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Overview of Challenges of the Investment Climate-Related Content of the APRM

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OVERVIEW OF CHALLENGES OF THE INVESTMENT CLIMATE-RELATED CONTENT OF THE APRM

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I. INTRODUCTION

Potential investors in Africa are confronted with a number of challenges including prolonged delays in starting a business, getting requisite licenses, legal regime for hiring and firing workers, registering property, obtaining credit, protecting investments and enforcing contracts. In addition, the overall favorable political environment for investment including peace and security are not guaranteed, as is the pervasive perception of corruption in the region. According to the 2007 World Bank's Ease of Doing Business Index—which assesses entry regulation, building a warehouse, employment regulation, regulation of property transfers, legal rights and credit information, corporate governance, imports and exports, court efficiency, tax rates and compliance, and bankruptcy— of the 50 lowest ranking countries (out of 175), 32 are in Africa.[1] Although Africa is disproportionately represented at the bottom rankings of the index, nine African countries have registered significant progress over the last few years and are counted among the top 100 countries ranked in the index. The implication is that if reforms are seriously and systematically introduced and implemented within a framework, significant improvements can be made in improving the investment climate in Africa.

This concept paper will provide an overview of the contributions of the African Peer Review Mechanism (APRM) to improving the investment climate in Africa and analyze the challenges of deepening the investment climate-related content of the APRM. The first section briefly re-counts the challenges of overcoming the unfavorable investment climate in Africa. The second section discusses the nature of the structure and processes used in the conduct of the APRM Country Assessment and how they impact on the attention given to investment climate issues in the APRM reports. This is followed by reviewing the Post-review follow-up actions of the Program of Action phase based on the evidence from those countries that have advanced in the

[1] Doing Business in 2007 – How to Reform. Washington DC: The World Bank.2006.

APRM process. Fourth, an overview of the scope of the Self-Assessment Questionnaire relating to the investment climate content of the APRM is provided. The final section provides ideas and issues for discussion for improving the investment climate-related content of the APRM.

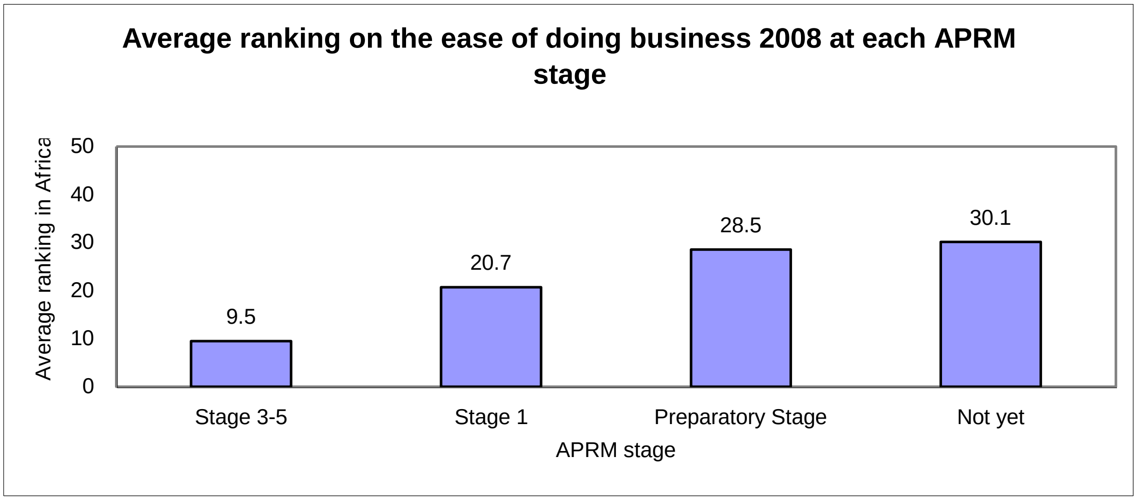
II. THE CHALLENGES OF OVERCOMING THE UNFAVORABLE INVESTMENT CLIMATE IN AFRICA

The unfavorable investment climate in many African states results from poor governance, institutional failures, macroeconomic policy imperfections and inadequate infrastructure, as well as rampant corruption, bureaucratic red tape, weak legal systems and a lack of transparency in government departments. In addition, the overall poor image of Africa as reported in Western and other media as the locale of physical insecurity and lack of peace and stability have made it difficult for the continent to attract foreign capital and mobilize adequate and sustained levels of domestic private investment to attain the levels of growth. More fundamentally, good governance—the other dimension of a good investment climate—underpinned by strong and functional institutions, is critical for increasing domestic and foreign investment. Both contribute towards a more favorable business environment by addressing coordination failures, promoting political stability, enforcing property rights, regulating economic activities, and upholding the rule of law. In short, an increase in investment and private sector growth requires an institutional framework that supports a well-functioning market economy.

