

# **The African Union Organs and the African Peer Review Mechanism: Implications for Regional Integration in the Context of Continental Structures**

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## **Introduction**

More than two years have elapsed since the birth of the new-look African Union (AU), during which time several of the major organs mandated by the AU have come into existence, and various others are due to be inaugurated in the near future. The AU also embraced as its developmental framework, the New Partnership for Africa's Development (NEPAD), launched in October 2001.

While the ideal of a politically and economically integrated continent isn't new, the energy created by the genesis of the AU and its organs has rekindled optimism for an African renaissance. Significantly, the voluntary African Peer Review Mechanism (APRM) has been introduced as a vehicle for improving governance standards and holding corrupt governments to account. The first four countries are to undergo review during 2004.

The past decade has also seen regional integration structures progress from theoretical talk-shops to practical implementation in many spheres. Institutions that were originally created primarily for economic reasons have expanded their scope to include political and security considerations (and, as in the case of SADC, vice versa).

This paper briefly explores the relationship between regional structures such as SADC and the continental union, looking at how established regional organs and substructures can dovetail (or not), with the corresponding continental ones, many of which are newly formed. It seeks to determine the potential for synergy and complementarity between these organs and to examine whether structures are being duplicated.

Since the APRM is perhaps the single most innovative initiative of the AU, the paper attempts an analysis of the APRM as a tool that could have significant impacts on regional integration and regional development and explores the potential for regional structures such as SADC to become actively involved in the peer review process.

Ultimately, the paper attempts to answer the question of whether the AU's (and especially NEPAD's) laudable but lofty aims can, in part, be operationalised via regional bodies.

## **Continental Integration: Marginalisation or Collective Power?**

Analysts offer various reasons for Africa's socio-economic decline over the last fifty years, ranging from colonial legacies and globalisation to corrupt leadership and ongoing conflict. (Amuwo 2002; Chabal 2002; Taylor 2003).

Notwithstanding this, a key question is whether "continentalisation" in the envisaged AU context will further marginalise already embattled poor regions and create regional

hegemonies, or whether it could be used (particularly via regional bodies) to give collective bargaining power to previously voiceless states and regions?

Proponents of pan-Africanism point to the economic and political power wielded by the United States of America (USA) and the European Union (EU), and argue that Africans must pool resources and act as a federation to make measurable impacts in the global arena. Sustainable socio-economic development in any African state, they contend, cannot occur in isolation, because Africa's peoples have common colonial legacies and shared cultures in addition to contiguous borders.

Already, united action by African states has resulted in some small victories, notably in the trade arena. The collective dispute action against first-world cotton subsidies by the West African cotton-producing states in the World Trade Organisation (WTO) is a significant example of collective influence.

Conversely, critics of African integration maintain that the net overall effect will be increased marginalisation of the poorest countries and domination of poor states by those of their neighbours that have achieved some growth. This scenario could prolong conflicts currently plaguing the continent and could possibly foment increased violence.

The penetration of various South African companies into other states in Africa is an oft-cited example. At the NEPAD Agriculture Conference in December 2003, for example, there were claims that South African supermarkets have had a negative impact on small-scale farmers and small businesses in some countries. South African gem mining companies operating in Africa have also come under fire for failing to benefit the local populations since most of the beneficiation (cutting and polishing) is done outside the country where the gems are sourced. (Kajee and Gruzd, 2003:4)

There are also concerns in the agriculture and textiles sectors that trade liberalisation could cause key sectors of certain African economies to collapse. There has been substantial progress by regional economic communities (RECs) such as SADC towards phased economic integration, with special provisos for sensitive commodities. RECs are familiar with regional concerns and have a critical role in maintaining these phased integration frameworks and harmonizing them with continental plans.

The AU acknowledges this and seeks to "co-ordinate and harmonize policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union" (AU, 2002:Article 3, Objective 1).

However, significant practical barriers to integration exist, at both regional and continental levels. These include the infrastructure gaps and lack of standardisation in various sectors. For example, the establishment of regional and continental rail transport corridors are stymied by the discrepancies in the gauge systems of Tanzania, Uganda and Kenya (which are all built to 1000mm or metre gauge) and the rest of SADC countries, where they are built to Cape gauge of 1067 mm.(SAIIA, 2003: 10). Limited transport and ICT infrastructure and poor maintenance of existing infrastructure are additional

impediments, some of which NEPAD has prioritised in its project plans. Political barriers include onerous visa and customs controls that restrict the movement of labour and goods.

