The role of civil society in South Africa's peer review mechanism: A critical reflection

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Introduction

South Africa went through its first peer review under the African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD), having voluntarily acceded to being part of the review process. The review mechanism's potential lies in the extent to which it secures participation by civil society and non-governmental actors. In principle, the review mechanism involves all sectors of society, including business, government departments, civil society, Parliament and communities at large. At the beginning of the APRM process, however, much was said (rightfully so) about the extent to which government would create opportunities for other stakeholders to play a role in the review[1]. It was pointed out that government's involvement in the process was likely to be too extensive and that little room would be left for other stakeholders to play a meaningful role. If one of the central objectives of NEPAD – and subsequently the APRM – is to spread neo-liberal market ideology and "legitimize the [Washington Consensus] across the continent"[2], this would obviously require sidelining civil society from the process since this sector is usually concerned with social justice and humanitarianism. From this perspective uneasiness about the role that civil society and larger communities would play in the review process is not totally unfounded.

The concern around the role of civil society in South Africa's peer review mechanism emerges within the broader question of how civil society should relate to government: both here in South Africa and elsewhere. It is an established trend – at least in liberal democracies based on constitutional sovereignty – that the more independent civil society

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is from government, the more sustainable the process of democratisation becomes. Therefore, the existence of an independent civil society is one of the legitimising factors of a democratic system. It is argued that "it seems inevitable that the destiny of civil society will continue to be inseparably intertwined with the success of liberal democracy"[3]. Most importantly, civil society and liberal democracy are "mutually contingent upon one another"[4]. Therefore, civil society has both a legitimizing role and a substantive role to play in a democratic setting.

This paper outlines both the legitimizing and the substantive roles of civil society in South Africa's peer review mechanism. While these two roles are not entirely separable it is, however, necessary to note that while making a substantive contribution may have legitimizing effects, playing a legitimizing role does not necessarily entail a substantive contribution. Civil society's legitimizing role in South Africa's peer review mechanism may be assumed simply because of the sector's formal involvement in the process. That is easily verifiable by observing if civil society is formally represented in the APRM structures.

The question that this short paper aims to address is whether South Africa's first peer review mechanism has had meaningful substantive participation by civil society. This enquiry is not meant to elevate the role of civil society above other sectors. There are, of course, other important sectors in society whose contribution and role in processes, such as the peer review, are just as essential. For instance, the role played by communities or ordinary citizens in the process is crucial in the sense that they do not usually get an opportunity to engage with government on a regular basis. And communities know the concerns that shape their lives better than anyone else. However, the role of civil society is particularly crucial because the sector has the necessary critical attitude and, most importantly, the capacity to engage with government

and other sectors rigorously, leading to meaningful engagements and a betterment of life. It is out of this understanding that civil society is accorded primary attention in this paper.

To explore the question: 'to what extent has civil society substantively contributed towards the review mechanism?' it is important to outline the formal structure of South Africa's review mechanism as it sets the stage for the possible substantive participation of civil society. In a sense, the paper will be exploring the extent to which the formal APRM structures provide for meaningful participation of civil society in the review mechanism. To put the question in reverse, and more frankly, the paper will assess if there were impediments to the possible substantive participation of civil society in the South African review mechanism.

It should be noted at this point that the task of determining the role of civil society in South Africa's peer review mechanism is not an uncontentious exercise. For one, this type of enquiry will, first and foremost, raise the question: what constitutes civil society in post-apartheid South Africa? Civil society could involve organized groups such as non-governmental organizations (NGOs), trade unions and community-based organizations (CBOs). What seems to invite controversy is how civil society organizations should relate to government. It remains a contentious question in South Africa whether civil society should be "adversarial" or "complementary" to government. What this shows, however, is that the defining character of civil society has largely come to be based on how it relates to government. Civil society is an expression of co-operation and voluntarism outside the state. This co-operation may at points overlap with the state and other stakeholders in society in pursuit of certain goals. The defining character of civil society is that it is independent from the state; it is known for placing "multiple demands on the state" hence the emphasis that civil society has to be independent from the state[5]. This paper adopts the point of view of liberal democracy in its understanding of civil society. This approach is based on a view of civil society as a space that exists outside government constraints; hence it is independent and sometimes adversarial. That said, the paper moves on to outline the structural formulation of South Africa's peer review mechanism with the aim of answering the question: how did that provide an avenue for civil society participation?

