areas there were widespread brutal killings, looting, burning of houses, evictions and other inhumane acts based on an individual ethnic identity and perceived political affiliation. In urban centres violence was characterized by looting, burning, destruction of shops and properties

[119] Norad: *Norad Report 19/2009 Discussion: Political Economy Analysis of Kenya.* (Oslo, Norwegian Agency for Development Cooperation, June 2009) P.5

[120] Waki, the Hon. Mr. Justice Philip J.A. *Report of the Commission of Inquiry into Post Election Violence (CIPEV),* Presented to His Excellency Hon. Mwai Kibaki, C.G.H., PM. President and Commander in Chief of the Armed Forces of the Republic of Kenya and The Panel of African Personalities (Government Printer, Nairobi, October. 2008) Pp.345,346.

[121] Ibid,Waki Report, P.146

[122] Ibid,Waki Report, P. 351

in massive proportions. Barricades and roadblocks were set up to intimidate and rob travellers and destroy their vehicles based on one's perceived ethnic community. During the violence, the national leaders were apparently preoccupied with securing their personal political interests rather than use their influence to stop the violence[123]. The post election crisis created a situation of lawlessness and impunity for crimes carried out in the violence affected areas.

The rapid escalation of the violence and the political crisis in Kenya provoked swift intervention from the international community. The African Union (AU) mandated a mediation team of Eminent African Persons led by the former United Nations Secretary-General, Kofi Annan, to find a peaceful resolution to the crisis. At the conclusion of the mediation phase in February 2008, a power sharing agreement was adopted under the National Accord and Reconciliation Act. Mwai Kibaki remained as President, while Raila Odinga was appointed the Prime Minister with the authority to co-ordinate and supervise the execution of government functions.

Further during the mediation the two sides also agreed to establish three important commissions as follows; the Independent Review Commission on the 2007 elections (IREC) and the Commission of Inquiry into the Post- Election Violence (CIPEV), both of which had completed their work in early 2009 and the Truth, Justice and Reconciliation Commission (TJRC) which would inquire into, 'historical injustices ' including human rights violation, illegal or irregular acquisition of land and the misuse of political power from independence in 1963 to the present. The initiatives were to provide an opportunity to address in detail the root causes of political violence in Kenya.

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[123] Ibid, Waki Report, P. P.30

Despite of the roadmap adopted to address the political ills affecting the country, concerns were later raised over the slow process to implement the recommendations in the Commissions reports. The governing coalition has frequently been under stress because of splits between the two main parties particularly due to disagreements over the power relationship between PNU and ODM, led by their leaders, and the pace, scope and depths of reforms. Internal conflicts both within the coalition and in the coalition political parties became apparent. A lack of collective vision and commitment to reform was discernible[124]. This gave space for anti-reform and non-reform forces at various levels to operate. The public had concerns whether the partners in the coalition government would act in the public interest. The grand coalition was scheduled to last until the next General elections in the year 2012.

3.3.   Overview of the Political Governance in Kenya

The brief history of political development in Kenya since independence and the situation after the 2007 elections provide the context for the challenges faced by the African Peer Review Mechanism in search of suitable ways to contribute positively to building stronger structures and processes of democracy and good governance in Kenya. While development remained an important pursuit at independence it was not alone. It was pursued simultaneously with the goal of consolidating the powerbase of the political elite. The latter goal was not enslaved during the nationalistic struggle as well as during the transitional period. The two goals created the problem of conflict of interest and absolute propensity of the new government and gave importance and urgency to the latter goal. Since the future guarantees had to be made through the use of civil methods, notably self popularization and establishment of ethno-political alliances, which later preoccupied both President Kenyatta and Moi eras. Ethno-political coalition formation was a

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[124] Norad: *Norad Report 19/2009 Discussion: Political Economy Analysis of Kenya.* (Oslo, Norwegian Agency for Development Cooperation, June 2009) P.12

method applied by both Moi and Kenyatta[125]. Kenyatta heavily relied on his Kikuyu and the larger GEMA Community while Moi on the Kalenjin and KAMATUSA.

The initial task for Kenyatta's government was to neutralize the opposition politics and political pluralism in general. To achieve this it was important first to disband the opposition and absorb their membership to KANU and secondly to establish an authoritarian system of governance that would suppress any political dissent. Infact this remained the preoccupation of the KANU leadership in both Kenyatta and Moi era. The two eras were characterized by government political maneuver, manipulation, and sheer intrigue that absorb all governmental energies and resources.

President Mwai Kibaki ascendance into power in 2002 brought about enthusiasm about change in governance. However, the developments within the ruling coalition party forestall the initial government agenda on governance, and the administration approach to issues was marked by continuity with some aspects of transformation[126].

[125] Barkan, J. D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers,1994) p.85

[126] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi,Oakland Media Services,2006) p.53

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Figure 2: Political map of Kenya
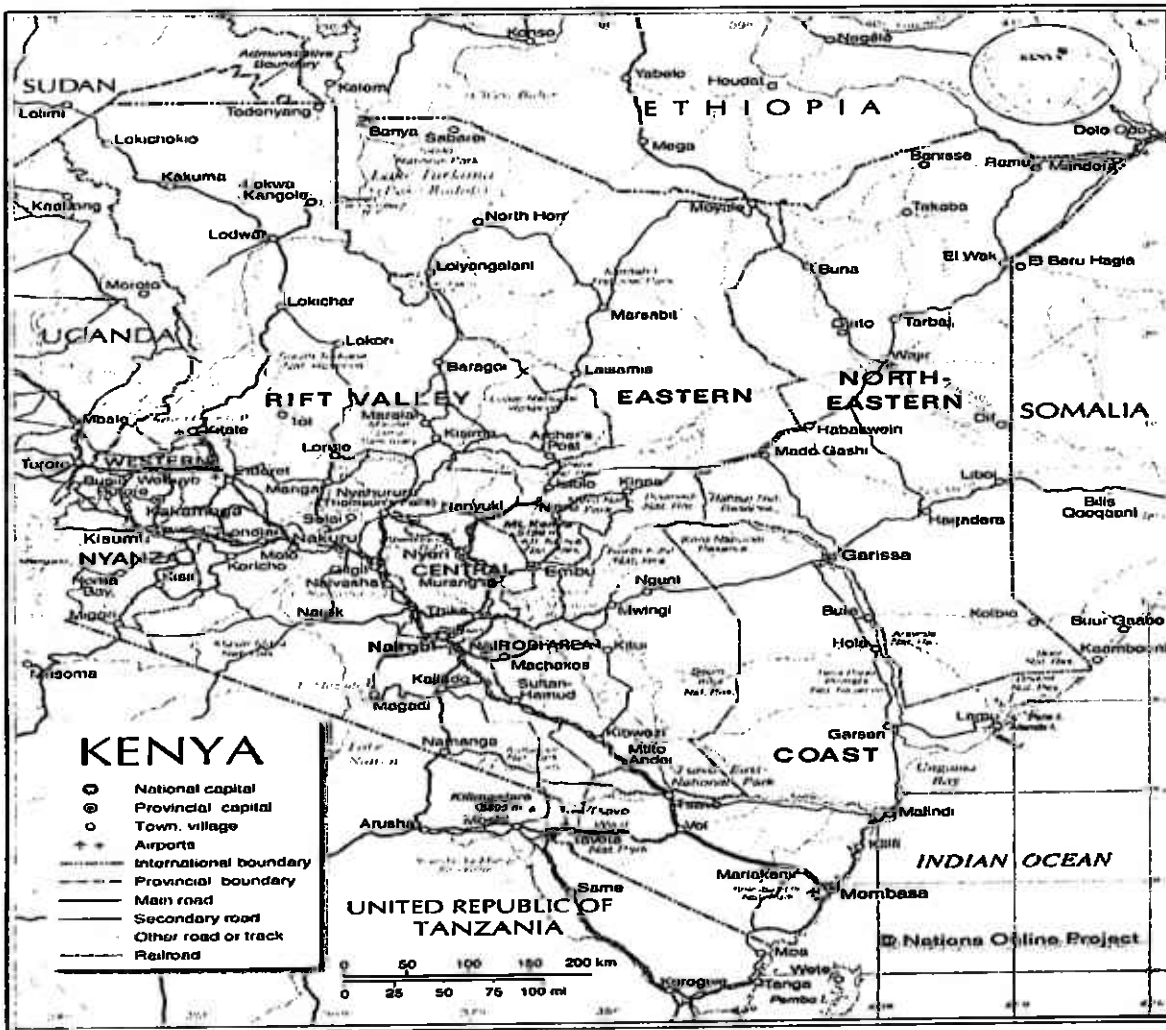
Democratic governance in Kenya remained an illusion due to several factors. These include the use of the state to serve the self-aggrandizing activities of the incumbent political elites and their supporters. The state was viewed as the source of largesse and hence competition for political office in Kenya is not premised on the calling to serve or to provide alternative leadership but to control the state apparatus so as to have limitless access to resources. Political parties took an ethnic angle lacking ideology leading to politics of opportunism with mass defections across parties with changing political fortunes.

