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Grist for the Sceptic's Mill: Rwanda and the African Peer Review Mechanism

Eduard Jordaan

However much Ian Taylor's (2005) authoritative book on the New Partnership for Africa's Development (NEPAD) wants to be upbeat about the possibility that this ambitious plan will lead to Africa's revival, the gap between rhetoric and reality leaves him hardly able to express any such hope. Taylor is particularly pessimistic about the likelihood that NEPAD and its flagship initiative, the African Peer Review Mechanism (APRM), will lead to greater democratisation and respect for human rights, an assessment he bases on the dubious democratic credentials and commitments of most of NEPAD and Africa's leaders and the strength of this elite's pan-African solidarity, and on the view that NEPAD's commitments will not be able to displace the neopatrimonial governance that characterises most African states (also Chabal 2002). On the whole, I agree with Taylor's diagnosis of NEPAD and the APRM. But, because the APRM is still in its infancy, because it is still not clear how the process would actually work, because it has been conducted in a manner so opaque and inaccessible as to border on secrecy, and because the process has moved along since Taylor's book was written, we might wonder if his scepticism has been premature. A particularly important step for NEPAD has been the completion of the APRM process by three countries (Ghana, Kenya and Rwanda), which makes it possible to base an evaluation of the likelihood that the APRM will lead to greater democratisation on evidence somewhat more substantial. Rwanda, as the least democratic country of the three that have completed the process – it is the only one of the three that Freedom House (2006) rates as 'unfree' – offers a particularly good opportunity to investigate the ability and resolve of the APRM to secure constitutional democracy with effective checks and balances, and respect for human rights and for the rule of law in participating countries (NEPAD Secretariat 2003c).

This article intends to show that it is extremely unlikely that the APRM will bend Rwanda towards greater democracy and respect for political freedom, for at least three reasons. First, the APRM lacks the ability and the will to force deeper democratisation and respect for political rights on a recalcitrant Rwandan government. Second, the APRM holds a rather sanguine view of political governance in Rwanda. To be sure, the country review team (CRT) to Rwanda had some unflattering things to say about the state of democracy and political freedom in the country. Nevertheless, much of the criticism is qualified and wavering, couched in

narrow technocratic language, naïve in that it views the mere creation of new institutions and laws as evidence of democratic commitment, and, most problematically, withdrawn during the latter stages of the peer review process. Third, the APR Heads of State Forum (APR Forum), the highest decision-making body in the APRM, has already ratified a Rwandan programme of action that ignores issues of democracy and political freedom, even though the programme of action is the document in which the country under review is supposed to outline how it intends to meet the commitments stipulated in the foundational NEPAD Declaration on Democracy, Political, Economic and Corporate Governance. The timidity and helplessness of the peer reviewers in the face of an oppressive but unrepentant Rwandan government therefore continues to cast serious doubts on the integrity, meaningfulness and value of the APRM. It is, however, not clear what significance the failure of the APRM in Rwanda holds for the wider NEPAD initiative, especially since the APRM seems to function quite autonomously from NEPAD, while 'NEPAD', in turn, entails little more than the slapping of an institutional affiliation onto various quite independent development projects throughout Africa (see NEPAD Secretariat 2006b).

This article consists of six further sections. Section one gives a brief overview of the five stages of the APRM and also discusses the powerlessness of the APRM. Section two focuses on the flaws in Rwanda's self-assessment process (stage one of the APRM process), while section three considers the findings of the country review mission to Rwanda (stages two and three). Section four considers the Rwandan government's response to the country review team findings (part of stage three). Section five addresses the withdrawal of much of the country review team's earlier criticism by the Panel of Eminent Persons (APR Panel), as well as the gaps in the Rwandan government's final (and ratified) programme of action (stages four and five). Section six offers a brief conclusion.

The Meekness of the APRM

The African peer review process consists of five stages. During stage one, the country under review writes a report in which it assesses its performance in four thematic areas: democracy and good political governance (although the word 'good' is dropped in certain documents, for example, NEPAD Secretariat 2003c), economic governance and management, corporate governance, and socio-economic development. Part of the first stage is the drafting of a programme of action that describes how the country under review intends to address the governance shortcomings that were exposed during the self-assessment process. During stage two, a CRT visits the country, where it conducts "the widest possible range of consultations" (NEPAD Secretariat 2002a) with members of the government, parliament, political parties, civil society, and international organisations. During stage three, under the auspices of the APR Panel, the CRT prepares a report based on desk research and information obtained during their meetings in stage two. As part of stage three

[t]he draft report is first discussed with the government concerned. Those discussions will be designed to ensure the accuracy of the information and to provide the government with an opportunity to react to the APR team's findings and to put forward its own views on how the identified shortcomings may be addressed. These responses of the government will be appended to the Team's report. (NEPAD Secretariat 2003b:8)

This is an extremely worrying step for its wilful exclusion of civil society oversight in a process that professes to be participatory, strengthening Taylor's suspicion that the APRM is unlikely to jeopardise solidarity among Africa's elites (Taylor 2005:67–74). During stage four the APR Panel's report and the final programme of action are sent to the APR Forum "for consideration and formulation of actions deemed necessary in accordance with the mandate of the APR Forum" (NEPAD Secretariat 2003b:1). The fifth stage entails the formal and public tabling of the report in select African structures, such as the Pan-African Parliament, which is to take place at least six months after the report was considered by the APR Forum.