South Africa's APRM structures

The provisions and protocol under which the peer review took place has been sufficiently documented

and analyzed[6]. Suffice to say that NEPAD – the developmental framework of the African Union (AU) – provides for a peer review mechanism in which "Heads of State and Governments of the Member States of the African Union [have pledged to] participate"[7]. Signatories to the Memorandum of Understanding (the MOU) on the APRM also agreed to "ensure the participation of all the stakeholders in the development of the national Programme of Action including trade unions, women, youth, civil society, private sector, rural communities and professional associations". The Programme of Action embraces the spirit of the APRM whose primary purpose is to "foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences …"[8]

South Africa's review took place under the leadership of the Department of Public Service and Administration (DPSA) which was responsible for organizing consultative structures through which the review mechanism commenced. The National APRM Secretariat was placed under the DPSA. The Secretariat is the highest structure in the country dealing with NEPAD's goals and initiatives. The body organized the events leading to the appointment of the APRM National Governing Council (NGC) at the First Consultative Conference held at Gallagher Estate in September 2005. The composition of the NGC expresses a vision to create a body in which various stakeholders ranging from civil society organs, trade unions, government (the presidency), the women's sector and the disability sector, for example, are represented on a near equal footing. The NGC is a platform for the formal representation of civil society organs and community organizations in the APRM process. The task of the NGC has been to govern South Africa's peer review mechanism in four key thematic areas, namely 1) Democracy and Good Political Governance; 2) Economic Governance and Management; 3) Corporate Governance; and 4) Social Economic Rights.

The process

The process of reviewing South Africa's progress according to the four thematic areas of the APRM (listed above) is supposed to lead to the final document to be adopted as the Country Self Assessment Report. Such a report would mean nothing if it was not arrived at through a process that effectively involved

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all stakeholders. Most importantly, the review process should also involve the participation of communities and ordinary citizens. The process should involve South Africa's civil society organs, research institutes, academic communities and the business sector, among others. This would ensure that the Country Self Assessment Report that emerges is truly a reflection of the views and ideas of South Africans from all walks of life.

To ensure that the review mechanism is comprehensive and representative, a Research Committee was set up and different stakeholders, including NGOs, were encouraged to apply to be part of it. To be part of the APRM research team organizations had to make formal written submissions to the APRM Secretariat on one of the four thematic areas and they were selected on the basis of these submissions. A number of organizations applied – mostly research institutes, NGOs, trade unions, and women's and children's organizations.

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Technical Support Agencies (TSAs), whose role it was to provide support, were responsible for collating all the written submissions made to the APRM Secretariat into a single report. This was discussed by stakeholders at a Technical Conference held at the Indaba Hotel in Johannesburg in April 2006 and at the Second National Consultative Seminar held in Kliptown, Soweto, in May 2006. The Technical Report drafted by the TSAs was work towards the final Country Self Assessment Report, which will be submitted to the Team of Eminent Persons who will assess it.

The APRM Secretariat called for South African organizations to apply to be part of the TSAs and four organizations were selected, each assigned to work on one of the thematic areas. The four organizations selected as TSAs, and their thematic areas, were as follows:

❍ The Institute for Democracy in South Africa (IDASA): Democracy and Good Political Governance;
❍ The South African Institute of International Affairs (SAIIA): Economic Governance and Management;
❍ The Africa Institute of Corporate Citizenship (AICC): Corporate Governance;
❍ The Institute for Economic Research and Innovation (IERI): Socio Economic Development.

These institutions handled and summarized an array of submissions relating to their respective thematic areas. Reports were produced in the four areas and these were subsequently merged into a single document: the Country Self Assessment Report.

TSAs were drawn specifically from civil society. Beyond providing technical assistance in summarizing submissions forwarded to the National APRM Secretariat, TSAs implicitly carried out a monitoring role in the review process in the sense that their involvement potentially ensured that the voices and concerns raised in the submissions formed part of the Technical Report and were fully discussed at the consultative seminars. This is a complicated task as the TSAs were organizations that form part of civil society; they do not constitute civil society per se. Yet they had to ensure that all submissions that were made to the APRM Secretariat were reflected in the final report.

The difficulty in fulfilling both monitoring and technical roles is that either way they would be subjected to criticism. There will always be criticism that the report over-emphasizes some issues above others. If the review mechanism were understood as a process of self-reflection, then it would be characterized by differences in how issues and concerns should be viewed and represented. This takes us to the next section, which deals directly with substantive engagement on the review mechanism.