Historical grievances around inequalities including land ownership had not been addressed. The use of violence by political contenders during elections, with the exception of a respite in 2002, had become systematic. The state's failure to deal decisively with political violent dented its legitimacy among the citizenry in its role of providing security. The problems of social and economic inequality and lack of security were compounded by impunity. There had been numerous commissions of inquiry and many official reports of public investigations commissioned by the Government with names senior leaders as accomplices in large scale corruption or violence against Kenyan citizens, but none had been tried and convicted in court of law[127]. This negatively impacted on the credibility of the rule of law and the regulatory functions of the state. Although Kenya boasts the strongest and most self sufficient economy and the best educated population in the East African region, political analysis in the sections above provided an admittedly bleak rendition of the state of Kenya and its system of government and governance. The challenge in Kenya was to build on the impressive strengths that the country possesses, while overcoming the state's systematic weaknesses.

3.4 Socio-Economic Development & Economic Governance

Economic development is measured at two levels. Macro-economic level and micro-economic level. Macro-economic level indicators include the Gross National Product, Gross Domestic Product, Per-capita incomes and the Balance of Payment situation. Micro-level indicators include social indicators such as satisfaction of basic needs as food, housing and clothing as well as access to fundamental social services notably education, healthcare and social security which constitute the standard of living measure.

[127] [127] Norad: *Norad Report 19/2009 Discussion: Political Economy Analysis of Kenya.* Oslo, Norwegian Agency for Development Cooperation, June 2009.P.12.

Trends in economic performance

Kenya is characterized by many achievements of strong socioeconomic performance but also significant failures and missed opportunities[128]. The attainment of Kenya's independence in 1963 brought new political leadership that enthusiastic about the development needs of the country. The leadership embarked on developmental programmes geared towards eradication of hunger and nutrition, illiteracy and ignorance as well as poverty and deprivation[129]. These were enshrined in the first national development plan covering the period 1963-1970 and the Government Sessional paper no. 10 of 1965 on Africa socialism and its application to planning in Kenya. Kenya's economic performance since independence can be accounted in phases of change that is from 1963-1972, 1973-1984, 1985-1996, 1997-2002 and 2003 -2008[130]. Each phase had distinct accompanying macroeconomic policies and outcomes.

Post-independence, 1960s

At independence in 1963, the new Government of Kenya inherited a formidable challenge of poverty. About 90% of the population lived in rural areas in abject poverty. The percapita income was estimated at $85 a year with much of the wealth concentrated in urban areas and held within the European and Asian communities. This modern and relatively opulent segment of society provided some impetus to the economy with supply of entrepreneurship, managerial talent, skilled labour and created market for its products especially in manufacturing and services. It also assisted in building up of an early export market to its neighbours offsetting

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[128] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.111

[129] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.59
[130] Kimuyu, P., Wagacha, M. and Abagi, O.: *Kenya's strategic Policies for the 21st Century: Macroeconomic and Sectoral Choices* (Nairobi, Institute of Policy analysis and Research, IPAR, 1999) p.11

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Kenya's external debt deficit[131].The modern sector was run largely by European and Asians with the public service heavily dependant on expatriate personnel which called for a programme of Africanization in areas of the modern sector.

The economic objectives of the Kenya Government were clearly defined in the original ruling party Kenya Africa National Union (KANU) 1963 Manifesto. The manifesto had a set of declarations adopted by the Government to provide guidance in its approach to Social, Economic and Political development matters. The First Sessional paper number 10 of 1965 entitled African Socialism and its Application to Planning in Kenya was an in depth elaboration of principles of a democratic African socialist state as per the declarations of the KANU Manifesto of 1963[132]. In the document, the Government laid down development policies aimed at correcting regional imbalances and amelioration of Poverty, Ignorance and Diseases. The paper emphasized on rapid economic growth which was seen as key solution to the myriad of challenges the country was facing. It noted that Kenya was in transition from subsistence economy to monetary economy, from economic dependence on agriculture to a more balanced growth, with the need to mobilize resources for development to be achieved through development of highly skilled human resource through offering high quality education and provision of free primary education to reduce illiteracy levels, provision of healthcare services to the citizenry. It emphasized on private and government investment, and set out new regulations on property ownership. The policy stance was to achieve high and rapid growth, equitably distributed so that all are free from want, diseases and exploitation while at the same time guaranteeing political equality, social justice,

[131] World Bank, *Kenya Into the Second Decade: Report of a Mission Sent to Kenya* (Baltimore: John Hopkins University Press, 1975) Pg.3

[132] Kimuyu, P., Wagacha, M. and Abagi, O.: *Kenya's strategic Policies for the 21st Century: Macroeconomic and Sectoral Choices* (Nairobi, Institute of Policy analysis and Research, IPAR, 1999) p.12

human dignity and equal opportunities but also without prejudice to remedy the inequalities inherited from the past.

The 1963-1972 periods was a high growth decade marked by the success of the authorities in developing a policy consensus and a framework that propelled economic growth to high levels[133]. The government had introduced two developmental plans between 1963-1965 and 1966—70 respectively[134]. With their implementation, the country achieved a rapid economic growth through public investment, encouragement of smallholder agricultural production, and incentives for private (often foreign) industrial investment. The gross domestic product (GDP) grew at an annual average of 6.6% from 1963 to 1973[135]. Agricultural production grew by 4.7% annually during the same period, stimulated by the redistributing estates, diffusing of new crop strains, and opening new areas for cultivation and business.

In the 1970's

In the early 1970's the country continued to experience rapid economic growth despite the rapid population growth with the Gross Domestic Product growing at an average of 7% increasing the per capita income significantly. This was facilitated by the creation of the stable political environment necessary for high level private investment and sound management of the economy. The Government and the Central Bank of Kenya followed a cautious financial policy keeping inflation rates at minimal level and keeping the external debt at manageable levels. This saw increase in opening up of new areas of business in manufacturing and increase in exports of both

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[133] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.111

[134] Kimuyu, P., Wagacha, M. and Abagi, O.: *Kenya's strategic Policies for the 21st Century: Macroeconomic and Sectoral Choices* (Nairobi, Institute of Policy analysis and Research, IPAR, 1999) p.12

[135] Leonard, T.M.: *Encyclopedia of the developing World, Volume 2* (New York, Routledge &Taylor Francies Group,2006) p.904

primary products and manufactured goods. The Government also turned the budget deficit into a sizeable surplus, increasing development expenditure and reducing dependence on foreign Aid. However, the oil price shock of the mid 1970's caused a slowdown in growth[136].