### **Continental Political Structures and their Regional Counterparts**

Significant economic integration must occur in tandem with political integration. Indeed, integration is intrinsically a political process, predicated upon substantial political unity and the concomitant ceding of some sovereignty. The issue of sovereignty has been a sensitive one in Africa, often impeding moves towards political convergence.

The AU's Constitutive Act of 2002 specifically mandated the formation of nine separate organs and provided for the establishment of others at the discretion of the AU Assembly. Currently about 20 organs have been established, of which most are as yet loosely defined. These include the AU Commission; the Pan African Parliament (PAP); the Peace and Security Council (PSC); the Court of Justice; the Court for Human and People's Rights; and the Investment and Central Banks. There are also various sectoral commissions and committees.

Various regional initiatives such as customs unions and free trade zones have long-range implications for continental integration. While the AU is far from forming an integrated monetary zone, for example, the long-term implications of the recent launch of a common monetary area in West Africa, must be a factor for consideration by the AU Banks and other organs.

Establishment of the various AU organs, and especially NEPAD's APRM, signifies a willingness to relinquish some sovereignty in pursuit of the continental public good. However, the AU Commission (2004:4) notes that fostering political will to achieve integration remains a major challenge and "requires that member states delegate power and progressively transfer sovereignty at both sub-regional and continental levels".

The AU structures often have regional counterparts with similar functions: the SADC Parliamentary Forum and the East African Legislative Assembly may be regarded as the regional equivalents of the PAP, while the SADC Organ on Politics, Defence and Security (OPDS) is potentially the best-developed regional counterpart of the PSC. The challenge here is to align existing regional structures with continental ones, avoiding unnecessary duplication of bureaucracies and ensuring constant, unambiguous communication between them.

The regional structures and the AU both recognise this need for alignment. According to Isaksen (2002:46), the RECs "form building blocks for the future continental economic community". He notes that, in 2001, SADC Foreign Ministers acknowledged the linkage between NEPAD and SADC's Regional Indicative Strategic Development Plan (RISDP). "...the RISDP and the SADC restructuring process should take NEPAD into account, and where appropriate, SADC and NEPAD programmes should be harmonised." (Isaksen, 2002:46). Similarly, the AU Commission aims to "ensure that the momentum of continental integration is irreversible by promoting regional cooperation" via

“strengthening of institutional linkages between the AU and the RECs” and “adoption of common policies in specific areas” (AU Commission, 2004:15).

While much has been written about economic integration, there has been limited consideration of the structures and organs that will potentially facilitate political integration. It therefore behoves us to examine some of these.

### ***Parliamentary and Judicial Structures: Regional and Continental Implications***

The PAP, inaugurated in March 2004, is in its infancy. By contrast, the SADC Parliamentary Forum and the East and West African Legislative Assemblies are longer established and may offer significant lessons.

The newly established African Court for Human and Peoples' Rights (ACHPR) and the African Court of Justice, will face the challenges of upholding the rule of law and implementing justice on the continent. A key consideration is the divide between national and multinational legal and judicial systems. The bid to host the PAP in Libya, a country whose national government is not democratically elected, highlights the nature of this challenge.

Currently, members of the PAP are seconded by their national parliaments, in a similar manner to the SADC PF, although there are plans for the PAP to have some form of elected representation in the future.

In this event, there may be value in seconding the same elected PAP MP to also serve in the relevant regional parliament, with a view to synchronizing regional policy with continental initiatives.

The PAP presently operates in a purely advisory capacity. Political integration in the long-term will necessitate greater legislative power for the PAP and the regional legislatures. In the past, member states have ignored the recommendations made by regional parliaments.

Although the AU undertakes to “promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments” (AU, 2002: Objective 3) and has ratified various treaties and protocols on rights issues, corruption and democracy; the domestic legislation in many member states deviates from the continental pledges. There has been little attempt by national parliaments to align domestic legislation with continental or international instruments. Even in nations where domestic legislation corresponds with the continental protocols, failure to uphold the law is common. Often, military regimes or other forms of state-sanctioned repression hamper implementation of the law and abet miscarriage of justice.

Until the power to enact and enforce legislation on issues that impact on all Africans is ceded to the PAP and other relevant bodies, abuse of basic human rights will continue unchecked in some areas. The differentiation of scope and focus between national, regional and continental legislatures is a crucial consideration and should be prioritised

by the PAP in its formative stages. Clarity regarding the limits of national sovereignty, and the precedence of regional and continental law, where appropriate, is necessary. The role and reach of supra-national judicial structures and of other monitoring and enforcement mechanisms should be elucidated.