It is in part a response to the above investment climate challenges that the African Heads of States established the African Peer Review Mechanism (APRM) in March 2003 as a major component of NEPAD. As a regional mechanism under the New Partnership for Africa's Development (NEPAD), it is designed to promote good governance and institutional change, increase growth and generate sustainable socioeconomic development and greater regional integration on the continent. The mechanism is voluntary and self-monitoring. It targets institutional strengthening by improving the quality of political, economic and corporate governance in African countries and thereby promoting socioeconomic development. The five-stage process includes periodic reviews and benchmarking of the policies and practices of participating states. The review ascertains progress made towards achieving mutually agreed goals, as well as compliance with adopted political, economic and corporate governance values, codes and standards. The APRM's five stages include self-evaluation, external review, report preparation, peer review and dissemination of findings.

Below is a graphical illustration of the average Doing Business rankings and the stage reached in the APRM process by those participating countries. It is important to note that the average ranking is a composite score of the World Bank Doing Business indicators, covering inter alia paying taxes, trading across borders, enforcing contracts and closing a business. There are many caveats attached to how the correlation is interpreted, but it is striking.

APRM stage and Doing Business ranking



(source: the World Bank, APRM Secretariat, UNECA, OECD)

III. APRM NATIONAL STRUCTURES AND PROCESSES AND THEIR IMPACT ON THE INVESTMENT CLIMATE ISSUES

There are two main areas in which the APRM process could potentially contribute to improving the investment climate: the first is the process and structures set up to undertake the APRM country self-assessment, implemented according to design; and the second is what strategies are adopted by APRM national stakeholders in influencing both the country self-assessment and the formulation of the National Program of Action. The two processes are areas analyzed below based on experiences from three of the countries that have already completed the APRM process.

A. National Institutions and processes governing the APRM Country Self-Assessment

The country Self-Assessment is the most important phase of all the APRM stages due in part to the challenges of setting up the National Governing Council or the National Commission. The National Governing Council is a critical link to the day-to-day management of the APRM process both in terms of mobilizing technical research teams and public participation in the entire process leading to the formulation of the National Program of Action. In this sense, the composition and representativeness of all stakeholders and interest groups can impact on how the assessment is conducted in terms of which issues receive the bulk of attention in the report and eventually make their way into the APRM-PoA.

Ghana had a total of 7 members on its National Governing Council representing various sectors of civil society; however, none of the seven members on the council was chosen from the Private Sector, at least in the sense of representing business or industry. The implication is that some issues relating to the investment climate content of the APRM self-assessment may have received very little attention perhaps due to the lack of expertise on the Governing Council; although Ghana chose a professional competent and independent Technical Research Institutions in all the four thematic areas of the country self-assessment report. The Center for Policy Analysis (CEPA) and the Private Enterprise Foundation (PEF) who dealt with economic management and corporate governance respectively, interviewed around 600 people primarily government, civil society groups, private sector and independent experts.[2] Whereas issues of investment climate may have been discussed based on the questionnaire, it is not clear whether specific submissions were made and positions advocated with regards to investment climate improvement. The lack of a private sector representative on the National Governing Board may have negatively affected the extent to which these issues received the requisite attention. Indeed, this problem could be further explained by the fact that although the criteria for appointing the NGC was made public, the fact that they were not seen as representatives of different stakeholder groups appears to have contributed to a certain distance between them and civil society.