From the onset, questions were raised about the APRM's ability to ensure compliance with NEPAD principles of democracy and political freedom, reservations that were set against a history that saw African governments trample on these principles without fear of rebuke by other governments on the continent (Kanuma 2002; Olukoshi 2002). To assuage these concerns, the APRM base document includes the promise that, failing constructive dialogue, "appropriate measures" will be taken against governments that do not display "the necessary political will" to "rectify the identified shortcomings" (NEPAD Secretariat 2002a). However, the content of these "appropriate measures" has never been specified. Furthermore, in later documents, reference to "appropriate measures" has been removed (for example, NEPAD Secretariat 2006a:21). At one point it seemed as though countries that failed to comply with APRM standards would forfeit a certain amount of foreign aid, given that NEPAD pledged "to urge donor governments and agencies ... to come to the assistance" of those countries that showed a "demonstrable will" to address identified governance deficiencies (NEPAD Secretariat 2002a; *ibid* 2006a:21–2). However, even a punitive measure as mild as losing out on a potential increase in aid has been disavowed. In a recent press statement, the Executive Director of the APRM Secretariat, Bernard Kouassi, iterated that, since the APRM is

[a] peer learning and experience sharing process, it should not be interpreted as a score card of pass or fail, or a conditionality for donor assistance. It may be that some donors and development partners could use the results of the APRM assessments or reviews to make decisions on aid and development assistance, but this is not the primary purpose of the APRM nor its intention. (NEPAD Secretariat 2005c)

Having renounced all punitive capabilities, the APRM now describes its role in the introduction to the Rwandan country review report in the following way:

It must be stated that it was not a function of the CRM [Country Review Mission] or Panel to make its own assessments of the situation in Rwanda. The task of the CRM in the APR process is indeed clearly identified in the AU Document on the African Peer Review Mechanism Organisation and Procedures: 'The visit is an opportunity for the APRM Team to discuss the draft Programme of Action that the country has drawn up to improve their governance and socio-economic development, to provide positive reinforcement for the sound aspects, and to address identified weaknesses and shortcomings in the various areas of governance and development'. *The main emphasis in the process rests with what the country itself is prepared and able to produce. The APRM is, after all, structured on the non-negotiable principles of national ownership and leadership, and self-assessment.* (NEPAD Secretariat 2006a:27, emphasis added)

In short, even the "peer learning and experience sharing" element of the APRM has been reduced; paradoxically we are informed that *peer* review is "structured on" *self*-review. This leaves one to wonder about the relevance of bodies such as the APR Panel and the APR Forum, which stand relieved of burdens of authority and ensuring compliance with NEPAD standards.

A generous interpretation of this reduction of external or peer authority and responsibility vis-à-vis that of the government under review would be that it stems from an acknowledgement that an "ongoing dialogue" between peers and the government under review is a misnomer, as the Rwandan experience illustrates. After acceding to the APRM on March 9, 2003, the actual process was kicked off a year later (March 24–26, 2004) when about 200 "stakeholders" held their first workshop in Kigali. Official peer interaction between Rwanda and the continental APRM structures consisted of a visit by an advance team to assess Rwanda's preparedness to receive a support mission (February 9–12, 2004); a brief country support mission (June 21–24, 2004); a sharing of country experiences in Algeria (November 20–21, 2004); a country review mission (April 18–30, 2005, see below); a meeting with the APR Panel in Abuja (June 17, 2005); the presentation of the draft country review report to the APR Forum on June 19, 2005; an experience-sharing session at the Sixth Africa Governance Forum, which had the theme "The African Peer Review Mechanism: Challenges and Opportunities" (May 9–11, 2006); and a two-hour "peer review" during the ratification of Rwanda's country report and programme of action by African heads of state at the Fifth Summit of the APRM Forum in Banjul on June 30, 2006. Whichever dates one takes as the beginning and the end of the Rwandan peer review process, it should be clear that official peer interaction has been minimal. Of course, interaction between Rwanda's NEPAD structures and those at the continental level took place outside of these official events, and it is instructive to read the Rwandan evaluation thereof:

[T]hroughout the process, there was regular liaison between the National Focal Point and the APRM Panel of Experts as well as the continental secretariat who offered support despite the fact that they tend to be too inaccessible. Since 2003 when a number of countries acceded to the APRM no attempt has been made to establish a regular communication link amongst those countries that have come on board on APRM [*sic*]. (Rwanda NEPAD Secretariat 2006a:9)

Regardless of the extent of opportunities for “peer learning and experience sharing” in the APRM, what we are left with is a creature bereft of any enforcing power and which puts its faith in the good intentions of the governments under review. Such trust in African governments contradicts the mistrust of these governments that motivated the creation of a body to review their governance externally in the first place. It also backtracks on earlier promises that the APRM would contain a disciplinary element, which is how it was sold to the international donor community (Cilliers 2002; Taylor 2005:64). What is more, the resting of the process on “what the country itself is prepared and able to produce” seems a rather naïve strategy, if one considers that

the logic and the *modus operandi* of neopatrimonial rule and the dominance and nature of extractive economies in Africa, and their relationships with the international system, mean that NEPAD’s strictures on good governance and democracy cannot be implemented without eroding the very nature of the postcolonial African state and undermining the positions of the incumbent elites – an unlikely possibility. (Taylor 2005:46)

One of the dangers of leaving the process in the hands of African governments, while NEPAD’s officials and Africa’s political leaders pretend that significant external review is taking place, is that it enables autocratic leaders such as the Rwandan President Paul Kagame to pretend great openness, by declaiming, “Never before have statesmen and stateswomen, who are still in power, ever subjected themselves voluntarily to both internal as well as external scrutiny. And that is what African leaders set out to do” (Rwanda NEPAD Secretariat 2006b:2). But be that as it may, in the case of the Rwandan peer review, the ability of the APRM to get a recalcitrant government to change was never put to the test as Rwanda’s peers took the path of least resistance by (in the end) adapting their evaluation to concur with the Rwandan government’s point of view.

Rwanda’s Skewed Self-Assessment

The way Rwanda went about organising its self-evaluation process, as part of the first stage of the APRM process, was a harbinger of the self-assessment report to come. Realising that the initial group of 200 people would be too unwieldy to answer the 88-page questionnaire upon which the country self-assessment report would be based, it was decided to form four technical review teams (TRTs),

which would each write a chapter on one of the four thematic areas (democracy and political governance, economic governance and management, corporate governance, and socio-economic development). A 50-member National Commission was formed to lead the APRM process and to oversee and assist in the work of the TRTs. The APRM country support mission to Rwanda, whose visit coincided with the inauguration of Rwanda's National Commission, immediately expressed their concern that the National Commission "had too many government officials which may compromise the independence of the commission" (NEPAD Secretariat 2004). Indeed, more than 60 per cent of the National Commission consisted of government officials. Furthermore, the TRT responsible for writing the chapter on democracy and good political governance consisted of four members, all of whom had close links to the government (Jordaan 2006:337–40; NEPAD Secretariat 2004; Rwanda NEPAD Secretariat 2004:14–16). The country support mission proposed that the government's dominance on the National Commission be reduced through the creation of an 'executive bureau' within the National Commission and which would consist of around 10 members, only one or two of whom were to be from the public sector (NEPAD Secretariat 2004). However, the Rwandans did not implement this suggestion.

