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The Role of Functional Differentiation in the Governance of the Decision- Making Process of the African Peer Review Mechanism.

Merit-Based Decision-Making or Power Politics?

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**The Role of Functional Differentiation in the Governance of the
Decision-Making Process of the African Peer Review Mechanism:
Merit-Based Decision-Making or Power Politics?**

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Deutsche Zusammenfassung:

In dieser Dissertation untersuche ich die Frage warum und unter welchen Bedingungen Mitgliedsstaaten des African Peer Review Mechanismus (APRM) Entscheidungskompetenzen an mehrere Organe im Entscheidungsprozess delegieren. Ich untersuche dabei, wie und mit welchen Konsequenzen funktionale Differenzierung im APRM-Entscheidungsprozess Muster der Entscheidungsfindung und den Gehalt der Entscheidungen über länderspezifische Review Berichte beeinflusst. Der APRM ist ein Peer Review Instrument der Afrikanischen Union und wurde als Mechanismus geschaffen, um Politiken zu fördern, welche die Qualität der Regierungsführung von Mitgliedsstaaten verbessern. Der Reviewprozess beruht auf Berichterstattungs- und Überwachungsmechanismen, welche dazu dienen die Politiken der teilnehmenden Länder zu beurteilen. In Rückgriff auf die moderne Institutionentheorie erkläre ich die Entstehung des Governance Systems des APR-Prozesses. Das APR Forum (die Versammlung der teilnehmenden Staatsoberhäupter des APRM) schafft eine zunehmend komplexere Governance Struktur und delegiert Kompetenzen an Unterorgane, um Entscheidungen zu treffen, welche die Mitgliedsstaaten implementieren müssen. Basierend auf Erkenntnissen der modernen Institutionentheorie argumentiere ich, dass die Organisationsstruktur des APR Prozesses funktional ausdifferenziert ist. Als Konsequenz ist das Entscheidungssystem, in welchem der Reviewprozess eingebettet ist, aufgeteilt zwischen einer Regelsetzungsfunktion und einer nachgelagerten Anwendung der Regeln auf länderspezifische Reviewprozesse. In dieser Hinsicht konzentriert sich das APR Forum darauf allgemeine Regeln zu formulieren während das APR Panel und seine Unterorgane diese Regeln auf die einzelnen fallspezifischen Reviewprozesse anwendet. Ich argumentiere, dass funktionale Differenzierung im APRM deliberative Entscheidungsfindung sowohl bei der Regelsetzung als auch bei der Regelanwendung begünstigt. Dies wiederum beeinflusst den Entscheidungsprozess dahingehend, dass er leistungsorientierte Entscheidungen gegenüber machtpolitischen Entscheidungen begünstigt. Basierend auf bislang unbeachteten Quellen, analysiere ich mit Hilfe der Prozessanalyse und qualitativer Experteninterviews die Effekte von funktionaler Differenzierung in drei APR Länderüberprüfungen (in Südafrika, Ghana und Kenia). Ich komme zu dem Schluss, dass der APRM Entscheidungsprozess einen bedeutenden Mechanismus bietet um leistungsorientierte Entscheidungen selbst auf der Ebene, auf welcher der Prozess von den zu begutachteten Ländern geführt wird, hervorzubringen.

Schlagwörter:

Internationale Institutionen, Funktionale Differenzierung, Delegation, Peer Review, African Peer Review Mechanismus, Südafrika APR Prozess, Ghana APR Prozess, Kenia APR Prozess

Abstract:

The African Peer Review Mechanism (APRM) is the peer review instrument adopted by the African Union as a mechanism to foster the adoption of policies to enhance the quality of governance among member States. Its review process relies on using self-reporting and monitoring tools to assess and encourage improvements in the policies of participating States. This dissertation explores the question of why, and under what conditions, member States acting within the African Peer Review Mechanism (APRM) decide to delegate decision competence to other bodies as part of the Review's decision-making process. It investigates how, and with what consequences, this delegation creates consequent mechanisms of functional differentiation which determines the patterns of decision-making in the APRM review process and the contents of country review reports. The dissertation engages modern institutional theory in order to explain the emergence of the governance system of the APR process. The APR Forum (the assembly of Heads of State participating in the APRM) has acted over time to create an increasingly complex governance structure and to delegate decision-making competencies to subsidiary bodies in order to arrive at decisions that require implementation by participating member States under the review process. With insight taken from modern institutional theory, this dissertation argues that the organizational structure of the APRM process is functionally differentiated, and that the decision-making system embedded within the review process therefore becomes divided between a rule-making function and the concomitant application of those rules to the specific historical circumstances of APR country processes. In this regard, therefore, the APR Forum concentrates its functions on formulating general rules, while the APR Panel and subsidiary committees subsequently apply these rules to individual case specific review processes. This dissertation contends that such functional differentiation in the APRM promotes deliberations, at both the rule making stage and the norm application phase of the decision process, which consequently affect the decision process in ways that favour merit-based decisions-making and inhibit raw power politics. Based on previously overlooked sources, the dissertation further conducts an empirical analysis of the effects of functional differentiation in the examples of three APR country processes (i.e. South Africa, Ghana and Kenya), using qualitative expert interviews and process-tracing. It concludes that functional differentiation in the decision process of the APRM provides a powerful mechanism to promote merit-based decisions, even at the country level where the process is led by the country under review.

Keywords:

International Institutions, Functional Differentiation, Delegation, Peer Reviews, African Peer Review Mechanism, South Africa APR Process, Ghana APR Process, Kenya APR Process

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Abbreviations

APR	African Peer Review
APRM	African Peer Review Mechanism
AU	African Union
CDD	Centre for Democratic Development
CRM	Country Review Mission
CSAR	Country Self-Assessment Report
CSM	Country Support Mission
CSO	Civil Society Organization
EU	European Union
G8	Group of 8
GNPoA	Ghana National Programme of Action
HSGC	Heads of State and Government Committee
IAEC	International Atomic Energy Commission
IEA	Institute of Economic Affairs
IGOs	Intergovernmental Organizations
IMF	International Monetary Fund
IMO	International Maritime Organization
INGOs	International non-Governmental Organizations
IOs	International Organizations

ISSER	Institute for Statistical, Social and Economic Research
NAPRM-GC	National African Peer Review Mechanism- Governing Council
NARC	National Rainbow Coalition
NEPAD	New Partnership for Africa's Development
NFP	National Focal Point
NGC	National Governing Council
NPoA	National Programme of Action
OAU	Organization of African Unity
ODAC	Open Democracy Advice Centre
OECD	Organization for Economic Cooperation and Development
SACC	South African Council of Churches
SANGOCO	South African non-Governmental Organization Coalition
T-SA	Transparency South Africa
TSAs	Technical Support Agencies
UN	United Nations
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organization

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Chapter 1

1.1. Introduction

A predominant trend in contemporary world politics is clearly evident in the increasing number, complexity and influence of international organizations (IOs). Since the end of the Second World War in 1945, an exponential growth in a variety of types of international organization has been apparent. Whilst this can be attributed in part to a proliferation of newly formed international non-governmental organizations (INGOs), operating without formal links to government, the role of intergovernmental organizations (IGOs), with precisely those links, still dominates global political processes, displaying a much stronger influence in global governance. This can be attributed to the advantages that IGOs possess in reflecting the authority of the Nation States who have participated in their creation (Davies and Woodward 2014: 1).

Nevertheless, an investigation of the role of these powerful international organizations is still seriously under-researched within the disciplines of Political Science and International Relations (Abbott and Snidal 1998; Davies and Woodward 2014). This observation is particularly surprising as international organizations, and institutions of similar character, are the most common and enduring feature of global governance systems. Any relevant issue in the arena of international affairs inevitably involves or implies a response from at least one international institution, whose framework and rationale encompasses formalised approaches to any issue constituted in the mandate of that organization, and concomitant with the general interests of member States who comprise their constituency. In most instances, international organizations have acquired considerable authority and competence in these areas of their mandate. Pre-eminent examples of sophisticated and well established international organizations that act within elaborate global governance systems include the United Nations (UN), the World Trade Organization (WTO), the International Atomic Energy Commission (IAEC) and the European Union (EU), as well as many other more specific organisations acting within a more limited ambit.

As has been strongly argued in scholarly discourse, this limited attention accorded to international organizations as part of the study of International Relations may be attributed not least to the absence of a reliable theory which gives adequate attention to the nature of

international organizations (Gehring and Dorsch 2010: 2). It has to be acknowledged that thorough and successful research has afforded vigorous theoretical scrutiny to topics such as cooperation theory (Axelrod 1984), decision-making within international organizations (Haas 1964; Cox and Jacobson 1973), transnationalism (Keohane and Nye 1972), international regimes (Krasner 1983; Keohane 1984), the creation and effects of international institutions (Keohane 1984; Goldstein, Rivers and Tomz 2007: 39), and institutional interaction (Oberthuer and Gehring 2006; Gehring and Oberthuer 2009). Yet it might be argued that these wide-ranging studies fail to attribute any independence to the behaviour and effect of international organizations. Despite their focus being firmly on their area of operation, the dominant Realist school in International Relations theory insists that States are the main actors in the international political environment, while international organizations remain a barely relevant component of their conception of world politics. Their approach maintains a stance in which intergovernmental organizations are recognised merely as forums where the more important agents of governments representing Nation States can meet (Reinalda 2009: 5).

It is the contention of this dissertation that this view of international institutions, as exhibited in the ongoing evolution of research in International Relations, has tended to seriously impede the development of a comprehensive and well-focused theory for the study of international organizations in general. In particular it maintains that the evidence suggests that, in practice, international organisations have been operating increasingly independently as a function of the common modes of governance. This dissertation thus attempts to address this gap in the recognition of the agency of international organisations.

While there is some recent global governance research which has recognised and identified new actors in world politics, including international non-governmental organizations, intergovernmental organizations and professional transnational groups, this newer focus has not yet dislodged the tendency to pay insufficient account to the study of international organizations.

Two instructive paths that have been followed within the study of global governance are worth mentioning in the context of their contribution to a better understanding of international organizations. Firstly, reflecting a long-standing scepticism about the efficacy of bureaucratic forms of organization, there has been an attempt by scholars to focus on and explain the

autonomy of bureaucracies in the operations of international organizations. Scholars in this enterprise increasingly identify the Secretariats of international organizations as actors in international relations and point to the potential of these bodies to gain a life of their own, acting powerfully and independently beyond their original function. They particularly focus on a determination of dysfunction in the bureaucracy's organizing environment and the policy process that underlines the activities of those organizations (Barnett and Finnemore 1999; Nielson and Tierney 2003; Barnett and Finnemore 2004; Biermann and Siebenhuener 2009). While this in itself is a useful exercise in analysing the bureaucratic function, it has also shed light on aspects of the organisations within which these bureaucracies are generated. However, this analysis in its fruition, has generally necessitated a limited focus, obscuring the potential theoretical potency of giving recognition to the fact that international organizations as actors have far wider importance and resonance than in the behaviour of their Secretariats.

A second existing line of research explores organizational decision-making processes. Reinalda and Verbeek (2004), in particular, pay special attention to the Council of Europe, the United Nations, the EU, G8, the World Trade Organization, International Maritime Organization, the World Health Organization and the OECD, examining the extent to which non-State actors, for example non-governmental organizations and multinational corporations, are influential in the decision-making of such international organizations. Some scholars have given special attention to the rationality of the design and framework of organizational decision-making procedures (Koremenos et al 2001), while research on the delegation of these procedures to independent agents and adjudicative bodies has also had considerable significance (Keohane et al 2000; Majone 2001; Hawkins et al 2006; Alter 2008; Sobol 2015). Influential theory-driven research into the institutional mechanisms for producing decisions that are problem-adequate, regardless of their distributive effects, (Gehring and Kerler 2008; Gehring and Plocher 2009), and the analysis of interactions between international institutions (Gehring and Oberthuer 2009), has made some contribution to a theoretical understanding of the functions and properties of international organization. As with the above work on bureaucratic functions, the role within the decision-making function remains a partial aspect of any overall analysis of the full nature of an organisation, and suggests a need for further understanding in more general research into the nature of international organisations.

A further pressing aspect of this identified dearth in the scope of relevant research specifically indicates a woeful neglect of research into international organizations that emanate from or operate within the global South, in particular. It may not be surprising that research has been focused more upon the more powerful actors and bodies in the international arena that are drawn from the Northern hemisphere, and have long been considered to dominate global politics. This dissertation intends to redress this lack of direction by drawing on insights from modern institutional theory to elucidate the organizational aspects of one such institution operating in the Southern hemisphere, the African Peer Review Mechanism (APRM).

Relying on the literature regarding processes of delegation to international institutions, the dissertation advances a functional theory of international institutions which illustrates the way in which the member States of an organization sometimes empower their international organizational agents with the capacity to make decisions *pro illis*. As a consequence of this assertion, a serious consideration of this dissertation is to ask how the overriding challenge and inherent conundrums of such a decision-making situation is managed within appropriate measures to guarantee the proper functioning of such agents. A question is raised by this evidence as to whether such operations necessarily jeopardise the autonomy of these organisations. In the light of such possible difficulties, this dissertation proposes the use of a theory of functional differentiation to create a mechanism to assess problem-adequate decisions, even where problems concerning cooperation present a range of distributive outcomes. The dissertation therefore particularly tests the importance of a differentiation between rule-making functions and the application of agreed standards at different levels of a decision process. These factors, elucidated through the example of an empirical study of the African Peer Review Mechanism process, provide a relevant context for how international organisations operate within Southern global politics, leading to clear conclusions about their operation.

1.2. Statement of Research Problem and Research Questions

The African Peer Review Mechanism provides a strong example of the use of peer reviews in practice. Peer reviews are increasingly favoured by Nation States and widely used by international organizations as potent instruments of global governance. These reviews involve

the regular collection of information on the policy performance of a State and the assessment of such information by ‘other peers’. ‘Peers’ in this respect are normally representatives of other States or non-State actors, who create insight into performance in relation to agreed norms, codes and standards for any given issue.

The Organization for Economic Cooperation and Development (OECD) characterizes peer review as the systematic examination and assessment of the performance of a State by other States (peers), carried out by designated institutions, or a combination of States and designated institutions, with the ultimate goal of assisting the reviewed State to improve its policy making, adopt best practices, and comply with established standards and principles (Pagani 2002: 16). Peer reviews are conducted on a non-adversarial basis, and need to be conducted in an atmosphere of mutual trust among the States involved in the review, as well as with a shared confidence in the procedures and processes that underlie their conduct. The purpose of peer reviews in most international organizations is to engender the sharing of best practice among peers, and to create an avenue for sharing information on particular issues and productive areas of cooperation. One distinctive feature of this “soft mode of governance” is that peer reviews are mostly devoid of explicit sanctions or coercive mechanisms. Therefore they are constructed in order to avoid the implication of any resulting punitive decision, sanction or any form of legally binding acts or enforcement mechanism (Pagani and Godfrey 2002: 8).

This dissertation investigates how, in the process of peer review, States may delegate decision-making authority to independent agents in the governance structure, and under what conditions any agent may be held accountable for their decisions. This research focuses specifically on the decision-making process of the African Peer Review Mechanism (APRM). It investigates the incentive structures created for the APR Panel and other committees within the governance structure of the review process, and assesses whether it is able to produce decision that represent the general interests of member States of the organization.

Within the governance structure of the APRM, substantial decision-making authority is delegated to the APR Panel and other committees, often comprised of eminent persons. This practice represents a contradiction in International Relations theory, in that it illustrates how the APR Panel over the years has exhibited significant independence from member governments.

Traditional International Relations theories of Neo-realism and Neo-liberalism, as currently conceived, fall short of explaining such autonomous action by international organizations, as they operate state-centric ontologies (Nielson and Tierney 2003:242). This dissertation specifically investigates this seeming anomaly, and asks why member States of the African Union delegate substantial decision-making authority to the APR Panel.

The practice of delegation to the APR Panel presents a puzzle which leads one to interrogate whether the arrangements put in place in the decision process of the APRM have a serious consequences. Given the prevalence of this practice of delegation of decision-making away from the State, this dissertation asks whether these conditions may enhance the quality of decisions at each level of the decision-making process in the APRM. This enhancement may occur when, in line with the arguments of modern institutional theory, the delegation of decision-making competence to various sub-organs within the APRM decision system creates a functional differentiation of the system. This differentiation has been seen to empower less powerful actors within the system to argue for the correct application of the institutional guidelines over specific issues, instead of resorting to bargaining to attain their goals and preferences. Functional differentiation within the APRM system, it is argued, may produce a new form of horizontal accountability of the involved actors towards other actors at the same level. These horizontal accountability structures are expected to increase the incentives of decisions-making by the APR Panel and to producing decisions that are accepted by all actors in the peer review process.

The choice of peer review, as discussed in this study, refers to established interrelated mechanisms utilized for international monitoring of compliance with agreed norms and standards in international organizations. It involves the assessment of the quality and effectiveness of the policies, legislations and important institutions of various countries (OECD 2002). Peer reviews in this sense offers a forum where policies of participating States can be discussed and information sought on various issues of concern to interested parties.

The literature has over the years established new paradigms for the conditions under which States may utilize either hard or soft legalization in international interactions (Abbot and Snidal 2000; Bayne 2004; Sindico 2006; Checkel 1999). Hard legalization in international interactions is portrayed to have a potential of reducing transaction costs among actors, strengthening the

credibility of their commitment, as well as making diverse political strategies available to members co-operating in an issue area. The potential of soft legalization to promote learning and normative processes, and to reduce the costs involved in contracting soft legal rules, is highlighted as a point of attraction for their usage.

The popularity of peer reviews in international organizations, especially as voluntary and non-sanctioning forms of public action, has historically reflected their increasing use as a solution to problems of effectiveness and efficiency in policy making, especially within the European Union (Borras and Conzelmann 2007). Abbot and Snidal (2000), for instance, argue that international actors may choose softer forms of governance, such as a peer review, when it is apparent that those forms offer superior and greater institutional solutions. In most instances, States adopt softer forms of governance because they can provide flexibility and the capacity to promote compromise among actors with different interests and preferences.

Debate on peer reviews, as instruments of global governance, usually focuses on whether peer reviews prove effective for domestic policy development and compliance with international norms and agreements (Conzelmann 2010). Some commentators have rejected outright the effectiveness of peer reviews because of their lack of sanctions and enforcement. However, a group of scholars with the ‘management’ approach tend to see immense potential in peer reviews. This school argues that States are mindful of their reputation, and sensitive to avoiding hard solutions that may be seen to flagrantly violate their obligations in the international system (Conzelmann 2010). As a result of reputational issues States tend to comply with recommendations made in peer review reports, as their compliance enhances their credibility among the international comity of States.

Pagani argues that when peer reviews are undertaken within the framework of an international organization, the Secretariat of the organization plays an important role in stimulating and supporting the process. Where the environment of the peer review is marked by shared confidence in the process and mutual trust among States involved, peer reviews tend to create ‘through this reciprocal evaluation process, a system of accountability’ which contributes to their effectiveness (Pagani 2002). Furthermore, the literature on peer reviews in international organizations lacks a theoretically focused agenda that examines their organizational aspects. As

a result, current debates on peer reviews in international organizations are unable to fully account for the decision-making processes that guide their conduct.

In pursuing this research, this study follows a number of research trajectories which are brought together in the following analyses. The dissertation focuses on research on the delegation of decision-making authority to independent agents in the organizational structure of an international organization, making specific reference to the African Peer Review Mechanism and the institutional incentives for making problem-adequate decisions in the governance of the review process. Secondly, this study develops well established theory-driven research to assess procedures to induce rationally motivated actors to make decisions that are not shaped by their parochial interests, but instead informed by externally-given decision criteria that better serve as the basis for making problem-adequate decisions (Gehring 2004).

1.3. Argument in Brief

This study contends that institutional arrangements within the decision-making system of the African Peer Review Mechanism can have an effect on the contents of final country review reports. I seek to account for the impact of delegating decision-making competencies to several committees within the operations of the decision-making process of the APRM. In this light, I utilize the theory of functional differentiation in decision-making processes in international organizations as a leverage to explain the emergence of the decision apparatus of the African Peer Review Mechanism. The core argument put forward is that, in contrast to power-based bargaining, the delegation of decision-making authority to subsidiary bodies within an institution can produce an entirely new situation where decisions follow a rule-based decision-making logic, even where the interests of powerful actors are at stake in various policy issues of concern. The argument is developed as follows.

I start by making appeals to the theory of cooperation among self-interested actors on a given issue area of interest. Based on the tenets that States are rational and the central actors in international interactions, I draw on the theoretical debates on the incentives for cooperation among self-interested actors in issue areas defined by cooperation and collaboration problems.

The literature identifies two scenarios through which cooperation can be achieved even in the absence of any central authority. These are the presence of reciprocity and the presence of a shadow of the future in the interactions of actors. Given the nature of the decision process of the African Peer Review Mechanism with its multi-functional governance system, it remains puzzling why and if a voluntary and non-coercive decision process can produce any serious outcomes in the decision-making system. As a consequence the emergence of the decision system of the APRM is not fully explained by existing accounts informed by only power and material interest considerations.

As a result, I develop a theory of multi-functionality based on the exiting works of Gehring on functional differentiation in decision-making processes. A multi-functional decision system operates just like a functionally differentiated decision system. It involves the emergence of several institutional bodies within a decision system with each subsidiary body guided by the presence of externally given rules. Just like a functionally differentiated decision-making process, a multi-functional decision system is separated between a rule-making and the application of norms to case specific situations by different entities in the decision-making process. As a consequence, institutional incentives are generated at both the rule-making and norm application stages of the decision process to make decisions that are merit-based. Merit-based decisions are based on decision makers' resort to existing guidelines and good practice as the basis for arriving at final decisions in case specific situations. Their efficacy is based on the potency of arguments adduced to support the particular course of action being pursued. As a result, the governance of a multi-functional decision system involves delegating decision competencies to various committees. The incentive for delegating any decision competencies is informed by the benefits that accrue to States involved in the review process. Since, I hold the assumption that States are rational and have an overriding tendency to pursue their parochial interest; I investigate if institutional arrangements in the APRM decision system provides any incentives for decision makers to operate based on their externally given rules.

On a whole, the concept of functional differentiation which informs this study, demonstrate that the practice of delegating decision-making competencies to subsidiary bodies in the decision-making processes of institutions generate incentives for actors to decide in favour of generally accepted rules as points of reference in a decision system. Its application is generally suitable for

the study of the decision processes of most international organizations and it is applicable to the decisions making processes of the African Peer Review Mechanism which delegates decision competencies to different organs in its institutional set-up.

1.4. Existing Literature on Governance and the African Peer Review Mechanism

The African Peer Review process and governance are among the most crucial topics in the consideration of African in world politics in the twenty-first century. However, few existing works in both democratic governance studies and the vast literatures on the African Peer Review process systematically explores the decision-making process of the APRM. Over the last couple of decades, research on governance and the APRM have focused on clarification of the operational process of the APRM in a descriptive manner. The literature on the African peer review mechanism has mostly been divided between scholars who tend to see restrictions in the value of a mechanism that is ‘too soft’ as a means of reforming governance practices, and those who give more approval, arguing that the mechanism is the most tangible move towards regional political accountability in Africa (Matholo 2003; Masterson 2005; Venter 2003). Criticism of the African Peer Review Mechanism (APRM) revolves around the issues concerning the rationale and design of the mechanism, its process and organization, and the extent to which the implementation of the mechanism is transparent and legitimate. Some in particular have raised concerns about the transparency of the internal decision-making processes of the AU (Brosig 2014: 231). This literature has, however, failed to take into account the motivations and expectations with which some States in Africa decide to participate in a non-sanctioning peer review mechanism. This study therefore departs from early literature which lacked a theoretical focus to build a theory driven research that seeks to explain the nature of decision-making within the governance structure of the review process, taking into account in a practical assessment of the full participation of its actors.

An example of this limited focus in research, with a preponderance of negative judgments arising from the lack of a legally binding framework, can be found in that of Mathoho. His work explores the strengths and weaknesses of the APRM and its prospects of impacting positively on Africa’s governance challenges (Mathoho 2003). He rightly notes that the peer review process

had never been attempted in Africa before and that, unlike judicial proceedings, the final outcome of any review is not legally binding. He concludes that the impact from this process is likely to be limited. However, his work fails to acknowledge how organizations may be instrumental in the enforcement of the outcomes of the review, even without a legally binding imperative, and how this would help consolidate democracy. Although an attempt is made to elucidate the implementation of the programme of action of the APRM, his work fails to accept that a peer review which is legally non-binding could develop authority and make it worthwhile for States to submit to the procedures. This study intends to investigate how procedures in peer reviews gain authority and develop trust among actors who interact within their procedures.

The critical role of civil society in the APRM process has also received scrutiny by scholars. Adotey (2007) argues that, despite the strong emphasis on civil society's involvement in the APRM process, meaningful consultation was notably insufficient in the case of Ghana. He notes there were three main civil society consultation events constructed to consider or validate the country's self-assessment report. However he describes how the way the meetings were conducted left many participants with the sense that, though those consultations may have been broad, they were not sufficiently deep. To establish itself, therefore, the review process will need to supplant such consultations and mobilise a critical mass of the population into sustained effort. This can be achieved conceptually, strategically and operationally. It involves opening the frontiers for better engagement with scientific experts and the general, interested public. The relevance of Adotey's work to this study is that it emphasizes the role of civil society in the APRM process in Ghana. Therefore, showing the importance of assessing the degree to which the public may become engaged in the process of producing review reports that can then appear more acceptable to participating States.

It should be acknowledged that the APRM, for some commentators, is a major tool for democratic consolidation. In this respect, if efficient in its decision-making processes, it can offset the skepticism expressed by scholars exploring the conditions for democratic consolidation in the developing world (Bratton and van de Wall 1997; Diamond 1999; Rod 2004). For instance, Gruzds analyse the APRM as a conflict analysis tool, demonstrating how the responses characterized in the reports of Ghana, Kenya and Rwanda have articulated conflict issues, and conclude that therefore the APRM has a potential for conflict analysis (Gruzds 2007).

Another debate surrounds the fact, alluded to by Ross, that the APRM is clearly not designed to handle fast moving crisis (Ross 2004). This claim leads to the conclusion that such work is most appropriately dealt with through ad-hoc diplomacy and the Peace and Security Council of the African Union. This dissertation makes the suggestion that there is an opportunity to use a theoretical analysis of the framework of the APRM to test this assumption.

As none of the above, mostly skeptical commentaries by scholars has been grounded in any theoretically focused analysis of the decision-making process of the African Peer Review Mechanism as an organization, they represent, at best, an endeavor which has tended to be highly descriptive and with no theoretical basis. This study seeks to fill the gap by presenting a parsimonious theory on international organizations, and using it as a lever to explain the decision-making process of the APRM and the institutional incentive structures that might push rationally motivated actors in a decision process to forgo their individual interest in pursuit of the collective interest. The goals of democratization and the opportunity to forge a mechanism for conflict resolution are clearly worthy of further deliberation which might overcome the skepticism of the current literature.

1.5. Research Design and Methodological Considerations

A qualitative and case-oriented research approach is adopted in this study to address the research question posed. It involves the use of qualitative case studies, in combination with interviews with experts, and process tracing. These techniques are chosen and applied as their design can produce evidence to explain the rationale for delegation in the African Peer Review Mechanism. These methods allows for an in-depth analysis of the processes and structure of any social phenomenon (George and Bennett 2005). While at the same time, it limits the potential for case-based generalizations (Ragin 2000).

These techniques are specified in their detailed approaches below, leading to a discussion of the strengths of their methods, as well as any inherent limitations that are likely to be encountered in their use. This empirical framework is applied to the operation of the decision-making process of the African Peer Review Mechanism. The cases empirically test whether members intervene at

any point in the decision-making process of the APRM committees as they come to a final decision on what policies and measures are to be taken by a State to address an identified problem. The decision to focus on the APRM and the pioneer States that participated in the review process, i.e Ghana, Kenya and South Africa, is based on the reasoning that those States are the most efficient in the African Union (AU) system, and therefore constitute the most unlikely cases to support the hypothesis. Therefore, I test fully the proposition that forms the basis of this research's proposed hypotheses. If the proposition that functional differentiation may play a role in pushing rational actors to accept decisions that might not be in their best interest is upheld in the most unlikely scenario within the APRM, then one can be more confident that it may prevail in other peer review institutions that mostly lack hard enforcement mechanisms.

The following sections provide an explication of the methodological considerations that underpin the research, providing the rationale, where necessary, of the logics and epistemological concerns that shape the various research tools adopted.

1.5.1. Approach

The research utilizes a qualitative case study approach to explain the role of delegation in the decision-making process of the African Peer Review Mechanism. It combined process tracing and elite interviews to explain the decision-making rationale of actors in the APRM. Both methods are seen to be extremely useful in unearthing and explaining the role of key actors in the APRM process, and also to explain the basis on which peer review decisions are arrived at. The qualitative case study approach allows for a deep examination of various cases, enabling one to theorize on the dynamics of decision-making in a 'soft' institution that delegates some decision-making authority to the various sub-bodies of the institution. Based on the theoretical research question that is posed, a case study technique is seen to be capable of addressing the pertinent questions that the research seek to answer, using the example of various cases in the peer review process.

A comparative advantage of the case study research method that is often highlighted in the literature is its ability to contribute to the development of theories that can accommodate varied forms of complex causality (George and Bennett 2005: 5). This may be generated from the need to fashion a proper and adequate analysis of various hard or ‘deviant’ cases that fail to fit existing theories, and in doing so might result in providing significant theoretical insights.

Case study approaches generally involves an expansive and detailed examination of an aspect of a phenomenon to develop and test explanations that might be generalizable to other events and situations (George and Bennett 2005). Following Eckstein (1975), this research defines a case as an instance of a class of events. The events are a social phenomenon of scientific interest that a researcher aims to study with the intention of developing a theory explaining the diversity of the whole class of events. Therefore, according to George and Bennett (2005), a case study is a well-defined aspect of a historical episode that a researcher selects for analysis and is representative of the historical event itself. The selection of those aspects chosen to constitute a case is thus of fundamental importance to finding cases that are ideal for study, and is informed by the perceived general advantages that have been ascribed in the growing literature on qualitative case study approaches. Furthermore the decision to use a case study approach, and the design and implementation of research in such cases arises from an assessment of how the particular case can provide evidence to meet the research question, framed to create a specific answer through the mechanism of the research.

In assessing the use of a variety of techniques in Social Science, George and Bennett highlight the strengths of case study methods. Their advantages include their usefulness in achieving high conceptual validity, the ability of case study methods to foster new hypotheses, their capacity for dealing with causal complexity in research, and their value in examining the hypothesized role of causal mechanisms in the context of individual cases (George and Bennett 2005: 19).

These strengths notwithstanding, case studies have some limitations and pitfalls. This has led to telling critiques, especially from researchers coming from a statistical methods background. One common criticism that has been raised against case study methods is the issue of ‘selection bias’, which is of great concern to statistical researchers (Achen and Snidal 1989; Geddes 1990). Selection biases generally speaking have some potential consequences in case study research, but

not in the same vein as in statistical approaches. According to Collier and Mahoney, selection bias occurs when some form of selection processes in the design of the research or the phenomenon under study results in inferences that suffer from some form of systematic error (Collier and Mahoney 1996). Such biases may occur in instances where cases are self-selected, or as King *et al* suggest, when cases are selected that represent a truncated, and not fully representative sample along the dependent variable of the population of cases under consideration (King *et al* 1994: 60). This statistical notion of selection bias undermines the strength of the relation between the independent and the dependent variables (George and Bennett 2005: 23). In contrast to these concerns in statistical methods, another selection bias in case study research can sometimes occur when the researcher is inclined to deliberately choose cases that share a particular outcome. However, selection of cases based upon the dependent variable is not necessarily a flaw of case study practitioners, as such a judgment will depend on the purpose of such decisions. In some instances, selecting cases based on the dependent variable can help identify which variables do not afford a necessary or sufficient pre-condition for certain expected outcomes. Other considerations, such as the historical importance of some cases and the availability of accessible evidence could also legitimately play a key role in case selection in qualitative case studies.

In order to derive a robust theoretical framework to investigate the theoretically derived research question in this research, an analytical inductive approach was utilized for the purpose of revealing the core of the question of interest. Analytic induction constructs a method that allows for the consideration of existing theories and the iterative back and forth between the literature and empirical data to refine existing theory (Manning 1982). In most instances, analytical induction involves an initial review of the literature and the derivation of some assumptions made. Based on these assumptions, a model is proposed and tested against empirical data to either confirm or reject already existing theories that form the basis for those initial assumptions. The analytical inductive approach thus has its main usefulness in its ability to refine existing theories and make contributions to the already existing literature in that area of study.

Within this research, where applicable, the methods of elite interviews and process tracing are chosen and utilized to trace the decisions of various committees within the decision apparatus of the APRM system. Process tracing generally allows for detecting intervening causal mechanisms

between independent variable and dependent variables (George and Bennett 2005). The value of interviewing applied to this research is based on the positivist assumption that interview responses are to be valued primarily because of their accuracy as objective statements of sets of events. Following positivist assumptions, responses from experts are treated as being a direct representation of the bureaucratic culture of the institution that is being investigated. Positivists hold the view that interviews based on pre-tested, standardised questionnaires are a way of increasing the reliability of research. In this case that reliability is achieved by cross checking interview data with official documents that are produced.

Elite interviews for process tracing have strengths and weaknesses that are discussed in the relevant literature in Political Science. George and Bennett outline a range of uses of process tracing data and interview data (George and Bennett 2005). The use of elite interviews has the following benefits. In the first place, elite interviews in most instances are used to corroborate information that has been established by other sources. When primary documents and secondary sources gives an initial clue to a phenomenon that is of interest to the researcher, interviews could be used to corroborate the phenomenon and facts that are already out there. Interview data in this sense contributes to the research goal of triangulation. Information collected is cross checked through multiple sources to increase the robustness of the findings. This contributes to the credibility of the findings of the research since information collected is supported across multiple sources, and can simultaneously reveal the weakness of other unsupported sources that might have been viewed as reliable at the initial stage of the research (Davies 2001).

One danger of depending on interviews is that they might reflect an account that is determined by the social and psychological structures that govern the responses of the respondents, and will thus produce analysis that supports a preconceived argument. To overcome such dangers, two effective strategies suggested in the literature (Baruch 1982) are to tabulate many cases and to investigate deviant cases.

1.5.2. The Case Study Selection

Case study based research is relevant for a research strategy aimed at theory building through a constant comparison of theory and data, and case based research can help to explain the dynamics present within single settings. This study therefore makes use of a small number of cases to allow for an in-depth study of their inherent dynamics, and to take into account any peculiar case characteristics and contextual factors. The universe of cases, from which selection has been made for this dissertation, are those States that have participated in the African Peer Review Mechanism from 2003 to 2017. As outlined above, there are factors concerning their effectiveness that has put them into this position, and since the dissertation aims at explaining why States in the APRM delegate decision-making authority to sub-committee and whether and how delegation impacts on the final decision that are made by the APRM panel of experts, the selection of these cases has been made to demonstrate that, under these least likely conditions, the outcome of States overriding the decision of the APRM will display increased significance.

1.5.3. Data Sources

Several data collection methods are used in this research to enable the proper construction of a theoretical framework, the specification of observable implications of theory, the derivation of some hypotheses, and the testing of the hypotheses empirically. The research relies on the theory of functional differentiation to deductively derive hypotheses to be tested empirically.

Expert interviews will constitute a main data source for illustrating individual case studies which can supplement official reports and press statements of various committee meetings. Noaks and Wincup (2004: 80) have elaborated on the characteristics of different interview formats in social science research. Three different interview formats are sketched out in their work. These typologies of interview strategies include structured interview, semi-structured interview and the open-ended interview or focus groups. Each of these formats requires some skills to produce reliable and valid analysis of data gathered in the process. The choice of the structure of the interview questions aimed at the experts has been guided by my theoretical framework. This determines that open ended questions will be a highly useful source to generate information from

the experts. In the context of the need to generate wide-ranging and possibly unstructured information that can contrast and fill gaps that official reports on the decision process in the APRM may not be able to cover.

1.6. Relevance of the Research

This research is designed to explain the role of delegation in the decision-making process of the African Peer Review Mechanism. It does so through a theory-guided case study analysis of the decision-making system of the APRM. Although the empirical findings on the three case studies presented in this book cannot be broadly generalized, there is every reason to assert that the results are transferable to other cases in the APRM process. My claim hinges on the fact that, the selected cases in themselves represent a universe of unlikely cases where the theoretical assumption impugned were not expected to work. In this regard, this study makes both a theoretical and empirical contribution.

First, the study contributes to ongoing academic debates on the functions and effects of international organizations in global politics. While research in this area has attempted to explain the autonomy of bureaucracies in international organizations, this study looks specifically on the organizational operations of the decision-making process of the APRM and makes reference to a hitherto unaccounted mechanism, the separation of functions among decision makers in a decision-making process.

In this regard, the study also contributes theoretically to recent debates on institutional mechanisms to produce problem adequate decisions in functionally differentiated decision systems (Gehring 2004; Gehring and Kerler 2008; Gehring and Ruffing 2008). The analysis of the decision-making process of the African Peer Review Mechanism shows that institutional arrangements are important at both the rule-making level and the application of norms to case specific situations in curtailing the tendencies of actors to resort to the pursuit of their parochial interest in the decision process.

Secondly, the analysis makes an insightful empirical contribution to understanding the operations of the decision process of the African Peer Review Mechanism. Through the analysis of the

assignment of various competencies to different subsidiary bodies within the organizational structure of the review process, the analysis in this book is able to account for the patterns of final decision outcomes of the review process among African States. Therefore, this study is the foremost to systematically scrutinize the effects of delegating decision-making competencies to various bodies within the operations of the APRM. Unlike other descriptive oriented studies on the APRM, this study provides a more theory-driven analysis of the APRM decision process, which makes it novel in this respect.

Finally, the empirical findings of the study have broader policy implications for the enhancement of good governance practices among participating Member State of the APRM. The study contributes to debates on the APRM as a tool to effectively contribute to reforms in the governance processes of member States of the African Union. It makes a good case for the need to devolve the decision-making system of the APRM to enhance the quality of country review reports that are produced to serve as a blueprint in the implementation of various policy programmes.

1.7. Structure of the Dissertation

To address the research question, the analysis is structured in 7 chapters. The first chapter identifies the gaps in the literature on the African Peer Review Mechanism and proposes a methodological orientation to the study of the decision-making process of the APRM. It also makes a case for the theoretical and empirical relevance of the study. In the next step, I develop theoretical expectations based on the literature on delegation in international institutions and the literature on decision-making in functionally differentiated institutions (chapter 2). The third chapter focuses entirely on explicating the organizational structure of the African Peer Review Mechanism. The chapter identifies each of the organs and the incentives generated for each of the committees to make decisions that are ruled-based at each stage of the decision-making process. The next set of chapters (chapter 4, 5 and 6) investigate three case studies on the implementation of the review process with particular focus to the decision-making process. I investigate three review processes with differentiated decision-making systems to ascertain whether the postulated theoretical expectations are present or otherwise in each of the cases

under scrutiny. In the last chapter (chapter 7), the dissertation draws a conclusion from the analysis in the previous chapters. I present a summary of the theoretical and empirical findings as well as the policy implications for the operations of the African Peer Review process.

Chapter 2

2.1. Theoretical Background and Analytical Framework

In considering whether peer reviews by international organizations matter in global politics, scholars are confronted with key questions which require a close analysis of the nature of the governance structure which has been developed as a function of choice in institutional design. One such question asks whether delegation in peer review arrangements organized by international organizations facilitate the problem solving capability of the various sub-organs involved in the decision-making process. To respond to this question it is necessary to know to what extent review mechanisms, under the auspices of international organizations, place issues on the international political agenda, and how and with what consequences does the delegation of decision-authority to various bodies in peer reviews by international organizations shape the outcome of decisions and recommendations made by expert bodies. In each case the objective of these questions is to determine whether the practice of delegation in peer review arrangements in international organizations influences the politics of regulatory governance in an issue area of interest for States, especially in instances where States encounter with collaboration or cooperation problems within the organization.

Any delegation of decision-making authority to sub-organs within international institutions would inevitably raise and define a Principal-Agent relationship between key actors, creating incentives at each stage of the decision process. In order to understand the role of delegation in the decision-making process of international institutions, whose decisions have vital implications and ramifications for the conduct of the behavior of States, it is important to understand how and why States decide to co-operate with institutional arrangements like peer reviews, and then delegate decision-making authority to a body of experts. Based on the micro foundations of the behavior of States in institutionalized settings, I turn to modern institutional theory and the literature on the evolution of cooperation to explain the emergence of the decision system of the APRM and the behavior of rational actors in an institutional decision-making arena.

This chapter develops a concise framework of decision-making that assesses and explains the relative power of the twin mechanisms of expertise and of external expectations on member States of the APRM. Firstly a theory of cooperation is utilised to generate a discussion of the

debates in Realism and Liberal Institutionalism on the pros and cons of cooperating in a given issue area in international relations. This section sets the framework for establishing the general impetus for the theoretical framework adopted by this dissertation.

The main proposition put forward is that delegation of decision-making competence to an independent agent in institutions creates demands for accountability measures to keep the agent in check. However, to ensure the proper functioning of the agent, there is a requirement to design proper accountability mechanisms while not jeopardizing the autonomy of the agent in the execution of its task. This means instituting proper institutional mechanisms which persuade rational actors in the decision-making process to forgo the pursuit of their parochial interest in lieu of the collective good of all the participants within a cooperative project surrounding an issue of common interest. The consequence of this requirement is the recognition of the need for horizontal governance mechanisms in the decision process which are able to find solutions to problems of common interest. This therefore requires a new form of horizontal accountability of the involved actors towards other actors at the same level of the scrutinized State peers. The operation of these horizontal accountability structures, this research contends, will be superior to that of hierarchical bodies and judicial reviews. A non-hierarchical mechanism may well enhance compliance to agreed standards in a non-adversarial manner, without jeopardizing the benefits of delegation to sub-bodies of an international institution that is geared towards fostering a credible commitment. This general model of decision-making and accountability, developed through horizontal compliance, is applied in this research to the study of peer reviews in international regimes, with a focus on the African Peer Review Mechanism, in order to derive testable hypotheses in relation to the role of delegation of decision-making, in precisely such a context as that of an appropriate, horizontal peer review within an relevant international organization.

2.2. Research on International Cooperation and Institutions

The cooperation problem in International Relations has long been linked to situations where rational actors intend to cooperate for their own good in a particular issue area of interest, with each actor potentially possessing alternative incentives not to cooperate. The long-standing

question is how, in a situation where each actor has the incentive to be selfish, cooperation can be developed. Two propositions have been highlighted in the literature to define some of the strategies through which cooperation is achieved, even in a situation without any central authority. These two scenarios are, firstly, the presence of reciprocity in the interactions of actors, and, secondly, the presence of an unknown future for the interaction among actors. These factors would, to a large extent, shape the nature of any such cooperation, achieved among actors who are motivated to act rationally in a ubiquitous collective action problem situation. Axelrod (1984) has elaborated on how the use of ‘tit for tat’, and the informal development of ties among adversaries, can lead to the likelihood or even certainty of successful cooperation, as these responses determine how, in a real event, key actors reciprocate the gesture of their partners to form an alliance based upon cooperation. Based on insights from this literature, this section delves into debates within International Relations concerning the theoretical foundations of cooperation in any issue area which is of interest to self-interested actors. The application and usefulness of these debates to the questions raised in the dissertation provides the micro foundation from which is built a conceptualization of the cooperation patterns in the African Peer Review Mechanism (APRM).

Accordingly, international institutional cooperation among rational actors is laden with numerous intricacies and complex interactional effects on the institutional structures on which they are built. The starting point in the enterprise of defining those dimensions has to be in a functional account of why States cooperate in a given issue area in international politics. I contend that a functional theory of cooperation in International Relations provides a good starting point to nuance our understanding of the origin of institutions, but falls short in accounting for the incentives that may play a role in influencing the outcome of the final decisions in a decision-making system that is characterized by multi-functionality among actors.

The extensive literature on cooperation among self-interested States in international politics gives a strong foundation for explaining actor interests and preferences. The assumption is always made that most issues pertaining to coordination of policies between States can be understood in terms of a collective action problem. While States in a cooperative arrangement stand to reap the benefits that come with it, there are prevailing incentives for individual States to defect and renege on their side of a contract. In the usual two game prison’s dilemma situation,

these incentives may be mitigated where the interactions between the players are repeated, where the utility of mutual cooperation is high, or when the time horizons of participating States are long (Krasner 1983, Oye 1986). Importantly, international institutions, as is widely agreed in the literature, help overcome any informational problems often associated with collective cooperative solutions to a given issue area by monitoring the behavior of States and identifying lapses and noncompliance to agreed principles and norms (Keohane 1984).

International cooperation, conceptualized as the mutual adjustment of governments' policies through a process of policy coordination (Krieger 2001), could, at the basic level, presuppose the inherent anticipation of mutual gains by States through a deliberate and coordinated adjustment of policies in attempting to solve a mutual problem (Milner 1992). Cooperation comprises iterated processes which continue beyond initial agreements, and can result in complex and enduring governance orders with a potential for social change and a change in the behavior of actors (O'Neill, Jorg and Stacy 2004). International cooperation occurs when States adjust their behavior to anticipated preferences through a process of policy shift and coordination. Cooperation is sometimes characterized by widespread participation, ongoing assessments and experimentation and a process that may drive broader transformation of the international system. Tellingly, however, Keohane distinguishes cooperation from harmony, an atypical state of such mutual accord this dissertation does not address. Keohane defines harmony as a situation in which unilateral pursuit of self-interest automatically facilitates the ability of other actors to achieve their goals (Keohane 1984). Harmony, at its best, is illustrated by a situation in which the pursuit of self-interest by all actors in a given issue area automatically leads to the achievement of all participant's goals. Pfaltzgraff and Dougherty argue that harmony brings about a situation where rational self-interested actors achieve their mutual interest through a narrow pursuit of their self-interest (Dougherty and Pfaltzgraff 2001). In contrast, the essence of cooperation does not connote the non-existence of conflicts between and among States in their interactions in the pursuit of their interest and preferences, but looks at how they may overcome these conflicts for the mutual benefits of all actors.

States create mutual rules, expectations and institutions to promote behavior that enhances the possibility of mutual gains (Goldstein and Pevehouse 2010). Sadly, however, interactions among States in international affairs have been, historically, plagued by huge conflicts and

disagreements, especially on issues pertaining to the core interests of States. It is, however, clear that, despite the numerous sources of conflicts in International Relations, States cooperate most of the time (Goldstein and Pevehouse 2010). Neoliberal scholars have shown that, even in a world of unitary rational States, the Neorealist's pessimism about international cooperation is not valid.

The central question in the cooperation theory of international politics was initially concerned with why States, existing in an atomistic, anarchic, international system, will cooperate with each other in the first place (Waltz 1979). The metaphor of the Prisoner's Dilemma Game captured this view well. In a one-off game between rational actors, defection can become the dominant strategy. States may then be deterred from long-term cooperation, thus failing to realize their potential gains, because of the possibility of defection by partners in the first round which could lead them to be far worse off than before (Oye 1986). This view reflects certain underlying assumptions by Realist and Neorealist theorists on cooperation among actors in international politics. States, conceived of as rational, unitary actors, are primarily concerned with their own survival and the pursuit of their narrow interest. Anarchy, the absence of a sovereign global government, then represents a key ordering principle that structures the behavior of such self-interested States.

In the Realist tradition, the anarchical nature of the system inhibits cooperation among States, eventually promoting competition since the system is described as a 'self-help system'. This reading of the nature of world politics contends that international institutions do not have the capacity to promote cooperation, and consequently the constraining effect of anarchy on cooperation is emphasized. Nevertheless, in a situation of competition and cooperation under anarchy, States may still wish to pursue relative gains. Thus there are reasons to join or participate in international institutions for self-serving gains which may not be enshrined in the objectives of such institutions. Using this paradigm, States are assumed to be preoccupied with power and security, and are consequently predisposed to intractable disagreements concerning issues of common interest. International organizations and institutions are thus seen to affect the prospects for cooperation only marginally, as States will still protect their interest over each prevailing circumstance, giving salience to the notion that decisions within international

institutions are the result of the outcome of the great power politics that characterizes those institutions.

Liberal institutionalists, on the other hand, hold a strong view on the important role of institutions in world politics. They argue that even if anarchy constrains the willingness of States to cooperate, States may still work together purposefully, particularly with the help of international institutions. The existence of international organizations is viewed as an ample demonstration of the ability of States to cooperate in international politics. Free-riding and self-interest is acknowledged as a fundamental obstacle to cooperation at all levels, but Liberal institutionalists project the important role of international institutions to overcome these problems. States may thus seek to maximize their individual absolute gains, rather than relative gains, in an institutional decision-making process where there is a categorical differentiation of roles among different institutional actors, and the inhibiting presence of a minimal degree of decision-making criteria to guide institutional actors on their behavior.

The debates between these Realists and Liberal institutionalists on the discourse of international cooperation, especially from proponents like Robert Axelrod, demonstrate beyond reasonable doubt that States, though instinctively rational egoists, do cooperate under conditions of anarchy and support conditions that may facilitate cooperation. These include the presence of a common interest, the participation of a small number of actors and a perception of the implications of a long shadow of the future.

Firstly, Axelrod sees cooperation as necessarily difficult to achieve unless States perceive some common interest in cooperation. But it is likely that common and conflicting interests will mostly exist side by side in international relations. As a result, States may see gains from cooperation while finding it continually difficult to take the risk of pursuing the benefits that exist for all. Domestic political pressures and the constraints of the self-help anarchical international system serve to deter governments away from risky cooperative endeavors, even if the benefits of such endeavors are large. However, the larger the level of common interest, the higher the tendency for cooperation.

Secondly, Axelrod maintains that the involvement of a relatively small number of actors can provide better conditions to propel the need for international cooperation. If the numbers of

States involved in an issue area are few, negotiating mutually acceptable agreements and monitoring compliance with such agreements becomes easier. Therefore, cooperation may be easier when few States need to coordinate their policies to achieve outcomes.

Thirdly, the presence of a future goal to pursue is one that encourages international cooperation. To the extent that States perceive future benefits relative to immediate gains, the more they will be willing to cooperate within a given issue area. A State that is mindful of the future will forgo present benefits in order to gain future benefits from cooperation.

