

Is the African Peer Review Mechanism a Key Variable in the Establishment
of Institutional Rather than Neopatrimonial Rule in Africa?

by

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ABSTRACT

This thesis provides an analysis of whether the African Peer Review Mechanism (APRM) can be considered a key variable in the establishment of institutional rule, rather than neopatrimonial rule, in Africa. Ultimately, the conclusion is that it cannot be considered as such. The APRM has been heralded as a voluntary, African-led solution aimed at establishing institutional rule on the continent. A comparative analysis of the juridical nature of the African state is provided, including how this background influenced the overall design and approach of the APRM. Ultimately, it is found that the design of the APRM, including its voluntary approach, is not robust enough to significantly contribute to the establishment of true institutional rule in Africa in the place of neopatrimonialism. The mechanism gives inordinate control over the process to the governments under review, with insufficient independent input to the content and monitoring of the subsequent National Plans of Action for improving governance under the APRM.

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Chapter One - Introduction

1.1 Introduction

There is much evidence in the literature (Bayart, 1993; Chabal and Daloz, 1999; NEPAD, 2003; Taylor, 2005; Agbese and Kieh, 2006; Gordon and Gordon, 2007; Mbaku, 2007; Herbert and Gruzd, 2008; Mills, 2010) to indicate that poor governance in Africa is one of the important root causes of sustained poverty on the continent. In the *New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance* (the *NEPAD Declaration*), African leaders themselves conclude that corruption is retarding economic growth.¹ The literature (Levine, 1980; Jackson and Rosberg, 1982; Medard, 1982; Bratton and van de Walle, 1997; Callaghy, 1984 and 1987; Sandbrook, 1985; Crook, 1989; Bayart, 1993; Chabal, 1994; Chabal and Daloz, 1999; Tangri, 1999; Taylor, 2005; Levy, 2006; Gordon and Gordon, 2007; Grabowski, Self and Shields, 2007; Mbaku, 2007, Mills, 2010), as well as primary research (Corrigan, Gruzd, Masterson, Petlane, Tungwarara and Turiansky interviews, 2009) further bear out that one of the most damaging aspects of poor African governance is the widespread practice of neopatrimonial rule, which is considered as the opposite of institutional rule. Ultimately, this means that, while allowing for existing variances, much of African governance is insufficiently checked by institutions, and therefore is largely unguided by the public good or the national interest. This has important negative consequences for sustainable development in Africa, as acknowledged by African leaders themselves. From the literature and primary research, one can also derive the premise that, by their very nature, neopatrimonial regimes are unlikely to

¹ NEPAD, *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, 2003. internet: <http://www.uneca.org/aprm/documents/book2.pdf>, accessed October 2, 2011, p.4

establish true institutional rule voluntarily (Taylor, 2005; Clapham, 1985; Mbaku, 2007; Jackson and Rosberg, 1982, Masterson interview, 2009, Tungwarara interview, 2009).

In the *NEPAD Declaration*, African governments commit to enforce the rule of law, to adhere to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments, to eradicate corruption, and to the right of populations to free, credible and democratic elections.² In other words, these governments, through the *NEPAD Declaration*, commit to the establishment of institutional governance. The African Peer Review Mechanism (APRM) has been heralded by its proponents both as an acknowledgement of Africa's poor governance record, and as an African-led process to resolve the problem. Indeed, the primary purpose of the APRM is ensure to the implementation of the commitments outlined in the *NEPAD Declaration*, and to foster the adoption of policies, standards and practices that lead to political stability, high economic growth and sustainable development.³ The APRM, which is a purely voluntary process, provides for a review of participating countries' performance in the four priority areas outlined in the *NEPAD Declaration*: Democracy and Good Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development.⁴ After being reviewed, participating APRM countries must also produce a plan of action for implementing the *NEPAD Declaration* commitments⁵ and for addressing the more specific gaps identified in their respective reviews. The objectives and intent of NEPAD and the APRM, therefore,

² Ibid., p.3-4

³ NEPAD, *The APRM (Base Document)*, 2002, internet: http://saiia.org.za/aprmtoolkit/docs/Official_documents/atkt_aprm_base_document_2002_en.pdf, accessed: October 1, 2011, p.1

⁴ Ibid.

⁵ Ibid., p.3

clearly demonstrate the overarching aim to establish institutional rule in Africa, and, by extension, to displace neopatrimonialism.

1.2 Identification and Demarcation of the Research Problem

From the above section, one can clearly identify a tension between the premise that neopatrimonial regimes are unlikely to establish institutional rule voluntarily, and the relevant objective of the APRM, which is to help establish institutional rule through a voluntary process. This tension provides a good framework for the research question of this thesis, which asks whether the APRM is a key variable in the establishment of institutional rule rather than neopatrimonial rule in Africa. The hypothesis argued here is that it is not, due to design flaws which are ultimately fatal to its capacity to actually achieve this important objective. Based on the premise that neopatrimonial regimes will not voluntarily establish true institutional rule, the most important of the APRM's flaws, with respect to our research question, are that it: 1) is a voluntary process; 2) is predicated on a "peer" review by regimes which mostly, and to varying degrees, employ similar approaches to governance; and 3) puts too much control over the process in the hands of the very governments under review. In evaluating the APRM's effect on institutional and neopatrimonial governance, this thesis focuses on its Democracy and Good Political Governance component. The specific objectives under this component are the prevention and reduction of intra-state conflicts; constitutional democracy; the rule of law and supremacy of the constitution; the separation of powers (including the protection of the independence of the judiciary and of an effective legislature); accountable, efficient and

effective public office holders and civil servants; and fighting corruption in the political sphere.⁶

Although the APRM does not directly diagnose or address neopatrimonialism, its objectives clearly demonstrate the aim of establishing governance objectives clearly associated with institutional rule. Since institutional rule is considered the opposite of neopatrimonial rule, the APRM can therefore also be studied as an indirect effort at combating neopatrimonialism on the continent. In essence, the APRM's ability to establish institutional governance is positively related to its ability to displace neopatrimonialism. The more the APRM is able to contribute to the establishment of institutional governance, the more effectively it will displace neopatrimonial rule.

As the pre-eminent African governance reform initiative, the APRM provides a clear opportunity for African states to pursue genuinely the painful reforms necessary in the fight for institutional rule. These are the types of reforms which would, in a real, absolute, sense, take away much of the space for African leaders to conduct neopatrimonial rule in the way they have become accustomed to in the post-colonial era. The APRM can therefore be seen to represent an important litmus test for African governments, undertaken in the full view of many interested observers. In this sense, the APRM provides a useful lens through which political scientists can examine whether participating governments, both individually and collectively, are truly seeking to establish institutional governance in place of neopatrimonial rule, rather than simply appearing to do so.

⁶ NEPAD. *Country Self-Assessment for the African Peer Review Mechanism*. 2003, internet : http://saiia.org.za/aprmtoolkit/docs/Official_documents/atkt_country_self_assessment_2003_en.pdf, accessed October 1, 2011, pp. 27-40.

1.3 Key Terms

For the purposes of this thesis, key terms are defined as follows:

Governance is defined by the World Bank as the method through which power is exercised in the management of a country's political, economic and social resources for development.⁷

Good governance is defined by the United Kingdom's Department for International Development by focusing on four major components namely legitimacy (government should have the consent of the governed); accountability (ensuring transparency, being answerable for actions and media freedom); competence (effective policymaking, implementation and service delivery); and respect for law and protection of human rights.⁸

In line with our chosen definition of good governance, *institutional rule* is defined as a system of government administration conducted by rule of law, which is impartial, free from arbitrariness and unpredictability, is formalistic according to rational rules,⁹ and is geared towards justifying the *raison d'être* of the organized state by providing public goods.¹⁰ Institutional rule provides a legitimate and effective constitutional basis for the state (including checks and balances and regular, competitive elections).¹¹ It combats corruption seriously¹², and possesses "modern" bureaucracies with competent, well-

⁷ United Nations Economic and Social Council, *Definition of Basic Concepts and Terminologies in Governance and Public Administration*, New York, E/C.16/2006/4, January 5, 2006, p.3

⁸ *Ibid.*, p.4

⁹ Max Weber, "Die Drei Reinen Typen der Legitimen Herrschaft", in *The Essential Weber*, ed. Sam Whimster, London ; New York : Routledge, 2004, pp.133-134

¹⁰ Robert H. Jackson and Carl Gustav Rosberg, *Personal Rule in Black Africa*. Berkeley : University of California Press, 1982, p.3

¹¹ Pita Ogaba Agbese and George Klay Kieh, Jr. "Introduction: Democratizing States and State Reconstitution in Africa" in *Reconstituting the State in Africa*, eds. Pita Ogaba Agbese and George Klay Kieh, Jr., New York : Palgrave Macmillan, 2006, pp.23-24

¹² *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, pp.3-4

trained, honest, and highly skilled civil servants¹³ that are capable of delivering and implementing competitive policies.¹⁴

Neopatrimonialism is defined as a hybrid political system in which the customs and patterns of traditional patrimonialism co-exists with, and suffuse, the outward appearance of rational-legal institutions.¹⁵ In such regimes, the right to rule is ascribed to a person rather than to an office, despite the official existence of a written constitution. This person, often a long-standing president, dominates the state apparatus and in practical terms stands above its laws and any ostensible constitutional checks and balances. In this way, neopatrimonialism can be considered the opposite of institutional rule.

Development is defined as the presence of (1) self-sustaining economic growth; (2) structural changes in patterns of production; (3) technological upgrading; (4) social, political, and institutional modernization; and (5) widespread improvement in human conditions.¹⁶

1.4 Structure

The thesis is divided into five chapters. Chapter one introduces and validates the topic, research question, and hypothesis; explains the methodological approach used; and gives an overview of the resulting conclusions. The purpose of chapter two is to explore the theoretical concepts of the state as they relate to Africa, including the attendant governance challenges and implications, including the lack of sufficient

¹³ John Mukum Mbaku, *Corruption in Africa: Causes, Consequences, and Cleanups*, Lanham, MD : Lexington Books, 2007, pp.64-65

¹⁴ Greg Mills, *Why Africa is Poor*, Johannesburg: Penguin Books, 2010, pp.66-67, 358

¹⁵ Michael Bratten and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge: Cambridge University Press, 1997, p.62

¹⁶ Richard Grabowski, Sharmistha and Michael P. Shields, *Economic Development: A Regional, Institutional, and Historical Approach*, Armonk, NY : M.E. Sharpe, 2007, p.6

institutionalization and a prevalence of neopatrimonial rule. This highlights the relevance of the topic, while outlining the broader geopolitical substructure within which the APRM must perform. Chapter two also provides a survey of prescriptions for the establishment of institutional rule, from which we derive the criteria used in assessing the APRM's performance in achieving this objective. While accounting for the overall influence of the African political substructure, chapter three outlines the APRM's resulting design and objectives, using the criteria established in chapter two to measure the former are for truly establishing institutional rule in place of neopatrimonialism. Chapter four assesses the implementation and results of the APRM. It uses the same criteria to measure what the APRM's implementation thus far tells us about its ultimate ability to establish institutional rule in Africa in place of neopatrimonialism. Finally, chapter five summarizes the conclusions relating to the thesis hypothesis, provides suggestions for further analysis, and makes policy recommendations.

1.5 Methodology

In addressing its central research question, this thesis adopts the qualitative, descriptive inference¹⁷ approach so well outlined by Gary King, Robert O. Keohane and Sidney Verba in *Designing Social Inquiry: Scientific Inference in Qualitative Research* (1994). At the elemental level, our methodological approach will therefore entail summarizing historical detail (through both a literature review and primary research) in order to help classify our main unit of analysis, describe the latter's relevant general attributes, derive an operating premise, develop the central research question, and establish a hypothesis along with measurable criteria. Further observable data (literature

¹⁷ Gary King, Robert O. Keohane and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton, N.J. : Princeton University Press, c1994 pp.4, 8,13, 46-47

review, primary documents, research interviews, and case studies) will be used to make conclusions and projections about unobserved facts (the potential for the APRM to help engender institutional rule in the place of neopatrimonial rule in all participating states). As mentioned, the overall approach will be to combine both primary and secondary research. More specifically, the secondary research entails a comparative literature review of concepts of the state as they relate to Africa (providing our unit of analysis – the juridical African state), including the related governance challenges and their implications (providing both the relevant attribute of our unit of analysis – neopatrimonial governance, and the operating premise that neopatrimonial regimes are unlikely to establish true institutional rule voluntarily). Together, these elements guide us in the final design of the central research question of this thesis as expressed above, and allow us to establish our falsifiable hypothesis. They also provide a survey of prescriptions for the establishment of institutional rule on the continent, which in turn provides us with criteria to use in measuring the APRM’s potential for establishing institutional rule and displacing neopatrimonialism in all participating states (and therefore for measuring the validity of our hypothesis). The primary research includes both an analysis of official APRM and NEPAD documents and research interviews in order to assess the state of governance in Africa, the appropriateness of the APRM’s design, the effectiveness of the implementation of the APRM, and the scope for its ultimate impact on governance in Africa. The objectives of each research method, and their respective applications, are further detailed as follows.

Literature Review

In chapter two, the literature review provides a comparative survey of the concepts of the state as they relate to Africa, including the continent's extant governance challenges and implications. While acknowledging variances across the spectrum of African statehood and governance, chapter two provides a comparison between empirical and juridical concepts of statehood in the African context. The relationship between these differing concepts of statehood and their related forms of governance, such as institutional rule and neopatrimonial rule, are also analyzed. The exploration of the juridical substructure of post-colonial African states provides a sharper perspective through which to assess the design and implementation of the APRM in subsequent chapters. The literature review then provides a survey of conditions required for institutional governance to be considered present instead of neopatrimonial governance. This part of the literature review complements the specific commitments towards institutional rule which are contained in the *NEPAD Declaration*. From these prescriptions, and from the *NEPAD Declaration* itself, we are able derive the criteria to be used in measuring the APRM's potential for contributing to the establishment of institutional rule in the place of neopatrimonial rule in Africa. In this chapter we are also able to derive the premise that neopatrimonial regimes are unlikely to establish true institutional rule voluntarily.

In chapters three and four, literature is also used to complement primary sources in supporting the author's critical assessment of the APRM's political origin, its design, and its implementation, and how these factors influence the APRM's ability to establish concrete institutional rule in Africa.

Primary Sources - Research Interviews

The thesis makes extensive use of the results of semi-structured¹⁸ research interviews conducted in July 2009 in South Africa. South Africa was chosen due to the prevalence of institutions and individuals related to the APRM. The APRM Secretariat is located in the country, which had also recently gone through the APRM review process. There are also several technical research institutes and academic experts in South Africa which were either directly involved in the execution of the APRM process itself and/or are involved with tracking its progress at the national and continental levels. Ethics clearance for these interviews was obtained in March 2009.¹⁹ The ethics clearance acknowledged my employment with the Canadian International Development Agency (CIDA), which provides financial assistance to the APRM. The ethics clearance included an assurance that the author is not directly involved with CIDA's support to the APRM, and that CIDA colleagues would not be interviewed as a part of my research. In terms of interviewee selection, balance was sought by requesting interviews with a broad range of APRM stakeholders. This included APRM officials and representatives such as a member of the APRM Panel of Eminent Persons and key staff from the APRM Secretariat; representatives from the government of South Africa; representatives from independent non-profit African research institutes which have been either directly involved in the APRM process or are actively tracking it (the South African Institute of International Affairs (SAIIA), the Electoral Institute of Southern Africa (EISA) and the Africa Governance Monitoring and Advocacy Project (AfriMap), all headquartered in South

¹⁸ Tim May, *Social Research: Issues, Methods and Process*, Philadelphia : Open University Press, 1993, p.93

¹⁹ Attached as Annex A.

Africa); and academic experts from the University of Witwatersrand and the University of Pretoria in South Africa.

Requests for interviews were sent by email, which also included an information and consent letter to be signed. Ultimately, there was no response to my requests for an interview from any APRM official, including the South African member of the Panel of Eminent Persons and APRM staff, nor from any of the South African academics. However, South African government representatives agreed to be interviewed, as did staff from SAIIA, EISA, and AfriMap. South African government officials were selected in order to represent the perspective of a participating government on the interview questions, as well as the thesis hypothesis. SAIIA is affiliated with the University of the Witwatersrand, and is funded by grants from international governments, multilateral organisations and private foundations with some core institutional funding from local corporate, diplomatic and institutional members. Its mission is to provide cutting-edge analysis and promote balanced dialogue on issues crucial to Africa's advancement by making constructive policy input, stimulating informed public debate and building leadership and research excellence in Africa.²⁰ SAIIA was directly involved as one of the technical research institutes engaged for the South African APRM process.

EISA is a non-profit research institute whose mission is to promote credible elections, citizen participation, and the strengthening of political institutions for sustainable democracy in Africa. It receives funding from local, regional and international funding organisations.²¹ AfriMap is a civil society initiative that aims to promote good governance in Africa by conducting systematic assessments of

²⁰ Internet: <http://www.saiia.org.za/about-saiia/about-saiia.html>, accessed November 30, 2011

²¹ Internet: <http://www.eisa.org.za/EISA/about.htm>, accessed November 30, 2011

governments' compliance with human rights and good governance standards and commitments, strengthening the capacity of civil society to engage with governments and the AU, and providing evidence-based advocacy for improvements in government policy. AfriMap is a program of the Open Society Foundations, which was established and funded by George Soros, beginning in 1984.²² SAIIA, EISA, and AfriMap are all considered to be independent institutions dedicated to the improvement of governance in Africa. As such, they are particularly interested in the APRM and have provided critical monitoring of the latter with the aim of a successful outcome. This combination of factors can give us a reasonable measure of confidence in the objectivity of the viewpoints of representatives from these research organizations. Any potential biases within the entire participant group are further mitigated through the semi-structured nature of the interviews (consistent questions, with an allowance for individual clarification and elaboration) as well as through the number of participants (eight) across four organizations, including the South African government.

Interviews were conducted individually and in person. The results from the interviews are first used to support the literature review in chapter two regarding the state of African governance, including the prevalence of neopatrimonialism. They are also used as a key resource supporting chapters 3 and 4, which assess the political origins of the APRM, the appropriateness of its design, and its implementation, all in the context of how these factors influence the APRM's ultimate ability to establish institutional rule in Africa, and thus to replace neopatrimonialism. The interview process included standardized questions relating to the state of governance in Africa, the origin and design

²² Internet: <http://www.afri-map.org/ourmission.php>, accessed November 30, 2011.

of the APRM, and the quality of its implementation. The questions were as follows, organized by chapter:

Chapter two: What are your thoughts about the various theories of personal rule and neopatrimonial state systems in Africa? Do you feel these systems have affected the rate of Africa's socio-economic development? What do you feel are the most important roadblocks to Africa's development?

Chapter three: What are your thoughts on how the APRM design and negotiation processes evolved? How do you feel about the design of the APRM at inception? How important is the buy-in of participating as well as non-participating states? What do you think of the voluntary nature of the APRM?

Chapter four: Do you feel the APRM process is working? Is it effective? Why / why not? Do you feel the process is flexible enough to allow for adjustments in the interest of maximum effectiveness? Do you feel the APRM has the potential to fundamentally change the way Africa is governed? Can the APRM contribute to ending the era of personal rule in Africa? Could the APRM help preserve the era of personal rule in Africa? Over the long term, what do you think the true legacy of the APRM will be? Are you satisfied with this?

Primary Sources – Documents

Official APRM and NEPAD documents, such as the *NEPAD Declaration on Democracy, Political, Economic, and Corporate Governance*; the *APRM Base Document*; the *APRM Organization and Processes*; *APRM Guidelines for Countries to Prepare for and to Participate in the APRM*; *APRM Objectives, Standards, Criteria and Indicators*; *Country self-Assessment for the APRM (the APRM Questionnaire)*, and the APRM country review reports for Kenya and Nigeria are used to critically assess the appropriateness of the APRM's design, processes, and implementation with respect to the establishment of concrete institutional rule and displacement of neopatrimonialism. The country review reports for Kenya and Nigeria, more specifically, are used to provide two case studies to analyze the APRM's implementation. This allows us to highlight in detail what the APRM actually produces in its efforts to establish institutional governance, and

to determine the likelihood of these products actually generating such reform. The crucial, least likely case study method outlined by Harry Eckstein²³ is used in this regard, with the republics of Kenya and Nigeria selected as our case studies for two reasons. First, they are representative of the ‘reforming’ wing of African countries, with ostensible commitments to improving governance and fighting corruption. In this context they have also been champions for the APRM initiative and among the first to go through the country review process. Second, both of these countries are considered to exhibit strong neopatrimonial tendencies (as opposed to true institutional rule), representative of much of the rest of Africa, and both continue to experience severe poverty in the midst of immense economic potential. This combination of factors means that these two cases are considered as “least likely” to support the hypothesis of this thesis. This is because if the APRM process is going to be able to lead to the establishment of institutional rule in the place of neopatrimonialism, it should most likely work for countries such as these two. If it is found that the APRM will not likely be effective in the establishment of institutional rule in these two countries, the likelihood of it succeeding in other, less reformist, countries is even smaller. Such an outcome most strongly supports the hypothesis of this thesis. Alternatively, if it is found that the APRM process, in these two cases, produces outputs which are likely to substantively contribute towards the actual establishment of institutional rule, our hypothesis can be considered falsified.

Overall, this methodological approach fills several gaps in existing analyses of the APRM by exploring how the juridical substructure of participating states impacts upon the APRM’s design, implementation, and chances for success. It assesses the APRM’s

²³ Harry Eckstein, “Case Study and Theory in Political Science”, in *Strategies of Inquiry* (volume 7), Fred I. Greenstein and Nelson W. Polsby, eds., Reading, Massachusetts: Addison-Wesley Publishing, 1975, p. 118

potential for establishing concrete institutional rule against measurable criteria derived from the literature review and from the commitments contained in the *NEPAD Declaration*. Finally, the thesis assesses the APRM's utility in the context of diminishing the practice of neopatrimonialism in Africa.

1.6 Conclusions

While acknowledging variances across the spectrum of African statehood and governance, chapter two concludes that African states are primarily juridical rather than empirical in nature. It demonstrates that these states are therefore not under the same pressures as empirical states to justify their existence and power through the competitive provision of good governance, public goods and appropriate policies. The chapter shows that this very substructure of the African state is a major contributor to the continued lack of institutional rule in Africa, and confirms the prevalence of neopatrimonial approaches to governance and how this overall political environment provides distinct challenges to the APRM's potential for establishing true institutional governance. It demonstrates that the practice of institutional rule is crucial for displacing neopatrimonialism, and concludes that the best way to measure whether the APRM contributes to the establishment of institutional rule is whether it is a) engendering the establishment of true constitutional government, b) provoking the implementation of real, effective anti-corruption programs aimed at the strategic level, and c) leading to the construction of independent, professional state bureaucracies capable of designing and delivering globally competitive policies oriented towards providing public goods.