The hope that the civil society representatives who did make it onto the National Commission would offer an independent and countervailing force on a body dominated by government officials would also be disappointed, for a number of reasons. First, a number of 'civil society representatives' on the National Commission, such as the former governor of Rwanda's central bank and the rector of the School of Finance and Banking, owed their positions to presidential appointment, as determined by Article 113 of the Constitution. Second, various civil society representatives were only nominally independent of the government; for example, the president of Pro-Femmes, an umbrella organisation for women's groups that had previously taken the side of the Rwandan government (and the National Commission for Human Rights!) in accusing Human Rights Watch of being 'divisive'¹ (Front Line 2005:36; US Department of State 2004), and Silas Sinyigaya, the executive secretary of the human rights' umbrella organisation CLADHO (Federation of Leagues and Associations for the Defence of Human Rights in Rwanda), who the human rights organisation Front Line has described as "openly pro-government" (Front Line 2005:35). Third, although the Rwandan government's claim that the self-assessment process "was so participatory that all sectors were players and none spectators" (Rwanda NEPAD Secretariat 2006a:12), a number of organisations that enjoy international respect for their independence, such as the newspaper *Umeseso* and the human rights organisation, LIPRODHOR (Rwandan League for the Promotion and Defence of Human Rights) were all but absent from the process. In fact, their non-participation should come as little surprise, given the government's persecution of these two organisations (see, for example, Front Line 2005). Fourth, when members of civil society from beyond the National Commission were invited to participate in the self-assessment process, such as during a one-day workshop (September 28,

2004) conducted by the South African Institute of International Affairs, participants felt too scared to speak openly (Gruzd, forthcoming). Fifth, Rwanda's self-assessment process took place in a very illiberal political atmosphere (Amnesty International 2004, 2005; US Department of State 2005), which was definitely not conducive to the frank self-criticism required by the APRM.

Given that the process whereby Rwanda's country self-assessment report (CSAR) came to be written was dominated by government officials, it came as little surprise that this report presented a rather cheery and implausible view of political governance in the country. For example, the compilers of the Rwandan CSAR tell us that "the real causes of the conflict between Rwanda and Uganda were unclear" (NEPAD Secretariat 2006a:34)² when it is no secret their competition for the Democratic Republic of the Congo's mineral wealth lay at the heart of problem (United Nations 2003:17; Amnesty International 2003); that "Rwanda is making significant progress towards achieving constitutional democracy" (NEPAD Secretariat 2006a:36), even though the country is still rated as 'unfree' by Freedom House and whatever formal political opposition to the ruling Rwandan Patriotic Front (RPF) there has been dismantled; that the "groundbreaking referendum" on a constitution in May 2003 and the presidential and parliamentary elections later that same year "legitimated the current regime" (*ibid*), even though the constitutional referendum was "state-managed" (Reyntjens 2004:185) and ratified a document that contained elements that restricted political freedom and that were open to abuse (European Union Electoral Observer Mission 2003a:6), while the elections of 2003 have been described as nothing more than "a cosmetic operation for international consumption" (Reyntjens 2004:186); that the country aspires to a "respect for human rights consistent with those advanced by the United Nations" (NEPAD Secretariat 2006a:36) even though the RPF remains unable or unwilling to recognise the gross human rights violations it has committed (see, for example, Des Forges 1999); that the country seeks "to foster certain principles" to ensure that the "political activity of individuals and organisations does not threaten the national unity" (NEPAD Secretariat 2006a:36), which in practice is interpreted so narrowly that mere criticism of the government is viewed as a crime of 'divisionism', even when these criticisms have pertained to "taxation, insurance, and restrictions on animal grazing and tree cutting" (US Department of State 2006); that "the Constitution contains consociational arrangements to promote peaceful cooperation and power-sharing among political organisations" (NEPAD Secretariat 2006a:36), an accommodation that is rendered meaningless by the fact that the other political parties that 'share power' with the RPF are not fully independent of the ruling party (US Department of State 2006), while the main opposition party, the Democratic Republican Movement (MDR), remains banned; and that the presidential elections of 2003 represented "the first time the incumbent head of state was challenged" (NEPAD Secretariat 2006a:37), even though it was not much of a challenge as Kagame won 95 per cent of the vote in an election that the United States called "seriously marred" (US Department of State 2004).

As Rwanda concluded the self-evaluation phase of the APRM, it awaited its group of external reviewers which would form its own opinion about governance in the country in order to advise on governance matters and “to build consensus with the stakeholders on the remaining issues or challenge areas and the steps that need to be taken to address them” (NEPAD Secretariat 2003a).

The Country Review Mission

The country review mission to Rwanda took place from April 18 to 30, 2005, during which time the CRT held interviews with “all stakeholders” in Kigali, enumerated as “Ministers, the Auditor General, parastatals, the National Bank of Rwanda, the judiciary, the Rwanda Revenue Authority, parliamentarians, civil society, business people, etc.” (NEPAD Secretariat 2006a:26). Two days were spent on meetings in the 11 provinces outside the city of Kigali, meetings at which civil society representation was “very weak” (Rutazana 2006:7). As the CRT used two days for internal meetings, did not schedule work for the weekend, and used the last Friday (April 29) for “sightseeing and recreation”, they effectively had only seven days in which to conduct all their interviews. Although the review team did meet with a wide range of people, one is left to wonder whether the quality of the meetings did not suffer at the hands of quantity, especially considering that the CRT already spent so much of their time on “internal meetings, visiting dignitaries, ceremonial events and recreation” (Gruzd, forthcoming).