Lastly, Game theory also provides a justification for the need for international cooperation. The most commonly drawn preliminary distinction in game theory is that between a zero-sum game where one party wins at the expense of the other party, and a positive sum game whereby all participants are winners. Game theorists have justified the need for cooperation by emphasizing that the outcome of cooperation is a positive sum game as against a zero sum game. The ‘Stag Hunt’ model presented by Jean Jacques Rousseau, where the stag is most likely to be captured if all the participants in the chase work as a team in pursuit of their common goal, is often used as a good example for the need for cooperation in game theory. While this influential argument within the literature accounts for the conditions under which States may cooperate in a given issue area, the theory of cooperation tells little about the institutional incentives that may be at play in influencing decisions of various organs in an institution that is functionally differentiated in the decision-making process, and therefore fails to account for why rational actors may delegate to a decision-making apparatus to govern an issue of concern in their interactions.

2.3. Institutionalized Cooperation and Collective Decision-Making

This failure in theory leads to a theoretical interrogation of the reasons why States or actors need an institutionalized apparatus for collective-decision-making to govern an issue area of common interest in international relations. This research argues that such actors are forced by the problems of conducting ad hoc negotiations to establish an institution capable of adopting collectively accepted decisions where they have a common interest in a particular issue area (Gehring and Dorsch 2010). The consequence is for actors to accept the constraints duly imposed

by the framework of the institution in respect of decision rules, norms and the practicing procedures. This to a large extent may create a situation where actors do not need to routinely look into the possibility of negotiating possible solution to recurrent problems. In an attempt to reduce cost and time in negotiating for a common position at every stage of the decision process, it may be prudent for actors to appeal to institutionally ascribed values for the proper functioning of a system. Institutions to a large extent reduce certain types of uncertainties and transactional costs. According to Keohane (1984), even in the absence of hierarchical authority and power, institutions provide information and stabilize expectations among actors. This institutional context to a large degree shapes the transactional and informational flow, as institutions also make enforcement of rules feasible, especially at the decentralized level of policy implementation.

Thus, international organizations are undoubtedly important to understanding the emergence of cooperation among actors in international relations. Cooperation however may conceivably emerge among actors without any collective-decision-making apparatus. As illustrated by Axelrod (1984), cooperation can evolve from repeated interactions among a group of actors. In a repeated Prisoner's Dilemma situation a strategy of punishing defection and positively rewarding cooperation may induce actors to turn to cooperation and refrain from free riding.

A distinction between the processes through which institutions emerge could be useful to elucidate the fundamental functions of international organizations. Young (1983) differentiates between institutions that emerge spontaneously and those that arise as a result of a negotiated outcome to handle a particular issue area in international affairs. Whatever the process through which a particular institution emerges, it is likely to install technical cooperative arrangements that direct the activities and behavior of relevant actors. Whether institutions emerge spontaneously or are purposively established, they consist of social norms, in the form of institutionalized normative expectations that indicate an accepted socially desired behavior (Gehring and Dorsch 2010). Though this assertion is viable, it is nevertheless problematic because it hardly defines or takes into account the level or extent of cooperation achieved in a particular institutional arrangement. It retains some usefulness as a thorough account of the process of institutionalization which might serve a useful category in explaining relevant institutional developments within an area of cooperation.

It has long been observed that rules regulating human action can systematically evolve without conscious human design, and may even have the potential to maintain themselves without any formal machinery for enforcing such rules (Sugden 1989). Spontaneously emerging patterns may then reinforce their efficacy through interactions among participants in a given accepted situation where actors accept conventions and do not appeal to a higher authority for enforcement. The conceptual problem with this spontaneity is that rationality always assumes a well-informed position on the part of actors in any given issue under consideration, and the utility function of any such structure, which is absent in a spontaneous arrangement, is always promoted in a cost benefit analysis output. The rational choice theorist may still ask why an experience of this nature may be relevant to arriving at a convergence even when the actors involved have not communicated sufficiently to arrive at the most common rule to guide their behavior. Schelling's theory of prominence, sometimes called the idea of a 'focal point', may be useful to explain such rationality. As has been argued by Sugden (1989) cooperation can arise spontaneously in the form of accepted conventions in human affairs. These patterns of behavior tend to be self-perpetuating and replicate themselves in social norms that are practiced over time. The norms or rules need not be the result of any process of collective choice, but emerge directly from interactions among relevant and qualified participants in the subject matter in question. However, the emergence of any spontaneous institution may not prove to be appropriate to govern an issue area where the pay-off structure assigns high benefits to defectors and high costs to cooperators.

Spontaneously emerged institutions are therefore not seen as suitable for complex multilateral settings, and become hardly able to ensure a change in behavior among rational actors. Consequently, a group of actors, coordinating amongst themselves to achieve an improved sub-optimal outcome through the establishment of an institution, need to acquire the capacity to adopt collectively binding decisions on the particularities of the arrangement, envisaged separately from the ongoing interactions to be governed by the future institution (Gehring 1994). Separate arenas of interactions are required in a coordinated collective policy making process. Where one sphere is fully dedicated to negotiating the process and procedures that should shape the decision-making system, another can be dedicated to taking action and implementing decisions. The separation of these functions allows actors to fully specialize in one arena and also relieves principals, especially in a Principal-Agent relationship, from interfering in the work of the agent and other actors who may be empowered to seek the welfare of all actors by making

the most problem-adequate decisions. While a spontaneously emerging cooperation system may not require collective decisions, a purposively negotiated institution may require the establishment of some preconditions even before any negotiation may take place.

It is thus necessary for actors to adopt convergence criteria in making collective decisions if there are to overcome arbitrary decisions, when there is a desire to govern an issue area of importance to all relevant actors. The need to find an appropriate point to coordinate collective decisions will therefore force actors to accept the institutional constraints that are imposed on them, in the form of rules of procedures and norms as they emanate from their interactions. This may also force actors to delegate decision-making authority to sub-organs in the organization to ensure efficiency. Delegation of decision-making authority to sub-organs within an international organization creates a Principal-Agent constellation. The theoretical conundrum in any such relation remains in explaining why States may choose to delegate decision-making authority to any particular agent, and how best do principals monitor the activities of their assigned agents without jeopardizing the benefits of the delegation contract. The ensuing section looks at how this challenge is presented in the literature.

2.4. Delegation and Principal-Agent Relations in International Institutions

A principal-agent relationship arises when a principal contracts an agent to execute a task on their behalf. In performing the task, the agent chooses an action which has certain consequences, through an outcome that has the overall effect of affecting the welfare of both the principal and the agent (Petersen 1993, 277). The decision to delegate to an agent is mostly informed by the benefits that may accrue to the principal. Principal-Agent theory therefore assumes actors are rational and that cost-benefit calculations inform their decision to delegate a task to agents. Actors in a given issue area may therefore be more willing to delegate substantial tasks to agents, if the outcome of delegation will result in more benefit than cost to themselves.

In Hawkins' conceptualization of delegation, States acting as principals, in most cases, grant conditional authority to agents to enable the agent to act on their behalf (Hawkins 2006). The principal, in empowering the agent, puts in place measures to control the autonomy and level of

discretion that may be entrusted to an agent. The overarching question that arises in Principal-Agent theory is why States delegate or empower agents with decision-making authority and how can principals ensure that agents are properly kept in check to perform the task for which they have been chosen.

The existing literature, inspired largely by Hawkins (2006), Epstein and O'Halloran (1999), Alter (2008) and Majone (2001), suggests a cost-benefit analysis can explain fundamental considerations by States to delegate decision-making authority to agents. The reason for which States may delegate to agents in this perspective is when the benefits of delegating outweigh the costs. This analysis is premised on the principle of the division of labor between principal and agent, and recognizes the accrued gains from specialization (Hawkins 2006, 13). Incentives to delegate to international organizations are seen as rationally oriented and, other things being equal, as the benefits of delegation increase, principals become willing to delegate decision-making authority to agents.

The gains in these situations of delegation, however, interact with other benefits that might be as a result of delegation. Hawkins identifies the heterogeneity of preferences that different States display, and the power balances that exist between them, as mitigating factors that can interact with the benefits of delegation to affect the decision to delegate to an international organization. He argues that, though benefits may motivate States to delegate, they do not determine the outcome, and proposes that the preferences and power capabilities of States to a large extent shape and affect their likelihood of granting a conditional authority to international organizations. In the first place, all States do not share the same policy preferences, and are likely to have different strategies for achieving them. In situations where States have to overcome collective decision dilemmas, the decision to delegate will need to be preceded by a resolution of the policy conflicts of States. The level and degree of preference heterogeneity among a group of States deciding to cooperate in a given issue area is likely to affect the willingness of States to delegate to an international organization. Nielson and Tierney (2003) and Lyne, Nielson and Tierney (2006) postulate that the more dissimilar the preferences of States in a given policy area, the less likely States will be willing to revise an already existing delegation relationship. Greater preference heterogeneity within a group of States will be likely to lead some members to prefer the maintenance of the status quo in a delegation relationship rather than

revising the relationship to produce a policy change. States almost always weigh their capacity and ability to act alone. Realization of their goals vis-à-vis action through international organizations raises concerns of power, policy preferences and institutional rules which will always interact to influence the delegation outcome (Hawkins 2006).

The need to delegate is however framed in a context influenced by the prospect of reaping the gains of specialization. Principals may decide to delegate to specialized agents with expertise and the resources to perform a particular task. Where gains from specialization are greater, Hawkins argues there will be greater incentives to delegate and principals may be willing to face greater agency losses so as to capture the gains from specialization. The benefits from specialization are likely to be profuse in instances where the tasks to be performed are repetitive and requires expert knowledge (Hawkins 2006). Tasks that do not require recurring decision situations and are performed singly are not likely to generate such a need for delegation. The principal may decide to incur the opportunity cost of having to perform the task themselves in preference to the cost that will be incurred in creating and putting in place control measures for an agent. It follows, then, that tasks that depend on highly skilled and expert interventions will yield greater benefits if they are delegated.

Delegation for the purpose of benefiting from specialization can be seen in most international organizations where expertise is needed in the day-to-day activities. Organizations such as the International Criminal Court and the International Monetary Fund perform tasks that are of a specialized nature, and delegations to such institutions are intended to take advantage of their huge expert knowledge and skills that abound in those institutions. The African Peer Review Mechanism, to a large extent, also relies on expert bodies at each stage of the peer review process to benefit from the specialized knowledge of such institutions. At the national level, research institutions with expertise in the key areas of political and democratic governance, economic governance, cooperate governance and socio-economic development are normally each delegated the task of oversight in a particular area of focus. This produces expert recommendations of the current state of affairs as it pertains to each country under review. Specialization also gives States the opportunity to take advantage of services that they are unable to provide as a result of a lack of expertise and the resources to make policy on their own (Hawkins 2006: 15).

States may also choose to delegate to an international organization in order to mitigate large policy externalities (Milner 1997, Lake 1999). These are problem areas concerning policy, which may occur as unintended consequences which arise in their practical application, and negating the fact that principals generally benefit from cooperation. The solution to these externalities is enhanced by delegating to an agent who can insist on the general application of rules in all eventualities. Where externalities appear to be large, States are more likely to engage in mutually coordinated action (Hawkins 2006). Policy externalities may well arise under the conditions where there may be dilemmas of coordination and collaboration between States. In situations of coordination dilemma, agents act as a conduit to overcome mutually distasteful outcomes by enhancing the confidence of actors to settle on a mutually desired outcome. Lake and McCubbins (2006) point out the need to delegate to agents to monitor the behavior of States and provide information about various policy options, since cooperation may fail due to informational problems. In situations of coordination dilemmas, delegating to a neutral third party with wide margins of discretion could help in reducing transaction cost as agents can assess ‘alternatives on more technical’ or other ‘social welfare criteria’ (Hawkins 2006).

With collaboration problems between States, any equilibrium outcome is suboptimal, and needs to be addressed to progress. To realize a mutual outcome and gain from cooperation in such circumstances, States must bind themselves to act against their usual tendencies. As noted above, States will naturally have an incentive to defect from cooperation in the medium to short term, as in a Prisoner’s Dilemma game. This can be seen in the provision of public goods, which is a constant factor in providing a major category of collaboration problems. The main problem has to do with free riders, who know that they are able to benefit from a particular public good whether they contribute to it or not. In such dilemmas, principals may benefit from delegation by granting conditional authority to an international organization to make such public goods available to all at a cost. Alternatively States could pool individual resources together to provide the public good, and then create an agent to monitor individual contributions by collecting information on each member (Abbot and Snidal 1998). The APRM serves as a good example of this, as, among African States, the APR Panel monitors the performance of each member State on key issues of governance.

In addition, States may also delegate agenda-setting authority to an international organization when the problems of collective decision-making arise. In many situations States have divergent preferences which make it difficult to agree on policies, and create divergence in priorities, which can be reflected in separate demands over agenda-setting. The literature suggests delegating powers to an agenda-setting agent to induce stability. It is, however, certainly not a given that merely delegating agenda setting to an agent will be a foolproof method of overcoming this collective dilemma, as the very selection of an institution to set the agenda may in itself be subject to such divergence.

States may delegate authority to agents to provide help in the specific resolution of clear disputes as they arise in their international interactions. As a result of an increase in international interactions among States there has been an increasing use of third parties to resolve disputes, securing the social benefits of cooperation using agents of arbitration. In a situation where an agent serves as the arbiter in the dispute, the delegation contract is designed to grant a great deal of independence to the agent, since principals themselves have accepted the fact that they cannot come to a mutual resolution. Alter (2008) suggests that principals, in agreeing that the functions of a dispute settlement be referred to an arbitrating agent, may create and empower agents who are seen to be impartial with a high degree of autonomy. However, those agents will almost always be constrained by some decision-making criteria which have been designed by their principals.

A theoretical question that arises in almost every situation of delegation is whether, and how, principals may motivate agents to act on their behalf to minimize negative effects upon the agency. Principal-Agent models typically assume that agents may have dissimilar interests to that of their principals, and for mutual exchange to be possible, a proposal may be adopted where the principal designs a contract that will align the interests of the principal and the agent (Huber 2000, 6). Some typical hierarchical control measures, suggested in the literature, include cutting budgets, re-contracting agents, using ‘fire- alarms’ or ‘police patrols’, and screening. In most instances these tools of hierarchical controls are counter-productive when the purpose of delegation is to demonstrate a credible commitment by the State to long-term collective policy objectives. The logic of delegation, in a case where principals need to demonstrate to third parties their commitment, is to select an agent whose preferences are different from that of the

principal. Re-contracting tools are thus not suitable in those situations where the purpose of delegation is to enhance the credible commitment of the principal.

Principal-Agent theory generally suggests that the principal is conferred with exclusive privileges and hierarchical sources of leverage over the agent (Alter 2008) because the principal has the power to appoint, rewrite the contract, fire or cut the budget of the agent. Although hidden actions and information are central to the problem of any delegation, employing strict hierarchical control measures on independent agents, where the aim of delegation is to enhance a credible commitment, may be counter-productive.

A crucial insight of credible commitment theory is that the reason that actors have great difficulty cooperating on a common solution in their mutual relationship is because they are mostly unable to commit themselves credibly in advance to act in agreed or specified ways. This proposal is predicated on the assumption that a credible commitment to institutional arrangements makes it unattractive or costly for States to renege on promises, and therefore ties the hands of principals to certain policy objectives. This is most appropriately achieved through an act of delegation of decision-making authority to an agent which States have little control over.

There are a number of reasons why an actor's promise to behave cooperatively in a given situation might not be believed by other actors. The problem of cynical commitments, and of time-inconsistent preferences are among the strongest reasons why an actor's promise to cooperate in a joint issue area might not be believed by other participants. Where cynical commitments are made by actors, they are made with no intention of living up to the promises made. Inevitably this leads to negative perceptions which have a tendency to make cooperation among actors difficult. A time inconsistency problem arises where an actor may genuinely promise to cooperate in the present, but in the future may see it as rational and beneficial to renege opportunistically. According to Majone (2001) time inconsistency occurs when the optimal long-run policy of a government differs from its optimal short-run policy, creating a situation where, in the short term, actors have incentives to renege on their long term commitments. Kydland and Prescott (1977) argue in favour of rules which increase the possibility of policy credibility in opposing the discretion which can lead to time inconsistency.

Without binding rules holding actors to the long term policy commitments, rational actors may be free to use their discretion to switch to actions that may appear in the short run to be beneficial, though opposed to their long term goal. Where promises and agreements among actors cannot be enforced as a result of the institutional arrangements in place, actors will find it difficult to convince each other that they can willingly behave in a way that seems costly in the short term, even if doing so will promise benefits to all actors concerned (Simmons 2008).

To ensure that actors who are willing to commit to a particular course gain the possible long term benefits at hand, the theory of credible commitment emphasizes the need to raise the cost of defection *ex-post* (Simmons2008). In economic transactions, this will always amount to a case of surrendering some form of bond entrusted to a third party. The viable alternative is to delegate or empower an independent agent to make and carry out policy decisions on behalf of the principal, which, effectively, removes the decisions from the challenges to credibility that may exist if actors are to think of their short term interest.

For this reason, Fearon (1997) has defined ‘audience costs’ as a set of political costs that a government risks facing if it reneges on a commitment. Since it is impossible for any sovereign body to completely tie the hands of another actor to a particular commitment, this strategy makes efforts to raise the political cost of defection so as to make it unattractive for actors to renege on their commitments. Audience costs are defined as those emanating from the negative reactions of a particular group, leading it to inflict costs on actors who renege on their commitment (Simmons 2008). For example, the withdrawal of aid or economic cooperation by third parties might well force African States to follow through with their commitment to policies of good governance, notwithstanding the fact that this could have highly negative consequences for all concerned in the long term. Rational States make their commitments more credible by raising the anticipated audience cost associated with their defection. This idea of tying their hands, inferred in the attempt to raise audience costs, is in itself a costly option to reinforce the credibility of a commitment being showed by an actor. When an actor typically accepts the tying of their hands when making a credible commitment, it shows a manifest willingness of the actor to forgo certain policy competences. In most cases making a commitment involves a sovereign cost, by giving up decision-making authority to an agent. The sovereign cost, relative to the gains and benefits that are likely to result, may determine the degree of credibility commitment and tying

of hands pertinent to a particular issue area. Where the benefits exceed the sovereign cost, a state is more likely to rationally commit by hand-tying.

2.5. The Logic of Delegating to Trustee-Agents as a Solution to the Credible Commitment Problem

Delegation to independent agents raises the problem of accountability in international institutions (Grant and Keohane 2005). The issue of accountability manifests itself whenever member States establish an institution to perform a particular function on their behalf. Control arrangements are intended to curtail the discretion and autonomy of the power-wielding agent (Nielson and Tierney 2003), and to also avoid the negative consequences of dysfunctional behaviours that Barnett and Finnemore (2004) refer to as cooperation pathologies. Therefore, independent agents are established as a response to the cooperation problems faced by principals, and to also help enhance the credible commitment of member States towards long-term policy objectives. Their establishment is a tacit response to the tendency of their principals to behave opportunistically in specific decision situations. Accountability mechanisms, in this situation, need to be well measured to make sure that agents can be made accountable for their decisions, without severing or jeopardizing their proper functioning (Gehring and Plocher 2009). Monitoring tools and re-contracting threats (Kiewiet and McCubbins 1993), as suggested in the standard Principal-Agent literature, undermine the ability of independent agents to properly perform their functions without the reintroduction of the specific interest of the principals.

A fundamental requirement for any well-designed accountability mechanism in principal-trustee agent relations is a clear definition of the decision criteria to act as a point of reference for all actors (Gehring and Plocher 2009). Decision criteria form the basis on which the long term interests of the principal are defined, and serve as the reference against which the actions of the empowered agent can be assessed. Without a set of substantive decision criteria, the trustee-agent will lack guidance on how to proceed in taking decision when confronted with a variety of situations. The presence of substantive decision criteria may then facilitate the transformation of interactions among actors into a discourse, where the actors argue about validity claims in the application of those criteria (Krapohl 2004). Binding rules create an important *ex ante*

accountability mechanism (Huber 2000) and commit all other actors involved to the same sets of standards. The establishment of substantive decision criteria also diminishes the tendency of principals to seek their short term parochial interest, and helps in preserving the autonomy of the agent in case a conflict arises.

Substantive decision criteria in any delegation relationship mostly emerge from negotiations among States cooperating in a given issue area. This may have the potential of introducing the parochial interest of member States but, as has been argued, the division of labour between principals and their trustee agents, which is then established, limits the space for power-based manoeuvring among the principals (Gehring and Plocher 2009). The internal arrangements in a division of labor will help commit the agent to the existing decision criteria and also decrease the degree of arbitrary decisions. In most cases of delegated decision-making in international organizations, the practice is always to assign to a committee rather than to individuals. This leads to a situation of committee governance where members are faced with a stream of parallel decisions of relatively limited scope (Gehring and Plocher 2009). Committee decision-making will become jeopardised if any member tries to seek the parochial interest of any actor or constituency, and this can ultimately affect the cooperation project altogether. To hedge against the consequences of intergovernmental negotiations that might not lead to the general good of all actors, especially because of the distributive interest of the negotiating actors, rational actors may delegate decision-making to an agent to limit the room for pursuing pure preference aggregation. In specific cases, if actors genuinely want to prevent a situation where they have an influence on decisions, they can craft general rules that promise consistent application across all situations of decision-making. Actors will then be obliged to search for the common good instead of their own preferences.

In addition to ensuring that trustee agents are guided by external decision criteria, trustee agents can be made accountable through a number of interrelated measures, which need to work in tandem with other incentives, to ensure that agents produce decisions that represent the long term interest of the principals, against the background of the externally given decision criteria. The accountability arrangements embedded in the design of this arrangement must ensure both the autonomy of the trustee agent and the denial of any unnecessary interference of the principal in specific decision situations. As much as possible the design must limit the agent's ability to

deviate from the agreed decision criteria provided by the principal. The requirement of accountability from the agent will help in ensuring that agents take decisions that are well reasoned and fulfill the long term interests of the principals. According to Gehring and Krapohl accountability measures may necessitate specific forms of divided labor that split decision-making functions among several actors, and, in such a functional differentiated system, institutional structures are made available to keep each actor in check in order to produce reason adequate decisions (Gehring and Krapohl 2007).

Furthermore, trustee agents could be held externally accountable by the public for their decisions at each stage of the decision-making process. Interested actors, including civil society groups and non-governmental organizations, can be given the opportunity to actively participate in decision-making procedures. This creates the opportunity for them to intervene with information to shape the quality of decisions. The involvement of the public who are then placed in the position of observing and validating decisions may well have the positive effect of contributing to increasing the cost of having to adopt decisions that are not convincing.

Decisions and recommendations made by trustee agents could also be published and deposited in regional parliaments and courts. Making such decisions available in regional institutions will give an incentive to empowered agents to give their sole consideration to delivering decisions that are reason adequate. Knowing that decisions will be published, and that the general public and interested partners will have access to the decisions arrived at, will in all likelihood limit attempts to put forward obviously problematic decisions in given situations.

Lastly, principals can always revoke the decision-making authority of the agent. Though the principals would have re-contracting tools at their disposal, this should be used sparingly and as a last resort. Using re-contracting powers drastically affects the proper functioning of the trustee agent, since the underlying rationale for delegating decision-making authority to the trustee is to keep the principal away from interfering in day-to-day decisions. Thus the range of control measures discussed above can be seen as interrelated and working together to reduce the tendency of both the principal and the trustee agent from abusing their authority.

In the next section of the dissertation, the concept of functional differentiation is elucidated, supporting the proposition that functional differentiation in a decision process provides

institutional incentives to close down the opportunities for power-based decisions and to reorient actors towards decisions that are based on the validity or merit of the arguments advanced by actors in the decision-making process.

2.6. Functional Differentiation and the Promise of Merit-Based Decision-Making

Functional differentiation, unlike Principal-Agent theory, is not concerned with hierarchical control. It is preoccupied with the operations of a functionally differentiated system. In this regard, a functionally differentiated system has to do with separation of powers between sub-systems in an organizational environment. Drawing on social systems theory by Luhmann (1984), Gehring observes that a social system emerges out of communication between actors in a social environment to form an entirely new entity (Gehring 2004: 683). Within its communication system, this body has its own boundaries and divides itself to form its own internal operations according to the attention it accords actors and other aspects of its environment. A defining feature of this engineering is the establishment of boundaries between different sub-systems. As a consequence, the emergence of a new system is separated from its environment by the existence of boundaries which delineate each sub-system from the other and shows where the responsibility of each terminates. However, the survival and efficiency of the system to some degree depends on the ability to extract information across boundaries within its environment. In this respect, information extracted from the environment is processed for the purposes of enhancing the functioning of its internal programs.

A social system therefore reduces complexity in its environment by functioning as a selector in the environment in which it operates, defining itself as the arbiter of any form of complexity (Gehring 2003: 94). In this light, it is almost impossible to preconceive the spectrum of issues and the variety of actors to include in discussions prior to the emergence of a system. The ability of the system to demonstrate a high sense of selectivity can contribute to its relevance. By focusing widely on many aspects of its outside world, the system creates an opportunity to have control over many important issues, as opposed to being overly selective and ignoring important functions that require attention. However, too wide a focus on the outside world limits the ability of the social systems to process the information that is important to its own operations.

In the context of social systems theory, an organization can augment its efficiency through the formation of sub-systems that specialize in the execution of specific tasks. Each sub-system thus specializes in a domain of functions relevant to the larger social system, with each sub-system focusing on a different task and therefore fulfilling functions that are complementary to each other (Gehring 2004: 683; Gehring 2003: 94). As a result, each sub-system operates in the context that is akin to a firm organized on the basis of a division of labour. From a functional perspective, as put forward by Gehring (2004), each stage of the differentiated decision process attains equity in the performance of their assigned tasks, and none is recognized as being more important than another in the production process. The fundamental essence of a differentiated decision process is that it delivers the promise of efficient performance in the entire decision system. Therefore, as a result of its sub-systems, a complex governance structure has the capacity to respond to many aspects of a decision process, contrasted to an unresponsive system that has no sub-bodies. Just as in the case of a firm organized on the principles of a division of labour, functional differentiation in a decision process may increase the rate of productivity and enhance the quality and output of the decision-making process for efficiency gains.

Gehring (2004: 683-684) draws attention to three aspects of a functionally differentiated decision process, informed by analytic perspectives based on systems theory. Firstly, the idea of the existence of boundaries between sub-systems in a social system is crucial to the concept of functional differentiation. The presence of boundaries between sub-units in the governance structure of a decision system can reinforce the organizational independence of the various sub-systems operating within the larger decision-making process. A boundary between sub-units in the larger decision system gives an indication of where the functions of each unit end. It is that very clear delineation of the functional roles that are assigned to various units in the decision-making process which identifies the actors whose participation in the negotiation process matters for the emergence of the system. In this way boundaries help divide the world into its internal operations, and define the relevant actors and any other factor that is of essence to its environment.

Secondly, a complete separation of functional roles between a rule making body and another body charged with the implementation of rules can change the rationale of actors when seeking the most problem-adequate solutions to issues (Gehring and Kerler 2008). In the event of a clear

separation of functions between sub-systems in a decision process, each component of the decision apparatus concentrates on its assigned task to foster specialization. This can lead to better performance among the various sub-systems in the decision system if every unit in the decision process operates exclusively according to its rationale (Gehring 2004: 684).

Finally, the mechanisms through which the operations of autonomous sub-systems in a decision process are integrated into a meaningful whole is important for a functionally differentiated decision system (Gehring 2004: 684). If various sub-systems are not integrated by hierarchical control measures, each sub-system operates by way of its defined roles. In a sense, the operational autonomy of each unit in the decision process is thereby respected, and furthers the opportunity for each to be concerned with its assigned task in the decision-making process. These aspects of a differentiated decision process indicate a situation where autonomy and non-hierarchical relations exist between sub-systems in a decision process, and suggest how this institutional arrangement can contribute to encourage rational actors away from pursuing their self-interests. The conceptual core of a differentiated decision-making process is therefore a distinction between the separation of rule-making functions and rule application in the governance structure of a decision process, and this is relevant to a situation where decision-making authority is bequeathed to independent agents.

In the ensuing sections, this dissertation demonstrates how institutionalized arrangements that divide labour among decision makers in a decision-making process can create incentives for the actors involved to deliberately arrive at merit-based decisions. Institutional arrangements premised on the principles of a division of labour have a functional rationale. In international organization like the African Peer Review Mechanism, such arrangements assign essential functions to the powerful political actors, for example in the APR Forum of Heads of Participating States, while at the same time drawing on specialized expertise from stakeholders, institutions, civil society groups and the general public for effective and efficient decision-making. In this way, the institutional arrangements in the resulting division of labour can prevent actors involved in the decision-making process from pursuing their parochial self-interest. As argued by Gehring and Kerler, decision-making processes, characterized by the separation of functions to different bodies, mobilize a form of democratic legitimacy that originates from the involvement of broad active stakeholders and the public, allied to the technocratic legitimacy that

emanates from expert deliberations (Gehring and Kerler 2008: 1003). The influences of expertise and technocratic legitimacy thus serve as a potent force to marshal resources for the production of problem-adequate decisions in institutions characterized by a separation of decision functions.

2.7. The Need for the Separation of the Functions of Rule-Making and Rule Application in a Decision Process

A decision-making process which is characterized by a systemic separation of legislative functions and the application of rules by different bodies operates in the light of a functionally differentiated decision system. The separation of specific decision functions among actors in such a decision process may systematically deprive actors of the opportunity to influence the decision-making process through bargaining (Gehring and Kerler 2008: 1006). As a result, the rule making functions usually tend to deal with enacting general rules designed to serve the long term purpose of the decision process, and are meant to be applicable to several other possible cases (Gehring 2004: 685). Often legally binding rules that emanate from a rule-making body are susceptible to amendments at any point in time, if this is deemed as appropriate in the operations of the decision-making process. Actors working in the arena of enacting general rules for their application to specific situations mostly execute their responsibilities within the competences bequeathed to them through the institutional set up. In most cases the activities of actors, making rules for the operation of the decision apparatus, are limited to providing generally applicable rules that are deemed detailed enough to serve as points of reference in a wider range of situations fostered by novel or unknown cases. This task, in some institutions, is carried by actors who may be deemed as the political arm of the organization.

In contrast to the rule-making functions, an executive arm may be established to take over the tasks of decision-making, based on the rules enacted by the legislative body in charge of rule-making. By assigning executive functions to a sub-system in the decision-making process, the agency performing the executive functions can specialize in case-by-case decision-making on the various issue areas of concern to the decision-making process. The agency responsible for applying rules to case specific situations may be entrusted with wide discretionary powers that allow it to interpret those general rules, where there is ambiguity in the meaning of specific

situations. The agency may also be granted the authority to independently institute investigative procedures in situations where it suspects inappropriate behaviour by participating actors in the issue areas of interests in the decision-making process. In some decision-making processes, interested actors may trigger the decision-making process (Gehring 2004: 686) by making a formal complaint to the executive body responsible for making decisions. In this way the agency responsible for making decisions may respond to externally driven incentives to make decisions that are in the best interest of the objectives of the issues under consideration.

A fundamental question that arises, in a decision process with detailed separation of rule-making functions and the application of rules to specific decision situations, is how the decision-making chamber of the decision process may gain relevance to all actors in the process. If the general rules set by the legislative rule-making body are incomplete or require elaboration or interpretation, then the decision-making sub-system can set a precedent in deciding cases which eventually create further rules for the decisions making process (Gehring 2004: 686). In any case the precedent that might be set through the interpretation of cases must be synchronised with the original general rules that have been agreed upon as the reference point for collective decision-making for all actors.

If the operations of a decision system clearly delineate functions between various sub-systems, and each specializes in case-by-case decisions, then political actors can be deprived of the opportunity of introducing conflicts at the decision-making level of the process through systematic institutionalized mechanisms. By so doing, such a decision system may be characterized by the fact that, in no specific situation, can the decision process be held to ransom by either the rule-making sub-system or the rule application body. In this regard, functional differentiation can create institutionalized opportunity structures that systematically guide actors towards deliberation, while discouraging power-based decision-making or bargaining (Gehring and Kerler 2008: 1002). Even in more complex decision bodies like the European Union, it has been observed that institutionalized decision-making processes, designed to allow ample communication between actors, can systematically induce actors to deliberate and produce more reasonable decision outcomes than traditional bargaining schemes (Gehring 2003: 57; Joerges and Neyer 1997; Joerges 2006; Eriksen and Fossum 2002).

An important first order theoretical question, with some contradictory implications, is raised within this perspective by enquiring exactly why a rule-making function separates a decision-making function in the design of a decision process. To answer this question, it is instructive to systematically analyze the situation that can give rise to the delegation of the decision-making authority to an agency that is expected to be independent in its activities in a decision process. To explore this question theoretically we follow the path indicated by Gehring (2004: 687) to find a plausible method to find the conditions where it makes sense for a rule-making body within a decision process to refrain from adopting case specific decisions on the implementation of policy issues and rather delegate the task to a body clad in the cloak of independence. Following a rational argument, it has been observed that actors will be motivated to delegate this way if it is anticipated that subsequent interventions in decision-making might counteract their interests in the near future (Gehring 2004: 687). If we accept received knowledge of the cost-benefit calculation behind such a decision that is made by principals in order to delegate some sort of decision-making authority to an agent, then this reason for choosing to delegate does make sense to actors who we assume to be rational in their motives. This is so because principals will mostly weigh the potential benefits that might accrue for any decision to delegate powers to an agent to make decisions on their behalf. Such benefits must be anticipated to outweigh the potential costs that are inherent in delegating such authority to an agent.

However, this analysis needs to recognize that there are instances where the long term interests of an actor might contradict their short term interests in a given situation. In such a conflicting scenario, the actor's order of preferences are said to be inconsistent (Keech 1995: 38), as a situation specific interest can override their long term interests. A common example, often used to illustrate this point, is the case of a government that is faced with the difficult situation of hostage taking. To all intents and purposes, it will be in the long term interests of a State to develop a reputation for not negotiating with any taker of hostages in such a situation, so as to eliminate the incentives of further crimes by others. The dilemma imposed by such a stance, though, is the distinct possibility to loss the life of those taken hostage at that particular point in time. As a result, a government may well opt to negotiate with hostage takers, within a particular real-life scenario, with the purpose of saving the lives of citizens involved, even though it well knows the negative implications of emboldening criminals. This kind of situation presents the theorist with a classical time inconsistent problem, in which, as a result of the inconsistent order

of preferences, an actor may pursue a short term interest at the detriment of long term preferences. In a decision situation where the problem at hand has to do with overcoming problems of this nature, actors are clearly faced with the conundrum of balancing the tendency to forgo their long term interests for short term ones.

For a very good reason, the problem of the order of inconsistent preferences over time is relevant to the study of any decision-making processes that are faced with dilemmas of this nature. The conundrum appears equally tricky in situations where the issue areas of cooperation have to do with policies of governments that might have a positive impact on public welfare. It is generally acknowledged that it is difficult for most in democratic governments to implement policies that have an overwhelming impact on the welfare of their citizens, because elected governments have incentives to calculate in respect of seeking reelection. With a short term time horizon (Shepsle 1992: 251), elected politicians may look at the possibility of increasing their reelection prospects in an election period with handouts to the members of the electorate. This may be the case because; at that moment their preoccupation is to be elected into office. As a consequence, they are inclined to ignore the future dangers that accrue from expensive reforms relative to the immediate costs. The problem is exacerbated where there exists a general interest in the issues of concern in a particular policy area, especially if it has to do with reforms in policy areas that are characterized by huge capital expenditure. If such reforms are carried out to the letter, there may exist the possibility of recognizable benefits to the private sector or to the general public. Although the stream of decisions that emanate from the decision process necessarily places demands on interested actors, it is still in their interest to prevent case specific intervention in the decision process by actors who might be pursuing their parochial interests to the detriment of the general benefits for the general public.

However, the conundrum of inconsistent preferences that arises in such situations may diminish in time if the time horizon of the decision apparatus is mitigated by appropriate institutional arrangements (Gehring 2004: 688; Gehring 2003: 102). To ensure that the long term interests of actors are preserved, without the temptation of pursuing a case specific interest, some form of credible commitment will be required to insulate tendencies of pursuing the short term interests or vice versa (Shepsle 1992: 115). A concrete theoretical approach to preserve the long term interests of actors entangled in the inconsistent preference dilemma, is for actors to sacrifice their

margin of choice in a case specific situation (Elster 2000: 65). In making this sacrifice, they then bind themselves to resisting the temptation of being ‘bewitched’ to intervene in concrete situations, somewhat in the manner of Ulysses requesting of his crew that they tie him up to face the enchantment of the Sirens. In most modern decision-making processes, there are viable means to prevent a palpable risk of intervention in the decision process through the use of an appropriate institutional restraint (Gehring 2004: 688; Gehring 2003). Any principal delegating the implementation of decisions to an actor who is not expected to behave like that principal, in that they do not have the temptation of intervening in case specific situations, will credibly bind themselves to avoid the ever present situation of the temptation to forgo their long term interests for a short term preference and vice versa. If the institutional restraint is endowed with authority to operate as an independent entity then the institutional basis for separation of decision-making between actors is set.

To sum up, where delegation of the implementation of decisions to independent agents brings about the differentiation of a rule-making function and the application of decisions by another, then an institutional incentive becomes available for making decisions that are merit-based and not dependent of the power resources of actors involved in the decision process. In this respect, an appreciation of the nature of potentially clashing long-term interests and situation-specific interests of actors explains the reason for deciding to separate and assign different tasks to different bodies in a decision process. As a result, the separate tasks of making rules and implementing decisions require different institutional arrangements, and each must operate differently from the other with its own criteria and issues of competence. Therefore the separation of functions in decision process matters, for the very reason that it modifies the interaction among participating actors in a decision process (Gehring 2003: 96).

These insights generate a number of empirical predictions and expectations that can be tested in respect of the governance structure of a decision-making process involving actors with different preferences. This dissertation makes the following empirical proposal: *that it is expected that the more a differentiated decision system closes down opportunities for power-based decisions, the more it promotes merit-based decisions.*

2.8. The Consequences of an Institutionalized Division of Labour of Rule-Making Functions and Decision Implementation Functions in a Decision Process

I proceed with the assumption that the emergence of a governance system may institutionally assign separate functions of rule-making and the application of rules to decision to different bodies. I then make conjectures of how institutional arrangements, at both the rule-making level and the rule implementation stage can have implications for the behaviour of actors and the outcome of decisions in a complex decision-making process.

If the institutional arrangement of a decision process is characterized by the preparation and adoption of general rules by a rule-making body and their application to case-specific situations, no matter how detailed the general operating rules might be, they will without doubt always remain incomplete (Williamson 1987). This leads to the likely situation that the general rules put forward may not cover all possible eventualities that may emerge in the process of decision-making. The incomplete nature of the generally agreed rules therefore requires the implementation body to exercise discretion in interpreting the rules, in the light of specific situations where the general rules do not cover the issue under focus. As has been pointed out earlier, this will be done while paying close attention to the criteria set by the rule making body.

In a decision-making process where political actions are limited to the adoption of general rules and standards, it may be extremely difficult to entertain individual parochial interests among any members involved in the decision-making process. This will be so because the making of general rules to serve as the basis for assessing unknown future case-specific situations makes it difficult to pursue individual interests (Brennan and Buchanan 1985: 29). The general logic here is that, in most decisions making processes, rules about the operations of the decision process are established before actors become aware of their individual case-specific parochial interests and preferences. At this stage of the process, political actors are concerned with abstract formulations that serve as a boundary for deciding future cases that fall within the remit of the defined criteria. It is therefore impossible at this stage for actors to become aware of their exact case-specific individual interests, as the purpose is to formulate general rules that might sustain the decision-making system for a long period of time.

To put it differently, a deliberative decision process consists of two different stages of decision-making. These include the elaboration of general criteria for decision-making, and then the application of these criteria in case-specific situations. If each of these tasks is performed at different levels by different bodies in the decision process it allows each forum to concentrate on its task and not become overstretched with other issues. The functional division of labour between various sub-systems in an institutional arrangement separates these two functions and may enable an expert committee to enhance efficiency gains and increase the potential for problem-adequate solutions. The stage of elaborating decision criteria may facilitate argument among rational actors if it tends to prevent actors from pursuing their interests. Elaborating criteria for decision-making is a general task, and does not easily lend to envisaging future specific cases that may arise. Unlike simple negotiation situations, the decision situation is different. Actors are generally forced to be consistent in respect of producing standards that can be implemented by a different body within the decision-making process. It becomes difficult therefore for actors to calculate their overall interest in all cases that may arise in the future. Under such conditions, rational actors have no other option than to transform their perceived future interest into coherent principles that serve as a yardstick against which all other future cases will be appraised.

Since actors develop general criteria before becoming aware of their case-specific interest, they behave under a Rawlsian ‘veil of ignorance’ (Rawls, 1971). Rational egoistic actors, under this Rawlsian veil, may formulate criteria which produce acceptable decisions in theory, notwithstanding the fact that there may arise unfortunate outcomes in practice in the distributive effects of their application. The mutual search for common criteria, and an analysis of the effects of the application of the different options available, is more a matter for deliberation than bargaining. As a consequence, even those who wish to maximize rational utility, by making general rules for the purpose of being applied to future unknown cases, will operate under the ‘veil of ignorance’, not knowing exactly what their preferences might be in a yet unknown specific case. It is also clear that, even in situations where rational actors are able to anticipate what their interests might be in specific situations, they are forced to take a median position that is an aggregate of their overall interests (Gehring 2004: 690). In such a situation, political actors are pushed to adopt a consistent general interest that takes into consideration the effect of extreme situations.

When the decision environment only can enable actors to stipulate general rules, without much sense of what their anticipated case-specific preferences might be, Gehring suggests actors are forced to search for and formulate rules that have the promise of giving the best outcomes to all participating actors in the decision process (Gehring 2004: 690). In the same light, political actors who cannot anticipate their case-specific interests are forced to search for general rules that ensure effective implementation of the decisions at the application stage, irrespective of their unknown parochial interests (Tsebelis 1990: 117). The mechanism that might strengthen the convergence of actors on the continuum of full knowledge of their preferences or otherwise is the existence of an institutional arrangement that allows actors to search for the most appropriate general rules to guide the conduct of other bodies in the decision making process. The idea behind this is that, outside of the institutional arena where political actors have the opportunity to agree on what should serve as the baseline for all implementation decisions, there might not be any other institutional arena for such rule making activity.

In a hypothetical decision situation where political actors, with anticipated case-specific interests, search for a median position, while actors, who may be unaware of their preferences, are involved in looking for the best rules to be applied to unknown future cases, those who wish to maximize rational utility are forced to engage in a discursive interaction based on the exchange of reasonable arguments (Elster 1998). In such an environment, the general search for rules to govern an issue area of interest is expected to be characterized by the exchange of reasons rather than by power-based bargaining.

According to Gehring (2003), the deliberations between actors to arrive at general rules approaches a Habermasian discourse (Habermas 1992), so that reasoning, rather than the power resources of actors, dominate and influence collective decision-making. Risse, for instance, claims that argument, as a form of social action, has an impact on world politics (Risse 2000). In his application of Habermas' discourse theory, Risse points to three forms of communicative behaviour relevant to communicative action. The first is bargaining based on fixed preferences. The second is strategic argumentation, which utilizes arguments to justify positions held by actors and strives to persuade other actors to change their minds. The third he sees as true reasoning, where actors deliberate to seek a reasoned consensus on the basis of shared understanding. Actors, in such reasoned based deliberations, not only attempt to persuade but are

prepared to be persuaded by other actors with better and superior arguments. The last is recognized as the ideal form of communicative action by Habermas. According to Risse (2000), central to the theory of communicative action is the notion of an 'ideal speech situation', where discourse is based on openness and equality, and is devoid of coercion. The ultimate aim of discourse in a Habermasian sense is for mutual understanding, with the absence of power relationships or any external factors that affects the power of the better argument.

Johnstone (2003) observes that distinguishing true reasoning from strategic argumentation in world politics is challenging since it is so difficult to determine in practice. A distinction between the two is analytically useful, but is not necessary, in order to support a case that deliberative discourse may take place in a functionally differentiated decision-making process. For actors to appear convincing and persuasive they are expected to justify their positions with reasons other than that of self-interest. Some scholars have posited that, in public settings, unbiased arguments and appeals to the collective interest succeed far better than self-serving and partial arguments (Elster 1995). In this regard, it is observed that a view that maximizes rational utility, in some instances, may resort to the exchange and common appraisal of rational arguments to arrive at the most problem-adequate solution. According to Elster, public observation and involvement in the political decision process, through transparent and open settings of decision-making, may deprive actors of the opportunity to pursue their parochial interest openly.

Elster offers five reasons why this may be so. Firstly, the belief that others are arguing from principle may make others more willing to back down. Secondly, impartial arguments may actually persuade rational actors. Thirdly, there appear to be social constraints against taking positions that do not meet the collective goal or have benefit for all participating actors. Fourthly he notes, when dealing with special interests, that public language can be used as a stratagem. Lastly, arguments grounded on principles rather than bargaining power may be useful in helping actors with different positions to agree on common criteria. A point worth noting is that arguments can be used hypocritically, but, even where that happens, the discourse may lead to a situation where there are concessions towards the general good. This may be so because, in an institutional environment where the main purpose of deliberations is aimed at handling specific policy problems of a state, arguments are not likely to correspond directly with self-interest, as actors may act from an awareness of how the national interest is furthered by other actors

through their engagements. Seeking partial and unjustified grounds may therefore be greeted with suspicion and may mean a specific argument has less chance to survive.

In a situation where arguments arise over issues of self-interest, they are less likely to see the light of day if actors dilute their narrow self-interest and argue for the collective interest. If actors are expected to make arguments for the collective interest, and engage in paying lip service to shared principles and codes, or automatically to seeking the collective interest, circumstances force self-interested actors to moderate the rhetorical positions they take (Johnstone 2003). This can result in a situation which Risse refers to as argumentative self-entrapment (Risse 2000). Once actors accept the importance of a norm in their interactions, they argue about the interpretation and application of the norms or shared standards to a particular case at hand, and not the validity of the standards of behavior agreed upon. According to Risse this creates a discursive acknowledgement for critics or upholders of the norms of the common practices which may eventually induce governments to match their professed words with deeds. These altered behaviours are then the result of concessions to more superior arguments promoting the propriety of other policy options.

In this case, therefore, whether actors are oriented towards strategic argumentation or the logic of true reasoning and mutual persuasion, any arguments based on agreed norms and standards may have an independent impact on the behavior of rational actors. Firstly, by this logic, impartial arguments may advance interests in the sense that, both the actor making an argument and the actor the argument is targeted towards, see 'instrumental benefits from preserving reputation for norm guided behavior' (Johnstone 2003). Secondly the logic promotes the idea that actors are open to persuasion and ready to change the positions they advance in the light of new, convincing information that is in the collective interest.

Any limited conception of argument will not throw much light on the theoretical conception of deliberation or discursive decision-making which this dissertation claims can be induced as a result of the separation of decision functions in a complex decision process. This concept of deliberation focuses on speech acts by actors in their interactions in institutional settings. Deliberation involves a process of reaching decisions through reason-giving (Eriksen, 2003). Usually it takes places among actors before an audience, and may involve higher order

discussions aimed towards solving matters of principles or standards. Such a process may end up with agreement, or in other instances with disagreement on the possible options available which may then lead to bargaining. Most of the literature is silent on the causal influence of deliberation on the final decisions produced in multilateral settings. Deliberation through argument is diametrically opposed to bargaining, which utilizes power resources, instead reflecting the coordination logic of deliberation (Neyer, 2003).

Bargaining characterizes most collective decision-making in negotiations. Bargaining reflects strategic action to maximize rational utility in communicative processes. Actors in negotiation situations generally have an interest in reaching an agreement but competing interests in the gains afforded by distribution of cooperation can affect a smooth outcome (Scharpf, 1997). Bargaining generally relies on the power resources available to actors, and, in some instances, bargaining actors may utilize threats and promises that may have to be executed outside of the bargaining assembly. According to Elster (1989), bargaining outcomes are represented by the distribution of gains, which to a large extent reflects the distribution of power among actors. In a decision process where actors decide by a majority, bargaining will lack consensus among those actors, particularly in the minority faction.

Bargaining outcomes are thus one sided, and may in most instances be problem-inadequate, because they rest on the existing power distribution among actors. Bargaining falls short of ensuring that the most legitimate, collective solutions are identified. As a consequence, bargaining outcomes may not improve Pareto-efficiency, because they achieve cooperative gains for parties involved compared to the status quo. In any bargaining situation, any outcome will tend to be legitimate in so far as other parties accept the outcome, so it is common that the legitimacy of negotiated outcomes is prone to suffer some legitimacy deficit when the underlining distribution of power among the actors changes significantly.

Patterns of communication, as promoted by the modes of argument adapted from Habermas' discourse, are exclusively based on the expression of convincing reasoning. The processes of argument are characterized by competing validity claims which are appraised against commonly accepted criteria (Gehring 2003). Every position being advocated by an actor must be accompanied by reasons that take into account the accepted criteria that have been agreed upon.

Decision-making procedures characterized by argument are triadic and are built on two different stages of deciding. The first step involves identifying general criteria that all actors collectively accept as reference for appraising future cases. The second step then explores case-specific disputes. Following from this, in the third stage, decisions are made concerning the application of the collectively identified criteria. Therefore, reasoning serves as the most important resource in deliberation processes.

Coordination in the mode of argument demands that participants assume an ‘ideal speech situation’ (Risse 2000), which makes it a more demanding proposition than coordination through bargaining. In the arguing mode participants are expected not to resort to power resources outside of the negotiations. Arguments will fail the litmus test if they are based on the power resources of participants. In the Habermasian perspective, collective decisions that are the product of argument are better reasoned and convincing since they have been collectively agreed upon and approved by participants. In that case, decisions arrived at through processes of deliberation are expected to enjoy greater legitimacy than decisions that emanate from a bargaining process. One of the prevailing and important features of deliberation processes is the need for participation by various interested members of the public, and this creates an arena where the legitimacy of decisions reached is felt more widely. Legitimacy in this regard, however, is not confined to issues of the transparency of the discourse, as deliberation among expert groups could even take place behind closed doors. What matter most is the ability of actors to sincerely consider all arguments on the table and consider the merits thereof.

As pointed out earlier, the claim that actors may have reached an agreement discursively, Gehring (2003: 98-111) means that two interrelated complementary functions need to be fulfilled in the arrangement of the decision process. The first phase of the decision process deals with the abstract development of criteria for an unknown number of case-specific situations. These criteria must be agreed upon by all participating actors to gain legitimacy in their application to subsequent case-specific situations. The second phase gives decision makers the chance to judge individual claims against the previously agreed criteria.

The main claim made here is that the separation of decision functions provides strong incentives for even the economically oriented maximizers of rationality to adopt a discursive strategy in

search of general rules that are enduring and capable of dealing with non-specific case situation preferences. The separation aids the facilitation of the process of coming to agreement on general rules and criteria that might serve as a yardstick to judge the action of actors in future cases. It is not argued here that a division of labour in a decision process automatically dissolves the parochial interests of political actors. Functional differentiation, in the estimation of this dissertation, serves as another mobilizing force that pushes rational actors to refrain from the use of their power-based resources to bargain over the rule making stage of a decision process. It helps in increasing performance based on the search for a common acceptable position for participating actors in a decision process independent of their power and interest constellations (Gehring 2004: 690).