Chapter three demonstrates that the APRM design is indeed appropriate for assessing the quality of governance in participating states and, in terms of content, has

great potential for guiding these states away from neopatrimonial rule and towards the objective of institutional governance. However, the chapter ultimately identifies three design flaws which severely limit the APRM's utility in influencing African states to actually take advantage of the mechanism and move towards real institutional rule. First, the APRM is strictly voluntary. This means that it cannot influence poorly governed states which simply decide not to participate. Second, the design puts too much control over the review process in the hands of the governments under review, including national-level review coordination and implementation and, most importantly, the production of the national action plan for implementing the *NEPAD Declaration* commitments and improving governance. Finally, the APRM design lacks a credible monitoring and enforcement mechanism for these national plans of action.

Chapter four's analysis of APRM implementation shows that some elements of the APRM have worked well so far – in particular the independence and quality of the country review reports. However, it ultimately concludes that the design doubts underlined in chapter two are well-founded. The key elements left exclusively in the hands of participating governments, such as the plans of action in response to the review reports and the peer review of both products by participating heads of state, are too weak to be considered concrete manifestations of a movement towards true institutional rule. The administration of the APRM and the publication of its results are also found to be insufficient. If this is the case for our two selected crucial cases, it does not bode well for the potential of the APRM to engender institutional rule as less reformist countries go through the process, and as the most severe neopatrimonial regimes face no compulsion at all to join the mechanism.

Therefore, the evidence presented in this thesis leads to the overall conclusion that the APRM cannot at this point be described as a key variable in the replacement of neopatrimonial rule with institutional rule in Africa.

Chapter Two – The State and Africa

This chapter will provide a review of the literature explaining the structural differences between African states and those in the developed world, demonstrate how these differences in turn explain the lack of institutional rule in Africa (and thus the prevalence of neopatrimonial rule), show why an analysis of the relationship between the APRM and neopatrimonialism is so important to the study of African politics, explain the differences between institutional and neopatrimonial rule and, finally, provide prescriptions and criteria for measuring how well the APRM is able to establish institutional rule in place of neopatrimonialism. In this chapter, the literature review is complemented by the results of research interviews.

The current *legal* definition of the state emerged from the Montevideo Convention of 1933. According to it, a territory may be classified as a ‘state’ if it possesses the following attributes: a permanent population; a defined territory; an effective government; and the capacity to enter into relations with other states.²⁴ The post-World War II era saw the consolidation of the legal approach to the state, with the evolution of state recognition only through the United Nations system. In *Africa and the International System* (1996), Christopher Clapham explains this as the ascension of the juridical state – one that is established through the international system and its laws. This approach is a necessary component of the modern world, given the need to protect global stability and weak states from stronger ones. However, the acceptance of juridical statehood also dispensed with the historical system through which states emerged -- an empirical existence established by the ability to project power over a territory, and a

²⁴ Yarik Turiansky, M.A. Thesis, *A Critical Analysis of the APRM as a Standard for ‘Good Governance’*, University of Pretoria, 2008, p. 13

justification of its existence through the productive organization of that territory. It is crucial to understand that there are therefore two types of states in the international system – those that possess both empirical and juridical statehood, and those that only possess the latter. While all states are equal under international law, they are not equal empirically. This has important consequences for the study of states, the nature of their activities, and the fabric of their societies. In order to better understand the impact of these differences on a state's governance system, a more detailed comparison is useful here.

2.1 The Empirical State

Max Weber (1919) provides the dominant definition of the empirical state as “that human community which within a defined territory successfully claims for itself the *monopoly of legitimate physical force*...the state is the sole source for the ‘right’ to exercise violence.”²⁵ This ability to project force over a given territory was earned through the unmerciful forge of historical geopolitics from pre-history to 1945. Prior to 1945, power had to be capable, creative, competitive, and, above all, institutionalized. History shows that, when unconstrained, the ruling elite of any society tends to pursue policies geared towards minimizing institutional oversight, in order to maximize their own welfare, wealth and power. Such policies, focused as they are, will not generally be the type that raise the welfare of general society. “In other words, the ruling elite may very well view their society as prey from which wealth is to be extracted; thus the concept of the predatory state.”²⁶ In essence, the ruling elite will naturally use its power to create rents that satisfy a politically powerful minority, in order to ensure their

²⁵ Lecture by Max Weber, “Politik als Beruf”, 1919, in Whimster, p.131-132

²⁶ Grabowski, Self, and Shields, p.55

enrichment and continued hold on power. Such rent-seeking behaviour is pursued at the expense of lower productivity and lower growth.²⁷ Unconstrained rent seeking prevents the productive operation of sustainable markets and allows the ruling elite and their supporters (all of whom are a minority unable to translate their own gains into productive behaviour) to earn extraordinary, and ultimately destructive, returns. In short, unconstrained by institutions, “society’s interests are sacrificed for the interests of the politically powerful minority.”²⁸ The existence of constraint on the power elite by institutions, or the lack thereof, will fundamentally explain the scope and history of a state’s development and success.

Classical theories of the state (Hobbes, Locke, Rousseau) grew out of this realization, and emerged from the changing conditions of economic and political power in 17th century Europe. The foundation of this theory was based on individual rights and the state acting in the ‘common good’. It posited that the state that would best serve humankind was a liberal one, which relied on and guaranteed the operation of free markets in civil society.²⁹ Rousseau further codified a social contract which emerges from the liberal state arrangement, which is ultimately a crucial part of the empirical state’s power and legitimacy. Under the social contract, the power of the State derives from the people, who willingly give up their freedom to the institutions of the State and the State in turn represents the general will.³⁰

Weber identified three pure forms of state domination (‘legal/bureaucratic’, ‘traditional/patriarchal’, and ‘charismatic’), each accompanied by a fundamentally

²⁷ *Ibid.*, p.88

²⁸ *Ibid.*, p.87

²⁹ Martin Carnoy, *The State and Political Theory*, Princeton, N.J. : Princeton University Press, 1984, p.13

³⁰ *Ibid.*, p.21

different sociological structure and means of administration.³¹ According to Weber, only one of these forms, the legal/bureaucratic, or institutional, could be associated with the modern state. The ‘traditional/patriarchal’ and ‘charismatic’ systems are defined as communal forms of social relationship characterized by patronage and governance conducted according to practical effectiveness rather than legal rule.³² Weber wrote that ‘legal/bureaucratic rule’ is based on the legitimate enactment/amendment of laws by formally correct procedures. In this form, all people, including the ruler, are able to subject themselves willingly to these laws through virtuous self-interest. This is because government administration is institutional – meaning by rule of law, impartial, free from arbitrariness and unpredictability, and is formalistic according to rational rules. Under this system, the wilful domination of the populace is stable, because of the instrumentally rational assessment of advantages and disadvantages by the commanded population.³³

Picking up on Rousseau’s social contract theory, economists have traditionally assigned the state two main functions: (1) to maintain law and order, including the enforcement of contracts, and (2) to provide public goods.³⁴ Therefore, we can argue that an effective and legitimate state is one that enforces the law and maintains the appropriate institutional environment for the efficient and equitable allocation of resources. Its structures are focused on enhancing entrepreneurial activities and wealth creation while adequately constraining state custodians so that they do not engage in opportunistic behaviours. These state functions are elaborated in a constitutional compact.³⁵ Thus, through a historical, evolutionary, and mutual interplay between social and political

³¹ Max Weber, “Die Drei Reinen Typen der Legitimen Herrschaft”, in Whimster, ed., p.133

³² Ibid., p.135-136

³³ Ibid., p.133-134

³⁴ Mbaku, p.2

³⁵ Ibid.

forces within defined territories, legitimate, representative, and institutional states emerged as cohesive entities in pursuit of rational self-interest. This is the type of statehood considered 'empirical', or measurable. The empirical state's existence is empirically established through its institutional framework, and is measurable concretely by its ability to exert control over its territory, to represent its population legitimately, and to provide public goods. Under this theoretical approach, the legitimacy of a state is not something that can be simply conferred, but instead is derived from a positive outcome of a constructive struggle between the ruling elite and the rest of society.³⁶

According to Grabowski, Self and Shields, a crucial step in the evolutionary process of the political development of states is the point at which the pursuit of wealth maximization by the elite comes to coincide with wealth maximization for society at large. "In other words, political development is the process by which a ruling elite moves from killing the goose that lays the golden egg to nurturing the goose so that it lays many golden eggs. Political development is the process by which the state moves from being predatory to being developmental."³⁷ In this rational process, the survival probability of the ruling elite becomes increasingly dependent on the well-being of the bulk of its society.

Grabowski, Self and Shields also highlight the important concept of distinguishing between 'earned' and 'unearned' state income. Earned state income is linked to institutional statehood and can be understood as the type of revenues that are "dependent or influenced by the extent to which it has put in effort working with its

³⁶ Grabowski, Self, and Shields, p.124

³⁷ *Ibid.*, p.55

citizens in order to get its tax revenue.”³⁸ These efforts would include institutionalization aimed at constructing a bureaucratic apparatus for the collection of revenue, and also would include the provision of services, or public goods, in return for this revenue. Unearned income, on the other hand, is derived from very few sources, requires little institutionalization to collect, and involves little interaction between the ruling elite and the bulk of society.³⁹

Just as a healthy state is one in which government and society work together, a clearly defined division between the two spheres is equally important. Here, institutions provide another important barometer of political development. John S. Dryzek and Patrick Dunleavy argue meaningfully that a defining feature of an empirical state is the existence of state institutions which define a ‘public’ realm separate from the ‘private’ realm, which is of concern only to the individuals or organizations involved.⁴⁰ Patrick Chabal and Jean-Pascal Daloz indicate that from the perspective of the Weberian tradition, the modern state is the outcome of a process by which the realm of politics is gradually emancipated from society and constituted into increasingly autonomous political [governmental] institutions. They further identify the key to such institutionalization as the successful establishment of a truly independent bureaucracy, and less so the gradual acquisition of the monopoly of legitimate violence (although they acknowledge the importance of the latter). The emancipation of the state, they explain, is dependent upon “the establishment and operation of a civil service unconstrained by the

³⁸ Ibid., p.55

³⁹ Ibid., p.56

⁴⁰ John S. Dryzek and Patrick Dunleavy, *Theories of the Democratic State*, New York : Palgrave Macmillan, 2009, p.2-3

dynamics of social pressures.”⁴¹ In the tradition of Weber, Chabal and Daloz state that the emergence of the modern state further implies the termination of patrimonialism and a complete break from “the notion that the holders of political power possess any legitimate claim on the assets or resources which they administer.”⁴² According to this tradition, a modern state is one in which the public and private spheres have become functionally distinct. By contrast, the patrimonial model demonstrates a convenient and very profitable lack of distinction between the civic and personal spheres. The ruler allocates political office to his clients on the basis of patronage, rather than according to the criteria of professionalism and competence which characterize the effective and independent civil service.⁴³

2.2 The Juridical African State

So, with the complex history behind empirical, institutionalized states put briefly into context, one can see the problem with assuming that juridical states, as a matter of course, will be able to behave and operate in the same way as the empirical state. In fact, empirical states and juridical states are vastly different and will achieve different outcomes. With juridical statehood, the state is not required to possess the institutional capacity to deliver public goods, nor is it required to legitimize itself or consolidate its control in a productive manner. Juridical states and borders are neither established nor maintained through endogenous effort and tension, as with empirical European state-building, but by simple “international fiat.”⁴⁴ Such was the case with the advent of the post-colonial African state. Before going further, the author wishes to acknowledge that

⁴¹ Chabal and Daloz, *Africa Works: Disorder as Political Instrument*, Bloomington : Indiana University Press, 1999, p.5

⁴² *Ibid.*, p.5-6

⁴³ *Ibid.*

⁴⁴ Mills, p.13

there exists some variance across the spectrum of African statehood and governance. The overall approach of this thesis is a general one, making use of the broad governance trends which are identifiable across the critical mass of African states.

Emerging from colonialism, beginning in the 1960s, the newly independent African states were immediately recognized by the United Nations. The boundaries of these states were based on the colonial maps, which themselves had been established by the Berlin Conference of 1884-1885. These maps had been based solely on the strategic needs of imperial Europe, and had nothing to do with what made sense for the continent itself. Their artificial boundaries separated cohesive social groups, divided logical and well-established trading areas, distributed resources unequally, and enveloped existing diverse cultural and political systems.⁴⁵ This left the newly post-colonial Africa with weak, fragmented, distorted, and often unviable economies and markets. Clapham interestingly describes the type of state sovereignty derived from juridical statehood as ‘negative’, in that it is indeed ascribed to them externally, rather than ‘positive’ sovereignty, which is generated by effective control of territory. Because of this, Clapham points out, African states are often referred to as ‘quasi-states’.⁴⁶

It has become clear through recent historical evidence, as Ian Taylor posits, that postcolonial African countries, “although bounded by formal frontiers and with an international presence at various international institutions such as the United Nations, function quite differently from conventional understandings of what a formal Western

⁴⁵ April A. and Donald L. Gordon, *Understanding Contemporary Africa*, Boulder: Lynne Rienner Publishers, 2007, p.58

⁴⁶ Christopher Clapham, *Africa and the International System: Politics of State Survival*. Cambridge: Cambridge University Press, 1996, p.15

state is and should do.”⁴⁷ The traditional empirical criteria of the state as outlined above do not to hold up well when applied to African states. There was also a lack of a powerful African entrepreneurial class, independent of government, with vested interests to protect through sound economic policies. The post-colonial history of African states does not lend itself to adjectives such as ‘institutionalized’, ‘successful’, ‘developmental’, ‘holistic’, or ‘public’. Instead, African states are predominantly depicted in the development literature as “rentier,” “prebendal,” “extractive,” “personalized,” “weak,” or “overdeveloped.”⁴⁸ These new countries obviously faced enormous challenges. Almost everyone, even the ascending elites, was on the extremes of either absolute or relative poverty. However, one cannot credibly say that newly independent Africa was bereft of the *potential* to establish institutional governance.

At independence, the new African leaders faced several important choices for their respective states. Many believe that these early choices were driven by a cynical resignation to the idea that wealth creation would be limited, with access to state power the only sure way to achieve it personally. The path of the African state therefore can appear to be linked to the maximization of unearned income for its leaders rather than to earned income through broad-based economic and social development. Through this lens, many poor African policy choices begin to make sense. The first choice faced by the freshly independent African states, quite bluntly, was whether or not maintain the political boundaries as they were. A difficult, but certainly available, option would have been to work together to reconfigure states and their boundaries along logical and

⁴⁷ Ian Taylor, *NEPAD: Toward Africa's Development of Another False Start?*, Boulder: Lynne Rienner Publishers, 2005, p.2

⁴⁸ Pita Ogaba Agbese and George Klay Kieh, Jr. “Introduction: Democratizing States and State Reconstitution in Africa” in *Reconstituting the State in Africa*, Pita Ogaba Agbese and George Klay Kieh, Jr., eds., New York : Palgrave Macmillan, 2006, p.11

productive lines. It seems that this was not a serious consideration. Next, Africans had to choose a political system. As John Mukum Mbaku describes, one option in this regard would have been to engage in democratic, bottom-up, and inclusive constitution-making, to construct the economic and political institutions which would generate developmental good governance.⁴⁹ This approach would have been a preliminary step towards building empirical, institutional statehood. Instead, effective authority was quickly concentrated in the executive and single-party dominance rapidly established. Any independent legislative authority or meaningful debate was displaced by the executive.

The new leaders made themselves presidents for life and refused to give their people any power to remove them as "...they looted Africa's wealth for deposit in Swiss bank accounts while their own people starved."⁵⁰ Mbaku believes that the leaders of most of these new countries engaged primarily in self-serving institutional reforms which produced laws and institutions that offered them opportunities and the power to maximize their own personal interests instead of pursuing the public interest.⁵¹ To these ends the new leaders adapted the extractive and coercive institutions created by the colonial powers. So the colonial structures, which had robbed Africa of so much, were often maintained by national liberators in order to extract rents and maintain their hold on power. These immediate decisions meant that, despite the heady joy of independence, the new states and their leaders very quickly began to lack legitimacy in the eyes of most of the populations.⁵² In response, there was a universal move by African leaders to consolidate their hold on power, apparently motivated not by institutional state-building

⁴⁹ Mbaku, p.1

⁵⁰ George B.N. Ayittey, *Africa Betrayed*, New York : St. Martin's Press, 1992, p.23

⁵¹ Mbaku, p.1

⁵² Grabowski, Self, and Shields, p.124

but by the desire to ensure their continued capability to use state power as a mechanism for private wealth creation.⁵³ April and Donald Gordon provide a useful summary of what happened:

Across the continent, the early years of independence witnessed a strikingly similar transformation of inherited governmental and political structures. Concentration of political power and control was achieved primarily through 1) limiting or eliminating opposition and (2) expanding the bureaucratic agencies and the security organizations, which passed to the new leadership at independence, (3) electoral systems were modified to make competition unlikely or impossible; (4) constitutions were changed to give wide authority to restrict the power of representative assemblies, including national parliaments and provincial and local assemblies.⁵⁴

Dissent and political opposition were not tolerated. Opposition political parties were outlawed and the multiparty system was condemned as a source of disunity, instability and chaos. The opposition was literally considered enemies of the state⁵⁵ by virtue of their threat to the ruling elite's access to rent-seeking. The single-party system was used to prevent any possibility of the political opposition from gaining access to state power. The state, party and national leader therefore became fused. Leonardo Villalon and Phillip Huxtable observe that in Africa, "the state, the regime, the party, and even individual personalities have been closely intertwined in the vast majority of African countries, and are not easily disentangled."⁵⁶ They further posit that these leadership

⁵³ Pita Ogaba Agbese and George Klay Kieh, Jr. "Introduction: Democratizing States and State Reconstitution in Africa" in Pita Ogaba Agbese and George Klay Kieh, Jr., eds., p.12-13

⁵⁴ Gordon and Gordon, p.70-71

⁵⁵ Daniel T. Osabu-Kle, *Compatible Cultural Democracy: the Key to Development in Africa*, Peterborough, Ont. : Broadview Press, 2000, p.98

⁵⁶ Pita Ogaba Agbese, "The Political Economy of the African State" in George Klay Kieh, Jr, ed., *Beyond State Failure and Collapse: Making the State Relevant in Africa*, Lanham, MD : Lexington Books, c2007, p.44,

groups wanted, more than anything else, to separate their fate from the hazards of a competitive political game over which they were unable to exercise total control.⁵⁷

The result is that politics became further and further removed from the need to provide public goods such as the rule of law and appropriate development policy. As Robert Jackson and Carl Rosberg point out, politics revolved around power and not policy issues. Success or failure in policy become less and less likely to result in direct political rewards or losses.⁵⁸ Worse, leadership groups have largely been identifiable along lines of ethnicity or region rather than by ideas. As Gordon and Gordon point out, the newly forming structures of post-independence power were often seen to bring almost instant economic and political dominance for particular ethnic or regional groups. Those groups (often wide swathes of the entire population) excluded from power, or the periphery excluded from government largesse, would live with the necessary economic consequences of poor leadership.⁵⁹

African states, then, were typically governed internally along zero-sum lines. African political and state spheres since independence have not generally been arenas for competing ideas or productive policies, but petrified arenas for life-and-death struggles over personal access to public resources. Jackson and Rosberg further explain that politics in sub-Saharan African states remained uninstitutionalized. Politics did not become an activity in which individuals and organizations competed in the public arena in order to earn the right to govern or to influence a state policy within an overall and legitimate framework of agreed-upon rules. Rather, politics in the region became more

⁵⁷ Jean-Francois Bayart, *The State in Africa: The Politics of the Belly*, London : New York, N.Y. : Longman, 1993, p.263

⁵⁸ Jackson and Rosberg, p.75

⁵⁹ Gordon and Gordon, p.69

personalized and less restrained, with higher stakes and greater risks for those actively engaged in the political game. This also resulted in great uncertainty for the general public. In Jackson and Rosberg's minds, the public political realm on the continent became greatly reduced in scope and significance.⁶⁰

There is broad support in the literature for the concept that, after fifty years of independence, most African states still fail to meet any traditional criteria of statehood (unchallenged control of territory, possessing a monopoly over legitimate use of violence, and a demonstrated ability to provide institutionalized rule) beyond that of juridical status. Pita Agbese, Timothy Longman, Chabal and Daloz, and Clapham all argue in various ways that the African state, as presently constituted, is actually the main source of the continent's ills, and has overwhelmingly failed to provide any sort of legitimacy or justification for its existence beyond serving the needs of a few connected to power. Agbese writes that, rather than becoming developmental, African states have played major roles in the economic decline of the continent and have too often become the fundamental threat to citizens' well-being and prosperity,⁶¹ including the encouragement of ethnic and religious divisions.⁶²

As Agbese writes, Africa has the dubious distinction of hosting UN peacekeeping troops sent to provide security for populations against their own governments at an inordinate rate.⁶³ Chabal and Daloz indicate that the state in Africa is vacuous because it has not been institutionalized, or emancipated from the overriding dominance of personalized politics. The formal structure of the state in Africa therefore ill-manages to

⁶⁰ Jackson and Rosberg, p.1-2

⁶¹ Agbese, "The Political Economy of the African State" in George Klay Kieh, Jr, ed., p.42,

⁶² Ibid.

⁶³ Agbese Klay Kieh, Jr. "Introduction: Democratizing States and State Reconstitution in Africa" in Agbese and Klay Kieh, Jr., eds., p.4

conceal the patrimonial and particularistic nature of power.⁶⁴ Clapham argues effectively that the criterion that is most frequently not achieved in Africa is governmental legitimacy, or the moral right of a government to act on behalf of its population.⁶⁵

The moral relationship between the population of the state and the people who run it is limited, and in essence many African rulers do not govern on behalf of their populations, but instead govern on their own behalf and that of their supporters.⁶⁶

According to Chabal and Daloz, state legitimacy in Africa is generally limited to and embedded in the patrimonial practices of patrons and their networks.⁶⁷ They underline the evidence suggesting that, in most African countries, the state conception is often no more than a decor or facade. They describe the reality that while there may be some superficial institutionalization of state structures, such bodies are largely devoid of authority. This 'shell' form of institutionalism also provides a way for the international system to be able to interact with and understand these entities. Jackson and Rosberg believe that the historical evidence proves that African rulers and other leaders are not captives of their environment. Rather, in the provision or the destruction of political goods such as peace, order, stability and non-material security, "...the actions of Africa's rulers and other leaders have been more important than anything else."⁶⁸

A meaningful analysis of the African state, and of African development, must therefore include insight into the actions of African rulers. One can best determine what kind of state exists merely by asking "what are its aims?" The ongoing and almost universal lack of institutional statehood across the region has dictated the nature of these

⁶⁴ Chabal and Daloz, pp.1-2

⁶⁵ Clapham, pp. 12-13

⁶⁶ Turiansky, M.A. Thesis, p. 22

⁶⁷ Chabal and Daloz, p.16

⁶⁸ Jackson and Rosberg, p.3

states and the ends to which African state power has been applied. These ends essentially are the private interests of the ruling elite and their respective power bases, which are pursued at the expense of the public good. Despite much talk of a capacity gap, African states actually display expert professionalism, organization, foresight and skill in the achievement of their aims. However, these aims, as we have seen, are far more personal than public. Neopatrimonialism is the system and process through which these personal ends are implemented. This is why the study of this form of governance is so crucial, as is the question of whether the APRM will effectively combat it by helping to establish institutional rule in Africa.