Whatever the impact of these shortcomings, the CRM yielded a report that was encouraging for its willingness to speak some uncomfortable truths about politics and governance in Rwanda, a country described as having an environment in which there is limited “political space for competition of ideas and power” (NEPAD Secretariat 2006a:12). The report pointed to a score of more specific problems, such as allegations that the gacaca courts (newly revived community-based courts to deal with genocide issues) were being used to exact victors’ justice, as they focused exclusively on the actions of the genocidaires during the 1990s and deliberately disregarded the atrocities committed by the RPF during this period; the use of various schemes to prevent political parties from operating freely, such as a prohibition on political activity below the provincial level and the regulation of political competition and expression through the Forum on Political Parties to which all parties are forced to belong; the government’s “cautiousness on press freedom” and the practice of self-censorship among journalists; the “compromised” independence of the judiciary at the hands of a powerful executive; and endemic social discrimination against women (*ibid* 2006a:12–13; 35–49). It should be pointed out that even though the CRT’s remarks were surprisingly critical, they were not at all original as they presented criticism that is readily available in the grey and academic literatures, such as Reyntjens (2004, 2006), and various downloadable reports by Amnesty International, the European Union, Human Rights Watch, the International Crisis

Group, and the Country Reports on Human Rights Practices by the US Department of State.

However, despite the CRT's willingness to highlight political problems in Rwanda, its report is inadequate for a number of reasons. First, although part of the CRM's brief was to "ascertain that Rwanda's National Assessment Process was technically competent, credible and free of political manipulation" (NEPAD Secretariat 2006a:11), it fails to evaluate the Rwandan self-assessment process in its report. This failure occurred even though the APRM country support mission had earlier expressed concern about the large number of government officials on the National Commission and had suggested that the National Commission be re-arranged to give civil society greater influence, which the Rwandans did not do, and so did nothing to diminish the impression that the process was indeed 'politically manipulated'. The consequences showed up in a CSAR that lacks credibility for its overlooking of various political problems in Rwanda and its upbeat view of political governance in the country, as was pointed out at the end of the previous section.

Second, despite expressing concern about "the voting system in local communities and the capacity of the Electoral Commission" (*ibid* 2006a:12), these and other electoral issues receive no elaboration in the CRT's report, only for the issue of elections to surface later in the form of suggestions about strengthening the Electoral Commission. In other words, in the country review report, neither the CRT nor the Rwandan government divulge anything about the seriously flawed presidential and parliamentary elections of 2003 (European Union Electoral Observer Mission 2003b, Reyntjens 2004; Samset and Dalby 2003). Instead, we are led to believe that the main electoral problem is the lack of 'capacity' of the Electoral Commission – which seems inaccurate given that the 2003 elections were peaceful and well organised – rather than the government's general closing down of political space, as recognised elsewhere in the same paragraph of the CRT's report. If there is a problem with the Electoral Commission, it is the organisation's lack of independence from the government, as suggested by its echoing of government opinions on its website (Jordaan 2006:347); its role in helping the incumbent RPF control and manipulate the 2001 district elections (International Crisis Group 2001:10–14); and its biased monitoring of politicians during the 2003 elections, during which time "arrests, interrogations, and summons were reported on the part of many opposition candidates, in particular those with a clear political standing and history, [while] hardly any were reported on the RPF side" (Samset and Dalby 2003:16).

Third, the country review report is silent on the conflict in the Great Lakes region and Rwanda's role in it, save for making the rather facile recommendation that the Rwandan government should "[t]ighten regional security links, promote social relations between populations in border areas, and contribute towards finding sub-regional mechanisms to curtail trafficking of small arms" (NEPAD Secretariat 2006a:36).

Fourth, the CRT informs us that “Rwanda is making progress with freedom of the expression” and then cites the new press law and the creation of the High Council of the Press as evidence. Yet not a word is breathed about the government’s past and ongoing harassment and persecution of journalists (see Reporters Without Borders 2006a, 2006b). Indeed, Reporters Without Borders have reached a conclusion contrary to that of the CRT: “Rwanda’s last remaining independent newspapers have to struggle to survive in an *increasingly* hostile climate” (Reporters Without Borders 2006b, emphasis added).

Fifth, the CRT delivers some dubious analysis, primarily because it views the creation of new laws and institutional bodies as evidence of democratic progress, and so appears oblivious of the fact that African governments are notorious for creating a façade of bureaucratic institutions, officiousness and officialese behind which informal channels are used for the actual exertion of authority and distribution of benefits (Bratton and Van de Walle 1997; Chabal and Daloz 1999). The CRT’s faith in legal text leads them to claim that because “Rwanda has ratified almost all the standards and codes provided in the APRM questionnaire” the country “demonstrates a good example of political will to adhere to the rule of law and good political governance” (NEPAD Secretariat 2006a:11–12). Similarly, the CRT thinks that because a constitution was adopted through a referendum, “efforts are being made to promote constitutional democracy in Rwanda” (*ibid*:12). Elsewhere, the CRT asserts that “Rwanda is making progress with freedom of the ... Press” because “a new Press law was established in 2003, and a High Council of the Press was set up to authorise and approve various permits” (*ibid*). The CRT also argues that the “independence of the judiciary is compromised ... because there is no Judicial Service Commission” (*ibid*:13).

Sixth, when the CRT does pause to wonder why the laws that do exist are not working as they are supposed to, they refuse to lay the blame too specifically and typically prefer to invoke lack of capacity, in other words, pinning the problem on something for which no one is directly to blame. This is particularly cowardly with regard to the violation of political rights and freedoms, for these abuses, as violations of so-called negative rights, already imply ‘capacity’ and an identifiable perpetrator or unjust law. The following is a particularly clear example of apportioning blame in this way:

Another issue discussed in detail during the CRM was the limited extent to which Rwanda had actually implemented the international conventions and protocols [on democracy and political governance] to which the country had already acceded.... The CRM learned that the discrepancy was explained by a lack of appropriate capacity to complete the processes. (*ibid*:31)

Elsewhere, the lack of capacity is explicitly blamed for the woes of the Electoral Commission (*ibid*:38), the judiciary (p.43), the civil service (p.45), the ombudsman (p.46), and the relative ineffectiveness of women in parliament (p.48).