At the end of the two stages of rule-application, as indicated above, decisions are expected to be made on a case-by-case basis with reference to the established standard criteria. This makes it impossible for actors to be aware of their interests in each case-specific situation. As a consequence, rational actors are more inclined to resort to power-based bargaining to protect their parochial preferences in such specific situations. Participating actors at this stage are also faced with the typical problem of having to ensure that the agents who implement decisions, based on the criteria agreed, are accountable for their decisions. It is established that this delegation of decision-making authority always entails the danger of abuse by the power wielding agent. As a result, it introduces the issue of putting in place appropriate incentives to prevent abuse by the agency (Kiewiet and McCubbins 1991). However, close oversight, as suggested by traditional Principal-Agent theory, is not appropriate, especially if the institutionalized separation of tasks in the decision-making process is a response to the problem of inconsistent preferences. In particular, proposals of budget cuts and threats of dismissals of officials (Huber 2000) tend to be counterproductive, and in a way represent an inappropriate intervention into the decision-making rationale of the agent. In any case, any attempt to intervene in the decision process reverses the benefits for functional differentiation since a prerequisite for the agency to discharge its functions properly requires a wide margin of autonomy (Majone 2001). Therefore, suitable institutional arrangements must be put in place to provide incentives to ensure a candid application of the criteria. This entails, providing general norms that have been agreed upon by the rule-making body of the decision process. This prerequisite requires

decision makers to resort to the general rules and be forced to argue about their case-specific concerns.

Since it is apparent that rational utility maximizers at this stage may attempt to pursue their individual parochial interests on case-by-case bases, I argue that institutional arrangements may induce rational actors to prefer merit-based arguments to power-based bargaining. It is therefore imperative to look at some related institutional incentives that might motivate rational actors to deliberate in favour of better solutions to problems, rather than bargain with their power resources.

2.9. Institutional Incentives for Deliberative Decision-Making at the Rule Application Level of a Decision Process

A key question that ultimately arises from this analysis of processes of deliberation over decisions is to determine which institutional arrangements induce appropriate deliberation among rational actors. Any theoretical exploration of deliberation-inducing incentives in the institutional setting must be premised against a background which recognizes that cost-benefit analysis underlines the motivation for actors' behavior in a setting with diverse interest constellations. It should not be assumed that actors are prepared to sacrifice the pursuit of their parochial interests merely because of the availability of agreed general rules. This dissertation therefore sets out to outline some basic institutional incentives that can push rational actors towards deliberative problem solving decision-making. The processes of decision-making through deliberation present a picture of actors in the decision process acting as if there is an automatic recourse to their parochial interests. This appears quite unrealistic because it is usually assumed that even the most powerful actors within such situations are expected to accept reasoned outcomes, even if they are not compatible with their interests. In what follows I discuss a number of different institutional arrangements that have been proposed as a means to drive rational actors closer to reason-based decision-making rather than resorting to the opportunity to bargain.

A first step to institutionally push rational economic actors towards discursive decision-making at the rule application level is to limit the chances for bargaining at this stage (Gehring 2003:

107-108). Unlike in a simple negotiation, decision makers in a functionally differentiated system operate in a distinct, well defined setting. Decisions on rule application are made in the confines of general criteria that serve as a reference to limit the degree of arbitrariness by the agency implementing general rules against situation-specific cases. Any opportunity for the arbitrary application of agreed general rules opens the floodgates for opportunistic bargaining over the implementation of decisions. To narrow the chances for this, the application of norms are limited to individual cases at a time and dealt with separately so as not to broaden the scope of issues to be considered to allow actors the opportunity to pursue their parochial interests. Meanwhile at the rule formulation stage it is expected that the scope of issues will be enlarged as much as possible to consider the possible cases that might arise at the application level. As a result of the narrow focus at the rule application stage the opportunity for bargaining may systematically disappear if actors focus on a single case. If procedures at this stage are based on consensus decision-making, then actors are presented with the option of either accepting a decision or rejecting the outcome of a single case. If an actor for any reason decides to reject a decision based on their parochial interests, then the consequences for the efficient function of the decision process is in jeopardy. In that case the capacity of a decision system in terms of the production of many streams of decision is greatly affected as the process is encountered with conflicts as a result of the pursuit of parochial interests by self-seeking actors.

However, a situation in which actors cooperate on a single case under consideration, gives an indication of the sustaining nature of the norms agreed upon at the rule making stage. Where actors are met with the options of either cooperating or not on a case-specific situation, they will take into consideration the benefits that might accrue for future cases. Insights from game theory demonstrate that the existence of the long shadow of the future may induce maximizers of rational utility to cooperate, when faced with the traditional conundrum of the Prison's Dilemma (Axelrod 1984). The potential for actors to refrain from bargaining to seek appropriate reasons in case-specific situations can induce rational actors to resort to discourse in applying the rules to individual cases.

This mechanism, which helps push rational actors into discourse, is based on the idea that decision makers handle cases separately. This becomes necessary because rational actors might be tempted to seek to put together 'package deals', based on the constellation of their interests, if

each case is not assessed based on its merits and facts. If each decision on a single case becomes established without any contestation, then actors can have a reference point to decide other similar cases that are separated from each other. If, over time, it is established that each case is decided by discursively exploring the most problem-adequate solutions from available option, even maximizers of rational utility will, in the future, prevent other actors who attempt to stampede the decision process through power-based bargaining.

Another means of mobilizing rational actors to make problem-adequate decisions is to assign the task of rule application to different bodies rather than to a sole independent agency. Assigning decision-making functions to different bodies within the rule application procedure leads to a restructuring of the decision process horizontally (Gehring 2003: 111). Complex decision-making systems that are characterized by the separation of specific decision functions may also deprive participating actors in the decision process the opportunity to influence decisions through bargaining. Functional division of labour emerges from the collaboration of different decision-making bodies (Gehring 2003). Decision-making processes that consist of numerous sub-systems at the rule application level lead to a mutual interdependence and control among the sub-systems involved in the performance of particular functions within the broader decision process (Kiewiet and McCubbins 1991). In this regard, stalemates in the decision process can be avoided if other units of the decision process discharge their functions without controversy, and in tune with the production criteria agreed for all decision situations. If the desire to avoid stalemate by sub-systems within the decision process is rooted in the need to produce problem-adequate decisions, then mutual interdependence and control between the horizontally structured sub-systems provides incentives for actors to seek common decision criteria that are in the interest of all participants in the decision process. Over time it is expected that various agreements and directives, issued as a panacea to avoid decision stalemates at each level of the decision process, become a point of reference in subsequent decision situations to forestall any major conflicts in their application to future cases. If this mechanism is properly instituted and works properly, the expectation is that the sub-systems at the rule application level will constantly refer to the decision criteria as an external point of reference, when faced with separate cases that are a novel and present new challenges in the decision-making process.

In addition, horizontal differentiation of the decision process may also enhance the sincerity of commitment to the implementation of the decision criteria. A decision process consists of two distinct components. The initial component deals with the appraisal by independent research institutions of the relevant facts of issues of interest to member States involved in the decision process. The second component may make decisions based on the appraisal by those research institutions in consultation with various sectors of relevant actors. The first component deals with issues of knowing the truth. Institutional settings can strengthen deliberative decision-making on matters of fact finding if issues of this nature are delegated to specialized forums (Gehring 1999). The research and expert assessment panels within the decision system may establish a mode for deliberative validation of relevant issues of truth, based on shared standards for appraising competing propositions among actors. These research and expert bodies can set the tone for recommendations made by decision makers in the application of general norms. To further strengthen a commitment to the decision criteria, the decision-making body could be made accountable to other entities. This forces the various decision organs to be guided by the decision criteria that are set out.

Further to the above reasons, Shapiro (1992) argues that decision makers, when required to elucidate their reasoning, are more likely to weigh the advantages and disadvantages of a particular decision situation before arriving at a conclusion. Importantly, mandating agents to give reasons at every stage of the decision-making process can increase incentives to adopt well-reasoned decisions, rather than those based on the aggregated preferences of actors. The requirement to giving reasons also helps in making decision-making transparent and devoid of any undemocratic tendencies. Where agents are expected to give reasons to justify the decision they have made, it compels a commitment from them to stick to the decision criteria that have been agreed upon at the rule making stage. The requirement to give reasons thus serves as a mild self-enforcing mechanism to control discretion and assist subjecting decision makers to public surveillance (Shapiro 1992). If the structure of the decision system makes it a feature for decision makers to give reasons for their decisions, actors will generally avoid the situation where they are unable to justify the decisions they have made. This also makes it possible for interested individual participants, who actively get involved in the proceedings of the decision process, to challenge inappropriate decisions that are made and found to be outside of the remit of the decision criteria provided as a guide to the decision makers.

This brings us to the final, and perhaps the most effective institutional arrangement that can curtail the tendencies of rational actors to resort to the pursuit of their parochial interests and facilitate reasoned arguments. An institutional arrangement which comprises the possibility for judicial review of decisions can play a major role in forcing decision makers to produce problem-adequate administrative decisions. The idea of judicial review is rooted in a tradition of demonstrating the effectiveness of the rule of law. Judicial reviews therefore ensure that administrative agents make decisions that are rationally reasonable and fair with regard to the procedures established in carrying out their mandate. As a result, institutions that make provisions for court-like bodies typically specialize in the application of generally agreed norms to case specific situations (Shapiro 1981). The purpose of a judicial review is to assess the legality of the actions and decisions made by administrative agents who are endowed with the authority to make decisions that reflect the general goals of actors cooperating in an issue area of interest. Through these means, agents are pushed to act in a manner that is never in variance with the rules and norms that govern the application of decisions to contentious issues. The potential for a review of badly reasoned decisions can be an incentive for decisions makers to strive for the most problem-adequate decisions, knowing that their actions could be subjected to judicial review.

In institutional arrangements where clear provisions are made for the possibility of resorting to the courts, the judicial process is always structured to sharply reduce the self-interested motivations that are common among political actors (Shapiro and Levy 1995: 1054). The presence of a threat of a judicial review of inconsistent and badly reasoned decisions to a large extent provides incentives for decision makers to relate the rationale of their decisions to the established principles and norms which guide the behavior of participants in the decision process. If this system works with a complementary regard for other institutional incentives, then the need for intervention in the decision process, or for power-based bargaining, may diminish considerably and decision makers will be incentivized to pursue a path that remains tied to the task of providing justifiable reasons for their decisions.

These institutionalized arrangements may create sufficient incentives for deliberative decision-making to take place at the rule application level and affect the behavior of rational actors to engage in merit-based arguments. Deliberation in this light will mobilize different sorts of

legitimacy, from the scrutiny and involvement of the public to the involvement of experts in the decision-making process. It is important to note that the institutional incentives discussed above do not operate in isolation. They are interrelated and depend on each other to effect a change in the behavior of rational actors in order to forgo their tendency to bargain and resort to the search for reasoned arguments to make decisions that are problem-adequate for the issues identified in various policy areas of interest. Altogether it is expected that these theoretical institutional arrangements generate strong incentives for actors involved in a decision process to arrive at decision outcomes that reflect the general norms and standards expected of decision makers. These theoretical insights lead this dissertation to the formulation of a second empirical expectation: *that the more a differentiated decision system provides strong incentives for discursive decision-making, the better its ability to prevent arbitrary application of general norms at the decision-making level.*

2.10. Conclusion and Implications of our Basic Model for the Empirical Cases

Theoretically, delegation follows two different logics (Majon 2001). On one hand a principal may choose to delegate with the desire to reduce transaction costs and mobilize expertise so that the agent is able to make decisions as the principal would have done in the absence of the delegation contract (Hawkins et al 2006: 20; Koremenos, Lipson and Snidal 2001: 766). On the other hand, delegation of decision-making competence to an agent may be for the sole purpose of enhancing the credibility of policy commitments, so that the agent generally is expected to decide differently from how the principal would have done, for reasons, among which, include the time inconsistent preference of actors. While in the former approach the control and oversight of the agent is presented as a theoretical dilemma, the latter emphasises the independence of the agent. Unlike principal agent theory, an analysis based upon ideas of functional differentiation sheds light on how the various systems of an organization can be governed without being preoccupied with hierarchical control (Gehring 1999). It draws on social systems theory to elucidate the emergence of new entities arising from communication between actors in a cooperation project.

In a delegation situation where the purpose of delegating decision-making authority is to commit to future unknown cases, it is possible to protect the agent against the power and interest of the powerful principals by delegating decision-making authority to several committees to monitor the activities of the agent and shape its decision on a given issue. The agent is thus entrusted with the power to take decisions that are in the best interest of all the participating members in a decision-making process. To prevent members from intervening in the day to day work of the agents, various institutional mechanisms could be installed in the decision-making system to push the agent towards making decisions that represents the best interest of the principals, without necessarily using hierarchical control mechanism. Accountability mechanisms which are useful in this governance systems, as discussed above among others, include defining proper decision criteria to serve as an external source of reference to the agents, and the establishment of checks and balances among different agents to make them horizontally accountable to each other (O'Donnell 1999). Others include the involvement of the wider public in the decision-making system to hold decision makers accountable for their actions, giving reasons at each stage of the decision stage, and the possibility of using judicial reviews where necessary.

These mechanisms help reduce the tendency of principals to intervene in case-specific decisions and also reduce the margin of opportunity for the agent to abuse their competencies. As a result, decision makers, within a decision system that has these inbuilt features, are systematically deprived of their ability to bargain or pursue their individual partisan interest. This is so because badly reasoned decisions may not pass the litmus test of these safeguards, and may be detected by other agents within the decision process. If the decision system is well designed to avoid any distortions in the decision process by powerful stakeholders, these accountability mechanisms would happily be incorporated in the decision environment to enable the principals to abstain from the day-to-day monitoring of their agents (Gehring and Plocher 2009). In this respect, a decision system whose institutional design allows for internal accountability mechanisms which make decision makers accountable to other actors ensures that the decisions taken are in line with the long term interests of the principals, as prescribed in the substantive rules that guide the agents in the decision-making process.

Therefore, in contrast to dominant Principal-Agent approaches, the approach of this dissertation relies on institutional theory to present a model that can address both the independence and

oversight of agents without interfering in their day to day decisions. Literature emphasising social choice reveals that a tension exists among actors at both the rule-making and norm application stages of a decision-making process when involved in discursive decision-making. This tension can be relieved by adopting institutional arrangements that create incentives for rational actors to abandon the pursuit of their parochial interest and resort to merit-based arguments for problem-adequate decisions.

The act of assigning decision-making competencies to an independent agent automatically separates the functions of norm formulation from the application of those formulated norms to case specific situations. The core argument emerges that, with the separation of a rule-making function from the application of rules to decisions, an institutionalized division of labour is created. In an institutionalized differentiated decision system, complementary functions are performed by different sub-bodies within the decision-making process. With the presence of different sub-systems performing complementary functions within the same decision apparatus, a multi-functional decision system emerges. The features and characteristics of a multi-functional decision system are akin to the emergence of a division of labour in a decision-making process, as it assigns several functional components to different sub-bodies, working interdependently but with different decision rules. In all, the autonomy of each sub-organ in the decision process is important for the decision outcomes produced, which can mean that the presence of tight oversight measures could seriously derail the autonomy of sub-systems and undermine the purpose for which they are established. In the light of this, any dilemma in instituting an independent agent in practice, ensuring their autonomy without any manifest interventions in their activities, should not be a matter of strict control. The issue is more concerned with putting in place institutional measures that ensures the independence of the decision-making agent while hedging against the unlimited autonomy of the decision maker to adopt arbitrary decisions.

To establish the relevance of functional differentiation in a decision-making process, this dissertation will observe the internal operations of the decision system, characterized by an interaction between independent and autonomous units in the decision system, each operating according to its own decision rationale. An important aspect of the design of such a decision system is a systematic delineation of the decision system between a rule-making component and a rule application stage. The rule-making stage of the decision process reflects a need to create

an arena to agree on general principles that might help dissipate power-based bargaining in the decision process. The rule application stage, on the other hand, is supposed to present a test for the application of the general principles and norms agreed upon at the norm application stage. This provides a virtual separation of the political task of having to arrive at a set of general rules that reflects the long term interests of all participating actors in the decision-making process. The tacit separation of functions serves as a response to the problem of inconsistency of preferences among actors who have long-term interests and are likely to be distracted from their short term preferences.

Also it is important to note that the establishment of an independent agent in a decision-making process not only serves as a response to the problem of inconsistent preferences, but can also institutionally create incentives for discursive decision-making at all levels of the decision-making process. Decisions at the rule-making stage would be taken under a ‘veil of ignorance’ that can push even rational economic actors to deliberate, rather than bargain, as a result of their limited awareness of their future preferences in case specific situations. Decisions at the rule application stage mobilize the influence of interrelated institutional arrangements to generate reasonable decision outcomes that are not tainted by the power resources of the participating actors in the decision-making process.

The consequences of the institutional separation of functions in a decision-making system could even have implications for institutional settings that are not characterized by issues of high politics, such as in an international peer review process. These conditions should operate in the decision-making process to enable the mechanism of an institutionalized division of labour to transform the interests of rational utility maximizers into a discursive behavior to gain influence.

Firstly, each sub-system in a functionally differentiated decision system must have a clearly defined task, and be effectively separated in its decision rationale from any others sub-systems. This condition can be fulfilled based on the degree of institutional autonomy of various sub-systems in the execution of their day-to-day activities. Secondly, deliberative decision-making at the rule formulation stage will depend on the inability of political actors to identify their case specific interests in individual cases. This condition can be observed in a decision process by looking at conflicts that arise at that level of decision-making and how they get resolved.

Thirdly, it is expected that decision competence at the rule application level will be diversified and organized horizontally among sub-systems that operate at that stage of decision-making. The observable implication for this condition is for decision makers to be accountable for their decisions through various institutionalized arrangements.

This dissertation applies the theoretical framework developed above to cases in the African Peer Review Mechanism (APRM) to determine the extent to which member States show a credible commitment to the goals of the APRM process. It empirically examines cases across member States and various policy fields to see if member States intervene or attempt to do so in the process of arriving at the final decisions of the APRM. Furthermore, the application of the theory of functional differentiation to decision-making in the APRM generates insightful arguments for the operations of the peer review process. The division of labour in decision-making is seen to create sub-systems, with their own specialized functions and decision criteria, which serve as a yardstick to appraise case specific issues. The presence of a functionally differentiated system is seen to introduce standards and decision criteria into the decision process which may affect decision outcomes devoid of any power-based politics.

Chapter 3

3.1. The Governance Structure of the African Peer Review Mechanism (APRM): Unpacking the Institutional Design and Functional Differentiation in the Review Process

The governance structure of the African Peer Review Mechanism (APRM) is characterized by a differentiation of functions, and relies on a division of labour in the decision-making process. Several committees within the decision system perform complementary functions to facilitate decision outcomes. Within these committees, experts are expected to impartially discuss sensible policy options available to identified problems of member States, within the policy areas of the review process. The governance system of the review process can be described as an amalgamation of national and supranational resources with the intention of augmenting the political problem-solving capacity of member States without undermining their sovereign authority.

The task of this chapter is to unpack the institutional design of the review process and to answer the question of how and why national and supranational actors must work together in a functionally differentiated decision-making system in the African peer review mechanism. The chapter sets the stage for explicating the functional components of the African Peer Review Mechanism. It points to the general organization of the APRM and the functions assigned to various actors actively involved in the decision-making process. Through this, it proceeds in subsequent chapters to test the claims of functional differentiation as an alternative source of inducing reason-based decisions. That is, that institutional arrangements can serve as strong incentives to push rational self-interested actors from pursuing their parochial interests in favour of making decisions that are problem-adequate in a decision system.

The central argument in this chapter is that the governance system of the APRM is systematically functionally differentiated with various sub-systems, each performing complementary functions for efficient decision-making. The chapter is organized as follows. Firstly the background of the African Peer Review Mechanism is traced with emphasis on its origin and the use of reporting and reviewing tools as means of engendering cooperation among participating member States. In the next section, a critical perspective on the emergence of the governance system of the APRM and the division of labour in the decision-making process is put

forward. This section places emphasis on the organization of the review process. It generally identifies the differentiation of a rule-making function, performed by political actors, from a rule implementation stage, delegated to various sub-bodies in the institutional design of the peer review process. Subsequently, this institutional arrangement is related to the theory of functional differentiation in order to argue that the establishment of sub-systems in the decision process follows distinct decision rationales at both levels of the decision system. This is followed by a description of the functions performed by each of the sub-systems in the decision-making process of the review. In the following section, the discussion is then focused on the nature of the decision process in the African Peer Review Mechanism. It describes the purpose of the review mechanism and the nature decision problems that are faced by members participating in the review process. The final section looks at the stages of the peer review process, noting the incentive structure created for actors within the division of labour in the institutional set-up to impact upon the final recommendations of the review process. The chapter concludes with a summary of the implications of the institutional structure of the review process as they apply to decision outcomes.

3.2. Background to the African Peer Review Mechanism (APRM): Explaining the Origin, Formal Processes and the Institution

As a first step to unpacking the significance of the African Peer Review Mechanism, this section gives insights into peer-reviewing in the African Union, entailing a general description of the purpose of the review process. It sets out to explain the objectives and reasons for which the Heads of State and Government of the African Union established the institution. Through this background information on the APRM, the section puts in perspective the primary goals of the review process and what it aims to achieve for member States of the African Union. It is argued in this section that the APRM relies on monitoring, reporting and reviewing tools that can serve as a means of supporting interstate cooperation among participating member States, in finding solutions to their common policy issues.

The APRM is an instrument created to monitor and evaluate the political, economic, and corporate governance of African States. It therefore is involved in a close examination of the

governance systems of participating member States (Corrigan 2015a: 8). Its envisaged aim is to find and promote workable solutions to challenges that are identified through its review process. In this sense, the process aims at solving the Continent's broad challenges by improving the political economic and corporate governance of member States (Letsholo 2014: 299; Reitmaier 2012: 148). Against these normative ideals, the review process is embedded in the broader framework of the African Union in order to enhance the capacity of member States to overcome policy challenges that hinder the realization of better economic and political governance on the Continent.

In this respect, the idea of establishing a peer-review mechanism came as a response to challenges of governance in the Continent as well as its poor economic performance on the global stage. As a result, the African Union initiated a development plan in 2001 called the New Partnership for Africa's Development (NEPAD). NEPAD aimed to deliver the Continent out of a cycle of poverty, political instability, and marginalization in the global system. The NEPAD framework underlines the need to defend and advance the interests of Africa in the global arena (Malcomson 2009: 11; Bama 2010: 300; Bach 2013: 7). From a business and corporate perspective, a cardinal objective of NEPAD is to promote, in all the participating countries, a set of concrete and time-bound programmes that are targeted at enhancing corporate governance practices (Khoza 2009: 101). In this respect, NEPAD recognizes good governance as a prerequisite for development in the Continent. At the first meeting of the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD in Abuja in 2001, the HSGIC agreed to set up parameters to regulate the conduct of member States in good governance practices. These parameters were envisaged to serve as a guide to the political and economic goals of members of the African Union, in order to achieve the objectives that are set in the NEPAD programme (Communique of HSGIC, para 6, 2001). As a follow up to the HSGIC decision in Abuja in 2001, the third meeting of the HSGIC approved a code of good governance in June 2002. The code adopted included the *Declaration on Democracy, Political, Economic and Corporate Governance*, which, in combination with the African Peer Review Mechanism, were made available as instruments to lead African countries to good governance and economic development (Resolution AHG/235 (XXXVIII) Annex I). The APRM, through this declaration, commits African countries to exercise true democracy, respect for human rights, peace, and good governance. This commitment appears to be informed by the realization that development is

impossible without an accompanying alignment with policies and practices that conform to the agreed declarations of the African Union on democracy, political, economic and corporate governance, through the adoption of socio economic development objectives, values, standards, and codes (Waal 2002: 464; Chabal 2002: 448). The APRM, in this normative orientation, desires to foster the adoption of policies, standards and practices that would lead to political stability, high economic growth, sustainable development, and accelerated sub-regional and Continental economic integration (CRR of Ghana 2005: 1). This goal is expected to be achieved through the sharing of experience and best practice, as well as identifying deficiencies and assessing the need for capacity building in various African countries.

Certainly, there is no shortage of criticism on the NEPAD initiative. Chabal (2002) takes a critical, somewhat pessimistic perspective and casts doubt on the potential for any wave of change in the governance landscape as heralded by the NEPAD programme's intention to enhance accountability or the quality of governments. Chabal argues that, where the State is improperly institutionalized and judicial systems are deficient, it is likely to fall into an exercise of governance through informal means. Chabal characterizes contemporary African politics as it is understood through the exercise of neo-patrimonial power (Chabal 2002: 450). What this means in concrete terms is that, the exercise of bureaucratic power in Africa is performed through informal means, notwithstanding the existence of the formal political structures. As a consequence, Chabal claims that African political systems rest on personalized power that is ingrained in forms of political reciprocity that links patrons with their clients. This logic of the political system, according to Chabal, does not correspond to the Western model of modern democracy and the exercise of power. This dissertation sees this argument of Chabal as erroneous, as it promotes a misleading representation of the nature of politics in most African countries. It argues that these countries, on the contrary, are firmly rooted in the rule of law and the respect for the fundamental rights of citizens. Chabal's negative focus also would have the reader believe that western bureaucracies are neutral in their exercise of their mandate. However, this is not the case. It has been empirically proven that institutional arrangements can influence decision-making process independent of the individuals involved (Knott and Miller 1987). Institutions, if purposively crafted, can shape outcomes by creating incentives that can affect the final decision outcome in a decision process. As a result it seems misleading to make

generalizations concerning all political systems in Africa without any analysis of the institutional structures of all political systems across the Continent.

While proponents of the NEPAD would often point to the APRM process as a milestone that would police standards of democratic governance and sound economic management, some scholars have equally expressed concern about the band-wagoning effect where countries scramble to get reviewed without meeting the basic governance standards and norms (Khadiagala 2010: 382). According to this thought, if a situation is created where States get reviewed for the sake of being recognized as having signed to the review mechanism, there exists a tendency where the peer review can degenerate into an exercise where countries with dubious governance records sign up for the sake of doing so. If such a situation is created, the peer review mechanism, instead of rewarding reformers becomes a haven for rogues.

To attempt to overcome some of these criticisms, the African Peer Review Mechanism was formulated as a voluntary self-monitoring tool. It was hoped that the voluntary instincts of the APRM can lead to a situation where countries could mutually encourage each other to adopt policies that could engender the principles enshrined in the standards and objectives underlining the peer-review process (Bama 2010: 300; Corrigan 2015b). This hopeful outcome emphasises how the APRM relies on a perception of credibility of its processes and reports as a means to attract member States who may not be inclined to participate in a process that does not reflect their desired policy orientation (Corrigan 2015b). In this light, the voluntary aspect of participation in the review process gives credence to the willingness of participating States to accept recommendations and decisions emanating from the process to correct deficiencies that are identified.

Related to the voluntary nature of the mechanism is the need to allow open access to membership for all members of the African Union. In this regard, participation in the process is not restricted to any group of countries in the AU. Accession to the review mechanism entails undertaking to submit to periodic reviews, and to be guided by agreed parameters for political and economic governance, socio-economic development and corporate governance (CCR of Ghana 2005: 2).

The *APRM Base Document* outlines the interrelated stages of the peer-review process. The stages consist of elaborate and interconnected activities of self-reporting, evaluation of information,

cross-examination, report drafting and consultations with interested observers. The first stage of the process of review is the preparatory phase, both at the national level and in the APRM Continental Secretariat. The process is triggered when a country that has acceded to the review mechanism gives indication to the Secretariat of its preparedness to be reviewed. Following this expression of interest, the APR Secretariat forwards to the country to be reviewed a questionnaire covering the four areas of focus in the review process. This is done under the direction of the APR Panel which oversees the review process. The country under review at this stage conducts a self-assessment based on the questionnaire. The APR Secretariat and other partner institutions can assist in the self-assessment exercise if there is the need. The country's self-assessment then results in the drafting of a Country Self-Assessment Report (CSAR) and a preliminary programme of action (PoA). The preliminary programme of action (PoA) builds on existing policies and frames projects to respond to the findings in the CSAR that can be enacted by the country under review. While the country's self-assessment is being undertaken by the country under review, the APR Secretariat independently commissions a background study of the country based on materials provided by national, regional and international institutions (APRM Base Doc. Para. 18, 2003). The CSAR and the preliminary programme of action prepared by the country under review are then presented to the APR Secretariat for further deliberation and action, while the APR Secretariat also develops a background paper on the current state of the issues of concern to the review process.

In the second phase, a Review Team (RT) visits the country under review to consult with relevant stakeholders and interest groups on the issues contained in the Country Self-Assessment Report, and to assess with them the preliminary programme of action and the background paper drafted by the APR Secretariat. According to the APR Base document, consultations of the Review Team should be as broad as possible to include government officials, parliament, the judiciary, civil society organizations, trade unions, professional bodies and the business community (APR Base Doc. para. 19, 2003). The Country Review Mission (CRM), which is led by a member of the APR Panel, is given access to relevant information that can lead to a smooth and timely verification of the issues contained in the reports produced by the country under review.

During the third stage of the APRM process, as stipulated in the founding documents, the Country Review Mission drafts the Team's report. This report is produced on the basis of the background information provided by the APR Secretariat and the information received during the country visit and from the consultations with stakeholders in the country. The draft Country Review Report takes into consideration the programme of action and the self-assessment reports that are drafted by the country under review. At this stage, the country is given the opportunity to respond to the issues raised by the country review mission, and the responses of the country under review are attached to the final Country Review Report. The country's reaction to the Team's report is an opportunity to clearly outline how any deficiencies identified may be rectified with a clear plan of action.

The presentation of the final report of the Country Review Mission and the final programme of actions to the APR Secretariat and the APR Panel marks the fourth stage of the review process. The APR Panel, on receipt of the final report, forwards it to the APR Forum for deliberation and adoption by the Heads of State and government of participating member States. At this level, the process is preoccupied with discussing the issues raised in the Country Review Report and, as far as possible, makes suggestions on the possible ways of mitigating any deficiencies.

The APR Base document makes it mandatory for the Country Review Report to be formally and publicly tabled in regional and sub-regional institutions such as the Pan-African Parliament, the Commission on Human and People's Rights, and the Economic, Social and Cultural Council (ECOSOCC) of the African Union (Base Doc. para.25). This is expected to be completed within six months of when the APR Forum considers a country's review report. To a large extent, this final stage is expected to create incentives for transparency and accountability in the review process. The duration of the review process, per country, is envisaged to be completed in not more than six months from the date of inception of the first stage. The insistence on this timetable appears to be a strategy to facilitate the review process in as many countries as possible, given the limited resources at the disposal of the review process.

The formal processes of the APRM at each stage of the review process depend on monitoring and reporting tools which provide a means of gathering adequate information on the policies of member States participating in the review mechanism. From the use of self-reporting instruments

to the final publication of Country Review Reports, the system supports mutual cooperation of States in policy areas of relevance to all member States of the APRM.

3.3. The Emergence of the Governance System and Division of Labour in the African Peer Review Mechanism (APRM)

This section offers an explanation of the emergence of the governance system of the APRM, and the impact of functional differentiation in the decision-making process of the review process. It argues that the existence of a division of labour among several sub-bodies in the governance structure of the APRM can have an independent impact on the contents of final review decisions. The section also gives insights into the functions assigned to each of the sub-systems in the APRM decision process. By providing a detailed description of each of the bodies involved in the APR process, the section hopes to clarify how various sub-bodies are organized and the incentives created at each stage of the process to promote merit-based decisions.

The presence and creation of various committees to facilitate the process of the APRM establishes a complex governance system, and introduces a functional division of labour among the various sub-bodies that work to achieve the ultimate goal of the process. Within the APRM decision apparatus, the APR Panel is constituted in order to overcome any credible commitment problems of their principals and aim at producing reason-based decisions. Unlike traditional Principal-Agent relations, the delegation setting in the APRM is anchored in a division of labour that relies on defined principles for decision-making. Besides the interests of the principals and the agents, general decision criteria serve as an external point of reference that is distinct from the parochial interests of the principals in specific decision situations (Gehring and Plocher 2009: 670) . These decision criteria, in the form of guidelines, generally reflect the long term interests of the principals. They also give an idea of the decision rationale of the agents. This delegation structure enables the autonomy of the agent while at the same time making it accountable for its decisions.

Since its creation in 2003, the African Peer Review Mechanism has been dominated by the encompassing authority of the APR Panel and the APR Forum. While the APR Forum has the

authority to appoint members of the APR Panel and supervise the activities of the APRM process, the Panel is envisaged as an independent agent with the authority to make recommendations that are binding for the principals of the organization (Base Doc. par. 7). The authority afforded to the APR Panel makes it possible for it to take control of its own activities, and assume the power to direct, as it sees proper, the manner in which its administrative procedures should proceed in the process of the peer review process.

The operation of the APRM system is characterized by the interaction of a number of autonomous units, each of which operates according to its rationale in taking decisions. The institutional structure of the African Peer Review Mechanism is largely differentiated. The complex APRM system is made up of both Continental and national APRM structures that work in tandem to produce the final decisions and recommendations of the APRM process. At the Continental level it comprises four bodies. These are the APR Forum, the APR Focal Points Committee, the APR Panel and the APRM Continental Secretariat. At the national level four bodies coordinate the activities of the APRM, comprising the focal points, the national commission/ national governing councils, national APRM Secretariat and technical research institutions (TRIs). Each of these bodies perform distinct functions that together work for the proper functioning of the APRM system. Each body works in its own capacity with the authority to produce authoritative and legitimate knowledge to inform the process. The distinct status and authority accorded each of the bodies at the national level differs from State to State. The wide variations in the special recognition and level of autonomy invested to national bodies may be important to explain the extent of the seriousness or importance placed on the review process in the development planning of each of the participating States.

The level of independence enjoyed by each of these bodies, especially at the State level, is contingent on the kind of task that it is assigned. Most of the bodies in the APRM process produce expert knowledge to serve as a basis for the final recommendations and the work of the other committees. The APR Panel, which has oversight of the process, makes its decisions based on information provided by the research bodies and the initial self-assessment reports that are produced by officials of the state under review. The process of decision-making, to a large extent, may be understood within the paradigms of Principal-Agent theory. This promotes the idea that the task of decision-making concerning the propriety of policy decisions and programs

of a State should be delegated to an agent by the contracting States. This is illustrated in the establishment of various bodies at the Continental level which further assign various roles to other sub-bodies within the institutional structure. This arrangement is geared at producing the best recommendations for the improvement of the policies of States participating in the review process.

The governance system of the APRM distributes these distinct functions to the various bodies of the APRM to enhance the capacity of the system to produce the most adequate solutions for any deficiencies that might be identified in the process of the peer review. From its design and conception, the African Peer Review Mechanism appears to have been made operational to act as an appropriate tool to mitigate policy deficits in member States of the African Union. Chikwanha (2007), for instance, argues that the central aim of the review mechanism is to encourage the adherence to adopted policies, principles and proposed practices that enhance the economic growth and facilitate the transition to democracy by identifying capacity gaps and proposing alternative courses of action (Chikwanha, 2007). In this way, member States participating in the review process have an obligation, in respect of issues that might be identified, to require the attention of governments to get them resolved. Adherence to policies and principles, as enshrined in the founding documents of the review process, are guided by the established norms in the APRM statute. Since the first peer reviews, starting with Ghana in 2003, various guiding rules have been elaborated upon and more guidelines have been produced by the APR Panel and the Forum to enhance the efficiency of the process.

Different institutions and activities are identified in the key documents which established the APRM to define how the process of a peer review of a country is to be organized. At both the Continental and national level, a variety of activities and institutions are engaged in the process of evaluating and assessing the range of proposals that lead up to the final drafting of reports and decisions on how the deficiencies identified are to be rectified by a member State. The interest constellations of actors may play out at the national level when the APR Panel and members of the government under review, engage in various consultations to agree on the policy issues contained in initial APR reports. However, to minimize the possibility of power politics among the Panel, different tasks are then delegated to other sub-bodies in the decision process,

providing incentives for making appropriate decisions that are in the best interest of the objectives of the review process.

Until 2012, the peer review process of the African Union was dominated by the encompassing authority of the APR Forum, the Panel and the Continental Secretariat. The powers supplied the APR Panel gave it the authority to supervise the activities of the Secretariat while simultaneously taking charge of the administrative issues related to the entire peer review process. At its inception in 2003, the APR Panel was mandated to direct the operations and management of the review process (*APRM Base Document*, para 6, 2003). The intention was to create an independent and autonomous entity that produces credible and impartial decisions on the policies of participating States in the review process, while at the same time ensuring that the Panel is responsible and reporting directly to the APR Forum. The APR Forum acts as supervisor of the Panel and the Secretariat and is the supreme decision-making body of the review process (*APRM Organization and Process Doc.* para 1.1(a), 2003; Article 9 (2) of the APRM Statute, 2016). Based on the chain of command that is established in the institutional design of the APRM, all decisions and proposals of the Panel and the Secretariat were subject to the oversight of the APR Forum.

As early as November 2004, the Heads of State participating in the review process made attempts to review the progress in the implementation of the APRM (Communiqué of APR Forum, 4 November 2004). At the second summit of the committee of participating Heads of state, the chairman of the Forum called on members to engage with the peer review process with utmost commitment, and recognised a need to re-examine the implementation of the process in countries where it had already been started (Communique of APR Forum November 2004, para 9). The main issues of concern in this self-assessment centred around establishing an enduring relevance of the APRM as an undertaking, to mitigate the political and economic quagmire faced by member States. A major issue of concern, in the organization of the process, was the tenure of the chairperson of the APR Panel of eminent persons. The Forum resolved at the summit that the base rules be amended to allow for the rotation of the chairmanship of the Panel every year (Communique of Second APR Forum summit, para 15, November 2004). As a result, the APR Forum, at its fifth summit in Banjul, Gambia in 2006, acting in conformity with the decision to rotate the chair of the APR panel, appointed Prof. Dorothy Njeuma as the new chairperson of the

APR Panel (Communique of the fifth summit of the APR Forum, para 17, 30 June 2006). Through this change, the Forum demonstrated its authority to have the operations of the review process under its guidance. Furthermore, the Forum was optimistic that the idea to have the position of chairperson rotated among the Panel members would optimize the pool of talents available at every moment for the benefit of the decision-making process.

After the years of implementation of the peer review process by the first pioneer countries to accede, some amendments have been made to the original structure. The initial structure and authority of the APR Panel, for instance, came to be seen to be undermined by a number of factors that some scholars have attributed to seemingly candid and credible judgments that have emanated from the Country Review Reports produced (interview with Joseph Tsang, member of the APR Panel 08.09.2015). At the inception of the review process, the leadership and management structure of the review process was to be directed by a Panel of between five and seven members (*APRM Base Document* para 6, 2003). The size of the Panel and its oversight responsibilities over the review process over the years have changed slightly. Amendments to the APRM Base Document adopted by the APR Forum titled *Statute of the African Peer Review Mechanism* agreed to a Panel composed of a maximum of nine members (Article 11 (2)a of the *Statute of the APRM*, 2016). Not only has the size of the Panel been modified, but some responsibilities hitherto performed by the Panel have been scrapped, or delegated to another sub-body within the organizational structure of the review process.

As a first step towards reorganizing the review process, and galvanizing the needed support for the proper operations of its systems, a review of the implementation of the peer review process was initiated as early as July 2007 to realign and synthesise the operations of the process for effective and efficient decision-making. For instance, the 7th summit of the Committee of Heads of state and government participating in the APRM had, as its agenda, a consideration of the status of the implementation of the review process in member countries (Communique of the seventh summit of seventh APR Forum in Accra-Ghana, 1 July 2007). Two related issues in this regard were of prime concern to the APR Forum. These were the establishment of enduring national structures, and a commitment to the funding obligations of members.

In the first case, since the APRM Base Document at best leaves open the question of the kind of national structures required to support the process and implementation the review process, the Forum sought to give a clear direction in this respect. However, the decision of the seventh summit did not give a definitive answer to the exact organizational structure at the national level. The decision of the summit vaguely called on ‘all participating countries to fast-track their review process by putting in place the necessary national structures as soon as possible’ (Communique of 7th Summit of APR Forum, page 2, 1 July 2007; Communique of 8th Summit of the APR Forum, 30 January 2008; Communique of 9th Summit of the APR Forum para 2.2, 30 June 2008). The decision of the summit still left open the precise and detailed requirements for the organizational structure at the national level. The general nature of the directive from the Forum still left its implementation open to different interpretations. The relevant issue at hand, at this particular time during this process, however, was a firm attempt, made by the Forum, to recalibrate processes at the national level to generate outcomes that advanced the envisaged objectives of the review process.

The second issue, dealing with funding of the APRM process, has always been at the heart of the philosophy underpinning the origination of the entire review program. The idea behind this has always been stressed by stakeholders to be to ‘maintain the African ownership of the process’ (Communique of seventh summit of the APR Panel page 2, 1 July 2007). To many commentators, taking the responsibility to ensure that the review process is funded by African countries would preserve independence and ensure non-interference by external actors acting in their own interests. Yes, beyond the call for members to honour their obligations, nothing substantive was decided on the modalities for negligence and punitive measures concerning failure to pay.

Other activities, as captured in the 2007 work-plan of the APR Panel, demonstrate an attempt to revise some aspects of the review process to meet the exigencies of time. Targets for reform were found in the master questionnaire and other base documents, the establishment of appropriate monitoring and evaluation frameworks, the fine-tuning of the APRM methodology and improvements in institutions related to the review process (Communique of the Seventh Summit of the APR Forum, July 2007; Communique of the 12th Summit of the APR Forum, page 2, para 11, January 2010).

In the first stage of the post-2008 reforms, the APR Forum took a decision to resolve the issue of the legal status of the APRM Secretariat as an ‘autonomous institution’ of the African Union (Communique of the 8th Summit of the APR Forum, page 2, January 2008; Communique of the 9th Summit of the APR Panel, page 2, para 2.3; Communique of the 11th Summit of the APR Forum, page 2, para 12). This phase is perhaps the first restructuring of the APRM organizational structure. To achieve the goal of making the APRM an integral arm of the African Union, the proposal was to have the AU general assembly debate on its statutes. The need for reforms was propelled by the administrative and institutional challenges, encountered in the five year period of the implementation of the review process across the 28 member States that had acceded to the process at the time (Communique of the 8th Summit of the APR Forum, page 2). Among other problems, the host country agreement between the Republic of South Africa and the APRM Secretariat remained outstanding, and concrete measures had not been taken to settle the matter. In addition, the term of office for the first batch of members of the APR Panel was set to expire, and no new appointments were made in that regard.

The decision of the Forum, regarding the processes and procedures for the appointment of the members of a new Panel, was to deviate from the original rules and rather allow for a two-stage change in the membership of the Panel of eminent persons, in order to retain some sort of institutional memory (Communique of the 8th Summit of the APR Forum, page 3; Communique of the 10th Summit of the APR Forum, page 4, para 22). Consequently the Forum appointed three new members in the first stage, allowing for four members of the Panel to continue to serve. In the second stage, the remaining four members retired after handing over to the next batch of members appointed by the Forum. This paved the way to ensure continuity within changes in the institutional operations of the review process, and enabled the APR Panel to sustain institutional memory of the founding principles that had served as the bedrock of the review process.

A fundamentally important organizational issue that emerged in 2009 entailed a refinement of the ‘peer’ component of the review process. Hitherto, it was only the Heads of State and Government of participating member countries that were allowed to sit in on the discussions of the final ‘peer’ review sessions. This was a reflection of the notion that, the ‘peer’ component was literally preserved when Heads of State passed judgment on the reviewed report and offered their recommendations for tackling the deficiencies identified in the reports. From this position, a

change came when two key decisions by the Forum in June 2009 made it possible for partner institutions and representatives of Governments to participate in the proceedings of the Forum in the 'peer review sessions.' These actors were enabled to participate as observers without any voting rights. The decisions as expressed in the Communiqué of the 11th Summit of the Heads of State and Government of the APRM were as follows: firstly, 'representatives of Heads of State and Government may attend peer review sessions but they cannot participate in the discussions that are held among the peers', and secondly, 'Heads of the APRM strategic partner institutions- AFDB, UNDP, UNECA- are allowed to attend APR Forum meetings but they cannot participate in the deliberations of the Heads of State and Government' (Communiqué of 11th Summit of APR Forum, page 3, para 15).

The involvement of strategic partners and other representatives of Governments in the peer sessions of the Heads of State give an indication of an attempt to introduce further accountability measures for the deliberations of the Heads of State. By making the peer sessions of the review process open to the involvement of other stakeholders, an institutional incentive was created to push decision makers towards making decisions that are based on the merits of the issues as presented in the Country Review Reports. Even if decision makers were thought to have some parochial interests in the issue areas of the review mechanism, under these arrangements it becomes difficult for them to make the choice to rely on their power resources to bargain on the recommendation presented by the APR Panel, since their actions are being observed by stakeholders in the review process. This organizational change in the peer sessions makes it possible for stakeholders to hold the Heads of State accountable for the final recommendations and decisions contained in the Country Review Reports.

This first phase of reforms consequently made the APRM operationally autonomous from the African Union, yet the APRM remained constitutionally integrated in the AU operational structures (Communiqué of the 11th Summit of the APR Forum, page 3). Financially, the APRM gained autonomy in financing its budget without resort to the African Union. However, the States that made up its membership an exact parallel to those of the African Union. The operational separation of the APRM from the AU over the years did not prove to be fully beneficial in terms of the operational costs that had been a huge challenge to the management and operations of the review process. As a consequence, the second and third stages of reforms

in the operations of the review process involved the systematic integration of the APRM into the AU structures, and an enlargement of the mandate of the APRM to monitor the activities and programmes of the African Union.

Up until 2012, the operation and management of the APRM's institutional set-up was completely independent from the AU structures. The APRM had its own Secretariat and was headed by a chief executive officer. With the adoption of a revised APRM questionnaire and APRM operating procedures by the Forum in 2012, the stage was set for further reforms that would see the APRM process integrated into the AU system and endowed with enlarged authority to monitor the policies and programmes of the AU (see Communiqué of the 17th Summit of the APR Forum, para 21, 40, 42 and 44).

This phase of reforms merely created another entity, the Focal Points Committee, with a specific mandate of oversight of the administrative and operational duties of the APRM Secretariat. With the creation of this committee, the regulatory functions of the APR Panel changed once again. The brief of the Panel was curtailed to only perform activities related to country peer reviews. In this way the original mandate of the APR Panel, to have oversight responsibility of the administrative and operations issues of the review process, was abolished (APR Base Doc. para 6). According to the new changes that were made, decisions of the Panel were still subject to general directives issued by the APR Forum, the highest decision-making organ of the APRM (Communiqué of the 11th Summit of the APR Forum, para 15). The new system assigned the newly created Focal Points Committee with the responsibility of making recommendations for consideration by the Forum on issues related to the operations of the APRM Secretariat. This committee had the statute of a ministerial body that served as an intermediary between the APR Forum and the APR Secretariat (Statute of the APRM, Article 10). This system makes it possible for the APR Panel to concentrate on Country Review Reports and to have its programmes and budgets approved by the committee, before they are given consideration by the highest decision-making authority. Though both the Panel and the Focal Points Committee enjoy much freedom in the operation of their mandates, both are subject to the directives of the Forum.

In the final phase, the operational activities of the review process were restructured and integrated into the AU system (Communiqué of 17th Summit of the APR Forum, page 5, para 44;

Communique of the 18th Summit of the APR Forum, page 4, para 42; Communique of the 19th Summit of the APR Forum, page 4, para 24; Communique of 20th Summit of the APR Forum, page 5, para 33, Communique of the 22nd Summit of the APR Forum, page 2, para 12; Communique of the 23rd Summit of the APR Forum, page 2, para 12 and 22a). A decision in the twenty-third ordinary session of the Assembly of the African Union unanimously decided that the APRM be integrated into the AU organizational structure as an autonomous entity (Assembly/AU/Draft/Dec. 527(XXIII)). This decision basically reaffirmed the exercise of financial and budgetary independence in the process of the APRM, as originally envisioned. The most important aspect of the decision was for the administrative structures, management and legal personality of the APRM to be modeled on the standard procedures of the African Union.

As a result, the APRM became a specialized agency of the African Union, broadly mandated to monitor and evaluate the policies and programmes of the AU (APRM communications, poste on 10th March 2017; APRM Communications, 9th February 2017). The decision of the African Union Assembly of Heads of State and Government, to extend the mandate of the APRM to track the implementation and oversee the monitoring of Continental-wide policies on governance, follows an expert report on recommendations for reforms in the African Union. The decision of the general assembly of the AU basically expanded the mandate of the APRM to include the monitoring and evaluation of the African Union agenda 2063 and the United Nations sustainable development goals agenda 2030 (Eddy Maloka, *City Press* 02.04.2017; APRM Communications, 2nd February 2017).

This expanded mandate, on the other hand, has no direct effect on the organizational structures of the APRM process as it stands. No entity has been created to take up the role envisaged in the general directives of the AU assembly. The general rules of procedure makes it possible for committees to be created when the need arise. As a consequence, decisions of the agency are now subject to oversight by the APR Forum and the Focal Points Committee of the APR. The independence of the Panel then relies much on its ability to proceed with its activities without any interference from other entities in the review process.

To conclude, the three stage reform process, identified above, led not only to a complete separation of functions between the APR Panel and other entities, but also a reinforcement of the

oversight role of the APR Forum in the review process. The legal persona of the APR Secretariat was transformed into a wholly autonomous entity, integrated in the African Union organizational structures. In this context a largely independent APR Panel emerged with the specialized task of concentrating solely on peer review reports and the processes that leads up to the country review missions. At the same time, the Focal Points Committee, which emerged out of the reforms, plays an intermediary role between the Heads of State and the APRM Secretariat. Therefore, the various reforms and restructuring of the organizational structure over the years created a gradual differentiation of functions among the various entities in the organizational structure of the APR process. In order to grasp the operational duties and the presence of functional differentiation in the organizational operations of the review process, the ensuing sections give a detailed description of each of the entities involved in the decision-making process of the review process.

3.4. The Separation of Functions in the Organizational Structure of the APRM

In order to explain how functional differentiation can serve as an independent factor to impact the outcome of decisions in the review process, this section gives insight into the various functions assigned to each of the sub-bodies within the institutional operations of the review process. The section makes a claim that, by assigning complementary roles to each of the sub-systems, incentives are created for each body to be accountable. In that light, a dichotomy between a rule making and rule implementation function by the APR Forum and the other sub-systems is established. The discussion that follows looks at each of the APR institutional bodies in detail.