2.3 Description and Scope of Neopatrimonialism in Africa

By the 1980s, Jackson and Rosberg were identifying neopatrimonialism, or personal rule, as a distinctive type of political system, with operative principles and practices that are measurable to the political scientist.⁶⁹ The term neopatrimonialism is derived from the concept of patrimonial authority, which Max Weber used to describe the authority occurring in the most traditional polities. As outlined above, Weber distinguished patrimonial authority from rational-legal authority, in which the public sphere is clearly distinguished from the private sphere and written laws and bureaucratic institutions formalize the exercise of authority and protect individuals and their property.⁷⁰ In a traditional Weberian patrimonial system, ruling relationships are personal in nature and the private and public spheres are not differentiated. A neopatrimonial system, as Ian Taylor explains, is one in which there *appears* to be a separation of the public and private spheres, alongside the outward trappings of a modern, rational-

⁶⁹ Jackson and Rosberg, p.4

⁷⁰ Bratton and van de Walle, pp.61-62

bureaucratic state (a flag, borders, a constitution, a government and bureaucracy, etc.), yet in practice the private and public spheres are not at all detached.⁷¹ Behind the ‘façade’ of the modern state, Taylor further outlines, power in a neopatrimonial system progresses informally, between patron and client along lines of political reciprocity. It is intensely personalized and is not exercised on behalf of the public good.⁷² Bratton and Van de Walle describe neopatrimonial systems as “hybrid political systems in which the customs and patterns of patrimonialism co-exist with, and suffuse, rational-legal institutions.”⁷³ According to them, in such regimes, the right to rule is ascribed to a person rather than to an office, despite the official existence of a written constitution. This person, often a long-standing president, dominates the state apparatus and in practical terms stands above its laws.

The study of comparative government provides a wide-ranging tradition of theoretical-institutional analysis associated with a long line of distinguished writers such as Montesquieu, de Tocqueville, Carl Friedrich and John Rawls. This tradition provides a deep analysis of political institutions: their nature, the historical conditions that gave rise to them, and their importance for political life.⁷⁴ As Jackson and Rosberg underline, the tradition of comparative institutional analysis explores, among other things, not only the form and substance of such rules in a political system, but also the degree of respect for them and the conditions underlying public attitudes toward them. Under this framework, rules are the tools of a healthy and productive civil society. In an effectively institutionalized state, the rules are supreme and are respected by all persons no matter

⁷¹ Taylor, pp. 2-3

⁷² Ibid., pp. 46-47

⁷³ Bratten and van de Walle, p.62

⁷⁴ Jackson and Rosberg, p.9

how important they are. In a state without effective institutions, rules are defied or ignored; they appear without value or meaning.⁷⁵

As detailed by Jackson and Rosberg, neopatrimonialism is the opposite of institutional rule. It is a non-institutionalized form of government, where persons take precedence over rules, where an officeholder is not effectively bound by his office and is able to change its practical authority and powers to suit his own personal or political needs. Even if most African states have *abstract* constitutions and institutions, in the Rawlsian sense, very few, if any, have them in fact: the formal institutional rules of the political game do not effectively govern the behaviour of rulers and other political leaders in these neopatrimonial systems.⁷⁶ In this setting, institutions are unable, and are not meant to, constrain the ruling elite or politics in general. The manner in which a country exercises political power is thus perverted. Ultimately, under neopatrimonialism, political power is exercised through informal channels built around patronage relationships, and not through governance systems that are both formal and credible.⁷⁷

Under neopatrimonialism, relationships of loyalty and dependence take precedence over the formal political and administrative system. Officials occupy their bureaucratic positions less to perform public service than to acquire personal wealth and status. State functionaries receive an official salary but also put into practice various forms of illicit rents, prebends, and petty corruption, which are considered attendant to their position. The chief executive and his inner circle maintain political order not by maximizing the effectiveness of the outwardly modern state administration, but by

⁷⁵ Jackson and Rosberg, p.10

⁷⁶ Ibid., p.10-11

⁷⁷ Brian Levy, "Are Africa's Economic Reforms Sustainable", in *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation*, Muna Ndulo, ed., Athens, Ohio : Ohio University Press, 2006, p.130

undermining it through systematic patronage and clientelist practices. Under a neopaternalistic system, the parallel and unofficial structures through which rents are extracted hold more power and authority than the formal administration. In essence, the key characteristic feature of neopatrimonialism is the incorporation of patrimonial logic into bureaucratic institutions.⁷⁸ Neopatrimonial regimes secure stability through ‘clientelism’ – a system of patron-client ties that bind leaders and followers in relationships of mutual assistance and support. These ties extend from the center of the regime, the ruler, to his lieutenants, clients, and other followers, and through them to their followers, and so on. The neopatrimonial state is, at its most basic, an extensive chain of patron-client ties.⁷⁹

Jackson and Rosberg stress that the study of neopatrimonialism is important because it highlights real features of African politics that other approaches play down or neglect altogether: clientelism and patronage, factionalism, coups, purges, succession crises, and similar characteristics and dynamics of institutionless government.⁸⁰ According to them, the official world of the international system does not outwardly appear to consider the reality that power in African politics must be understood as the “utilization of patrimonial power and not as the performance of legitimacy drawn from the sovereign will of the people.”⁸¹ In fact, there is strong support in the literature for the position that neopatrimonialism is the dominant, if not universal, system of government in Africa. Interviews with representatives from SAIIA (Steven Gruzd, Program Head, Governance and APRM Programme; and researchers Yarik Turiansky, Tsoeu Petlane, and

⁷⁸ Bratten and van de Walle, p.62

⁷⁹ Jackson and Rosberg, p.39

⁸⁰ Ibid., p.6

⁸¹ Taylor, pp.46-47

Terrence Corrigan), EISA (Grant Masterson, Senior Programme Officer) and AfriMap (Ozias Tungwarara, Director) show that they all believe strongly that neopatrimonialism is the predominant form of governance in sub-Saharan Africa.⁸² The dissenting view came from South African government officials from the South African Ministry of Foreign Affairs, who disagreed that neopatrimonialism exists as a form of government in Africa.⁸³ It should not be surprising that government officials would deny the existence of neopatrimonialism. Ultimately, it is felt that the opinions of the representatives from SAIHA, EISA, and AfriMap were more independent and objective.

Further, as Gordon and Gordon point out, although there was great variety in the types of government structures and regimes that emerged in the post-colonial era (monarchies and dictatorships; military regimes and civilian governments; revolutionary systems; Marxist and capitalist), their political evolution was characterized by neopaternalistic patterns that were “strikingly similar.”⁸⁴ Bayart believes that neopatrimonialism is not simply a matter of corruption, but actually represents the African state’s fabric.⁸⁵ Michael Bratten and Nicolas Van de Walle echo this, arguing that neopatrimonial practices are the *core* feature of politics in Africa, with personal relationships constituting the foundation and superstructure of political institutions in Africa. They further confirm that there has been a widespread embrace by scholars of African politics of the neopatrimonial model, which is also known by various theoretical labels such as “personal rule,” “prebendalism,” and the “politics of the belly.”⁸⁶ Ian

⁸² Research interviews with Steven Gruzd, Yarik Turiansky, Tsoeu Petlane, and Terrence Corrigan, Johannesburg, July 8-9, 2009

⁸³ Research interview with Harvey Short and Peter Makwarela, Pretoria, July 14, 2009

⁸⁴ Gordon and Gordon, p.57

⁸⁵ Bayart, p.89

⁸⁶ Bratten and van de Walle, pp.62-63

Taylor lists several other researchers (Levine, 1980; Medard, 1982; Callaghy, 1984 and 1987; Sandbrook, 1985; Crook, 1989; Chabal, 1994; Tangri, 1999; Chabal and Daloz, 1999) who agree that the concept of neopatrimonialism has become the standard tool of analysis for Africanists seeking to understand the politics of the state on the continent.⁸⁷ Taylor further writes that, although clientelism and patronage are *not* unique to Africa, the continent implements a type of intensive neopatrimonialism, of ‘pathological’ patrimonialism.⁸⁸

The state system and its strategic corruption provide incumbent leaders the incentive to resist reform – especially institutional modernizations that could cancel their privileges and make it more difficult for them to extract extra-legal income from the economy.⁸⁹ Furthermore, because politics are chiefly about wealth, they devolve into zero-sum life and death struggles which do not account for the national interest.

Neopatrimonial leaders make decisions motivated by personal and power interests rather than public interests. These would include ultimately destructive actions such as the misappropriation of revenue from natural resources, the toleration of endemic corruption, the fomentation of ethnic conflict, and productivity-killing policies. Under neopatrimonialism, corruption is therefore structural as opposed to opportunistic. The foundation of the state is built upon it, and relies upon it to make it work.

As Jackson and Rosberg point out, there is little governmental or public organizational rationality in most African states. The rationality that does exist is limited to narrow personal or factional considerations. In the absence of effectively institutionalized rules, political players are not restrained from using coercion, violence,

⁸⁷ Taylor, p.2

⁸⁸ Ibid., p.3

⁸⁹ Mbaku, pp.ix-x

and other harmful and unfair political means.⁹⁰ Neopatrimonial rule is inherently authoritarian. Its practitioners use the law and the coercive instruments of the state to consolidate its monopolization of power and to suppress the political rights and opportunities of all other groups to compete for that power. Constitutional rights and protections are removed from political opponents, institutional checks and balances are ignored, state power is centralized in presidential offices, and open party politics and political participation are confined.⁹¹ Neopatrimonial Africa is therefore famous for its long-tenured leaders, who are seldom subject to constitutional time limits on their incumbency. As Ian Taylor points out, as of the beginning of the twenty-first century, 39 percent of Africa's rulers had been in power for over ten years, and 28 percent had been presidents for fifteen years or more. 19 percent had been in power for twenty years or more and two have been heads of state for over thirty years.⁹²

During the 40-50 years of post-independence neopatrimonialism, ruling parties have often blurred the line between themselves and the state,⁹³ which further suppresses the emergence of institutionalism. Regimes actually came to see themselves as the state, and therefore entitled both to its resources and to maintaining power at all costs.

Masterson details the legacy of the one-party state in much of Southern, Eastern, and Central Africa, where the organization of the incumbent ruling parties goes right down to the community level. "The ruling party is so entrenched within the fabric of the country it is as though it's the skeleton that the country's built around. They have organizational

⁹⁰ Jackson and Rosberg, p.19

⁹¹ Ibid., pp.23-24

⁹² Taylor, p.4

⁹³ Research interview with Ozias Tungwarara, Johannesburg, July 14, 2009

units down to the micro-village level, and the party can mobilize down to that level.”⁹⁴

He further elaborates that, post-independence, the one-party state apparatus deliberately proceeded to either absorb or dismantle civil society. The argument was that under a one party system, the party was the state, which represented the people, and civil society therefore didn't have anything additional to bring to the table. Civil society, as an organized force which had played a huge role in the struggles leading up to independence, was co-opted, displaced, and in many cases, gave up.⁹⁵

Masterson further states that this provides a massive advantage for the former single party states as they evolved into ostensible multi-party democracies. “The playing field is definitely rigged. A lot of these governments have become far more sophisticated in putting the playing field on advantageous terms for themselves, and that also has a key effect.”⁹⁶ Even the relatively advanced democracy of South Africa finds itself falling into the same trap. The South African Minister in charge of implementing the APRM process in that country, Geraldine Fraser-Moleketi, stated to civil society participants that the ANC is the State.⁹⁷ As well, ANC officials have been caught using \$1 million from the state treasury for party purposes – and remained in their posts.⁹⁸

According to Ozias Tungwarara, this devolutionary reality allows for the undermining of democratic governance institutions, even when these exist nominally, as they do in neopatrimonial states. The judiciary, legislature, the media, and civil society are crowded out and are not permitted to play their different roles and responsibilities.

⁹⁴ Research interview with Grant Masterson, Johannesburg, July 17, 2009

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Corrigan interview

The interests of the nation get conflated with the personal interests of the ruling class.⁹⁹ It is in this environment that practical (as opposed to formal) government policy addresses mainly these personal interests, and those of their clients. The example of Mugabe and the ZANU-PF in Zimbabwe springs to mind,¹⁰⁰ particularly the way in which the land reform policy managed to secure client support and maintain power while destroying the country's economy and international standing. ZANU-PF also succeeded in ruthlessly and violently intimidating their political opposition while overturning electoral results.

In established neopatrimonial regimes the prospect of succession, even within a power group, or in accordance with nominally extant institutional rules, is seen as a threat to the state because it would alter at least some of the important relationships and standings among leaders and factions. This includes the standing of 'big men' and the ethnic communities which they represent. Succession would affect the power and privileges of individuals and groups as a result of changes in the membership of ruling bodies such as cabinets, party executives, and military ruling councils, especially at the political and senior administrative levels.¹⁰¹ In healthy polities, where the public and private spheres are clearly demarcated, succession is taken for granted as an important part of progress through fair competition through institutions. In the politically static and venal world of neopatrimonialism, succession or its prospect equals only crisis. A common aspect of neopatrimonialism is also the willingness of regimes to foment destructive ethnic strife in order to achieve their political objectives.

As mentioned above, the state becomes conflated with those ruling it. It is no wonder that members of the Ghaddafi family considered Libya as 'their' country when

⁹⁹ Tungwarara interview

¹⁰⁰ Tungwarara interview

¹⁰¹ Jackson and Rosberg, p.67

explaining their unwillingness to leave power. Just as in the West, where no leader is bigger than the parliamentary or presidential systems through which they serve, in Africa no leader is bigger than the neopatrimonial system atop of which he sits. This shows why so many successive African leaders, when faced with electoral defeat, have recently simply refused to give up power. The truth is that they often cannot. They are usually only the public face of a much larger, unseen network of powerful officials and business cronies that would simply have too much to lose should the leader step down, and are in a position to use state resources to resist legitimate political change. These factors all explain the willingness of so many African leaders to cling to power at all costs. Recent events in Côte d'Ivoire, Libya, Zimbabwe and Kenya can all be explained by this problematique. The international community appears shocked, surprised and perhaps outraged by each new African crisis. However, it may be fair to consider these events not as isolated crises but as systemic, predictable outcomes.

It is clear then, as Taylor argues, that structural, not agential, explanations of the persistence of neopatrimonial regimes are necessary.¹⁰² Where political space is created, or actual power captured by so-called 'reformists', the new incumbent's clients will invariably anticipate and demand material benefits for their support. The example of President Kibaki in Kenya is one which shows that, once democracy works, subsequent political behaviour is not conducive to its consolidation. Instead, the irresistible characteristics of neopatrimonialism reassert themselves.¹⁰³ Under neopatrimonialism, we have seen how the national interest is defined. Under this system, the good of the state does not equate to the public good, but to the good of its rulers and their clients. The

¹⁰² Taylor, p.30

¹⁰³ Ibid.

patronage pressures faced by neopatrimonial regimes, combined with an almost complete lack of accountability, lead to an under-allocation of resources to public goods and an ever-increasing over-allocation of resources to unproductive patronage. Under neopatrimonial systems, the minimal state resources which do end up earmarked for public investment are usually allocated through clientelism. Using political clout, powerful positions, and access to government monetary resources made available by the rulers, patrons not only supply jobs in government but money for schools, health clinics, wells, storage facilities, roads, and other public goods to their favoured ethnic groups and regions. This patronage binds local constituencies to the network in exchange for political acquiescence.¹⁰⁴ No matter what a leader does beyond his patrimonial transactions with a given group, that group will generally support him as long as they get some form of material benefit from him.

Under neopatrimonialism, wealth generation and survival for the ruling elite does not depend on productive development, but is dependent upon control over select areas of the country (i.e., where the mines and plantations are) or by the manipulation of the market for personal gain. Unfortunately for Africa, elite survival (i.e. access to rents to distribute to patronage networks and thus retain key support) can therefore be based on the capture of relatively limited geographic areas. That is all (to varying degrees) that is required to lubricate the machinery of patronage. In other words, investment in infrastructure and the advancement of policies that bring in revenue for the elites but that also benefit broad swathes of the population is not required.¹⁰⁵ As Bratten and Van de Walle point out, by setting high rates of taxation, governments created various economic

¹⁰⁴ Gordon and Gordon, pp. 74-75

¹⁰⁵ Taylor, pp. 5-6

rents that could be used to dispense political favours, all at the expense of official government revenue. Since independence, land acquisition and allocation policies have for the most part been conveniently opaque. Land was not allocated in a manner which ensured clarity and individual ownership of title. African leaders favoured keeping land in the hands of the state or in the hands of those favouring the state. Unsurprisingly, under neopatrimonialism, the politically connected acquired significant land holdings, and inequalities in private land ownership rose across the continent.¹⁰⁶ Because of the sophistication of today's neopatrimonial regimes, the analysis which simply assesses whether or not rules and institutions exist is one which does not go deep enough. In Africa, it is necessary to assess how the formal constitutional state institutions are actually able, or willing, to check the activities of the ruling elite.

As we saw above, the quality of a state's bureaucracy is an important contributor to sound government policy and is a crucial element of the institutionalization of the state. In Africa, the staffing of bureaucracies at independence was used as an easy way to expand and reward patrimonial networks, ensure political support, and consolidate power (instead of building the state's capacity to deliver competitive policies geared towards providing public goods). Most postcolonial African leaders, through neopatrimonialism, have survived by capturing power over the economy and through patronage, rather than through the state in the form of a functioning institutional administration.¹⁰⁷ As Chabal and Dayoz point out, the overriding criteria for recruitment into the civil service were kin, communal and other types of loyalty to the ruling elites, rather than qualification or competence. An independent and capable civil service based on merit, so important to

¹⁰⁶ Mills, p.232

¹⁰⁷ Taylor, p.3

institutional government, was and remains virtually nonexistent in much of Africa. The state bureaucracy in Africa is not institutionalized or professionalized. Chabal and Daloz point out that “the logic of state service is resolutely particularistic and personalized and public employment is exploited as a private resource. State bureaucratic institutions are thus rarely more than empty shells.”¹⁰⁸ However, merely providing civil service jobs by ruling elites was not enough to sustain the permanent support of their power base.

Jackson and Rosberg highlight the pressures faced by neopatrimonial rulers for resources to maintain the patronage system and political support.¹⁰⁹ Maintaining patronage networks requires a huge amount of money. As Gordon and Gordon point out, many African rulers found very quickly that to keep clients secure and the system stable, they had to commit increasing amounts of money to patronage, and allow increasing opportunities for those in government to use their positions for personal gain.¹¹⁰ As a system based on venality, neopatrimonialism is by nature quite insatiable in its demands for resources. As Jackson and Rosberg point out, the need to provide resources to fuel the patronage polity upholding their rule is an ever-present concern of African rulers.¹¹¹ This necessity is what drives the creativity of African rulers, not the broader public good.

These requirements drove much unproductive government policy, including the official sanction of administrative corruption, misuse of loans, and misappropriation of resources from natural resources. Thus corruption in Africa is not accidental, or due to a lack of government capacity to rein it in. It is in fact a deliberate and structural

¹⁰⁸ Chabal and Daloz, p.6-7

¹⁰⁹ Jackson and Rosberg, p.43

¹¹⁰ Gordon and Gordon, pp.75-76

¹¹¹ Jackson and Rosberg, p.43

component of the neopatrimonial system of government.¹¹² Therefore, it is extremely difficult to avoid. African corruption is famous both in its scope and for the depth of its detrimental impact on economic growth and the public interest. Under neopatrimonialism, the need to provide rent-seeking opportunities to the individuals making up its power base creates an irresistible incentive for the extensive regulation of economic activity and arbitrary economic policy. Crucial economic policy and practices are established on the basis of political rather than economic criteria.¹¹³ For example, African governments impose extensive licensing regimes, a particular area where bribery and corruption flourish.¹¹⁴ Neopatrimonialism has created an economic climate of uncertainty and risk, which scares away investors, or directs them toward short-term speculation. Therefore, it should be no surprise that African economies suffer from a shortage of long-term private investment, exacerbating slow economic growth.

As a result, the African neopatrimonial state has not generally been proficient at even basic functions of regular legitimacy. In essence, the misplaced priorities of neopatrimonial rule have directly led to the misplaced capacity of the African state. As Jackson and Rosberg point out, the capacity of the neopatrimonial state is geared more towards clientelism and the misuse of state resources rather than productive policy. Indeed, as they write, neopatrimonialism in Africa presents the apparent paradox of relative autonomy or freedom for the ruler and his clique to make formal policies but great constraint and incapacity to implement or enforce them. This is primarily because of the relatively limited capability of the agents and agencies of underdeveloped governments, who are not generally able, well-trained, or diligent enough to deploy

¹¹² Jackson and Rosberg, p.45

¹¹³ Grabowski, Self, and Shields, p.126

¹¹⁴ Jackson and Rosberg, p.46

efficiently available resources.¹¹⁵ Bureaucrats who have gained access to rents from such enclaves may benefit handsomely, but this neopatrimonial system fundamentally suppresses economic growth and development and, throughout Africa, has rapidly sabotaged the aspirations of independence.¹¹⁶ As Herbert and Gruzd point out, without good governance to provide institutionalization and public goods, and with strategic corruption rampant, much of Africa was effectively bankrupt within 20 years of independence. The 1990s bore witness to a litany of state dysfunction and failure: Rwanda, Liberia, Sierra Leone, Ethiopia, Burundi, Somalia, Sudan, DRC, Republic of Congo, Chad, Niger, and the Central African Republic. Poor governance either caused or exacerbated crisis in every case.¹¹⁷ In general, Africa's neopatrimonial leaders, and the system itself, have little to show for their 50 years of independence. This past section has demonstrated the strength and scope of the neopatrimonialism in Africa. This strength and scope is further hardened by neopatrimonialism's relationship to the juridical, as opposed to empirical, nature of statehood on the continent. Therefore, any measures which are meant to establish true institutional rule in this environment must be highly transformative and equally robust. We must keep this in mind when considering what kind of measures are required, and how best to measure the APRM's true potential in this regard.