Seventh, shorn of its punitive capacity, the APRM is now presented as an institution intended to assist countries under review in “enhancing progress in key governance and socio-economic development areas” (NEPAD Secretariat 2005c), which requires the CRT to “recommend further actions that should be taken in the final programme of action” (*ibid*:21). However, most of the ‘recommendations’ made by the CRT strike me as being of limited use and often err by being *vapid*: the Rwandan government is advised to “[a]dapt and harmonise its laws to be consistent with international commitments, while giving due attention to its own realities” (*ibid*:32); *tautological*: executive influence on judicial branch can be overcome by ensuring that “[t]he Supreme Court and the judiciary are independent of the executive branch” (p.43); *naïve*: the Tutsi-dominated Rwandan government should “ensure that its policy of inclusiveness wins the trust of all citizens, both victims and perpetrators of genocide” (p.35); *officious*: the government should “[s]et up an inter-ministerial structure to coordinate actions to enhance the rights of its citizens” (p.32); and *obvious*: “[t]he Electoral Commission [should] respect the principle of a secret ballot” (p.38), and so on.

Given all these problems with the CRT’s report, it would be a stretch to claim that it was “clear on a number of points in instances where problems are identified” as the APRM base document required it to be. Moreover, the CRT’s report did not fulfil its instructions to indicate whether there was “the will on the part of the Government to take the necessary decisions and measures to put right what [was] identified to be amiss” (NEPAD Secretariat 2002a), as the Rwandan government hid its recalcitrance behind an apparent dispute over the CRT’s findings.

Rwanda’s Response to the Country Review Mission’s Findings

As mentioned, the government under review is offered the opportunity to respond to the CRT’s findings so as ‘to ensure the accuracy of the information’ and to append their response to the report. As the peer review process is one of “constructive peer dialogue and persuasion” (NEPAD Secretariat 2003a), the disagreements between the APRM and the government under review would have to be overcome for the process to advance. Rwanda’s response on issues related to democracy and good political governance centred on three themes: gacaca courts as an instrument of victor’s justice; the closing down of political freedom; and concerns about executive influence on the judicial branch of government. On all three counts, the Rwandan response is unsatisfactory.

Regarding the first of these themes, as the Rwandan court system proved unable to cope with the enormous load of genocide cases,³ more than 12 000 gacaca courts were created to address genocide-related crimes (US Department of State 2006). While the gacaca courts have been hailed as an innovative albeit imperfect way of alleviating the pressure on the court system, the CRT pointed to the impression that “the Gacaca courts are a camouflage for ‘victors’ justice’, since the crimes committed during the RPF’s incursion and takeover in Rwanda in the

1990s may go unpunished while the focus remains on the *genocidaires*” (NEPAD Secretariat 2006a:35; on RPF atrocities, see Des Forges 1999). Indeed, the CRT’s impression that the *gacaca* system is blind to the massacres perpetrated by the Tutsi-dominated RPF is one that is widely shared (Corey and Joireman 2004:86–9; Morrill 2006; Ooman 2005:905–6; Uvin and Mironko 2003:227). Strengthening these suspicions, Morrill (2006) reports how the language of the *Gacaca* Law was adjusted in 2004 so as to shift the focus of the trials to Tutsi victimhood, thus sidelining the cases of Hutu moderates who suffered at the hands of the *genocidaires* and of Hutu civilians who were murdered by the RPF. Moreover, by confining the jurisdiction of the *gacaca* courts to crimes committed between October 1 and December 31, 1994, it excludes the cases of “[t]ens of thousands of civilians, possibly more than 100 000 [who] were massacred by the RPF after the resumption of the war, between April and September 1994” (Reyntjens 2004:194; Corey and Joireman 2004:86). So, even though the current Rwandan government repeatedly insists that a “pursuit of national unity and reconciliation of all Rwandans is a priority” (NEPAD Secretariat 2006a:132), it is hard to fault Corey and Joireman’s diagnosis that “[t]he exclusion of [Tutsi/RPF] crimes from the *gacaca* process establishes an ethnic divide and amounts to an unequal application of the law” and will have the opposite effect – a “politicised application of justice [that] will ultimately undermine the security of both Hutus and Tutsis within Rwanda” (Corey and Joireman 2004:86).

Nevertheless, the Rwandan government remains unmoved about concerns over the *gacaca*’s focus on Tutsi suffering and insists that “the *Gacaca* court jurisdiction is mandated to address the special cases of genocide suspects only” (*ibid*). The Rwandan government goes on to note that “[a]ll other cases are still handled through the classical justice system” (NEPAD Secretariat 2006a:132), an empty gesture considering that this system is so overburdened (the reason why the *gacaca* system was created in the first place) that these ‘other cases’ are unlikely ever to be heard (Uvin and Mironko 2003:227). What is also worrying is that in the next paragraph the Rwandan government tries to dismiss those who question the working of the *gacaca* courts as “people who are interested in seeing Rwanda’s genocide go unpunished” (*ibid*:133). On other occasions the Rwandan government has branded human rights organisations that have called for an investigation into human rights violations by RPF troops during the genocide as ‘divisionists’ (US Department of State 2006). But, contrary to what the Rwandan government thinks, what these critics want is that

all individuals should be held accountable for their actions. Indeed national reconciliation demands that individual Tutsis must bear the responsibility for crimes committed against civilians during and after the genocide just as individual Hutus are held accountable for their crimes. (Corey and Joireman 2004:86)

Be that as it may, the Rwandan government’s depiction of critics of the *gacaca* system as people who would like to render the genocide “unknown, with a view

to revise it in history” (NEPAD Secretariat 2006a:133) fits into a familiar pattern whereby the Rwandan government attacks the integrity of its critics⁴ and at the same time milks international sensitivity and shame about the genocide for all its worth – what Reyntjens has called an exploitation of its “genocide credit” (Reyntjens 2004:199). It is also ironic that the Rwandan government would charge its critics with revisionism, for the Rwandan government’s own manipulation and sanitation of the country’s history, especially with regard to atrocities committed by the RPF, have been well documented (Pottier 2002; Corey and Joireman 2004; Buckley-Zistel 2006). Indeed, the gacaca process has given the Rwandan government another opportunity for imposing its version of the truth. As Oomen (2005:906) puts it, “the gacaca are hardly about eradicating the culture of impunity but rather about tightening the control of a minority government and about passing down its imagery of Rwandan identity”.