Substantive engagement within the review mechanism

It is worth noting that the peer review mechanism had the potential to draw South Africans into a conversation about how the country has progressed since the end of apartheid. The review mechanism was undertaken just over a decade after the collapse of apartheid; it was the right moment for the country to engage and reflect on what has been fulfilled and where the shortfalls lie. Submissions that were made[9] to the APRM show that South Africans have different and sometimes conflicting views on how things have progressed thus far. This is well captured in the Technical Report[10].

While civil society organizations made an extensive contribution through written submissions to the APRM Secretariat, it is crucial to note reports that came from communities in the form of Community Development Worker (CDW) Reports, Provincial Government Reports and Parliament's Submission. CDWs, appointed by government, engaged with communities, including those in rural areas, to document their concerns and reflections, using an APRM questionnaire. Individuals

were asked questions ranging from how they think decentralization can help ensure a more responsive government to how they think decentralization has been effected in South Africa. The reports that came out of such engagements were substantial and informative. Responses show unequivocally that South Africans, irrespective of their literacy status, have a clear sense of what is due to them as citizens.

The APRM questionnaire adopted a two-level approach. The first level required information about the existence of institutional apparatuses in relation to specific objectives such as a "free and fair political environment". This part of the questionnaire could be answered objectively – the existence of formal institutions, and supporting legislation aimed at securing voting rights for different groups, for example, needed simply to be identified. The second and subsequent level of the questionnaire required assessment of the effectiveness of the institutional apparatuses in place. This part sought to solicit opinions and also evidence on how institutions are performing and whether they have been able to achieve their designated goals. Most of the submissions made by civil society organizations raised concerns about the effectiveness or functioning of institutions in place. Civil society organizations seem to concur that while South Africa has adopted the most robust and visionary institutional apparatuses, much still needs to be done to ensure that the institutions function to their maximum capacity. While significant progress has been attained in bringing South Africa closer to the ideals identified in the Constitution (multiparty democracy, equality, transparent and clean government, among others) it is important to build on these achievements and also prevent reversal of what has thus far been secured. The role of Parliament as a monitoring body was one of the issues highlighted in the review process both in the Technical Report and in discussions at the consultative seminars. It was emphasized that Parliament should be strengthened and capacitated to play a role in monitoring the executive branch of government to effect the separation of powers, ultimately leading towards a more democratic environment and improvements in the lives of South Africans.

The role that was played by Parliament in the peer review mechanism should be highlighted. Parliament's Submission – drawn up out of interactions with various stakeholders including business and organized civil society groups – indicates the institution's ability to engage with communities and listen to different views held on the ground. By looking at Parliament's Submission, one can agree that the institution has the potential to "broaden

public involvement in the peer review process [and generally in governance] and to stimulate public awareness and dialogue"[11]. Also indicative of consultation and wider representation were Provincial Governments' submissions. Provincial Governments held various APRM seminars involving communities at provincial level. They provided an avenue for communities to voice their views and concerns, an opportunity they had never had before. The results of such engagements, as shown in some Provincial Reports, were quite robust and less compromising.

In any democratic society based on the open contestation of ideas, among other features of democracy public opinion becomes an area of contention. In this scenario, what matters the most is how public opinion is shaped and, therefore, what are the issues emerging from within communities and how they should be represented and taken forward. Civil society organizations (or organized civil society), in partnership with government, play a major role not only in representing and voicing the views of communities but also in educating communities about what is due to them as citizens. This is a delicate area, often characterized by controversy about who should be responsible for representing the voiceless. As civil society organizations engage with government on numerous issues involving social justice and the wellbeing of society, tension often arises between the two role players (organized civil society and government) on what should really be on the table. There were therefore certain areas in the review mechanism where stakeholders, including civil society organizations and government departments, would differ on what should be reflected in the self-assessment report. This tension – which is an indication of the diversity of views pertaining to a democratic system – was almost reduced to an exercise of casting judgement between what was deeply or widely felt by the people, and issues that could be seen merely as passing comments.

One such area involved the debate around the electoral system: whether the current proportional representation system is adequate to create the political environment envisioned in the constitution, namely a multiparty democracy. The media reported: "A wide variety of submissions noted the unintended problems of the nation's party list electoral system, which stifles dissent and ensures accountability to parties rather than citizens"[12]. The electoral system proved to be a contentious issue in South Africa and there are no immediate solutions to the matter.