¹¹⁵ Jackson and Rosberg, p.31

¹¹⁶ Taylor, p.5

¹¹⁷ Ross Herbert and Steven Gruzd, *The APRM: Lessons from the Pioneers*, Johannesburg: South African Institute of International Affairs, 2008, p.3

2.4 Criteria - What is needed in Africa to establish true institutional rule?

This chapter has so far demonstrated the scope of neopatrimonialism in Africa, its political and economic impacts on the continent, and, therefore, the centrality of this author's research question. We have seen that, to date, independence from European colonial rule has unfortunately not meant much in terms of fundamental economic and social change in Africa. After having assessed the extent of neopatrimonialism in Africa, and the myriad problems associated with it, what are the alternatives? What type of meaningful reforms would be effective in generating a move away from this form of governance and towards institutionalism? Jackson and Rosberg remind us that it is important to recognize the profound *political* significance of independence. The political reality is that, some fifty years ago, the African administrative state was placed in African hands. Therefore, final responsibility for the actions and decisions of the African state was irrevocably transferred from Europe back to Africa.¹¹⁸ Our review of African statehood shows that its achievements, as viewed fifty years on, would not be recognizable to institutional statehood -- particularly under the lens of public goods. The neopatrimonial operating system so dominant in Africa has therefore led many observers to question the relevance of African states in the lives of the people. This paper has shown that under the neopatrimonial form of statehood, concepts such as the public national interest are neither sufficiently concretized nor pursued. The independent African state has failed to attain the most basic justification of statehood – organization beyond the individual interest and for the collective good. Researchers such as Agbese argue that the African state, as presently constituted, simply cannot advance the material

¹¹⁸ Jackson and Rosberg, p.15

interests of African people.¹¹⁹ They believe that the state in Africa must be re-fashioned if it is to pursue the public interest and become developmental.

This section will provide an overview of key policy prescriptions found in both in the literature and in the *NEPAD Declaration* for the establishment of true institutional governance in the place of neopatrimonialism in Africa. This helps us further focus and validate the criteria for assessing the APRM's effectiveness in establishing institutional rule, as outlined below.

Concrete efforts to establish real constitutional governance

The *NEPAD Declaration* includes specific commitments for African governments to enforce the rule of law; to hold free, credible and democratic elections; and to adhere to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments.¹²⁰ The literature calls for a fundamental transformation, a democratic reconstitution of states in Africa. In essence, it calls for an appreciable push towards true institutional statehood based upon the rule of law. This means, most importantly, a legitimate and effective constitutional basis for the state (including checks and balances and regular, competitive elections).¹²¹ The primary objective in seeking alternative options for the African state is to make it responsive, responsible, transparent, and accountable to the African people.¹²² In other words, finally to make the African state constitutional and legal. This means a clear move towards institutional governance and away from the neopatrimonial form of state described above.

¹¹⁹ Agbese, "The Political Economy of the African State", in Klay Kieh, Jr, ed. p.36,

¹²⁰ *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, pp.3-4

¹²¹ Pita Ogaba Agbese and George Klay Kieh, Jr. "Introduction: Democratizing States and State Reconstitution in Africa" in Agbese and Klay Kieh, Jr., eds., pp.23-24

¹²² *Ibid.*, p.27

Implementation of effective anti-corruption programs aimed at the strategic level

The *NEPAD Declaration* includes specific commitments for African governments to combat and eradicate corruption.¹²³ The literature shows that the major anti-corruption campaigns undertaken so far by African states have not generally modified behaviours at any level, or the rules of the political game. Nor have they engendered meaningful institutional changes.¹²⁴ In order to truly bite against the strategic corruption engendered by neopatrimonialism, any serious anti-corruption strategy must begin with the government's overall policy framework. Addressing corruption at the transactional level is meaningless unless the state's leadership is genuinely committed to clean government motivated by the public interest. This means that anti-corruption packages must include an enforceable code of conduct for all public officials (up to and including the president) requiring them to declare their assets before, during, and when leaving office. This code of conduct would have to be vigorously enforced by an independent body completely free from political control.¹²⁵ Government procurement must be conducted in a fully transparent manner. Government agencies and functionaries must operate in an open manner at every stage and level. Bid requirements must be cleared and the criteria used in selecting "winners" must be clearly outlined.¹²⁶ Results should be published in the media. The opportunities for corruption through the system must be minimized, through fewer regulations, licenses, and permits. Options would include a licensing law that minimises the number of transactions required (and therefore the amount of bureaucratic discretion),

¹²³ *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, pp.3-4

¹²⁴ Chabal and Daloz, p.104-105

¹²⁵ Klay Kieh, Jr, "Creating a Relevant State in Africa: The Lessons" in Klay Kieh, Jr, ed., p.260,

¹²⁶ *Ibid.* p.262-263

and single window applications.¹²⁷ The anti-corruption infrastructure must also be transformed.

The most critical of problems related to anti-corruption efforts has been the fact that their success depends on the effectiveness and professionalism in existing counteracting institutions (e.g., the police, the legislature, the judiciary, and the mass media), which so far have generally not been well constrained by the law and have not been sufficiently free to investigate and expose corruption without fear of censure or ruin by the powers that be.¹²⁸ For the most part, these institutions have not been independent of executive domination, nor free from corruption themselves.¹²⁹ Another major weakness with traditional anti-corruption programs is that these programs are not designed to affect high-ranking government officials (especially members of the ruling party), even when there is overwhelming evidence supporting their complicity in corruption.¹³⁰ Any anti-corruption program developed and implemented by any of these institutions is not likely to be successful.¹³¹ Thus, either a transformation of existing institutions, or the creation of truly independent ones, is necessary before any chance of success can be considered. An effective anti-corruption program, then, must begin with the execution of new rules that (1) constrain government and (2) implement new and more effective counteracting agencies (e.g., an independent judiciary, a well-constrained police force, effective and independent task forces, a professional and neutral military, an independent central bank, and a free press).¹³²

¹²⁷ Mills, p.358

¹²⁸ Mbaku, p.143

¹²⁹ Ibid., pp.143-144

¹³⁰ Ibid., p.144-145

¹³¹ Ibid., p.144

¹³² Ibid.

Construction of independent civil services capable of delivering globally competitive policies and programs oriented towards providing public goods

The *NEPAD Declaration* includes specific commitments for African governments to ensure accountable and effective civil services.¹³³ The literature confirms the crucial importance of a reliable and performance-driven civil service with regard to the institutionalization of the state. As former Singaporean President Lee Kuan Yew observed, the single most decisive factor in Singapore's success in transforming itself from a swamp to a developed nation in 30 years was the ability of its ministers and the high quality of the civil servants who supported them.¹³⁴ Success also depends on government focusing as much on the effective implementation of good policies as on its formulation. This requires the construction of the institutions essential to the efficient functioning of a competitive state and to the delivery of quality services to its people.¹³⁵ Indeed, the inability or failure of most African countries to secure efficient, professional, and "modern" bureaucracies with competent, well-trained, honest, and highly skilled civil servants has been one explanation for the pervasiveness of corruption in these countries. A civil service that is staffed primarily by corrupt, poorly trained, incompetent, and highly inefficient employees can severely undermine a country's efforts to achieve sustainable economic growth and development. It is therefore argued that in order to ensure sustainable economic growth and development, each country must have a competent, efficient, and professional civil service.¹³⁶ The development of merit-based, professional civil services that deliver policies and programs in the public interest is therefore another crucial component of establishing institutional rule. This of course

¹³³ *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, pp.3-4

¹³⁴ Mills, p.234

¹³⁵ *Ibid.*, pp.66-67, 358

¹³⁶ Mbaku, pp.64-65

requires civil servants that do their jobs effectively and impartially instead of wasting time and ruining economic prospects by pursuing rents and corruption.

At the end of the day, African leadership must make choices informed by rational needs rather than their own personal interests. Africa cannot avoid the reality that it simply must compete in the world just like everyone else, or continue to suffer from poverty. Sustainable economic growth depends mainly on what countries do for themselves and for their own people.¹³⁷ One of the most important factors explaining differences in economic performance therefore will be public policy.¹³⁸ African civil services, to genuinely counteract neopatrimonialism, must be able to deliver policies that increase competition, reduce corruption, improve transparency and accountability, reduce trade barriers, avoid politically motivated subsidies, ensure market-based pricing, reduce bureaucracy and simplify procedures. Business must be permitted to focus on the market rather than the government.¹³⁹

This chapter has shown the extent to which neopatrimonialism has impacted Africa. It has reinforced the centrality of the thesis question which asks whether the APRM will contribute to the replacement of this corrupt form of governance with institutional rule. In addition, this chapter has provided some concrete ways to assess the effectiveness of the APRM in this regard: does it a) engender the establishment of true constitutional governance; b) provoke the implementation of real, effective anti-corruption programs aimed at the strategic level, and c) lead to the construction of independent, professionalized civil services capable of delivering globally competitive policies and programs motivated by the broader national interest and public good. The

¹³⁷ Mills, p.23

¹³⁸ Ibid., p.126

¹³⁹ Ibid., p.32

next two chapters will measure the APRM's design and implementation against these criteria.

Chapter 3 - The APRM

Previous chapters have assessed the scope and impact of neopatrimonialism, have surveyed independent reform prescriptions for the fight against it, and provided concrete criteria with which to measure the APRM's potential for replacing it with institutionalism. We are therefore in a sound position to assess whether the design and implementation the APRM in this regard. This chapter will assess the design and chapter four will assess implementation. Both of these chapters will measure the APRM against its ability to a) engender the establishment of real constitutional governance, b) provoke the implementation of real, effective anti-corruption programs aimed at the strategic level, and c) lead to the construction of independent, merit-based, professional civil services capable of delivering globally competitive policies and programs motivated by the public good. This chapter will assess the APRM's design in three distinct but interconnected sections. Section 3.1 will describe the APRM's origins, and the kinds of political manoeuvring that was required for it to be successfully established. It will also analyze how these factors influenced the APRM's final design. Using our established criteria for measuring the APRM's capacity for establishing institutional rule, section 3.2 will describe and assess its approach and scope and section 3.3 will describe and assess its structures and processes.

3.1 APRM – Origins

As of January 2011, 30 countries have acceded to the APRM: Algeria, Angola, Benin, Burkina Faso, Cameroon, Congo, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria,

Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia. Of these, 14 member countries have been peer reviewed : Ghana, Rwanda, Kenya, South Africa, Algeria, Benin, Uganda, Nigeria, Burkina Faso, Mali, Mozambique, Lesotho, Mauritius and Ethiopia.¹⁴⁰

The process through which the design of the ARPM was established is an important element of the study of its effectiveness and potential, for it was not achieved without great difficulty, controversy, and disappointment. Assessing this process provides a window into the intentions and motivations of African governments, both signatory and non-signatory. The forces driving the APRM were the same as those driving NEPAD (which has since been renamed the NEPAD Planning and Coordinating Agency (NPCA) and completely subsumed into the AU), of which the former was originally a part. The hunger for external aid and development was a huge motivating factor. By the 2000s, decades of African mismanagement had led to poor development results and appreciable donor fatigue. Some form of joint compromise and commitment was seen as necessary to keep Africa moving forward. It was estimated at the time that African governments, through NEPAD, would require some \$64 billion annually in programming and fairer trade. To encourage the developed partner countries (particularly the G8) to increase aid and to take measures to make the international trade regime fairer (thus generating more income for Africa), African governments undertook, through NEPAD, to improve their political and economic governance regimes.¹⁴¹ With the advent of NEPAD, African

¹⁴⁰ NEPAD web site, <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about>, accessed November 2011

¹⁴¹ Adotey Bing-Pappoe, *Reviewing Africa's Peer Review Mechanism: A Seven Country Survey*, Ottawa: Partnership Africa Canada, 2010. Internet: http://www.pacweb.org/Documents/APRM/APRM_Seven_countries_March2010-E.pdf. Access: October 1, 2011, p.3

governments were finally publicly acknowledging the fact that domestic governance weaknesses on the continent play a large role in the retardation of economic development. In the *NEPAD Declaration*, African governments committed to enforce the rule of law and adhere to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments, and to eradicating corruption.¹⁴²

The APRM has been heralded by its proponents both as an acknowledgement of Africa's poor governance record and as the operational manifestation of the NEPAD commitments to improve governance. However, the process of its establishment was not without conflict, tension, and dilution. It is crucial to study the continental process through which the APRM was negotiated and established. This is because the process has had an important influence on the design of the APRM, and therefore on its ultimate prospects for truly establishing institutional rule in the place of neopatrimonial rule. It also provides a window into the motivations exhibited by many of the participating states. As with traditional governance initiatives in Africa, there were longstanding pressures militating against concrete commitments to reformist action. From the beginning, the scope of APRM was debated, and this debate had its source in the tensions felt over NEPAD itself. NEPAD was seen as dividing reform-minded countries from those which were not interested in reform. NEPAD represented a challenge to the traditional twin pillars of African regional politics – internal sovereignty and unity. NEPAD saw its genesis in the frustration of reformers with the fact that all African countries were being painted by the same brush of poor governance, chaos, corruption, and failure. Originally, NEPAD reformers aimed to push Africa forward by example, rather than continue

¹⁴² *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, pp.3-4

moving only at the speed of the slowest. With the aim of restoring the continent's credibility and attractiveness, NEPAD would be an opportunity for reformers to band together to promote a robust peer review, leaving behind those that were unwilling or unable to follow suit. This strategy would allow 1) a committed minority of AU states to exercise operational control of peer review rather than leave it vulnerable to a hostile majority; 2) a focus on actually raising governance standards rather than settling for the lowest common denominator; and 3) the fast tracking of reforms by those members that could do so. As one observer commented, the original vision was to avoid the approach of a single large convoy travelling at the pace of the slowest, instead allowing for states capable of greater speed to travel in their own fast convoys.¹⁴³

Therefore, as originally conceived and promoted, the peer review mechanism was meant to offer a disciplinary device to secure compliance with agreed political governance values and norms in Africa, as per the *NEPAD Declaration*. The vision was to use such a mechanism as a way to improve the legitimacy of African states through improved governance standards. The effect would be to secure greater political and economic stability. The time had come, it was argued by then-President Obasanjo of Nigeria, for African leaders to "...no longer remain silent about the shortcomings or abuses of other African leaders".¹⁴⁴ South African President Mbeki repeatedly stressed the importance of establishing a credible and effective APRM that would support "certain standards of behaviour which are agreed, which are clear, which are capable of enforcement".¹⁴⁵

¹⁴³ Douglas G. Anglin, "The African Peer Review of Political Governance", in *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation*, Muna Ndulo, ed., pp.255-256

¹⁴⁴ *Africa Recovery*, vol. 15, no. 4, December 2001, p. 10

¹⁴⁵ Taylor, pp. 64-65

This concept, at face value, would seem to be consistent with the AU's stated approach of replacing the OAU's primacy of state sovereignty with a responsibility to improve governance and development. In due course, however, such a competitively based approach generated opposition. One of the stated objections focused on the 'exclusive' nature of the 'club'.¹⁴⁶ Such objections were, of course, disingenuous at best. No state could be excluded unless it chose not to participate. The real issue was the fact that the package included the possibility of intrusive measures designed to ensure actual implementation of results. This triggered a long-standing allergy to mandatory standards. While African ruling elites have often publicly committed to governance-related obligations, they always opposed any mechanisms to ensure implementation.¹⁴⁷ The peer review concept was seen not only as a threat to the methods used to stay in power, but to the very reason for power in the first place – personal enrichment (i.e. neopatrimonialism).

Yet overt opposition would have to find its time and place. The ensuing sequence is demonstrative of the creativity and sophisticated ability of African states to gain concessions. At its very first meeting, in October 2001, the NEPAD Heads of State and Government Implementation Committee (HSGIC) discussed how to monitor state performance effectively. With the 2002 G8 summit in Kananaskis rapidly approaching, HSGIC members were under intense pressure to produce concrete proposals as a measure of the sincerity of Africa's intentions. The Committee was ultimately successful in adopting two key documents. The first was the *NEPAD Declaration*, which was intended as a statement of reaffirmation by African leaders of their strong commitment to the

¹⁴⁶ Anglin, p.256

¹⁴⁷ Ibid., p.250

principles of good governance. The second provided for an ‘independent, effective, professional and credible’ APRM.¹⁴⁸ In July 2002, the inaugural session of the African Union in Durban confirmed its ‘commitment to the principles and core values’ contained in the *NEPAD Declaration*. Members were urged to adopt it and to accede to the APRM. These developments were welcomed by the G8, particularly the APRM proposal.¹⁴⁹ In return, they committed to increased official development assistance levels. However, once the G8 had provided commitments in response to NEPAD and its APRM component, an entrenchment of African resistance to the peer review package became more apparent.

The threat to domestic power manifest in the concept of the APRM is part of why the debate over how to integrate NEPAD into the AU became so contentious.¹⁵⁰ Opponents of the APRM did not want to accede to a process which could legitimately shine a light on their poor governance, but neither did they want a dual track which would bring rewards to those that were willing over those that were unwilling. The majority of African countries did not want to see one minority group advance too much farther than the larger group. This meant that NEPAD, and the APRM process, had to be quickly brought under control by the AU. Having failed to stop the establishment of the APRM, the opposition acted to protect their interests by arranging for the AU, rather than the peer review participants, to manage the process.¹⁵¹ In this way the process could be sufficiently diluted. The ‘first deadly blow against the reformists’ agenda’ came when the late Muammar Ghaddafi successfully pushed (with the usual inducements) for an

¹⁴⁸ Ibid., p.248-249

¹⁴⁹ Ibid., p.249

¹⁵⁰ Ibid., p.250

¹⁵¹ Ibid., p.256

expansion of the NEPAD Implementation Committee from 15 to 20, and for a rotation of its membership. This meant the executive inclusion of non-APRM countries with doubtful democratic credentials or ambitions, such as Libya.¹⁵²

Subsequently, there was a sharp retreat by NEPAD over the APRM. Instead of an enforceable mechanism, the APRM became completely voluntary, somewhat vague, and without any process for ensuring compliance. Next, South African President Thabo Mbeki, the erstwhile NEPAD and reformist champion, suddenly declared that the APRM would not review the political governance of African countries. Instead, it would focus only on economic performance. It was explained that any review of political governance was considered the jurisdiction of the AU and not NEPAD or the APRM (although this does not make much sense given that NEPAD is part of the AU). This attempt to drop a review of political governance was inexplicable and irresponsible, given that it would have clearly omitted from the APRM some of the most crucial commitments made in the *NEPAD Declaration*, and contradicted the APRM scope which had been presented by NEPAD to the G8. These developments prompted the then G8 chairman, Canadian Prime Minister Jean Chrétien, to write to Mbeki for an explanation of what had happened to the political governance side of the APRM. This had been a key factor in garnering G8 support for NEPAD in the first place.

This letter proved to be deeply embarrassing to the South African president.¹⁵³ Mbeki's response to the letter stated that critics questioning the lack of a political governance component for the APRM were "racists who were 'self-appointed champions of democracy and human rights in Africa' and who were infused with 'contemptuous

¹⁵² Ibid., p.249-250

¹⁵³ Gruzd interview

prejudice' for Africans by daring to suggest that 'Africa's political leaders cannot be trusted to promote and entrench democracy and human rights.'¹⁵⁴ Eventually, and fortunately, the APRM's political governance review component was retained. The episode, however, justifiably leads interested observers to question how serious participating African governments are towards addressing the very large gaps in institutional governance on the continent. If they had not been 'encouraged' by the G8 to re-insert the political governance section in the APRM, it would have stayed out, and the initiative would not have even considered crucial issues such as the rule of law and constitutionalism, perhaps not even corruption.

Few Africa observers were surprised by how this unfolded. Many believe that, despite NEPAD's ambitious intentions, the idea of an intrusive peer review process being approved by the bulk of Africa's leaders was a non-starter from the beginning. As Ozias Tungwarara of AfriMap points out, African APRM negotiators had to strike a balance between shaking the status quo and getting sufficient participation.

"When it comes to issues of dictators, issues of neopatrimonialism, these are issues that are actually challenging the legitimacy of those who are current heads of state, in terms of their existence in coming to power and maintaining power. We should not be naïve that all the heads of state that formed the apex of the APRM are democrats. You have serious dictators in there. People with a lot of issues that they need to address in their own countries. The motivations for joining and participating in the APRM are quite varied."¹⁵⁵

The ghost of OAU-style African elite solidarity and the strong reluctance of African leaders to criticize their fellows meant that any initiative that might actually seek to enforce best practices did not have much chance of proceeding. It seems clear that such a system would have called too much attention to the wholesale malgovernance and

¹⁵⁴ Taylor, pp.65-66

¹⁵⁵ Tungwarara interview

corruption on the continent. This called into question Thabo Mbeki's assertion that an "African Renaissance" was already underway.¹⁵⁶ If participating governments truly wanted to establish institutionalism, and if they were truly dedicated to the commitments they had made in the *NEPAD Declaration*, why would they have questioned the inclusion of political governance in the APRM? This section has shown that the political environment from which the APRM springs, and the political machinations evident during its design process, at the very least call into question how genuine the motivations behind it are. This question must be part of our consideration of the APRM's potential for replacing neopatrimonialism with institutionalism.

3.2 APRM – Approach and Scope

The APRM objectives, procedures and structures are outlined in a series of official documents. The most salient for this paper are the *APRM Base Document* (2002); *APRM Organization and Processes* (2003); *Guidelines for Countries to Prepare for and to Participate in the APRM (APRM Guidelines)* (2003); *APRM Objectives, Standards, Criteria and Indicators* (2003); *Country Self-Assessment for the APRM (the APRM Questionnaire)* (2003); *APRM Prerequisites for Country Support Mission (the APRM Prerequisites)* (2007); and the *Supplementary Document to the APRM Guidelines for Country Review – the APRM National Structure (the APRM Supplementary Guidelines)* (2007).¹⁵⁷ As outlined in the *Base Document*, the APRM is a voluntary, self-monitoring process open to all member states of the African Union (AU) upon their adoption of the *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*.

¹⁵⁶ Taylor, pp.66-67

¹⁵⁷ Herbert and Gruzd, p.12

The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth and sustainable development.¹⁵⁸ The APRM is also meant as a vehicle for participating countries to implement the good governance commitments outlined in the *NEPAD Declaration*. The APRM provides for a review of participating countries' performance in the governance priorities outlined in the *NEPAD Declaration: Democracy and Good Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development*.¹⁵⁹ After being reviewed, participating APRM countries must also produce a plan of action for addressing the specific gaps identified in their respective reviews and for implementing the *NEPAD Declaration*.¹⁶⁰ Although institutionalism is not mentioned specifically by the APRM, its objectives clearly demonstrate that the overarching aim is to establish institutional rule in Africa and, by extension, to displace neopatrimonialism.