Another tricky area where RECs can play a role is the incorporation of traditional legal and justice systems into the continental one. The potential value of traditional measures was highlighted by Rwanda's 'gacaca' system, which used the community-based "grass courts" to bring justice to genocide victims in a situation where the formal system had collapsed (since most legal professionals were dead). Apart from alleviating pressure on the overcrowded prison system, regional reconciliation was enhanced as refugees returned from neighbouring countries and cross-border ties were resumed.

***Peace and Security Structures: The Relationship between the PSC and the SADC Organ on Politics, Defence and Security***

Despite the ongoing restructuring within SADC, it is fair to say that the SADC OPDS has made some progress towards regional security integration, particularly in a strictly military sense. Its Inter-State Defence and Security sub-Committee (ISDSC), which deals with military and intelligence cooperation, is staffed by defence officials from member countries and has been a well-functioning body since the late 1990s. (Hammerstad, 2003: 149). Since the PSC will operate an African Standby Force which will essentially be operationalised through five sub-regional standby brigades (Wannenberg and Kajee, 2003: 10), there is considerable potential for synergy between the OPDS and the PSC, which should be exploited to prevent duplication. The OPDS could also contribute in an advisory capacity for PSC operations in other regions.

Two crucial issues are: how to manage the relationship between the PSC and regional structures in a complementary manner rather than an antagonistic one so that resources are optimally used and can regional military brigades provide non-partisan intervention in the context of ethnic and political loyalties? These questions are likely to remain unanswered until the PSC becomes operational and grapples with the realities of peacekeeping in Africa. The recent move by the AU to send peacekeepers to Darfur in Sudan will provide a litmus test of the PSC's efficacy.

From a softer, human security viewpoint, the OPDS's Inter-State Politics and Diplomacy sub-Committee (ISPDC), is not yet fully operational and has significant overlaps with other directorates. As more human security-related issues come under the ISPDC's auspices, it may also contribute value to other AU organs. The issue of refugees and displaced persons, for example, now falls under the ISPDC and may have relevance for the ACHPR and the Commission as well as the PSC. Hammerstad (2003:152) recommends that the ISPDC adopt a limited but high-priority human security agenda that is manageable.

While Landsberg (2002: 19) recognizes the synergies between SADC's priorities and those of NEPAD and the AU in the peace and security sector, he identifies the harmonisation of priorities as the crucial challenge. He further argues that the SADC

OPDS should play a key role in the APRM at regional level, since its two substructures - the ISDSC and the ISPDC - are “well-placed to adapt APRM to SADC conditions and dynamics”. (Landsberg, 2002: 20). Conversely, Hammerstad (2003: 152) views the PSC and APRM as potential obstacles to the OPSD, arguing that it is in danger of being overshadowed by the AU initiatives.

### **The African Peer Review Mechanism: Implications for Regional Bodies**

In March 2003, a small group of African leaders made a groundbreaking decision when they agreed to “open their books” and allow their governments to be scrutinised by their peers via the APRM. Since then, a total of twenty three countries have acceded to peer review, and several others have indicated that they will join the APRM in the near future.

In contrast with the old Organisation of African Unity (OAU) which prioritised state sovereignty and allowed for very little intervention in the governance of member states, the AU’s Constitutive Act made specific provisions for intervention in member states for security purposes (Article 5) and provided for sanctions against any “member state that fails to comply with the decisions and policies of the Union.” (AU 2002, Article 23). At the time, this was seen as a positive move away from blind respect for sovereignty towards a situation where the union would intervene in countries that disregarded universal principles of good governance and democracy. The APRM was expected to be the mechanism through which the AU would be given “teeth” to act in such situations. However, the decision to make the APRM a voluntary mechanism without explicit penalties or sanctions is widely regarded to have considerably weakened the initiative.

Furthermore, late in 2002, conflicting statements from the South African presidency and foreign affairs ministry seemed to indicate that the APRM would focus on economic governance and leave the political governance, democracy and human rights issues to the African Union, were viewed by many as an attempt to appease those African leaders who would be inclined to reject APRM on the basis of their poor records in the democracy and human rights arenas. Such a move that would have significantly diluted the scope and impact of peer review, since political governance affects the economic climate and vice versa. In the face of widespread criticism, a statement that APRM would incorporate political governance (with the proviso that this aspect of APRM would be carried out by relevant AU organs such as the ACHPR and PAP as soon as they were operationalised), subsequently clarified the issue. Accountability for aspects of peer review such as human rights and elections has thus been shifted from NEPAD to AU organs that are in their infancy and are currently perceived as lacking the power to effect changes in these areas.