In the 1980's

Between 1980 and 1990, Kenya's economic performance gradually declined[137]. The economy grew at an average of 4.1% from about 7% in 1970's. This was partially attributed to inappropriate agricultural policies adopted, inadequate credit, and poor international terms of trade leading to the decline in agriculture performance. Kenya's inward-looking policy of import substitution and rising oil prices in the 1980's made the manufacturing sector uncompetitive. This was aggravated by the world economic recession, domestic inflation of early 1980's, and the devastating drought of 1984. Lack of export incentives, tight import controls, and foreign exchange controls made the domestic environment for investment even less attractive. This led to the government reviewing its policies and subsequently the adoption of Sessional paper number 1 of 1986[138].

Sessional paper no.1 of 1986 titled Economic Management for Renewed Growth, introduced the Structural Adjustment Programmes (SAPs) arising from globalization and liberalization of international trade. Its adoption varied the economic policies and strategies based on the national and international economic environment that prevailed at different periods in time. The development strategy in the sessional paper was derived from the past development plans with

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[136]Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.114
[137] Barkan, J. D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers,1994) p.101
[138] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.114

the principle elements of encouraging of a mixed economy with well defined roles for both the Government and the private sector, giving high priority to agriculture development while industrialization was being undertaken. The sessional paper emphasized on renewed rapid economic growth with a targeted GDP growth rate of 5.6% a year between 1984 to 2000 which was to be generated through job creation, increased productivity in agriculture, widespread rural non-farm activities, a dynamic informal sector and a restructured industry which will lead to improved distribution of income and enhanced provision of basic human needs.

The paper also emphasized on creating an open economy that takes full advantage of the opportunities available in world markets and concentration of Government in provision of economic infrastructure and social services especially health, education and other basic services. The Government shifted from heavy dependence on import substitution and protection as a means to stimulate industrialization towards a policy of exposing industries progressively to international competition and encouraging non-traditional exports. The District Focus for Rural Development (DFRD) was institutionalized putting greater emphasis and responsibility on the Districts through the District Development Committees in planning and implementation of development programmes. There was Government direct investment in development through budget rationalization, tax reform and limiting government employment to levels dictated by the requirements of raising productivity. The Government also aimed at liberalization of import policy, money and financial markets, and encouraged informal sector and other small-scale industry and services.

The adoption and implementation of the Structural Adjustments Programmes did not assist much as the rate of economic growth continued to decline and living conditions deteriorated with the

average percapita income falling to 0.4% by 1989[139]. The economic crisis in Kenya in the 1980's exposed fundamental weaknesses in the structures and management of the economy[140]. Structural weaknesses, external factors and domestic policies contributed to stagnation in economic growth.

In the 1990's

Despite the reforms introduced in late 1980's, from 1991 to 1993, Kenya had its worst economic performance since independence[141]. In 1990, the economy was hard hit due to suspension of developmental aid by bilateral and multilateral donors due to poor governance[142]. The Growth in GDP stagnated and progressively slowed down achieving a rate of 4.3% in 1990, 2.3% in 1991, 0.4% in 1993 and 0.1% in 1993[143]. Agricultural production shrank at an annual rate of 3.9% due to poor weather and intermittent ethnic strife during the period. Poor rains led to power rationing leading to reduced manufacturing output. The recession occurring in developed countries led to lower export earning from Coffee and Tourism, reducing Kenya' importing capacity and terms of trade. The transition to multiparty democracy and the 1992 general elections created uncertainty which reduced investment, tourism and manufacturing output. Inflation reached a record 100% in August 1993, and the government's budget deficit was over 10% of GDP driving

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[139] Leonard, T.M.: *Encyclopedia of the developing World, Volume 2* (New York, Routledge &Taylor Francies Group,2006) p.904

[140] Barkan, J. D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers,1994) p.101

[141] Barkan, J. D.: *Beyond Capitalism and Socialism in Kenya and Tanzania* (Nairobi: East African Educational Publishers,1994) p.101

[142] Leonard, T.M.: *Encyclopedia of the developing World, Volume 2* (New York, Routledge &Taylor Francies Group,2006) p.904

[143] Sessional Paper 1 1994,Pg.1

the interest rates to extra-ordinary levels with the Kenya Shilling depreciating by some 35% against the US Dollar between 1990 to 1993[144].

The problems were compounded by the High levels of Corruption in the Public sector especially the Goldenberg Scandal, Mismanagement of Public enterprises leading to collapse of key parastatals such as the Kenya Meat Commission, Agriculture Finance Corporation, the Kenya Green Growers Union, the Kenya Cooperative Creameries, collapse of some financial institutions such as the Kenya Finance Corporation, Euro Bank among others leading to declining in private investment with majority of the foreign investors leaving the country. As a result of the above and poor governance, bilateral and multilateral donors suspended Aid programs to Kenya stagnating the Country's development.

In 1993, the Government of Kenya began an economic reform program. The Government adopted new economic and development strategies outlined in Sessional Paper No.1 of 1994 on Recovery and Sustainable Development to the Year 2010.This was a complement and a build up to the Sessional Paper no. 1 of 1986. It reaffirmed the medium term and long-term strategy measures for social-economic stability which will lead to sustainable development by introducing policies and programmes to attain economic recovery and re-establish economic stability[145]. This was to be achieved by guaranteeing microeconomic stability through reduction of inflation and the fiscal deficit to restore business confidence. The specific short term measures included reforms in the civil service, enforcement of the monetary controls, divestiture of the non strategic Parastatals, and the abolition of price, marketing and production controls. The paper had

[144] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.115

[145] GOK: *Sessional Paper No. 1 on Recovery and Sustainable Development to the Year 2010* (Nairobi: Government Printer, 1994)

strict macroeconomic management policies to control budget deficits, money supply and inflation, establishment of trade policies to foster overall export bias in the economy and stimulates private foreign investments. It called for renewed partnership and a clear understanding of the roles of the public and private sectors.

As part of the reforms the Government undertook a series of economic measures with the assistance of the World Bank and the International Monetary Fund (IMF). It eliminated price controls and import licensing, removed foreign exchange controls, privatized a range of publicly owned companies such as Kenya Airways, reduced the number of Civil Servants, and introduced conservative fiscal and monetary policies. From 1994 to 1996, Kenya's real GDP growth rate averaged was just over 3% a year.

In 1997, however, the economy entered a period of slow growth, due in part to adverse weather conditions and reduced economic activity prior to the 1997 General elections. In July 1997, the Government of Kenya refused to meet commitments made earlier to the IMF on governance reforms[146]. As a result, the IMF suspended lending for three years, and the World Bank also put off the Structural Adjustment Credit. Although many economic reforms put in place in 1993 to 1994 remained, Kenya needed further reforms, particularly in governance, in order to increase GDP growth and combat poverty among the majority of the population. The lack of progress in the Goldenberg scandal was seen as unwillingness of the Government to deal with corruption despite the establishment of the Kenyan Anti-Corruption Authority in 1999.

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[146] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services,2006) p.115

Year 2000 and beyond

In the new Millennium, the Government of Kenya continued with its reform program. There were measures to improve the transparency in government procurement and reduce the government payroll. In the Year 2000, the IMF approved a Poverty Reduction and Growth Facility for Kenya, and the World Bank the Economic and Public Sector Reform credit. By early 2001, however, the pace of reform appeared to be slowing again, and the IMF and World Bank programs were in abeyance as the Government failed to meet its commitments under the programs.

In 2001, the Kenyan economy had a growth rate of –0.3%, the lowest growth in the post independence era. This decline in performance coincided with the period when the Government was involved in grass-root consultations with private sector, the civil society and other stakeholders, to find out the causes of poverty and what they perceive as the best steps towards poverty reduction. This period was characterized by decline in per capita incomes, increasing poverty and inequality, low savings and investment, poor infrastructure, poor governance and perceived weak government commitment to the reform agenda.