With regard to the second theme, the limits on political freedom in Rwanda, the CRT noted that “political parties are not allowed to operate at the grassroots below the provincial levels” (NEPAD Secretariat 2006a:37). Indeed, during the transitional period, which ended in July 2003, political parties had agreed to a moratorium on political organisation and recruitment at the grassroots level, an agreement that was flouted by the incumbent RPF as it actively recruited new members and pushed its favourites into local positions of power (International Crisis Group 2001; Human Rights Watch 2003). Moreover, the period leading up to the presidential and parliamentary elections of 2003 saw the banning of the MDR, the strongest electoral threat to the RPF, while critical journalists and human rights activists had to endure constant harassment from the government (Human Rights Watch 2003). Since the 2003 elections, government harassment of former members of the MDR and of independent journalists and human rights organisations has continued, while there are 10 political prisoners according to most recent reports (US Department of State 2006). Those parties that are indeed allowed to operate are “not considered to be fully independent of President Kagame and the RPF” (*ibid*). In the absence of true opposition parties, one might wonder about the political role and influence of local human rights NGOs, especially since the officially endorsed National Commission for Human Rights “acted more as a public relations organ of the government” (*ibid*).⁵ Unfortunately, what one would find is that these organisations have, under immense pressure from the government, retreated to such an extent that all but a few

investigate and document violations by the state, preferring instead to focus on abuses by non-state actors (such as domestic violence). Out of self-preservation, they now shy away from vigorous human rights advocacy and concentrate on non-confrontational activities such as humanitarian assistance and human rights education and training. (Front Line 2005:32)

In the light of these alleged constraints on political activity, the Rwandan government’s response to the charge of restricting grassroots political activity is rather

crafty, for it denies and acknowledges the charge from one sentence to the next: “[t]here is currently no evidence of inhibition to [*sic*] the practice of vibrant political party activities at the grassroots. Nonetheless, the government of Rwanda recognises that this innovation [?] may be short of meeting international standards” (NEPAD Secretariat 2006a:133). The Rwandan government then tries to set our minds at ease with a truly vacuous commitment “to periodically assess the constitutional instrument [?] through a proper legal framework” (*ibid*).

A further aspect of the CRT’s concerns about the limits to political freedom in Rwanda concerns the oversight role played by the Forum for Political Parties (*ibid*:37–8). The forum is a body to which all political parties are forced to belong and which monitors the behaviour of political parties in the country. In the Rwandan government’s sanguine view, the forum is

an innovative creation of Rwandans for internal peer review and sharing of best practices in national political activity. After terrible experiences with exclusion and conflict, Rwandans have chosen inclusion and consensus building. The Forum is part of a package of innovations to consolidate constructive ideas even from minority parties, rather than isolate them. (*ibid*:134)

Despite pretensions of “power sharing”, the forum is dominated by the RPF and instead so tightly ‘peer reviews’ other parties, which are not wholly independent of the RPF to begin with, that it in effect restricts political pluralism. So, however legitimate concerns are over national unity, the fact remains that the forum conflicts with and stifles the liberal elements of the Rwandan Constitution as well as the political principles stipulated in the Declaration on Democracy, Political, Economic and Corporate Governance (NEPAD Secretariat 2002b).

The third theme of Rwanda’s response to the findings of the CRT on political governance in the country relates to executive dominance of the judicial branch, especially in so far as the

judiciary is in practice an appointee of the executive branch. Besides nominating both the president and the deputy president of the Supreme Court for election by the Senate, the President of the Republic makes the final appointment. Subsequently, the president of the Supreme Court presides over the Supreme Council of the Judiciary, a powerful body with responsibility to appoint and discipline judges and other judicial officers. (NEPAD Secretariat 2006a:42)

The Rwandan government defends this practice (outlined by Article 88 of the Constitution) by noting that the President always nominates two candidates for both the positions of president and deputy president of the Supreme Court, whose suitability is “rigorously” debated in the Senate, which “must approve the most qualified candidates before being proposed for appointment by the President of the Republic” (*ibid*:134). However, presenting the Senate as a check on executive

power is misleading: out of the 26 seats in the Senate, 14 are elected while 12 are appointed; eight by the President and four by the Forum of Political Parties, a body dominated by President Kagame's RPF. Furthermore, of the 14 elected seats, 12 are elected by an electoral college made up of local officials in each of the 12 provinces, a sphere in which the RPF had entrenched their dominance during the transitional period by ignoring the ban on grassroots political activity (Front Line 2005:22, note 50; Human Rights Watch 2003; International Crisis Group 2001; Samset and Dalby 2003:23, 26).

Although the quality and accuracy of Rwanda's responses to the CRT's findings left much to be desired, it did not prevent the Rwandan government from questioning the competence and objectivity of the team that compiled the country review report, which was done partly to pave the way for the Rwandan government to ignore the CRT's criticisms. In a reflection on the APRM process in Rwanda, an 'outcome report for experience sharing', the Rwandan government claims that,

given the recent history of Rwanda, it seemed as if some external reviewers came with inadequate knowledge of the country, and perhaps even some preconceived ideas based on inaccurate information about the country found in different media like the Internet [which, incidentally, is where the report under citation was found]. (Rwanda NEPAD Secretariat 2006a:8; NEPAD Secretariat 2005b)

As mentioned above, government attacks on the integrity of critical researchers have become a predictable response to criticism. To compensate for the reviewers' "inadequate knowledge" and "preconceived ideas" and since the Rwandan government defines objectivity as that which casts it in a positive light, it proposes that a "minimum requirement for objectivity should also mean that the final report, the APR Panel report, be subjected to a process of moderation before it is tabled before the Heads of State" (Rwanda NEPAD Secretariat 2006a:9). Moreover, under the guise of saving valuable time during the country review visit, the Rwandan government has suggested that "local experts could be recruited as counterpart experts to the panel of external reviewers, providing them information that often takes long to gather" (*ibid*:10).