More specifically, by acceding to the APRM participating countries commit to submitting themselves to periodic peer reviews; facilitating these reviews; and following agreed parameters for good political governance, and good economic and corporate governance. The base document specifies that the mandate of the APRM is "...to *ensure* (emphasis mine) that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration." The purpose of the APRM is "...to *foster* (emphasis mine) the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental

¹⁵⁸ NEPAD, *APRM Base Document*, 2002, p.1

¹⁵⁹ NEPAD, *APRM Objectives, Standards, Criteria and Indicators*, 2003, p. 4

¹⁶⁰ *APRM Base Document*, p.3

economic integration through sharing of experiences and reinforcement of successful and best practices, including identifying deficiencies and assessing the needs for capacity building.”¹⁶¹ It is interesting to immediately note, in the very same base document, a seeming devolution of the APRM’s role from *ensuring* to *fostering* good governance. In terms of a commitment, the two words have very different meanings.

The *NEPAD Declaration* includes a reaffirmation of participating states’ commitment to no less than twelve pre-existing continental plans of action, charters, declarations, treaties, protocols, frameworks, and acts.¹⁶² In the *NEPAD Declaration*, participating countries not only commit to promoting democracy and its core values within their respective borders, but to *enforcing* (emphasis mine): a) the rule of law; b) the equality of all citizens before the law and the liberty of the individual; c) individual and collective freedoms, including the right to form and join political parties; d) the inalienable right of the individual to participate by means of free, credible and democratic political processes in *periodically* (emphasis mine) electing their leaders for a fixed term of office; and e) adherence to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments.

Signatories also “undertake to combat and eradicate corruption, which ... retards economic development.”¹⁶³ Within the NEPAD Declaration is the promise that governments will provide for: demonstrably accountable and constitutional governance; a free and fair political environment; appropriate electoral bodies with the capacity to conduct free, fair, and credible elections; clear codes, standards and indicators of good governance at the national, sub-regional and continental levels; accountable, efficient and

¹⁶¹ *APRM Base Document*, p. 1

¹⁶² *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, p. 2

¹⁶³ *Ibid.*, pp. 3-4

effective civil service; effective functioning of parliaments and other accountability institutions, including anti-corruption bodies; and independence of the judicial system that will prevent abuse of power and corruption.¹⁶⁴

As mentioned above, the APRM provides for an assessment of four specific areas: Democracy and Good Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development. In addition, corruption and gender are included in all four of these sections as cross-cutting issues.¹⁶⁵ Each of the broad focus areas are further divided into a series of objectives, which are to be measured against a number of standards (treaties, conventions and protocols, both African and international) and best practices. These standards lay down the expectations, responsibilities, criteria, and indicators. As countries progress through the process, they are to be judged according to how well their institutions and actions reflect the demands of the standards and best practices. These key elements are outlined in the *APRM Objectives, Standards, Criteria and Indicators* document, and are neatly summarized for practical purposes in the aforementioned Self-Assessment Questionnaire, which is distributed to all participating countries for completion. This thesis focuses mainly on the APRM area of democracy and good political governance because this is of most import to our specific criteria for measuring its effectiveness in establishing effective governance and displacing elements of neopatrimonialism. The logic is that improvement in the area of democracy and good political governance is actually a prerequisite for any meaningful and realistic progress in the other three -- economic governance and management; corporate governance; and socio-economic development. The specific

¹⁶⁴ NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, p. 5

¹⁶⁵ APRM Objectives, Standards, Criteria and Indicators, p. 4

APRM objectives under democracy and good political governance are: prevention and reduction of intra-state conflicts; constitutional democracy, including periodic political competition and opportunity for choice; the rule of law, and supremacy of the constitution; the separation of powers, including the protection of the independence of the judiciary and of an effective legislature; accountable, efficient and effective public office holders and civil servants; and fighting corruption in the political sphere.¹⁶⁶ These objectives can be seen to confirm the validity of our assessment criteria, as they correspond closely and their very presence within the APRM demonstrate a strong relevance to the African political landscape.

Assessment – Approach and Scope

Neopatrimonialism is a very elegant system, with African governments employing ever-more sophisticated tools to appear to reform while actually defending the status quo. This is the challenge of assessing the effectiveness of the APRM – to go beyond a checklist of whether nominal systems are in place by verifying whether actual practice will be affected positively. As Chabal and Daloz point out, neopatrimonialism, or the ‘real’ business of African politics, mostly takes place where analysts are not looking. They believe that the standard questions of political science are not sufficient for understanding what is really happening in Africa today. These questions must therefore be recast in the light of what they call the ‘infra-institutional’ aspects of power.¹⁶⁷ It is through this lens that the APRM Objectives, Standards, Criteria and Indicators must be analyzed. As mentioned above, this assessment focuses mainly on the APRM area of democracy and good political governance, and we will analyze only those of its specific

¹⁶⁶ *APRM Questionnaire*, pp. 27-40

¹⁶⁷ Chabal and Daloz, p. 1

objectives which are relevant to the fight against neopatrimonialism and also therefore to our assessment criteria. However, given that there is much overlap in the APRM documentation, elements from the economic governance and management objectives will also be included where relevant to our criteria. The question then becomes one of depth – whether the APRM is designed to dig deep enough into these issues to ensure true reform towards institutional governance and away from neopatrimonialism, as measured by our assessment criteria.

As we assess the thoroughness of the APRM objectives and standards relating to democracy and good political governance, less attention will be paid to the elements relating to the signing of the various international and regional treaties, declarations, and commitments. Although these are central components of the APRM process, the uneven track record of African countries in actually ratifying, domesticating, and, above all, implementing commitments related to these documents drastically lowers the utility of studying them in a practical context. Instead, focus here is placed on the tangible, national governance attributes which the APRM aspires to measure. The following paragraphs of this section will assess these objectives against our three criteria: establishment of true constitutional government, provoking the implementation of real, effective anti-corruption programs aimed at the strategic level, and engendering the construction of independent, professional civil services capable of delivering globally competitive policies.

Concrete efforts to establish true constitutional government: The APRM objective of effective separation of powers includes an independent judiciary, an effective legislature, and the rule of law. Specifically, the APRM seeks to measure the formal

constitutional provisions separating the powers of the executive, legislative, and judicial branches of government, and the level of independence of the legislature and judiciary from the executive. More importantly, it seeks to measure the *practical* application of the rule of law and constitutional supremacy. These elements would of course be central to the establishment of institutionalism through constitutional government, particularly with respect to practical checks and balances on executive power, as well as the potential for establishing independent judiciaries and legislatures. In this sense, the rule of law section of the APRM's design can be considered appropriate under our criteria. However, there are some important weaknesses to keep in mind. For example, the concept of 'practical application' is not sufficiently defined by the APRM. Furthermore, the separation of powers in principle, or even in practice, does not necessarily equate to an application of the concept as empirical states understand it. There is no accounting by the APRM for the possibility that even independent judicial and legislative bodies may still be corrupted, and fail to provide the kind of true institutionalism that their independence would otherwise suggest.

Also, while seeking to measure the practical application of constitutionalism, the APRM does not attempt to research and explain the underlying reasons why governments are able to exhibit informal power to circumvent or co-opt formally extant governance institutions (including constitutions and parliaments), nor does it address the important substructural issue of whether governments are motivated by private self-interest or by the national public interest. As Yarik Turiansky points out, the APRM does not have any specific standards intended to address or eradicate neopatrimonialism, nor its negative

implications.¹⁶⁸ There is no questioning of how and why government decisions are made, the quality of these decisions, nor of the motivation behind them. As Herbert and Gruzd point out, the APRM questions and criteria pertaining to political and democratic systems are not well structured to diagnose the *sources* of poor political governance.¹⁶⁹ The APRM does not address the means by which political power confers this kind of economic power and, unless it does, it will not get to the root causes of political-economic dysfunction.¹⁷⁰

Meaningful electoral competition is also important for maintaining pressure on African states to establish institutional statehood and for motivating government policy formulation toward the public good. The APRM does specifically seek to measure the freeness and fairness of elections and the competition for power. However, it does exhibit several weaknesses in terms of our criteria in this regard. First, the APRM aims only for undefined *periodic*, as opposed to regular, political competition (although governance experts consulted on the content of the APRM questionnaire recommended using the latter).¹⁷¹ In fairness, “periodic” is the word used in the NEPAD documentation. However, this does not mean that it is an optimum term for measuring electoral democracy. Further, the APRM does not question the extent to which elections are about ideas and policy rather than patronage. It does not question whether political opposition parties are/will be any less neopaternalistic than incumbent regimes. It does not specifically ask about how electoral oversight bodies are appointed, nor how close they may be to the regime. It does not assess the extent to which politics and the formation of

¹⁶⁸ Turiansky M.A. Thesis, p146

¹⁶⁹ Turiansky and Tungwarara interviews

¹⁷⁰ Herbert and Gruzd, p.47

¹⁷¹ Gruzd interview

political parties are influenced more by ethnicity rather than by policy. It is also important to keep in mind that the APRM is an AU mechanism, with AU heads of state in the driver's seat. As a whole, the AU itself does not have the best record when it comes to enforcing the good governance it ostensibly promotes. Representing the will of these and other African leaders, the AU has consistently declared as free and fair recent elections (such as those of Cameroon, Malawi, Nigeria and Zimbabwe), which were considered dubious by the international community. There is a clear link between the AU's handling of recent election results in Kenya and Zimbabwe (power-sharing arrangements with the incumbent remaining in power) and the disastrous refusal of Laurent Gbagbo to cede power in Cote d'Ivoire – why would he have in light of such precedents?

This raises serious doubts about the interpretation of what actually constitutes a “free and fair” election by those institutions cited by the APRM. AU members have been unable to take any decisive action against the Sudanese government for its activities in Darfur, and even supposed APRM champions such as Thabo Mbeki blocked any decisive action against pariah states such Zimbabwe.¹⁷² Notably, the AU also lagged the entire world, even the Arab League, in calling for Muammar Ghaddafi to step down as his failing military response to popular uprising became more and more destructive to the future of Libya and its people. This is another example of the neopatrimonial primacy of incumbent personal interests over the well-being of a state and its people.

The objective of preventing and reducing intra-state conflicts is relevant to establishing institutionalism because these conflicts, whether related to ethnicity, regionalism, or other issues, are often fomented or exploited by neopatrimonial leaders, at

¹⁷² Charles Manga Fombad, “The African Union, Democracy, and Good Governance”, in *AU, NEPAD and the APRM: Democratization Efforts Explored*, Henning Melber, ed., Current African Issues No. 32, Nordiska Afrikainstitutet 2006, p.35

the expense of the state's long-term ability to maintain order and stability throughout their borders. This technique is used by regimes in order to maintain their hold on power, and therefore on the nation's resources, all at the expense of political stability and broad-based economic productivity. It will take effective institutions to minimize the ability of such leaders to conduct such policies. Specifically, the APRM seeks to measure the level and sources of conflict in the country (including economic inequality and ethnic diversities); and the effectiveness of national mechanisms for preventing/minimizing intra-state conflict (i.e. legislation, institutions, government efforts).¹⁷³ While the APRM process appears open to the possibility of leaders or government officials being a source of intra-state conflict, it does not explicitly include them in the list of potential sources of such conflict.

The APRM objectives and measurements here do touch upon key concepts related to the establishment of institutional statehood through constitutional governance, the rule of law, electoral democracy, and intra-state conflict. However, the depth to which they seem designed to look into these issues is somewhat vague and undefined, leaving much space for inconsistent analysis from country to country.

Implementation of effective anti-corruption programs aimed at the strategic level:

The APRM objective of fighting corruption in the political sphere is of obvious importance in diminishing the life-blood of neopatrimonialism and fighting corruption at its most important level – the top. It is therefore also crucial for limiting the discretionary power of African regimes to both disregard nominal institutions, and to suppress the establishment of institutions which may eventually check them. The APRM focuses on measuring the existence, effectiveness and independence of anti-corruption efforts

¹⁷³ APRM Questionnaire, pp. 27-29

(institutions or campaigns). It also seeks to assess the scope of corruption in each participating country, and the extent to which governments account for, monitor and report publicly on revenue and expenditures. Quite importantly, the APRM does seek to verify the existence of codes of conduct for public office holders, and whether there is a process requiring them to regularly declare their assets.

However, the specifics here are again ill-defined, and the APRM does not appear to assess how well such requirements are implemented in practice. It does not appear to verify to which level of public office these declarations would apply (i.e. it does not specify that they should apply to heads of state). In general, the APRM's consideration of corruption in the political sphere is very promising, and it does bring important governance considerations to the fore in a very public way. With respect to our criteria, however, it remains a cause for concern that the overall approach taken does not dig deeper into the nature of corruption in a country, nor its role in the political structure of how decisions are made. A satisfactory look at strategic corruption would go beyond efforts at preventing corrupt practices, and move towards looking at whether and how corruption may be blocking a country's ability to establish concrete institutionalism, or to produce and implement appropriate and competitive policies. A serious look at African governance would provide prescriptions for eliminating these specific impacts of corruption, which are key parts of neopatrimonialism. The APRM does not provide this.

Construction of independent, professional civil services capable of delivering globally competitive policies oriented towards providing public goods: The APRM process aims to measure mainly the strength, efficiency, accountability and effectiveness of the public service and transparency of recruitment and promotion. The APRM appears

to assess the civil service based mostly on its effectiveness in social service delivery. Otherwise, the mechanism does not define what is meant by civil service efficiency and effectiveness. A focus on service delivery is somewhat superficial, and does not go nearly deep enough for the criteria we are using for the APRM's effectiveness against neopatrimonialism. There is no mention of 'merit' anywhere regarding the public service, of its independence from the executive, nor of its capacity to deliver globally competitive policy motivated by the public good.

As Yarik Turiansky points out, a general problem with the APRM is that its core terms and concepts are not sufficiently defined. In particular, the terms democracy and 'good governance' remain undefined, providing problems for the monitoring and evaluation of their establishment in the APRM participating states.¹⁷⁴ The standards do not provide any measurable 'thresholds' at which they can be considered to have been achieved, nor any details regarding what states must do to be considered in compliance. The formal standards do not provide actual prescriptions for good governance and effective institutions, nor guidance about how these may be built. Overall, the objectives and approach of the APRM, admirable as they may be, do not provide sufficient depth to substantively establish institutional governance as called for in the *NEPAD Declaration*. It is quite difficult to see how the approach thus far would promote empirical statehood, anti-corruption at the strategic level, and competitive civil service policy capabilities.

3.3 APRM Design - Structures and Process

The *APRM Organization and Processes, Guidelines and Supplementary Guidelines* documents prescribe the structures making up the APRM process:

1. Committee of Participating Heads of State and Government (APRM Forum)

¹⁷⁴ Turiansky M.A. Thesis, p.110-111

This Committee is the highest decision making authority in the APRM, and assumes overall responsibility for the process. It is meant to oversee the mutual learning and capacity building, and the constructive peer dialogue and persuasion between African states that are a part to the process. The APR Forum also has the formal mandate to effect changes in country practice where recommended, through the peer process.¹⁷⁵

2. Panel of Eminent Persons (APRM Panel)

The APRM Panel and its Chairperson are appointed by the APRM Forum. It is made up of five to seven members, who are collectively responsible for the direction and management of the APRM process and for ensuring its independence, professionalism, and credibility. It is this body which submits the APRM country review reports with recommendations on measures that could be taken to assist the country to improve its governance and socio-economic development performance. Panel members must be Africans “of high moral stature” who have distinguished themselves in careers relevant to the work of the APRM.¹⁷⁶

3. APRM Secretariat

The APRM Secretariat provides the secretarial, technical, coordinating and administrative support services for the process. It is responsible for preparing operational documents for the APRM process (such as the questionnaire); compiling background information used as part of the assessments; proposing performance indicators; monitoring the performance of participating countries; preparing and organizing the Country Review visits; organizing best practices workshops; and maintaining a database of the four thematic areas of the APRM, and updating it with the latest political and economic developments that take place in the participating countries.¹⁷⁷

4. National APRM Focal Point

Each participating country must establish a Focal Point, which will organize a participatory and transparent APRM process. It is recommended that the APRM Focal Point should be at a Ministerial level, or a person that reports directly to the Head of State or government. The Focal Point will have associated national technical committees supporting it.¹⁷⁸

5. National APRM Commission / Governing Council

This is a body which is meant to provide strategic policy direction to and manage the implementation of the APRM, and be autonomous from government (although

¹⁷⁵ NEPAD. *African Peer Review Mechanism Organisation and Processes*. 2003, internet: http://saiia.org.za/aprmtoolkit/docs/Official_documents/atkt_aprm_organisation_processes_2003_en.pdf, accessed October 1, 2011, p. 2

¹⁷⁶ Ibid., pp. 3-4

¹⁷⁷ Ibid., pp. 5-6

¹⁷⁸ NEPAD. *Guidelines for Countries to Prepare for and to Participate in the African Peer Review Mechanism (APRM Country Guidelines)*, 2003, internet: http://saiia.org.za/aprmtoolkit/docs/Official_documents/atkt_guidelines_prepare_participate_aprm_2003_en.pdf, accessed October 1, 2011, p. 11

in general it is appointed by government in consultation with civil society). It must contain upstanding citizens who command the respect of the general public. Membership must also be diverse and representative to ensure broad-based participation from all stakeholders. This includes representation from both state and non-state members from key ministries, civil society, parliament, media, private sector, youth, women, rural populations, and others. It is recommended that the National Commission be chaired by a non-state member. The National Commission is also meant to ensure the professionalism, credibility and independence of the process while ensuring that it is technical and free from political manipulation.¹⁷⁹ The Supplementary Guidelines document urges that the chairperson of the council should not be from government. But the wording stops short of making this a requirement: 'Where possible, [the council] should be chaired by a non-state functionary.' The Supplementary guidelines document is unequivocal in stating that decisions on how the APRM should be conducted rest with the council and not the Focal point.¹⁸⁰

6. APRM Country Review Teams (APRM Teams)

These are the country-specific expert teams, approved by the APRM Panel, to conduct independently each country review, analyze the APRM questionnaire data, produce the APRM country reports, and review the progress of country Programmes of Action. These teams are designed to ensure an integrated, balanced, technically competent and professional review of the country.¹⁸¹

As outlined in several of the official documents, the APRM Process is then carried out in a series of five stages in each country actually undergoing the peer review process.

Stage One – Country Preparation

This stage consists of three elements:

A) Country Self-Assessment Report - The APRM Secretariat sends to the country the APRM Self-Assessment Questionnaire, which is designed to measure how well the country stands against the APRM Objectives, Standards, Criteria and Indicators. The APRM Focal Point, in conjunction with the National Commission, draws up a list of stakeholders to participate in responding to the questionnaire, and distributes the latter to these stakeholders. Technical institutions are contracted to collate the responses and compile a consensus response for

¹⁷⁹ APRM Secretariat. *Prerequisites for Country Support Mission*, 2007, internet: <http://saiia.org.za/aprmtoolkit/>, accessed October 1, 2011, and *APRM Supplementary Document to APRM Guidelines for Country Review: the APRM National Structure (APRM Supplementary Guidelines)*, undated, internet, <http://saiia.org.za/aprmtoolkit/>, accessed October 1, 2011, paragraph 3

¹⁸⁰ Herbert and Gruzd, p.28-29

¹⁸¹ *APRM Organisation and Processes*, pp. 1, 7

submission to the Focal Point. The questionnaire responses, along with other data, are used to compile the Country Self-Assessment Report.¹⁸²

B) Country Programme of Action – Based on the Self-Assessment process, other consultative research, and taking into account existing national initiatives, the country under review produces a draft time-bound Programme of Action for achieving the governance objectives of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance.¹⁸³ This is meant to include: a) an assessment of compliance with the APRM Objectives, Standards, Criteria, and Indicators, and a discussion of the major development and governance challenges facing the country; b) an outline of the priorities for enhancing governance and socio-economic development in the short, medium and long term; c) time-bound commitments on key governance and socio-economic development priorities over the next 3 years, including the identification of key stakeholders for implementation; and d) an outline of the implementation, monitoring, and evaluation mechanisms for the Programme.¹⁸⁴

C) Country Issues Paper/Background Document – With the information provided through the Country Self-Assessment Report, the draft Country Programme of Action, and further desk research, the APRM Secretariat produces a country issues paper/background document.¹⁸⁵ The Secretariat will also propose a recommended APRM Country Team for approval by the APRM Panel.¹⁸⁶

Stage Two – Country Review Visit

This visit is conducted by the selected APRM Country Review Teams. During the visit, the APRM Team will measure the accuracy and adequacy of the country's Self-Assessment Report and draft Programme of Action. The visit will also help determine how the country can best be assisted in strengthening its final draft Programme of Action and its capacities to implement it. In order to achieve this, the APRM Country Review Team will carry out wide consultations with stakeholders such as government officials, parliamentarians, political party representatives, the business community, and representatives of civil society organizations (including media, academia, trade unions, non-governmental organizations, community-based organizations, and rural communities).¹⁸⁷ The APRM Team will also use these consultations to assess the various viewpoints on the status of governance in the country and to build consensus on how these can be addressed.¹⁸⁸

¹⁸² NEPAD, *African Peer Review Questionnaire General Guidance*, undated, internet: http://saiaa.org.za/aprmtoolkit/docs/Official_documents/atkt_apr_questionnaire_general_guidance_2002_en.pdf, accessed October 1, pp. 4-5

¹⁸³ *APRM Base Document*, paragraphs 13, 18; *APRM Organization and Processes*, p. 11-12; *APRM Country Guidelines*, p.5

¹⁸⁴ *APRM Country Guidelines*, p. 11

¹⁸⁵ *Ibid.*, p.6

¹⁸⁶ *APRM Organization and Processes*, p. 11-12

¹⁸⁷ *APRM Organization and Processes*, p.13; *APRM Questionnaire General Guidance Document*, p.5

¹⁸⁸ *APRM Country Guidelines*, p. 8

Stage Three – Country Review Report

Based on the findings of the country issues paper/background document, the country review visit, the Country Self-Assessment, the draft Programme of Action, and other background research, the APRM Country Review Team produces the APRM Country Review Report.¹⁸⁹ The draft report must take into account the applicable political, economic and corporate governance and socio-economic development commitments made in the draft Programme of Action, identify any remaining weaknesses, and recommend clear and specific further actions that should be included in the final Programme. The Country Team's report is first discussed with the Government concerned. Those discussions are meant to ensure the accuracy of the information and to provide the Government with an opportunity both to react to the Team's findings and to put forward its own views on how the identified shortcomings can be rectified, including modifying the draft Programme of Action. The responses of the Government will be appended to the Team's report.¹⁹⁰

Stage Four – Peer Review by the APRM Forum

The APRM Secretariat submits the Country Review Report to the APRM Panel. The APRM Panel meets to review the report in accordance with its mandate and submits its recommendations and the report to the APRM Forum. The APRM Forum then meets to consider and adopt the final report and its recommendations, including deciding upon any further actions which may be required. The Chairperson of the APRM Forum communicates the decisions of the Forum to the Head of State or Government of the country being reviewed. If the government of the country being reviewed does not demonstrate the political will to rectify shortcomings identified in the report, the APRM Forum is supposed to first engage it in constructive dialogue, offering technical and other appropriate assistance. According to the APRM Base Document, "if such dialogue proves unavailing, the participating Heads of State and Government may wish to put the Government on notice of their collective intention to proceed with appropriate measures by a given date. The interval should concentrate the mind of the Government and provide a further opportunity for addressing the identified shortcomings under a process of constructive dialogue."¹⁹¹

Stage Five – Publication of Country Review Report

Six months after the report has been considered by the APRM Forum, it is formally and publicly tabled in key regional and sub-regional structures such as the Pan-African Parliament; the African Commission on Human and People's Rights; the Peace and Security Council and the Economic, Social, and Cultural Council of the African Union.¹⁹²

¹⁸⁹ Herbert and Gruzd, p.16-17

¹⁹⁰ *APRM Base Document*, paragraphs 20-21; *APRM Organization and Processes*, pp 13-14; *APRM Country Guidelines*, p. 8

¹⁹¹ *APRM Base Document*, paragraphs 23-24; *APRM Organization and Processes*, pp. 14-15

¹⁹² *APRM Base Document*, paragraph 25

Follow-up

The APRM follow-up is meant to sustain the efforts to improve governance and socio-economic development in participating countries. The APRM Country Review Report is supposed to suggest a date by which the progress made by the country regarding the implementation of its Programme of Action will be checked. During the follow-up stage, the country is meant to modify its Programme of Action as needed, to continue its implementation and to monitor progress. The APRM Secretariat is also meant to monitor the country's progress.¹⁹³ There will also be periodic follow-up reviews of the policies and practices of participating states to determine progress being made towards achieving compliance with the APRM's mutually agreed political, economic, and corporate governance values, and socio-economic development codes and standards, as outlined in the NEPAD Declaration.¹⁹⁴

Assessment – Structures and Processes

The major issue with the design of the APRM process, which is consistent throughout its most crucial components, is the asymmetrical authority and responsibility furnished to participating governments over their own reviews. The government position is asymmetrical in relation both to civil society as well as APRM structures such as the Panel of Eminent Persons. This overall design issue affects (and is relevant to) each of our three assessment criteria equally. Therefore our analysis in this section will consider all three criteria in a cross-cutting sense.