The Government with the assistance from the World Bank/IMF formulated the Poverty Reduction Strategy Paper (PRSP) 2000 – 2003. The primary development goal was to achieve a broad-based, sustainable development through restoring economic growth while maintaining macroeconomic stability and improving governance. It focused on enhancing accountability and transparency, strengthening oversight bodies, strengthening budget planning and execution, changing the incentive mechanisms faced by potential participants in corruption and removing rent-seeking opportunities. The Local Authorities were targeted for intervention to improve local

economic situation, governance, transparency and accountability through the introduction of the Local Authorities Transfer Fund (LATF) mechanism. There were measures of dismantling intrusive, restrictive and outmoded laws and regulations in all the productive sectors, while maintaining adequate protection for workers, the society and the environment. There was emphasizes on rehabilitation and subsequent adequate maintenance of all physical infrastructure, particularly feeder Roads and Ports through implementing widespread labour-intensive roads schemes.

Following the 2002 General Elections and victory for the opposition, the new NARC (National Rainbow Coalition) Government introduced changes in economic policies, through its medium term blueprint the Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003[147]. The following were considered the most immediate priorities for Government action. Increasing primary school enrolment and completion through provision of free primary education; enabling more poor children to attend secondary school; providing all public primary healthcare facilities with an appropriate and adequate supply of drugs while making essential primary health care drugs and treatment affordable to the poor; increasing the provision of portable water in rural areas and in urban informal settlements; prepare enabling legislation for the privatization of urban water supplies, and improve equity and physical infrastructure[148].

There were short-term measures to address power crisis, increasing access to modern forms of energy; information, transport and communication; human resource development; control of HIV/AIDS; measures to increase employment, social security, agriculture production and rural

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[147] Aras, G. and Crowther, D.: *Global Perspective on Corporate Governance CRS* (England, Grower Publishing Limited,2009) p.151

[148] Government of Kenya, *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007.*Nairobi: Government Printer, 2004.

development sector; development of arid and semi-arid areas, tourism, trade and industry sector. Others were to improve public administration, local government reform, parastatals reform, improve provision of security, promotion of administration of justice and the rule of law with zero tolerance to corruption by eliminating all systems, rules, and environments that perpetuate and encourage corruption. The Government also introduced reforms in monetary policy and financial sector, and created a monitoring and evaluation strategy for the intended reforms.

The implementation of ERS saw some rehabilitation of infrastructure, investment in human capital, improvements in institutions of governance and revitalization of the productive sectors. Other ERS interventions included the affirmative action policies, National Policy and Strategic Plan on HIV/AIDS and Malaria, integrated management of childhood illnesses with increase funding to the health sector, the establishment of National Environmental Management Authority policy and legal framework, repossession of irregularly acquired road reserves and other public land, rehabilitation and augment of existing water supply and sewerage works, development of energy policy and regulatory framework, governance, trade and investment reforms, reforms in the Local Authority Transfer Fund (LATF) with 20% of the fund to be spent on core poverty programmes, the introduction of the Constituency Development Fund, CDF Act 2003, where 2.5% of all ordinary revenue is paid into the fund with 75% being equally distributed to all constituencies and the remaining 25% on the basis of population and poverty index, and the establishment of the Youth Development Fund (2006).There were also government budgetary reforms and debt restraint. The Government also established the National Economic and Social Council (NESC) in 2003 to advice the Government and oversees the implementation of the economic and development plans.

The reforms led to significant improvements to Kenya's economic performance and development. Despite early disillusionment with the Government, the economy saw a broad-based expansion with a strong performance in tourism, telecommunications and horticulture, and acceptable post-drought results in agriculture, especially the vital Tea sector[149]. However economic challenges to robust growth remained including the weak infrastructure, drought, political instability in the run-up to the December 2007 elections, and diminution of financial flows from donors because of corruption allegations.

In 2008, the economy recorded a slowed economic growth following the outbreak of the post-election violence from about 6.8% GDP growth to about 4%. This was attributed to disruption in agriculture production, reduction in the number tourists visiting the country and reduced investor confidence. This was compounded by rising global petroleum prices leading to rapid increase in inflation rates[150].

Despite of the challenges, the Government started the implementation of its new long-term economic blueprint, Kenya Vision 2030, which aims to transform the country into a globally competitive, newly industrialized and middle-income country by the year 2030. The vision has three main pillars, that is the Economic pillar which aims to achieve a high sustained non-inflationary economic growth steadily rising to 10% by 2012 and maintaining it; a Social Pillar which aims to achieve a just and cohesive society with equitable social development; and a Political Pillar which aims to achieve an issue-based, people-centered and accountable

[149] Government of Kenya, 2008, *Budget Speech for the Fiscal Year 2007/2008*. Nairobi: Treasury.

[150] Government of Kenya, 2008, *Budget Speech for the Fiscal Year 2007/2008*. Nairobi: Treasury.

democratic political system[151]. The fact that Vision 2030 is a product of a consultative process that included experts in various fields, the private sector, the civil society and the public, it is expected to achieve for the country a higher rate of economic development than the previous economic and development plans which it has been build-on.

3.5   Corporate Governance

The question of the impact of public governance on corporate governance has been one of the most formidable challenges in corporate governance in Kenya, which is whether good corporate governance can thrive in an environment of bad public (political) governance.   Corporate governance is concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals, and between individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society within a framework of sound governance and common good.

In the recent past, Kenya has undertaken measures to develop its own corporate governance framework, however the mechanisms for effective governance are at their nascent stage and very little had been undertaken to assess the effectiveness of the governance mechanism in place[152]. Kenya has experienced difficulties in promoting and implementing good corporate governance in an environment where ostentation, conspicuous consumptions, corruption, violation of the rule of law and work ethics of regulations have misplaced the founding national values of mutual social responsibility, moral courage, integrity, resourcefulness of mind and nationalism[153].

[151] Government of Kenya, 2007, *Kenya Vision 2030*.Nairobi: GOK.

[152] Tsamenya, M. and Uddin, S.: *Corporate Governance in Less Developed and Emerging Economies* (UK, Emerald Group Publishing Limited) p. 18
[153] Gatamah, K.,Strenghtening corporate Governance the Kenya Experience, OECD, Official Development Assistance and Private Finance: Attracting Finace and Investment to Developing Countries(Paris,OECD,2002)p. 46

Initiatives on Corporate Governance are expected to take into consideration country specific situations, including public governance which involves public policy, national economic priorities, consensus on license to operate, national ideology framework, values, justice systems, ethics and social infrastructure that underpin the business environment[154]. Some of the challenges facing corporate governance in Kenya are discussed below.

In Kenya businesses operate in an intricate regulatory environment and numerous licensing authorities creating bureaucratic bottlenecks leading to tendencies towards corruption and bribery[155]. Corruption and bribery are the biggest obstacles to good corporate governance in Kenya. Numerous public scandals and corruption cases reported involve private enterprises including multinational or offshore companies formed as shrouds for fraud, to conceal the personalities of proprietors who manipulate local directors and innocent shareholders in order to use companies as conduits of fraud or market manipulation[156]. The major scandals led to the collapse of big corporations, especially state owned ones with disastrous social and economic consequences. This explains the collapse of major sate corporations in Kenya in the 1980's and 1990's such as the Kenya National Assurance, Kenya Meat Commission, the Kenya Textile Mills, Kenya Cooperative Creameries, and companies such as the Trade Bank, Euro Bank, and in the recent past the Uchumi supermarkets.

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[154] OECD: *Official Development Assistance and Private Finance: Attracting Finance and Investments to Developing Countries*(Paris, OECD,2002) p.47
[155] OECD: *Official Development Assistance and Private Finance: Attracting Finance and Investments to Developing Countries*(Paris, OECD,2002) p.45

[156] OECD: *Official Development Assistance and Private Finance: Attracting Finance and Investments to Developing Countries*(Paris, OECD,2002) p.48

It was inevitable that the wider society questioned how these organizations were run. Shareholders especially in public listed companies were becoming increasingly vocal demanding better transparent and disclosure of information from their directors. Therefore, Kenya needs to build up systems for monitoring and evaluating compliance with good corporate governance practices and strengthening the incentives for corporate governance. Furthermore, it is vital to develop and improve institutions that have the capacity to implement and enforce best practices particularly in the financial sector and self regulatory organizations.