3.4.1. APR Forum (Committee of Heads of State and Government)

The APR Forum consists of the Heads of State of participating countries in the APRM process. It serves as the supreme decision-making body of the APRM process. The overall responsibility of the APRM is vested with the Forum (Article 2.1, NEPAD/HSGIC-3-2003/APRM/Guideline/O&P March 2003). The Committee of Heads of State has overall oversight and authority over the APRM. The APR Forum, as the hierarchical superior body of

the governance system of the APRM process, sets the scope, mandate, objectives and structure of the APRM regime under its protocol and a document that emerged out of the sixth summit of the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD in March 2003 (APRM Guidelines, 2003). The guidelines serve as the guiding framework for the operation of the various bodies that are created within the institutional setting of the APRM.

In the absence of any specific or particular provisions in the Constitutive Act of the African Union, the APR Forum broadly enjoys a large amount of discretion in the design of the peer review process. The Heads of State and Government of participating countries have the power to create institutions and delegate functions to them, when the Forum considers it appropriate, as the plenary body with the ultimate responsibility of defining the objectives of the review process (Chukwumerije, 2006:79). The overall responsibility of the APRM is thus vested in the APR Forum. The Forum is entrusted with the ultimate responsibility for mutual learning and capacity building, and to exercise constructive peer dialogue and the practice of persuasion of members to the policies and programmes of member States (APRM Organization and process doc. para 2.2d). The APR Forum serves as the avenue through which peer learning may take place through the sharing of best practices among member States (Grimm et al 2009). Among other things the APR Forum appoints members of the APR Panel. The APR Forum therefore delegates decision-making authority to the APR Panel to oversee the peer review process.

The Forum directs the activities of the other bodies under the APRM through the adoption of protocols at their annual meetings, which mostly take place on the sidelines at the AU Heads of State and Government Summits. Over the course of time, then, the role of directing the activities of the various subsidiary organs of the APRM has been shifted to the APR Panel. The guidelines, which were adopted by the HSGIC, delegated the task of producing guidelines for the conduct of country review visits to the Secretariat and Panel, subject to the approval of the committee of Participating Heads of State and Government of the APRM (APRM Guidelines para. 2).

The Forum has adopted an increasing dense set of procedural and substantive provisions that govern the conduct of the peer review process. The Forum retains the right to approve any guidelines and rules that are set out by, any of the organs, to give direction to how their activities are conducted. In general, procedural rules that are elaborated and adopted by the Forum are

broad in perspective and may apply to unknown future situations, taking into consideration individual country differences. The Forum also serves as a platform, where dialogue is generated among States participating in the APRM, to reason for common and amicable policy options to address lapses that are identified in the process of the peer review. Final recommendations are adopted at the APR Forum before they are published and made public at various regional institutions, including the African Parliament and other sub-regional bodies and institutions.

The code of conduct and the rules of procedure for both the APR Panels are approved by the Forum. It has the mandate to ensure that the various sub organs within the institutional setting of the APRM are adequately resourced in order to manage the process of producing effective and efficient outcomes. All components of the APRM organization which set its code of conduct also need approval from the Heads of State and Government Committee. To ensure that reports and recommendations are communicated to the general public and other institutions of relevance, the APR Panel, according to the guidelines, must make public all such reports pertaining to the review of a member State (Article 2f&g, NEPAD/HSGIC-3-2003/APRM/Guideline/O&P March 2003).

In a sense, the task of enacting binding and general rules is within the purview of the APR Forum. It performs a task that can be liken to a legislative function, enacting legally binding rules that serve as a guide to the operations of other committees in the APR process. The intentions of such general rules are to serve as a point of reference for each agency, and are constructed to hopefully last for a long period of time. By limiting the functions of the Forum to formulating general rules to be applied on specific cases by other bodies, a loop is created, enabling the decisions of the Forum to strive to represent the median interests of all member States in the review process. As a consequence, members in the Forum act can be unaware of the implication of specific rules to future cases, enabling them bargain over the options available for the pursuit of their parochial interests.

For instance, in 2009, the APR Forum gave a general directive to the Panel to formulate transparent procedures for the appointment of members into the Panel, as well as modalities of designating the chairperson of the APR Panel (Communique of the 10th Summit of the APR Forum, page 4, para 22). The directive, at best, can be described as vague. As a result it gives the

Panel a considerable margin of choice in formulating procedures that they feel are in the best interest of the review process. The general directives to a large extent are incomplete, and their implementation is mostly left to the discretion of the implementation body. Since general directives emanating from the APR Forum are blind to the specific situation of their implementation, it forces decision makers at the highest level to deliberate over the reasonableness of options available. Thus this measure creates an incentive to prevent members of the Forum resorting to their power resources in taking decisions that are geared towards the operations of the review process. In a nutshell, the exclusive assignment of a rule making function to the Forum contributes to inducing members of the Forum to deliberate on the most appropriate options in given decision situations. By being unaware of the future case specific situations and how general directives may be applied they are pushed to make decisions that are in the best interest of the review process.

3.4.2. APR Panel (Panel of Eminent Persons)

The APR Panel derives its mandate from the African Peer Review Mechanism base document (AHG/235(XXXVIII), 2003). The document was endorsed by the African Union Summit in Durban, South Africa in July 2002. The Panel supplements the governance system with its distinct and diverse expertise. The APR Panel is appointed by the Heads of State and Government committee of the APRM. It is an independent body of the APRM charged with the responsibility of organizing the peer reviews of member States. It engages in a rule-application function alongside the APR Forum which engages in rule making. The Panel develops its own rules of procedure (APRM Organization and Process doc. 2003, Para. 3.1g) that specify and elaborate on the more general directives enshrined in the APRM Organization and Procedure document. Rules and guidelines developed by the Panel need the approval of the Forum. The Panel is also responsible for approving any guidelines developed by the APR Secretariat and the APR Teams. As the main body that regulates the APRM process, it relieves the Heads of State and Government Committee of the need to provide comprehensive rules to ensure the proper functioning of the review process without undermining the oversight function of the Forum. It constitutes the main body set up by the Heads of State and Government Committee to exercise

oversight on the review component of the APR process, with a view to ensuring the credibility of the process (APRM Organization and Process doc. 2003, Para. 3.1).

The APR Panel consists of up to nine members, appointed by the APR Forum. The chairperson of the Panel, appointed from the members of the Panel, serves for a period of up to five years while other Eminent Persons each serve for a period of up to four years, renewable once. Members of the Panel do not represent their individual countries, but are appointed to protect the long term interest all the Principals (States participating in the APRM process). Though the Panel reports to the Heads of State and Government Committee, the APRM base document anticipates that the general mandate of the APR Panel will be defined in a Charter. By shifting the role of making rules and guidelines to the APR Panel and the Secretariat, the Forum hedges itself against any tense political situations which may entail a deadlock in elaborating any rules and guidelines that take into account the future success of the process. By extricating the APR Forum from most political tensions that are inherent in creating such guidelines and rules, delegating to the APR Panel and the Secretariat, the option of strictly regulating the Panel becomes non-existent. The absence of a regulator, in the strict sense of the word, in the APRM governance system prevents a situation where specific opportunity structures prevail for any other bodies that have their decisions blocked, to search for alternative forums to advance their interests.

Members of the Panel of Eminent Persons are expected to be distinguished, and experienced in careers that are relevant to the work of the APRM. Among some professionals who have served on the Panel are diplomats, academics and professional experts in the various areas of focus in the APRM. The *APRM Organization and Process* document is clear on the need for the composition of the Panel to reflect broad regional balance, gender and cultural diversity (APRM Organization and Process doc. 2003, para.3.6). The decision rationale for delegating decision-making authority of the APRM process to the APR Panel is to ensure that the long term interests of States participating in the APRM are achieved, by depriving States of the opportunity to pursue short term interests in lieu of the long term collective interests of members.

An important role played by the Panel is to oversee the overall APRM process, and to guarantee the integrity, independence and professionalism of the peer review process. To preserve the

credibility of the process, the Panel oversees the selection of APR Teams and the process of conducting country reviews (APRM organization and process doc. 2003, para. 3). In this way an organizational incentive is put in place to deprive the APR Forum of the opportunity to introduce their parochial interest into the decision-making process of the review. In most instances, the Panel recommends appropriate African institutions or individuals should conduct the technical assessments that are required to produce the most informed Country Review Reports, enabling the Panel to make the most problem-adequate recommendation to the APR Forum (APRM organization and process doc. 2003, para.3.1c). The Panel develops tools, instruments, codes of conduct and guidelines to govern the country review process with approval from the APR Forum, having set the guiding rules on how each country review process must proceed in accordance with the guiding principles of the APRM documents.

The Panel therefore plays a crucial role in the country review process and serves as the main anchor when the process proceeds from the signing of the base documents to the final submission of the Country Review Report, and then to the enactment of the program of action which is expected to be implemented by the country to realize the objectives emerging from the peer review process. The Panel, as an agent of the States participating in the APRM, works to realize the long term policy goals of the member States, by making sure that States do not take short cuts to formulate policies that may not be to the long term benefit of all actors involved. It is also expected of the Panel that it coordinates visits by the support missions to countries that are to undertake a peer review process. Support missions generally assist a State preparing to go through the peer review by putting into place necessary structures and institutions at the national level for a smooth take-off of the process. This usually involves giving technical and administrative support to officials in a member State in getting the process started.

For each country review, there is one Panel member appointed by the APR Panel to coordinate the activities of the process. The Panel selects the country review team that will support the APR Panel member that is appointed to lead the process in a member country. They make an assessment of, and give recommendations on Country Review Reports, with a program of action on how to fix deficiencies that are identified. These final decisions are presented to the APR Forum, made-up of the Heads of State of participating countries, for adoption and implementation.

The APR Panel has thus been described as a ‘credibility buffer’ between the country review and the APR Forum (Grimm and Mashele 2006). The Panel is expected to mediate and filter any tendencies by member States to insist on having their parochial interest highlighted in the production of the final recommendations and programme of action made to the APR Forum. This role may thus help in preserving the immunity of the process to any political manipulations, and may discourage any tendency by member States to introduce their preferences in the decision rationale of the Panel. The Panel of Eminent Persons therefore engages in rule-making alongside the Heads of State and Government Committee. The Panel sets the guidelines, and the Forum approves or adopts them to become operational, submitting recommendations to the APR Forum on measures that could be taken to assist the country in the improvement of socio-economic development and governance performance (APRM organization and process. doc. 2003, para.3.1f).

3.4.3. The Focal Points Committee

Another important sub-system in the APRM Continental structure is the Focal Points Committee. It is composed of national focal points of participating countries. It has the status of a ministerial body and serves as an intermediary between the APR Forum and the Continental Secretariat (APRM Statue, Article 10 (1)). In effect, it comprises the focal points of participating countries who are the representatives of the Heads of State and Government participating in the APRM.

The Focal Points Committee is led by a troika comprising a chairman, assisted by the immediate predecessor and successor for that position. Working in this administrative capacity, the troika is expected to lead the committee in managing the activities of the review process at the Secretariat. In a sense the Focal Points Committee performs a coordinating role between the Heads of State and Government participating in the review process and other bodies in the operational system of the review mechanism. By entrusting the leadership of the Focal Points Committee to a troika which is constituted from present, past and future leaders, the opportunity structure is created for members to harness the experience of past members for the proper direction of the activities of the review process.

The responsibilities bestowed on the Focal Points Committee are, to a large extent, administrative in nature. Article 10 (4) of the APRM Statue defines its general obligations. The Committee is entrusted with the responsibility of making recommendations to the APR Forum on appointments to the Secretariat. For instance, in the appointment of the CEO of the APRM Secretariat, the Committee makes recommendations to the Forum on the candidate best suited for the job, based on the recruitment modality it operates. The general rules that guide the conduct of the Committee in making recommendations to the Forum are incomplete, and demand that further guidelines be produced. As a consequence, the Committee develops further guidelines to serve as a guide to their operations in specific situations. The Focal Points Committee also has the responsibility to review the annual budget and work programme of the APRM, submitted by the CEO of the APRM Continental Secretariat, making recommendations and submitting them to the APR Forum for adoption (APRM Statue, Article 10(4b)). The Forum, as the highest decision-making organ, therefore relieves itself of involvement in issues relating to the day-to-day administrative operations of the review process. As a consequence, it provides institutional incentives to deny the pursuit of parochial interests or power-based bargaining among the political decision makers. The presence of the Focal Points Committee in the institutional structure of the decision-making process of the APRM helps deal with the possibility of rolling back the decision process, by providing incentives for members at the committee level to deliberate on issues and provide problem-adequate solutions for the adoption of the Forum.

In contrast to other expert committees that are involved in the operations of the review process, the Focal Points Committee serves as the managerial hub for the decision-making process of the review. It is within the mandate of the committee to manage the APRM trust fund and see to the proper monitoring and audit of APR reports (Statue of APRM, Article 10(4e)). By assigning the Committee with the responsibility of monitoring and evaluating the activities of the Secretariat, the highest decision-making body creates an institutional incentive structure for the CEO of the Secretariat and other staff to make decisions that are in the best interests of the review process. The Committee thus becomes an extra institutional means of expecting other committees within the institutional operations of the review process to be accountable for their decisions at each stage of the review process.

In order to make it flexible for the Focal Points Committee to manage the administrative duties at the Secretariat, it is further empowered with the authority to establish sub-committees with specific mandates, as may be deemed necessary for a given duration (Statue of APRM, Article 10 (6,7&8)). Having the power to create sub-committees with specific mandates, in effect, grants the committee a version of executive power. This empowerment came about as a tacit response to the demand to curtail the initial powers that were bequeathed to the APR Panel. The Panel, in the exercise of its duties, has shown a candid approach in their Country Review Reports. The fact that an intermediary body was needed appears to show the Reports, over the years, have challenged the authority of the Forum in respect of its approach to policy issues in some States.

To sum up, the Focal Points Committee, as the body with oversight responsibility over administrative issues in the review process, is given powers that are akin to the powers of an independent administrative agent. The rationale for its operation is based on the general mandate codified in the Statue of the APRM. In order to function without administrative bottlenecks, the committee sets out to determine guidelines for any decision situation. The Focal Points Committee represents the interests of the Heads of State and Government participating in the review process, and, in this sense, could become entangled with the power dynamics that may be at play at the Heads of State Forum. On the other hand, the Focal Points Committee acts as an agent of the Forum, with the mandate of making decisions in the best interests of the operations of the review process. The institutional incentives created for merit-based decision-making, at the APR Forum level, is based on the ability of the Focal Points Committee to absorb all political debates that might arise in the decision-making process. The Forum therefore does not usually tend to debate issues that are brought before it by the Focal Points Committee, and almost all recommendations from the Focal Points Committee get the approval of the Forum. As a consequence, the committee insulates the decision-making process from power-based decision-making.

3.4.4. The APRM Continental Secretariat

The APRM Continental Secretariat is led by a Chief Executive Officer, appointed by the APR Forum. The Forum adopts regulations and conditions that sets out the powers and duties of the

CEO's office. This appointment is at the rank of a commissioner of the African Union, which therefore entails conferring executive powers as the CEO of the Secretariat.

The Secretariat supports the APR Panel and the country review teams in accessing information on a participating country undergoing the review process. It gathers background information on the political and socio-economic development in a participating country, and coordinates the administrative and technical exigencies of the peer review process in participating States. In this respect the Secretariat, together with the APR Panel, is responsible for implementing general directives on the detailed criteria that are used as indicators for country assessments. Rules based upon the criteria are issued at the beginning of each process of the review, to serve as a guide to the country on how data and information at the county level is expected to be organized. A variety of documents serve to construct the guidelines for the conduct of a peer review among member States. The APRM base document, which has been adopted by the Heads of State of participating countries, serves as the main document that gives directions on how the process must proceed. Other documents emerge in the course of the process, with some directives issued by the APRM Panel and Secretariat serving as a guide to most member States in their country review process.

To effectively carry out the mandate of providing technical, advisory, coordination and administrative support functions to the various organs, the Secretariat is tasked with undertaking and managing research activities that underpin the APRM process (Statue of APRM, Article 12(1a)). This involves preparing the necessary background work to facilitate the country review processes. It also entails undertaking to support country review missions and publishing reports, monitoring papers and follow-ups.

3.4.5. APR Partner Institutions

The APRM works in collaboration with institutions with knowledge and expertise in various areas of interest to the APRM process. Each peer review sees the composition of a country review team which encompasses the recruitment of strategic partners of the APRM. The country review teams inspect the proceedings of countries during the peer review. Each country review

team, led by a member of the APR Panel, writes the reports that form the basis for the deliberative review of the Heads of State Committee. The country review teams are specifically assembled for each review process by the APR Panel and their task usually takes three to five weeks. The APRM base document calls for the composition of a balanced, integrated and technically competent country review team, that is professional in all aspects of the conduct of the country review process (APRM base doc. para 11).

Partner institutions play a major role in assessing the technical viability of the programme of action that is compiled at the end of the process. They give expert advice on the modalities of planning and implementing the PoA at the end of the peer review process. Members of the partner institutions participate in deliberations of the country review teams, and they also take part in the meetings of the APR Forum (the Heads of State of Participating Countries) which meets to adopt the final reports. The involvement of the partner institutions meets the need for competent expertise to be at the forefront of the peer review process, giving the work of the institution more credibility. The presence of the partner institutions mediates any attempt by States to pursue their self-interest or not to work to achieve the general objective of the peer review process to enhance the governance process in the country under review. It is also important to note that the APR partner institutions are actually involved in the review missions, advising and offering the best possible policy options in the various areas of the review process.

3.4.6. APRM Institutions at the National Level

Participating countries in the APRM process, beyond their role in Continental structures, set up additional coordinating institutions at the national level. The official APRM base document does not categorically specify which structures are to be established at the national level, so participating States are largely left to their own devices in defining which institutions to set up at the national level to coordinate the process of the peer review (Herbert 2006). However, the common feature among all States participating in the process is the creation of similar coordinating institutions at the national level. The difference in institutional structure from one country to another is in the operational capacity of the institutions established. While in some countries these institutions operate as independent departments, in others they are under the

oversight of a government ministry. These differences could well account for the level of independence and efficiency of the structures at the national level.

One key institutional structure, common to member States of the APRM, is created by the establishment of a Focal Point. The Focal Point serves as a crucial interface and coordinating vehicle among various stakeholders in the APRM. The base document of the APRM defines the Focal Point as either an institution at ministerial level, or an independent individual, who reports the activities of the peer review process directly to the government. Most Focal Points have technical committees supporting the work of the national APRM process, which assist in the coordination of the peer review process at the national level. The Focal Point serves as the link between the APR Forum and APR Panel on the one hand, and national institutions on the other. Nomination of personnel to the focal point is made by each government, and the process varies from country to country. While in some countries the Focal Point reports directly to the Head of State or Cabinet, in other countries the Focal point reports to a Minister. Herbert and Gruzid (2008) argue that the appointment and composition of the focal points in some countries is an issue of debate, and that an understanding of the independent role of the focal point might raise some contention. As a result they propose a situation where the Focal Point would be independent and out of the reach of governmental influence in reporting the true situation in any particular State. The practice of setting-up Focal Points, and their composition in various countries may partly explain the level of commitment of various countries and governments to the APRM process.

National governing councils and steering commissions are also common institutional features at the national level in most participating States. At the start of the peer review process in 2003, there were no templates for the pioneer States on how to model the steering commissions and the governing councils. Besides the Focal Point, which had an individual appointed by the government to coordinate the APRM process at the national level, the governing councils were created by some countries to serve as a buffer from the political maneuvering in a country. The governing council in most countries managed the process and reported to the Focal Point. In such instances, it helped to disentangle the whole process from the trappings of any parochial political interests that were likely to be generated at the national level. This process has the capability of preventing any stage-managed, and therefore damaging, reports and decisions. The relationship

and composition of the governing councils to the Focal Points generally touches on the question of the independence and autonomy of these institutions at the national level, and how far they function to produce recommendations and decisions that do not reintroduce the short term interest of member States.

3.4.7. Technical Research Institutes

Another key structure in the process of the review is the Technical Research Institutes (TRIs). The TRIs are tasked with developing instruments to collect information on key areas of the peer review process. This involves extensive consultation within various relevant sectors of society, making their information gathering task as wide and practicable as is possible (Statute of the APRM, Article 18 (2), pg 21). These technical institutions are appointed by the national governing council, with the key point of reference for their appointment being the competence and expertise of the institution with respect to the main issues of interest in the APRM. They administer peer review questionnaires on various aspects of the process. The work of the technical research institutions serve as the basis on which the country self-assessment report is drafted and then forwarded to the APRM Continental Secretariat and the APR Panel for the country visits to take place.

3.5. Decision Stages of the African Peer Review Mechanism

Functional differentiation within the decision-making system of the APRM developed and crystallized over time. With the creation of the current system in 2003, several modifications were made to the APRM machinery in the light of difficulties that were faced by the first group of countries that went through the peer review process. Three considerably overlapping decision stages of the APRM process can be identified. These stages of the peer review provide distinct opportunity structures for shaping the outcome of decisions that are made by the Panel. In each of the stages a key APRM institution assists and monitors the progress of the process, and offers needed advice.

This process leads to the production of two important reports which serve as the main documents for the entire process of the peer review. A self-assessment report is completed by the country under review in a thorough participatory process that is led by the government (Akoth Ouma, 2007). Each stage of the process involves the active involvement of members of the various sub-organs.

The first stage of the decision-making involves a self-assessment that is initiated through the Secretariat. The second stage involves an evaluation of reports that are submitted by the country under review, led by the country review mission. The country reports that emanate from the country visit are validated by a country support team that is chaired by a member of the Panel. The final decisions on a State are made when the participating Heads of State meet at the APR Forum to discuss the final recommendations that are made by the APR Panel.

The Memorandum of Understanding (MoU) on the African Peer Review Mechanism (APRM), adopted by the Heads of State and Government Implementation Committee (HSGIC) of the NEPAD, reflects the intentions of the APRM parties to produce decisions that are not dominated by partisan power-based bargaining. The process is envisaged to be guided by the sharing of experiences, and the reinforcement of best practice in participating countries (Article 8, APRM MoU, NEPAD/HSGIC/03-2003). Decisions on adherence to the set standards are fully assigned to the APR Panel, which is composed of up to nine experts in various fields relevant to the peer review process.

The next section establishes a discussion of the stages of a typical review of a country. It identifies various institutional incentive structures that might exist at each stage to promote deliberation among decision makers. It is the contentions of this dissertation, that member States generally sacrifice the power to influence the content of decisions if they resort to power-based bargaining. Through various institutional accountability mechanisms, it is expected that, to a large extent, the decision-making process produces accepted and appropriate results, as actors seek to ensure that power-based interventions by States are systematically dealt with so that the peer review process is consistent with their general intentions.

3.5.1. First Stage: Decision Criteria as Accepted Points of Reference

As part of their policy regarding the New Partnership for Africa's Development (NEPAD), the Heads of State and Government of the African Union adopted a set of detailed general provisions establishing the procedures and processes of the APRM process. These rules and guidelines define the responsibilities of the actors involved in the process. Over time, most of the guiding documents have been refined to meet further exigencies. The standards and codes approved by the countries participating in the APRM serve as a yardstick against which individual member States are measured. The standards and criteria are formulated to give guidance to the key actors and reference points to parameters of assessment in the process. The first stage of decision-making has to do with deciding on the key issues that would be the focus of the review process after a country undertakes a self-assessment report. The APR Secretariat plays an important role at this stage of the process.

An important established criterion is in the requirement that any review process must be free from political manipulation, and technically competent. Deficiencies identified therein are to be systematically fixed through a comprehensive program of action that also commits to a time frame for addressing any issues (Article 3 and 4, APRM Overview Document, June 2002). This criterion is indispensable to the operations of the APRM, since the process relies on securing the commitment of member States to achieve the long term interest of all member States involved in the process. Notwithstanding the fact that the operations of the APRM process occur in a political space, its ability to insulate itself from political interference and manipulation is key to achieving the appropriateness and legitimacy of the decisions that are made by the various bodies in the peer review process. If the process did not highlight an identification of any deficiencies which prevent the process being devoid of any political manipulation, APRM projects would inevitably undermine the general aim of the NEPAD project, since they would have perpetrated a wrong diagnosis of the problems the project aims at achieving.

A country under review is expected to create a national Focal Point to coordinate activities between the Secretariat and the State. After initial consultation with a country that agrees to be peer reviewed, an overview of the process is discussed with the country on modalities and particularities of importance. The national Focal Point has the responsibility of sending the Self-

Assessment Questionnaire to wide variety of stakeholders. The questionnaire solicits opinions and facts about issues of relevance to the peer review, and the particular needs of the country are contextualized to meet the general objectives of the process.

Once the ground-level structures are established in a country, the APR Secretariat and the country under review simultaneously, but independently, compile preliminary documents. A background paper is prepared by the Secretariat aimed at bringing up to speed the information gathering of the country through national, regional and international organizations. This paper gives an idea of the various international regimes and protocols the country is party to, and the extent of its adherence to the principles enshrined in those organizations. Based on information received from the Focal Point on relevant laws, treaty ratifications, budgets and development plans, the APR Secretariat prepares a document outlining the nation's major issues (Herbert 2007, atkt/Herbert/apr overview 2007). This document is intended to further guide the country on the program of action that it drafts to tackle any outstanding important issues. The national program of action, drafted by the government in response to the major issues identified, should contain clear steps and guidelines on the how the country under review intends to bring itself into conformity with APRM codes and standards, the African Union Charter, and UN and other international obligations. The national program of action therefore generally contains the commitments made by the State to achieving the goals of the APR project.

The APR Panel, over the years, has tried to clarify and make as precise as possible some of the speculative and vague rules and directives that were issued arising from the initial reviews in 2003. The original questionnaire, which outlines the major issues of interest and the means available to judge adherence to established standards, has been revised. Most countries had complained of its vagueness and repetitive nature. The revised questionnaire, which was introduced in 2012, addresses this problem as, for example, it has a glossary of terms that clearly defines what it means by some words and phrases as they appear in the documents.

Other general substantive criteria commit the decision makers to specific guidelines in respect of the standards and codes that are associated with each thematic area. The guidelines for democracy and good political governance, for instance, are clear on the specific laws and international protocols to be assessed. Decision makers have the option of indicating if and when

a particular international treaty of interest has been adopted, ratified or enacted. There is however a column that allows for reservation notes and comments by the assessors. The specific guidelines, to some extent, limit the discretion of the decision apparatus, but this is obviated by the fact that, at the national level, the system is still prone to political compromise and some questionable interventions by the States. To prevent unnecessary interventions that might roll back or slow down the decision process, the presence of clear standards and codes which guide each of the issue areas makes it possible to prevent a possible conflict between the government and other civil society groups that might have an interest in some of the specific issues of interest.

General provisions are also given on modalities of interpretation or implementation of the MoU in instances of conflicts between the parties (NEPAD/HSGIC/03-2003/APRM/MOU). Any differences that result in the process being contested are to be resolved by negotiation between the parties involved. Through mutual consent between the parties, amendments to the initial MoU can always be initiated by the participating country where there is a substantial change in the issues that were originally thought to be of prime concern. Additionally, in all instances the procedures to be adopted under the APRM need to be consistent with the decisions and procedures of the African Union (Article 27, MOU of APRM 2003). This provision is formulated to make use of dialogue, through the influence and auspices of the African Union, as the most accepted means of solving all conflicts that might emerge in the process. The APRM sees dialogue and mutual persuasion as the most potent instruments to rally all member States to implement their programs.

To a large extent, the substantive criteria adopted by the member States to guide the initial stage of the peer review process narrow the discretion of the actors in the assessment of the programs and policies of a country at the preliminary stage. Since the initial stage of drawing up a program of action, prescribing how big issues identified can be fixed, is characterized by many political considerations, the move to have a precise questionnaire that serves as a guideline on the contentious areas helps in reducing conflicts that could arise. The guidelines generally reflect a set of principles that should be considered in the assessment process, and then restrain, as much as possible, the tendency by government to politically manipulate the process and render it impotent in achieving its goals and objectives.

3.5.2. Second Phase of Country Visits and Validation of Reports: Strong Accountability Mechanisms Leading to the Proper Application of General Decision Criteria

Several accountability mechanisms are intended to ensure that the independent APR Panel adheres to its task and does not abuse the powers and competencies at its disposal. They also demonstrate, to a large extent, that governance systems will be enhanced substantially where institutional mechanisms contribute to greater accountability in the decision-making process, and this could lead to the involvement of several expert actors with varied levels of interests. The 2004 Kigali meeting of the APR Heads of State adopted recommendations that stressed the need for an inclusive and broad involvement of civil society. It called specifically for participating countries to take steps to identify or establish broad-based and all-inclusive APRM National Coordinating Structures (NCS), which were to be responsible for ensuring that a wide variety of stakeholders in the APR are involved at each stage of the process.

The assessments of major issues in the APR process by the country review team, and the subsequent drafting of the review report, are perhaps the most far-reaching tasks of the review team. The team is usually composed of members of the APR Panel and some other stakeholders. At this stage of the decision process members of the review team will visit the country concerned, where a wide range of consultations will be held with government officials, parliamentarians, political parties, civil society groups, the media, academia, trade unions, business and professional bodies in order to validate the authenticity of the information generated at the national level, and the feasibility of the program of action put up by the country on remedies to perceived shortfalls. The composition of the country review team and its guiding rules helps to sort out any parochial interest which member States may seek to pursue. The involvement of various entities also makes the members internally accountable to each other.

A country review team is composed of up to fifteen members. It is led by, at most, two members of the APR Panel. Others members on the team include experts from the UN Commission on Africa, The African Development Bank and representatives of some research institutes in Africa. The APR team determines the compliance of the participating country to the core commitments outlined in the base documents, and suggests improvements where implementation is lacking (Para. 42, NEPAD guidelines for Countries, 2003). Decisions of the team are arrived at by

consensus and with further discussions with the government over the best alternatives remedies to the current challenges that are identified. As a result, any attempt by the government to pursue its own interest will dramatically slow the process. It is also the responsibility of the team to assess whether attempts are being made, in good faith, by the country to comply with core commitments, and to note difficulties encountered by the country in its compliance efforts, in order to facilitate deliberation on the best options available (para. 45, Guidelines, 2003). Since the review process focuses on specific areas of governance, it is impossible for any members of the team, who are less than expert in any area, to divert the work of the review team on the basis of a strong view on a particular issue, without the fundamental expertise to back up that claim.

Another important factor that helps to encourage all members of the team to be accountable for their decisions lies in the establishment of the multi decision loops that are created with the involvement of several actors within the process. The self-assessment questionnaire, and the program of action that gives an indication of the problems and challenges of a country, emanate from officials of the country under review. At this point, if the State has an interest in not highlighting a particular issue area that is paramount to the process, it could do so by simply not giving it prominence, even though it might be of great importance to the collective good. Member States may therefore display an interest in underestimating the real problems in their implementation, as a result of political expediency or in order to paint a favourable picture. However, the consultation by the team offers the country the opportunity to give convincing reasons for proposing a particular policy path, and, though the country sets the agenda on the issues to consider, they are accountable to the subsequent stages of the process and will need to justify why one position is more appropriate than another.

Though the APR Panel constitutes the Centre of expertise in the review process, it does not have power over final decisions. The Panel is merely charged with responsibility for the oversight and monitoring of the process (Article 3.1a, NEPAD/HSGIC/2003/APRM). It thoroughly scrutinizes all reports submitted by the various bodies at the national level, in a ‘police patrol’ manner. The influence of the expert Panel on the decisions of the review process depends on whether or not their recommendations are adopted by the APR Forum. The panel provides detailed reasons and comments on its recommendations. The Panel as a whole is accountable to the Forum, and has incentives to generate appropriate expert recommendations, even if individual members might

occasionally have personal preferences or pursue the interest of a stakeholder in the process. Final decisions are then made by the APR Forum, though the agenda for Forum discussions is set by the recommendations and assessment that is made by the expert panel. Historically, the Forum has taken the work of the Panel seriously and, in practice, has hardly rejected recommendations made by the Panel.

In addition, decision-making bodies at this stage are externally accountable to an interested public, and to other partner organizations that have high stakes in the review process. Civil society groups and other public forums that participate in the consultations serve as an additional ‘fire alarm’ system in the review process, and have formal rights to contribute to or challenge any issues presented by either State officials or the APR decision makers. These consultations are very transparent. In some instances NGOs and research institutes have submitted position papers on policy proposals. However the nature of the areas of focus demand that only competent actors are able to seize the opportunity to influence the outcome of the recommendations, by providing appropriate reasonable argument or relevant information that is of essence to the review process. The meetings of the APR Forum are also open to national officials of member States and members of the strategic partners of the APRM, such as the UN Commission on Africa, UNDP and African Development Bank. Upon adoption of its recommendations, the reports of the review process are made public and tabled in regional and sub-regional institutions such as the African Union Parliament, the African Commission on Human Rights and the Economic Social and Cultural Council of the AU. Hence, it is highly improbable that badly reasoned recommendations and decisions by the APR Panel or the Forum will remain undetected, since these bodies are accountable to the public and interested partner institutions that have expertise in the project areas.

Aspects of the design of the APRM system, whether intended or not, are modeled in a way that deprives all committees, bodies and individual decision makers involved of the ability to stray from appropriate decisions consistent with the general criteria. The APR Panel’s ability to influence the decisions of the Forum is a function of the expert knowledge at its disposal. Several accountability mechanisms that are created also deprive the Forum, the most political organ of the system, from bargaining or compromising on well-reasoned decisions. The general public is involved from the initial stages of the process until the final stages, and has the opportunity to

intervene with well-reasoned arguments to influence the process. The general guidelines are clear on how conflicts in the review process are to be settled, encouraging mutual dialogue among States and the decision makers at any point of a conflict.

3.5.3. Third Stage: Monitoring and Following up on Implementation Reports, Another Layer of Accountability

The implementation of policies agreed after the review, and the systematic integration of those policies into the national development planning scheme, is monitored by various actors in the APR system. The Secretariat, the partner institutions, the APR Forum and other interested actors are in a position to pay attention to the progress reports that are submitted by the national Focal Points on the implementation of their policies and programs. Some States have resorted to creating a national governing council to coordinate the activities of the APR Secretariat and their national government. This direct link between policy makers at the national level and the APR Secretariat ensures that recommendations agreed upon by all parties are implemented by the countries involved in the process. An annual progress report on the implementation of a National Program of Action is presented by the Head of State at the sidelines of the AU General Assembly meetings, meaning that member States, participating in the APR project, are informed of the progress made by the State in actualizing the set goals after the review. This gives another opportunity to discuss the challenges in the implementation process, and to fashion the best alternatives to address them. States have an incentive to present accurate reports on the level of progress made, as their partner institutions are the agencies instrumental in mobilizing external funds for the country in key priority issues of concern.

At the 25th Assembly of the African Union Heads of State, held in June in 2015, Uganda and Sierra Leone, for example, presented their progress reports to the Heads of State and government representatives participating in the APRM (Report of APR Forum to the 25th AU Assembly, June 16, 2015). The Forum congratulated them on their progress, so far, in achieving some of the issues contained in their national Program of Action.

Over the years, some member States have called for the integration of the APRM into the African Union system and structures, so that it does not operate as an autonomous organization. This makes sense, in the light of the fact that all its members are part of the AU. The AU commission is currently working at fully integrating the APRM into the African Union organizational framework. The implication of this is that peer review reports will be widely tabled in all sub-regional parliaments and thoroughly discussed. This will generate additional accountability mechanisms to make sure that neither the Panel nor the Forum adopts recommendations that are problem-inadequate, as the reports will be subject to parliamentary debates in the sub-regional parliaments.

Procedures for reporting on progress in the implementation of agreed projects in the APRM presently limit the discretion of the States and other decision makers to put forward inaccurate reports. These procedures ensure that it is difficult for particular actors within the system to pursue their parochial interest without being subjected to verifications from other actors in the process. The member States of the APR risk credibility and faltering reputation if they too generously report on false progress with their program of action, and the Forum, in light of its position, cannot afford to deviate from its mandate and allow inappropriate reports to be delivered by member States.

3.6. The Nature of Decision-Making in the APRM

The APRM promises to make policies and practices of participating States more compliant with the political, economic and corporate governance standards set by the African Union NEPAD program. It aims at achieving political stability, high economic growth and Continental economic integration through capacity building and the identification of deficiencies (APRM Overview Doc. 2002: 3). It allows individual States to voluntarily accede to a self-monitoring mechanism on their governance performance in four broad key areas. Each area is assessed against a set of codes and standards agreed and contained in the Declaration on Democracy, Political, Economic and Corporate Governance (NEPAD/HSGIC-03-2013/APRM/Guideline/OSCI/09.03.2013). If a State signs up to the protocol, and a peer review is initiated and completed, the process culminates in the identification of deficiencies and good practices in key areas of interest. Good

practice is identified in order to serve as a learning point for participating States, while identified deficiencies are highlighted in order to be fixed by the State involved. The whole spectrum of tested policies that emanate as a result of the peer review process is expected to create a robust platform for Continental economic surge and regional integration.

Notwithstanding the cost implication for submitting to review, the process is expected to also serve as a platform to attract extra regional actors. Participating States, in a bid to appear attractive to other actors when putting forward a case for attracting international aid, may find the APRM a useful tool to enhance their viability in that respect, and furthermore demonstrate and signal a commitment to the principles of good governance and the rule of law.

There is a danger that, if the APRM is poorly administered, it could undermine the commitment system that is envisaged in the Declaration on Democracy, Political, Economic and Corporate Governance of the NEPAD program. A peer review generates an obligation on member States to assist other States, who have been through the process, to fix identified deficiencies by soliciting possible financial and technical solutions. Other members States with the technical know-how to support could opt to independently help mitigate the difficult circumstances that are identified through the peer review process. Therefore, a poorly evaluated session on a member state could seriously undermine the collective intention of the member States of the African Union to stabilize their economies and increase intra-region integration and socio-economic development.

The administration of the APRM system therefore raises a credible commitment problem. In as much as member States may have a long term interest in the decent operation of the review mechanism, they may be tempted under other circumstances to pursue a different interest with regard to a particular issue area which is seen as important in pursuing a foreign policy goal or an issue that has domestic ramifications. Countries expecting to experience difficulty in fulfilling the obligations identified in the review process are encouraged to depend on the proposed recommendations and appropriate good practices arising from the review process, which then might enable a country to attract some foreign aid from extra regional actors, who see the APRM as a sign of commitment to democratic principles and a striving inclusive polity. In such a case, a country may require protection from the strict application of a negative response by the review team over the extent of deficiencies and non-conformity to international and regional protocols

that are a prerequisite for the attainment of the general goals set by the APRM instrument. In normal circumstances, countries have an interest in positive reviews, even if this can tacitly undermine the overall objectives of the review process, since they stand to gain in their standing and attract performance among some extra regional actors that can be important to their economic survival. Perhaps this need for positivity can interfere with those countries who intend to implement recommendations from the APRM review at home, and are therefore generally interested in ensuring that the review process is conducted in an atmosphere where recommendations, irrespective of their cost implications, are geared towards identifying reforms in the country.

It has to be noted that, while the review of a country on particular issue areas may benefit some countries, it may not always generate similar benefits to other States. As a result of the divergent interest of States regarding the outcome of a review, member States would be confronted with continuing decision problems if they take it upon themselves to separately make decisions on the programs of member States in their annual meetings. The APRM is promoted by countries in Africa who have a strong infrastructure and good production capacity base to enable them access the economies of member States. To enjoy the full benefits it is therefore proper to get member States to enact laws that protect their companies and to also open up markets for their goods and services. Though some commentators have criticized the flexibility and non-binding nature of the decisions taken during the peer review process, the absence of an effective commitment and a functioning criteria-based review process could jeopardize the whole decision system, given the mixed interests constellations of the member States involved.

The nature of this decision problem may explain why member States in the APRM, who may be exposed by their separate decisions, delegate the day-to-day business of the APR to an independent agent, avoiding permanent conflicts and committing themselves credibly to its long term collective goals.

3.7. Conclusion

In conclusion, the AU's resort to a peer review process has created a governance structure that splits a rule-making and norm application functions between the APR Forum and the Panel. The decision process also allocates specific functions among other subsidiary bodies, in particular the Committee of Focal Points, the National Governing Councils and the Research Institutes. Each of the sub-bodies within the review process performs distinct functions and operates under certain procedures. As a result of the different mandates entrusted to each of the subsidiary bodies, each body makes different kinds of decisions with different institutional constraints. As a consequence, the complex decision structure that emerges in the review process creates a high demand to make the subsidiary bodies accountable through rules.

In this light, the act of assigning decision-making competence to agents in order to solve a credible commitment problem creates a constellation of interests, characterized by a need to make the agent accountable for decisions without short-changing its independence. As a result, agents in a delegation relationship that is characterized by such features are mostly protected from direct interventions by their principals into their day-to-day activities. Since they are charged not to deliberately follow the preferences of their principals, hierarchical control mechanisms would tacitly undermine their autonomy to take decisions that are in the long term interest of their principals. The establishment of decision-criteria, defined by the principals, largely promotes the long term interest of agents, and serves as a guide for them not to deviate or pursue their personal interest. Since the tendency to abuse the powers bestowed on the agent exist, the agent is made accountable for those decisions. Accountability mechanisms are therefore geared towards preserving the autonomy of the agent from any interference in their assigned task. Institutional mechanisms then rely on an internal accountability that does not diminish the agents' ability to disregard any external influences. Measures such as the demand for rationality, a division of labor in the decision process, accountability to the general public and reporting on implementation and progress are potent tools to make decision makers accountable in the decision apparatus.

The presence of the APR Panel, the Forum and the wider public as participants in the APRM process contributes to making the accountability mechanism stronger, and prevents, as far as

possible, interventions from member States to pursue their parochial interest in the process. The Forum, as the political body in the decision system, has thus successfully assigned the task of oversight and the making of expert decisions to the Panel, which is a repository of expert knowledge within the APR system.

Chapter 4

4.1. The Organizational Development of the South African Review Process

Following the theoretical argument of chapter 2, which promotes the idea of functional differentiation and its promise of merit-based decisions, I provide an empirical framework in analysing the actual division of competencies which occurred during the review process in the South African country review process. It concludes that the separation of different decision functions, among actors in the South African review process, deprived them of the opportunity to influence decision outcomes through the mechanism of bargaining. It is able to demonstrate a complex interlinking between country level and continental structures in the review process. It therefore is able to give an account of the organizational structure of the South African review in practice, in order to assess any implications concerning the method and content of the decisions that the process produced (see Fig. 1 for author's illustration of the governance structure).

Secondly, the analysis of the review process necessarily takes into account, and makes comparisons concerning the different positions of associated interest groups and of the government under review, on issues of socio-economic development, corporate governance, democracy and political governance. From this comparison, it is able to demonstrate that divergent interests were at play during the review process of South Africa. This then supports a description of how institutional arrangements played a decisive role in framing how these relevant actors made their deliberations on contentious issues, and how problem-adequate solutions to various policy issues of the review process were found.

Thirdly, this empirical analysis generates a concrete explanation of how the constellation of actors, with their divergent interests, proceeded towards deliberation, showing clearly how different stages of the review process stabilized over time, and established accepted guidelines for decision making. A distinction between three stages in the organizational development of the South African review process is made. The initial stage of the process is characterized by conflicts which lead to a potential derailment of the ability of the governance system to produce effective decisions. In the second phase, members of the bodies involved in the decision-making process resort to general guidelines and rules that are provided by the APR Panel as reference points for decisions. Finally, the third stage of the decision-making process is characterized by an

in-depth engagement with stakeholders in the decision-making process, which can resolve the initial conflicts. This practice is seen to have huge implications for the governance of the decision-making process, which can then take into account the extent to which divergent actors can find common ground in resolving difficulties in the review process.

The South African review process appears to have been one of a relatively few cases that posed significant difficulties in the APRM process. In the light of this concern, this chapter undertakes an interrogation of the different types of impediment to reason-based decision-making within a decision-making process that might be affected by power and interest based politics (Gehring and Kerler 2008:1002). As a selected case, the South African example is not fully representative of the universe of cases. It displays a strong bias towards consideration of the experience of the early participants of the review process. This is inevitably so, because the pioneer countries of the review process have had the longest period of engagement with the APRM among member States, and the fact of their early participation has implications, particularly in reflections upon their enthusiasm for the process. Nevertheless, the earliest reviewed countries did provide ample evidence of the main challenges of the APRM system, with the main indicators demonstrating the existence of difficulties in the review process arising from the persistent occurrence of conflicts among decision makers, repeated consideration of items in the Issue papers, and an impasse among key actors over major issues of how the various specific country-level processes are to proceed.

In describing this process, this analysis provides evidence to support the theoretical argument that differentiation in the APRM decision system accounts for problem-adequate decisions in the review process. This conclusion is arrived at by paying close attention to the institutional operations of the South African review process. It notes that, even where members of an international organization delegate decision competence to sub-bodies that are composed of members of the organization, there may exist an incentive for members to refrain from bargaining over unfavourable cases. This absence of self-interested behavior may be explained by the preference to have recourse to general norms and guidelines on the application of contentious case-specific decisions, since disagreements between the APR Panel and the government under review would have to be overcome to enable the review process to advance (Jordaan 2007: 341).

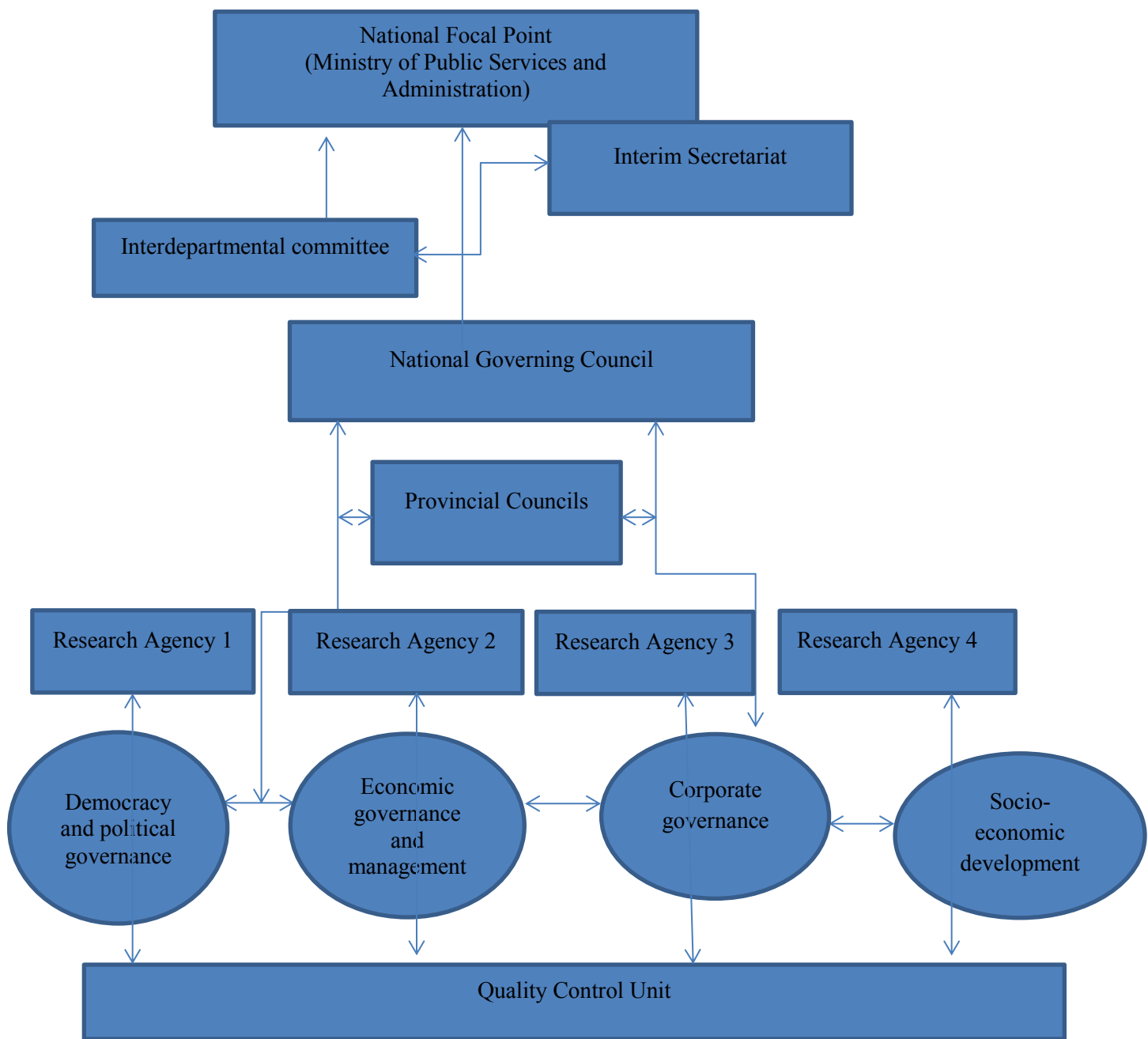


Figure 1: Governance Structure of the South African Review Process, Author's Illustration

Disagreements with decisions and recommendations at each stage of the process can put to the test the ability of actors to appeal to the guidelines as points of reference for a decision. To provide substantial pointers to the influence of institutional mechanisms in the APRM, this

analysis demonstrates how actors who are opposed to disadvantageous decisions are pushed to abandon their case-specific interest in favour of previously agreed guidelines and norms of the review process.

The analysis of the process is based on country review reports, communiqués of the APR Panel and Forum meetings, implementation reports of the APRM, summary records of meetings of the Forum, and expert interviews conducted by the author in South Africa between August and October 2015. This wide-ranging data source is unique, in the sense that previous work on the APRM has tended to ignore the richness of these documents in the analysis of the APRM decision-making process.

4.2. The Organizational Structure of the South African Review Process

The organizational structure of the South African review process was characterized by a differentiation of functions between various bodies. The functions and competencies assigned to the National Governing Council (NGC) of South Africa and the sub-committees within the governance structure of the review process are differentiated from each other and from other processes. Within the review process, other actors, such as the continental APR Panel and Research Institutes, act as independent actors acting as a complement to the decision-making process.

In the scheme of the review process, it is the composition and management of country level institutions which provides context to explaining the decision process and the functional competencies assigned to each entity. Notably, a common practice among participating countries is the establishment of an APR Focal Point. In all cases, the Focal Point serves as a liaison between the Continental Secretariat and the national APR structures. To this end, the Focal Point is usually a minister or diplomat or a senior civil servant with direct access to the executive or to the Head of State (Herbert and Gruzd 2008, 14; Article 1 of APRM MOU of Technical Assessment).