The APRM rules and processes themselves, although lengthy and complex, exhibit a significant ambiguity at crucial points. The most important of these is whether authority and control over the process rests with civil society or with the government under review. Although in places the documentation intimates that civil society 'shall be in charge' of the APRM process, elsewhere the question of whether the APRM focal point (usually a government representative) or the broader national commission has ultimate authority over the management of the process is vague and completely open to

¹⁹³ *APRM Organization and Processes*, pp 15-16

¹⁹⁴ *APRM Country Guidelines*, p.2

interpretation. This much is clear: ultimately, as designed, it is the participating governments which decide how to interpret these rules. Indeed, the governments under review nominate and oversee the Panel of Eminent Persons; they formulate the national plans of action (which is the real legacy of the APRM); and they collectively, of course, make up the peers in peer review. Further, as Terrence Corrigan points out, the government controls the money and the schedules, both of which are key.¹⁹⁵ This raises a significant concern of conflict of interest. There are no enforcement mechanisms. Finally, there is no allowance for civil society oversight of the peer review component, nor of the implementation of the National Plans of Action. The APRM design does not prescribe a minimum level of quality to the National Plans of Action, and does not appear to include a process for ensuring that the latter adequately capture the issues raised on the APRM country review reports. That is, apart from the leaders themselves through the APRM Forum.

Ian Taylor reminds us that, with very few exceptions, most of the heads of state involved in NEPAD and the APRM are quintessentially heads of neopatrimonial regimes and do not consider their rule as ‘temporary’ or believe that their rule should be constrained by institutional law. The rulers of many APRM participating states (such as Angola, Cameroon, Congo-Brazzaville) are of highly dubious reputation in the context of good governance.¹⁹⁶ The APRM’s reliance on the commitment of leaders such as these to advance reforms so diametrically opposed to their own self-interest does not bode well for its ability to combat neopatrimonialism where it is strongest. Regarding the AU’s Constitutive Act, which forbids both unconstitutional changes and retention of power,

¹⁹⁵ Corrigan interview

¹⁹⁶ Taylor, p.159

African leaders have been very strong in reaction to the former and weak in reaction to the latter. A statement from my interview with Peter Makwarela of the South African Ministry of Foreign Affairs concerning the 2008 electoral violence in Kenya was instructive in this regard. Although the 2006 Kenya APRM country review report specifically warned about its tendency towards ethnic electoral violence fomented by government, this type of violence was still sponsored by members of Kibaki's regime in 2008. This selective dichotomy is very clear and probably not surprising, given incumbents' collective interests.

One can legitimately ask why there would be confidence in the political will of most APRM heads of state, who ultimately control and oversee whatever reforms come out of the APRM process, to reform towards true constitutionalism, to establish anti-corruption efforts aimed at the strategic level (and towards themselves), and to construct independent civil services capable of delivering globally competitive policies. This is especially so when many consider that it is these very leaders who have heretofore proven to be the biggest perpetrators of neopatrimonialism and the strongest obstacles to eliminating it. Rwandan journalist Shyaka Kanuwa, in the Johannesburg *Mail and Guardian*, states that it is difficult to believe "that a gathering of men who benefit from disorder will help unravel...disorder; that they will pave the way for good government in their countries; that they will give up their cash cows, surrender power and, with it, their means to a livelihood."¹⁹⁷ He also asks "...how can rulers who are themselves clearly the problem be part of the solution? ... These men are not troubled by niceties such as respect for human rights, concern for their populations' material welfare or consensual decision-making. ...most... benefit from a hybrid of African patronage and farcical parliamentary,

¹⁹⁷ Ibid., p.72

judicial and other institutional procedures that contrive invariably to act in the big man's interests."¹⁹⁸

Ian Taylor also sees a fatal incompatibility between the objectives of APRM (and NEPAD) and the logic and modus operandi of neopatrimonial rule and the dominance and nature of extractive economies in Africa. He points out that good governance and true democracy cannot be implemented without eroding the very nature of the postcolonial African state and undermining the positions of incumbent elites.¹⁹⁹ This is considered by many to be an unlikely possibility. As Clapham²⁰⁰ has noted, a most evident trait of these neopatrimonial elites has been their refusal to accept any diminution in their position of privilege which accountability would imply. Ian Taylor points out that most commentaries on NEPAD ignore this reality.²⁰¹ It is crucial to note that the ostensible pinnacle, and *raison d'être* of the APRM (as the name implies), is the actual peer review. The peer review is, of course, undertaken by the APR Forum, the body made up of these very same leaders. There is very little historical evidence to show that African leaders will be willing, let alone effective, commentators on the internal affairs of their counterparts. Indeed, the evidence would suggest the opposite. The fact that the APRM design allows for such an obvious conflict of interest to exist probably tells us that the process is meant more as a knowledge and best practices sharing initiative, with overtones of resource mobilization, rather than one expected to impose any undesired reforms on participating governments. While the APRM is heralded by African governments as an innovative and deep-reaching governance initiative, its overall

¹⁹⁸ Ibid.

¹⁹⁹ Ibid., p.46

²⁰⁰ Ibid., p. 159

²⁰¹ Ibid.

approach suggests a more prosaic reality, replete with loopholes and in camera peer discussions dominated by collegiality rather than criticism. The design of the APRM therefore demonstrates that, as left alone in the hands of participating states, it is very much in line with traditional efforts at reform – strident, but ultimately inconcrete.

3.4 APRM Design - Conclusions

While the APRM design touches upon areas related to our criteria (constitutional governance, anti-corruption, and civil service performance), it does so somewhat tepidly. The APRM design seeks mostly to measure the formal establishment of constitutional government, rather than provide a robust assessment of the informal power relationships or leadership motivations. It attempts to provide an overview of existing anti-corruption efforts, with some suggestions for improvement. The APRM does not, however, provide an analysis of how corruption affects decision-making at the highest levels, nor of how it impedes the development and implementation of appropriate policy – which is ultimately the only solution to poverty in Africa. In the context of this analysis, the APRM process, as designed, has several inherent weaknesses: 1) it does not directly address how corruption impacts formally existing constitutional orders, or how it influences strategic decision-making at all of its levels -- executive, legislative, and judicial; 2) it does not address the capacity of civil services to deliver globally competitive policy; 3) the APRM ‘standards’ and thresholds are not well defined; 4) the APRM process is strictly voluntary and without enforcement mechanisms; and 5) it puts inordinate control of the process in the hands of those being reviewed – the participating governments.

Therefore, the APRM’s overall design would suggest that it has a low potential of acting as a meaningful generator of reform towards away from neopatrimonialism and

towards a) true institutional governance, b) a real, effective anti-corruption programs aimed at eliminating its strategic impact, and c) the construction of merit-based, professional civil services capable of designing and implementing globally competitive policies and programs oriented towards providing public goods.

An important distinction between the APRM and traditional reform initiatives is the extent to which it is meant to engage civil society in diagnosing and addressing governance issues. Indeed, the design of the APRM is only half of the story in assessing the relationship between the APRM and neopatrimonialism. Of equal, if not greater, importance, is the question of how the APRM has proceeded in practice – how independent has it been; what quality of space has been provided to civil society; what is the quality and relevance of the resulting country review reports and attendant national plans of action; and, finally, what has been the value-added of the peer review itself. These considerations are crucial to our understanding of how well the APRM performs against our assessment criteria. This is the focus of the next chapter.

Chapter 4 - Implementation and Results of the APRM

This chapter will review the implementation of the most important aspects of the APRM review process. This includes the performance of the reviewed governments, the APRM Panel of Eminent Persons, civil society, the APRM technical experts and the APRM Forum, and the quality of the country review reports and accompanying national plans of action. Ultimately, it is the quality and meaningfulness of the country reports, the plans of action and the peer review by the APRM Forum which are the most crucially important of the entire APRM process, particularly as a measure of how useful the mechanism is in establishing institutionalism and therefore displacing neopatrimonialism. It is these products which best demonstrate how well the APRM process performs against our three measurement criteria.

Our assessment of the APRM's implementation will start with an analysis of two APRM country review reports – Kenya and Nigeria. Using the crucial, least likely case study method, these two countries have been selected for two reasons. First, they are representative of the 'reforming' wing of African countries, with ostensible commitments to improving governance and fighting corruption. In this context they have also been champions for the APRM initiative and among the first to go through the country review process. Second, both of these countries are known to exhibit strong neopatrimonial tendencies and both continue to experience severe poverty in the midst of immense economic potential. This combination of factors means that these two cases are considered as "least likely" to support the hypothesis of this thesis. This is because if the APRM process is going to be able to lead to the establishment of institutional rule in the

place of neopatrimonialism, it should most likely work for countries such as these two. If it is found that the APRM will not likely be effective in the establishment of institutional rule in these two countries, the likelihood of it succeeding in other, less reformist, countries is even smaller. Such an outcome most strongly supports the hypothesis of this thesis. Alternatively, if it is found that the APRM process, in these two cases, produces outcomes which are likely to contribute substantively towards the actual establishment of institutional rule, our hypothesis can be considered falsified. Each of these two APRM reviews will be assessed against our three established criteria: 1) contribution to true constitutional governance, 2) establishment of concrete anti-corruption programs aimed at the strategic level, and 3) construction of independent, professional bureaucracies capable of designing and delivering globally competitive development policies oriented towards providing public goods.

4.1 Case Study - Kenya

In terms of the issues raised, the report does diagnose certain elements of neopatrimonialism. It goes beyond transactional issues and speaks to high-level decision-making and governmental operations which profit the few at the expense of the public good.

Concrete efforts to establish true constitutional governance

The Kenya Report concluded that although the country possesses a formal constitution specifying the separation of powers among the executive, legislative, and judicial branches, power is exercised much differently in practice. It was found that the executive, particularly the Office of the President, dominates both of the other branches,

which are not considered effectively independent from interference and influence.²⁰²

Therefore, there is very little checking and balancing occurring in reality.

The report rated the perceived performance levels of the legislature in the field of development, security, management of constituency funds, conflict resolution, articulation of interests in parliament and attendance to the personal needs of constituents at a very low level.²⁰³ In the report, parliamentarians were often described as self serving, insensitive, predatory, and unable or unwilling to check executive excess.²⁰⁴ Kenyans also demonstrated considerable scepticism about current MPs' capability, given their penchant for ethnically based interests, to pass progressive laws that would promote the rule of law and constitutionalism, and that would promote peace and unity instead of dividing the citizenry.²⁰⁵

Judicial appointments (and promotions) were felt to be made by the President based on political, tribal or sectarian reasons, transforming the judiciary into an instrument at the service of the executive.²⁰⁶ The report decries the resulting lack of independence of the judiciary. The Panel members noted that, during their visits to Kenya, they had been informed of incidents in which prominent government officials either disobeyed court orders or expressed an intention to disobey them. They state forthrightly that "the Chief Justice being an appointee of the President is not trusted to be

²⁰² *African Peer Review Mechanism Country Review Report of Kenya (APRM Kenya Country Review Report)*, 2006, internet, http://saiia.org.za/aprmtoolkit/docs/Country_Reports_and_Exper/atkt_kenya_aprm_country_review_report_2006_en.pdf, accessed October 1, 2011, pp. 51, 72, 85

²⁰³ *Ibid.*, p.86

²⁰⁴ *Ibid.*, p.88

²⁰⁵ *Ibid.*, p.87

²⁰⁶ *Ibid.*, p.85

able to take an independent decision.”²⁰⁷ The report also cited crucial complaints about the judiciary by Kenyans regarding its inability to deal with the many instances of grand corruption that involve key political and civil service figures. However, the report also noted that the judiciary has been strengthened with the *Anti-Corruption and Economic Crimes Act (2003)*, and the *Criminal Law (Amendment) Act*.²⁰⁸

Overall, the report noted that Kenya is well serviced with a body of laws, programmes, commissions and agencies that could make for the best-governed democracy in Africa. However, these programmes have so far been poorly implemented. For instance, the Second MDG Status Report for Kenya 2005 indicates that the completion rate for major development projects was as low as 3 % in 2000.²⁰⁹ As well, it was found that although Kenya has signed many of the Democracy and Good Political Governance APRM Codes and Standards, it has thus far neglected to entrench them through legislation. Even where the codes and standards have been domesticated, there was a demonstrable lack of enforcement capacity.²¹⁰

The report found that the country’s politics have come to be dominated by ethnic considerations, to the detriment of objectivity, collective responsibility, the consolidation of ideological concepts, nation-building, development, and the effective use of land resources.²¹¹ It indicated that successive governments have continued the colonial practice of exploiting inequalities between ethnic groups and regions,²¹² with the power

²⁰⁷ Bronwen Manby, *Was the APRM process in Kenya a waste of time? Lessons that should be learned for the future*. Open Society Institute, Africa Governance Monitoring and Advocacy Project, internet: http://www.afrimap.org/english/images/paper/Manby_APRM-Kenya.pdf, accessed September 28, 2011, p. 2

²⁰⁸ *APRM Kenya Country Review Report*, p. 91

²⁰⁹ *Ibid.*, p.242

²¹⁰ *Ibid.*, pp. 15, 59-60

²¹¹ *Ibid.*, pp. 50, 62-63

²¹² *Ibid.*, pp. 14-15

elites pursuing political competition based on the promise of political power as a means of delivering a share of the national wealth to their ethnic groups.²¹³ Political parties were found to be regional, ethnic based, poorly institutionalized, and described as “mere electoral vehicles for political entrepreneurs.”²¹⁴

The report crucially makes note of the 2002 Akiwumi inquiry into the 2,000 deaths and displacement of 500,000 people as a result of ethnic violence surrounding the 1992 re-introduction of a multi-party system. The inquiry report confirmed the role of prominent members of the ruling party and high-ranking government officials in fuelling the ethnic clashes. The APRM found that many perpetrators identified in the inquiry report have neither been investigated nor prosecuted, with many continuing to serve as senior officers, Ministers, or Members of Parliament.²¹⁵

With regards to these findings, the APRM Panel report made the following recommendations in the report: Parliament should be made accountable to the electorate through the introduction of recall laws, and Private members should present this law in the face of Parliament’s reluctance to do so; the oversight functions of Parliament should be reinforced through check and balance mechanisms on the basis of legislation such as the *Public Audit Act (2003)*, the *Government Financial Management Act (2004)*, and the *Public Procurement Bill (submitted in 2004)*; Parliament should support necessary governance reforms by voting adequate funds to agencies such as the Kenya Anti-Corruption Commission, Law Reform Commission, the Kenyan Human Rights Commission and Governance, Justice, Law and Order Sector Reform Program (GJLOS),

²¹³ Ibid., pp. 62-63

²¹⁴ Ibid., pp. 69

²¹⁵ Ibid., pp. 13-14

among others;²¹⁶ Parliament is encouraged to speed up the adoption of the *Political Parties Bill*, which prohibits the registration of political parties based on ethnic, age, tribal, religious or regional membership;²¹⁷ government and political parties are encouraged to design and engage conflict resolution mechanisms to reduce factional frictions, build consensus on crucial national issues, defuse ethnic tension and promote tolerance; and government should adopt and implement redistribution and reallocation policies to enforce equitable access to, and use of, land.²¹⁸

In response to the APRM findings and recommendations regarding constitutional democracy, the Kenyan government national plan of action included the following comments, commitments and strategies: it will institute constitutional provisions that minimize presidential discretion on legislative matters and enhance the autonomy of the legislature;²¹⁹ it will ensure the judiciary maintains rule of law through existing government capacity building programs²²⁰; it will enforce judicial reforms and existing administrative measures aimed at improving efficiency, accountability; it will monitor judicial functions²²¹; it will provide adequate funding of governance reform implementing agencies by voting adequate funds to agencies such as the Kenya Ethics and anti-Corruption Commission (KACC), Law Reform Commission, Kenya National Commission on Human Rights (KNHRC), and GJLOS;²²² it will enact the *Political Parties Bill* (Legislation that prohibits registration of political parties based on regional,

²¹⁶ Ibid., p.91

²¹⁷ Ibid.

²¹⁸ Ibid., p. 66

²¹⁹ Ibid., p. 331

²²⁰ Ibid., p. 327

²²¹ Ibid., p. 331

²²² Ibid., p. 332

ethnic and religious considerations²²³; it will develop and implement a coherent land policy to address land ownership, use, tenure and administration²²⁴; and government and political parties will design and implement conflict resolution mechanisms at community and ethnic levels (Public Officers' Ethics Act; Cabinet Code of Conduct; Peace committee established in the Office of the President to deal with conflict resolution).²²⁵

Implementation of effective anti-corruption programs aimed at the strategic level

The Kenya report does a good job in highlighting Kenya's ongoing systemic and destructive problem with corruption. While acknowledging ongoing government efforts such as the KACC and the Kenya Anti Corruption Police Unit, it concludes that corruption continues to pervade the executive, legislature, judiciary and military, as well as the civil service.²²⁶ It duly notes the fact that the country has consistently been ranked in the bottom 10% of Transparency International's Corruption Perceptions Index.²²⁷ It profiles several high-level and far-reaching scandals involving the misappropriation of state funds by high-ranking politicians, up to the Vice-President and Ministerial levels (including the Attorney General himself and the Minister of Finance).²²⁸ The Kenya report also refers to the Ndung'u Report on Land and Graft, which documents the illegal allocation of public land by post-independence Kenyan government officials.

This report concluded that under a practice of illegal land allocations, which increased dramatically during the late 1980s and throughout the 1990s, "land was no longer allocated for development purposes but as political reward and for speculation

²²³ Ibid., p. 327

²²⁴ Ibid., p. 325

²²⁵ Ibid., p. 325

²²⁶ Ibid., p. 97

²²⁷ Ibid., p. 246

²²⁸ Ibid., pp. 11-12

purposes ... 'land grabbing' became part and parcel of official grand corruption through which land meant for public purposes ... has been acquired by individuals and corporations," including both the Kenyatta and Moi families, former ministers, MPs, judges, civil servants and military officers.²²⁹ The reviewers note an "exploitative predilection" in Kenya's power elite,²³⁰ under a perverted political culture in which "looters are admired as tycoons and honest public servants are derided as failures."²³¹

The report also highlights the fact that public confidence in the government's commitment to fighting corruption has waned, and indeed posits that the government's anti-corruption track record has been mixed.²³² At times, the positive inclusion of civil society elements in the different anti-corruption agencies was noted to have changed the dynamics and facilitated a robust and result-oriented approach, with appropriate action (prosecutions and dismissals, etc). At other times, the government was seen to have remained incapable of mustering the required political will to pursue anti-corruption actions to their logical conclusion.²³³ The issue of corruption, however, does seem, according to the report, to remain consistently on the front burner, with some questions as to weak implementation and capacity of the legal anti-corruption frameworks.²³⁴ Furthermore, the report interestingly points out that the most important Kenyan anti-corruption efforts (such as the KACC and anti-corruption legislation) were established only after IMF conditionality and donor demands.²³⁵

²²⁹ Ibid., pp. 12-13

²³⁰ Ibid., p. 54

²³¹ Ibid., p. 25

²³² Ibid., p. 97

²³³ Ibid., pp. 83-84

²³⁴ Ibid., p. 150

²³⁵ Ibid., p. 96

The Kenya report highlights the very low public opinions of politicians and civil servants. MPs and councillors were accused by stakeholders of having bribed their way into office, of lacking in accountability to the electorate, of being chronically ineffective, and of misuse and embezzlement of public funds.²³⁶ The report concludes that corruption and mismanagement of public resources have increased tremendously and have become a hallmark of service delivery and the transaction of official business.²³⁷ Overall, it was found that widespread corruption and nepotism in Kenya have exacerbated its economic crisis, cost the taxpayer and the national coffers, discouraged investors, and negatively affected the competence, integrity and output of government.²³⁸ As well, these problems were found to have led to the emergence of mediocre leaders, the mismanagement of national resources, the personalization of development, poor economic planning, and the destruction of institutions.²³⁹

With regards to these findings, the APRM Panel report made the following recommendations in the report: Kenyan leadership at all levels (political, private, judiciary, religious, academia, NGOs, community leaders, etc.) should unite on a national front against corruption; government should enforce the Public Officers Ethics Act to ensure that public officials failing to declare their assets and liabilities are sanctioned accordingly; the Attorney General's Office and the judiciary should speed up mechanisms to eliminate legal challenges arising against corruption prosecutions,²⁴⁰ and should establish anti-corruption programmes, including the use of 'whistleblowers' and

²³⁶ Ibid., p. 92

²³⁷ Ibid., p. 93

²³⁸ Ibid., p. 53

²³⁹ Ibid., p. 97

²⁴⁰ Ibid., p. 101

anti-corruption monitoring units in each Ministry; and the government should strengthen the capacity of the Attorney General's office to investigate public corruption cases.²⁴¹

In response to the APRM findings and recommendations on corruption, the Kenyan government national plan of action included the following comments, commitments and strategies: Kenya has already established anti- Corruption institutions (KACC) and the National Anti-Corruption Steering Committee²⁴²; it will enforce the *Anti-corruption and Economic Crimes Act (2004)*; investigations into corruption cases are ongoing and prosecutions launched in cases where evidence is available;²⁴³ it will operationalize the *Public Procurement and Disposal of Assets Act*; procurement guidelines are being prepared; a Public Procurement Oversight Commission is being set up;²⁴⁴ it will accelerate and strengthen the campaign against corruption; it will enhance the capacity of legal institutional mechanisms for preventing and fighting corruption; the *Public Officer Ethics Act* is being enforced;²⁴⁵ it will strengthen land management and tenure systems;²⁴⁶ it will provide an enabling environment for business development and growth; it will reduce the policy impediments to private sector participation; and it will review the regulatory law and institutional arrangements for doing business.²⁴⁷

Construction of an independent, professional civil service capable of delivering globally competitive policies and programs oriented towards providing public goods:

The Kenya country review reported that the civil service was perceived as corrupt and inefficient, with top officials accused of practicing ethnic favouritism. The quality of

²⁴¹ Ibid., p. 97

²⁴² Ibid., p. 334

²⁴³ Ibid., p. 349

²⁴⁴ Ibid.