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Such differences are not new to South Africa; they form part of an ongoing conversation in the country. For instance, the review mechanism also expressed differences about how "floor-crossing" – a legislated system that "allows defection of members from the party under whose aegis they were elected"[13] – should be discussed or reflected upon in the process. IDASA argued in its submission to the APRM[14] that "when an individual MP crosses the floor it distorts the balance of representation as determined by citizens through the ballot box"[15]. In essence, floor-crossing "permits the outcome of an election to be changed by the subsequent actions of an individual member of the legislature between … elections"[16]. The general argument is that floor-crossing defies the logic of the proportional representation system, and the functioning of the system in South Africa has recently shown that MPs usually cross the floor from smaller parties to bigger parties (usually to the ruling party), thus weakening opposition parties.

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During the review process, floor-crossing was widely discussed and was one of the points of contention. One of the arguments put forward was that floor-crossing is not "unconstitutional" because it was procedurally adopted, i.e. it went through parliamentary processes as required by South African law. However, the fact that the system has been democratically adopted does not necessarily mean that its provisions cannot be questioned or reviewed. The (APRM) review process could not settle this question, particularly the question of whether floor-crossing is justifiable. But the process indicated that there was a need for further deliberations on the matter.

Conclusion

Did civil society play a meaningful or substantive role in South Africa's first peer review mechanism? The question is whether the extent of civil society's participation in the process – as the paper attempted to outline – created an opportunity for substantive participation, or diverted it. The way in which the APRM structures have shaped up – by formally accommodating civil society organs (such as TSAs, Research Partners and members of the APRM NGC) implied that an opportunity for substantive participation of civil society existed. Civil society organizations used this opportunity to critically engage with the review process, as the submissions and the Technical Report show. Contributions that were made through the CDW Reports were also a milestone in representing the views of ordinary citizens.

In order for South Africa's future review mechanisms to be even more engaging, work has to be done on capacitating communities and civil society to fully engage in the process. It was emphasized during discussions in the review process that civil society needs to be further capacitated so that it can engage and partner with government in carrying out some of the issues captured in the Programme of Action derived from the review process.

The aim of the APRM process should not be to bring about a report and "get it over with". The APRM is first and foremost about the process whose validity depends on both the quantity and quality of participation. As a result, the timeframe in carrying out the review mechanism needs to be relaxed to enable as much participation as possible. South Africa's first review mechanism shows potential and lessons that have been learned in the process should serve as guiding principles to bolster future review mechanisms here in South Africa and, perhaps, elsewhere.

ENDNOTES

1   Janine Hicks, *Public Participation in the African Peer Review Mechanism* (APRM). Speech delivered on the APRM.

2   Patrick Bond, 2004, 'South Africa Tackles Global Apartheid: Is the Reform Strategy Working?' *The South Atlantic Quarterly*, 103:4 Fall. p 818; See also Richard Calland, 2003, 'Setting NEPAD 's compass', *Mail & Guardian*, 02 July.

3   Pietrzyk, Dorota I, 2003, 'Democracy of Civil Society' in *POLITICS*, 2003 Vol 23(I), p.43.

4   Ibid.

5   Skidmore, David, 2001, 'Civil Society, Social Capital and Economic Development' in *Global Society*, Vol. 15, No.1, pp.55-56. For a more South African-focused debate on what constitutes civil society see, for example, Fiaramonti Lorenzo, 2005, 'Civil Societies and Democratisation: Assumptions, Dilemmas and the South African Experience' in Theoria, August.

6   See Sarakinsky, Ivor, 2004, 'APRM and Parliament: Linkages between Parliaments, NEPAD, the African Union and the Pan African Parliament,' 6-7 May, Dar es Salaam and Cape Town. See also, Verwey, Len, 'NEPAD and Civil Society Participation in the APRM,' IDASA's Budget Information Service, Africa Budget Project, http://www.idasa.org.za

7   Memorandum of Understanding on the African Peer Review Mechanism ('the MOU') 09 March 2003.

8   Ibid

9   Most of the submissions are posted on www.aprm.org.za

10 For the APRM Technical Report on Thematic Area No 1: Democracy and Good Political Governance, visit www.Idasa.org and www.aprm.org.za

11 'Parliament and public are key to peer review', *Cape Times*, November 22, 2005.

12 'Electoral System stifling dissent, say SA peer reviewers', *Cape Times*, May 5 2006.

13 Idasa's Submission on Floor Crossing, http://www.aprm.org.za/docs/submissions/IDASA_Floor_crossing

14 ibid

15 ibid p.13

16 ibid