Within the South African review process, a Focal Point was established to oversee the implementation of the process at ministerial level. The Minister for Public Services and

Administration was designated as the Focal Point (Country Review Report of South Africa 2007: 39; Pogue 2010: 147). He was mandated to coordinate and organize the country level structures needed for the review process of South Africa. In this regard, the Focal Point organized workshops and sensitization activities, to create awareness among stakeholders and to define the modalities for participating in the review process. To assist the Focal Point, an interim interdepartmental committee and a secretariat were established at the Department of Public Services and Administration (DPSA). The mandate of the interim committee was to put in place the necessary mechanisms for overseeing the implementation of the review process (Country Review Report of South Africa 2007: 39). The committee was given the task of conceiving of and designing appropriate strategies for the engagement of South Africa in the review at the national level. In the context of the review process, the committee served the role of an agenda-setter.

The structural idea behind the involvement of the Focal Point was, as much as possible, to diffuse the interference of the State in the review process, and to prevent the country under review from unnecessarily intervening in the decision outcomes at each stage of the process. South Africa used its Focal Point as the National Governing Council (NGC), with the innovation of creating provincial APRM councils in each of the nine political provinces of the country (Herbert and Gruzd 2008: 258). The implication of this unique design of the organizational structure of the review process in South Africa is that it offered the opportunity to expand the involvement of interests groups and individuals at the grass-root level. In this way, an opportunity structure was created for individuals to intervene, with the associated input of relevant information of interest in some policy areas.

Reflecting its relevance in the review process, the National Governing Council was initially composed of 15 persons drawn from State and non-State actors.¹ Representatives on the council were therefore senior officials of various civil society groups and some government ministries. The governing council was led by a Chairperson, who, incidentally, was the Minister at the Focal Point. Most members on the council were appointed by the Focal Point. As a consequence of this interpretation of the role of the Focal Point, the national government appears to have exacted a desire to dominate the review process at the country level. This is, to some extent, problematic.

¹ See Annex 1 for a full complement of sectors represented on the NGC

Civil society actors, in particular, questioned the rationale for establishing a governance structure that was heavily managed by State actors. Their argument essentially had to do with the ability of the governing council to demonstrate transparency and accountability in the decision-making process. For this reason, some critics, especially from civil society sectors, expressed pessimism concerning the intended independence of the National Governing Council in the review process (Pogue 2010: 148). Since accession to the APRM requires a commitment from governments to the process to identify policy challenges and deficiency with complete candidness (Jordaan 2006: 350), the presence of government representatives at the level of decision implementation was seen to be indicative of a detrimental exercise of power politics in the decision making process of the review.

As a consequence of this tendency, the process of formulating a framework and implementing policies in relations to the proper execution of the review process was seen by many as needing improvements at the country level. The responsibility of regulating the activities of the review process at the country level rests within the competence of the National Governing Council. The Council has the remit to develop policies and to specify frameworks and timelines for the involvement of the country under review. In doing so, the council interacts with other committees that operate under its control. Within the South African review structure, scientific committees and oversight committees work together to influence the decision making process.

In this regard, four technical support agencies were selected by the Governing Council to work on the four thematic areas of the review process. The technical agencies scrutinized submissions made by participants at the various consultative conferences, and analysed responses to the APR questionnaire. An oversight committee was created to provide quality control measures on the work of the technical agencies by auditing the research materials that were presented for analysis.

In addition, the National Governing Council worked with the other continental structures that have a place in the governance structure of the APRM. At the apex of the decision process, the APRM Forum is engaged in adopting political decisions that define the direction of the entire review process. Article 2 of the *APRM Organization and Process Document* (2003) and Article 27 of the *Memorandum of Understanding on the African Peer Review Mechanism* (2003) point

to the functions and powers of the APR Forum. Article 2 of the APRM process document, in particular, defines the type and scope of powers conferred on the Forum. The committee of participating Heads of State and Government, as the highest decision-making authority (Article 1 of the document), was empowered to set directives on the implementation of the country review process in South Africa.

In practice, the Forum is endowed with a wide range of discretionary powers, mainly related to the organization of the peer review process. As a result, the Forum has the power to create organs and other subsidiary bodies and assign tasks to specialized entities wherever it finds it appropriate (Article 10 of the *Operating procedures*, 2012). There are no specific rules in the *APRM Base Documents* to regulate its powers. As a consequence, the Forum confines its decision-making function to giving general directives and guidelines that are applied to case-specific decisions within the implementation of the peer review process at the country level. In the particular case of South Africa, the Forum, at its seventh summit in 2007, reviewed the country report of South Africa and made recommendations in respect of the challenges and issues that were raised in the report. The report's findings on issues of floor-crossing and xenophobia were of particular interest to the Forum. As a result, as a matter of practice, it requested further clarification of the challenges listed, with the aim of using the responses as a guide in other similar cases (Communique of the 7th Summit of the Forum, pg 4).

Another important body that was instrumental in the review process of South Africa was the APR Panel. The APR Panel, which oversees the review process, makes decisions of an administrative nature and monitors the implementation of the review process (Article 10, *APRM Base Document*). The APRM base document proposes that the operation of the review process be directed and managed by the Panel. The Panel is therefore envisaged as an independent autonomous entity that makes decisions that represent the general interest of participating states in the review process. To ensure the autonomy of the Panel, and at the same time make it accountable, various institutional structures are put in place to guide the conduct of members of the Panel. The term of office of each member of the Panel is limited to a four year period, with a plan to have members retire in rotation (Article 8, *APRM Base Document*). In this way a mechanism is created to ensure that members of the Panel do not leave *en bloc*, so as to affect the continuity of functions that ought to be performed.

The APR Panel appointed the country support and review teams that undertook the review visits of South Africa.² These teams were composed of a member of the Panel alongside other experts in the key areas of the review process (Article 11, 12&19 of *APRM Base Document*; Article 1.1d, *APRM Organization and Process Document*).

The Country Support Mission (CSM) was formed to serve as a technical unit that advises participating States on initial in-country structures. The mandate of the CSM takes effect when a country gives notice of its preparedness to go through the review process. Its visits, at the beginning of the process, are intended to inform the design of country level structures and the extent of inclusion of interested parties and actors in the process. Such missions are mostly represented by experts in the key policy areas of interest in the review process. In this regard, consultants were engaged when the Country Review Mission (CRM) met to scrutinize the proposed programme of action and the self-assessment report of South Africa (Article 1.1 (d), *APRM Organization and Process Document*).

The country review team decides by consensus. The review team is headed by a chairperson who is, as a matter of principle, a member of the APR Panel. Its report is presented through the chairperson to the APR Panel before being finally presented to the Committee of Heads of State of the participating countries. As a matter of general rule, no decision can be made if a member of the country review team objects to an issue under consideration. This arises as the effect of the rule that members of the team must agree unanimously to have a decision adopted into the preliminary country review report. By convention, the country review team is divided into sub-committees. This is done to facilitate the decision-making process, and may also be necessitated because the issues under consideration are extremely diverse.³ This makes it even more prudent to assign the task of deciding questions relating to the thematic areas to experts and consultants in each of the areas of the review, and has the advantage of overcoming decision deadlocks especially where a disagreement stems from technicalities.

Besides adopting case-specific decisions in the review process, the Panel is also central to its rule-making function. The Panel drafts its own procedures and rules of engagement as well as

² See annex I for full list

³ Personal Interview, Consultant and member of the country review mission, Johannesburg, South Africa, 23 October 2015.

giving guidelines to member States on the review process (*APRM Organization and Process doc.* para 3.1g). Over the years, the APR Panel has issued directives, in the form of guidelines, to individual member States on the composition of the national level structures. These guidelines have become the standard against which participating States model the country level structures that are involved in their own review process.

The decision competences assigned to the various actors in the South African review process clearly demonstrate that the authority to make rules was bestowed on the APR Forum, while the National Governing Council was expected to apply these rules to case-specific decisions. The Forum's rule making function makes it possible for it to elaborate on specific guidelines, to be then applied in deciding specific cases by the Panel and the governing council (Article 3 (b) of Operating Procedure, 2012). If, for example, all actors in the South African review process accept rules and guidelines as the basis for coming to particular decisions, it is possible for formally accepted guidelines to form the basis on which the behavior of decision makers are shaped.

Against this background, decisions on the propriety of the policies of a State could take two different directions. If there are diverging preferences among members of the national governing council, decision-making by consensus might well entail several deadlocks, especially in the event that members of the National Governing Council try to pursue their self-interest at the expense of the agreed rules. However, to alleviate this situation, if the decision-making outcomes are dependent on the guidelines and criteria set by the APR Panel, member States may be more amenable to unfavourable case-specific decisions where rules and formal institutional mechanisms may have taken precedence in explaining decision outcomes of specific cases.

As a result of differentiation of function, if an entity gains autonomy in an organizational setting, such differentiation could increase the capacity of the organization to process enormous amounts of information in highly selective ways (Gehring and Dorsch 2010: 18). Where an inter-governmental decision process addresses complex issues (Buzan 1981), this is managed commonly as an outcome of a number of specialized sub-systems, with each fulfilling a specific function within the overall decision process of the organization. The presence of functionally specialized sub-systems within the governance structure of the South African review process

may fundamentally change the decision rationale of various entities in the organizational setting. This delegation to sub-systems leads to a situation where the APR Forum, over time, will automatically specialize in the remaining tasks of discussing and approving country review reports. Thus the Forum itself becomes a specialized sub-system within the operations of the review process, as has been demonstrated in principal-agent situations (Hawkins et al 2006). If an organization makes its decisions through its specialized sub-systems, it allows for each unit to focus on a narrow aspect of the decision process. As a consequence, it allows for better elaboration of relevant aspects of the policy issues, and addresses the need to disregard other irrelevant issues that have no consequences on the decision outcome.

Furthermore, this analysis leads to the assertion that the separation of functions among different sub-systems in an organization may even systematically deprive participating actors of the opportunity to influence the decision-making process through divisive forms of bargaining (Gehring and Dorche 2010). As has been argued, a decision process characterized by the elaboration of general criteria, and their application to specific cases assigned to different forums, may have the net effect of changing the decision rationales of actors involved in these levels of decision-making (Gehring and Plocher 2009). This is because the act of concentrating on the task of elaborating decision criteria is likely to deprive actors of the opportunity to pursue their case-specific parochial interest in an issue under consideration. Actors are, by design of the duality of the task of elaborating and applying general criteria, necessarily forced to be consistent across a range of cases. The dichotomy of these differentiated tasks is helpful, then, insofar as the task of key actors at this stage is limited to producing abstract standards that are to be implemented by other actors in unknown situations, so that they are theoretically deprived of their opportunity to bargain over specific cases (Brennan and Buchana 1985).

To examine these assertions, the following sections take a look at the various decision stages of the review process in South Africa, which provide empirical evidence of the various activities and issues that culminated in the final decision outcomes of the South African review process.

4.3. Phase 1: The Stage of Government Dominance and the Absence of Precise Guidelines

South Africa acceded to the APRM in March 2003 in Abuja, Nigeria. The country review of South Africa was carried out from the second group of countries who agreed to undergo the review process, and to present its Country Review Report (CRR) to the APR Forum within 21 months (Herbert and Gruzd 2008: 257). The Minister of Public Services and Administration was appointed by the government as the National Focal Point (NFP) to systematically map out a strategy for the management and successful implementation of the review process (Country Review Report No. 5, Republic of South Africa, 2007:1). Prior to signing the Memorandum of Understanding, South Africa had played a major role in the formation of the New Partnership for Africa's Development which the APRM complements, and played a leading role in fulfilling the task of realizing its objectives. From a much broader perspective, these initiatives fit into the broader picture of the African Renaissance Project which led to the transformation of the Organization of African Unity (OAU) to the African Union (AU) in 2002 (Matlosa 2014: 7).

For specific reasons, the designation of the South African National Focal Point at a ministerial level has been criticized by some scholars in their discussion of the processes of the APRM. It appears to some that any engagement of the Focal Point in the reporting activities of the review process would amount to an inappropriate strategic involvement of the South African Focal Point in the decision-making process, with the implication of an intrusion into the process of ulterior motives on behalf of the government. For instance, in reflecting upon the relevance of the APRM to enhancing governance in South Africa, one particular analysis on the third progress report, concerning the implementation of national programmes of action, pointed out that the South African government was using the review process as a foreign policy tool in its engagement with the rest of the continent (Turianskyi 2014: 4). However, this contentious conclusion, as critical as it might be, does not fully take into account how these institutional arrangements could foster better deliberations for decision making in the review process. Particularly, it does not address the issue of how governmental participation in the process might enhance a continental desire to achieve the collective goals of members of the APRM.

It is generally accepted that the decision to participate in the review process signals a commitment on the part of member States to the principles and values of the review mechanism.

By acceding to the APRM, a country commits itself to periodic reviews in terms of its policy frameworks, institutional architecture and practice regarding the four thematic areas of the review mechanism (Matlosa 2014). In general, the APRM aims at shaping the behavior of participating states on agreed policy areas, as outlined in the Declaration on Democracy, Political, Economic and Corporate Governance (AHG/235 XXXVIII, 2002). It immediately opens up a country for scrutiny by other peers, and, in the process, members of the APRM Forum engage the country in the formulation and implementation of public policy, as envisaged in the memorandum of understanding that is signed between the government and the APRM committee of participating Heads of State and Government.

It may be expedient that the review mechanism, as an undertaking adopted by a particular member State, offers limited guidelines on how to go about the process (Katito 2008: 3). Virtually no concrete directions were contained in the Memorandum of Understanding which committed South Africa to the APRM, except to reaffirm the commitment of the State to the principles and objectives of the review process, and to accept the goal of ensuring that policies and practices of participating States conform to agreed political, economic, and corporate governance standards (APRM, MOU, Para. 6: 2003). The MOU, signed by then South African President, Thabo Mbeki, in 2003, is nevertheless clear on its claim that it is the mandate of the APR Panel and other stakeholders to pass judgment on the internal policies of the State (para. 15, MOU). It lists obligations expected of the country under review, which, among others, include the need to ensure that South Africa, as a participating State, conforms to the expectation of achieving mutually agreed objectives in socio-economic development (para.6). It also gives its consent for identified deficiencies to be made public by reviewers (para. 8), and also acknowledges the need to facilitate activities leading to the review process by allowing unfettered access to information to all participants in the process (para. 13&14).

The wording of the MOU, like all others signed by participating States, appear vague, as it does not provide concrete substance of the nature of the process, and the kind of institutional infrastructure needed to fully implement the review process. These concerns are however addressed in supplementary guidelines provided by the APR Panel, while the initial documentation that established the APRM provides for the establishment of a National Governing Council. This Council is mandated to coordinate and manage the review process at

the country level. It serves as a focal point at a ministerial level to play the role of a liaison between the government and the APRM Continental Secretariat (Guidelines for Countries to prepare for and to participate in the APRM, para 20 (II)).

The ambiguous nature of the language, used in the MOU and other founding documents which established the South African review process, immediately subjects the process to contestation at the country level. For example, the imprecise directive requiring the establishment of a governing council at the country level immediately subjected the South African governance structure to internal conflicts (Herbert and Gruzd 2008: 255). With no further details of the modalities and the make-up of the council, many contentious issues were generated between the government and civil society. The participation of civil society groups was largely envisaged, in the foundation of the review process, as a mechanism to serve as an extra check on activities at the country level. As a result of the imprecise wording of the MOU, the initial stage of the South African review process was characterized by an arbitrary application of the guidelines in the lead-up to the country self-assessment. Given that the country self-assessment is one precise area of the review process in which civil society organizations might exert some positive influence (Odoi 2008: 6; Hutchings et al 2008), the unfortunate dominance of the process by government machinery was a recipe for contestation among participants in the decision process.

The Council had a noticeably strong government representation (Hutchings et al 2008: 6), which therefore created the perception that it would be susceptible to proposals that were close to the government's position. The council's initial 15 members contained five representatives with government ministerial roles, leaving only the remaining ten seats to represent stakeholders outside government. This initially skewed composition of the council gave prominence to government influence in the South African example, and therefore contributed to some of the early decision problems that were encountered in the effectiveness and veracity of the review process.

As early as October 2004, the Minister of Public Services and Administration had been designated as the Focal Point. As Focal Point, he acted as chairperson of the National Governing Council. On 28 October 2004, the Minister briefed Parliament on the preparatory works underway for the review process to commence, and outlined a preliminary programme for the

review process (*Parliamentary Media Briefing, Oct. 28*). The government had taken some steps to create awareness by engaging senior civil servants in two separate workshops in December 2004 and April 2005. The outcome of these workshops was a consensus on the need to outline strategic modalities for participating in the process (Implementation Process Report, April 2005 to June 2005: 7). It was, however, never clear which strategic interests the government sought to pursue in the process of the review. However, the dominant role of the government in the process gives enduring clues as to the possibility of their pursuing case-specific interests, if, in the event, they saw the utility of promoting decisions beneficial to their own cause. A decision was taken to complete the self-assessment report within 3 months and to appoint a steering committee at the ministry. This was agreed upon by Cabinet without recourse to any consultations with other stakeholders.

The intention of finalizing the self-assessment report by July 2005, in itself, draws attention to the exclusivity of the government's adopted approach. According to an interview source, the government had already tasked different departments to respond to sections of the APRM questionnaire before public input was solicited.⁴ Reports produced by various government ministries on the questionnaire were then consolidated into a composite report which later became known as 'the government submission' (Herbert and Gruz, 2008: 257).

Bond asks, rather rhetorically, how these powers of government, which gave them control over the process at the initial stage, had an impact upon the recommendations and outcomes of the South African process (Bond 2009: 559). Overall, any criticism of the dominant role of the South African government in the setting up of the review process should be seen as largely a result of the flexibility of the guidelines that allow States to model the country level process in accordance with the prevailing circumstances and context of the country. Though flexibility gives States the space to factor in the issues that they see as being of prime importance, it also carries the danger of restricting the review process. This is particularly so in any instance where the system fails to curtail the powers of the State to stifle the broad involvement of a variety of agencies in the process.

⁴ Personal Interview, Gruz Steven, Programme Director of the Governance and Democracy Project at the South African Institute of International Affairs, Johannesburg, South Africa, 28 July 2015.

Between September 2005 and February 2006 a series of meetings and activities were organized by the Focal Point with the involvement of major stakeholders in the process. The first national consultative conference was held from the 28-29 September 2005 in Midrand. The conference had a dual purpose, seeking firstly to initiate the APRM process, and then to inaugurate the National Governing Council (Hutchings et al 2008: 3). These meetings and activities appeared to foster a sharp divide between government, on one hand, and a coalition of NGOs and civil society organizations in South Africa, on the other. Prior to the conference, representatives of a number of NGOs jointly organized a workshop for civil society organizations. Organizations present at the workshop included the South African non-Governmental Organization Coalition (SANGOCO), Transparency South Africa (T-SA), the South African Council of Churches (SACC) and the South African Institute of International Affairs (SAIIA). The aim of the workshop was to form a common position on issues pertaining to the APRM, and to enhance the skills of members in participating in the review process (Herbert and Gruzd 2008: 258). The main issues that attracted contention arose from criticisms made from civil society actors of the governance structure and the proposed implementation schedule that was outlined by the government in a press conference of 13 September 2005 (Media briefing, September 2005).

In a subsequent meeting, SANGOCO and other civil society groups argued for an independent national council, and the engagement of research institutes in the compilation of the self-assessment report, as had happened in Ghana and Kenya. Government adamantly explained that South Africa, unlike other countries, did not have a need for much research to be done on most of the areas arising from the APR questionnaire. According to the Chairman of the Focal Point, most of the data that was required for the analysis was available through various State departments (Herbert and Gruzd 2008: 256). At this point, opponents of the proposed arrangement made reference to the fact that the guidelines and best practices of the review process did not suggest that the chairman of the National Governing Council could additionally operate as the Focal Point. Furthermore, according to this view, those in favour of the proposed structure were acting contrary to the advice that the APRM Panel of Eminent Persons had given to other countries, which sought, as much as possible, to disentangle the direct involvement of the government in the process at the country level.

To resolve the problem, the Focal Point postponed a planned follow-up meeting, in November of 2005, intended to validate the country self-assessment report. This was to allow for some consultation and to also refer the issue to the country support mission. In the midst of a public brouhaha, both Houses of Parliament, the National Assembly and the National Council of Provinces, set their own agenda, which appeared to support the opponents of a narrow interpretation of the independence of the council and of the timeframe put forward for completing the country self-assessment report (Hutchings et al 2008). Parliament ostensibly formed a joint ad hoc committee on the APRM, and established a subcommittee for the four thematic areas of concern to the process. Their intention was to create a parallel system to the review, and to generate a report that would be submitted directly to the Continental APRM Secretariat. To achieve this, it was proposed that public hearings would be held and submissions accepted from interested parties. Parliament's move generated substantial interest among critics of the government, and had the full backing of civil society groups who were not in support of the proposals and motives of the government.

The visit of the Country Support Mission (CSM), from the 9th to 11th November 2005, was important in getting some issues in perspective. Some observers have criticized the relative short period the mission spent during the first visit, and the overambitious and unrealistic schedule it attempted within a brief time period. Herbert and Gruzd describe the process leading to the meeting as 'chaotic', as some members were only alerted of the meeting hours before the event (Herbert and Gruzd, 2008: 261). As a result, some of the invitees had limited engagement with the team since they had to shuttle between venues to meet various stakeholders in the process.

However, three important issues, worthy of note, were a product of the support mission's visit. Firstly, in the communiqué that was issued after the engagement, the mission was able to address a contentious issue within the structure of the national governing council, which worked to encourage a bottleneck to the decision process. In a unanimous decision, it agreed to the expansion of the National Governing Council with greater representation from non-state actors (Herbert and Gruzd 2008: 261). The governing council was expanded to 29 members, therefore embracing more civil society members in the decision process of the country self-assessment. Secondly, it directly addressed the issue of the parallel structure that was mooted by Parliament. The support mission finally brought this nagging issue to an end when it was agreed that

Parliament could submit its report to the National Governing Council, to serve as an additional source of authentication of the self-assessment report (Herbert and Gruzd 2008: 261). The parliamentary committees were therefore obliged, and subsequently made direct input, to contribute to the work of the council, instead of presenting an independent report to the APRM continental secretariat, as originally conceived. Lastly the initial plan of government not to involve research institutes in the self-assessment report was also addressed, the support mission resolved that the involvement of research institutes were important to the process and their role could not be overlooked (Herbert and Gruzd 2008: 261). Through these mechanisms, it appeared that critics of a looser approach had sent a strong signal that government needed to respect the guiding principles of the review process and to abide by the guidelines of the review. With these decisions of the Support mission, the terms of engagement at the country level in the South African process were made clearer, and formalized earlier demands that were being sought by critics on the government-driven process.

It can be seen that this first phase of the review process was characterized by decision stalemates that largely stemmed from the imprecise nature of the guidelines, and the unclear provisions of the memorandum of understanding which served as the basis for South Africa's participation in the review process. As a result the National Governing Council was dormant for a large part of the period, and hardly made any progress on formulating the procedures needed to guide the decision process at this stage.

4.4. Phase 2: Relative Stability in the Process, but no Specific Decision Criteria

Following the intervention of the country support team which achieved clarification of the issues that had stalled the review process, the system appears to have resorted to informal means, involving consultation with a range of other stakeholders to reach consensus on various issues in the decision-making process. At this time, the council did not adopt any specific decision criteria to guide their conduct, but, by and large, the council resorted to informal means to reach deep agreements on any contentious motions that were put forward.

From December 2005 to June 2006, a number of proposals were made, from all sides, on issues pertaining to the process of research and the editing of the self-assessment report. To this end, the council in November 2005 appointed a research subcommittee to oversee the compilation of the self-assessment report. According to Herbert and Gruzd (2008), the resolve of the council to involve technical research agencies was founded in the desire to ensure quality assurance, providing a means of preventing defects and maintaining the quality of the research information needed to make informed decisions at each stage of the process. In this regard, a robust quality assurance framework within the decision process was deemed necessary to prevent unnecessary problems that had the potential to affect the review process. The credibility and quality of information provided at the country level was seen as central to the outcome of decisions in the final review reports, necessitating the highest control measures to provide the means to arriving at appropriate information for each policy issue.

Effective administrative and procedural activities were seen to be needed to be designed into the quality system, to enable requirements for the most appropriate decisions in the self-assessment report. There arose a requirement to assign the tasks of creating systematic measurements, and of the monitoring of the review process, to a specific research entity. This would enable the system to create a feedback loop to assist in the prevention of errors at every stage of the process. In the presence of an effective quality assurance system, participants in a decision-making process were expected to be pushed to abandon their case-specific parochial interests, since the extra measures put in place are likely to identify inappropriate, less informative proposals. Though the appointment of the research institutes was accompanied with some difficulties, as detailed below, it played an important role at the country level process. The involvement of the Technical Research Institutes addressed the need to ensure the credibility of the process, and to strengthen its immunity to the whims and caprices of participants who may intend to pursue their parochial interest.

In order to make them relevant in this respect, two important arrangements were put in place by the National Governing Council in appointing the Technical Support Agencies (TSAs) engaged in the South African review process. This process had unintended consequences in inducing further and extra incentives for making decisions that represent the collective goals of member states participating in the review process. Firstly, in a move towards creating extra accountability

and monitoring mechanisms in the process, the research subcommittee (of the national governing council) invited over 200 institutions to apply as voluntary research partners. The aim in partnering these organizations was to validate the work of the research institutes that were contracted to compile the self-assessment report for each of the four thematic areas. This innovation was envisaged to be able to contribute to a fair representation of the inputs of all actors in the review process, and give systematic access to minority groups wishing to have their concerns heard. Though geared towards pushing the various research institutes to be accountable for the decisions they made in the compilation of the reports, this aspect was not properly implemented. Fifteen such bodies were accredited, but never met to review the technical reports (Herbert and Gruz, 2008: 262). These difficulties were attributed partly to inadequate resources and the limited timeframe to complete the self-assessment process.

Instead the services of two quality assurance agencies were engaged to assess the quality of work that was produced by the technical support agencies. The Human Sciences Research Council (HSRC) and the office of the Auditor-General were given responsibility for evaluating the work of the four technical agencies that compiled the reports. In each case this provided the technical agencies with incentives to make decisions that generally reflect the goals and objectives of the review process. The knowledge that the contents of their reports would be scrutinized by other agencies, with equal expertise in the issues of relevance, provided incentives for the technical agencies to produce the most problem-adequate decisions. Even if this incentive was absent, the research agencies had their reputation at stake. Since their competence in the issues of concern to the review process was thereby recognized, they generally had an incentive to produce the most reasoned decisions in the best interest of the objectives of the review process. To this end, it can be seen that the onus of producing reports that reflect the intentions of the review mechanism became institutionalised, and created the conditions for producing outcomes that were in the best interest of all actors in the process.

A second important arrangement that preceded the appointment of the technical agencies was a call for tenders for their engagement in each of the four areas of the review process. The main task under consideration was the production of a draft report that reflected the submissions and criticisms of all comments received. It was the responsibility of these agencies to test the findings of the report by organizing seminars for experts in the particular thematic area, and then

produce a final technical draft, with a programme of action for each of the areas based upon these findings.

The question of the relevance of the autonomy of the research agencies, spearheading the review process in South Africa, is theoretically significant. In this particular case, the presence of the research agencies seems to serve to reduce doubts about the potential of the government led National Governing Council to interfere with the decision making process. Research agencies, in the institutional framework of the review process, are expected to contribute to decisions based on their expertise. They are guided into making recommendations that represent the criteria spelt out in the guidelines. As a result, the decision rationale of the technical research agencies is akin to that in trustee-agent relations, where decisions are made to reflect some previously established criteria that are defined by the principal and largely representing their long-term interests (Gehring and Plocher, 2009: 688). This externally given criteria, if they exist, serve as an intervening force in the principal-agent constellation to preserve the autonomy of the agent in its day-to-day operations.

The contestations that characterized the initial operations of the South Africa review process appeared to have become stabilized, to a large degree, with most contentious issues being mutually agreed upon by resorting to the guidelines. An issue of importance was the attempt by the Open Democracy Advice Centre (ODAC) to get two specific issues, of whistleblowing and freedom to information, addressed in the APR questionnaire (Hutchings et al 2008). It is clear from the APRM questionnaire that issues related to the access to information and the protection of whistleblowers is missing from the standardized questionnaire sent out to each participating country in the review process. In its claim to get these issues incorporated as a key component of the South African review process, ODAC made appeals to the guidelines of the review process which are explicit on the need to make adaptations to the questionnaire in the light of the prevailing circumstance of the country under review. According to ODAC's argument, a true and proper interpretation of paragraph 17 of the APRM base document and paragraph 11 of the Guidelines would make provision for the flexibility of the contents of the questionnaire and allow countries under a review to take into consideration their own peculiarities (Hutchings et al 2008: 5).

Based on these provisions in the guidelines, ODAC made proposals specifically related to access to information and whistleblowers, demanding that these issues be included in the questionnaire in the South African review process. In the first national consultative conference held on the 28th and 29th of September 2005, the Focal Point resisted any attempts to amend the questionnaire. All efforts to discuss the contents of the questionnaire at the conference were subdued. This position of the Focal Point was seemingly contrary to the guidelines, which are explicit on the need to amend the questionnaire to prevailing circumstances (APRM Base Doc. para 17; *APRM Guidelines*, para 11). At the same time the department of public services and administration did not appear to be transparent in its proceedings at the consultative conference, as required by paragraph 22 of the memorandum of understanding which obliges states to foster open and transparent participation by all actors in the process.

As a result of the initial rejection of the proposals, put forward by ODAC in respect of the need to include issues related to freedom of information and protection for whistleblowers, those arguing for the expansion and modification of the questionnaire resorted to a formal engagement to get their issues accepted. Proponents of the inclusion of other issues in the questionnaire made a written submission on the issues of concern, advancing compelling arguments for the need to have the issues included in the questionnaire (Hutchings et al 2008). Their submission outlined the strengths and weakness of the current laws and procedures under the Public Disclosures Act 2000, and made constructive recommendations for improvements, providing substantial evidence to support its contestations (Submissions of ODAC on the right to information and protection for whistleblowers). To give substance to claims being made, ODAC conducted extensive research on the right to information and protection of whistleblowers. They found that accessibility to information, requested by individuals or organizations from private entities, was largely ignored. Probably this is due to the absence of concrete legal instruments to back such demands. In pursuing their goal of having these issues accepted as core components of the questionnaire in the South Africa review process, ODAC needed to be both strategic and persuasive to convince all actors of their position.

The resort to a persuasive and convincing argument, to get the contentious issues at this stage accepted into the self-assessment process, points to the difficulty of actors who might wish to resort to bargaining. Even where specific interests of actors are at stake, bargaining as a means of

pursuing a parochial interest in the decision-making process of the review mechanism becomes difficult to resort to. In a situation where reasoning forms the basis upon which issues are resolved in a decision system, it may serve as a point of reference for future similar cases. To take a cue from most judicial decision-making processes, for instance, giving reasons for decisions at each stage of the decision process can serve as an extra accountability mechanism in a decision system. Where decision makers are required to give reasons for their decisions, this provides incentives to make decisions that are based on scientific evidence. In such a situation decisions produced are more likely to be problem-adequate and represent the general interest of actors in the decision system.

Identifying gaps and proposing solutions on such a wide scale, in relation to the APRM, has proven to be a complex and demanding undertaking (Katito 2008: 4). As a result, instituting proper accountability measures may well protect the decision system from arriving at arbitrary and power-based decisions. The promotion of a reason-giving requirement also means that decision makers are aware that their reasons will remain in the spotlight as external actors determine their reasonableness or otherwise. As a result, decision makers, at all stages, endeavor to represent the most appropriate solutions available to address the deficiencies identified in the policy areas under scrutiny. This not only benefits policy implementation, but also contributes to providing stability in the decision process.

In response to a strong and convincing case to incorporate these issues into the questionnaire, and to begin a conversation on the issue of the right to information at the regional level, members of the ODAC team were afforded participation in subsequent workshops and conferences organized by the Focal Point, and in parliamentary ad hoc committee meetings. At the parliamentary engagements, for instance, presentations were made to the four committees set up by parliament to conduct an independent self-assessment (Hutchings et al 2008). ODAC's concerns appear to have drawn some interest in the parliamentary sub-committees, leading to further elaborations of their proposals. At the ad hoc committees, on economic governance and management and on corporate governance, for instance, the committee accepted their submissions. It recommended to the review component on economic governance and management that it should address the failure of the Public Disclosures Act to protect whistleblowers. This was a clear recognition of the arguments advanced by the proponents for an

expansion of a main instrument of the process, targeted at sourcing information that could lead to reforms in major policy areas of the participating State in the review process.

To further their course in getting issues, related to the right to information and the protection of whistleblowers, into the draft self-assessment report and the national programme of action, a follow-up submission was made by the ODAC to the technical research agencies that were contracted to work on the draft reports. This worked through the auspices of the SAIIA, which was appointed to collate views and submissions made by other entities into a composite draft report to make its submission. At the second consultative conference of May 2006, the issues raised by the proponents for the expansion of the questionnaire were listed, with a proposal to find the most appropriate mechanisms to implement and monitor the contents of the Public Disclosures Act. Overall, the draft country self-assessment report acknowledged that there were problems with the implementation and effectiveness of the Public Disclosures Act, and that it did not provide the adequate protection for whistleblowers that was expected.

The South African review process, at this point, should be seen to have evolved from the practice of arbitrary decisions into a merit-based decision-making system. It should be concluded that decision makers, by and large, were now pursuing the public interest, as opposed to their individual interests, in their deliberations over the various issues under consideration at the National Governing Council. The propriety of evidence adduced in support of the issues pertaining to the right to information, in particular, was given consideration, with a firm recognition of the evidence provided to the various scientific committees. The decision to finally have these issues included in the final report seems to have been as a result of the reasonableness of the argument put up by the ODAC. In considering the value of the information provided in support of their case, members of the review mission appear to have limited their judgment to the information provided.

From this point, the National Governing Council augmented the role of the Focal Point, and accepted amendments to the decision process. Most participants at the second consultative conference made contributions to the proposals put forward by ODAC. As a result, amendments were made, which appeared to be accepted by delegates who participated in the group discussion

on issues related to the Promotion of Access to Information Act 2 of 2000 (Hutchings et al 2008).

However, the preliminary programme of action that was formulated through the National Governing Council still did not address gaps that were identified in the draft self-assessment report. In effect, specific responses were not provided for the gaps identified and no practical measures were outlined to mitigate the challenges contained in the report in relation to access to information.

4.5. Phase 3: The Final Report and Standard Decision Procedures Based on Accepted Norms

The final stage of the review was characterized by a more uniform and systemic application of the guidelines and procedures. This seems to have emerged as a result of informal agreements, reached among members of the council, to resort to the APR guidelines as the basis for deliberations at the level of the National Governing Council.

In this phase, the handling of proposals for the inclusion of items not specifically captured in the APR questionnaire became subject to complete standardization. This was largely the result of an increase in the demands of civil society groups to have submissions included in the national programme of action. Within the context of its visit, the country review mission engaged with stakeholders, and the final approval of the review report of South Africa by the APR Forum and Panel, in conjunction with the National Governing Council, developed a set of guidelines that served as the point of reference for the conduct of participants (APR Guidelines 2003). Through a communiqué issued at the 4th summit of the Heads of State Committee participating in the APRM, the Forum directed the APR Panel and the Secretariat to monitor and report on the implementation of the programme of action of members undergoing the review process (Communiqués of 4th summit of APR Forum, para 15, January 2006). This communiqué largely addressed issues of monitoring programmes of action which are, in many ways, the engine of the review process in terms of its vision to enhance governance practices in participating countries. Against this background, the Forum agreed that all issues related to the implementation of the

review process be addressed in accordance with the procedures and regulations of the APRM, as outlined in the APRM base documents.

The adoption of the communiqué of the 4th summit opened up an opportunity for deliberation on the guidelines of the APR, and the possibility of making use of them in regulating the behavior of decision makers, in order to overcome challenges in the decision-making process of the review. However, the directives issued by the Forum at the 4th summit of HSGC of the APRM did little to provide a robust common ground for participants in the review process to come to an agreement. In a subsequent communiqué, the Forum requested all participating countries to make the process widely participatory for all interested actors, especially civil society groups. This process marked a reversal of some magnitude, so that members of the committee of Heads of State and Government now expressed concerns over the tendency of country advance missions and support missions to spend more time with civil society groups and non-governmental actors, to the detriment of the government under review (Communiqué of Sixth summit of APR Forum, para 12, 2007).

It can be seen that the Forum has latterly underscored the participatory and all-inclusive character of the APRM process, and recommended that stakeholders be encouraged to participate, deepening the transparency of the decision-making process (Para. 12 of communiqué). This innovation effectively gives individuals and groups the opportunity to make proposals on issues of concern that are deemed important to the policy areas of the four thematic areas of the review process. However, such proposals are still subject to a consensus among the country review mission. Although this appears procedurally more progressive, it still presents inherent challenges. On the positive side, individuals and civil society groups with expertise in the issue areas can directly access and petition any of the bodies in the governance structure of the review process. By doing so, the process is open to extra opportunity structures that can hold decision makers accountable. On the other hand, its performance presents practical challenges in situations where petitions are ignored at the country level. This is particularly the case in situations where the issues of concern are perceived to have reputational effects on the State under review. In such cases, disagreements could, at the least, lead to a decision blockage which could paralyze the entire decision system.

The directives of the Heads of State Committee, as put forward in the communiqués (4th and 6th communiqué of the HSGC of the APRM), and the presence of the guidelines seem to have significant consequences in the operation of the review process at this stage. Since the adoption of the communiqués, the South African review process appears to have been more receptive to the adoption of proposals by civil society groups to the national programme of action at the level of the review mission. At the country level, however, attempts to get individual issues listed have proved frustrating, as seen in the ODAC case. In separate national consultative conferences organized by the national governing council, ODAC attempted unsuccessfully, on both occasions, to get issues related to the right to information listed in the thematic areas of corporate governance, economic governance and management, and political governance and democracy (Hutchings et al 2008).

In July, 2006 the country review mission visited South Africa. The purpose of the visit was to hold structured formal engagements with a cross-section of groups and actors relevant to the review process, in order to validate information that had been received. To this end, efforts were made by the review team to reach out to a variety of sources outside the formal programme schedule (Herbert and Gruz, 2008 264). At this point of the process, the conflicts that had questioned the independence of the council and the definition of the structural components of the internal process were widely absent. The review team was able, more or less, to play the role of an arbiter between the more radical civil society groups and representatives of government on the council. As a result of this practical outcome, some semblance of stability seems to have emerged within the decision process of the review mechanism.

Issues of concern to the media, and to some representatives within the National Governing Council, have focused on the omission in the draft country review report of discussions on ‘floor crossing’, the ‘Oilgate’ scandal and threats to judicial independence. While strict advocates of a detailed process pressed for further condemnation of these practices in the report, it appears that government was uncomfortable with the strong wording of the reports on these issues. During the 2nd May meeting of the National Governing Council, it is reported that some government officials had expressed misgivings at the tone of the draft report and requested the research agency tone down the language used to describe the situation (Minutes of 2 May 2006 National Governing Council Meeting).

The second National Consultative conference which took place on the 4th to 5th May appears to have been hurriedly encouraged to validate the draft reports, which were seen to have had some pages taken out at the last minute.⁵ Beside a last-minute revision of the contents of the report, as suspected by some participants, a further doubt was raised by the fact that the research agencies had not collected further and better particulars on the submissions that were made by individuals through the provincial councils that it had used. As the research agencies had relied heavily on the information that was provided by the provincial council, it was not possible to validate or cross check the responses that were provided to the APR questionnaire which served as the basis for formulating the self-assessment report.

Notwithstanding these doubts, the Kliptown conference of 2 May was well attended by over 1,700 participants (Herbert and Gruz, 2008:264). It was generally agreed that the self-assessment report and the national programme of action had succeeded in reflecting the concerns and issues raised. Though some sections of the participants still held the view that portions of the report were edited, an agreement was reached to present it to the APR Panel for scrutiny.

The country review team worked on the country review report of South Africa, from August to December, 2006. The report that was produced contained 182 recommendations in all four areas of the review. Most of the issues that were thought to have been watered down as a result of the editing of the self-assessment report had found their way back into the report.⁶ Nevertheless, a close look at the programme of action, and the responses that were provided by government to the comments of the review team, reveals that the government, to a large extent, had ignored and failed to respond to some of the condemnations directly. Admittedly, it was the case that government had partially responded to some of the recommendations, for instance, when issues of xenophobia and crime statistics were contested at the presentation of the Country Review Report at the summit of the APR Forum (Communique of 7th Summit of APR Forum, page 3).

The review of South Africa, held at the margins of the AU conference, served as an opportunity to assess the acceptability of the report, considering that most civil society and government actors had expressed their concerns about the process that culminated in the report. With the July

⁵ Personal Interview, Gruz Steven, South African Institute of International Affairs, Johannesburg South Africa, 28 July 2015

⁶ Personal Interview with Gruz Steven

2007 Summit of the APR Forum, South Africa's case was reviewed by the Forum. Thereafter in October 2007, the Country Review Report and the National Programme of Action was publicly released.

This brief phase of the South African review process was met with media criticism around the lack of transparency leading to the final country review report (Pogue 2010: 154). The central basis for this criticism was more related to a conflict between the National Governing Council of South African, on the one hand, and civil society groups that were desirous of engaging the review process as a means of advancing and advocating their interests, but had been sidelined in the process.

Another conflict, in essence, had to do with the APR Panel and the National Governing Council. It appears the Panel had reservations over the lack of any comprehensive response to the programme of action as outlined by the government of South Africa to address the challenges identified in the country self-assessment report (Herbert and Gruzd 2008: 307). As a result, the desire of the National Governing Council to go through the process as quickly as possible was seen a dereliction of its duty to meet the requirements for a comprehensive process with broad base engagement.

4.6. Conclusion

The governance structure of the South African Review process provides an example of an institutionalized environment that incorporates incentives for making decisions that are informed by established guidelines and norms. The APR Forum transfers its power to the APR Panel over the making the day-to-day decisions of the review mechanism, which are then implemented at the country level by the National Governing Council. As a result, a division of labour is established in the exercise of the functions that are assigned to each of the committees in the decision process. This leads to specialization among the various decision bodies, resulting in implications for the decisions made. As a consequence each of the bodies in the decision process is faced with a specific opportunity structure. While the APR Forum restricts itself to making decisions of a political nature and adopts decisions that guide the conduct of the review process,

other bodies are faced with streams of decision proposals and have to utilize expert knowledge to arrive at a resolution of individual cases. Even in the particular case of South Africa, where the National Governing Council operates under a government ministry, the system has been able to push the powerful government representatives in the council towards the acceptance of decisions based on standards that were agreed upon to guide the review process.

As theoretically forecast, the South African review process operates empirically in the light of rule-based decision making, even though powerful actors exhibit interests that are averse to the guidelines of the review process. As a specific case, the review process of South Africa shows adherence to the guiding principles of the review process, notwithstanding the initial attempts by the Focal Point to pursue the interest of government. The contention of this dissertation is that this tendency can systematically be traced to the separation of rule-making functions and norm implementation between the continental APR structures and the national level structures. Even in the face of ambiguous guidelines and imprecise country guidelines, the decision making system has consistently resorted to a practice that had previously existed in other review processes, and served as a yard stick. In summary, in the South African case, during the review process the APR Forum concentrated its operations on formulating rules at the political level, while the National Governing Council, in conjunction with other sub-committees at the national level, concentrated on the application of rules and guidelines. As a consequence, different tasks were delegated to other bodies that sought and succeeded in producing the most appropriate decisions.

Chapter 5

5.1. The APRM Process in Ghana: Setting a Precedent or Governed by Rules?

This chapter analyses how the simple structure of the APR process in Ghana has affected the functioning, as well the quality of decisions, in the country review of Ghana. It pursues the argument that, at the level of the APR Panel, decision-making issues are not resolved through the provision of generalized decision criteria. Instead, stability in the system is attributed to the ability of actors to converge on common interests through the use of expert committees. As a result, horizontal accountability, induced by recommendations from experts and peers, has had a significant influence on the APR process in Ghana. At the level of the National Governing Council, the absence of decision criteria leaves actors with broad discretion over their decision-making, which brings to light the imprecise nature of the rules or clauses in the organizational structure of the African Peer Review Mechanism.

Using the example of the Ghana review process, the chapter gives empirical insights into the relevance of horizontal and vertical accountability mechanisms in encouraging convergence on issue areas, even where there are no definitive provisions guiding the tenets of cooperation between and among States. The argument further confirms theoretical propositions by emphasising the enduring role of institutions in enabling stability among States in the presence of a cooperation or distributional problem. The argument compliments previous research that emphasises the importance of institutional design features in an existing cooperation project among States. Thus, States are seen to be rational in their choice of design features of institutions. States, then, consciously choose from among alternative design provisions as a result of the ensuing cooperation problem at hand, or as a result of the uncertainties about the world or the behavior of other actors (Koremenos 2016: 2). Making these assumptions has implications for the procedure this dissertation takes to test the presence of mechanisms that lead to observing the previously theorized phenomenon of rationally motivated actors using institutions as a conduit to further their interest and preferences in issues of conflicting interests.

The chapter will proceed as follows: in the first section, the governance structure of the review process in Ghana is explored. National and continental institutions are described, and their respective composition, specific role and extent of independence from government are subjected

to vigorous analysis. The simple structure of the APR process in Ghana is shown to illustrate a differentiation in a rule making function and the application of the contents of the rules to the cooperation project of member States in the APRM. At the continental level, the APR Forum is shown to be engaged in a rule making function. The Forum takes political and administrative decisions that are meant to give direction to the application of the rules at a lower level. At the country level, the National Governing Council is shown to implement directions as contained in founding documents of the APR process. The implication of this differentiated system is the creation of a horizontal accountability mechanism at the country level among stakeholders at various stages of the review process. This differentiation is described as fulfilling the intention to provide an incentive structure for various committees to offer review recommendations that are in the interest of the entire APR process.

The second section of the chapter looks at the various phases of the decision-making process. It shows how the first and second phases of the review process were characterized by the absence of any concrete guidelines, since Ghana was the first country to be reviewed. The *APRM Base document* and other instruments adopted by the Heads of State and Government participating in the review process served as the main reference documents. This phase is characterized by a number of milestones that show how the commitment and intentions of the various actors in the process were important to ensuring an incident-free review process.

The chapter concludes by affirming that the current design of the governance structure of the APR process in Ghana provides a robust system to hold actors, at the lower level of rule implementation, accountable for their decisions. It contends that the lack of sufficiently elaborate rules during the review process in Ghana did not apparently undermine the accountability system in the decision-making process. The separation of the National Governing Council from the direct shadows of a government ministry is argued to have played a role in ensuring that disagreements did not result in stalemates in the decision process, and asserts that members instead resolved contentious issues at each stage of the process through expert subcommittees that were formed to handle each of the issues. The presence of institutional arrangements at each stage of the review process contributes to pushing decision makers to resort to the APRM instruments as a point of reference for deciding on policy issues in the review process.

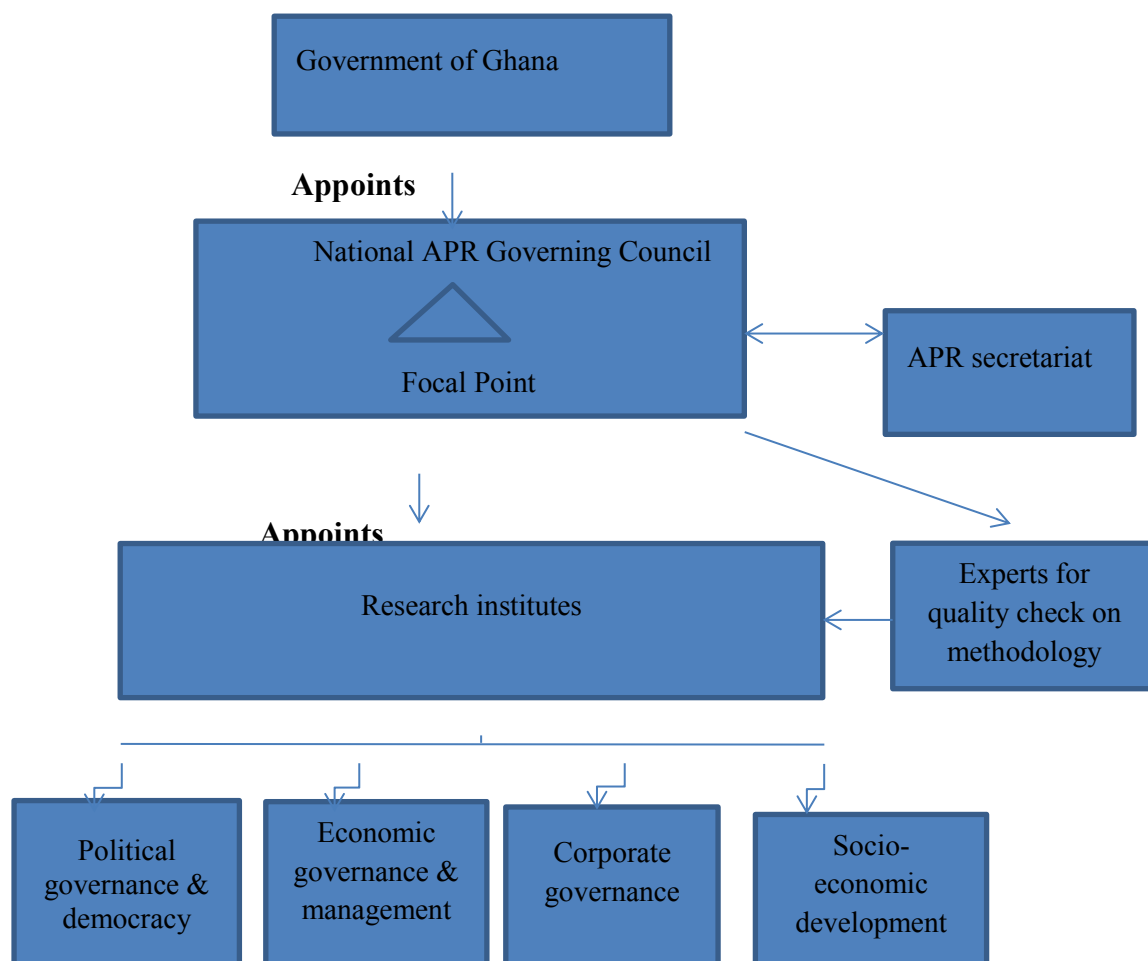
5.2. The Governance Structure of the Ghana Review Process

An analysis of the APRM review process of Ghana allows for the study of problems that arise as a result of the absence of well-developed and concrete guidelines in a decision system. It also gives insight into how the APR process may insulate itself from the acrimony of power politics, and remain visibly non-partisan, given the interests at stake for civil society, opposition parties and the incumbent government. According to Grimm et al (2009), the institutional structures established in the process of the country review of Ghana served as the backbone to securing the independence of these actors. They further argue that the institutional structure designed in Ghana largely provided corroborating evidence for the ongoing autonomy and credibility of the process (Grimm et al 2009). Though the design features of the institutions, established by Ghana to manage the review process, sought to establish this sense of autonomy, actual operations and procedures carried out in Ghana were not fully detached from the political process. Questions may be raised concerning the fact that appointments to the National Governing Council were made under the authority of government. This, in itself, does not discredit the independence and autonomy required for the actors in the decision-making process. This section describes the institutional structure of the APR process in Ghana, and explores the incentives that push actors to make the most adequate rule-based decisions in the face of competing interests. It traces the development of the decision-making process in the Ghanaian example, and describes each of the sub-bodies in the organizational structure (see figure 2 for author's illustration).