²⁴⁵ Ibid., p. 334

²⁴⁶ Ibid., p. 346

²⁴⁷ Ibid., p. 343

recruitment to the civil service was felt to be compromised by a dependence on extraneous factors such as bribery, nepotism and political influence. The report even describes a “collapse” of the work ethic among public officers, which is a major factor in the continuous spread of corruption and corrupt practices, and obviously an impediment to the development and delivery of appropriate and competitive development policy. It notes also that the government has put in place procedures for the declaration of assets and liabilities by civil servants.²⁴⁸

With regards to these findings, the APRM Panel report made the following recommendations in the report: government should coordinate reform efforts of the Civil Service Reform Unit at the Vice- Presidency; the Public Service Commission should ensure coherence and effectiveness;²⁴⁹ government should design a comprehensive policy directed squarely at the issue of diversification – of the domestic production structure and of exports; it should conduct a comprehensive survey of implementation problems throughout government and the public sector, with a view to characterising the nature and the sources of the problems; it should obtain a clear picture of their incidence and how deep-seated they are; it should design strategies and actions to deal with them, both on a grand scale and in specific contexts; and it should make continuous formal assessment of the effects of indirect policies on diversification policies such as education and training of young people, labour and manpower policies, health policies, infrastructure policies, financial sector policies, policies to address corruption, and monetary and fiscal policies

²⁴⁸ Ibid., p. 100

²⁴⁹ Ibid., p. 91

with a view to restructuring and fine-tuning the policies, as necessary, to promote diversification.²⁵⁰

In response to the APRM findings and recommendations regarding the civil service, the Kenyan government national plan of action included the following comments, commitments and strategies: it will ensure that all new civil service recruitments are based on pre-defined qualifications and attributes in line with the organizational personnel needs; it will ensure the PoEA has been enacted and caters for ethical conduct in recruitment of Civil Servants;²⁵¹ it will strengthen the agricultural sector through policy, planning and implementation; it will strengthen land Management and Tenure Systems; it will review the regulatory law and institutional arrangements for doing business; it will conduct privatisation and divestiture; it will enact tax reforms to enhance performance; it will conduct a comprehensive review of implementation problems throughout the GoK and public sector; and it will implement a Strategy for Public Financial Management.²⁵²

4.2 Case Study - Nigeria

Concrete efforts to establish true constitutional governance

The report notes that, formally, the country is operating under the 1999 constitution, which maintains a strong presidential system, reminiscent of the military regime that oversaw its drafting and adoption. “It is not particularly designed to ensure a high degree of separation of powers with checks and balances among the three arms of

²⁵⁰ Ibid., pp. 135-136

²⁵¹ Ibid., p. 333

²⁵² Ibid., pp. 345-352

government.”²⁵³ The APRM report finds that there is an overconcentration of power in the executive vis-à-vis the legislature and judiciary, including budgetary intimidation. This means, in effect, that the principle of separation of powers, with its inherent checks and balances, is also greatly curtailed in Nigeria.²⁵⁴ The report notes that the executive has been able to remove uncooperative leadership of the legislature or deny the legislature operating funds.²⁵⁵

The 1999 constitution provides citizens with the right to change their government peacefully through periodic, free and fair elections held on the basis of universal suffrage. However, the APRM report concludes that this right is curtailed, with elections generally marred by violence, fraud and the use of money to attain power. Nigerian stakeholders lamented that the elections of 2003 and 2007 were the most poorly organised and massively rigged in the country’s limited experience with electoral politics. In fact, Nigerians identify an ongoing crisis of leadership legitimacy.²⁵⁶ In the report, Nigerian stakeholders call into question the credibility of the entire electoral system, as well as the impartiality and independence of the INEC.²⁵⁷ The INEC was widely perceived by stakeholders as lacking independence because of the executive’s role in its financing and the appointment and removal of its members.²⁵⁸ Overall, the report indicated that INEC’s management of elections is flawed and deemed to be noncredible, and lacking in

²⁵³ *African Peer Review Mechanism Country Review Report of Nigeria (APRM Nigeria Country Review Report)*, 2009, internet, http://saiia.org.za/aprmtoolkit/docs/Country_Reports_and_Exper/atkt_nigeria_aprm_country_review_report_2008_en.pdf, accessed October 1, 2011, p. 64

²⁵⁴ *Ibid.*, p. 5

²⁵⁵ *Ibid.*, p. 90

²⁵⁶ *Ibid.*, p. 84

²⁵⁷ *Ibid.*, p. 90

²⁵⁸ *Ibid.*, p. 94

transparency, impartiality and the ability to deliver elections that substantially reflect the will of the electorate.²⁵⁹

The report correctly goes beyond merely examining the formal role of the legislature and investigates its own nature and value. For example, although the Nigerian National Assembly has recently shown an increasing independence on occasion (for example, its rejection of Obasanjo's attempt to extend term limits),²⁶⁰ the report finds that the legislature itself is a corrupt part of a patrimonial approach to governance. Indeed, it cites many stakeholders stating that Nigeria has become a "moneycracy" instead of a democracy.²⁶¹ MPs and councilors, as in Kenya, are accused by stakeholders of buying or bribing their way into office, often funded by wealthy businesspeople, known as 'godfathers', who expect reciprocal rewards and benefits from these 'elected' representatives. These politicians lack in accountability to the electorate under current practices, and are therefore still able to channel public funds to their financiers illegally.²⁶² Although the constitution admirably requires the declaration of assets by government politicians as well as the judiciary, the APRM's review mission could not establish the level of actual compliance, nor whether compliance is independently monitored or verified.²⁶³ "Politics has become a business, and the business of politics has become the diversion of public funds from the crying needs of the people for real development."²⁶⁴ This practical system is of course pursued at the expense of the public good and of any motivation towards effective developmental policies or practices.

²⁵⁹ Ibid., p. 112

²⁶⁰ Ibid., p. 66

²⁶¹ Ibid., p. 92

²⁶² Ibid., p. 110

²⁶³ Ibid., p. 114

²⁶⁴ Ibid., p. 111

According to the report, the judiciary is increasingly growing in autonomy and in its effectiveness as a check on executive impunity, at least at the higher levels (Supreme Court and federal Courts of Appeal). However, at the lower levels, the judiciary still remains weak and is highly dependent on the state and local governments for its budget. This exposes judges to corruption.²⁶⁵

The Nigeria country review report quite clearly diagnoses neopatrimonialism in the country.

“In practice, the informal exercise of power by the Nigerian political oligarchy exerts more control than do the formal institutions. The formal and informal powers converge in the office of the president, who uses the enormous resources at his disposal to reward and cement his patrimonial networks. It is this oligarchic control of the political power system that constitutes a major obstacle to the realisation of democracy in Nigeria, with its attendant complexities and dynamics.”²⁶⁶

Under this neopatrimonial system, rather than oil wealth acting as a generator of development, it instead sustains poverty and inequality and produces rulers motivated by personal rather than public gain. In Nigeria’s case, the report identifies a resulting “ethnodistributive” system of resource allocation from the centre, with oil revenue accounting for 85% of the budget.²⁶⁷ “The redistribution of patronage among regional and state interests constitutes a national oligarchy which needs to hold on to power and have continuous access to central resources through any means necessary, including rigging elections, organizing violence, constantly reshuffling alliances and avoiding institutionalizing political parties.”²⁶⁸

²⁶⁵ Ibid., p. 65

²⁶⁶ Ibid., p. 51

²⁶⁷ Ibid., pp. 50, 502

²⁶⁸ Ibid., p. 51

The report found that ethnic, religious and regional diversities have been manipulated politically by elites to serve their own interests (particularly for control of power and oil resources). This, combined with the fact that most Nigerians do not benefit from its great wealth, is found to be the fundamental cause of conflicts such as the Niger Delta Crisis. The resulting societal cleavages make it even more difficult to create effective institutions to mitigate or manage these conflicts and have created a system that maintains and feeds on extreme poverty and elite manipulation. “This dynamic seems to suggest that nothing short of an institutional and structural transformation can reduce and manage conflict in Nigeria in a sustainable manner.”²⁶⁹

According to the report, the weaknesses in the Nigerian electoral system outlined above continue to permit a winner-takes-all paradigm of holding office, narrowing the space for opposing parties to participate in governance. This makes the struggle and competition for power “all the more intense and possibly vicious.” Stakeholders complained that all political parties are guilty of organized violence and zero tolerance of opposition. In the end, political energy and resources are mainly diverted into these tensions instead of “building and consolidating democratic and nationalistic ideologies, programmes and agendas.”²⁷⁰ The report also highlights the exclusionary nature of oligarchic rule in Nigeria, with the result being that critical problems relating to economic development, institutional reforms and needed public goods are not resolved.²⁷¹

As with Kenya, the APRM process underlined a problem with the overall performance of Nigeria’s government machinery. In the report, the government itself admits that “Nigeria’s experience has been one of formulating good plans, policies and

²⁶⁹ Ibid., pp. 82, 85

²⁷⁰ Ibid., p. 92

²⁷¹ Ibid., p. 51

programmes and then failing to achieve objectives because of ineffective implementation – or no implementation.²⁷² The lack of effective policy and programme implementation in Nigeria is explained primarily by its lack of political will and weak accountability mechanisms.²⁷³ Also, as with Kenya, the report found that Nigeria has not lived up to its obligations under the several international conventions that have been signed and ratified by the country.²⁷⁴

With regards to these findings, the APRM Panel report made the following recommendations in the report: review the electoral system urgently; grant financial autonomy to INEC; convene a national conference to address all contentious constitutional issues; strictly adhere to the rule of law and implementation of policies in line with the constitution and the law;²⁷⁵ extra judicial killings by the police and other law enforcement agencies should stop immediately;²⁷⁶ financial autonomy directly from the Federal Account (not from the Executive) for the judiciary and legislature, as stipulated in the constitution; increase remuneration and terms of service for lower level judicial officers; the Freedom of Information Bill should be urgently passed and duly enforced;²⁷⁷ government should consider the establishment of a political parties registration commission to regulate the activities of political parties;²⁷⁸ the government should intensify efforts to develop the necessary expertise in managing public finances and formulating development plans; it should design and introduce an effective system for administering tax at the state and local government levels; it should introduce measures

²⁷² Ibid., p. 20

²⁷³ Ibid.

²⁷⁴ Ibid., p. 60

²⁷⁵ Ibid., p. 95

²⁷⁶ Ibid., p. 101

²⁷⁷ Ibid., p. 110

²⁷⁸ Ibid., p. 116

to improve access to the constitutionally guaranteed share of revenue from the Federation Account by local governments; and ensure that ten per cent of state revenues are deposited into the Joint Account for use by local governments for delivering services.²⁷⁹

In response to the APRM findings and recommendations regarding Nigerian constitutional democracy, the government's national plan of action included the following comments, commitments and strategies: it will conduct stakeholder workshops on constitutional review; it will review the *Independent National Elections Commission (INEC) Act* to make for an independent INEC; it will review the 2006 Electoral Act to make for a transparent electoral system, and an acceptable voting process;²⁸⁰ it will ensure adequate & independent funding of the judiciary; it will insulate the judiciary from executive interference and ensure general effectiveness of the judiciary; it will enthrone the rule of law and due process and judicial independence by sensitizing government establishments and functionaries on the need to adhere to the constitution and extant laws in the conduct on public affairs;²⁸¹ it will provide financial autonomy for the National Assembly through National Assembly Budget & Research Office;²⁸² it will establish and strengthen the National Assembly Budget and Research Office; it will conduct inquiry into nature and causes of Executive interference with Judiciary; and it will implement the Public Procurement Law;²⁸³ it will enlarge the scope and awareness of alternative dispute resolution mechanisms;²⁸⁴ it will provide an enabling environment for business development and growth; it will strengthen

²⁷⁹ Ibid., p. 191

²⁸⁰ Ibid., p. 410

²⁸¹ Ibid., p. 437

²⁸² Ibid., p. 411

²⁸³ Ibid., p. 412

²⁸⁴ Ibid., p. 410

the agricultural sector through policy planning and implementation;²⁸⁵ it will de-link government expenditure from current oil revenue;²⁸⁶ it will implement the Public Procurement Law;²⁸⁷ it will increase in productivity;²⁸⁸ it will enhance and intensify tax administration reforms and the efficient collection of excess tax;²⁸⁹ it will provide an enabling environment for business development and growth;²⁹⁰ it will strengthen the agricultural sector through policy planning and implementation; it will increase stakeholder participation in policy, planning and budgeting at all levels of government;²⁹¹ and it will aggressively develop the non-oil sector.²⁹²

Implementation of effective anti-corruption programs aimed at the strategic level

The Nigeria report asks a crucially important (and rhetorical) question – “why does the biggest oil producer in sub-Saharan Africa have the world’s third-largest concentration of poor people?”²⁹³ The answer resounds clearly throughout the document – corruption, with its massive scope and impact on the country and its future.²⁹⁴ The report directly diagnoses patrimonial corruption and its incompatibility with sustainable socio-economic development as the central problem. Broadly, it highlights the fact that Transparency International’s 2006 Corruption Perception Index ranked Nigeria more corrupt than 37 out of the 45 African countries for which relevant data was available, and

²⁸⁵ Ibid., p. 414

²⁸⁶ Ibid., p. 415

²⁸⁷ Ibid., p. 445

²⁸⁸ Ibid., p. 455

²⁸⁹ Ibid., p. 457

²⁹⁰ Ibid., p. 459

²⁹¹ Ibid., p. 461

²⁹² Ibid., p. 462

²⁹³ Ibid., p. 4

²⁹⁴ Ibid., p. 24

ranked Nigeria 142nd out of 164 countries globally.²⁹⁵ It cited estimates that Nigeria has lost about US\$300 billion to corruption in the last four decades.²⁹⁶

“29 years of military misrule, erratic and distorted policies, public-sector dominance in production and consumption, and unbridled corruption and rent-seeking have taken their toll on the development potential of the country. They have left the country with high incidences of poverty, high unemployment rates, poor infrastructure, low growth rates, and widespread insecurity and crime.”²⁹⁷

Since the return to Nigerian civilian rule in 1999, Presidents Obasanjo and then Yar’Adua both began a fight against corruption with efforts such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC). President Yar’Adua also became the first Nigerian President to declare his assets and have them published.²⁹⁸ These efforts are lauded in the report, yet it ultimately concludes that corruption remains a structural and endemic problem, with both the EFCC and ICPC under-resourced and apparently overly influenced by the executive.²⁹⁹ Furthermore, the report highlights the current immunity laws of the constitution, which protect incumbent elected executives at the federal and state levels from being prosecuted for corruption. It is felt that these laws are also clearly hampering the work of these two institutions.³⁰⁰ According to the report, the problem of corruption continues to constitute a major challenge to democratic governance, and is still seen widely as a cancer within Nigerian democracy, rooted in the centralised, clientelist and patronage nature of politics. An informal network of power-based relations and a patrimonial distribution of goods sustains corruption at the federal, state and local levels.

²⁹⁵ Ibid., p. 60

²⁹⁶ Ibid.

²⁹⁷ Ibid., p. 7

²⁹⁸ Ibid., p. 49

²⁹⁹ Ibid., p. 6

³⁰⁰ Ibid., p. 112

The APRM report states that to maintain power, the system of patronage – composed of self-serving politicians, businesspeople, political fixers and ‘godfathers’ – trades offices, co-opts rivals, and distributes concessions.³⁰¹ The report states that “while recent efforts under the civilian administration to fight corruption are encouraging, no efforts can stem the spectacular political corruption in Nigeria without attacking its systemic roots.”³⁰² It indicates that political and social will must be strengthened in order to tackle the scourge.³⁰³

With regards to these findings, the APRM Panel report made the following recommendations in the report: the immunity clause which provides for immunity for the president, vice president, and governors and their deputy governors should be amended or expunged; Nigeria should domesticate and implement the conventions of the UN and AU regarding anti-corruption and the prevention and combating of corruption; all public officials and office holders should be encouraged to follow the example of the president in declaring and publishing their assets and abiding by the rule of law;³⁰⁴ the capacity of the offices of the auditor general and attorney general should be strengthened; corruption and misconduct on the part of public office holders must be appropriately punished;³⁰⁵ the ICPC and EFCC should be made more autonomous in reporting and financing; government should create ICPC and EFCC suborgans at state level; the offices of the auditors general of the federation and the states should be expanded and strengthened, and government should ensure that their reports be published; the Code of Conduct

³⁰¹ Ibid., p. 67

³⁰² Ibid.

³⁰³ Ibid., p. 20

³⁰⁴ Ibid., p. 117

³⁰⁵ Ibid., p. 110

Bureau (CCB) should be equipped to conduct verification of assets and liabilities; and specialised 'corruption courts' should be set up to speedily try all corruption cases.³⁰⁶

In response to the APRM findings and recommendations regarding Nigerian corruption, the government national plan of action included the following comments, commitments and strategies: it will review the ICPC and EFCC Acts to make them more effective and independent; it will increase funding of EFCC and ICPC; it will protect whistle blowers; it will provide logistics support to the CCB;³⁰⁷ it will enforce the *Anti-corruption and Economic Crimes Act (2002)*; it will establish and enhance ministerial anti-corruption units; it will strengthen the Audit Office; it will strengthen Parliamentary oversight;³⁰⁸ and it will improve the legal framework against money laundering.³⁰⁹

Construction of independent, professional civil services capable of delivering globally competitive policies and programs oriented towards providing public goods

The APRM report concluded that the Nigerian civil service is mainly corrupt and ineffective. It was found to be poorly remunerated, equipped and motivated. Indeed, it was seen that government at all levels is unable to provide adequate public goods and services, with its agencies lacking the necessary institutional infrastructure required to supply goods and services efficiently.³¹⁰ The quality of recruitment to the civil service is seen to be compromised by dependence on extraneous factors such as nepotism and political influence. It states that government at all levels is unable to provide adequate public goods and services, with corruption and mismanagement of public resources increasingly a hallmark of service delivery and the transaction of official business. It was

³⁰⁶ Ibid., p. 116

³⁰⁷ Ibid., p. 412

³⁰⁸ Ibid., p. 414

³⁰⁹ Ibid., p. 415

³¹⁰ Ibid., p. 107

found that there is a marked lack of transparency about the amount of crude oil extracted at any time by oil companies in Nigeria. The report indicated that it remains difficult to ascertain how much revenue the federal government actually derives from oil. APRM interviews with officials of the Economic and Financial Crimes Commission (EFCC) and Extractive Industries Transparency Initiative (EITI) confirmed that the counting problem about crude oil volumes and related revenues to the government was considered enormous. Nigerian stakeholders told the APRM that they are reluctant and unwilling to pay taxes because they feel that the national and local governments have continued in their failure to provide basic amenities such as water and sewerage, roads, street lighting, schools and health services. They felt that government funds are often channelled towards individuals' pockets instead of being used to develop and deliver services. Further, several stakeholders thought that there is a lack of capacity and accountability in collecting and disbursing tax revenues.³¹¹ The public service was even found to have been plagued by 'ghost workers' whose names are placed on the payroll by corrupt officials to enrich themselves illegally.³¹² The federal government was also found to have practiced unconstitutional interference over the civil service. For example, it is alleged that when the auditor general submitted a report alleging government financial abuses in 2003, the president of the day summarily fired him without consultation and/or approval of either the Federal Civil Service Commission (FCSC) or the Senate, as required by the 1999 constitution.³¹³

With regards to these findings, the APRM Panel report made the following recommendations in the report: the federal civil service should utilise standardized

³¹¹ Ibid., p. 176

³¹² Ibid., p. 106-107

³¹³ Ibid., p. 109

competitiveness, merit, and professional examination bodies during recruitment; professional examination bodies and professional organizations should be involved in the recruitment exercises in order to bring about standardisation, uniformity and transparency;³¹⁴ predictability in the trade sector should be increased by resolving the protectionist / liberalisation inconsistency in Nigeria's trade regime; the government should develop a comprehensive strategy aimed at diversifying the domestic production base and exports away from oil; it should revamp the agricultural sector; and it should conduct a comprehensive survey of the implementation problems confronting the sector.³¹⁵ In response to the APRM findings and recommendations regarding the Nigerian civil service, the government's national plan of action included the following comments, commitments and strategies: it will advocate for adequate funding for overheads and infrastructure for the federal civil service³¹⁶ and it will conduct training workshops, seminars, retreats, periodic review of wages, salaries & other conditions of service.³¹⁷

4.3 Case Studies - Assessment

From both the Kenya and Nigeria APRM country review reports, we can clearly see that, so far, the mechanism is able to produce hard-hitting assessments which do not pull many punches. These reports clearly diagnose and identify elements of neopatrimonial governance and, for the most part, provide sound recommendations on how to address and potentially resolve them through reforms aimed at establishing effective institutional governance. These recommendations and the analysis behind them actually go quite far in potentially contributing to the emergence of constitutional

³¹⁴ Ibid., p. 110

³¹⁵ Ibid., pp. 171-172

³¹⁶ Ibid., p. 412

³¹⁷ Ibid., pp. 445-446

governance and to combating corruption at the strategic policy level. However, the utility of these recommendations suffers somewhat because the APRM does not sufficiently address how to build the capacity of national bureaucracies to deliver the kinds of policies needed for implementation. Indeed, both reports indict the implementation track records of the respective countries, realistically calling into question the value of formal legislation (including the respective constitutions), regulations, and initiatives in face of weak implementation. Ironically, they show that both countries have no shortage of anti-corruption initiatives, although corruption continues to flourish. This supports the position that traditional and existing anti-corruption efforts are mostly insufficient. Overall, the APRM country reviews of Kenya and Nigeria appear to have overcome a design which does not necessarily provide enough detail towards the establishment of true institutional governance. This clearly shows that, to date, many of the components of the APRM are working well in identifying and addressing practical institutional gaps – the Panel, the technical review institutions, the national governing councils, and government openness to a thorough review of their governance. They were not without their omissions, however. For example, the Kenya report failed to diagnose autonomy problems at the Kenyan Electoral Commission, which would become apparent throughout the 2007 national elections.