3.6   Conclusion

At the beginning of 21st Century Kenya faced a myriad of development challenges that included persistent and increasing poverty; declining productivity in the real sectors; declining enrolment, completion rate and quality of education; unemployment; inadequate skilled human resources; worsening investment environment; depleted infrastructure and limited access to quality health services[157]. These challenges are not self reinforcing. The GDP growth rate has not kept pace with the population growth; gender and regional disparities had widened.

Economic development alone does not lead to sustainable development and elimination of poverty. Economic growth need to be accompanied by among other things good governance, active participation of the population in socio-economic and political life, equitable distribution of resources and benefits, and efficient institutions[158].

Kenya had relatively poor governance in its first four decades of independence. The problems of landlessness, unemployment and high population growth and denial of economic opportunity

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[157] Kimuyu, P., Wagacha, M. and Abagi, O.: *Kenya's strategic Policies for the 21st Century: Macroeconomic and Sectoral Choices* (Nairobi, Institute of Policy analysis and Research, IPAR, 1999) p.1

[158] Ibid.

created a major challenge for any system of governance in Kenya. Kenya had been exposed to economic plunder to a scale not known in history[159]. This included corruption, rampant human rights abuses, grabbing of state land and public forest, and the civil service was weakened by nepotism[160].

There is an interesting correlation between trends of socioeconomic development and the growth of civil liberty in Kenya. The phases that recorded commendable achievements in socio-economic development have had relatively competitive political environment, with greater citizens' participation in the political process. There was also a causal relationship between political leadership and economic development.

[159] Nyong'o. P. A, *A leap into the future: A vision for Kenya's Socio-political and Economic Transformation* (Nairobi. African Research and Resource Forum, 2007) p.202.

[160] Ibid.

CHAPTER 4

THE IMPLEMENTATION OF THE AFRICA PEER REVIEW MECHANISM AND ITS IMPACT ON GOVERNANCE IN KENYA (2003-2009)

4.1   Introduction

This chapter provides an analysis of the study that includes the reasons why African governments accede to the APRM process, the importance of the APRM on governance, the role of the APRM in enhancing governance and the challenges to the APRM process. It examines the implementation of the APRM in Kenya and its implication governance reform.

4.2 APRM Process in Kenya

Since its independence in 1963, Kenya has experienced periods of both successes and poor governance with endemic corruption making the stakes on governance reform particularly high. Kenya's reputation as a hub of peace and stability in Eastern and Horn of Africa has allowed reforms which the country is traditionally tolerant. Hence, Kenya combines a clear necessity for governance reform with high potential for success of such initiatives.

Kenya was the third country in Africa to volunteer for the APRM assessment in 2003. A 33-member APRM National Governing Council was constituted to oversee the process[161]. The Government designated the Ministry of Planning and National Development, which was responsible for NEPAD projects, to be the focal point for the APRM process[162]. An inter-ministerial task force drew a strategy for the implementation in conformity with the APRM guidelines. It was subsequently enlarged to include representatives from the private sector, civil society groups, academia, and faith-based organisations.

[161] ARPM Secretariat: *Country Review Report of the Republic of Kenya*,(Midrand ,May 2006) p.9
[162] ARPM Secretariat: *Country Review Report of the Republic of Kenya*,(Midrand ,May 2006) p.8

By June 2004, the task force had prepared the road–map for the APR process in Kenya. The task force organized the National Stakeholders Consultative Forums and finalized the domestication of the APRM questionnaire, elected conveners and proposed members to the National APR Governing Council (NGC). The APR Panel undertook its first visit to Kenya in July 2004 to assess the processes and mechanisms put in place by Kenya to undertake its self-assessment and draft Programme of Action. Among its recommendations was expansion of the membership of the NGC to include additional civil society members. Subsequently the inter-ministerial task force was phased out and handed over the national mandate on the APRM to the NGC.

The NEPAD Kenya provided the secretarial support to the APR process and worked very closely with the NGC and other structures. A two-stage approach was adopted in conducting the Kenya country review mission (CRM). In July 2005, the second country review mission was conducted to resolve the emerging issues that delayed the national process, mainly internal wrangles with the NGC.

Notwithstanding the organizational challenges, Kenya produced its self-assessment report described as candid, objective and technically sounds as well as a product of broad based consultations. Kenya submitted its self-assessment report and a draft national programme of action to the APRM Secretariat in August 2005.

Figure 2 Kenya APRM Structures
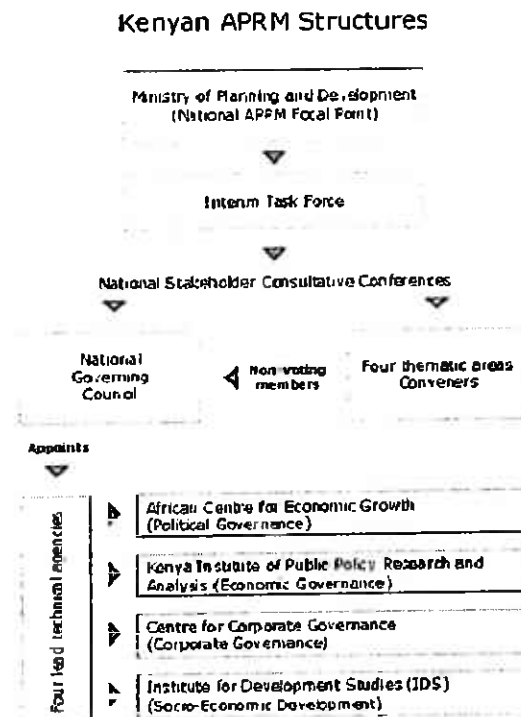
Kenyan APRM Structures

4.3 Highlights of the Kenya APRM Report, 2006.

Democratic and Political Governance.

The report informs that Kenya's political landscape has some fundamental challenges undermining the country's quest for sustainable development. In spite of numerous strengths the country exhibited, there were several factors that could lead to civil strife such as strong ethnic divisions, polarized political issues, political manipulation, rampant violence, socio-economic disparities, deepening levels of poverty and endemic corruption. As highlighted in the previous chapters, the post-independence politics in Kenya were characterized by ethnic politics, reflecting patterns of super-ordinate and subordinate ethnic relations and inequality. In addition, regional inequalities widened and for some reasons this inequalities remained a fundamental

characteristic of Kenya's political economy. The state of affairs had formidable implication for democracy and political governance including the basis for ethno-regionalized basis for political power.

Kenya had signed and ratified numerous international, regional and continental codes that have a bearing on democracy and human rights. While the country considered itself bound by these and other international and regional protocols and instruments, the challenge of entrenching them through legislation persisted. The opposition victory in the 2002 elections was considered Kenya's first taste of real democracy. The new administration undertook several institutional and policy reforms in the civil service, the Executive, the Legislature, the Judiciary and local government. The government capitalised on national goodwill to consolidate positive political reforms. However some underpinning problems such as the policy which favored investment of resources in high potential areas at the expense of the rest of country had gone largely unaddressed, stirring up several problems. Political parties were neither broad-based nor inclusive cutting across the racial and ethnic divides or anchored on a national agenda.

The Kenya ARPM Country Review Mission recommended for direct policy measures to address the pervasive manifestations of the colonial heritage; to drastically reduce and possibly eliminate regional inequalities; to alleviate poverty; and reduce the salience of ethnic politics. This required an inclusive and competitive political landscape and power-sharing arrangements at the central level. Further it would be of paramount importance that consensus be built amongst Kenyans on national values to foster nation building. For Kenya, a stable mechanism to enable consensus building on crucial governance issues should have been developed with government exercising leadership in this direction. Political parties and other stakeholders should design and

engage in conflict resolution mechanisms to reduce factional frictions while promoting political, religious, social and ethnic tolerance.

Economic governance and macro-economic management.