Poor governance in one nation-state inevitably impacts on its neighbours, with major economic and political consequences for the region. In recent years, this has been amply illustrated by the regional impact of the Zimbabwe crisis in Southern Africa (Isaksen, 2002: 29–32) and the Liberian and Ivorian ones in West Africa. Regional destabilisation and insecurity, decreased regional investment and cross-border migration are indirect effects of governance abuse in one or more countries. It thus behoves regional structures to become actively involved in the APRM, supporting the review process where possible

and using it as a tool to drive the development agenda of the RECs. Indeed, SADC's Regional Indicative Strategic Development Plan (RISDP), formally launched in March 2004, specifically embraces NEPAD as a credible and relevant continental framework and positions the RISDP as the vehicle for achieving NEPAD's aims within SADC member states. Peer review is potentially the single NEPAD initiative that could accelerate regional development through compliance. REC's and their organs can leverage their knowledge and constituency base to play an important role in this regard.

### ***APRM Structures and Organisation***

The heads of state of the APRM countries comprise the APR Forum, the highest-level structure at the continental level, which is where the actual "peer pressure" will ultimately be exerted. The APR Forum has appointed a panel of seven eminent persons – Africans of high stature and integrity from the various regions of the continent – tasked with overseeing the process and ensuring its credibility. Ms Marie Angelique Savane of Senegal is the current chairperson of the panel. The continental APRM Secretariat in South Africa is responsible for coordination and implementation of the review process.

At the national level, each APRM country must establish an APRM focal point (preferably at ministerial level or higher), to facilitate access to the head of state and relevant ministries that will participate in the review. (APR Forum 2004: 6). As recommended by the eminent persons to the APR Forum, the country must also set up a national coordinating mechanism, including all the key government and civil society stakeholders that should be part of the review. (APR Forum 2004: 6). The exact nature of the national focal points and coordinating mechanism varies from one country to another, depending on each country's resources and geo-political makeup. Ghana, for example, has a dedicated Ministry for Nepad, via which these structures are established. Kenya, on the other hand, established a semi-autonomous national Nepad Secretariat, which is currently setting up the APR structures.

Regional structures have been slow to grasp the opportunities offered by involvement in NEPAD and peer review. Both NEPAD and APRM have been widely perceived as initiatives driven by executive levels of government, with little or no formal involvement of parliaments and government departments (World Bank Institute, 2004). Since many regional organs are resourced via secondments from government departments and the legislatures of the member states, ownership of NEPAD initiatives at regional level has been weak. East African countries took the lead last year, when they mandated the Kenya NEPAD Secretariat to serve as the Regional Secretariat for East Africa.

As several southern African countries have agreed to be peer reviewed, and others have indicated that they are considering participation, SADC could play a valuable coordinating role at the regional level. Several committees and structures that already exist within SADC and other RECs could feed valuable information into the four core areas of the APRM (political governance and democracy, economic governance, corporate governance and socio-economic development). Since APRM has been widely mooted as an all-African initiative, it is envisaged that peer review will be funded primarily via a contribution of \$100,000 from each country that accedes to being reviewed, but thus far several countries have failed to meet this obligation due to resource

constraints. Furthermore, various analysts have estimated that this figure will be insufficient to adequately assess the governance situation in the depth that is specified by the APRM documents, with Herbert (2003:10) suggesting that a proper analysis would require this amount to be quadrupled.

According to Landsberg (2002: 20) “one way of enhancing the (peer review) mechanism would be to devolve it down to the regional level. Thus the SADC should play a role in the peer review process, and its political and diplomatic structures in particular should play a key role.” As yet, no institutional links exist. In areas where SADC has existing capacity, it could share human and technical resources with the APR, perhaps even offering some staff as members of the review teams and providing an infrastructural node from where review team for countries in the region could operate. Utilizing existing capacity within the RECs for APRM could significantly decrease the financial constraints on the peer review process.

### ***The Review Process – What role for Regional Structures?***

The APRM comprises five phases. In the initial step, the country to be reviewed establishes its APR Focal Point and National Mechanism, completes a self-assessment questionnaire and develops a draft plan of action. In parallel with this, the continental APRM secretariat (with the help of various partner institutions) collects background documentation on the country and identifies the major governance challenges facing the country, compiling a “Big Issues Paper”. If further in-depth analysis is required, the secretariat will undertake technical assessments on these big issues.