Rwanda's National Commission for the APRM had 17 members appointed by the government to form a steering committee, 14 of whom were government officials, accompanied by one civil society representative and one private sector representative and a UNDP representative. An expanded APRM National Commission of 50 members did not significantly change the preponderance of government representatives on the commission in relation to civil society or private sector; even though it was subsequently chaired by the General Manager of a mixed capital insurance company who also served as the chairperson of the thematic sub-committee for the Economic Management and Governance pillar.[3] That the corporate governance thematic sub-committee was chaired by the Vice-President of Chamber of Commerce of Rwanda, the Rwandan Private Sector Federation is an indication of the importance the Rwandan APRM officials placed on improving the investment climate. Since Rwanda did not have the luxury of employing Technical Research Institutions as in Ghana, the thematic sub-committees of the National Commission had a direct role in reviewing the reports submitted by the Technical Review Teams mainly made up of sectoral Ministry staff and some volunteers from civil society and academia. This approach may have deepened the attention given to the issues that was of great concern to the representatives of various sectors within the National Commission.[4] In fact, one of the criticisms of the Rwandan process is that questionnaires were specifically distributed to a few large commercial companies such as breweries an telephone companies because the contributions of the private sector was still not sufficient.[5]

In Kenya, as in South Africa, the role of the private sector was more visible. In Kenya, civil society and private sector played a central role in the operations of the National Governing Council both as the majority members on the council and as conveners of for the four thematic areas. This is in addition to the Technical Research Institutions that could also be considered as a part of civil society. Indeed, two prominent private sector organizations, the Center for Corporate Governance and the Climate Network Africa, were conveners for the economic and corporate governance thematic areas respectively. The Center for Corporate Governance was also selected to be the technical research institution for corporate governance, while the Kenya Institute for Policy Research and Analysis was chosen for the economic governance pillar. It is clear that Kenya had a density of highly specialized private sector institutions as well as interest groups that were highly involved in ensuring that issues of investment climate received the utmost

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[2] Adotey Bing-Pappoe, Ghana and the APRM: A Critical Assessment, Africa Governance Monitoring and Advocacy Project (AfriMap), June 2007. pp. 3.

[3] A Critical Review of the APRM Process in Rwanda, Afrimap, Governance Monitoring and Advocacy Project, September 2006, pp. 10

[4] Ibid, pp. 11

[5] Ibid, pp. 13.

attention in the self-assessment process. The major determinants of the business climate are addressed in the Kenya APRM report and the NPoA due in part to the visibility given to private sector and civil society in the process.

B. Strategies for influencing the APRM Country Self-Assessment Report and the Formulation of the National Program of Action

The strategies adopted by non-state actors in engaging in the APRM process would definitely have an impact on the extent to which issues are taken into consideration by the national self-assessment process, including the formulation of the National Program of Action. Civil society and other non-state actors have an opportunity to make sure that the country self-assessment and the country review visit capture issues that are left out in the formal process by engaging in different strategies of advocacy and submissions of position papers and write-ups. First, civil society or business organizations can find a compelling evidence of the need for sectoral reforms or changes to the business environment and organize this information in a form of written submissions. The interest group organization can also reach out to key governance institutions like parliament, media and other groups and lobby them in the form of writing and public meetings about certain policy reforms that will benefit the business environment. Second, business associations should seek audience with key government decision-makers who can influence policy and have several meetings with them using research-based evidence for policy reform. This should be an iterative process and not a one-time shot. Third, non-state actors including the private sector can use the media strategically to press for policy changes and make direct inputs into the APRM report or to the National Program of Action.

C. Post-Review Follow-up of the APRM-PoA

In almost all of the APRM countries, the APRM-PoA was left until the very end of the process because either it did not meet the requirements set out in the guidelines or required prolonged negotiations with the APRM Secretariat before it was accepted and included in the Country Review Report. While the APRM assessment is useful in identifying problems and challenges, it is the APRM-PoA that will follow-up on the review against which the progress in reforms would be measured. It is possible that the private sector or business associations that would like to see certain laws or policy changes could still make an impact if they feel that key problems and recommendations have not made it into the Country Self-Assessment. There is no evidence from the post-review countries that interest groups took advantage of this opportunity.

Besides making inputs into the APRM-PoA, following up on commitments already made in PoA is perhaps the most crucial stage in contributing toward improving the investment climate of APRM participating countries. The APRM guidelines note that reviews should be conducted every three to four years and that reports on progress toward implementation should be filed every six months. In this context, the APRM countries that have completed the five stages of the process have developed a Monitoring and Evaluation (M&E) framework to monitor progress of implementation of policy issues of specific interests to all stakeholders including the private sector such as the promotion of an enabling environment, public sector reforms, effective regulatory framework for economic activities and good corporate citizenship with regards to human rights, property and adoption of codes of good business.