Kenya had the largest economy in East Africa and the third largest economy in Sub-Saharan Africa (SSA). However its economic performance over the years was below its potential despite substantial progress. The Real Gross Domestic Product growth fell from the high growth in 1960's to the negative growth in early 2000 due to a combination of factors, including exogenous shocks such as intermittent drought and deterioration in the terms of trade, corruption, deteriorating infrastructure, weak implementation capacity and low levels of donor inflows. The NARC government demonstrated intent of advancing its economic reform agenda, which saw the country register positive but modest, economic growth from year 2003 to 2007.

The country's economic strength was mainly on reduced dependence on foreign aid, good domestic resource mobilization efforts and a vibrant agricultural export sector especially in horticulture. Despite of the noticeable progress in undertaking key reforms in economic governance and management, there were persistent challenges in the country, including in implementing strong and effective anti-corruption policies, improving the efficiency of public sector service delivery, rehabilitation/building of new infrastructure, improving water supply, maintaining sound macroeconomic policies, and difficulties in implementing various structural reforms.

The report indentified poor economic management and lacks of accountability as some of the reasons why economic growth and development targets were never realized. In Kenya, lack of

good governance was considered one of the major causes of stagnation in economic performance as well as increased poverty levels[163].

Corporate Governance.

The Kenya APRM report noted that awareness of Corporate Governance principles was increasing and being disseminated by institutions such as the Nairobi Stock Exchange (NSE), the Capital Markets Authority (CMA), the Institute of Certified Public Accountants (ICPAK) and the Kenya Chapter of the Association of Chartered Certified Accountants (ACCA), among others. Further, Kenya had signed, ratified, and adopted several instruments elaborating internationally recognized standards and codes among them the Principles of Corporate Governance (OECD and Commonwealth), International Accounting Standards (IAS) and the International Standards on Auditing (ISA).

However, in the country there was weak enforcement of codes and standards since the capacity of numerous regulators and supervisors was constrained. There was also need to apply corporate governance standards and principles beyond the larger companies. Improvement in public service delivery was a key issue in Kenya which was described as poor, especially in the areas of business registration and licensing, commercial dispute resolution, access to land and customs and trade facilitation. Business licensing and public service delivery were critical impediments to doing business in Kenya.

The report further observed that Kenya had achieved significant progress in the development of codes of Good Corporate Governance. However, weak governance aggravated by extensive

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[163] Kamenju, J. and Okoth, P.G.: *Power play and policy in Kenya: An interdisciplinary discourse* (Nairobi, Oakland Media Services, 2006) p.122.

corruption, raising insecurity and poor infrastructure remained a challenge. These factors undermined private sector activities leading to reduction investment levels and deterioration of economic and social indicators.

The APRM Panel recommended that Kenya could improve the investment climate and restore its competitiveness through developed infrastructure; reduced costs of doing business, reduced insecurity; improved the legal and regulatory framework; enforcing implementation of laws and regulations; boosting the capacities of professional and government supervisory institutions; and encourage business entrepreneurship through improved access to finance and industrial activities in urban and rural areas.

Socioeconomic development.

The Kenya country report informed of Kenya's strengths in socioeconomic development which was in its well-developed human resource base engaged in development activities; the vibrancy of its civil society including religious bodies, NGOs and the media. The country also had numerous credible and well-renowned institutions such as the University of Nairobi, Business and Research Associations and the Nairobi Stock Exchange. The political environment allowed for open political debate. Further, Kenya had a resilient economy which was less dependent on donors compared to some other African countries. The country had an established decentralized funding mechanism for local development, a vibrant agricultural export sector and had shown hospitality towards refugees and migrants that has manifested itself for many decades. Kenya had also adoption and ratified numerous codes of corporate governance and socio-economic development.

The key challenges to socioeconomic development were inability to address the colonial legacy and to set a political agenda for real and strong national unity. There were also historical imbalances in the channeling of resources and development programmes which perpetuated regional and ethnic inequalities. There was also lack of confidence and trust in public institutions coupled with pervasive corruption despite the substantive legal and institutional frameworks instituted to curtail it. Other challenges were high incidence of poverty and pervasive unemployment especially for youth; under-representation of women in key positions of leadership at all tiers of government and the private sector; lack of efficient enforcement mechanisms as well as the weak implementation of policies and programmes; ineffectiveness of the Parliamentary Oversight Committees; limited access to finance for small business; and the low probability of meeting MDG goals with the exception of universal primary education and fall in HIV/AIDS rates.

4.4 Factors that Influenced Kenya's Participation in the APRM Process.

Kenya was the third country in the Africa to accede to the APRM process in March 2003. The 2002 General elections and President's Mwai Kibaki victory, who was an opposition candidate, was observed as Kenya's first taste of real democracy and brought the ecstasy of an emerging democratic and free society. The National Rainbow Coalition (NARC) administration wanted to be perceived as an open government in the management of state affairs. These events coincided with the establishment of the African Peer Review Mechanism, and hence the APRM process provided the Kenyan leadership with an opportunity to implement its election pledges to the electorate.

Further, Kenya under the NARC Government acceded to the APRM since it had already sold the idea of enhancing transparency in the national governance when it came into power. Further, the

government had to capitalize on the national goodwill to consolidate positive political reforms. The emerging political environment in which the country was undertaking its governance agenda served as an instructive analytical backdrop which the APRM would have provided. The NARC administration opened up the democratic space. The new dispensation also ushered in several institutional and policy reforms in the civil service, the Executive, the Legislature, the Judiciary and local government.

Political leadership in Kenya was also engaged in an image building initiative. The NARC administration took over against the backdrop of decades of poor governance that had led to under development in the country. Therefore, the leadership wanted to create a positive public perception in the country on governance issues and the APRM was perceived to be an important contributing factor in achieving the national aspiration to good governance. Hence Kenya was committed to improved governance and its people were resolute and determined to work for a better quality of life.

On the supply side, one of the Key factors that led to the accede of APRM was to enable the country to attract and access donor development assistance. For example through the Euro bond. The systems that a country puts in place were expected to attract heavy donor funding. The APRM was also adopted domestically as a mechanism of enabling the country achieve its primary goals, for example complementing the national development plan. Therefore the APRM process was both demand driven and supply driven and both influenced Kenya's participation in the process.

4.5 The Impact of the APRM Process on Institutions of Political, Economic and Corporate Governance in Kenya.

The APRM created a platform for citizens to hold formal institutions in the society both governmental and in the private sector accountable. This was demonstrated in the context of the four thematic areas to which APRM examines that is political governance, economic governance, corporate governance and social economic development. The four areas feed into each other such that gains in good political governance were expected to translate into or influence the achievement of better economic governance which will translate into good corporate governance and ultimately social economic development.

Further, the APRM was in favour of improvement of institutions of governance since it provided the citizenry with a window to participate in management of public affairs. The Kenya APRM report made a significant frank assessment of the country's problems since the APRM process commences with an exercise of internal self assessment. The APRM investigations also highlighted the most critical ills of governance in Kenya including corruption, illegal land allocation, and ethnic tensions. The Kenya country report also provided a hard-hitting analysis of other challenges the country was facing.

4.6 The Importance of the APRM Process on Governance in Kenya.

The biggest value of the APRM was that it enabled the citizens to hold the government, their leaders and their institutions accountable. The NARC government opened up the democratic space in the country compared to the previous KANU administration, and hence Kenya desired the peer review because of its past experience and with a view that political transparency is the best guarantee for individual freedom.

The NGOs and the civil society in Kenya also adopted the public participation concept as advocated by the APRM. The APRM also fostered diagnostic analysis and facilitated formation of communities of argumentation, informed debate, public deliberation, justification and self criticisms. The APRM report of 2006 enlightened about the major ills that affected the society as indicated in the overarching issues including ethnicity and constitutional reforms.