The second phase is the country review visit, where a review team, headed by one of the eminent persons and including experts in each of the four areas of peer review, visits the country and conducts a series of interviews and investigations in order to assess the governance climate within the country.

Next, the team compiles its country report and shares this with the government of the review country. Significantly, the government cannot change or edit the report, but its comments are attached as an appendix to the report.

Fourth, the eminent persons review the report and make recommendations to the APR Forum. Fellow leaders in the Forum discuss with the head of the review country how they can support the review country to implement its action plan in the period until the next review.

Lastly, the report is made public and is tabled in various AU structures such as the Pan African Parliament.

As mentioned, Regional bodies have the potential to make meaningful contributions at various phases in the process. Reports and surveys undertaken by the RECs in a review country or region should be submitted as background documentation to the continental secretariat (SADC election observer missions, trade integration reports, etcetera). Regional structures can offer technical expertise, where relevant, to the review country as

it undertakes its self-assessment, and to the APR Secretariat if technical analyses are conducted.

For countries where the political or economic situation has widespread regional effects, organs of the RECs can highlight areas of concern by making formal written and oral submissions to the APR Secretariat, to the eminent persons and to the country review team at various stages in the review process. In the case of SADC, for example, the parliamentary forum's Standing Committee on Regional Integration could make a submission on the bureaucratic or legal barriers in the review country that hamper intra-regional trade and discourage investment. Similarly, the Gender Advisory Team and Election Observer Missions can provide in-depth and up-to-date knowledge of the country's situation regarding gender rights and the freedom and fairness of elections respectively.

The regional structures can play a crucial role in maintaining the integrity of the APRM, as they can focus attention on areas of concern that the review country might otherwise be inclined to conceal. In addition, regional structures can be key players in ensuring that the recommendations emanating from the review are indeed being implemented in the inter-review phase. The issues that are likely to emerge from peer review, such as curbing corruption in all sectors and improving delivery of basic services, are already on the agenda of many regional organs. The RECs can use the peer review as a catalyst for change in these spheres, thereby accelerating regional development. However, the latest (2004) SADC Summit in Mauritius did issue new guidelines on free elections but did not provide links with the APRM.

### **Using Regional Bodies to Implement Continental Plans: Potential Advantages and Limitations**

The advantages are clear: regional bodies have the opportunity to mobilise resources from the continent and use these to drive the regional development agenda and to promote stability and investment in the region. But the disadvantages are also manifest: the potential for unnecessary and inefficient duplication of structures and bureaucracies is huge. The AU needs to carefully audit existing regional structures, assessing their organisational capacity and efficiency levels, before incorporating them as feeder mechanisms for the continental organs. This presupposes additional resourcing where necessary and streamlining in cases of inefficient resource use.

Management and communication are key issues in realising the AU Commission's vision (2004: 8) that RECS will transform into comprehensive Regional Integration Communities (RICs), responsible for political, social and economic integration at regional level. RECs will eventually "evolve from intergovernmental organisations to a Confederation and later, Federation" (AU Commission, 2004:15). Poor communication is already evident within the continental NEPAD and APRM secretariats, with extreme difficulty encountered during recent efforts to access basic information. Managers of AU organs need to acknowledge the shortcomings regarding communication and take concerted action to rectify this.

According to the AU Commission (2004:16) “Regional institutions will play an increasingly vital role in the debate on (harmonizing) regional policies”, particularly macro-economic policies and social programmes. Indeed, the commission anticipates the emergence of regional and continental citizenships as a result. Whether this vision can be realised depends largely on the degree of citizen ownership of regional and continental initiatives, in particular the African Peer Review Mechanism.

While it is regrettable that responsibility for the political aspects of peer review have been handed to AU institutions (eg. The PAP) that are relatively new and perceived as being ineffectual for the time being, this opens up space for longer-lived REC organs to play a meaningful role in the APRM and to use this to accelerate regional integration initiatives. While peer review per se does not aim at enhancing integration, increased regional integration could be a significant offshoot of the APRM process. Regional bodies have unprecedented opportunities to develop mutually advantageous relationships with continental ones, as the various continental organs and mechanisms come on-line. A missed opportunity could mean that the regional structures wither in the shadow of the continental imperatives, which are perceived as more “glamorous” and are thus often better resourced. On the other hand, an opportunity grasped may be the conduit for developmental progress in a given sphere of activity within the region, and may channel human, technical and financial resources to the region that could simultaneously accelerate regional integration plans such as SADC’s RISDP.

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