As early as October of 2002, even before the APR process had been fully developed, Ghana stated its desire to accede to the review process (Herbert and Gruzd 2008: 158; Grimm et al 2009: 42). According to some analysts, the decision to participate in the process was a strategic, rational decision taken by the government in order to firmly position the country as a democratic and economic reformer. To this end, the government sought to demonstrate a high degree of transparency in public policy, a message which was aimed at various audiences, including domestic groups, other African states and, not least, international donors (Herbert and Gruzd 2008: 157). One incentive for taking this position can be seen in a need to signal a strong commitment to the long term goals of the AU in respect of the review mechanism, but could also be seen, to some degree, as being connected to the foreign policy goals of the government of Ghana at the time. Continentally, the government sought to position the country as an active

contributor in the realization of the objectives of the AU and the NEPAD, as well being instrumental in the promotion of good neighbourliness throughout Africa, with the intention of fostering the closest possible cooperation and collaboration with all African countries to promote the acceleration of the Continent's development. Adherence to the principles and parameters of these collective goals was nevertheless expected to be realised in a manner that is consistent with the national interest of Ghana (Art. 73, 1992 Constitution of Ghana). It may then be seen as questionable, whether the APRM undertaking manifestly achieved these goals, if a government visibly positions itself to strategically benefit from the process to further its own agenda.

Figure 2: APR Structures at the National Level in Ghana, Author's Illustration



In March 2004, while the ground rules for the review process were being drafted, Ghana inaugurated a National African Peer Review Mechanism- Governing Council (NAPRM-GC) as

the designated Focal Point for the review process. The National Governing Council was charged with the responsibility to administer the national review process, and mandated to facilitate the conduct of the APRM country self-assessment and monitor the implementation of the national programme of action (NAPRM-GC, Terms of reference, 2004).⁷ The creation of the Council, according to its terms of reference, was to coordinate and manage a non-partisan and informed assessment of the review process in Ghana, with a view to ensuring effective and efficient decisions with regard to the conception of good governance envisaged by the APRM. The scope of the Council's mandate covered the four thematic areas of the APRM, aiming to increase participation in the process, and share Ghana's APRM experiences with international institutions and organizations (NAPRM-GC, Terms of reference, para. 3, 2004).

The National Governing Council was comprised of a seven-member panel of experts, drawn from academics, retired diplomats, distinguished lawyers, international consultants and senior religious leaders. The Council was accorded the same status and legal protection from government interference as other independent bodies, as expressed in the 1992 constitution of the Republic of Ghana (Gruzd 2006, 24). The independence of the Council was essential to its credibility and autonomy in the review process. Autonomy, in this sense, meant that the National APRM Governing Council (NAPRM-GC) exercised discretionary powers and was not bonded by any external control, except when implementing the directives of the rule-making APR Forum.

The Council was therefore not subject to the complete control of the executive arm of government in the discharge of their mandate, none of the council members had been appointed by a single President, and could only be dismissed on grounds of due cause. The mandate enjoyed by the Council was enshrined in the terms of reference and the founding documents of the APRM process (APRM Guideline, para 34, 35&36). In this regard the Council was insulated from the executive arm of government, preserving its role as the impartial administrator of the self-assessment process, a factor vital to the final review process.

Since its inauguration in 2004 the governance structure of the Council has remained largely unchanged, although subject to occasional mandate renewals which have not resulted in

⁷ See Annex I for full list of the NAPRM members

substantive changes to the structure. Its membership over the years has been entirely composed of individuals from academia, the private sector and civil society. The Council is serviced by a Secretariat headed by an executive secretary. The Secretariat provides technical, coordinating and administrative support services to the Council. This general task of the Secretariat is divided into a technical operations unit and an administrative unit. These units broadly plan and execute programs and projects of the Secretariat, coordinate capacity building interventions and engage in the collection and analysis of data to inform the writing of progress reports (Terms of reference, para. 2).

Prior to the inauguration of the National Council, steps were taken to create a ministry of regional cooperation and NEPAD (APRM CRR Ghana, 2006: xvii). To some extent, this move indicated the intentions of government to cooperate at the continental level to achieve common policy goals and objectives expressed through the AU. The ministry, however, did not have any operational functions that were directly linked to the governance and management of the review process. Since an independent Focal Point was established to coordinate the activities leading to the review, the ministry technically had no mandate in the decision-making of the review mechanism at the country level.

In addition to the seven-member Council of experts, mandated to administer and monitor the self-assessment and the program of action, country support and review teams were also established by the APR Panel, fulfilling the terms of the Memorandum of Understanding signed by the government on 9th March 2003 to accede to the review process (APRM CRR Ghana, 2006:xvii). The MOU gives legal and operational backing to continental APR structures to initiate a process of gathering the most relevant information for the policy recommendations and decisions that are contained in the final country review reports. With the MOU in place, any member participating in the process has obligations, among which is the undertaking to create the most conducive political environment of an incident-free review, and to commit credibly to the long terms objectives of the review process.

Within the scope of the instruments which established the Governing Council, it can be seen to have been provided with powers of an administrative nature. It engages in making decisions that are guided by generally agreed rules and standards, formulated by the highest decision making

authority of the APRM, the APR Forum. Appointments to the Council are made by the executive arm of the government under review. To hedge against any potential to unduly use discretionary powers of appointment to victimize members who may be perceived to oppose the short term goals of government, the power to revoke the appointment of a member, on grounds of not diligently applying the rules of engagement, is virtually non-existent.

A further important source of authority, bequeathed to the Governing Council of the review process in Ghana, is the power to appoint credible and reputable independent research institutions to undertake the national self-assessment in each of the four main areas of the APRM. The involvement of the research institutes is geared towards guiding the Council to draft a national program of action that is based on appropriate and scientific recommendations received from internationally reputable think-tanks in areas of concern.

These arrangements lead to the creation of layers of accountability between the bodies involved in the decision process. The various bodies are not hierarchically ordered, as each of them has its competences and make recommendations based on its expertise. The introduction of vertical accountability in the organizational system of the review contributes to ensuring that appropriate decisions are made in the interest of the objectives of the review mechanism. Research institutes engaged in the process are then given incentives to make correct decisions. Since their activities are subject to public input, any attempt to diverge from appropriate decision-making may well be noticed by other external actors, and the omission rectified. Furthermore, the research institutes have their reputation at stake. If they engage in acts deliberately geared towards presenting unscientific recommendations, there exists a tendency to suffer a credibility backlash among their peers.

Another important component of the governance structure of the APR process in Ghana, as pointed out earlier, was the establishment of the Country Review Mission (CRM).⁸ It was comprised of sixteen experts, affiliated to one of the APR partner institutions, the APRM Secretariat or as independent consultants contracted by the APR Panel. The CRM held extensive consultations with diverse stakeholders including parliament, political parties, government officials, trade unions, civil society groups, academia, business and professional bodies (Country

⁸ See Annex I for detailed list of membership

Review Report of the Republic of Ghana, 2005). In the context of the review process in Ghana, the CRM served as a further instrument to cross-examine the information that provided the basis for the various issues raised in the country self-assessment report. Receiving information first-hand, from stakeholders who are expected to be instrumental in the process, was a vital component in the realization of the aims for which the mission was set-up within the system.

At the apex of the APR process are continental structures. These include the APR Forum, the APR Panel and the Secretariat. The Secretariat serves as a support to the APR Panel and the country review teams in the performance of their tasks, as per Articles 49 & 50 of the *Operating Procedures of the APRM*. It undertakes duties in relation to the technical and administrative coordination of the review process in participating countries (Grimm et al 2009: 28), thereby providing information that is vital to a balanced judgement of the state of affairs in each case. Information gathering takes place before the review team considers passing judgment on the programmes of member states in the four areas of the review process. While the APR Panel is the main body tasked with having oversight over the review process, the APR Forum is the supreme body that makes the rules that guide the decision-making process of the APR process.

On the basis of the functions that are assigned to each of the bodies of the review process in Ghana, there is a clear distinction between an upper level of the governance structure performing a rule-making function, and a lower level limiting itself to the implementation of the generally agreed rules established by the APR Forum. In this observation, it is conjectured that delegation to several bodies at the lower level of the review process can lead to a horizontal accountability mechanism that may help detect problem-inadequate recommendations made at each stage of the decision process. If there are less precise rules, then it is expected that, at implementation, actors may face a stalemate in the decision making process, making the system more likely to come to a standstill. With more precise rules, members of various bodies who disagree with various decisions are able to turn to the guidelines as a way of institutionalizing the decision rules and standards set by the rule-making body. Agreements on tenuous issues, avoiding any vicious acrimony on the agreed rules, may also be the result of the ability of members at the lower level of rule implementation to converge at common decisions without bargaining over the issues under consideration.

5.3. The First Phase of the Establishment of a National Governing Council through to the Country Support Visit

In the initial stage of the review process as it occurred in Ghana, the APR Forum, as the rule-setter in the APR process, provided few guidelines on how the review process was to be administered and governed. Ghana's declared intention to participate in the process, in October 2002, happened at a time when the APR Panel had not even been appointed (Grimm et al 2009: 58). There was no proper timetable, and no continental-level structures set up to have oversight of the process. The country review of Ghana thus had a unique opportunity to showcase how standards of procedure, later generally established, gained utility in the interactions of the actors on the various issue areas of the review process, and how, in the absence of substantive *ex ante* criteria, various stakeholders converged at median decision points.

Characterized by imprecise decision criteria and a lack of parameters for decision-making at this stage of the review process, members of the various bodies in the review process were afforded wide discretion in their decision-making. The *Base APRM document*, which served as one of the important guidelines at this time for the review, was, at best, incoherent over the designation of rules of engagement for the bodies in the organizational structure. The Base APR document encouraged imprecise delegation contracts to the bodies envisaged to superintend the review process. As a result, it created a demand for rules in each of the bodies that were only established at the country level. The basic expectation was that, as a result of diverging interest among stakeholders, the inability to substantially establish any formal or informal rules could negatively impact the decision-making process. However, the demand for rules at this stage, instead of impeding the business of the various committees and possibly blocking their work rather, proved beneficial. The differentiation of functions appears to have had a positive consequence for the decision-making process, as stakeholders seemed to be held accountable and in check by institutional mechanisms in the governance process of the review process.

After signing the MOU to accept the review process in March 2003, Ghana immediately inaugurated a Focal Point, as demanded by the APR base document (APR Guidelines Para. 34). No clear roadmap was put in place at this time to define a time-bound programme of action to implement the declaration on democracy, political, economic and corporate governance, as

required by Article 13 of the ARPM base document (Art. 13, APR base doc.). As a result, there were no concrete plans over the periodic reviews that were required in the case of Ghana. Notwithstanding, the review process in Ghana had the potential to set a precedent and develop standards that could shape the continental review process for other States (Herbert and Gruzd 2008: 158). As Ghana was the first country to receive a review mission and present its self-assessment report to the APR Panel, the management of the process was important in creating a niche for the review process as an undertaking.

As a first step towards getting the base review carried out, after it had deposited the Memorandum of Understanding at the APRM secretariat, Ghana's national APRM structures were developed in June 2003 and presented to Cabinet for approval (Appiah, 2004:7). Prior to this, a National Governing Council had been established and a Secretariat created to coordinate the activities of the review process. To make the Secretariat functional at this point, an executive secretary was appointed to manage the process by which the Secretariat delivered a self-assessment report on the four areas to be reviewed. Ghana decided, as far as possible, to insulate the National Governing Council from overt partisan politics, and to ensure the independence and autonomy of the Governing Council. The Focal Point was therefore given an independent status and not located under the control of any ministry or government department. Though in practice the executive secretary and members of the Governing Council were appointed by the President, in theory they were able to act independently of the government, leading a process that could be seen as credible and in the best interest of the objectives of the APR process. The decision to establish an independent national council with broad representation had implications. It set the tone of engagement between stakeholders on the one hand, in support of an open and transparent review process, and government on the other, with its own interest in the outcome of the review process.

The decision to establish an independent governing council to serve as the focal point for the review process created some incentives to foster cooperation between the different interests that were at play in the review. For instance, as early as November 2003, during a workshop for civil society organizations, government made claims that consultations with the general public were far advanced and that the country was ready for a review (Herbert and Gruzd 2008: 161; Report on national stakeholders consultations 2005). Civil society groups present at the workshop

challenged these claims being made by government, and sparked an animated debate on how they perceived the situation to have been at the time. The main issue of contention for most groups was that the selection of members to the governing council did not appear transparent. They also expressed the opinion that decisions made at the early stages of the process were skewed, and did not reflect a true and proper understanding of any desire to create an inclusive review process (Herbert and Gruzd 2008: 161).

These initial agitations by stakeholders signaled the seriousness of the participation of civil society in the process, and the strength of the interests they sought to pursue. The consultative report of the workshop of November 2003 indicates that the reaction of civil society had the effect of actually delaying the selection of the full complement of the National Governing Council, allowing for deeper consultation and the development of criteria for selection acceptable to all stakeholders in the process (Report on National Stakeholder consultations Oct. 2005). The decision to delay the creation of the Governing Council could thus be said to have been made on purpose, in the light of a perceived need to ensure that the Council appeared independent and legitimate in its operations regarding managing the internal process. An independent Council, to all intents and purposes, had the potential to present a self-assessment report that fairly represented the goals of the review process in general. Securing its independence was crucial, especially when gauged against the background of the pioneering role and precedent that could be set by the members of the council. On the other hand, since several stakeholders in the review came with various expectations and needed to pursue their interests in the four thematic areas of the review, a Council that was independent and legitimate was seen as the best solution to persuade all actors to accept decisions and overcome any stalemates in the decision-making process.

It is also important to note that the MOU that established the review process was not specific on the nature of the Governing Council. It left open to the participating State decisions on constructing a governing structure that was best for its practices. While it called for the participating State to facilitate the process by making available the necessary resources for the implementation of the review at the national level (NEPAD/HSGIC/APRM/MoU Article 18), it concomitantly fell short of clearly indicating the reporting lines of authority in the Governing Council, whose content and nature were also omitted. This probably explains why the

stakeholders' forum was thrown into the debate between government on one side and civil society on the other over the extent of consultations that had taken place, and on the modalities of appointing members into the Governing council. Neither did the MOU include any details about the implementation of the review at the country level. In such circumstances the Governing Council was afforded the latitude to exert its influence in the decision-making process by setting rules of engagement that would serve as the basis on which it would operate. Overall, these loose arrangements show how lack of oversight of the country review process of Ghana initially posed threats on the management and implementation of the review.

In the event it took almost three months for criteria to be developed to guide the selection of the Governing Council and define its internal procedures. According to Appiah, the initiative to develop standard criteria to guide the operations and conduct of the council was aimed at gaining acceptance from all stakeholders (Report on National Stakeholders Consultations 2005). Within this period, the work of the national APR Focal Point had come to a standstill, so that only administrative issues pertaining to the review were being dealt with. The Governing Council was inaugurated into office in March of 2004 (Country Review Report of Ghana, 2005). Though the executive arm of government supervised its appointment and inauguration, the Council did not take any oath of allegiance to the office of the President. This, in essence, signified an independent role that was being bestowed on the Council in the conduct of its duties. The Council, in its composition, mirrored the diversity and complex demographic structure of the country. Expertise and competence in the key areas of the review were prevailing factors in the consideration of each of the appointments. Impartiality and the ability to demonstrate a sense of independence from the government were regarded as matters crucial to the decision process of the review mechanism.

At the same time, concrete steps were being taken to engage Technical Research Institutes in the thematic areas of the review process. With the full complement of the National Governing Council in place, four research institutes were identified and given the specific task of producing a self-assessment report (Herbert and Gruzd 2008: 163). It was also within their terms of reference to produce a draft national programme of action for each of the thematic areas. The four research institutes comprised the Centre for Democratic Development (CDD-Ghana), responsible for the issue area of democracy and political governance, the Centre for Policy

Analysis (CEPA), which handled the area of economic governance and management, the Private Enterprises Foundation (PEF) which became the lead research team in the issue area of corporate governance, and the Institute for Statistical, Social and Economic Research (ISSER) which managed the thematic area of socio-economic development

These four Technical Research Institutes (TRIs), in their various domains, were to serve as a guide to the Council to produce a robust national programme of action (POA), which, as a matter of procedure, was to accompany the country self-assessment report (Country Review Report of Ghana, 2005: 24). The National Governing Council appears to have taken the work of the technical institutes very seriously, since their expert recommendations were recognized as necessary to inform the Council on the best decisions to take on each of the thematic issues in the review.

The adoption and signing of the APRM MOU on the technical assessment missions, as was carried out between the APR Forum and Ghana on 27 May 2004, created a clear signal in the appropriate adherence to the founding documents which had been established to guide the conduct of the review process.

A support mission of the APRM led by Dr. Chris Stals, a member of the APR Panel in charge of the Ghana review process, had been in Ghana prior to the signing of the MOU on the technical assessment mission. The team was composed of 8 members, including the lead consultant for the APRM. The purpose of the support mission was to assess the processes put in place to undertake the country self-assessment and to prepare the preliminary programme of action (APRM Support Mission Communique, May 2004). The mission assessed the preparedness of the country to commence the review exercise. During the visit, the mission analyzed the structures, methodologies and participatory processes that had been established at the country level for the implementation of the APRM (Country Review Report of Ghana 2005: 24). This visit brought to an end the initial disagreements on the composition of the governing country, and over the intentions of the government to set up an independent council to take overall responsibility of the country self-assessment process.

The support mission, which lasted from the 24-29 May 2004, also coincided with a national stakeholders' forum which was organized by the NAPRM-GC. This was followed by a workshop

purposfully aimed at creating national ownership of the process. The workshop also demonstrated an open and transparent process targeted to foster dialogue and build consensus among the participating stakeholders in the review. An outcome of these sensitization programmes was a tacit agreement, between members of the Governing Council and interested parties in the review process, to follow the guidelines of the national support mission in setting up an independent council that would serve as an arbiter in the administration of the process in Ghana. As a result, the Council, relying on guidelines given at the end of the support mission, organized a series of seminars, in all regional capitals of Ghana, to keep participants and the general public abreast of the fundamental aims and guidelines of the review process (Country Review Report, 2005:6).

The appointment of the Technical Research Institutes created a demand for mutually agreed decision rules for the technical teams that were engaged. The decision was made to delegate the competence to make its recommendations, which would inform the drafting of the country self-assessment report, to technical teams instead of to the members within civil society who were opposed to the initial plans over appointments to the Council. This made it clear that the implementation of decisions would need the support of all stakeholders in the process. Since the TRIs were each mandated to produce recommendations on a specific thematic area, it became important to have a uniform system for decision rules and their operations.

In this regard, the APR standard questionnaire guidelines, adopted by the Forum, served as a guide. The standards set out in the questionnaire were mostly vague and in some instances highly generic (Gruzd 2006: 25). The questionnaire, to a large extent, was meant to elicit responses to the issues that were the focus of the thematic areas of concern. The general problem with the questionnaire for the country self-assessment process had to do with a lack of consistency in the formulation of questions, and the overlapping nature of most of the issues areas. Translating the questionnaire into the various Ghanaian languages was also an issue, especially in instances where it was difficult to find the equivalence of some technical terms in the local dialect. Notwithstanding these problems, the methodology employed by the research teams contributed to amending the redundancies of the bulky questionnaire.

However the demand to have guidelines for the operations of both the Governing Council and expert technical institutes became more glaring as stakeholders pushed for an inclusive and more participatory review process. As a result the country support mission issued a statement, after its visit, where proposals were made on the way to establish criteria for the operation of the Technical Research Institutes and the Governing Council (APRM Support mission communique, May 2004). The team emphasized the need for the self-assessment questionnaire to serve as a guide to the conduct of the self-assessment process.

Efforts adopted by the support mission to Ghana to stabilize contentious issues at the beginning of the review process demonstrated the inadequacy of criteria for decision-making available to the National APRM Council. The mission nevertheless commended the government for the strides taken in appointing and establishing the foundational structures needed for the commencement of the review process. This positive response was particularly motivated by the ability of the State to commission four independent non-governmental technical advisory bodies to assist with the assessment process in the respective thematic areas (Para. 2(iii) of the APRM support mission communiqués, 2004). In this regard, the technical institutes briefed the mission on their planned activities and methodologies to facilitate the conduct of the self-assessment process. The Technical Research Institutes went to great length to adopt the most appropriate tools and methodologies, seen as best practice in their research, in order to converge around a reasonable self-assessment in the areas of their mandate.

In a follow up press statement, which was released by the APRM secretariat on the 18th of June 2004, the APR Panel was emphatic over the need for member States to adhere to the guidelines of the self-assessment process, devoid of any political manipulation (Press Release on the APRM Country Support Mission to Ghana, Rwanda, and Mauritius on 18.06.2004). It expressed the hope that the Ghanaian government would be committed to the process, and not play a role that would, in any way, bring the process into disrepute. The press release of June 2004 also spelt out the programme of the Panel in relation to other review processes that were to be started. The guidelines, given to serve as the point of reference in the review process in Ghana, were made equally applicable in other situations. To further strengthen the capacity and sense of credibility to the mission's work, the press release noted that the consultants and experts mobilized for the coming support visits were persons of high professional repute in the areas of the review process.

It called on all States participating in the process to put in place requisite national structures, and called for the proper organization of the APRM with regard to the timeframes stipulated. Member states therefore were enjoined to enforce and respect the rules of engagement without any hindrance to the work of the support mission (Press Release of Country Support Mission to Ghana, Rwanda and Mauritius, 18.06.2004).

In essence the support mission's main task was to provide the opportunity to arrive at a consensus with all stakeholders on existing issues of disagreements (United Nations Economic Commission for Africa Report, ESPD/NRP/01/05, 2005). By conclusively dealing with pertinent issues at the preparatory stage of the review process, members opposed to the Governing Council's initial steps had effectively promoted a ruled based mechanism that would inform the decision making process at the self-assessment stage. Efforts put in place by the Technical Research Institutes to follow a methodology that would produce the most problem-adequate recommendations to the National Governing Council, did not lead immediately to creating a focal point for decision-making among all the expert technical institutes that were being engaged. Though the support mission, in its press release, sought to give the impression that it had definitely dealt with any disagreements and provided solid guidelines for the conduct of the self-assessment, its questionnaire was vague and did not appear to have provided a solution to settle the discrepancies in the interpretations of the standards of the APR process at that time.

Failing to come up with proper criteria for decision-making for the self-assessment report gave an incentive for the emergence of new issues in the decision process. Some civil society groups had raised the issue of inability of the guidelines to clearly specify detailed and comprehensive rules to regulate the conduct of decision makers. The absence of concrete standard decision rules at this point meant that the decision process was still subject to disagreements. With a lack of identification of what problems might arise in the individual projects and programmes of other member states, subsequent review visits and the final review at the Forum could similarly be characterized by a lack of standard rules to guide the conduct of the actors in the decision making process.

This first phase of the review process in Ghana came to an end with the clarifications of the Press Release of June 2004 by the APR Secretariat in respect of the support mission's visit. (Press Release of 18 June 2004). While this statement purports to give clarity on the issues of disagreements between stakeholders, the statement in fact give more weight to providing information on the approval of the programme of work by the Panel in the subsequent reviews which were planned to follow the Ghanaian experience. The statement explains the purpose of the visit, stating:

‘the purpose of the Support Mission is to ascertain the extent of preparedness and the capacity of the country to participate in the peer review process, and particularly to undertake its self-assessment and draft its National Programme of Action. The Support Mission is also *intended to create common understanding of the overall APRM processes and instruments*, (own emphasis) and to ensure that the institutional and organisational arrangements provide for active involvement and participation of major stakeholders on an ongoing basis’ (Press Release of June 18, 2004, Para. 2).

The statement, however, fails to declare the processes and mechanisms put in place to definitively conclude on the criteria on which decisions on the propriety of member States were to be based. Therefore, instead of addressing disagreements on issues and the content of what had actually been done in respect to the preparatory work of the review process, the support mission merely sought to ‘ascertain’ the extent of ‘issues of capacity and preparedness’. This approach limits the capacity of the Panel, and avoids addressing questions over the introduction of specific regulatory guidelines for the conduct of various actors in the review process.

To sum up, the first phase of the review process, which concerned the preparatory and country self-assessment stage (ECA pamphlet 2011:5), was characterized by a complete absence of concrete decision procedures and criteria. The fortunate existence of mutual preferences, especially between members of civil society that were opposed to any move by the government to dominate the governance structure of the process, enabled them to push for and sometimes agree on criteria for specific tasks. However, lack of clarity resulted in a weak decision structure aimed at guiding decision-making among members of the council and the technical research teams. The non-existence of any reliable criteria-based decision procedures can also be seen to

create incentives for members of the Governing Council to exercise an arbitrary authority, conferred on it by participating states in the review process.

5.4. The Second Phase: From the Country Review Mission to the Review by the APR Forum

A close examination of the second phase of the review process reveals that a decision system that is not sufficiently well-designed may lead to accountability problems, especially in instances where there are no adequate guidelines in decision-making situations. However, it also shows that this deficiency can be mitigated by the presence of multi-layered stakeholders' engagement, which can prevent decision-making blockages.

At the commencement of this second stage of the review process, neither the APR Panel nor the Forum appeared to take its regulatory functions seriously, and, as a result, committees at the country level continued to enjoy unrestrained discretion over the exercise of their duties. Beneficially, however, the absence of any meaningful decision criteria appears to have meant that any incentives for member States to introduce their parochial interests into the decision process were avoided.

Internal mechanisms which could hold peers accountable were however induced by the presence of sustained stakeholder engagement in the process. As a consequence the review process was not entirely blocked from producing decisions on the four thematic areas of the review. There was, however, a problem with the implementation of the recommendations of the review. Systematic delays occurred in the implementation of the decisions that formed the core of the national programme of action. These delays had their roots in the non-existence of precise decision rules at this stage of the review process. In addition to the absence of decision criteria, implementation problems could also be attributed to the high cost of projects, as agreeing to implement the national programmes of actions inherently comes with both financial and political costs for the State under review.

At the political level, member States suffer from the possibility of an audience cost in instances where certain proposed programs have an internal political dimension. For instance, in the

economic governance area of the review, member States are assessed on the extent of their financial prudence in the management of both fiscal and monetary policy at the country level (NEPAD/HSGIC-03-2003/APRM/Guideline/OSCI, para 3.1a, page 15). Issues of economic management are often ones which are hotly contested between incumbents and opposition political parties within the national political system. As such, any admission of mismanagement of the economy in the process of implementing proposals for reforms may bring with it the difficulty that it buttresses the claims of opponents concerning the inability of an incumbent government to manage the economy. If these claims are driven by findings from the review process, the government under review faces the real possibility of backlash of public disaffection. While costs of this nature are invariably inescapable, they do create unhelpful incentives for governments to act in ways that might not comply with the tenets of transparency and accountability, which are prerequisites for a proper implementation of the peer review.

At the level of the APR Forum, member States who view the review process as a threat to their governance performance may have uniform preferences across cases, but become uncertain about the outcome of future reviews of their own performance. This could propel them to bargain over different sets of rules, as the Forum is the rule setting organ of the review process. The consequence is that the Forum, in order to dispel this tendency, may approach its regulatory role with a lack of seriousness, preferring to continue to produce protocols and resolutions to direct the affairs of the review process where most will contain few changes to the overall mandate of the APR Panel. Notwithstanding the periodically required renewal and appointment of Panel members, which does provide an opportunity for the Forum to exercise its regulatory functions, these circumstances rarely lead to explicit bargaining. In some cases the pace of renewal of membership of the Panel by the Forum has been described as painfully slow (Adotey 2010: 1), and, as a result, member States are excluded from bargaining over issues of restraining the powers of the independent bodies that make decisions, although that may have an impact on the behavior of States in the implementation of the review process.

None of the communiqués issued by the Forum and the country support mission had to do with any change in the mandate of the country review process in Ghana (see Communiqués on 13th February 2004: APR Forum, 29th May 2004: country support mission, 18th June 2004: country support mission). Instead, they confined themselves to extensions and restatements of the

institutional underpinnings of the governance structure of the peer review process. Neither did they contain any changes to the mandate designated to the any of the sub-committees. In essence, they confirm the responsibilities that are assigned the various bodies in the successful implementation of the review process.

The resolutions of the first summit of the committee of participating Heads of State and Government in the African Peer Review Mechanism go a long way to clarify some structural issues regarding the operations of the APRM. In the communiqué of the 13th of February 2004, the Forum mandated the APR Panel to work out modalities to establish and facilitate the work of the review process by identifying specific institutions and procedures for the proper implementation of the review (Para. 23, APR Forum Communique 13.02.04). These further extensions of the mandate of the Panel also covered issues that had to do with the implementation of the review process at the country level. Paragraphs 24 & 25 specifically endorsed the creation of Focal Points at the country level to manage the administrative and technical aspects of the review (Communiqué of Forum, 13.2.04). The criteria for the establishment of these Focal Points and the characteristics of their functions were generally merely hinted at, without specific details. The Communiqué is unclear over the exact nature of the Focal Point, and appears to have left it open to member States to decide their appropriate structure with regard to its unique context. In an attempt to improve the imprecise details of an earlier wording, the Communiqué states that ‘a focal point *should* be a ministerial level or a high level official reporting directly to the Head of State or government and with access to all national stakeholders’ (Para. 24, own emphasis). The language of the communiqué, in this respect, remains vague, and does not provide details on the exact nature of the Focal Point, beyond identifying persons to manage it. As a result it gave most participating States the leeway to appoint or locate the Focal Point with persons supporting the cause of the government in the review process. Examples of this practice have included the South African, Kenyan, and Rwandan structures.

The activities of the review mission to Ghana, and subsequent debates on the country review report and the national programmes of action, demonstrate how the absence of specific decision criteria has an impact upon the outcome of decisions in an institutional system characterized by a chain of delegation. The country review mission to Ghana was fielded from the 4-16th April

2005. The 16 member country review team was led by Dr. Chris Stals, then a member of the APR Panel responsible for the country review of Ghana (Country Review Report of Ghana, 2005: 8).⁹ The terms of engagement of the team were not any different from the previously assigned tasks to the country review mission, as per the APRM Base documents. The review mission, according to paragraph 17 of the APRM *Guidelines document*, was to preside over the drafting of the country review report and the national programme of action of the country under review. This task was achieved in collaboration with consultants and experts from partner institutions of the APRM (APRM Guidelines, para 22&23). The APRM Guidelines fall short of mentioning or listing the criteria which the review mission was to follow to guide the conduct of members of the team in the drafting of the country review report. As a result members of the review team were left with a wide margin of discretion in their activities.

This lack of regulation left the technical research teams with a wide range of discretion in their decisions. The Panel, represented by the review mission, had no concrete standards to refer to in dealing with each of the issue areas, for example in instances where there were disagreements between government and the expert committees. The mission does not appear to have come to a vote on issues of disagreements in the composition of the country review report.¹⁰ In practice the team agreed on issues through consensus building, achieved through a process of convincing other members of the team through arguments on the most reasonable policy options in each of the issues under consideration. The chairman of the review mission, who doubled as the lead Panel member on the team, ensured that a composite report was presented to the Panel for onward transition to the APR Forum, where it was discussed and approved.

In the production of the country review report the team focused on the areas that were important to ensure that decisions met basic appropriate standards. The review mission first interrogated how accurately the country self-assessment report identified the problems faced by the country under review. In addition, it looked at the extent to which the national programme of action addressed the issues listed, and finally investigated the nature of civil society participation in the production of the CSAR and the NPoA (Adotey 2010: 9).

⁹ See annex I for a full list of the APRM Country Review Mission to Ghana.

¹⁰ Personal Interview, Ms Gertrude Takawira (former Country Director, South and Eastern African Trade Information and Negotiating Institute (SEATINI) and Independent Consultant for the Ghana country review

As a result, the country review mission to Ghana held extensive discussions with opposition parties, parliament, government officials, civil society organizations, academics, the media, and professional bodies, among others, to test the veracity of the country self-assessment report and the national programme of action (Herbert and Gruzd 2008: 174). The mission equally evaluated the draft programme of action submitted by Ghana, and made recommendations where appropriate. To ascertain the extent of a credible and technically competent assessment process, the mission made provisions to discuss the Issue Paper compiled by the APR continental Secretariat with relevant partner institutions (Country Review Report of Ghana 2005: 9). Engagements of this nature were geared at building consensus with stakeholders on the remaining issues and challenges.

The verdict of the mission, after the consultations had been completed, was that the self-assessment was technically credible and free from manipulation from government (Press Release of Review Mission, 2004). This conclusion was not wholly accepted by critics of government's role in the review process. The United Nations Economic Commission for Africa (UNECA), for instance, criticized the short time span of the team's mission to the country and suggested that time spent was not optimally utilized (UNECA, ESPD/NRP/01/05, 2005). Despite this criticism, the decision process remained unaffected, and members of the review mission generally agreed on the status of the two reports, as a prerequisite to the production of the country review report.

In this way the independence of the country review mission, which draws its powers from the duties conferred on the APR Panel by the base documents of the APRM, was fully underlined. It is well established that the independence of the APR Panel is subject to the general supervision of the APR Forum, which, through its communiqués, gives directives to be implemented at a lower level of the decision-making process. The APR Panel and the country review mission are therefore subject to the administrative supervision of the Forum, though in limited terms which accord with the relevant provisions of the APR base documents. By appearing to offer the assigns of the Panel, in the case of Ghana, exercising discretion in the overall status of the review process, the Forum formally offered the APR Panel the opportunity to act independently. The implicit inference that may be drawn from this singular instance is that there exists the possibility of the APR Forum intervening in the mandate of the Panel if it fails to expeditiously deliver its mandate. This may be necessary where the supervisory principal sees its authority undermined.

Such a supervisory role of the APR Forum is not uncommon in the design of decision-making systems in international organizations. The work of well-established international institutions such the United Nations Security Council, the WTO, World Bank and IMF all afford some of the best examples of how superior institutionalized actors supervise the activities of lower bodies within a decision-making process. In appropriate cases, close administrative supervision of institutions of governance is warranted where it is seen as the most appropriate means to ensure that decisions meet agreed standard criteria. Nevertheless, supervision in this context must always be closely watched and hugely circumscribed, as it is well-known that principals of international institutions hardly have the time, resources or capability to closely monitor and supervise all the institutions which they have deliberately created for their benefit.

As a consequence, the deliberations of the review mission on the country self-assessment report offered an avenue to hold accountable the stakeholders and participants involved in the country self-assessment. The self-assessment report itself, then, offers the most elaborate and extensive opportunity available for external actors to hold decision makers accountable. For Adotey (2010), the process of generating the country self-assessment report points to a trend where the review process is given maximum prominence. This may be so because the time allotted to the discussion of the draft country review report by the Heads of State Forum is mostly inadequate, and, in such a situation, having a well-designed accountability mechanism becomes imperative. This accountability is premised on institutional incentives created for actors to hold decision-makers accountable, however institutional measures need to be designed in such a way they do not retard the ability of the decision system to achieve its aim of being productive and arriving at optimal norm-based decisions. A balance between having to impose hierarchical control measures on independent agents and allowing decision makers autonomy could be achieved by designing a decision system that allows for horizontal monitoring of decisions at each stage of the process of decision-making. This appears to be the case in the review process in Ghana, where institutional mechanisms are put in place to allow several interested participants to form part of the consultations which generate the final country review report.

In this regard, in the Ghana example, the country review mission appears to have brought finality to the issues surrounding the propriety of the methods employed in the generation of the self-assessment report. The approach used to arrive at the report was judged by the mission to be of

high quality (Herbert and Grudz 2008: 176, Country Review Report of Ghana 2005: 11). In essence, the mission met previous concerns on whether or not the self-assessment report met the requirements of credibility as set out in the APRM Guidelines (APRM Guidelines para 45).

Nevertheless, the second phase of the review was still unable to introduce any meaningful regulatory framework to guide the decision-making procedures of the various committees within the decision-making process in the country review of Ghana.

5.4.1. Features of the Country Self-Assessment Process in Ghana

An issue worthy of investigation is how the unique methods employed in Ghana served as a useful incentive to induce accountability in the decision making process of the review. The detailed methodology adopted by Ghana for the preparation of the Country Self-Assessment Report (CSAR) is perhaps one of the most distinguishing features of Ghana's APRM implementation process. The methodology underpinning Ghana's APRM country self-assessment process was designed as a people-centered, bottom-up approach, which involved interaction with interested actors at different levels. This is evidenced by the broad-based participation of respondents and stakeholders in the APRM process. The process was informed by four methodological approaches: those of a pre-field methodology, field methodology, in-house methodology, and post-field methodology (Herbert and Grudz 2008: 162).

The main objective of the pre-field methodology was to ensure popular participation and to attain an inclusive process of national consultation in the Self-Assessment Report and the preparation of the Ghana National Programme of Action (GNPOA). Steps were taken to educate, sensitize, and create ownership among a large section of Ghanaians. This was done through public debate and advocacy, using television, radio discussion, newspapers, newsletters, workshops and pamphlets, among other methods (Herber and Grudz 2008: 165). These initiatives were followed by a harmonization and coordination of the methodological approaches adopted by the four Technical Review Teams and the identification and involvement of stakeholders. The pre-field methodology also saw to it that information and data needed for the review process in Ghana was gathered based on rigorous scientific principles for the purpose of the review.

At the same time, a field methodology was also employed for the Country Self-Assessment Report. It served three main purposes. First, to engage relevant stakeholders as respondents to the APRM questionnaire, secondly to collect, collate and analyze information to prepare for the National Self-Assessment Report, and finally to provide scientific and empirical grounds to act as a basis for drawing up the *GNPOA*. For example, the Institute for Statistical, Social and Economic Research (ISSER), which was assigned the responsibility of working on the socio-economic component of the self-assessment report, utilized a variety of research tools. The reason behind their approach was to capture, as far as possible, both the perceptions of experts and grass-root opinion on policies of government (Herbert and Gruzd 2008: 168). In this way, opportunities were created for the public to contribute to the shaping the contents of the reports through their input.

Subsequently, elite surveys were conducted across the country, involving interviews with persons from specialized background in civil society organizations, the public and private institutions. A mass household survey intended to capture broad and representative views was also administered. Another tool that was used at this stage consisted of focus group discussions with identifiable organized groups. Among others, minority groups, the physically challenged, child advocacy groups, and youth organizations were specifically targeted to make the process as inclusive as possible.

Similarly, a rigorous in-house methodology was also adopted by the Technical Research Institutes. It covered the internal operations of the research teams involved in the review process (Herbert and Gruzd 2008: 171). Its desk research entailed making a study of documents on the four thematic areas of the APRM, in order to establish the current state of knowledge in the area in focus. Extensive desk research, coupled with literature reviews and regular meetings to deliberate and exchange ideas, was pursued. For instance, the Centre for Democratic Development (CDD), which was responsible for the democracy and political governance area of the country self-assessment report, established a 15-member internal advisory group. It comprised experts in democratic governance who met regularly to offer comments on the research activities leading to the self-assessment report (Herbert and Gruzd 2008: 171). The presence of this internal advisory group offered a way in which the institutional structure might contribute to the development of problem-adequate solutions acceptable to all actors in the

review process. It also facilitated the decision making process, as the technical reports necessary for completing the country self-assessment report in Ghana were efficiently completed within a period of four weeks (Herbert and Gruzd 2008: 171).

The fourth and final method adopted derived from a post-field methodology. According to the Country Review Report, the post-field methodology sought, through national consultations, to provide a reality check on the preliminary reports of national self-assessment and the GNPOA (Country Review Report of Ghana 2005).

Initially, the Governing Council engaged experts in the four thematic areas to cross-examine the draft reports and POA prepared by the technical review teams.¹¹ Measures were also taken to ensure that the national self-assessment report and the GNPOA were not reduced to mere research outcomes. To avert this possibility, the post-field methodology employed a process of stakeholder validation of the draft reports and POA presented by the technical review teams. In this regard, a national validation exercise, comprising representatives from Government, civil society, private sector, security agencies, and academia, was held from 10-13 February 2005 to deliberate on the national self-assessment report and the GNPOA (Country Review Report of Ghana 2005). A team of experts, set up by Government and the Parliamentary Select Committee representing Parliament on APRM matters, also reviewed the national self-assessment report and the GNPOA. The Trades Union Congress additionally had an opportunity to validate the national self-assessment report and the GNPOA. This post-field methodology became crucial to the credibility of the final report, insofar as its different measures fulfilled the need to ensure accountability on the part of decision makers through subjecting the draft report to validation among experts.

In summary there was an approach that centered on utilizing a bottom-up strategy in the compilation of the self-assessment process of Ghana. This bottom-up approach, by and large, contributed to improving dialogue between the government and other stakeholders in the review process. On the one hand, it provided government with an understanding of how citizens

¹¹ Independent reviewers of the draft self-assessment: 1. Democracy and political governance- Kwasi Jonah, director of governance at the Institute of Economic Affairs (IEA), 2. Economic governance and management- Professor Cletus Dudonu, ClayDord consult an economist, 3. Corporate governance- Dr Robert Adjaye, a partner of Ernst and Young, 4. Socio-economic development- Dr Samuel Aikins, Centre for Development Studies, University of Cape Coast Ghana

perceive government actions. On the other, it provided the general public with the opportunity to participate in the process, and where possible, shape the contents of the recommendations made by the Technical Research Institutes. The opportunity to participate and influence the content of decisions hinged upon the incorporation of expertise and knowledge of the issue areas being covered by the peer review process. The ability of the general public to participate in the assessment process reinforced the accountability of decision makers as their actions were demonstrably and closely monitored.

In conclusion, the strategies utilized in the process leading to the self-assessment report in Ghana set a precedent for the process of the review. It served the purpose of making a strong case for the effectiveness of multiple methodological insights into how best to produce the most effective policy options over the issues of the review process.

5.5. The Final Stage of Review at the APR Forum

The final phase of the review process revolved around the presentation of the country review report of Ghana to the APR Forum, and the post-review implementation of solutions to identified issues. This final stage was characterized by a stable and enthusiastic interest in the decision process by stakeholders, when Ghana, as the first country to complete the process, responded to the review report. In this light, the propriety of the recommendations and the challenges identified in the report were brought for discussion to the Forum, in order to further the process and ensure the adoption of the country review report and its implementation.

Accordingly, the country review report of Ghana was presented to the APR Forum at the third summit of the committee of participating Heads of State and Government in the APRM in June 2005 (Communiqué of the third summit of the APR Forum, 2005). The report gave a comprehensive account of the various stakeholder engagements undertaken by the review mission, and other processes leading to the final report. Emphasis was placed, at this stage, upon the challenges and overarching issues that were of prime concern to the mission.

Some of these issues pointed to the inability of the country to adhere to some of the principles and standards of the review process. For instance, under the democracy and political governance

section of the country review report, the inability of the government to ratify a number of key human rights instruments was deemed to require immediate intervention by the State (Country Review Report 2005:16). In reference to a number of significant global instruments on governance and human rights, which Ghana had acceded to, the report indicted the inability of the government to domesticate some of these instruments through a process of formal ratification. Examples of this omission include a) the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); 1992 Amendments to Article 17 (7) and 18 (5); b) the Convention on the Rights of the Child (CRC), 1995, Amendment to Article 43 (2); c) the Supplementary Protocol Against the Smuggling of Migrants by Land, Sea, and Air, 2000; d) the UN Convention Against Transnational Organized Crime, 2000; e) the UN convention Against Corruption, 2003, and others. In regard to this, the Panel recommended that Ghana adopt a binding time-frame within which the country should accede to and ratify all the conventions and protocols in question (country Review Report of Ghana 2005: 17). As a result, ministries, within whom responsibility for these actions was placed, were required to develop a plan that instituted automatic compliance with reporting obligations under those human rights instruments and conventions.

In the context of indictments of this nature, some scholars have argued that problems identified in peer reviews have a strong effect upon political reputations (Herbert and Gruzd 2008: 178). Even in instances where recommendations appear sound, they can be politically controversial and even costly to governments, and clearly have repercussions on the political fortunes of governments undertaking the review assessments.

Another issue in the case of Ghana, for instance, was the fight against corruption in the public sphere, which had received a great deal of attention by stakeholders in the review consultations. The Panel specifically attributed the existence and consequences of corruption to bad governance (Country Review Report of Ghana 2005: 35). In this respect, the government had to take responsibility for the general perception, and accept the need to deal with the prevalence of corrupt practices in the public sphere. However, the government's attempt to highlight some institutional and policy measures, as a way of dealing with the issue of corruption, did not succeed in convincing critics they were a solution to the problem. As a consequence, the Ghana Governance and Corruption Survey of the Centre for Democracy and Development found out

that 75% of the households surveyed regarded corruption as a serious national problem (CRR Ghana 2005: 36). One effect of this issue was seen when the government of the time suffered electorally, particularly among electorates that attributed the prevalence of corruption to the inaction of government.

Given the high profile interest that was generated about the review process in Ghana, it is quite surprising that it was unable to immediately respond to the country review report at the summit of the APR Forum in June 2005, when it was presented. The actual 'peer review' of Ghana by the Forum was held in Khartoum, Sudan in January 2006. At the review session of the Forum, it emerged that 159 recommendations, made in the programme of action of Ghana, needed to be implemented by the government. A significant concern to some members of the Forum was the seemingly western-inspired neoliberal policies being pursued by the government at the time. While comments from some Heads of State sought to castigate the economic model being advanced by the State, the APR Panel finally endorsed the liberal market orientation taken by the government (Herbert and Gruzd 2008: 180). As a consequence, the disagreements expressed by a section of the Forum were not powerful enough to over-rule the recommendations proffered by the Panel. In this respect, the inference drawn from this case is that, even in a situation where the Forum disagrees with the decisions of the Panel, it offers limited incentives to impose a counter policy recommendation to a State under review. The Forum, at best, is offered an opportunity to have a say on the country review report, but with limited incentives to change the decisions of the Panel.

Despite this, the move to publish the country review report of Ghana, after the APR Forum meeting in Khartoum, Sudan in January 2006, was important in ensuring accountability in the decision making process. Although the process of publishing the report was delayed as a result of some administrative lapses, it was finally made available to the public and interested parties in the review process. In the final analysis, the last stages of the review process were defined by the ability of the decision-system to adhere to the guidelines of not interfering in the decisions of the APR Panel. As pointed out, even in the particular instance where some members of the Forum disagreed with the Panel on issues of economic management, there was no opportunity for them to have their views stated in the final report.

5.6. Conclusion

The review process in Ghana illustrates a clear case where the absence of substantive decision criteria at both levels of the decision-making process does not lead entirely to a blockage of the review process. Instead, internal accountability mechanisms were induced, through the engagement of stakeholders and the public (individuals of varied interests), into the information gathering stages of the review process. Unconstrained discretion of the expert bodies, in itself, did not point to a situation where they develop any autonomous influence outside of their mandate. As a result, the structure of the governance of the review mechanism in Ghana appeared not to provide incentives for powerful actors to bargain over cases where decisions are against their preferences. In a rather interesting scenario, the structure of the review process in Ghana promoted cooperation among the various stakeholders through consensus building on issues of contention in the decision making process.

Contentious issues that emerged in the decision process were not necessarily solved through the adoption of mutually agreed decision rules to guide the conduct of actors. Rather, decisions were transferred to the upper level Forum, which in most cases preferred that States manage the process according to the APR questionnaire and the base documents.

Overall, the institutional structure of the review process did not provide robust incentives against any power based bargaining if a member States wished to exploit that opportunity. The institutional arrangements together with informal mechanisms are therefore seen as the institutional mechanisms that constrain powerful actors in decision-making process. They served as a means to bind them to the collective interest of all member States.

Chapter 6

6.1. Decision-making in the African Peer Review Mechanism: How the Absence of Decision Criteria Paralyzes the Review Process

In this chapter, an analysis is presented which addresses the institutional structure of the APRM process in Kenya. It focuses on the conflicts and challenges that plagued the review process in Kenya. To support these contentions, an investigation is made of whether or not the governance structure of the review process in Kenya created any incentives for arriving at decisions that were devoid of the interests of members involved in the review process.

The chapter advances a functionalist argument on the potential power of institutions to shape the behaviour of actors in the interaction of states in international organizations. From this perspective, decision-making processes that reflect competing interest constellations for members of an organisation may need to manage strong disagreements on issue areas that have different benefits to each actor. This may potentially turn such decision-making processes into bargaining arenas. Cooperation, under such circumstances, requires a careful institutional design to enhance the quality of decisions to the common advantage of all actors in the cooperation project. As a result, State leaders are compelled to coordinate State policies and the actions of their relevant State bureaucracies if they are to gain from the benefits of cooperating (Fearon 1998:271). To harness the benefits envisaged in cooperating on an issue area, decision-making processes need to strive to produce decisions that are seen by all actors as a product of the rules and norms guiding standards of behaviour.

Drawing on insights from the theoretical approach advanced in chapter two, this chapter asks whether, and to what extent, the creation and composition of the APRM national structures in Kenya impacted on the contents of the APRM country review report of Kenya. The chapter argues that functional differentiation within the governance structure of the APRM review process in Kenya contributed to the outcome of the decisions of the country self-assessment and the country review reports of Kenya. It contends that the institutional design of the Kenya country review process created incentives for members in the National Governing Council and the Technical Research Institutes to produce decisions that represent the general interest of member States participating in the peer review mechanism. For this reason, when faced with the

problem of coordinating policy goals at the continental level, member States of the review process delegate decision-making authority to a Panel of eminent persons and technical committees. In this manner, they demonstrate a credible commitment to long term policy goals and also take advantage of various experts to improve the depth of public policy. Doing so allows member States to make informed decisions on policy issues that are synchronised with the AU's agenda on NEPAD. This intention increases the likelihood that decisions and information that emanates from the various expert committees would enhance the quality of policy goals and their implementation at the country level.

