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Common African Political Governance Issues: Lessons from Six Early APRM Reports

Yarik Turianskyi

South African Institute of International Affairs

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ABSTRACT

Independent reports on the first six African states to submit themselves to scrutiny under the African Peer Review Mechanism (APRM) — the continent's principal governance assessment and monitoring tool — reveal a distinct gap between the admirable intentions enshrined in the countries' constitutions and the situation in reality. The six states are Ghana, Rwanda, Kenya, Algeria, South Africa and Benin.

This analysis by Yarik Turianskyi, a researcher at the South African Institute of International Affairs (SAIIA), shows that many states pay lip service to the principle of the separation of powers, but then proceed to disregard or override this commitment, to a greater or lesser degree, in day-to-day practice. Obviously, direct comparisons among the countries are not always possible because each has its own distinctive forms of governance, and criticisms and comments do not apply equally to all states.

But the reports do exhibit common threads. The manipulation of formal rules for elite advantage is embedded in the culture of many African states. The key problem is the lack of constitutionalism — i.e. an absence of a firm set of rules designed to control and minimise government authority. The tripod that should ensure that no single leg of government is more powerful than the other two combined is unbalanced. And the consequence is that the executive becomes dominant, the legislature becomes less effective in providing checks and balances, and the judiciary sometimes loses its necessary independence. This stifles progress and has other repercussions: it can exacerbate conflict over land, especially where ethnicity is involved; affect human rights, elections and decentralisation programmes; and encourage corruption.

The author concludes by pondering a thought-provoking question: if the APRM is to bring true democracy and better governance to Africa, how does it deal with countries that disregard its recommendations?

ABOUT THE AUTHOR

Yarik Turianskyi is a research intern in the Governance and APRM Programme at SAIIA, based in Johannesburg, South Africa. This paper is partially based on research conducted for his master's dissertation at the University of Pretoria, and an earlier draft prepared for SAIIA's The State of Governance in Africa conference, held at the Birchwood Hotel, Johannesburg, 18–20 November 2008.

INTRODUCTION

The African Peer Review Mechanism (APRM) is an unprecedented effort to promote democracy and good governance in Africa. It aims to enable African states to identify and overcome governance issues by mutual co-operation and 'peer learning'. The continent suffers from major governance problems, recent examples of which include the ethnic violence that followed contested elections in Kenya; the controversial elections and systematic intimidation of political opposition in Zimbabwe; military coups in Mauritania, Guinea-Conakry and Guinea-Bissau; continued violence and a refugee crisis in the eastern Democratic Republic of the Congo; and ongoing instability in the complex, interconnected conflicts in Somalia, Sudan and the Horn of Africa. All occurred against a background of poverty, large-scale unemployment, lack of socioeconomic development and rising HIV rates.

The APRM recognises that many African states suffer from similar governance issues (albeit to different degrees). The APRM Country Review Reports (CRRs) of Ghana, Rwanda, Kenya, South Africa, Algeria and Benin reveal patterns of problems in political governance, most commonly relating to land conflict, elections, human rights, separation of powers, lack of decentralisation and corruption. Although rules are in place to counter these problems, they are being disregarded in practice. The key problem is thus the deficient nature of constitutionalism. The consequences are that progress is stifled, not just politically, but economically and developmentally too.

This paper focuses on governance issues facing African states and recommendations proposed in APRM CRRs, the final product of the APRM process. Little distinction has been made between the material in the CRRs drawn from the Country Self-Assessment Reports (CSARs) and that produced by the Country Review Mission (CRM) itself. The rationale is that if material from the CSAR was included in the report without explicit refutation, it was accepted as having been agreed to by the CRM.

Dealing with six reports written by different teams means that there is not perfect consistency. Indeed, the reports deal with six different countries, and the issues they face are not identical. In preparing this paper, attempts were made to categorise governance issues, allowing common or related problems to be analysed. The aim was to identify common problems in broad strokes, rather than to create a more extensive list of individual difficulties.

What makes an issue 'common'? For the purposes of this study, an issue had to be prevalent in at least half the reviewed states to be labelled as common. These issues did not need to occur in identical form, but had to be similar in principle.

Because the extent of detail in the APRM's recommendations varied considerably, an attempt was made to summarise the main points to achieve a consistent basis for comparison. The identified common governance issues are not listed in chronological order (as they appear in the reports), but in terms of their perceived importance.

DEMOCRACY, GOOD GOVERNANCE AND CONSTITUTIONALISM

Although the APRM aims to establish democracy and good governance in Africa, it does not provide concrete definitions for these terms. This paper tries to explain political

concepts used by the APRM so that readers will understand why some African governance issues should be seen as problematic. It is also useful to provide a brief account of what democracy is and how it originated. In its original meaning, the term meant 'rule of the people', and was derived from the Greek *demos* (people) and *kratos* (rule). However, the word *demos* could also be translated as 'mob'. Because of this, Plato warned that rule by the people could turn into mob rule. Centuries later, the French philosopher Alexis de Tocqueville supported this view by cautioning against 'tyranny of the majority'. The danger is inherent in the fact that majorities can take decisions favouring themselves at the expense of minorities.