Kenya's first annual report shows considerable progress in the areas of public sector reforms and in the areas of privatization and public private partnerships for economic efficiency and growth. In its 2007/08 budget, the government emphasized institutionalization of transparency and accountability in the privatization process with the creation of Privatization Commission to be operationalized before the end of 2007.[6] In addition, the report indicates that the policy, legal, and institutional framework for the implementation of public, private partnerships (PPP) is being finalized. This framework is intended to allow private sector participation in the provision of key infrastructural services (eg. Water, energy, road, and other transport services).[7]

Similarly, Ghana's APRM Annual Progress Report of the NPoA notes several achievements in the policy areas related to investment climate improvements. While several codes and standards in economic management and governance have still not been ratified nor domesticated, some efforts have been made towards building efficiency, predictability and transparency in economic management. In the areas of corporate governance, the Institute of Chartered Accountants has organized a series of educational workshops on international accounting and auditing standards in preparation for plans to adopt international accounting reporting from January 2008. The Insurance Bill has also been gazetted and now in Parliament waiting to be passed. In addition, the Registrars General Department (RGD) is to be reformed to improve business registration processes including making it user friendly, decentralizing services to major cities and towns and freeing it from corrupt practices.[8]

Rwanda's APRM program of Action Implementation report for six months shows that the country has made the fastest progress in the post-review follow-up of the NPoA. In an effort to streamline the legislation and regulatory framework for setting up business in Rwanda, some of the laws have been amended and enacted by parliament including the investment code, tax code and procedures. Although the Rwanda cabinet has approved several laws, they are still awaiting enactment by parliament including intellectual property code, customs code, and public procurement code and accountants statute. In addition, several laws are in the drafting stages and expected to be passed within the next few years.[9] Although strenuous efforts are being made towards implementing most of Rwanda's APRM-NPoA in regards to the investment climate, the report openly admits that the capacity challenges are enormous and would require concerted efforts by both the public and private sectors in achieving all objectives.

Structures, processes and interest groups strategies in the self-assessment phase do matter in mobilizing stakeholders for robust investment climate reforms issues to receive adequate attention in the APRM-PoA. It is also clear that for countries that already have an on-going reform agenda, the APRM can help highlight the investment climate-related issues that make their way into the APRM-PoA. Ultimately, however, it is the systematic follow-up actions and monitoring of the APRM-PoA that leads to progress in investment climate reforms.

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[6] Kenya, APRM Annual Progress Report on the Implementation of National Program of Action, June 2006-2007, pp. 19.
[7] Ibid. pp. 19
[8] Ghana, APRM Annual Progress Report on Implementation of National Program of Action (NPoA) Jan. to June 2006. pp. 65
[9] Rwanda, APRM Program of Action Implementation, Progress Report, June-December, 2006.

IV. INVESTMENT CLIMATE-RELATED CONTENT OF THE APRM QUESTIONNAIRE: STRENGTHS AND CHALLENGES

The APRM questionnaire is more holistic and takes a comprehensive approach to investment climate issues by covering almost all development areas – political, economic, corporate and socio-economic - governance. In this sense, democracy and political governance is just as important as areas bearing directly on investment policies under the economic management and corporate governance spheres. This approach is understandable for a number of reasons. First, as a baseline assessment, it is perhaps prudent for the APRM to be as comprehensive, so that subsequent reviews can focus on specific governance issues. Second, as an instrument for peer learning that is not punitive but encourages mutually shared best practices with the aim of building capacity for improving governance system, narrowing the review would limit the number of best practices member states could learn from. Third, since the goal of the reviews is to enhance uniformity of governance systems, it is perhaps important to cover all the thematic areas that would contribute to the improvement of the image of Africa globally and make it a more attractive place for private investment. The following are specific comments relating to strengths and limitations of the investment climate-related content of the questionnaire.

1. Strengths

Corporate Governance themes

The APRM questionnaire comprehensively evaluates corporations as to whether they are good corporate citizens. It questions the existence of measures to rate corporations' recognition and observance of human and labor laws; the responsiveness of corporations to the concerns of the communities within which they operate; and their commitment to ensure sustainable environmental management. (Obj. 2/ Q. 1, 2 & 3)

The questionnaire comprehensively deals with the adoption of codes of business ethics. In assessing corporate integrity in member state, it uses some indicators such as measures to combat white-collar crimes; the role and quality of the media in reporting on economic crimes and ethics violation; the availability and quality of training programmes for professionals. (Obj. 3/ Q.1)