Some of the notable achievements in Kenya through the APRM process include considerable stakeholder mobilization bringing together civil society, private sector, and Government in conducting the APRM Self Assessment Exercise. There was also acceptance of the APRM by stakeholders as a useful platform for ensuring citizen participation in governance. These include through the institutionalization of the APRM by sustained dialogue with all stakeholders. It was also an impetus to the executive Presidential directive that 30% of all public appointments be given to women. The APRM Reports was also used as reference points for the Commission of Inquiry into the Post-Election Violence (CIPEV) and the Commission of Inquiry into the 2007 disputed Elections. Reference of the APRM as a critical tool for the achievement of the Agenda 4 items in the National Accord and Reconciliation Agreement cannot be over emphasized.

Further, the APRM was recognized and incorporated in major Kenya national development policy documents including Vision 2030. The APRM reports are now being relied upon and quoted extensively by government and other stakeholders.

4.7   The State and the APRM Process in Kenya

The APRM process was meant to be independent, however in most of the African countries including Kenya the level of autonomy was suspect. The set up of the process in Kenya did not favour autonomy. The Kenya APRM process was funded by the government and housed in the

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government that is the Ministry of State for Planning and National Development. The National Governing Council was appointed by the Minister of Planning and National Development but was composed of the civil society members. Criticisms were raised in Kenya but the concern remained the process as largely government-controlled and would culminate in a review that is neither credible nor independent.

The involvement of various structures including a Government Ministry as the Focal Point, the NGC, national secretariat, TRIs, conveners; finance committee among others, presented some challenges relating to coordination and appropriate reporting lines. The National Secretariat seemed to have responded more to the Ministry that created it than to the NGC. This was further compounded by the fact that the Permanent Secretary in the Ministry of National Planning was the Chair of the Finance Committee in charge of disbursement of funds. The granting of legal status through a gazette notice gave the gazetting Minister discretion to revoke the legal status or life of the NGC. While gazetting offered government a practical and simple modality to institutionalize the APRM, nonetheless it was liable to abuse. A framework that guarantees the existence and independence of the NGC for follow up activities even after the review process is was evidently desirable.

Further the implementation of the APRM programme of action is entirely left to the executive with no formalized role for parliamentarians or the civil society to hold the government accountable if it fails to perform. The systems in place to monitor the implementation of other national policies had not been mobilized to engage with the implementation of the APRM programme of action.

The Government was not successful in effectively communicating the developments and constraints faced in policy implementation, leaving the public to speculate on its motives, agenda and progress. There was also disconnect between the national process in Kenya and regional processes, as well as Ministry to Ministry relations interms of coordination, information flow, policy design and implementation. However, the Government did not have direct influence on the reports that are prepared by the APRM creating some sort of independence, for instance NEPAD Kenya submits its reports directly to the NEPAD Secretariat.

4.8 Challenges to the APRM Process in Kenya

The scheduled time limit of the APRM process of 6-9 months was not achieved in Kenya. There were numerous challenges in the process including difficulties in composition of the Kenya governing council particularly on issues surrounding representation, the high financial cost of the APRM and the extent of the popular consultative meetings. On the standards and codes, the country self-assessment report (CSAR) did not address in detail the compliance with the standards and codes as requested in the APRM Questionnaire. Kenyan authorities had agreed to complete a detailed assessment of each of the listed standards or codes during the country consultations.

The Kenya APRM report was shared by the NEPAD Kenya secretariat to all concerned government agencies as required. The country was noted for good ideas, plans and programmes but most of them could not be effectively implemented. These were due to lack of prioritization, financial and resource capacities, on the part of government and other stakeholders to carry the development process forward.

The above challenges were compounded by the unwillingness to put premium on the implementation of programmes, organizational and institutional inadequacies and an attitude that many a time supports mediocrity. For example in Kenya between 2006 when the country was first reviwed and 2008, the government had only begun implementing one of the recommendations on gender equality and issued a directive for 30% of all of the public appointments will be women. Being a government-controlled process the government protocol on reporting had also hindered progress.

A much greater weakness for the APRM process was between the country review report and the programme of action, which was expected to set out concrete, costed actions that will address the problems identified in the report. The programme of action did not address the difficult political issues and focused mainly on capacity building and resource mobilization. Apart from the slow pace of implementation which was receiving urgent attention, the need to move beyond general affirmations of the importance of governance to pragmatic action remained formidable in implementing resultant National Programme of Action (NPOA).

Some of the other challenges of the APRM in Kenya were the lack of regular exchequer funding to the APRM programmes. This led to weak and under-funded institutional structure making it difficult to attract, recruit and retain professional, technical and administrative staff. Further, the Kenya APRM process was not entrenched into the national policy frameworks. Being a multi-stakeholder process strengthening and enhancing complementarities with other public institutions and agencies, as well as the private sector and civil society has been a challenge. This was compounded by lack of participation and interest from the private sector to effectively participate in the APRM.

A frequently encountered problem and enviably the greatest challenge to Kenya's democracy is poor implementation of government policies and programmes. Though Kenya was well serviced with a body of laws, programmes, commissions and agencies that should provide for good governance, these policies and programmes are poorly implemented. This had also been the case of the APRM National Programme of Action. Political reasons accounted for much of the non-implementation of the Kenya National Plan of Action. Implementing recommendations of the NPA were more difficult in Kenya and unlikely to be a political priority. Lack of commitment and political will delayed the implementation of the APRM National Plan of Action. While Kenya's 2002 elections were declared free and fair, and considered as signifying an emerging democratic and free society, the 2007 elections were deeply disputed. Failure to implement some of the recommendations in the Kenya report could be taken to be an indicator of weak political will on the part of the government.

Although each country that has undergone the APRM process was expected to report back to the APR Forum on the progress, there is no serious monitoring exercise of how effectively this would be done. There was no system to ensure of the implementation of the commitments the government made to address the most important problems highlighted in the APRM review.

4.9   Conclusion

Those interviewed during the study had a general understanding of the APRM process. In Kenya it could be observed that the APRM self assessment and the review process were implemented in a generally positive way. Nevertheless, there were some differing or even contrary opinions. Some believed APRM constituted interfering with country's internal affairs, others were less

skeptical and suggested that APRM was irrelevant. Others believed that APRM was taking general decisions not adapted to the idiosyncrasies of each country.

However most of those interviewed were enthusiastic about the APRM. Those involved in the APRM were able to express themselves about the problems facing the Kenyan society. Kenya's conformity with the democracy and political governance thematic focus of the APRM was constrained by a combination factors.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

The New Partnership for Africa's Development (NEPAD) enunciated the vision of an 'African Renewal' through which the citizens of Africa ought to harness their collective energies to transform the continent into a region where economic progress, development, democracy, good governance and peace, security and stability reign. APRM is one of a common future that will guarantee good governance to ensure economic well-being, poverty reduction, freedom, social justice, peace and security in Africa. The shared vision is anchored on common values and principles that exist among the African countries. The vision incorporates the desire to promote sustainable and equitable socioeconomic development through good governance, deeper regional cooperation, efficient production systems and regional peace and security.

The APRM is unique, innovative and it involves the citizenry in scrutinizing the governance system in a country. The objective of the APRM is for African countries to peer review and advice each other, rather than be reviewed by outsiders. It requires African states to subject themselves to self-assessment by their own citizens, followed by external review led by panel of distinguished African personalities culminating in a peer review exercise conducted by the Forum of Heads of State participating in the APRM. Therefore APRM advocates for institutional change resulting from deliberate cooperation. Cooperation at the country level and continental levels are central to changing the unproductive institutions cultures. Cooperation is to be influenced by leadership, management style, organizational style, monitoring and evaluations, and carefully calculated trade-offs between action and effect. APRM was expected to offer a blueprint for encouraging cooperation that recognizes the importance of overcoming the dilemmas of collective action on the continent.