What has emerged in this section is that, at the end of the third phase of the APRM process, the Rwandan government was still at considerable variance with the country review team (and therefore with the APR Panel), of whose competence and findings on political governance the Rwandan government remained unconvinced. What remains to be seen is how this standoff played out during the next stages.

Ratifying a Watered-Down Report

The fourth phase of Rwanda's peer review culminated in the presentation of the APR Panel's report (compiled by the CRT) and the country under review's final programme of action to the APRM Forum in Abuja in June 2005. At this meeting, as in their report, the APR Panel identified the three most problematic aspects of political governance in Rwanda as being the gacaca court system, executive influence on the judiciary, and political pluralism (*ibid*:152; NEPAD Secretariat 2005b). In other words, the Rwandan government and the external reviewers remained at loggerheads given their conflicting assessments of these three aspects of political governance in the country.

In his response to the findings of the APR Panel at the Abuja meeting, the Rwandan President Paul Kagame noted that while "Rwanda was broadly in agreement with the report" he would use his speech to "correct some errors in the [APR Panel's] report and to improve on its quality" (NEPAD Secretariat 2005b). Kagame then proceeded to dispute the report's findings, including what was identified above as the three most problematic aspects of political governance in Rwanda. Kagame stated that

the review team, given the short time, may not have been able to appreciate ongoing innovative measures and processes e.g. those relating to freedom of the media, the procedure for appointment of Supreme Court judges and provisions for power-sharing between political parties where the winner does not take all. He noted that the Forum of Political Parties was an initiative to provide for debate of national issues among political parties, including those not represented in parliament; while consensus is sought, this is not 'absolute'. Commenting on the innovative instruments of governance, the President believed that the innovative instruments of governance may not have been well captured. For example, Gacaca is dictated by the special circumstances of trying to bring justice to the hundreds of thousands of genocide cases. Rwanda does not see it as a panacea. Furthermore, Rwanda's constitution is informed by its history and contains specific provisions that the Government of Rwanda should be given the opportunity to explain fully. (*ibid*)

With Kagame's comments being what one would have expected, the gap between the Rwandan government and the APR Panel's assessments of political governance in Rwanda remained. But, since the APRM has been recast in terms of consensus and cooperation, something had to give. And, perhaps recognising that they could do nothing about a defiant Rwandan government, the APR Panel, armed with nothing more than a measure of moral authority derived from their presumed 'eminence', relented. The APRM's retreat can be found in an addendum to the country review report, titled "Comments from APRM Panel after submission of reports to APR Forum" (NEPAD Secretariat 2006a:152-3). Here the APR Panel informs us that after their report was presented in Abuja and after Kagame suggested that some aspects of political governance in Rwanda were

misrepresented, the APRM “closely examined” the issues relating to the gacaca courts, judicial independence, and political pluralism and subsequently decided to add an addendum to the final country report to “clarify” matters (*ibid*:152). The way in which the APRM’s ‘clarification’ resolved the tension between itself and the Rwandan government was to say nothing more of the gacaca courts; accept the Rwandan government’s interpretation of the relationship between the executive and the judiciary; and beat about the bush with regard to the stifling effect that Rwanda’s Forum for Political Parties has on political pluralism.

On the issue of judicial independence it will be recalled that the CRT’s concern stemmed from a view that the Rwandan President dominated the appointment of the president and vice-president of the Supreme Court, which in turn gave him inordinate sway over judges. However, the APR Panel retracted this criticism and aligned its view with that of the Rwandan government by noting “that the Rwandan system of judicial appointments was comparable to that of many countries, including developed countries” (*ibid*:152; see also p.134). To be sure, in the United States, for example, the President also nominates Supreme Court judges for consideration by the Senate. However, unlike its Rwandan counterpart, the US Senate is not a presidential lapdog, as Harriet Miers recently found out. Following the APR Panel’s unwarranted and ignominious approval of Rwanda’s manner of judicial appointments, in the next sentence, the panel encourages the Rwandan government to “pursue its efforts towards good governance. This may lead the [Government of Rwanda] to set new international benchmarks in the matter of judicial independence” (*ibid*:152). If this is the quality of “peer learning and experience sharing”, then perhaps we are better off without.

With regard to the role played by the Forum for Political Parties, the APR Panel stood by the CRT’s view that the strict way in which the forum regulates the activities of political parties amounts to a suppression of political pluralism. Nevertheless, things come unstuck when the APR Panel asserts,

[I]t was accepted that the activities of the Consultative Forum was not in conflict with the those of parliament (as alluded to in the Panel’s report). The point was well taken that the Consultative Forum acts more like a hearing to influence the parliament which remains independent. (*ibid*)

So, instead of demanding that the forum be scrapped or at least drastically reformed, the panel uses an ‘allusion’ in the CRT’s report to change the topic to the relationship between the forum and parliament. However, the CRT’s report contained no allusion to the relationship between the forum and the Rwandan parliament;⁶ reference to such an allusion merely served as a pretext for the toothless APR Panel to equivocate and save face, and, in doing so, it actually furnished the Rwandan government with a certain amount of justification for maintaining the Forum for Political Parties. Powerless but posturing, the APR Panel proceeds to ‘recommend’ that the authoritarian Rwandan government becomes a little less authoritarian: “[T]he Panel recommends that the Government of Rwanda and the

Parliament of Rwanda encourage all parties to participate freely and openly in the Forum consultations and avoid adhering to a tight framework within which parties have difficulty operating freely" (*ibid*:152–3).