The process does appear to falter at the NPoA stage, the point at which government is solely involved. There are some interesting prospective commitments in these plans. For example, Kenya pledges to improve its legislation and institutionalization of procurement monitoring, reform recruitment into the civil service, provide constitutional reform (which they subsequently did), increase the financial

autonomy of the legislative and judicial branches, enact political parties legislation outlawing ethnic based-registration, and implement land reform. Nigeria commits to electoral reform, improved financial autonomy for the judiciary and legislature, and to de-linking government expenditure from current oil revenue. However, in both plans there is also much reference to the strengthening and enforcement of existing legislation, as if to say: all right, *now* we will properly enforce these laws and regulations. This is somewhat suspicious. As well, the NPOAs are replete with promises of training, sensitization and capacity building, for the judiciary, for civil servants, and for politicians, and vague promises such as “increase productivity”. The effectiveness, utility and sustainability of these approaches are also highly suspect based on the African experience with implementation of promises thus far. Regarding the Kenyan plan, AfriMap concludes that it “shies away from the difficult political issues, focusing rather on capacity building and resource mobilisation; matters to which even President Kibaki could happily agree – and in many cases had already done so as part of ongoing donor-financed reforms.”³¹⁸ Of course, a most glaring and obvious omission in the Nigerian NPOA is its failure to even address the current immunity from corruption prosecution enjoyed by political leaders. The APRM Panel explicitly recommended that this immunity be expunged. This perhaps very clearly shows a line which will not be crossed.

4.4 Performance of APRM Structures and Follow-through

The APRM Forum

The value-added of the APRM Forum has also greatly disappointed most observers. In practice, the APRM Forum meetings take place on the margins of the AU Summit. Therefore, it is felt that meetings are infrequent, are not long enough (especially

³¹⁸ Manby, p. 2

if there are pressing regional AU issues), and often some of the heads of state are not present, even when their countries are under discussion.³¹⁹ Another concern is that the meetings are often in-camera, so not many details of the discussions are made public.³²⁰ Although there is no publicly available report on the APRM Forum peer review of the Kenya report, Bronwen Manby of AfriMap has been able to provide us with the reactions of Jerry Okungu, a Kenyan journalist and member of Kenya's national NEPAD secretariat who was present at the meeting:

"I counted the number of leaders who spoke after President Kibaki had responded to Dr Machel. They were from Ghana, Ethiopia, South Africa, Rwanda and Nigeria. Not one posed a question to Mr Kibaki. They all praised the report and commended Kenya for being candid, thorough and open. They pledged to support Kenya in seeking solutions to its constitution review and diversity problems. When it was all over, presidents Obasanjo and Mbeki and Prime Minister Meles Zenawi of Ethiopia expressed relief and promised to go on with the process, after realising that it was not a life-and-death situation. Thus, though Kibaki was said to be 'committed to addressing all the issues, among them tribalism, poor corporate management and corruption, which were raised' by the APRM report, he need not expect too critical a review from the other heads of state on his follow-up in practice."³²¹

The Nigeria report did include a summary of the APRM Forum peer review discussion. This has been a commendable growing trend. According to the report, the APRM Panel leader's presentation focused on Nigeria's challenges due to its large and diverse population, its legacy of military rule, and the paradox of extensive poverty despite vast oil wealth. He mentioned the need to improve electoral administration and the ineffectiveness of policy implementation, but did not seem to touch upon issues of corruption.³²² The late Nigerian President Yar'Adua, for his part, highlighted the value of the APRM process in accurately pointing out the challenges of governance and

³¹⁹ Gruzd interview and *APRM Nigeria Country Review Report*

³²⁰ Gruzd interview

³²¹ Manby, p.2

³²² *APRM Nigeria Country Review Report*, pp. 505-506

development and stating that “we in Nigeria appreciate the thoroughness of the process and the audit exercise of governance that was carried out in our country.”³²³ He pledged to improve electoral reform and the management of ethnic diversity. He also made an important statement to the group on the topic of corruption:

We are conscious of the fact that many African countries are listed in the top ranks of the league of corrupt nations by transparency advocates and social analysts. ... we must acknowledge that corruption is a criminal act committed by individuals, corporations or companies, and institutions in collaboration with officials holding public or corporate trust. We cannot deny the reality of pervasive corruption and its debilitating consequences on national development and the quality of life of our people. Our response to corrupt practices is to establish and empower anti-corruption institutions that have the mandate to take the battle both to the grassroots and across international boundaries. We have no intention to blunt anti-corruption war. There will be no official protection for those found guilty in accordance with the law and due process and they will be punished accordingly. Our government will continue to show a demonstrable will and commitment to fight and eradicate corruption and corrupt practices in all facets of our economic and social life.³²⁴

During the meeting, President al-Bashir of Sudan praised Nigeria for signing up to the Extractive Industries Transparency Initiative.³²⁵ The Vice-President of Benin expressed concern about the recurring social and economic instability in the Niger Delta region, and felt that solutions to this instability were not proffered in the APRM CRR.³²⁶ Prime Minister Zenawi of Ethiopia pointed out the elite nature of Nigerian politics, whereby the people are excluded. The Prime Minister of Rwanda commended President Yar’Adua for publicly declaring and publishing his assets upon assuming office. He commended this practice to his colleagues and to all Africans who have a responsibility for financial management.³²⁷ Other interventions covered additional best practices which were not necessarily related to the APRM. Therefore, with the Nigeria peer review as well, there

³²³ Ibid., p. 506

³²⁴ Ibid.

³²⁵ Ibid., p. 511

³²⁶ Ibid., p. 512

³²⁷ Ibid., p. 513

appears to be very little challenge or in-depth discussion of the basic nature of governance in Africa – for example executive dominance.

APRM Follow-through

Once the report and NPoA has been discussed at the Forum, it is meant to be publicly released. Reviewed countries are supposed to provide an annual update to the Forum of progress on their respective NPoAs. There is also widespread disappointment with the quality of the practical application of this monitoring phase. According to AfriMap, there is no serious monitoring exercise of how effectively this is done. Nor are there any sanctions for failure to act. Nor, apparently, is there any real system to ensure that the commitments the government makes address the most important problems highlighted in the APRM review. They also point out that, at the national level, the implementation of the APRM programme of action is also left entirely to the executive, with no formalised role for parliamentarians or civil society to hold the government accountable should it fail to perform.³²⁸

Indeed, a review of the APRM's revamped official website (<http://aprm-au.org/>) reveals several weaknesses of grave concern. As of November 2011, it appears that the country review reports are no longer available on this website, and progress reports from only five countries (Ghana, South Africa, Benin, Burkina Faso, and Uganda) are available. There is also an inactive registration option, which may or may not make the country review reports available. Although the website declares that APRM staff are available for questions, there is absolutely no contact information provided. The website does not provide clear updates on how many countries have gone through the process, nor any tracking system for monitoring how many countries have produced their NPoA

³²⁸ Manby, pp. 2-3

progress reports on time. In essence, the APRM website is somewhat impenetrable. For a mechanism whose very existence is based on transparency and making completed country review reports readily available to the public, this weaknesses is at best curious, and at worst unforgiveable. It does not bode well for the overall seriousness with which public reporting is taken, nor of the overall competence of APRM administration.

AfriMap describes the Kenyan experience in particular, in order to illustrate the vacuum-like environment into which the rest of the APRM process can disappear. They indicate that President Kibaki did not report back to parliament on the APR Forum meeting and on the actions he had committed to take, nor was the report tabled for debate. Although there was some coverage in the media of the APRM Forum discussion of Kenya, this coverage did not generate a real national debate on the report, on the programme of action, or their related implications. The conclusions and recommendations were not widely disseminated throughout the country by the NEPAD-Kenya secretariat or other means. “Even the continental APRM secretariat failed to engage in any serious way with national institutions, such as the Electoral Commission of Kenya or the Kenya National Human Rights Commission, in order to brief them on the conclusions relevant to them and the follow-up role they might play. Without this sort of integration into other national planning systems, debates and oversight mechanisms, the APRM process seems doomed to become little more than a cosmetic exercise without effect in the real world of policy and decision making.”³²⁹

We have also seen that the Kenya APRM country review report clearly identified past problems of ethnic electoral violence fomented by senior government members, and the government pledging to address this issue. However, the same exact problems arose

³²⁹ Manby, pp. 2-3

in the subsequent Kenyan elections of 2008. Several high-ranking Kenyan government Ministers have been indicted by the International Criminal Court for involvement in fomenting this violence. This could be interpreted as an example of a lack of meaningful traction for the APRM in the neopatrimonial backrooms of African regimes. In other APRM cases such as South Africa, going through the process did not at all appear to lead to positive trends in good governance. After going through a review which concluded that corruption in South Africa was worse in perception than in reality, the country elected Jacob Zuma as President, a candidate who had massive allegations of corruption hanging over his head, as he still does today. The post-APRM South African government, under Zuma's leadership, is pushing for a special tribunal to regulate the country's media which would allow the jailing of journalists who violate a vaguely defined "national interest".³³⁰ In discussing the planned tribunal, President Zuma asked whether the media is on "the same wavelength" as the government, and whether the media can "accurately judge government action and performance."³³¹ It is this same media which is revealing details of how Mr. Zuma's family and friends are benefiting financially from their proximity to the President. His administration, perhaps uncoincidentally, has also disbanded the successful and independent Scorpions anti-corruption investigative unit, and replaced it with a new unit under the control of the South African Police Service, whose own leader, Jackie Selebi, has been charged with corruption yet manages to retain his post.

Panel of Eminent Persons

As mentioned above, the Panel is meant to be the crucial linchpin of the APRM process, ensuring its independence, professionalism and credibility. Panel members are

³³⁰ Geoffrey York, "In South Africa, World Cup Party Gives way to Old Strife", in the *Globe and Mail*, August 18, 2010.

³³¹ Ibid.

effectively meant to guide the country review process in each state, and mediate any disagreements among governments, governing council members, and technical review teams. Therefore, the Panel members are supposed to be nonpartisan and independent of the governments under review. Of course, one must keep in mind that the APRM Heads of State are responsible for the nomination and selection of Panel members. The original panel (appointed in May 2003), which has overseen the majority of APRM country reviews to date, was made up of six initial members: Graca Machel (Mozambique), the wife of Nelson Mandela; Adebayo Adedeji (Nigeria), ex-head of UNECA and ex-minister in Nigeria's military-run, coup-generated governments; Marie-Angelique Savane (Senegal), former head of the UN Population Fund's Africa Bureau; Bethuel Kiplagat (Kenya), ex-ambassador under Daniel arap Moi; Dorothy Njeuma, ex-minister of education in Cameroon; and Chris Stals (South Africa), ex-head of the South African Reserve Bank.³³²

We have clearly seen from our analysis above that the Panel has shown a capacity to shepherd hard-hitting country review reports through the system. Ozias Tungwarara believes that the Panel has done a "fairly decent job, particularly Graca Machel, who was able to resolve crucial problems and disagreements surrounding the NGC, and Chris Stals, whose knowledge and expertise on economic governance was extremely useful."³³³ Still other researchers (Taylor, Gruzd, Corrigan, Masterson) do raise concerns about the real independence and objectivity of Panel members, particularly the original composition. They highlight the close links of many of them to the governments under review. Taylor and Gruzd in particular point to the example of Dorothy Njeuma, a

³³² Taylor, pp. 67-68

³³³ Tungwarara interview

member of Cameroon's ruling party who had campaigned for President Paul Biya in the last Cameroonian election³³⁴ – a President who is routinely held up by observers as being one of the worst examples of corruption and neopatrimonialism.³³⁵ Gruzd and Masterson point to widespread concerns about the original Panel Chair, Professor Adedeji, staying on much longer than was planned. The fear was that he has a close relationship to the new APRM Forum Chair, Prime Minister Zenawi of Ethiopia, and was being permitted to stay on longer so that he could sympathetically oversee the Ethiopian APRM country review. Terrence Corrigan recounts that he was among the APRM technical review workers told by one Panel member that the APRM “was in no uncertain terms a government process.”³³⁶ At the very least, there is a perception problem with the independence of the APRM Panel and the fact that it is appointed by reviewee governments. Gruzd and Corrigan also indicate that the independent technical review institutes conducting the reviews often had to resist pressure from Panel members to soften some aspects of the report, and therefore deserve a large part of the credit for the quality of the reports,³³⁷ beyond the fact that they wrote them.

Civil Society

One of the more disappointing aspects of the APRM process has been the overall performance of the broader civil society. Civil society NGC members seem to have done a good job in standing up to governments and contributing heavily to the concerns outlined in the thorough country reports. However, beyond the NGCs, civil society as a whole does not seem to be taking advantage of the opportunities afforded them by the

³³⁴ Gruzd interview

³³⁵ Taylor, p. 68

³³⁶ Corrigan interview

³³⁷ Gruzd and Corrigan interviews

APRM reports to demand more concrete governance reforms.³³⁸ For example, as AfriMap points out, in Nigeria “CSOs have ...been slow to understand the opportunities offered by the APRM, and their participation has remained by and large passive. Only two CSO organisations have developed programmes aimed at promoting NEPAD and the APRM agenda. The others have maintained a sporadic and uncoordinated involvement, mainly consisting of attending meetings. Even the NGO Council has no history of having programmes and projects in this area.”³³⁹

Evidence also shows that the media have not jumped on the information as much as could be expected. As AfriMap observes about the APRM fallout in Kenya, although “... there was some coverage in the media of the APR Forum discussion of Kenya, it did not generate a real national debate on the report and programme of action and their implications. The conclusions and recommendations were not widely disseminated throughout the country.”³⁴⁰

There are certainly capacity and organizational weaknesses in African civil society. Researchers also acknowledge that there is variable space for civil society in APRM countries, with an increase trend in legislation restricting NGOs in Zambia, Uganda, and Ethiopia.³⁴¹ Yet the overall lack of seismic public response, both to the APRM process and its very public and very specific country reports, is a tangible phenomena which should also be considered. It is perhaps the weakness of civil society which ironically turns out to be the weak link of the APRM process. The governments of

³³⁸ Gruzd interview

³³⁹ AfriMap, *The African Peer Review Mechanism: A Compilation of Studies of the Process in Nine African Countries*, 2010, internet, http://www.afri-map.org/english/images/report/AfriMP_APRM_9countries_EN.pdf, accessed November 2011, p. x

³⁴⁰ Ibid.

³⁴¹ Gruzd interview

Kenya and Nigeria, for example, could be fairly seen to have done their respective jobs under the process. They have opened themselves to a robust audit of their governance qualities and have made some, if incomplete, effort towards addressing the subsequent issues raised. It would be unrealistic to expect them to do more than they have without a stronger reaction from their respective polities.

Even the APRM Forum members, given the relatively static and uncontroversial history of African multilateralism, cannot realistically be expected to use the APRM as a way to criticize and wring reforms out of each other. By and large, the APRM process has not generated from civil society demands for transformative change that would alter the status quo of the sub-Saharan African state. This could be consistent with the idea that civil society in Africa remains more interested in a generic form of politics in which competition is based on self-centric materialism rather than policy and performance.

Chapter 5 – Conclusion and Policy Recommendations

Overall, researchers agree that the APRM experience to date demonstrates that for countries which genuinely want to establish real institutional rule, the process can be a key tool.³⁴² They also believe that non-reforming countries could successfully go through all of the steps of the APRM process, the way it is currently designed, without delivering any concrete reform. Thus far, countries whose review reports have been released could be considered to be relatively reformist, including our case studies, Kenya and Nigeria. In these two cases, the APRM country review reports were extremely useful in diagnosing elements of neopatrimonialism and in suggesting ways of establishing institutional rule to displace it. However, the process design shows a flaw in its leniency regarding the subsequent national plans of action and follow-through. At these crucial steps, the national plans of action, and post-review behaviours of even relative democratic reformers such as Kenya, Nigeria, and even South Africa, fail to demonstrate that the APRM can reliably generate movement towards true constitutionalism, effectively address corruption at the strategic policy level, or credibly build the state's bureaucratic capacity to design and deliver appropriate development policy. Given this reality, many observers are rightfully dubious about how the process will proceed in other signatory states such as Cameroon and Sudan, not generally known for their reformist credentials, and which may take more forceful advantage of the leeway granted to governments under the mechanism.

The APRM does identify institutional gaps in participating African states, and provides solid recommendations for establishing true institutional governance, and therefore for displacing neopatrimonialism, in states where there is already sufficient

³⁴² Gruzd, Turiansky, Corrigan, and Petlane interviews

political will for genuine reform. Yet genuine reforming states do not need the APRM to generate this reform. Furthermore, the evidence suggests that the APRM, as designed and experienced thus far, would not provide sufficient influence over participating regimes having no interest in reform. This may be the main reason why countries such as Cameroon have joined. Neither can it be expected to have much effect on poorly governed countries who do not bother to accede to the APRM. Prime Minister Zenawi of Ethiopia is the current Chair of the APRM Forum, having taken over from APRM visionaries such as Presidents Mbeki of South Africa and Obasanjo of Nigeria. Zenawi is one of those leaders who may very well have a different idea about the practical application of the APRM than Mbeki and Obasanjo. Ethiopia is also a country that is known to be overtly restricting space for civil society. As Grant Masterson points out, a further challenge for the APRM is how well a new generation of leaders subscribe to the original principles of the APRM. It is interesting to note that the release of the Ethiopia report is currently delayed by about five months. A cynic may link this fact to the current state of the APRM's official website. Furthermore, given the voluntary nature of the APRM, many other African countries, including those such as Zimbabwe, have not joined the APRM and continue to operate as is their wont. We can infer from this that only a much stronger and mandatory mechanism could have sufficient influence on non-reforming countries to establish true institutional rule and effectively displace neopatrimonialism.

The APRM has proven to be an excellent diagnostic tool – it is revolutionary in terms of how deeply it diagnoses and addresses the institutional gaps in African states. It is also revolutionary in the depth of the concrete, specific recommendations it provides

for each participating state to address these gaps and to establish true institutional governance. In this sense, the APRM does have significant value. It can conceivably be used effectively by civil society groups to pressure governments to enable concrete reform. However, the APRM's design and execution includes several fatal flaws at the back end. First, participating governments have total control over the national plans of action, and these are subsequently of substandard quality, mostly failing to address the most crucial of APRM recommendations. Secondly, they are under no real pressure to actually follow through with their plans of action. Even in the cases of Kenya, Nigeria, and South Africa, we can see a disregard for APRM recommendations either in the national plans of action, or in subsequent government activity. Third, the value-added of the peer review, where participating governments discuss each other's reports, is minimal. Finally, the APRM Secretariat seems to have failed in making completed country review reports easily accessible to the public. Therefore, the APRM, while a noble and useful exercise, cannot at this point be described as a key variable in the establishment of true institutional rule in Africa in place of neopatrimonialism.

Moving forward, it will be crucial for APRM observers to monitor key areas of concern in the coming years. For example, will the Panel of Eminent Persons be able to continue protecting the work of the APRM technical research institutes from government interference? Will the selection of the technical research institutes continue to be based on merit, and will they be able to continue producing such robust reports? The upcoming APRM country review report on Ethiopia, once it is finally available publicly, will be instructive in this regard. If the APRM is to actually contribute towards the establishment of true institutional governance in place of neopatrimonialism in Africa, several policy

recommendations are apparent, particularly in light of the unreliable level of political will among the ruling elite across the continent, all of which are related to the inordinate control governments have over the process. First, some form of mandatory approach should be considered for the APRM, perhaps linked to AU membership. Second, the peer review approach should be adjusted to mitigate against its perceived conflict of interest. This could entail the formal addition of external, independent actors to the APRM Forum. These could include civil society representatives from the respective national APRM governing councils, technical research institutes, and some appropriate international body acceptable to participants (perhaps the United Nations Development Programme, which coordinates donor support for the APRM). Third, APRM Forum reviews should be discussed as a formal agenda item of AU Summits, rather than only on the margins of these meetings. Fourth, independent civil society representatives from the respective governing councils, as well as relevant line ministries, should play a formal role in the development of the NpoAs. Finally, the process for monitoring progress on NpoAs must be strengthened significantly, with clear and mandatory deadlines and reporting requirements. Civil society representatives from the respective national APRM governing councils should also be formally included in this monitoring process.

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ANNEX A
ETHICS CLEARANCE FORM

Ethics Clearance Form

This is to certify that the Carleton University Research Ethics Board has examined the application for ethical clearance. The REB found the research project to meet appropriate ethical standards as outlined in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* and, the *Carleton University Policies and Procedures for the Ethical Conduct of Research*.

New clearance

Renewal of original clearance

Original date of clearance:

Date of clearance **23 May 2009**
Researcher **Stephane Duval**
Status **M.A. student**
Department **Department of Political Science**
Supervisor **Prof. Chris Brown**
Title of project **Does the African Peer Review Mechanism Signal the Decline of Personal Rule in Africa?**

Ethics approval expires on: **31 May 2010**

All researchers are governed by the following conditions:

Annual Status Report: You are required to submit an Annual Status Report to either renew clearance or close the file. Failure to submit the Annual Status Report will result in the immediate suspension of the project. Funded projects will have accounts suspended until the report is submitted and approved.

Changes to the project: Any changes to the project must be submitted to the Carleton University Research Ethics Committee for approval. All changes must be approved prior to the continuance of the research.

Adverse events: Should any participant suffer adversely from their participation in the project you are required to report the matter to the Carleton University Research Ethics Committee. You must submit a written record of the event and indicate what steps you have taken to resolve the situation.

Suspension or termination of approval: Failure to conduct the research in accordance with the principles of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* and the *Carleton University Policies and Procedures for the Ethical Conduct of Research* may result in the suspension or termination of the research project.

Leslie J. MacDonald-Hicks
Research Ethics Committee Coordinator
For the Chair of the Carleton University Research Ethics Board
Prof. Antonio Gualtieri

ANNEX B
LIST OF INTERVIEWEES

Terrence Corrigan, Researcher, South African Institute of International Affairs, Governance and APRM Programme. Interview, Johannesburg, South Africa. July 8, 2009.

Steven Gruzd, Programme Head, South African Institute of International Affairs, Governance and APRM Programme. Interview, Johannesburg, South Africa. July 8, 2009.

Grant Masterson, Senior Programme Officer, Electoral Institute for the Sustainability of Democracy in Africa. Interview, Johannesburg, South Africa, July 17, 2009

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