Today, 'democracy' is a highly contested term. Meanings vary from 'rule of the people' to 'a distinctive set of political institutions and practices, a particular body of rights, a social and economic order, a system that ensures desirable results, or a unique process of making collective and binding decisions'.[1] Despite this, it is generally agreed that a democratic state must exhibit certain features. Freedom House, an independent non-governmental organisation that conducts research on democracy, political freedom and human rights, lists the following criteria as essential for a democratic state: a competitive, multiparty political system; universal adult suffrage; regularly contested elections with secret ballots, reasonable ballot security and the absence of massive voter fraud; and significant access to voters by major political parties through the media and open campaigning.[2]

It has been claimed that democracy has not taken root in Africa because it is an alien concept. However, traditional African political systems included widespread participation, consent of the governed and the public accountability of those in power – the same principles that underpin today's established democracies.[3] It is therefore necessary to determine which aspects of democracy are not being adhered to in Africa and why, so that structural changes can be made.

Based on the findings of this paper, it is clear that a key concept in studying the troubled political history and modern problems of Africa is constitutionalism. Broadly, constitutionalism refers to the allocation, distribution and limitation of governmental power by a system of constitutional provisions and laws. The purpose is to create a system in which laws restrict government power, or at least demarcate its parameters. In a properly functioning constitutional state, these provisions would be accepted for all law-making and government operations. But constitutionalism cannot be said to exist in a situation in which such provisions are absent, ambivalent or routinely ignored; but such is the case in many African states. Formal and informal systems co-exist, with severely negative implications for the country at large, manifesting themselves in corruption, lack of accountability, disregard for the rule of law, nepotism and authoritarianism.

SEPARATION OF POWERS

The separation of powers is an issue in most of the reviewed states. To prevent abuse, a strict system is needed, supported by checks and balances. The existence of such a system, known as *trias politika,* prevents the usurpation of power by one or more people or institutions. This is achieved when government is separated into distinct spheres and each administrative branch (executive, legislature and judiciary) is responsible for conducting its own duties and for monitoring other branches to ensure that its powers are not encroached upon. As

a result, this system depersonalises authority and prevents abuse of power. Ideally, this triangle of power means two branches always oversee the third, and so prevent domination by any one sphere of government. This is especially important in the case of the executive, which is naturally inclined to seize more power because of its political importance and, at times, its ability to control appointments in other branches. In Africa, political systems frequently accord very considerable – perhaps disproportionate – power to the executive, either directly through the constitution or indirectly through party loyalties.

APRM reports suggest that while all six states provide for the separation of powers in their constitutions, these provisions do not necessarily materialise in practice. Ahmed Mohiddin, a consultant who has worked extensively on the APRM, points out that 'irrespective of structures and entrenched principles, constitutional provisions may be undermined by crude political realities' and that 'in many African countries, constitutions remain eloquent proclamations of intention, but the political will for action and adjudication is lacking'.[4]

In Algeria, according to that country's CRR, executive and legislative powers are entangled, with an imbalance in favour of the executive. Parliament has an extensive range of legislative powers, but cannot introduce new laws without the support of at least 20 members of parliament (MPs). The president, on the other hand, can legislate by decree and without parliament's approval. The independence of the judiciary, formally enshrined in the constitution, is questionable because the president presides over the Higher Council of the Magistracy and essentially appoints judges.

The situation in Benin is similar. Its CRR states that although constitutional provisions establish a separation of powers, the country's president has a marked influence over both the legislature and the judiciary. The APRM report also notes that the poor institutional capacity of the legislature and the judiciary could result in the abuse and personalisation of power by the president. The Beninese parliament is considered to be weak, under-equipped and lacking in initiative in passing legislation. The report says the country's economic situation is partly to blame, because 'the list system ensures the election of wealthy candidates who can finance the party's campaign and bribe voters, even if such candidates are illiterate and suspected of corruption or embezzling public funds or are of doubtful morals'.[5] The privilege that the rich have over the poor in accessing political office is not an issue that is exclusive to Benin or even Africa – it exists in all political systems. It is easy to say that everyone has an equal chance; in practice, financial considerations play an important role and often cause tensions where a politically equal (in theory, at least) democratic system co-exists with an economically unequal capitalist system – a common situation in modern democracies.

Ghana's CRR acknowledges the fusion of the executive and the legislative branches. This stems from the constitution, which stipulates that most of the ministers must be chosen from MPs. At the time of the APRM review, there were 88 ministers and deputy ministers who were also MPs. Arguably, they might owe a greater loyalty to the executive than to the people who elected them, which would impact on their parliamentary functions. The report states that 'the parliament is neither effective nor independent of the executive branch'.[6]

In Kenya, despite a constitution that provides for the separation of powers, the executive has evolved to become the dominant arm, with the legislature subordinate to it. The Kenyan CRR claims that the judiciary is controlled, or influenced, because the president appoints

the Judicial Service Commission. The Kenyan parliament has attempted to provide checks on the executive, however unsuccessfully.