However, the biggest indictment of the APRM is not its retreat in the face of a defiant Rwandan government or the feebleness of its advice, but its ratification of a Rwandan programme of action that flatly ignores the issue of political freedom. From the beginning we have been told that the aim of the APRM was to help African states improve their governance in terms of mutually agreed upon objectives, including democracy and good political governance; democracy was even identified as a "precondition" for poverty eradication and sustainable development (NEPAD Secretariat 2003c). With this goal in mind, each country's programme of action would stipulate how it intended to achieve the various NEPAD objectives after a process of self and peer review. According to the Rwandan government, "The major objective of [the] APRM plan of action is to bridge governance gaps identified in the APRM self-assessment process and the entire peer review exercise" (Rwanda NEPAD Secretariat 2006a:15). Despite the importance of the programme of action, Rwanda's programme contains a fundamental and telling omission: of the nine objectives that pertain to democracy and political governance, the two that deal most directly with political freedom are simply omitted, while the other seven objectives are addressed. The two omitted objectives read: "Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, citizen rights and supremacy of the Constitution" (the second objective) and "Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments" (the third objective) (NEPAD Secretariat 2005:29–32). So, while the Rwandan programme of action has a fair amount to say about other political objectives such as better public service and the generic rights of women and children, it simply thumbs its nose at a powerless APRM as it makes its intention clear to continue disrespecting the political rights and freedoms of its citizens.

With the tabling and ratification of the final report and plan of action at the APR Forum meeting in Banjul in June 2006, African leaders gave Rwanda's disdain for political rights and freedom an official thumbs up. It is, however, not clear whether Rwanda's completion of the peer review process has resulted in benefits more tangible than the moral and political smokescreen proffered by the APRM, even though Rwanda's development partners have "pledged their support for the implementation of the APRM programme of action to cover the identified gaps in the [self-assessment] report" (Rwanda NEPAD Secretariat 2007:7).

Concluding Remarks

I have described how the APRM has failed to bring a politically oppressive government to heel, a failure that has been presented in terms of a pan-African body too weak and unwilling to challenge the sovereignty of a deviant government.

The APRM's failure on Rwanda cannot be put down to capacity problems at the body's continental secretariat or the questionable competence of the review team that went to Rwanda. Rather, the APRM's weakness stems from a shrunken mandate and an inability to impose penalties on governments under review.

One final point needs to be made. It could be argued that the endorsement of a politically oppressive regime, such as the one in Rwanda, is consistent with (some of) the principles of the APRM. To explain: the APRM has since its inception been ambivalent about what the goal of political governance should be; specifically whether it should be political stability or democracy. On the one hand, the APRM base document asserts, "[t]he primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to *political stability*" (NEPAD Secretariat 2002a, emphasis added), while, on the other hand, we are informed that "[t]he overall objective is to consolidate a constitutional order in which *democracy, respect for human rights, the rule of law, the separation of powers and effective, responsive public service* are realised to ensure sustainable development and a peaceful and stable society" (NEPAD Secretariat 2003c, emphasis added). However, the goals of political stability and democracy are clearly not the same thing and pursuit of them could even pull in opposite directions. Indeed, the Rwandan government consistently presents these two goals as being in tension, as when it uses concerns over national unity to justify its suppression of political freedom, or 'divisiveness', as it terms expressions of political freedom that it finds disagreeable, as the CRT also noted (NEPAD Secretariat 2006a:38). The APRM's (ambivalent) endorsement of political stability as the primary goal of political governance meant that Rwanda could draw on the APRM's stated aims to legitimise its preference for 'political stability'. The presence of such ambivalence in the APRM documents also enabled Rwanda's peers to claim non-culpability for allowing political stability to trump political freedom in the Rwandan peer review.

If I am correct in charging that the priority of political stability over political freedom and democracy has been written into, or at least enabled by, the APRM documents, then these are flawed and indeed dangerous documents. If I am wrong in this characterisation of the APRM's political principles, and democracy and political freedom are indeed the lead principles, then the fact remains that the APRM will not make any headway in establishing these principles in Rwanda, and has therefore been of no value to anyone except the Rwandan government, whose fiction of openness has been given an alibi by Africa's leaders.

Notes

1. With regard to 'divisionism' Article 33 of the Constitution states, "Propagation of ethnic, regional, racial or discrimination or any other form of division is punishable by law".
2. Various members of Rwanda's APR Focal Point failed to respond to my requests for a copy of Rwanda's CSAR. However, the content of the CSAR can be deduced from the country review report on Rwanda. This useful document relays the findings of Rwanda's self-assessment, as well as those of the CRT. It further contains three addenda: Rwanda's response to the CRT,

- the APR Panel's reponse to the Rwandan response, and Rwanda's programme of action (NEPAD Secretariat 2006).
3. The ICTR has been widely criticised for the slowness of its work as, between 1994 and 2005, it handed down a mere 20 judgements in 27 cases (US State Department 2006; Uvin and Mironko 2003:220).
 4. The Rwandan government's favourite strategy is to accuse its critics of 'divisionism' or propagating 'genocide ideology'. For example, in 2004, a parliamentary report accused LIPRODHOR (Rwanda's most independent human rights organisation), *Umeseo* (Rwanda's most independent newspaper), CARE, Trocaire, the BBC, Voice of America, and a number of Christian churches of propagating genocide ideology (Front Line 2005:19).
 5. The human rights organisation Front Line (2005:36) reports, "In 2003, the Rwandan Human Rights Commission issued only four communiqués: one attacking Human Rights Watch for supporting divisionism, one attacking former Prime Minister Faustin Twagiramungu for divisionism during his election campaign against President Kagame, and two others praising the presidential and parliamentary elections".
 6. The only place where the CRT report mentions the Forum for Political Parties and the Rwandan parliament in the same breath is in a rather cryptic paragraph, "To illustrate the point, the CRM found that, although the current parliament comprises both the opposition and the governing party, the numbers are patently weighted in favour of the governing party. This is in addition to the extremely difficult conditions in the Constitution attendant on party activities. Political parties may be de jure authorised but de facto impossible to realise and operate freely" (NEPAD Secretariat 2006a:38).

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