Arising from this argument, the general assumptions of this approach are that actors in the review process are rationally motivated, and therefore would protect their preferences within the constellations of interests that arise concerning particular issue areas. The initial premise it takes is that Kenya's decision to sign up to the APRM indicated a commitment to the principles of good governance and respect for the principles of democracy and human rights (Manby 2008). As a consequence of that commitment, the expectation is that issue areas that are defined by a perceived fundamental importance to the survival of a State may attract interest in the review process, and ultimately generate frequent and persistent conflicts if actors pursue their own preferences. The establishment of norms of procedure and guiding rules for the conduct of the review process can serve as a mitigating factor in restoring order in the decision making process, if all actors play by the rules of engagement. Following this argument, subsequent sections of this chapter investigate the causal chain of events that led to the final country review report of Kenya.

The first section of this chapter explicates the governance structure of the APRM process in Kenya. It examines in detail the composition of the National Governing Council and the Technical Research Institutes. The section explores the incentive structure that may exist for actors to make decisions in the interest of the objectives of the review mechanism. This has significance, especially as the Focal Point in the review process in Kenya came under the supervision of a minister of state, contrary to the structure that was deployed in Ghana. The second section pays attention to the initial stage of the review process. It focuses on the appointments and selection of members to the National Governing Council and the ensuing contestation between civil society groups and government on the preferred methods to be

employed in the review process. The next section discusses the process of the country self-assessment process in Kenya. It traces the events and issues leading to the compilation of the draft self-assessment report, and the role of civil society groups. This is followed by a section describing the presentation of the country review report of Kenya at the summit of the Forum in 2006, and leads to an overall conclusion.

6.2. The Governance Structure of the Review Mechanism in Kenya: Strong Accountability Mechanisms Limiting Unreasonable Power Politics

Analysis of the African Peer Review Mechanism process in Kenya helps provide insight into the role of functional differentiation and organization path dependence in the decision-making process of the Kenya country review process. It demonstrates how individual entities can emerge in an organizational setting and gain autonomy in their institutionalized environment. The emergence and influence of such entities is seen as rooted in the institutionalized and organizational norms that were established in the decision-making process, following from the previous experience of other States.

After signing up to the APRM, Kenya designated the Ministry for Planning and National Development as the Focal Point of APRM process (Herber and Gruzd 2008: 189; Masterson 2005: 10). At the time of the review process in Kenya, only 25 countries were participating in the process.¹² Unlike the Ghana review governance structure, the Kenya review was modelled on a system that did not establish a separate and independent Secretariat for the National Governing Council, reporting directly to a minister under their supervision. That notwithstanding, the governance structure of the APRM in Kenya was characterised by an extensive differentiation of functions. At the zenith of the governance structure was a Minister of State, who served as the main Focal Point for the process and gave political direction to the implementation of the review process. As per established precedent in the reviews of Ghana, Rwanda and South Africa, the Focal Point served as the main hub for the coordination of the activities of the review (APRM Guidelines, paragraph 34). This practice was envisaged to help in making identified policy

¹² As of May 2006, there were 25 APRM participating countries: Algeria, Angola, Benin, Burkina Faso, Cameroon, Republic of Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Uganda and Zambia.

failures known to the government, in order to prioritise them in national planning and development. As the Focal Point, the Minister, in charge of the coordination of the review of Kenya, arrogated to himself the powers needed to control the activities of the members of the National Governing Council, which was designed to be independent of the activities of the participating State in the review process. Under the chairmanship of the Minister of Planning and National Development, the government reconstituted a NEPAD steering committee in early 2003 under the National Rainbow Coalition (NARC) (Herbert and Grudz, 2008: 190).

The steering committee had a membership of 15 persons. They included permanent secretaries from some ministries, academics, and representatives from industry and nongovernmental organizations. The task of the steering committee was to establish the Kenya NEPAD Secretariat in order to pave the way for the successful implementation of the APRM country review process in Kenya. It was also its responsibility to organize a high-level interim task force, made up of both government and non-state actors, to provide interim coordination and the necessary modalities for the creation of a National Governing Council (Masterson 2005: 10). Through this process, a mechanism was provided to guard against the temptation of wholly selecting members who promoted the interest of government in the review process.

With the establishment of an APRM task force at the national level, a clear signal was given of the intention to institutionalize the country's structures for the review process. The key functions of the task force, among others, were to propose a detailed programme for the process in Kenya. In addition, the task force adopted and developed robust terms of reference and guidelines for the various institutional structures for the APRM in Kenya (Akoth 2007: 11). In this regard, the task force ensured that a timeline for the APRM process in Kenya was in place to precisely gauge progress and achievement through the various milestones of the review process.

The task force was responsible for the appointment of a permanent National Governing Council to manage the country self-assessment of the Kenya review process (Masterson 2005). It is apparent that deploying such an interim task force in the selection of a National Governing Council created an incentive for the selection of a team that was representative of perceived median interest constellations that might come to be involved in the process of the review.

Another advantage of adopting this two-step model in the appointments of members to the National Governing Council was that it ensured that civil society and non-State actors were actively involved in the process, and able to curtail any instances of similar conflicts to those that unsettled the initial stages of the South African process (Masterson 2005). As has been argued by Herbert and Gruzd (2008), the launch of the APRM in almost every country raises questions of how the process will be managed, as well as the nature of consultations that will be held. In some instances, the obscure ways in which these genuine concerns are handled have tended to hinder the initial organizational process. Consultation among actors, on the modalities and methods of participation in various levels of the decision-making in the review process, was seen to be important in defining the kind of institutions that were ultimately settled upon at the country level. It was therefore seen as a pragmatic move of the Kenya APR process to deepen consultations with potential actors in the process, which could, as much as possible, curtail any initial disagreements that could stall the decision process. In this regard, the process adopted ensured that civil society was given a voice at all stages of the process (Masterson 2005:10). Giving civil society groups the highest visibility during the process contributed to deepening transparency and accountability among decision makers in the process. At the same time, it also created another incentive to hold decision makers accountable at each stage of the process. This was because civil society representatives brought on board their expertise in the issue areas covered by the review mechanism. Overall, then, the decision of the task force to engage broadly on the formation of the National Governing Council made a significant contribution to defining the nature of the review process.

The formation of the National Governing Council to manage the peer review process was an important feature of the APRM institutional design in Kenya. Kenya's APRM Governing Council was composed of 33 members, drawn from six different groups. Membership of the council comprised academics, religious leaders, civil society groups, policy practitioners and government representatives. The Council arrived at decisions based on a simple majority. Of the 33 members, eight were non-voting members representing the lead technical agencies and the four conveners of the thematic areas (Herbert and Gruzd 2008: 194). Seven *ex officio* members, being representatives of various line ministries and key public institutions, were also part of the council. An important aspect of the composition of the Governing Council was the dominance of non-state actors. Twenty-four out of the 33 members were representatives of professional and

civil society groups with huge expertise in the main issue areas of concern to the review mechanism.

The Governing Council was intended to be an independent body, with the powers to make final decisions on the management of the review process in Kenya. Within the governance structure of the review, it was under the supervision of the Ministry of Planning and National Development. This arrangement, to some degree, had the potential to jeopardize the operational capacity of the Council to fully remain independent. In discharging the duties conferred on it, the Council was not subjected to executive control in the discharge of its mandate. Protecting the independence and autonomy of the National Governing Council was necessary to ensure credibility and accountability among decision makers.

The discretion of the Minister of Development and National Planning, with the opportunity to appoint two members, was subject to some terms and conditions. The Minister, in exercising the discretion to appoint 2 members on to the National Governing Council, was mandated to take into cognizance the need to create balance in the representation of various interests groups, and to follow ‘any other criteria’ (Herbert and Gruzd 2008:194). An attempt was made to guide the selection of the Minister, to some extent, with the intention of limiting the discretionary powers of appointment bestowed on him. By providing a guide to the considerations to be taken into account before making such appointments on the Council, it thought it would be possible to curtail the discretion entailed in his powers. In practice, however, such an attempt proved illusory. In the first place, any note of caution implicit in the criteria, concerning the basis on which an appointment could be made, was not backed by any further checks and balances. Since there was no stated need for any consultations with relevant stakeholders, the flood gates were opened for the minister to capriciously exercise the powers enshrined in the guidelines for the review process. It is not clear what ‘any other criteria’ might have meant in the context. The very vagueness of the terms of reference in this sense leaves a great deal of leeway for the appointing authority to appropriate powers vested in them in any manner that might seem appropriate.

The Governing Council provided political direction for the processes leading to up to the compilation of the country self-assessment report (Herbert and Gruzd 2008: 191). It was also

entrusted with a planning role, being mandated, amongst other tasks, to plan and develop a programme of action that formulated measures required to address challenges identified in the review process. As has been the practice in most countries, the National Governing Council also played a facilitating role in relation to the visit of the country support mission and the country review mission. In facilitating the movement of these teams it respected the need not to interfere in the fact-finding missions of the teams, ensuring that a credible country review report would be delivered. The assistance provided by the Governing Council to the review mission gave it access to almost every part of the country to verify information provided by government.

The Governing Council was given the responsibility to manage the in-country review process, and was therefore responsible for the appointment of the lead technical agencies to provide technical and expert reviews on the specific areas of the APRM (Masterson 2005: 11; Herbert and Gruzd 2008: 15). By taking away the authority to appoint lead technical institutes from the government, the structure intended to insulate itself from naked political interference from the executive arm.

In furthering this aim, the Governing Council was institutionally modelled to be independent in its operations, so as to signal a credible and open review process. In this way, the structure ensured that decisions of the Council were not based on a narrow view of the constituencies they represented, but were expected to be representative of the entire body. In this light, decisions made by the council were held to be binding on all members. As a consequence, decisions made on issues pertaining to the management of the review process at the council level were not to open to appeal by any dissatisfied member. Furthermore, the decisions of the Council were intended to be fully informed by the expert bodies providing information and opinion on aspects of the review.

To further its appointing role, the National Governing Council was serviced by the Kenya NEPAD Secretariat, under the supervision of the Ministry of Planning and National Development, whose staff was seconded from partner institutions. The Secretariat was headed by a chief executive officer who implemented the strategic plans of government on NEPAD-related projects and the APRM. The APRM desk in the Secretariat had two programme managers and a programme officer to coordinate and advise the chief executive office on the implementation of

projects related to the APRM.¹³ The Secretariat assisted in facilitating the work of the Governing Council by providing logistical and administrative services, coordinating training workshops and conferences related to APRM activities. It therefore served as a point for disseminating information about the APRM to relevant stakeholders, and also collected data for the purposes of the country self-assessment process and the drafting of periodic reports on the implementation of the APRM national programme of action. Over the years, it has also been the mandate of the Secretariat to update the continental APRM Secretariat on the progress of the review process.

Another important institutional component of the Kenya review process was seen in the role of technical agencies. Leading technical agencies, in the context of the Kenya APRM review, served an important role in providing expertise on the issue areas of the review process. Four technical agencies were mandated to compile a draft country self-assessment report and programme of action (Herbert and Gruzd 2008: 190). The Governing Council appointed four independent and reputable research organizations, known for their expertise in the thematic areas of the APRM. Experts within the APRM decision process advised the National Governing Council during the formulation of policy proposals for the national programme of action. The information and analysis generated by the expert technical agencies then informed the work of the review mission. The proposals put forward by the expert technical agencies provided a guide to members of the review team in the formulation of their final recommendations on policy options and alternatives to the problems identified in the draft country review report. If member States, in the review process, attempt to pursue their interests in response to the ‘big issues’ that accompany the review report, the information provided by the various lead technical agencies serves as the main means for judging the reasonableness of the policy options available at each stage of the process. The presence of thematic conveners within the institutional structure demonstrates an attempt to design a decision making process which is accountable at each stage of the process. The thematic group conveners served as the interface between civil society and the research institutes (Herbert and Gruzd 2008: 191). Conveners organized forums that facilitated further non-governmental organizations and other experts to make relevant input in the self-assessment report and the draft national programme of action.

¹³ Found on the Kenyan NEPAD website <http://www.nepadkenya.org/staff.html>

It is evident from the brief description of the functions and duties endowed to these various bodies that accountability mechanisms were intended to ensure adherence and non-abuse of the competencies of the National Governing Council and the APR Panel. The approval of the guidelines to the APR questionnaire used to inform the country self-assessment is perhaps the most far reaching power of the APR Panel in the review process. This is so because such approval almost amounts to rule-making, as the APR questionnaire is expected to guide the State under the review in the methodologies to be employed in arriving at the draft self-assessment report. In effect, the APR questionnaire for the country self-assessment report constitutes a set of highly detailed criteria to assess each of the thematic areas under review. This is supplemented by guidelines for the country review and any other information that originates for the APR Panel for that purpose.

The National Governing Council is structured with the mandate to implement set guidelines by producing a country self-assessment report which serves as the basis for subsequent decisions on the country review process. Guidelines for countries to undertake the self-assessment are published, and may be adopted by other countries for their country review processes if the best practices identified fit their particular situation. If decisions of an approval system are to be nonpartisan and problem-adequate, as suggested by Gehring and Plocher, accountability mechanisms must be designed in such a way that they create incentives for stakeholders to restrain from the power to bargain over issues that might not be in their best interest (Gehring and Plocher 2009:11). In this regard, problem-adequate decisions on recommendations of the APR can emerge if sufficient incentives are created by accountability mechanisms to deprive actors of the ability to resort to their bargaining power in influencing the final decisions of the review process.

Accountability can be achieved through a variety of mechanisms. The multi-sectored and inclusive composition of the National Governing Council helps to sort out parochial interests that individual members may pursue. This is achieved by ensuring that decisions of the governing council represent the entire committee and not individual members in the council. By assigning the power to arrive at a decision to a committee, members to a large extent are pushed to find solutions that are representative of the general interests of all actors in the decision-making process of the African Peer Review Mechanism. Decision makers, at each stage of the review

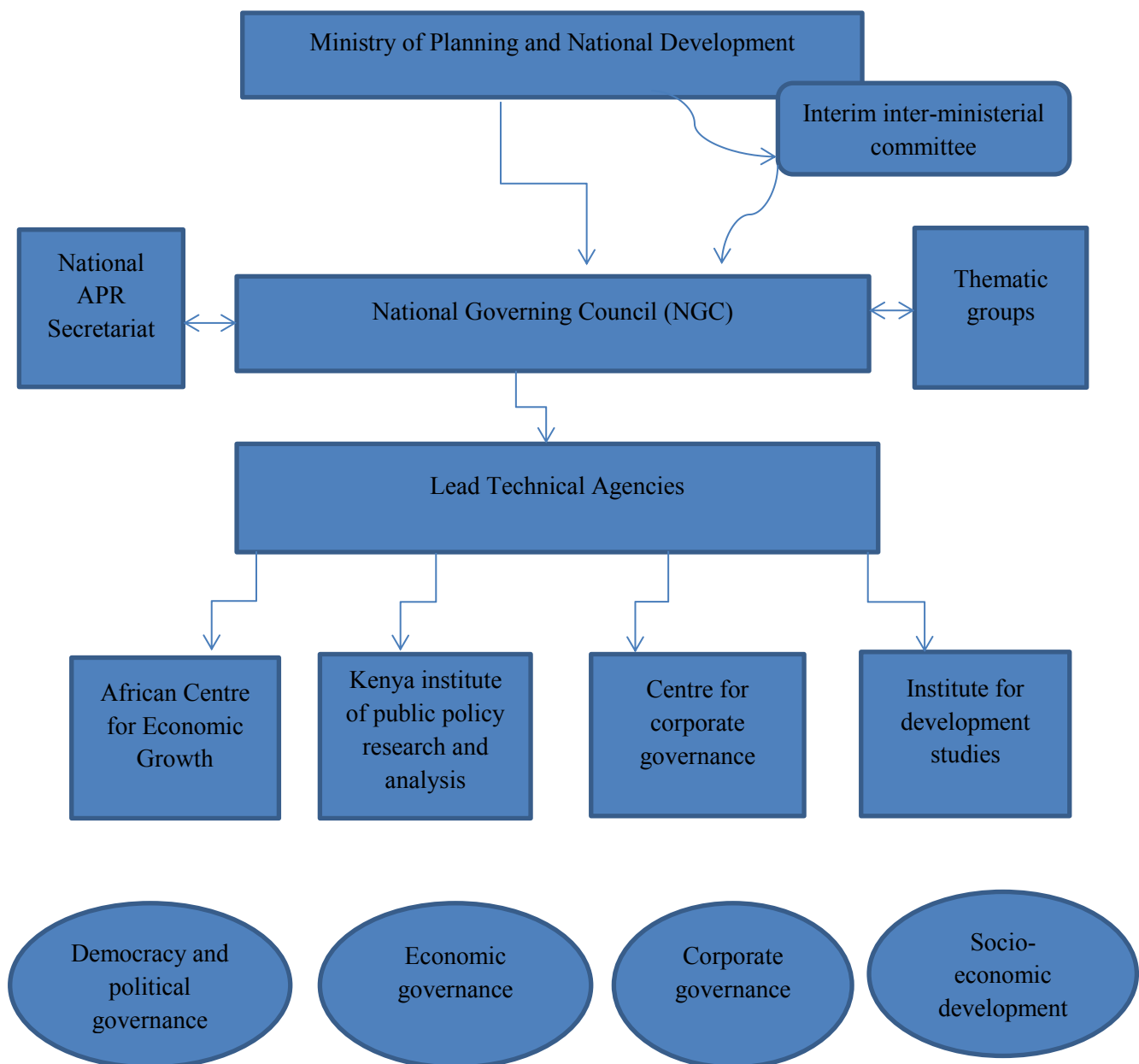
process are therefore formally pushed to be accountable for their decisions. For instance, the 33 members of the National Governing Council represent a wide range of professional, technical and advocacy groups with high stakes in the issue areas of the review mechanism. These appointments were sub-divided into six categories (Herbert and Gruzd 2008: 94), where each category was allocated a number of representatives, based on predetermined criteria of the APR task force, put in place to define the institutional set up of the review process in Kenya.

Any attempt by any of the blocs in the Council to pursue partisan interest could slow down the decision-making process or possibly truncate it all together. The Governing Council is thus subject to the power of committee governance (Sartori 1987), with a demand for an accepted resolution of every decision on the numerous issues of the review. As the country self-assessment at the country level focused exclusively on specific thematic areas, agreed upon by the Heads of State participating in the APRM, it was thought difficult to accommodate the interests and preferences of all Council members through any act of bargaining. To overcome this, members with different positions on an issue were expected to accommodate their preferences and turn to the commonly accepted guidelines to provide a focus on which all expectations could converge. The guidelines for the review mechanism, in this instance, served as mandatory criteria which guided the behaviour of all actors in the decision-making process. In practice, committee governance is reinforced by the fact that each member of the Council acts in their personal capacity.

In addition, the review process in Kenya provides a multi-layered decision-making process and encourages the active involvement of several actors and stakeholders (See figure 3). This is evident in the involvement of civil society groups and professional associations in the formation of the national governing council and the technical and research agencies. At the national level, several consultative fora were organised by the national governing council to involve the interested public in the issues related to the thematic areas of the review process. This resulted in a situation where multi-sectored stakeholders were engaged in the organizational structure of the review process in Kenya.

The governance structure within which the Kenyan Review Process took place is shown diagrammatically on the next page:

Figure 3: Governance Structure of the Kenyan Review Process, Author's Illustration



As a consequence, when the government of Kenya acceded to the APRM and gave notice to the Forum of its intention to be reviewed, a taskforce was commissioned to put into operation the institutional arrangements necessary for the review to take place. A country review process is always initiated by the interested state by depositing the MOU of the APRM with the continental

secretariat (APRM Guidelines, paragraph 30). The process is set in motion when country review structures are put in place by the participating state, and a country self-assessment process is started. The self-assessment is mostly led by research and technical institutions that are known for conducting independent research on the main issues of the APRM, balancing the fact that governments may have an interest in overstating their achievements in relation to goals of the APRM, hoping to generate positive reports on their governance credentials. They must, however, convince the decision process that the information on the key areas of the review process satisfies the general guidelines as outlined in the APRM self-assessment questionnaire.

As a result, a State under review sets the agenda for the process, but is accountable at each stage of the process as explanations and responses will be demanded by the review mission on issues that remain unclear and vague in the draft review reports. The country self-assessment is carried out by a group of independent research institutes with expertise in the areas of issue. Beyond this, the process is subjected to public scrutiny and interested individuals can make submissions on the various issues at each stage of the process. The technical institutes serve as the centres of expertise in the review process, and report to the National Governing Council and the APR country review teams. Though the research institutes are acting in their personal capacity on various issue areas, they do not have the final decision power on areas of their expertise. The final decision on the State of each of the thematic areas is left with the APR Panel, which then seeks final approval from the Forum (APRM Organization and Processes, paragraph 3.2).

Therefore, in essence, the technical institutes enjoy an advisory role. The influence of the research institutes depends on whether or not their recommendations are accepted by the country review mission and the APR Panel. For each issue that is raised by the research institutes and the country review team, detailed recommendations and background information pertaining to the issue are provided. Since the research institutes are accountable to the country review mission and the National Governing Council, strong incentives are generated to provide sound expert advice that is devoid of any parochial interest.

Additionally, the decision-making bodies in the review process are externally accountable to the general public. As a result, non-governmental organizations and civil society groups are involved in the country self-assessment process. The country review team and support teams therefore

invite and consult broadly with interested groups and individuals over their draft reports. In this respect, public observers serve to supply necessary warnings concerning the decision-making process of the peer review. Civil society groups may intervene with adequate and better information on a particular issue that they feel is not properly assessed. The internal procedures of producing the country self-assessment report are so transparent that individual members, present at the national consultative and validation meetings, may make public statements on any issue area of interest to them. Proceedings of the various processes are published and the final country review report is posted on the website of the continental Secretariat of the APRM. It should, however, be noted that access to public consultations are quite restrictive and selective, as , in most cases, only technically competent experts in the thematic areas of the APRM can effectively participate in deliberations. Meetings of the APR Forum, at the Heads of State level, are even open to APRM partner institutions and civil society groups. The Forum undertakes the final approval of decisions and recommendations contained in the country review report that is submitted by the APR Panel. With these measures in place, the Forum, the Panel and the National Governing Council can reasonably expect that any poor decision or recommendation will be detected.

A further check is provided by the fact that APRM reports are tabled in the Pan-African Parliament for debate. The Pan-African Parliament debates final country review reports before they are adopted as working documents of the continental legislative body. This serves as an extra tool to lead decision-making processes into producing the most problem-adequate recommendations on the policy options available for each problem identified. The plenary sessions of the Pan-African Parliament consider for debate the final review reports of the process. While it can comment on policy recommendations and the programmes of actions proposed, the Parliament's debates do not in any way change the findings in the final review reports. However, the parliamentary debates are geared at making the review a more transparent process to create incentives for decision-makers not to deviate from the decision criteria for each of the issue areas. The Pan-African Parliament can make proposals for further elaboration of rules and criteria for decision-makers. In the last session of the Pan-African parliament in 2016, four review reports were laid before the house and debated upon. With the intervention of some advocacy groups, translations of the reports were provided in the official languages of the Pan-

African parliament. In this way, contents of the final reports are widely disseminated throughout the Continent through their representatives.

A careful examination of the procedures for the review process in Kenya, and the design of its governance structure, therefore clearly points to an intention to deny all bodies and decision-makers any opportunity to deviate from the well-reasoned decision criteria agreed upon, *ex ante*. From the formation of the task force to the composition of the National Governing Council, steps are taken to protect the decision system from arbitrary decisions that could contribute to slowing or distorting the review process. While the influence of the Technical Research Institutes relies almost exclusively on the expert knowledge of the members, the National Governing Council and the review teams, through several accountability mechanisms, are deprived of the ability to compromise on the agreed upon guidelines or to indulge in bargaining. The presence of civil society and APRM partner institutions make it impossible for States at the level of the Heads of State Forum to intervene in single cases which might not be in their interest. These mechanisms, together with others, complement each other to force States to accept the guidelines established for the review process. As a result, States are deterred from acting in a way that would lead to an inappropriate intervention in the decision making process.

6.3. The First Phase of the Review Process: from the Creation of the National Governing Council to the Follow-Up Country Support Mission

The early stages of the review process in Kenya provided a vague and imprecise structure to accommodate procedures, and were also characterized by imprecise decision criteria. As a result they created a demand for rules to guide the decision making process of the review in Kenya. As a result, the presence of diverging interests between actors had the potential to affect the contents of the decisions taken at each stage of the review process. The base APR documents, together with the MOU, which served as the basis on which the governance structure of the Kenya review mechanism was designed, lacked any precise rules and guidelines for the decision-making process in the review of Kenya. This led to disagreements between civil society and the government on the way to process the country self-assessment.

In March 2003, Kenya, along with Ghana, Rwanda and Mauritius, signed the memorandum of understanding, committing itself to be reviewed under the African Peer Review Mechanism (Akoth 2007: 1; Reitmaier 2011:5). Kenya was subsequently the third of the first four countries to be reviewed at the Heads of State and Government Forum in Banjul, the Gambia, in July 2006. A decision to participate in the review process was taken to indicate a commitment to good governance and respect for the principles of democracy and human rights (Manby 2005), as, for many critics, events had created a background where its new government needed to demonstrate an orientation towards the rule of law and fundamental human rights (Manby 2005; Herbert and Gruzd 2008). In demonstrating a commitment and shift in policy towards a more African focused agenda in the attainment of the NEPAD objectives, the acceptance of the APRM process seemed a promising project for the new Kenyan government to indicate a new direction for the governance of the country.

The memorandum of understanding, which underlines the duties and responsibilities of member States participating in the APRM, gives an unspecific mandate for member States in the implementation and the establishment of country level structures for the governance of the APRM. As a result the Kenyan decision process, from the outset, was subject to the possibility of disagreements between interested actors in the review process. The MOU is cast, at best, in general and vague terms. There are no specific detailed provisions over the procedures and governance structures that are to be established for the review process. Article 12 & 13 timidly welcomes the initiative taken by the accepting member States, whose intention was to implement the declaration of the 3rd November 2002 in Abuja, Nigeria on the African Peer Review Mechanism (Art. 12 of APRM MOU). The context of the accompanying provisions, concerning a declaration of intent to implement the principles enshrined in the declaration of democracy and political governance, appears not to give any specific guideline on the expected obligations and behaviour of member States in the attainment of the objectives of the review. This lack of precise guidelines therefore gives member States unlimited discretion in the implementation of the country self-assessment at the country level.

Article 13, which calls for commitments from member States participating in the APRM, is also vaguely framed. It calls for member states to ‘fully commit in the implementation of the New Partnership for Africa’s Development and in particular the African Peer Review Mechanism’

(Art. 13 of MOU of the APRM). It is not clear what it means to be fully committed. Member states can thus make available the resources needed for the country level process, but remain reluctant over implementing the recommendations that may be contained in the final programme of action. As a result of the imprecise and vague nature of the MOU, the start of the Kenyan process was mired with disagreements on the formation of the National Governing Council, and the level at which it was to be placed. Civil society groups wanted to lead the process, with control at the country level, to ensure that government did not take full control of the decision-making process. As stated in the founding documents of the APRM, the purpose of a review is to create a credible and independent self-assessment of the programmes of the State under review, in order to enable a candid and true discussion of the challenges and progress required in the issues of concern to the review process (APRM Base Doc, paragraph 3). In this respect, in the light of these vague parameters and potential issues of control, the formation of the National Governing Council was highly instrumental in the process of getting the Kenya process started at the country level.

In February 2004, in response to the first summit of the African Peer Review Mechanism's agreed Kenya review, a Focal Point was appointed and a NEPAD Secretariat established (Communiqué of first APRM summit, 2004). Following the establishment of the Secretariat, a task force was founded, with the remit to serve as the coordinating authority for the review process in Kenya. The fact that the initial composition of the task force was dominated by government functionaries led to some disagreement between civil society and government over the need for civil society representation. An issue and source of contention, at this stage, concerned the method of nomination of representatives of civil society into the Governing Council (Reitmaier 2011:5). While input from civil society agitated for the nomination of its own representatives into the Governing Council, formed under an umbrella coalition of NGOs in Kenya, the Kenyan Focal Point held the view that the authority to make appointments was its own preserve. In April 2004, the South African Institute of International Affairs organised a workshop in Nairobi with the purpose of sharing information and building the capacity of possible instruments that could be used in the review process in Kenya. The Focal Point had, seemingly, taken the decision to go ahead with appointments of members into the National Governing Council without any consultation with relevant stakeholders (Herbert and Gruz 2008: 192). Civil society groups, at this point, protested, and formally demanded the Focal Point

ensure the independence of the Governing Council by allowing civil society organisations (CSOs) to appoint their representatives. Disputes over the composition and appointments of representatives to the Governing Council delayed the decision-making process for a considerable time. As a result, the National Governing Council did not undertake any substantive work for almost three months, and there was no meeting during this period to discuss any substantive issue relating to the country self-assessment.

Despite these background deliberations, a country support mission was deployed to Kenya. It was headed by Graca Machel, a Panel member who became responsible for the Kenya review process in July of 2004. Other members included senior personnel from the African Development Bank, the United Nations Development Programme (UNDP), the United Nations Economic Commission for Africa (UNECA), and representatives from the APRM continental Secretariat (Akoth 2007: 8). The composition of the country support team provided substantial incentives for members of the National Governing Council and the Technical Research Institutes to make decisions that are problem-adequate, because members of the country support team were accepted experts on all of the diverse areas of focus in the review process. Through this expertise they contributed directly to the country self-assessment process in meetings at the country level with members of various bodies. Even in a scenario where the country support mission might prove unable to detect a badly formulated decision on certain aspects of the review process, an opportunity still existed for other stakeholders to then intervene in the review process through these public consultations with bodies who held expert knowledge.

The purpose of the country support mission was to assess the process and mechanisms put in place by Kenya to undertake its self-assessment and to approve a draft a programme of action (Communiqué of APRM Support Mission to Kenya, 27 July 2004; Kenya Country Review Report 2006: 8). It was within its mandate to assess Kenya's readiness for the review process, and to offer technical assistance, if required (Akoth 2007: 8). According to its mandate the country support mission plays the role of an advisory body servicing country level structures with expertise, in order to prevent any challenges and failures in the process of the review. This preventative function provides impartial arbitration during the build up to the county self-assessment report, aiming to settle contending issues in the National Governing Council.

During the visit, the memorandum on the technical assessment mission and the country review mission was signed between the APR Forum and the government of Kenya (Communiqué of the APRM Support Mission to Kenya 26 to 27 July 2004). This essentially committed the government to a transparent and open review process, and also called on the government under review to provide the necessary resources available for the review to gain access to all sections of the population in order to validate its self-assessment (Communiqué of Support Mission to Kenya, 2004).

According to the Communiqué of the Support Mission to Kenya of 27th July, 2004, adequate progress was being made in the implementation of the review process. The team appeared to be pleased with some structural advancements made in setting up the country level institutions which define the review process at all levels of the process. In particular, the team commended the appointment of a Focal Point for the APRM as the Ministry of Planning and National Development (Communiqué of Support Mission to Kenya, 2004). With the focus of the APRM on socio-economic development, the support team was of the opinion that the Focal Point could play an active role in steering the national APRM process. Given that the role of the Ministry of Planning and Development was to be focused on the key thematic areas of the APRM, it made sense to have it co-ordinate the implementation of the review process.

Other efforts that appeared to have received commendation from the support mission included the establishment of a task force, comprising members from both government and non-governmental organizations, to conduct the national process pending the appointment of the National Governing Council (Communiqués of Support Mission to Kenya 2004). The government also held consultative APRM sessions on the 14th and 21st July, 2004, prior to the visit of the support mission to Kenya. Consultations in these forums, with contributions from all stakeholders that had an interest in the implementation of the review process at the country level, resulted in the appointment of nominees for the National Governing Council.

In the consultations and meetings between the country support mission and the Focal Point a consensus was reached on resolving the contentious issues that had affected the operations of the review process. The request by civil society to be fully represented throughout the review process was dealt with positively, after the support mission suggested an increase in the number

of representatives for civil society members. The membership of the National Governing Council was eventually expanded to include more stakeholders, with civil society bodies selecting its representatives. The conveners for the four pillars of the review were also representatives of civil society (Reitmaier 2011).

At this point stakeholders, in support of a National Governing Council with broad representation from all sectors, were pushing for the decision-making process to proceed, as far as possible, towards accepting guidelines and procedures on the activities of the various committees that were envisaged in the governance structure of the review process in Kenya. This was seen as a necessity as the main guidelines to the review, and the supplementary guidelines which were issued by the APR Panel, did not define the exact procedures for the implementation of the review. While it was clear that the National Governing Council could actively participate in the country self-assessment, with adequate representation from civil society, the decision of the country support mission left open the question of the exact nature of concrete decision criteria to guide its conduct. In practice, the country self-assessment was guided by a questionnaire prepared by the continental APRM secretariat, which was adopted to meet the prevailing circumstances in Kenya. Therefore, to overcome any further stalling of the decision-making process, as a result of this absence, the Technical Research Institutes and the conveners for the thematic areas were tasked to develop a set of guidelines and checklists for envisaged focus group discussions (Reitmaier 2011).

The call for a criteria based decision-making system at the country level was deemed necessary for two related reasons. In the first place, since participating States and stakeholders have, to some extent, different preferences and interests in the outcome of the review process, it becomes important to prevent actors from using the various bodies as bargaining arenas. In a situation where a stakeholder might pursue a parochial self-interest in any of the committees working at the country level, decision guidelines may serve as a means to prevent any power-based bargaining which might arise in situations where a decision does not favour that party. Secondly, it is received knowledge, from research on committee governance, that criteria based decision making can do much to facilitate decisions. By establishing the criteria on which decisions are to be based, especially over issues that may have asymmetrical outcomes for actors, the provision of guidelines may overcome the conundrum which might arise where actors have to intervene in

decision outcomes that are not in their interest. As a practical example of this problem, even where members of the Governing Council might generally agree on a need for guidelines for the operations of the conveners and the Technical Research Institutes, the issue of monitoring and oversight of their operations still remains contested and unresolved.

As a consequence of these unresolved issues, the first meeting of the National Governing Council was delayed until January, 2005 (Reitmaier 2011), although the 33-member National Governing Council had been officially inaugurated in October of 2004. As noted earlier, there were serious disagreements over the process, and these administrative challenges reflected a persistent rift between defenders of a proposed government-led process and the agitators of demands for broader civil society representation. As a result, the activities of the National Governing Council were slowed down substantially (Reitmaier 2011; Akoth 2007:9). A closer look at the trajectory of events to this point shows a clear strategy by government to systematically neglect civil society in the activities of the review process. According to Akoth (2007), in spite of the insistence of the continental APRM Secretariat and the APRM Panel for the process to be participatory, it took intense lobbying from *CSOs* and the intervention of the country support mission led by Graca Machel to get civil society fully involved (Akoth 2007: 9). Civil society, as a matter of fact, further challenged the procedures being employed in the lead up to the self-assessment process. They argued for an entitlement to fully participate and make input into the self-assessment report. While government sought to maintain its dominant position in the process, there were threats from civil society groups to boycott the proceedings of the country review process and set up a parallel system to make input through the review mission, which raised tensions between both sides.

A second country support mission to Kenya, in July of 2005, did little to overcome the disputes in the National Governing Council, which at that time, had a majority of its members representing civil society. Though there are some obvious advantages to the Kenya governance model, with its element of a dominant civil society, it equally has some drawbacks. According to Masterson, an advantage of the approach adopted by Kenya was an increased ownership of the process (Masterson 2005). With the highest number of representatives on the National Governing Council, civil society obviously had clear channels of communication into the all-important decision-making body of the review process at the country level. It almost appeared as

if civil society had the power to set the agenda for the issues that were tabled for discussion at the meetings of the National Governing Council, as the four thematic convenors that were responsible for organising the conferences and workshops for inputs into the country self-assessment report were members from civil society. In this way, the National Governing Council had the advantage of being equipped with experts from civil society on the thematic areas of the review process.

Notwithstanding the advantages of this arrangement, the structure was prone to the danger of the National Governing Council falling prey to the parochial interests of members of civil society, particularly where members in the Governing Council found an opportunity to advance their own cause through the APRM (Masterson 2005). If this had become an accepted practice, there would be an inevitable potential to undermine the central role of the National Governing Council in making problem-adequate decisions. To preserve the focus of the National Governing Council, the establishment of multi-level stakeholder participation in the review process could serve as a mechanism to prevent members in the Governing Council from pursuing any interest which was detrimental to its smooth operations.

As a corollary of the country support mission of 13th to 15th July 2005, a new plan to complete the country self-assessment was put in place. Revised deadlines for the submission of the self-assessment report became necessary because of unnecessary delays in the process of administering the surveys and gathering information from other regions of the country. These delays meant that the draft country self-assessment report could not be submitted to the APR Panel for consideration, as initially envisaged. The Kenya review process appeared to have stalled at this point as tensions over the management of the country self-assessment had virtually rendered the entire governance system non-operational (Akoth 2007: 12). The National Governing Council, mandated to direct the implementation of the country self-assessment, had few guidelines or clarity in its administrative procedures. Among other things, there was no clear guidance on how, and under what conditions, members of the National Governing Council could be sanctioned for a breach of the terms of their appointment.

In summary, the first phase of the review process was characterised by a complete absence of decision criteria and procedures for the conduct of the National Governing Council activities. As

a result, decision-making procedures were weakly structured. This led to a situation where the Governing Council referred almost every difficult outstanding issue back to the Focal Point.

6.4. The Second Phase: Decision Standstill as the Demands of Civil Society Impede Progress

The second phase of the Kenyan review clearly demonstrated the effects of a poorly designed accountability system on the governance of a decision-making process. The absence of rules of procedure to regulate the conduct of Council members gave them considerable leeway on all decision proposals. This, to a large extent, did not allow for the development of an internal accountability system as a reference point to hold peers accountable, even at the level of the APR Forum. There seemed to be little or no incentive in place to hold members of the Governing Council and the Focal Point accountable, or to prevent the pursuit of individual parochial interests in the decision process. As a consequence, the review process was completely paralysed, and there appeared to be virtually no regulatory framework to ensure the successful implementation of programs of action that it generated.

At the level of National Governing Council, members were generally perceived to hold divergent preferences on issues shaped around the four thematic areas of the review process. While members with a civil society background might be expected to promote policy issues that are market oriented and based on principles of accountability and the rule of law, most government-aligned members might be seen as being interested in decisions and review recommendations that portray the government in a good light. As a consequence, the absence of guiding criteria for decision-making raises the stakes in preventing the arrival at any consensus in the Council, and gives the Focal Point an opportunity to unnecessarily interfere in the work of the Governing Council.

The minister in charge of the Focal Point exploited loop holes in the APR Base document and took the action of dismissing three members of the Governing Council, on 20th July, 2005. The Base documents, which stipulate the nature and process of organising the country structures for the governance of the review process, fail to explicitly outline the conditions under which a

member of the National Governing Council could be sanctioned at the country level. The chair of the National Governing Council, and two other members, were sacked without due process by the Minister in charge of the Focal Point (Akoth: 2007: 13), whose reason for the arbitrary dismissals was reported to be linked to allegations by the Minister that these three individuals had made the work of the National Governing Council almost impossible (*East African Standard*, July 2005).

At this stage of the review process, these actions raised concerns over overt interference by the Minister, in that he acted within what was conceived as an independent body in the governance structure of the review process in Kenya. The independence of the National Governing Council was conceived of as an important requirement and component of its ability to make decisions that are in the best interest of the various interest constellations of actors in the decision-making process of the review. Any indication of that the National Governing Council was controlled by an agent of the government under review brings into question the credibility of the final self-assessment report produced. In this particular instance, the Minister in charge of the Focal Point clearly meddled in the operations of the Governing Council, as the dismissals were an imposition of his sanctioning powers on a hitherto independent body. In response to these actions, the Kenya NEPAD Secretariat, which serviced the review process in Kenya, issued a press statement intended to correct information that was in the public domain on the circumstances leading to the dismissal of the three council members. In a press statement dated 22nd July, 2005, the NEPAD Secretariat described as ‘incorrect and misleading’ accounts by a section of the media that the Minister of Planning or any government official had attempted to micromanage, control or have any undue influence in the APRM decision-making process (Akoth 2007: 14, Press Statement, Kenya NEPAD secretariat, 22nd July 2005).

The consequence of this incident became clear, and meant that the decision-making process was further delayed and the National Governing Council was unduly paralysed. But the NEPAD Secretariat continued to deny any possibility of the decision system running to a halt as a result of the dismissal of some members of the council. According to the Secretariat the ‘degazettement’ of just three members out of a total of thirty-three could not have affected the operations of the National Governing Council (Press Statement of the Kenya NEPAD Secretariat, 22nd July, 2005). The subsequent meeting of the National Governing Council on the

27th July, 2005 appears to have endorsed the dismissals of the chairperson of the Council and the two others. Reports from the minutes indicated that the National Governing Council at the meeting was briefed of the dismissals. This briefing indicated that, on the basis of information received by the Minister on the workings of the National Governing Council and the challenges the review process was encountering, he took a decision to 'degazette' the three from the Council. The dismissals were deemed appropriate as the Minister claimed to have acted within the powers delegated to him by the Head of State as the appointing authority of the Council (seen in Akoth 2007: 13). An interesting aspect of the propriety of the dismissals, vis-a-vis the powers of the Minister as the Focal Point, was the absence of standard operating procedures for the Council. In the absence of any standard procedures for the conduct of the Governing Council, it was thus unsurprising that the Focal Point appeared to misuse its mandate as the appointing authority in order to justify the dismissals.

Akoth's (2007) perspective on the dismissals and the controversy surrounding these issues is illuminating. According to his observations, the meeting that purported to have endorsed the dismissal of the three council members did not appear to have discussed in detail reasons for their abrupt sacking. In his view, it seems unusual that the meeting proceeded to confirm the appointment of a new chairperson, but failed to agree on the issue of replacing them. Akoth sees it as strange that the Council was unable to alter the agenda of the meeting to address the topic of replacement of the sacked council members, giving as their reason their opinion that the appointment of new council members was beyond their scope of competence (Akoth 2007). On the other hand, the Council indicated its preparedness to offer advice to the Focal Point should they be consulted on the issue.

The aftermath of the issue brought the legitimacy of the National Governing Council into question. Though a new chairperson for the Council was elected from among the remaining members of the council, and not selected by the Minister at the Focal Point, engagement with civil society appeared to have been dented. While opinion on supposed meddling in the affairs of the National Governing Council was divided among members of the council, an expert on the APRM suggests that the Minister's intrusive action into the activities of the National Governing

Council, at this stage of the review process, was at best irresponsible and lacked proper recourse to best practice.¹⁴

The three dismissed members of the National Governing Council proceeded to the High Court to sue the Minister for wrongful dismissal, also seeking a declaration to the effect that the Governing Council had been starved of funds from the Ministry of Planning and Development (Herbert and Gruzd 2008:196; Akoth 2007: 12). The case, however, was dismissed by the High Court in October of 2005. This wrangling between members of the National Governing Council and the Focal Point almost halted the entire review process as its decision-making was held hostage for close to nine months. The inability of the Governing Council to agree on criteria to guide procedures at the country level self-assessment, as well as outstanding issues on the legal standing of the Council in relation to other independent bodies established by law, contributed to contestations that delayed the implementation of the road map for the review process.

In a nutshell, the second phase of the review process was characterised by the arbitrary interference of the Focal Point into the activities of the National Governing Council. This subsequently led to a decision standstill in the Governing Council, where nothing much was achieved in relation to the completion of the self-assessment report. The absence of any decision criteria contributed to the haphazard situation that plagued the decision process of the review.

6.5. The Final Phase: the Country Review Mission and Demand for Accepted Standards of an Independent Assessment by Experts

In the third phase, although there was still no established decision criteria, experts played an important role in the production of the country self-assessment and the national programme of action. The committees that composed the self-assessment report and the national programme of action were left with large discretionary powers in the formulation of the final recommendations to the country review mission. In the light of vague or unavailable rules to regulate the review process, there was a need to fill the void with established practice or the use of experts in the key

¹⁴ Personal Interview, Ms Gertrude Takawira, Managing Consultant, Governance and Development Services Zimbabwe on the 15th November 2015 in Johannesburg, South Africa

thematic areas, in order to arrive at consensus on issues without bargaining. Problems in this situation were exacerbated by the fact that the decision process was delayed, with several decisions needing to be made on issues to be delineated in the assessment report as priority areas needing attention through the programme of action. As a result, recourse to using experts to define which issues to prioritise as the overarching ones in the national programme of action, benefited the decision system by introducing a consistent decision practice, acceptable to all actors in the review process.

From the 3rd to 17th October, 2005, a 19-member APRM country review mission visited Kenya. The aim of the mission was to assess the integrity of the country assessment and its processes, leading to the production of the national programme of action (Herbert and Gruz, 2008:16). The review mission evaluated the adequacy of the items included in the draft country programme of action, and identified gaps in the various issue areas of the review process. As a part of efforts to get a clear understanding of the issues, the team visited eight provinces, enabling the team to engage stakeholders and acquaint themselves with issues in the report. A series of meetings and interviews with relevant interested groups were held to verify the information contained in the draft self-assessment reports.

Prior to the composition of the country review report by the country review mission, the lead technical agencies had already produced an initial draft of the self-assessment report, in the third week of August, 2005 (Akoth, 2007:13). The process to arriving at decisions and recommendations in the draft self-assessment report was not entirely clear. However, a team of independent experts were organised to critique the initial draft. The team was tasked to submit the final version of the self-assessment report to the NEPAD Kenya Secretariat and the Ministry of Planning and Development (Akoth, 2007). An expert team, composed of academics and policy experts in the cognate fields of the review mechanism, worked from the end of August until the middle of September 2005 to ensure that the document was adopted as the self-assessment report of the review process in Kenya. It was initially reported in a newspaper on 2nd September that the group of experts had categorically rejected a draft self-assessment report which was to serve as the basis for producing the final self-assessment report (*East African Standard*, 2 September 2005), although, according to Akoth (2007), this claim was denied by the team. The procedures through which the expert group formulated the key issues in the final self-

assessment report appear to have been based entirely on issues raised by the lead technical research agencies.

A National Consultative Forum was organized in early September 2005 to validate the self-assessment report that was produced by the expert group, and was open to members of the public. Most of the participants in the Consultative Forum had previously attended events related to the review process. As a result, participants were familiar with the APRM process, having participated in previous provincial forums to validate initial draft reports of the self-assessment process. As a result, the tabled report was familiar to most of the participants, and the final self-assessment report received endorsement, without any challenges. This showed that the decisions taken by the expert groups were popular with the participants at the consultative forum.

The Consultative Forum served as an extra accountability mechanism in the governance structure of the review mechanism. It enabled interested parties, and think tanks working on allied issues related to the APRM, to have another opportunity to shape the contents of the review report. Since most of the participants were a part of the process at the provincial level, it was easy to detect issues that appeared to have been brought in to the draft report in addition to agreed items listed at earlier forums (Akoth 2007). The fundamental issue with this means of making decision makers accountable is the limitation presented to participants with regard to technical issues being discussed, suggesting that the Forum prioritised a need to be accessible to experts on the issue areas of the review mechanism. This, to some extent, made participation less attractive to individuals with no expertise in the key areas of the review.

By providing this extra means to hold decision makers accountable for their actions, the governance system of the review process in Kenya provided incentives for the expert group to make decisions that adequately addressed the problems identified in the self-assessment process. Research on regulatory governance has shown that extra monitoring structures, and the involvement of the public, contribute to providing incentives to hold decision makers accountable for their decisions (Krapohl 2003). Members of the expert group, selected for the sole purpose of producing the self-assessment reports, had an incentive to produce a report that was not representative of their parochial interests. In order to demonstrate their expertise and credibility in the issue areas they were credited with, the group had the responsibility to produce

a self-assessment report that was problem-adequate in passing judgement on the various governance problems identified in the course of the review process. In addition, since the expert group was aware the report would be subject to a broad consultative process and handed to another body for fact checking and scrutiny, there was an incentive to produce a report that adequately addressed the issues from an expert perspective.

Notwithstanding accountability measures, put in place to ensure that the process leading to the production of the self-assessment report by the experts did not suffer from any intense parochial and power politics, there were no guidelines to direct the activities of members of these groups. The absence of concrete guidelines for the expert group did not in any way impair the ability of the group to successfully meet the requirement of submitting the self-assessment report, within deadlines, for public scrutiny. It is curious to interrogate incentives that might have played a role in enhancing the ability of the group to work without any major problems. With hindsight, it may be argued that the expertise and independence of the team played a major role in ensuring a problem-adequate process to the writing of the final report. In its composition the team of experts was appointed based on their knowledge and track record on issues related to the review process. As a consequence, their expertise appears to have been a guiding principle in the process leading up to the composition of the final self-assessment report. It appears that the deliberate decision, to dedicate a period exclusively for the process of composing the report, was useful in not distracting the main focus of the team. Even in the mist of media speculation on the purported rejection of the draft report that was presented by the lead technical research agencies, the expert independent team remain focused (Herbert and Gruzd 2008).

Even with the self-assessment report completed and submitted at the end of August 2005, the National Governing Council still had the task to deliver a national programme of action formulate to address any governance problems needing critical intervention. According to Herbert and Gruzd (2008), Kenya had outlined clearly the process leading to the development of this national programme of action in a SAIIA workshop on learning lessons from the APRM in September 2006. Considerable time and resources seem to have been invested in the process leading to the final draft programme of actions. Again, the lead technical agencies played a decisive role in working on the composite programme of actions for all the thematic areas of the review, before it was subjected to analysis by a group of permanent secretaries.

A multi-stage process was thus created in the production of the programme of actions. As a consequence, incentives were created for both the lead technical agencies and the permanent secretaries to be accountable for their decisions. To further enhance the need for a problem-adequate process, participants attended a residential retreat to discuss and ultimately endorse the programme of actions (Herbert and Gruzd 2008:2004).

Ensuring that the lead technical agencies were accountable to another body also provided an incentive structure to develop a concrete and problem-adequate programme of action to address each of the issues listed in the self-assessment report. An extra procedure was initiated which involved subjecting the programme of action to comments from each ministry, providing another avenue to detect unreasonable policy proposals that might have emanated from any of the participating bodies. Not only were the items listed in the national programme of actions subjected to wide scrutiny, they were also prioritised and adapted to meet the needs of the various ministries. In this way, for example, a clear framework was put in place to ensure that the national programmes of actions were costed in the short to medium term.