APRM tries to address internal and external factors impacting on the business environment. Some of the potential internal factors mentioned are the availability and quality of infrastructures (ICT system, roads, etc.); efforts by member states to promote investment and formulate special enterprises (including. holdings by women); the state's effort to privatize public sector entities, and encouraging capital market rules and over-the-counter share trading facilities. (Section 3/ Obj. 1/ Q.3)

Economic Governance theme

APRM comprehensively addresses inflation and fiscal stability under the Economic Governance and Management thematic area. It uses them as quantitative indicators for sound macroeconomic policies. It proposes concrete measures to evaluate the inflation rate and fiscal deficit of APRM member states. These include average inflation over the last five years; the share of the fiscal deficit to GDP; limiting central bank financing of fiscal deficits; and keeping public debt within sustainable levels. This is based on the assumption that high and variable inflation and large fiscal deficits cause many distortions in the economy, and hence decrease the confidence and certainty of investors about economic policies. (Section 2/ Obj. 1/ Q. 1)

Political Governance theme

APRM questionnaire interrogates political instability under the democracy and political governance cluster. This is based on the conviction that political instability increases the material and financial risks associated with private investment. In addressing the issue of conflict, it puts specific indicators on the emergence of a truly consultative and participatory polity and the inclusion of marginalized groups in the decision making process. The indicators include evidence of a country's efforts in terms of legal provisions, institutions and resource allocation in managing and narrowing regional, ethnic, religious and economic inequality; improved broad participation of people at the grass root levels (due to decentralization); existence and effectiveness of legal provisions that recognize and guarantee the human and democratic rights enshrined in Africa and international human rights instruments; any legal provisions, institutions, programs or policies to enhance women's role in society in terms of participation in politics and leadership positions; the number of women in decision making process. (Obj.1).

To achieve the objective of ensuring the existence of accountable, efficient and effective public office holders and civil servants, the questionnaire focus on the existence of a transparent system of recruitment, training, promotion, management and evaluation of civil servants. To this end, it uses indicators such as legal provisions, procedures and institutions to undertake the aforementioned processes; and evidence of the use of carrot and stick methods to evaluate the performance of public servants. This objective is also critical in assessing the extent of corruption in the public service and how it negatively impacts on the investment climate (Obj. 5/ Q. 2).

2. Limitations

The questionnaire does not evaluate the interference of the state in the day-to-day management of state- owned enterprises that tend to undermine good corporate governance practices in Africa. The mechanism has a tendency to consider all business organizations as private business organizations.

There are no clear and specific indicators on the impact on the external factors on the business environment. The impact of regional instability on national business environment in Africa is said to be quite high and needs specific indicators to measure it. (ARPM/ Section 3/ Obj. 1/ Q.3)

The questionnaire does not question whether regulatory impact assessments are used to evaluate the consequences of economic regulations on the investment environment. The focus on environmental issues tend to be on "good corporate citizenship" issues rather than on economic consequences on regulation

The APRM questionnaire does not put emphasis on the role and establishment of an investment promotion agency (IPA); the extent to which the structure, mission and legal status of the IPA been informed by and benchmarked against international good practices.

The APRM questionnaire does not discuss contract enforcement; its effectiveness and accessibility to all investors; and alternative systems of dispute settlement to ensure the widest possible scope of protection at a reasonable cost.

The APRM questionnaire does not discuss the existence of mechanisms for managing and coordinating regulatory reform across different levels of government. The mechanism is important to ensure consistent and transparent application of regulations and clear standards for regulatory quality.

V. CONLUSIONS AND SUMMARY OF ISSUES FOR DISCUSSION

The above analysis of the contributions of the APRM process to improving the investment climate of participating countries raises a number of issues for discussion including the following:

1. While the APRM self-assessment process provides opportunities and avenues for different stakeholders to consult on various policy issues, including the investment climate issues, the questionnaire touches on key governance dimensions of good governance without focusing on specific issues of investment climate in a country. The issue, then is, how do you retain the broad objectives of the APRM questionnaire, which is to assess the global performance in good governance, and still focus on the detailed discussion of the investment climate in a country?

2. The APRM-PoA provides an opportunity to monitor progress towards implementation of investment climate reforms, including on-going reforms already initiated by APRM participating countries as seen by the strong correlation between countries performing well on the Doing Business rankings and APRM countries. The issue is how can countries build the requisite capacity to make the APRM-PoA into a dynamic tool for monitoring the results of implementing the investment enabling environment policy reforms?