The available evidence signified that comprehensive changes could occur when advocates marshal strong organizational and political capabilities to focus attention, mobilize resources and cope with resistance. Through the APRM, Africa's political leaders faced a litmus test of their willingness and commitment to implement fair and socially equitable governance and business practices. The APRM process is designed as a mechanism whereby sates open their books to be examined within a formal structure in which experts assess and critique the countries' governance performance based on a number of key indicators in political governance, economic governance, corporate governance and socio-economic development. Hence expectations about APRM as a programme that could salvage Africa from the tragedy of underdevelopment and poverty through improved governance were very high. It is therefore essential for African states to implement the programme in such a way as to change the political and socioeconomic environment, if it is to retain its credibility both in the Africa and outside world.

It should be appreciated that different scholars and leaders in Africa hold different views on the significance of APRM and its ability to deliver Africa from poor governance. It is the view of the researcher that APRM was a dynamic initiative with the potential to fulfill its goals. It is the adherence to the principles enshrined in the APRM base document by all, whether they believe in APRM or not, that are crucial for success.

Since its initiation, Kenya's APRM process suffered controversy to suggest that the necessary political will was severely lacking. As an endogenous, voluntary approach to improving governance in Africa the APRM had promising fundamentals. However, the apparent lack of government commitment to change significantly undermined its credibility in Kenya. The initiative's main weakness was the absence of binding mechanisms and its reliance on

government which is a balance of conditionality and government ownership, and hence ultimately depends on the emergence of genuine political will in the country.

For both governments and citizens, implementation of the APRM presented challenges and opportunities to strengthen institutions of governance and reinforce structures and mechanism of democracy and good governance. The APRM had tremendous potential to promote, entrench and advance good governance and political democracy, conducive to the attainment of an enabling environment for peace, security and stability. Governments of participating countries were obliged to ensure and facilitate effective and meaningful participation by all relevant stakeholders. Hence APRM has the potential to promote the role of civil society organizations and foster new partnerships between government and the civil society organizations.

APRM also provided an opportunity for the Government to demonstrate commitment and political will to promote, build mutual trust, and reinforce citizens' confidence in the effectiveness and fairness of the governance systems and the integrity and honesty of political leaders. It provided citizens with the opportunity to participate effectively and meaningfully in the decision-making processes that affect them by exploring the possibilities of forging and promoting democracy and good governance appropriate to their situations.

The APRM also had a wide range of opportunities for deepening the understanding of the principles of democracy and good governance and explaining the causes of bad governance and their consequences on economies and societies as well as the imperative of maintaining vigilance and support, preventing the abuse of power and creeping dictatorship. Thus APRM demystified government and rendered it properly understood and appreciated by citizens. Further, the APRM process did not only provide for the assessment of governance in the participating countries but

also provided countries an opportunity to share experiences on best practices, successes and challenges as well as constraints.

This study of APRM encouraged the consideration of the extent to which governance as an independent variable in shaping development of a society without ignoring the fact that economic forces and social forces set the stage for much of the politics. In order to realize the improved governance certain conditionality are essential. The foundations for the renewal of the continent have been laid through the APRM process and what remains is to accelerate concrete implementation by all stakeholders and implementing agencies.

The success of APRM is also dependant on the sound administrative capacity and quality of leadership. Effective leadership must have adequate administrative skills to implement the APRM successfully. The leadership should provide the basis to meet the demand for good governance, accountability and transparency. The African Peer Review Mechanism also highlights the potential of regional alternatives in improving governance as opposed to donor conditionality.

We conclude that political will is key to successful institutional reform. Conditions and participatory frameworks alone cannot render government bodies fully responsible. If political will is lacking, any reform advice that assumes its presence no matter how country-specific or inclusive of civil society may fail. The APRM suffers from insufficient government commitment.

5.2 Conclusion and Recommendations

The study investigated the extent to which APRM provided states with solutions to address the issues of governance and its impacts. Africa's stagnation and retrogression in the socio-economic development was attributed largely to the levels of chronic poor governance experienced in many African countries. Hence to improve on the APRM process, the following could be considered as a remedy to the existing challenges.

First and foremost, APRM is a Heads of State process who should lead from the front for the process to flourish. Political leadership is essential for the success of the process. The leadership should have the ability to buy into the African Institutions. For example former Kenya Planning Minister Professor Anyang Nyongó, Former President Thabo Mbeki of South Africa and President Obasanjo of Nigeria had a good vision for APRM. In Nigeria NEPAD/APRM had an office in every state and the overall NEPAD advisor is also the advisor to the President.

Good relations among all stakeholders, particularly between the Governments and the civil society organizations, could also lead to improvement of the APRM process. This can be achieved through voluntary mobilization and organization of human and material resources by partners, establishing and promoting partnerships, collaboration, coordination and capacity building across the entire governance system including Government and non-state actors. It's also essential to have political commitment and goodwill from all stakeholders, as well as formulation of appropriate policy frameworks and establishment of institutional mechanisms to deliver on the commitments under APRM.

The implementation of the APRM including commitments under the NPOA is a costly undertaking and therefore funding the APRM process has been a challenge. There is need for sustained public financing of the APRM process at country level. This should be complimented by identifying independent African sources of funding, including persuading the African business community to finance the APRM in order to ensure African ownership and independence of the process. This further underscores on the need to ensure independence, non-interference or influence of the Secretariat(s) from any source so as to allow them to function efficiently, effectively and professionally and to be perceived so by stakeholders.

The APRM programme of action is a point of political discussion and direction, thereby creating some incentives for carrying thorough political reform. It could benefit from better prioritization but it should not be regarded as a technocrat blue print. APRM political leverage is limited and as the programme of action is one among other development plans. The relationship between the existing strategies and the programme of action need to be further explored and developed.

Leadership is the key factor in any reform process, yet in the context of weak structures, leadership is not enough. Leaders need to demonstrate continued support and commitment to the APRM by implementing its post-review recommendations. Respect for the few fundamental rules at the continental level will be vital for the future of the APRM. It is through a credible process that actors can develop certain capacities. African governments need to render support for vibrant debate and prompt implementation of the review findings. To forge ahead, support is needed as well as clarity of the various roles that lead actors should play in addressing the emerging issues in the APRM process.

It's essential for the African Union and NEPAD to mobilize and augment the capacity to support African countries in implementing the NPOAs and distill lessons learned from the review process to African countries. Further there is need to disseminate and popularize best practices and other issues arising from the APRM process to high-level political quarters including at the AU Assembly.

The APRM solicits greater input from local stakeholders and reflect on country-specific circumstances. However its disappointing outcomes suggest that the initiative cannot realistically function in the absence of binding mechanisms. Hence, the APRM should be more objective and action-oriented, and aim to mobilize more independent expertise. For example linking with the United Nations may give it the neutrality and the credibility it requires.

The obligation is on African countries to embrace the APRM and harmonize it with its current development work. African countries should be determined to attain sustainable solutions to the multifaceted challenges that confront the continent, in light of the rapid social, economic and political changes taking place in the world.

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INTERVIEW SCHEDULE

1. What factors led to Kenya acceding to the APRM?

2. How does APRM process in Kenya explicitly target institution of political, economic and corporate governance?

3. Does the implementation of APRM favors improvement of institutions of governance?

4. Is the APRM demand driven, i.e. responding to the people's demands, needs and aspirations? Or is it supply driven – there is expectation of investment and development assistance?

5. APRM is expected to be led and not controlled or manipulated by the government. In Kenya how has it been possible to balance the leading by the government without controlling?

6. What value has this process added on governance in Kenya? Briefly describe.

7. Why is the process of APRM unmistakably slowing down? (Kindly give the major obstacles)

8. How can we improve on the APRM process to enable it achieve its primary goals?

9. Will APRM achieve its primary objectives?

Supplementary Questions from no. 10-12

10. Can APRM as an externally designed and externally driven process induce governance change at the national level?

11. What instruments or specific verifiable guidelines should be put in place to ensure the executive does not unduly interfere with the APRM process?

12. In your opinion, do African states have the capacity to oversee the APRM process and ensure compliance of their respective NPA? Explain briefly.