Following this process, the country review mission gathered its own independent information based on desk research, a task which was conducted by the APRM continental Secretariat. Based on the information gathered, the review mission subjected the final country self-assessment report and the draft national programme of action to scrutiny. In the process leading to the drafting of the final country review report, independent technical consultants and the APRM partner institutions were at the centre of the final review report. The independent consultants were assigned to the thematic area of their speciality in the review process (Herber and Gruzd 2008: 206). This resulted in a situation where experts, in each of the various issue areas, were given a task based around their expertise. To facilitate the composition of the country review report, the entire country review mission was subdivided into four groups to correspond to the main themes of the review process.¹⁵

The process leading to the composition of the country review report was guided by the work of previous missions, and the procedures for the conduct of a country review mission (APRM process and organization, 2003). Article 5 of the process and organization document of the

¹⁵ Personal Interview with Evelynne Change, Programme Office at the APRM continental Secretariat, on 17th September 2015 in Johannesburg South Africa

APRM partially addresses the measures needed to guide the conduct of country review teams (Art. 5 APRM process and organization, 2003), recommending that a country review team is formed for the purpose of a particular review process. It envisaged that the composition of any APR team be designed to reflect a balance of technical competence and professionalism (Art. 5.1 of APRM process and organization, 2003). As a result, members appointed to each of the APR missions were, uniformly, established consultants and experts in the main areas of the review process. The decision structure utilized experts who were expected to decide on issues listed in the country self-assessment report and the national programme of action based on their expert knowledge, and not on their political or parochial interest in the review process.

Further incentives were created for APR teams to form decisions based upon scientific information and the objectives of the review mechanism. A code of conduct and guidelines for the country review mission was provided for by the APRM Secretariat. It served as the main instrument to guide members in the teams to produce decisions that were in line with the principles and objectives of the review mechanism (APRM Guidelines, 2003). The presence of guidelines appeared to have helped in stabilising the decision process at this stage of the review.

Against this background, decisions for each of the thematic areas were arrived at by consensus. Each thematic area had a group of experts and consultants contracted by the APRM Secretariat for the exclusive purpose of investigating and interrogating the country self-assessment report and the national programme of actions.

The two-stage process adopted in the conduct of the country review mission in Kenya had some implications for the governance structure of the review process in general (CRR Kenya, May 2006: 6). The strategy of interacting with a diverse range of stakeholders including the National Governing Council, trade unions, academics and policy makers created an extra avenue for information validation (CRR Kenya, 2006). This brought to the fore the importance of information gathering in reporting and monitoring instruments in international governance. The availability and accuracy of information on the policy field under consideration was seen to facilitate the work of decision makers. Adequate information sharing was confirmed to lead to a situation where actors involved in a decision-making process were well informed of available alternative choices, based on the credibility of information received. Besides its ability to help

shape the direction of informed decision-making, the sharing of information may also have the potential to enhance trust among actors cooperating in a particular policy field. In a situation where the pay-off structure in a policy area is asymmetrical, information sharing plays a major role in stabilising coordination problems among actors. In so doing, it mitigates the potential of actors to free-ride, especially in a situation where the issue area is disproportionate in the distribution of outcomes. The presence of a third party to coordinate information in the provision of the public good is also seen as important in ensuring that coordination results in the best outcome for all parties in the cooperation project.

In addition, resorting to provincial forums tended to offer other means through which the country self-assessment report and the national programme of actions were fact-checked to ascertain their credibility and accuracy. By providing a multi-level scrutiny of the items listed in the self-assessment report, an opportunity structure was provided for actors to make decisions that are in the best interest of the review process. It has to be acknowledged, however, that this did not completely insulate the review process even at this stage from internal Kenya domestic politics.

In May 2006, the APRM Secretariat requested further information from the country review mission regarding issues related to the rejection of its draft national constitution, and the Anglo leasing scandals in which billions of Kenya shillings were purported to be paid in a fictitious security deal (Akoth 2007: 14). The exposition of this scandal at a time the country review report was almost finalised had major ramifications for political events and governance generally. While it had the potential to damage the reputation of government (Herbert and Gruz 2008: 2005), the high profile corruption cases also had the tendency to stall the review process and divert the attention of the media to issues unrelated to the review process. The APRM Secretariat therefore sent a team to specifically analyse the new developments and integrate its findings into the country review report. These developments were effectively dealt with by the team, and the issues related to the scandals were inserted as a separate appendage of the review report.

Following the completion of the review report by the APR review mission, it was subsequently presented to the APR Forum for debate at the AU summit of June 2006 in Banjul, the Gambia.

Following the debate on the report by the Forum, Kenya was peer reviewed. The President of Kenya was questioned by his ‘peers’ on issues raised in the report. According to Herbert and Gruzd (2008), Kenya was open to comments and not overly defensive concerning the difficulties and challenges identified in the report. However, there appeared to be no strong incentives created at the APR Forum to affect the behaviour of the State under review to implement the national programme of actions. Neither was there any opportunity structure at the level of the Forum, at this point, to restructure the governance procedures of the Kenya review process.

The conception of the final debate on the country review report, at the level of the Forum, appears to make it strongest appeal to the social force of ‘peers’ in the review process. In the particular case of the Kenya review process, the peer component appears not to have had any identifiable influence on the decision-making process as whole. According to reports by a participant at the APR Forum in June 2006 at the Gambia, the Heads of State and Government of participating countries in the review process did not disagree with any of the recommendations contained in the final country review report of Kenya.¹⁶ The ‘peer’ component in this sense did not appear to have any significant influence over the content of the final reports. Other than commending Kenya for taking the bold step to go through the process and offering suggestions on how to tackle some problems identified in the Kenya review, the Forum seems to have had no influence on either the content of the report or the organizational structure of the review process.

While the drafted national programme of action presented to the APR Secretariat contained 29 objectives, 153 sub-objectives and 368 monitoring indicators (Reitmair 2009), and the Kenya country review mission made several recommendations on the improvement of the governance process in Kenya, the review report did little to adopt any meaningful external procedures to govern aspects of the decision-making process in the review of Kenya. The recommendations contained in the country review report focused mainly on implementation of various policies, the monitoring of the programme of actions and suggestions on the way forward to address the deficiencies identified (Country Review Report of Kenya 2006). It appeared that the review teams, in general, refrained from making any substantive input to guide the conduct of the procedures of the various bodies within the review process. This could be as a result of their

¹⁶ Personal Interview with Ambassador Ashraf Rashed, Member of the APR Panel of Eminent Persons, on 17th August 2015 in Johannesburg, South Africa

loosely defined mandate, which is constrained to mainly focus on the composition of the country review report, based on the country self-assessment report and the national programme of action which is proposed by the country under review (APRM Organization and Processes doc. Paragraph 1.1d, 2003). It therefore does not appear that the review process had the ability to influence the behaviour of actors in the decision-making process through its statements and reports. Its weak authority was exemplified in the ability of the National Governing Council of Kenya to consecutively miss deadlines for the completion of the self-assessment process (Herbert and Gruzd 2008). Since the mandate of the review mission to some extent curtails its authority to structuring the decision-making process, it left it to concentrate on dealing with substantive issues related to the key areas of political governance, economic governance, corporate governance and socio-economic development.

Lack of regulations for the various APR teams, at the country level, left members with wide discretion when dealing with the expert reports from the technical research agencies. It also made it difficult to consider proposals on the listing or inclusion of items into the country review report. The technical research agencies continuously made proposals for the listing of items that needed proper policy interventions at the country level (Country Review Report of Kenya 2006). Notwithstanding their capacity to provide information on possible issues to be listed in the country review report as challenges, the research agencies were not able to submit their requests directly to the country review team. The draft report from the research agencies succeeded in sparking a huge discussion on the need to make criteria available to guide the process of listing issues into the country review report, as well to limit the apparent desire of the government to overshadow the decision making process (Herbert and Gruzd 2008). The draft report by the research teams did, however, form the basis on which other expert teams were assembled by the Focal Point to produce the final national programme of actions and the country review report.

Additionally, the governance structure under which recommendations from the technical research agencies and the expert teams were considered by the review team, was not seen to generate strong enough incentives to frame a discourse on the admissibility, or otherwise, of all recommendations contained in their report.

Although the final recommendations of the Kenya review process were the outcome of extensive consultations with diverse interests groups, discussed in informal consultations with consultants for the various pillars of the review process, strikingly no procedures exist for members of the review team to give reasons for their recommendations and decisions. As elaborated by Evelynne, each of the thematic areas of the review process was apportioned to a group of experts in the review team.¹⁷ Each pillar had a chairman and a consultant for the issue area of interest, the chairman giving leadership in the proceedings to issues related to their pillar. However, decisions on the contents of the recommendations presented by each group were guided by the consensus principle. The entire team attempted to find a consensus in order to adopt recommendations for their pillar, based on the information received from consultations and the self-assessment report. There was therefore a large margin of discretion by members of the review team in how they deal with recommendations in the final country review report. This leaves members with unconstrained discretion in the inputs they make into the final review report. In the Kenya review report, for instance, of the 159 issues that were identified and needed urgent policy intervention, the national programme of action directly addressed only 69 overarching issues (Herbert and Gruzd 2008).

Even though there is a practice on publishing the country review report following the Forum debates and reports at the margins of the Heads of State and Government meetings, the Kenya country review report was not immediately published. The self-assessment report itself was only circulated to a limited audience (Akoth 2007: 14). Delays in publishing both the country self-assessment and the country review reports were initially attributed to the need for coherence in presenting both reports at the same time, so as not to create confusion about the process. The Kenya APR Secretariat blocked the publication of the interim draft report, using a similar argument of avoiding inaccuracies. Proponents for the publication of the reports vehemently argued for the need for transparency and openness (Akoth 2007). Civil society and the media, in particular, pushed for a greater participatory process. They argued that publishing the reports at each stage of the process would provide a strong incentive to promote accountability and transparency in the decision-making process of the review. A further lack of responsiveness was exemplified by the fact that, in the particular case of the country self-assessment report, the

¹⁷ Personal Interview

National Governing Council had, on several occasions, missed the deadline to submit the final report to the review mission. Consequently, two separate amendments had to be made to the initial programme to enable completion of the self-assessment process.

In summary, in the third phase of the country review process in Kenya, neither the APR review team nor the APR Panel were able to resolve the challenges of the review through any meaningful guidelines. As a result, the decision system increasingly relied on the presence of expert committees to regulate the behaviour of actors through the production of decisions that were scientifically informed. As a consequence of these circumstances, the review process suffered from the consequences of affording too much discretion to members of the various expert teams, making the accountability system weak and ineffective at most stages of the decision process.

6.6. Conclusion

The analysis of the Kenyan review, offered above, is suggestive in several ways. First and foremost, it shows how a poorly designed decision-making structure in the APR process can influence and shape the magnitude and nature of challenges to the governance of the review process. The absence of guidelines to regulate the conduct of members of the various expert teams in the review process afforded actors with wide discretionary powers. As a consequence, the National Governing Council was left without adequate procedures to serve as a guide for decision-making at the level of the Council, while the governance system of the review process in Kenya was exposed to several challenges. This led to a situation where the decision process was paralysed for a long period of time, suggesting that in the absence of any meaningful decision criteria, the decision system of the APRM became ineffective in regulating the behaviour of actors.

In this regard, the Kenyan case illustrates a process which affords unconstrained discretion on the part of the APR expert teams. The lack of any requirement to give reasons for their recommendation in the country review report gives the expert teams unfettered discretion in their decisions. The implication of this situation is that the governance structure does not provide

strong incentives for members of the National Governing Council to forego power politics in the decision making process. Consequently, members pursue diverse preferences in the decision making process, which then has the potential to lead to conflicting outcomes for actors in the review process.

In addition, the case of the decision process in the Kenya review demonstrates the inability of the APR review team to take appropriate measures to enforce its own recommendations and decisions. While the APR review team to Kenya consistently showed its displeasure in the inability of the National Governing Council to meet deadlines for the submission of the country self-assessment report, it was not able to exert any sanctions, even where evidence of seeming government interference was manifest in the dismissal of some members of the National Governing Council by the Focal Point.

Chapter 7

7.1. Conclusion and Implication for Further Research

This study has analysed how, and with what consequences, functional differentiation in the decision-making system of the African Peer Review Mechanism affects the logic of decision-making. The dissertation has focused specifically on how institutional arrangements in the organizational structure of the decision-making process of the African Peer Review Mechanism can operate to facilitate a productive recourse to rule-based decisions among decision makers. The study has presented substantial evidence that institutional arrangements within the decision-making process of the African Peer Review Mechanism largely trigger the need for actors to resort to rule-based decision-making.

Evidence of this functional differentiation of the APRM decision system leads to a firm conclusion. While the APR Forum, the superior political body, is assigned a rule-making function, the APR Panel, and other subsidiary committees within the organizational structure of the decision-making process of the review, concentrate on the application of the general guidelines to case specific decisions. This leads to a situation where, at the political level, major actors provide a general set of guidelines to serve as a point of reference for subsidiary organs within the organizational structure of the review process. This confirms the findings of the dissertation that there is a tendency of decision makers to resort to guidelines as an external point of reference in deciding on issues that might lend themselves to disagreements on specific details. In the three cases investigated, particularly those of South Africa and Kenya, existing organizational structures at the country level were characterised by major conflicts, so that the peer review was faced with severe stalemates within the decision system. Despite these setbacks, encountered at the country level, the presence of a multi-functional governance apparatus was seen to serve as a meaningful weapon to push actors to act with disregard for their parochial interests when intervening in the decision-making process.

This concluding chapter proceeds in the following steps. In the first section, a summary of the main research findings is presented, derived from the empirical analysis of the decision-making systems of three review processes of the APRM. A discussion is then generated of the theoretical implications of these findings, and of their implications for the understanding of the African Peer

Review Mechanism, and of peer review processes in international organizations more broadly. Finally, policy recommendations for the governance and operations of the African Peer Review Mechanism are presented, with an assessment of their implications for the improvement of the quality of democratic and socio-economic development among the participating States of the African Peer Review Mechanism.

7.2. Summary of Main Findings

This dissertation provides a systematic account of the organizational structure of the decision-making process of the African Peer Review Mechanism, with the following clear findings. The study particularly provides an understanding of the consequences of delegating decision-making competencies to several subsidiary bodies in the organization structure of the APRM process. Its major assertion is that empirical analysis of the decision-making system of the African Peer Review Mechanism demonstrates a propensity by decision-makers to favour rule-based decision-making, as opposed to bargaining.

The organizational structures of the cases under consideration show a separation of rule-making and rule-application functions among decision-makers. As a consequence, the clear separation of functions between the APR Forum and other implementation bodies generate incentives for decision makers to formulate decisions based on generally accepted guidelines, in order to avoid stalemates in the decision system. In all, the cases investigated establish that sufficient safeguards are in place so that even the most powerful actors in the process find it difficult to bargain over decisions at the rule implementation stage. This is a result of the institutional arrangements put in place to make all decision makers accountable for their decisions at each stage of the decision-making process. In this respect, the findings of this research illustrate that institutional arrangements, at both the rule-making and rule-application phases of the decision-making process of the review mechanism, have positive effects upon the content of final country review reports of the APRM.

These empirical findings record similar patterns of decision-making, occurring across a range of issue areas, in a variety of organizational formats, over a range of decisions and within a broad

range of interest constellations of participants. This may well be the case because the examination of each example of the APRM peer review process presents similar decision situations for participating member States of the review mechanism. For instance, the tendency to make decisions in accord with the guidelines of the review process was clearly prevalent in the South African review process, and noted in the APRM scholarly literature for its problematic trajectory. However, equally, there was found to be a rule-based character to the decisions of the country review mission in Kenya, which followed a similar logic in deciding on issues related to the inclusion of the Anglo Leasing Report, the Goldberg Scandal and the November 2005 referendum.

The South African review process, in particular, illustrated that the tendency to accede to rule-based decisions occurred almost immediately, at the first phase of the implementation of the country review process. In the context of initial disagreements between the government and civil society groups with respect to the composition of the National Governing Council, proposals for an independent national council relied upon arguments that directly reflected the APRM guidelines on the establishment of a governing council, and of the good practice established by previously reviewed countries. This approach served to institutionalize a routine of resorting to the APRM guidelines as a source of making appeals to the decision makers in the validation workshops.

The reference to guidelines applied clearly to the review situation in Kenya also, when, for a variety of reasons, its decision system was held hostage at the initial stage. In the Kenyan review process, civil society groups disagreed with the appointing powers of the Focal Point on their representation on the council and demanded the ability to appoint their own representatives, under an umbrella of a coalition of non-governmental organizations. In a repetition of the South African resolution, the evidence shows that the justification for the argument, advanced to address this dilemma in the Kenyan example, was based on APRM guidelines and of existing practice in member countries that had undertaken the review process already.

Even in the case of Ghana, which, as the first country to be peer reviewed, could be said to be disadvantaged by a lack of established procedure, the composition of the National Governing Council was based on the need to establish an independent entity with clear, credible authority

that was widely recognized. The Ghana review process, conducted without any precedent, nevertheless similarly established procedures that made it possible for decisions to be made based on the APRM instruments as a guide.

The findings of the empirical analysis undertaken in this dissertation show that the majority of the problems encountered by the decision-making system in the review process are located at the country level. The process of establishing country level structures lends itself easily to conflicts between any interest constellations at play. In comparison, the Ghana review process appears to have been less afflicted with organizational difficulty than the Kenya and South Africa review processes.

In the Kenyan review process, for instance, the decision stalemate on appointments into the National Governing Council delayed the decision-making system for close to three months, with no substantial work being done by the National Governing Council. In the same way, the South African review process was subjected to a protracted decision stalemate at the initial stage of the process, as a result of organizational issues. Notably, the organizational difficulties encountered at the country level were related to decisions by participating countries to establish National Governing Councils that were not fully independent of the State. While the National Governing Council of Ghana in particular was composed of actors outside of the State apparatus (members of the National Governing Council of Ghana are wholly independent non-governmental actors), the National Governing Councils of Kenya and South Africa were initially dominated by State officials.

A further organisational variation is exemplified by the fact that the Focal Point of Ghana was established as an independent entity, with its own secretariat. The secretariat was headed by a chief executive officer, giving it autonomy outside of central government apparatuses. In the cases of Kenya and South Africa, on the other hand, the Focal Point and chairman of the National Governing Council were appointed at ministerial level, which meant the review process was led by a government official, unlike in Ghana. There is an implication here that these examples demonstrate that weak and ineffective organizational structures at the country level may well have impact upon the decision-making process of the review. Where the institutional

structures are dominated by government officials, decision systems were seen to suffer from intractable stalemates on the issues related to the set-up of the National Governing Councils.

In addition, these cases of the decision-making process of the African Peer Review Mechanism provide strong empirical evidence to support the claim that committee governance within a decision-making system encourages rational actors to deliberate in decision situations, rather than bargain at the rule-application stage of the decision process. It is clearly shown that, if the APRM Forum delegates the implementation of decisions to subsidiary bodies in the decision-making process of the review, then the Forum will adopt general substantive criteria for implementation to case specific situations by subsidiary committees. At the rule-application level, it is expected that guidelines will be adopted to guide decision-making, with application even to subsequent case-specific situations. The empirical relevance of this proposition was confirmed by evidence which scrutinized whether decision-makers at the rule-application stage systematically elaborated general rules in case specific situations, and were subsequently used in other decision situations.

This analysis also reveals that assigning decision-making competencies, to subsidiary bodies within the organizational structure of the decision-making process of the APRM, can generate incentives which systematically push actors to be consistent in rule application across a broad stream of decision situations, even in the presence of the exhibition of self-interest by some actors in case-specific situations. At the rule formulation stage, for instance, it demonstrates, beyond reasonable doubt, that political actors at the level of the APR Forum adopt general rules for the operations of the review process with no conception or knowledge of what their case specific interest would be in the application of the rules.

As a result of adopting rules, most of the operating procedures and standards formulated in the APR Base Document and Standards and Procedures of the APRM are necessarily incomplete, creating a need for further elaboration of the operating procedures by decision makers in specific decision situations. In all the cases under study, the generally adopted rules at the rule-making level did not consistently favour any particular party at all times. Both civil society members and government representatives were, on different occasions, dissatisfied with some rules on specific decision situations. The evidence suggests, interestingly, that the application of norms

formulated at a higher political level creates incentives for consistency in the application of rules to case specific incidents. For example, the third phase of the South African review process showed that members of the National Governing Council resorted to guidelines of the country review mission as a reference point for the implementation of the country self-assessment process. An incidence, where the Open Democracy Advice Centre (ODAC) showed intent to locate the specific issues on whistle-blowers and freedom to information into the APR questionnaire, in the face of diverging situation specific interests among other actors, demonstrated a determination to be consistent in the application of the guidelines of the APRM. In the case of the rejection of the draft national constitution in Kenya in 2005, as another example, a decision was taken to re-field a review mission to assess the impact of the immediate ramifications to the political situation. Despite government's specific interest in objecting to initial requests to look into this issue and other scandals, a second review mission was subsequently fielded to assess the situation. In the case of Ghana, the country review mission adopted the practice of utilizing independent research institutes in gathering data for the self-assessment report. This was consistently applied to subsequent review processes, notwithstanding the different preference constellations of each country over the decision to deploy independent research agencies for their country self-assessment report.

The implications of this dissertation's empirical findings suggest that, by separating the functions of rule-making from rule-application, actors are institutionally pushed to forgo their situation specific interest at the norm application stage. As a result, the application of rules to case-specific decision situations is not subjected to bargaining by powerful actors with situation-specific interests. Guidelines formulated on specific case situations can therefore gain consistency in their application in subsequent situations. The APR Forum thus can concentrate on formulating general rules to serve as a guide in the implementation of the review process, while the APR Panel and other subsidiary bodies in the decision-making process of the APRM are charged with applying the guidelines on case-specific situations for their consistent application.

In this respect, the analysis of the functional differentiation of the governance structure of three review processes of the APRM confirms this dissertation's first general empirical expectation, which is that the more a differentiated decision system closes down the opportunities for power-

based decisions, the more it promotes rule-based decisions. The case analysis shows that, with the separation of a rule-making function from a norm application function, the opportunity for power-based decisions at the rule implementation stage is completely diminished. Within the South African review process, for instance, activities at the country level, susceptible to conflicts among actors, led to a consistent resort to the APR guidelines as a means to stabilize the decision system. In the specific case of the initial decision by the Focal Point not to include the technical research agencies in the formulation of the country self-assessment report, any opportunity for power-based bargaining on the part of the government to pursue its case specific interest was absent. Since the implementation of the review process was governed by the National Governing Council, the implementation and process of the South African review was guided by previous practices and the standard guidelines. As a result, the National Governing Council implemented the review process of South Africa by insisting that technical research agencies should be employed to provide for a technically competent review process that met the highest standards. Similarly, in the Ghana review process, any opportunity for power-based decision-making was non-existent, as decision implementation was delegated to multiple research institutes who generated the country self-assessment reports. In this light, the government had no opportunity, at the implementation stage of the review process, to bargain over specific decisions in each of the thematic areas of the review process.

In each of the empirical case studies there is substantial evidence to demonstrate that, at the rule-application stage in the decision-making process, each issue was considered as a separate case, while decisions by the country review mission were based on separate considerations. For instance, issues related to democracy, political, economic and corporate governance, and socio-economic development were separated and assigned to consultants to assess individually each of the issues raised in the country self-assessment report. Each group of consultants within the country review mission made their decisions on separate issues, based on their assessments in the specific context of the issue under consideration. By separating issues and making decisions on individual cases, the incentives for package deals in the decision-making process become a rarity. In the Kenya review process, for instance, the team of consultants considered each of the thematic areas on the merits of the information that was available to them. As a result, even if actors sought to pursue their parochial interests at the level of the country review mission, the procedures of the committees in the mission did not allow for decision makers to add single

cases to packages. Accordingly, decisions of the different consultants in the review mission were based on the individual considerations of single issues, and precluded any opportunity for powerful actors to resort to power-based bargaining.

Empirical findings on these cases also provide evidence to support the claim that the institutional arrangements in the decision-making system of the African Peer Review Mechanism provide incentives for reasoned-based decision-making in the subsidiary bodies of the decision process. The complex and multi-functional APRM organizational structure assigns the task of rule application to different sub-bodies, rather than to a sole agency. As a result, the decision process is structured horizontally among the subsidiary bodies at the rule application stage. Horizontal structuring leads to a situation of mutual interdependence and control among the sub-systems involved in the application of rules in the broader decision system. As a consequence, stalemates in the decision process are avoided as every unit of the decision process discharges its duty, and is unable to indulge in controversy.

In the review process of Ghana, Kenya and South Africa, several subsidiary units are involved in the application of norms to situation specific situations. The country level structures included the national APR Focal Point, the Research and Technical agencies, the National Commission and the National Secretariat. Each unit was assigned specific functions in the overall decision process of the review mechanism in all the empirical case analysis. The consequence was that the directives issued as a solution to the organizational challenge of the Kenya review process became a reference point for subsequent review processes. Furthermore, countries that undertook their reviews after Ghana's review were expected to replicate the example of Ghana in the formation of their National Governing Councils by making non-governmental actors take the lead in the country self-assessment process.

Empirical analysis elicits and confirms the second general empirical expectation of this dissertation, which is that the more a differentiated decision system provides strong incentives for discursive decision-making, the better its ability to prevent arbitrary application of general norms in case-specific situations. In the Ghana review process, for example, the opportunity structure created for deliberation, during the validation process at the self-assessment stage, provided strong incentives for participants and decision makers to deliberate on the policy

options in each of the identified challenges. As a result, it contributed to a uniform application of the guidelines in the consultations undertaken by the review mission with government officials, civil society groups, academics and the media. In addition, the research methodology, utilized by the research institutes tasked to compose the draft country assessment report, was uniform across issue areas and provided a platform to apply these criteria when utilising research agencies at the country level.

Comparison between the three case studies shows that functional differentiation has an impact on the content of final country review reports. The differentiation of functions in the decision system of the APRM is shown to act as a trigger to applying rule-based decision logic in the decision process. This effect may be attributed to the perceived shared interest of actors in supporting a functional decision system that produces decisions that are problem-adequate to remedy deficiencies in their own policies. In the review process of South Africa, the constant engagement with civil society groups was able to sort out institutional bottlenecks in the process of incorporating salient issues into the APR questionnaire, and created incentives to decide on issues based on the standard procedures of the review process. In the third phase of the review process in Kenya, for instance, the decision to involve experts, with a keen focus on the various policy issues of concern to the review mechanism, was very instrumental in the production of the country self-assessment report. The presence of experts at that level meant that decisions on what issues to include into the report were not subjected to bargaining by actors with situation-specific interests. Decisions were largely reached through consensus building among the experts that were tasked with working on the country self-assessment report. As in the other cases, the National Consultative Forum, organized in September 2005 to validate the draft country self-assessment process, provided an extra-accountability mechanism to hold the experts in check. As a result, the experts who worked on the self-assessment report applied the guidelines in a uniform manner across the issue areas.

In the case of the review process in Ghana, the decision to establish a differentiated decision system, where membership at the rule-application level was independent and different from that of the rule-making body, contributed to the quality of decisions arrived in the final country review report. For instance, civil society showed an interest in the activities of the review process when they categorically rejected a claim made by the government related to the readiness of the

country to be reviewed. The interventions of civil society groups at this stage largely contributed to shaping the structures that were later widely modelled for the execution of later review processes.

Alternative theoretical explanations of decision-making in an international organization, reflecting on the power resources of actors participating in the decision process, would be unable to provide any convincing evidence to explain the observed effects of functional differentiation in the decision-making system of the APRM. Power-based decision-making appears to hold where decisions are made in a uniform manner with the possibility of powerful actors seeking package deals. However, in the decision-making process of the APRM, one decision on each issue area is separated from any other. As a result, decisions are made on single specific cases with no opportunity for powerful actors to seek package deals in the review process. Since decision-making at the rule-application level is based on a case-by-case application of the guidelines, the opportunity for power based bargaining on situation-specific issues become absent in the decision-making system of the review process.

Therefore, in the three cases under study in this dissertation, any alternative theoretical explanation would fail to account for the observed effects of functional differentiation in the organizational structure of the decision-making process of the African Peer Review Mechanism. The South African review process, in particular, points to the fact that the most powerful members of the review process are constrained by institutional arrangements in the decision-making process to bargain over unfavourable decisions. This is palpably the case, as shown by the attempt by the South African government to reject findings on xenophobia and corruption in the draft reports of the South African review process. Although the response from the government ignored the findings of the report, the APR Panel insisted on highlighting the issues in the final review report of South Africa. This dissertation concludes, therefore, that it is clear that none of the cases studied presents evidence of an alternative explanation of power-based decision-making taking place at the level of the review mission. In all the cases, the APR review mission considered issues separately and package deals were not entertained in any of the country review processes. Powerful actors were therefore restrained from bargaining over any decision outcomes in the review process.

In conclusion, the empirical findings of the case analysis does not present any evidence to support the alternative explanation that power-based bargaining at the level of the rule application stage had an impact on the final decisions of the various committees involved in making decisions on specific issue areas. The observed patterns of functional differentiation, pushing actors at the rule-application stage to deliberate on options in application to situation-specific decisions, are evidently robust across the three empirical cases.

7.3. Theoretical Implications for Understanding the Operations of the Decision-Making Process of the African Peer Review Mechanism

The analysis of the organizational structure of the decision system of the African Peer Review Mechanism presents enduring theoretical implications for a conceptual understanding of the African Peer Review Mechanism, and of the role of functional differentiation in decision-making systems in international organization broadly. This section draws theoretical implications of the analysis for a better understanding of the APRM process.

In the first place, it is argued that prevailing accounts of the APRM, revolving around the design, processes and the effective implementation of the recommendations of the review process, do not suffice to explain the organizational structure of the decision-making process of the African Peer Review process. The concept of functional differentiation and delegation in international institutions offers a more plausible explanation of the separation of decisions functions among several subsidiary bodies in the organizational structure of the decision-making process. Analysis of the three case studies demonstrates that modern institutional theory, with elements of organizational theory, provides a plausible explanatory mechanism for understanding the decision-making system of the African Peer Review Mechanism. The core of these concepts highlights the effects of particular institutional arrangements on the decision-making system of the review process and the outcome of decisions made at each stage of the review process.

The concept of functional differentiation, in particular, proves its relevance and universal applicability to decision-making systems that surround policy issues that are not guided by compulsory enforcement mechanisms. This has huge implications for the dominant International

Relations theory of Neorealism, which hardly recognises the role of institutions and their power to facilitate cooperation among States. In the conception of Neorealist scholars, States are conceived as the main actors in global politics, while international institutions are barely relevant. In the perspective of this dissertation, the concept of functional differentiation goes beyond Neorealist explanations of power politics in global governance by presenting a more systematic mechanism through which institutional arrangements can influence the behaviour of rational actors in a decision-making process. A concrete step to achieving this effect, in any functionally differentiated decision process, is the separation between a rule-making function and the application of rules at a lower level by multiple subsidiary bodies in the organizational structure of the decision-making apparatus.

Secondly, the study has implications for the organizational aspects of international institutions broadly. Research on delegation of decision-making authority to independent agents emphasises the need to delegate to a trustee-agent, as a signal of a credible commitment of member States to their long term interest. The concept of functional differentiation shows that rational actors can commit credibly to merit-based decisions through institutional arrangements in a decision-making system. While the literature on modern regulatory theory is preoccupied with hierarchical control, functional differentiation is concerned with the operations of a decision system in the making of decisions that are problem-adequate to issues in a given policy area, exhibiting competing interests to participating actors. As a result, differentiation of institutional arrangements in a decision system provides extra mechanisms to hold actors in a decision-system accountable for their decisions, without instituting hierarchical measures that could derail the benefits attained by assigning decision competencies to different bodies in the decision system.

In practice, situations are common in contemporary international relations among States, where international organizations assign several tasks to subsidiary bodies in the operation of their institutions. In most of these institutions, the political task of formulating general rules for the governance of the organization is handled by political actors, while the stage of applying rules to situation specific cases are delegated to subsidiary bodies. The benefits of these arrangements, in part, are in preventing decision stalemates at the rule application level. At the same time they assist efficient decision-making, as delegated tasks are carried out by a committee that specialises in particular areas of the decision system.

Beyond this advantage, a functionally differentiated decision system, though fully protected from political interference in the decision-making process, may nevertheless be subject to decision stalemates where actors are faced with a tendency by powerful members to resort to power-based politics, instead of respecting the decision rules instituted to guide the behaviour of all actors. As a consequence, research on international organizations, attempting to explain the autonomy of bureaucracies in the operations of international institutions, needs to accommodate alternative sources of influence residing in institutional mechanisms in order to produce decisions that are problem adequate, regardless of their distributive effect. This means going beyond a focus on the secretariats of international organizations, which in themselves do not capture the entire workings of the institution.

Finally, this dissertation concludes that any application of the concept of functional differentiation to an institution based on voluntary participation would suggest the kind of institutionalized forms of cooperation present in the African Peer Review Mechanism. By extension, it makes the assumption that the effects of functional differentiation, found in the decision-making process of the APRM, would be likely to have similar effects on other peer review processes in international organizations. Although generalizing these effects to decision-making process of all international organizations may not be possible, a plausible, though limited extension of the concept of functional differentiation can be made to similar peer review mechanisms under the ambit of international organizations, particularly in the governance of issue areas of particular interest to States. Furthermore it can be argued that if the African Peer Review Mechanism, which operates as a 'soft' arrangement between the participating States, can generate incentives for actors to deliberate at both the rule-making and rule application stages of the decision process, then other international organizations with peer reviews on issues of high politics could generate equally important institutional effects.

The concept of functional differentiation specifies the mechanisms through which institutional arrangements can influence organizational decisions in any decision system. A first practical step is to separate the roles of rule-making and rule application in the decision-making system. At the rule-making stage, actors concentrate on formulating general rules without requiring any knowledge of what their preference might be in anticipated case-specific situations. In such a situation, rational actors are pushed to search for the most appropriate options since they are not

anticipating their case-specific interests. The search for appropriate guidelines leads actors to deliberate on anticipated applications of the rules to specific situations, and, even if they calculate properly what their anticipated situation specific interests are, may well settle for a median position.

At the rule application level, actors can be prevented from indulging in power based politics in the application of decision guidelines by limiting their opportunity to bargain over decision situations. This can be done by limiting decision-makers at the application stage to the confines of guidelines that necessarily limit the degree of arbitrary application of the rules by the implementation body. In addition, decision makers at the rule application stage are obliged to separate the handling of cases. This mechanism works to prevent a situation where powerful members in the decision process resort to package deals. By preventing the most powerful actors from seeking package deals in the decision process, the requirement to provide reasons can serve as a powerful check to oblige decision makers to adhere to the decision guidelines at each stage of the decision process. In effect, the ability of institutional arrangements to push actors in the decision system to rule-based decisions is based on this causal chain of factors arising from the reality of functional differentiation.

7.4. Policy Implications

Following the theoretical implications of the research analysis, four policy implications and recommendations for the operations and governance of the decision-making system of the African Peer Review Mechanism are presented.

Firstly, it is recommended that the African Peer Review Mechanism should systematically delegate the implementation of the review process at the country level to independent consultants and research institutes, since that arrangement would better lead to rule-based decision making at the country level. As a consequence of accepting this recommendation, the act of delegating decision competencies to several independent consultants and research agencies at the country level would increase the rate of producing problem-adequate decisions in the implementation of the APRM process in individual member States. Against this background, functional

differentiation of the decision making system of the review process serves as a factor in pushing powerful States in the review process to accept decisions in the APR country review reports, which then has huge benefits for the implementation of the review process in all member States. The recommendation enables participating members to strengthen the autonomy of subsidiary bodies in the organizational structure of the review process, in order to enhance the quality of decision recommendations contained in the country review reports.

A second recommendation is that the implementation of the review process at the country level should adhere to the application of the guidelines governing the review process. In most instances, the production of the country self-assessment report is subject to several controversies over organizational issues. To prevent decision stalemates in the processes leading to the self-assessment report, participating member States should adhere to the good practice of making the National Governing Council independent of government. By instituting an independent and autonomous National Governing Council, member States are prevented from interfering and intervening in the decision process. This allows mandated subsidiary bodies to produce the most problem-adequate solutions to the problems encountered by individual member States in various policy areas of concern to the APRM process.

Thirdly, to ensure accountability at the level of the APR Forum, consideration of country review reports must go beyond the confines of the Forum. All country review reports should be tabled at the pan-Africa Parliament for discussion within the continental legislative body. By so doing, this process creates visibility for the APRM, and deepens accountability among decision makers on the final recommendations presented in the country review reports. The analysis of the empirical cases show that the more the decision process is subjected to several accountability measures, the more actors arrive at decisions that are acceptable to all participants in the review process.

Lastly, a recommendation is made that the separation of a rule making function from the application of rules to situation specific cases should be properly structured in the statutes of the APRM. The APR Forum, as the rule setter in the organizational structure of the review process, would thus take its rule making functions seriously to avoid instances of vague guidelines concerning the application of the standards. The presence of precise guidelines can greatly orient

the behaviour of actors to refrain from any attempts to bargain over the application of rules in specific decision situations. In the empirical analysis presented, the presence of guidelines has generally generated incentives for decision makers, at the rule application stage, to be consistent over all the issue areas of the APRM.

In conclusion, for the APRM decision-making process to follow a decision practice that is always ruled-based, the separation of rule-making and rule application in the decision system is required to ensure that the decisions of the APR Forum are rule-based, notwithstanding their political nature. The APR Forum, as the political and supreme decision-making body, is then encouraged to be consistent in the formulation of general rules, since it would be unaware of the future specific decision situation under which general rules are applied. The positive effect of this arrangement will then be that the APR Panel and other subsidiary committees will be pushed to make merit-based decisions based on the criteria provided by the political decision organ.

7.5. Extension and Further Research

This study is the first systematic attempt at explaining the impact of functional differentiation on the decision-making system of the African Peer Review Mechanism. Through this analysis, it shows the generalizability of this dissertation's conceptual framework across different peer review process in other international organizations. In this final section, I suggest other possible avenues for further research based on the conceptual framework offered in this study.

The findings of this study can be added to ongoing scholarly debates on institutional mechanisms to produce decisions that are problem adequate irrespective of their distributive effectiveness on the policy issues under consideration. Paying due attention to organizational aspects of international institutions contributes to our understanding of how specific international organizations function. In particular, the study addresses a curiously neglected aspect of the APRM process which has the potential to contribute theoretically to the literature on peer review processes in international organizations.

In this regard, an extensive analysis of the impact of the review process as an undertaking in individual member States can be useful in explaining the extent of implementation of policy

recommendations that emanate from the review process. Since the reinvigorated interest in the study of international institutions in recent year, some analyses have sought to explain the effectiveness of international institutions in their issue areas of focus. Curiously though, research in this area has paid little attention to institutions of the nature in this study. A systematic study in this regard can contribute to research efforts aimed at explaining the effectiveness of peer review process conducted by international organizations in issue areas of global concern.

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Annex

Annex I

South Africa's National Governing Council

Civil Society Members

1. Bheki Sibiyi, Business Unity South Africa
2. Looks Matoto, Disabled People South Africa
3. Zanele Twala, SANGOCO
4. Dr. Nomonde Mqhayi, South African Youth Council
5. Thabisile Msezane, South African Council of Churches
6. Randall Howard, South African Transport and Allied Workers' Union
7. Dr Mongane Wally Serote, Arts and Culture Sector
8. Master Mahlobogoane, South African National Civics Organization
9. Laura Kganyago, National Women's Coalition
10. Moemedi Kepadisa, National Council of Trade Unions

Government Representatives

11. Dr. Essop Pahad (Minister in the Presidency)
12. Trevor Manuel (Minister of Finance)
13. Mandisi Mpahlwa (Minister of Trade and Industry)
14. Bridgette Mabandla (Minister of Justice and Constitutional Development)
15. Geraldine Fraser-Moleketi (Minister of Public Service and Administration, Chairperson)

Country Review Mission (CRM) to South Africa

1. Prof. Adebayo Adedeji (Member of the APRM Panel of Eminent Persons)
2. Dr Bernard Kouassi (Executive Director APRM Secretariat)
3. Evelynne Change (Coordinator, Corporate Governance, APRM Secretariat)
4. Dr Afeikhena Jerome (Coordinator, Economic Governance and Management, APRM)
5. Ferdinand Katendeko (Research Analyst, Democracy and Political Governance, APRM)
6. Rachel Mukamunana (Research Analyst, Democracy and Political Governance, APRM)

7. Eunice Kamwendo (Research Analyst, Economic Governance and Management, APRM)
8. Dalmar Jama (Research Analyst, Corporate Governance, APRM)
9. Nana Boateng (Research Analyst, Socio-economic Development, APRM)

Independent technical consultants

Democracy and Political Governance

10. Prof. Amos Sawyer (Former President of Liberia and Academic)
11. Prof. Peter Anyang Nyong'o (Former Minister and Member of Parliament, Kenya)

Economic Governance and Management

12. Prof. Roland Ubogu (Retired Chief Economist, African Development Bank)

Corporate Governance

13. Dr. Babacar Ndiaye (Former President of African Development Bank)
14. Prof. Adebayo Ogundesi (Head of the Global Investment Division, Credit Suisse First Boston)

Socio-economic Development

15. Dr. Francis Chigunta (Lecturer in Development Studies, University of Zambia)
16. Prof. Mbaya Kankwenda (Former UNDP Resident Representative in Nigeria)
17. Prof. Julia Duany (Lecturer in Political Science, Makerere University)

Partner Institutions

18. Charles Muthuthi (Principal Governance Expert, African Development Bank)
19. Prof. Ahmed Mohiddin (Expert Consultant UNDP)
20. Prof. Emmanuel Nnadozie (Senior Economic Affairs Officer, Economic Commission for Africa)
21. Dr. Bartholomew Armah (Senior Regional Advisor, Economic Commission for Africa)
22. Dr. Kojo Busia (Development Management Officer, Economic Commission for Africa)

National APRM Governing Council (NAPRM-GC) of Ghana

1. Rev. Prof. S.K. Adjepong, a former University Vice-Chancellor and currently President of the Methodist University as Chairperson.
2. Amb. Alex Ntim Abankwa, a Retired Diplomat and former ambassador who has worked with all governments of Ghana since independence.
3. Prof. Samuel K. Botwe Asante, an International Consultant and former Principal Regional Adviser, UNECA.
4. Most Rev. Dr Bishop Paul Bemile, the Catholic Bishop of Wa and Director of the Inter-region Dialogue.
5. Prof. Miranda Greenstreet, a leading Educationist, former Director of Institute of Adult Education of the University of Ghana, and Chairman of the Coalition of Domestic Election Observers in the Ghana 2001/2004 elections.
6. Mr Nutifafa Kuenyehia, a former Chairperson of the Ghana Bar Association and Media Commission.
7. Ms Gloria Ofori-Boadu, a former Executive Director of the International Federation of Women Lawyers (FIDA) in Ghana and currently President of the Women's Assistance and Business Association(WABA).

Country Review Mission (CRM) to Ghana

1. Dr Chris Stals (Member of the APRM Panel of Eminent Persons).
2. Dr Bernard Kouassi (Executive Director, APRM).
3. Ms Evelynne Change (Coordinator: Corporate Governance, APRM).
4. Mr Dalmar Jama (Research Analyst: Corporate Governance, APRM).
5. Mr Sudir Chuckun (Coordinator: Multilateral Relations and Policy, NEPAD secretariat).
6. Mr Seward M. Cooper (Chief Counsel and Head of the Good Governance Unit, AfDB).

7. Prof. Claudius Dele Olowu (Principal Governance Expert, Public Administration, AfDB).
8. Ms Zemenay Lakew (Senior Programme Coordinator, AU-NEPAD Support Unit UNDP).
9. Dr Okey Onyejekwe (Senior Regional Adviser, UNECA).

Independent technical consultants for APR Secretariat:

Democracy and Good Political Governance

10. Prof. Ahmed Mohiddin (Director, 21st Century Africa Foundation).
11. Prof. Michelo K. Hansungule (Professor of Human Rights Law, Centre for Human Rights, University of Pretoria, South Africa).
12. Mr Alfred Mubanda (former UNDP Resident Representative in Ghana in 1981-1986 and former Minister of State for Foreign Affairs of Uganda).

Economic Governance and Management

13. Dr Afeikhena T. Jerome (Consultant and Senior Lecturer, Department of Economics, University of Ibadan, Nigeria).
14. Dr Omotunde Johnson (Consultant on Economic Issues and former International Monetary Fund Resident Representative in Ghana).

Corporate Governance

15. Ms Gertrude Takawira (former Country Director, South and Eastern African Trade Information and Negotiating Institute (SEATINI) and Managing Consultant, Governance and Development Services, Zimbabwe).

Socio-Economic Development

16. Prof. L. Adele Jinadu (Executive Director, Centre for Advanced Social Science, Port Harcourt, Nigeria).

National APRM Governing Council of Kenya¹⁸

Civil Society Members

1. Rev. Jephthah Gathaka (Ecumenical Centre for Justice and Peace).
2. Rev. Peter Orawo (Climate Network Africa).
3. Muhib Noorani (Kenya Paraplegic Organisation).
4. Philip Kisia (International Commission of Jurists).
5. Geoffrey Omedo (National Youth Parliament).
6. Abdullahi Abdi (Northern Aid).
7. Fatma Ibrahim (Kenya National Human Rights Commission).
8. Osendo Omore (Transparency International Kenya).
9. Rose Ogega (Institute of Certified Public Accountants).
10. Winnie Kinyua (Kenya Private Sector Alliance, KEPSA).
11. Juliet Makhokha (National Council of Women of Kenya).
12. Nduati Kariuki (Kenya National Federation of Agricultural Producers).

Conveners (non-voting members)

13. Esther Ndisi Bertolli (Bertolli and Associates).
14. Joseph Kimani (African Youth Parliament).
15. Victoria Kioko (Kenya Episcopal Conference).
16. Dr. Mbui Wagacha (Independent Consultant).

Technical Agencies (non-voting members)

17. Prof. Wafula Masai (African Centre for Economic growth, Political Governance and Democracy).
18. Dr. Hezron Nyangito (KOPPPRA, Economic Management).
19. Karugor Gatamah (Centre for Corporate Governance, Corporate Governance).
20. Prof. Mohamed Jama (Institute of Development Studies University of Nairobi, Socio-economic Development).

¹⁸ The National APRM National Governing Council of Kenya had 33 Members. Four Members from the NGO Council were expelled from the governing Council. The second member appointed at the discretion of the Minister of Development and national Planning resigned and are not listed above.

Ex-officio Representatives of line Ministries and key Public Institutions

21. Permanent secretary of Ministry of Foreign Affairs
22. Permanent secretary, Governance and Ethics
23. Permanent secretary, Ministry of Justice and Constitutional Affairs
24. Permanent secretary, Ministry of Finance
25. Permanent secretary, Ministry of Planning and National Development
26. Solicitor-General, Office of the Attorney General
27. Chairman of Electoral Commission of Kenya

Other appointments at the discretion of the Minister of Development and National Planning

28. Bernard Aende Ogada

Country Review Mission (CRM) to Kenya

1. Dr. Graca Machel, Member of the APRM Panel of Eminent Persons.
2. Dr Bernard Kouassi, Executive Director APRM.
3. Dr. Moise Nembot, Coordinator, Democracy and Good Political Governance.
4. Mr. Gaston Bushayija, Coordinator, Socio-Economic Development.
5. Mr. Dalmar Jama, Research Analyst, Corporate Governance.
6. Ms Nana Boateng; Research Analyst, Socio-Economic Development.

Independent Technical Consultants

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9. Laura Nyirinkindi, Director, Pro Initiatives Agency, Uganda.
10. Dr. Afeikhena T. Jerome, Consultant and Senior Lecturer, University of Ibadan Nigeria
11. Dr. Omotunde Johnson, Former IMF Resident Representative in Ghana
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16. Dr. Abdul-Nashiru Issahaku, Senior Governance Exprt, African Development Bank

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18. Dr. Emmanuel Nnadozie, Senior Economic Affairs Officer, UNECA

Annex II

Interview Guide for the Qualitative Expert Interviews Conducted

Interview guide for Panel members and other independent consultants

1. What goes into appointing persons to serve on the APR Panel?
2. What considerations are made in the selection of the chairperson of the Panel and for how long does the chairperson of the Panel stay in office?
3. What goes into taking a decision at the Panel meetings?
4. Which interests are mostly at stake at the committee meetings?
5. Do member States sometimes have a preference for decision to go a certain way?
6. Have there been situations where a member States raises a protest on a particular decision taken by the panel? If any, explain the circumstances and the nature of those protests
7. What is the general attitude of the Heads of State or their representatives on final decisions handed down to them by the Panel.
8. Do the Heads of State or their representatives have the opportunity to protest or disagree with a decision and what is the procedure? Which States have exercised that window and what were the issues of contention?
9. Has the Panel in any way ever accepted a protest by a State on an initial decision and amended their own decisions?
10. What might be the reason for having various bodies working independent of each other within the APRM?

Interview guide for the APRM Secretariat

1. What role does the secretariat play in the peer review process?
2. Which States make the most contributions towards the operations of the APRM?
3. Which member States appear more active in the process and why might it be the case?
4. Who appears to be more powerful, the APR Panel, the research institutes or the Heads of State, in making the final recommendations for a participating State?
5. How are members appointed to sit on a particular peer review case?
6. How long does it take for reports to be drafted and published at each stage of the decision process of the APRM?
7. At which points are amendments to the reports accepted and under which conditions?
8. How long does it take for a State to respond to deficiencies that are identified in their self-assessment reports?
9. What role does civil society and the general public plays in shaping the outcome of the decision that are taken?
10. What is the standard practice if a State has a complaint on a particular decision?
11. Can a State over step the final recommendations and go ahead with its own programs or an alternative solution on how to proceed?
12. Which States have not met the timeline in submitting their annual progress reports?
13. Are there sanctions for such countries? If not why?

Erklärung über das selbstständige Anfertigen der Dissertation

Hiermit erkläre ich, dass die Dissertation von mir selbstständig angefertigt wurde und alle von mir genutzten Hilfsmittel angegeben wurden, dabei keine anderen Hilfsmittel als die im Quellen- und Literaturverzeichnis genannten benutzt und alle aus Quellen und Literatur wörtlich oder sinngemäß entnommenen Stellen als solche kenntlich gemacht wurden.

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Erklärung über die bisher erfolgte Publikation wesentlicher Bestandteile der Arbeit

Ich erkläre hiermit, dass ich die Dissertation im Ganzen noch nicht publiziert habe. Teile von früheren Versionen der Kapitel 2 und 3 sind als Konferenzbeiträge veröffentlicht:

Banchani, John-Paul Safunu (2016), the role of delegation in the governance of decision-making within the African Peer Review Mechanism, Paper presented at *the ECPR General Conference* held from the 7th to 10th of September 2016 at the Charles University, Prague.

Banchani, John-Paul Safunu (2016), the role of delegation in decision-making in the African Peer Review Mechanism: Ruled-based? Paper presented at *the third African Leadership Conference* held from the 5th to 6th of June 2016 at King's College, London.

John-Paul Safunu, Banchani.

Bamberg, 20.06.2017.