According to the South African CRR, the judiciary in South Africa is widely perceived as independent of the executive; e.g. its intervention has caused laws to be rewritten. Judges are protected from arbitrary removal from office and their salaries are guaranteed against reduction. However, the role of parliament is questioned. It is noted that it has been reluctant to criticise the executive on controversial topics, such as the arms deal and HIV/AIDS. The report also notes that the executive is drawn from the legislature, and most parliamentary seats are occupied by the ruling African National Congress, so that the line separating the executive and the legislature may be blurred. Furthermore, South Africa has a purely proportional representation system based on party lists. MPs' sense of duty is therefore directed 'upwards' to party leaders who control their careers, rather than 'downwards' to the voters who elect them.

RECOMMENDATIONS

Some of the most common and prominent issues in the reviewed states are the domination of power by the executive, the inability of the legislature to provide a system of checks and balances, and the lack of judicial independence. Separation of powers per se is not mentioned as a cross-cutting issue in any of the reports. However, most offer recommendations to improve the situation in individual states.

Algeria: The CRR on Algeria is the most thorough of the six countries reviewed in this regard. It makes a number of suggestions for strengthening constitutional guarantees regarding the separation of powers. It recommends 'opting for a political regime that reduces the potential for institutional conflict and clarifies the political accountability of organs of the state'; 'formally giving the President, who is elected by the nation as a whole, the constitutional power to define and control the implementation of state policy for which he is directly accountable to the people'; 'strengthening the formal capacities of the APN (Popular National Assembly – Algeria's parliament)'; and 'reviewing the way in which draft legislation and proposals adopted by the APN are approved by the National Council, by changing the required three-quarters majority to that of simple majority'.[7]

Benin: This CRR takes a different approach. It recommends recruiting and training parliamentary staff to ease the load on MPs; reviewing the Electoral Provisions Act on the appointment of MPs to ensure better representation; and providing greater autonomy for the Judicial Service Commission from the executive (Benin's president and minister of justice are respectively chairperson and second vice-chairperson of this Commission).

Ghana: It is suggested that there is a need to 'revise [the] power of the president to establish ministries by subjecting this law to parliamentary approval',[8] which might not be the optimal solution, given that parliament includes 88 (out of 230) MPs who are cabinet or junior ministers. At one stage, the number of ministers decreased, but

the most recent APRM progress report (June 2008) notes that the numbers are rising again and currently stand at 89.[9] The CRR also recommends strengthening parliamentary committees to make them more effective in overseeing the executive. The final suggestion is that the position of minister of parliamentary affairs be re-evaluated because it tends to blur the line between the executive and the legislature.

Kenya: It is recommended that parliamentary accountability be increased by the introduction of recall laws, and parliament's oversight role should be strengthened by reinforcing checks and balances, increasing capacity building and reconsidering whether portfolio ministers should be separated from the legislature to entrench the separation of powers.

Rwanda: This CRR is the most conservative in its recommendations, merely stating that the government should 'ensure that the Supreme Court and the judiciary are independent of the executive branch'.[10] Such vagueness could be telling another story. The Economist Democracy Index (2007) lists Rwanda as an authoritarian regime and ranks it at number 118 in the world (number one being the most democratic).[11] The Mo Ibrahim Index (2008) gives Rwanda a score of 46 out of 100 for commitment to the rule of law, anti-corruption and transparency.[12] Rwanda clearly suffers from governance problems and one could assume that its peers are reluctant to criticise it because of its history and legacy of genocide. Analyst Eduard Jordaan argues that 'Rwanda's peers took the path of least resistance by adapting their evaluation to concur with the Rwandan government's point of view'.[13]

South Africa: This CRR identifies a need for 'strengthening the Parliament to ensure its capacity to monitor implementation of legislation it passes. Capacity constraints range from inadequate education, lack of information and knowledge of the legislators, to their capture or co-optation by the ruling party'.[14] While this recommendation points to areas that need improvement, it does not offer practical solutions.

ELECTORAL SYSTEMS AND ELECTORAL PRACTICE

Managing elections was another common challenge for the reviewed states, with the exception of Algeria (although it too experienced problems when elections were cancelled between 1991 and 1995). However, specific election problems tend to differ from country to country, and it is best to categorise them according to issues relating to electoral systems and those relating to electoral practices.

Electoral systems

An electoral system can be defined as a legal system that enables citizens to make choices through which a government is voted into power. Weak systems allow elites or the ruling party to manipulate the voting process. The Kenyan CRR notes apparent weaknesses and inequalities in the country's system, the biggest of them being significant variations in constituency size. For example, the biggest constituency is twenty times larger (in terms of electorate) than the smallest one. Furthermore, according to the report,

the Electoral Commission has not taken steps to inform Kenyans how and why it has created particular constituencies … though 21 new constituencies were created just before the 1997 elections, the public is unaware of the formula or criteria used in their creation. This led to speculation that politics was the over-riding consideration.[15]

Critics such as Ong'ayo have claimed that politicians manipulate the system to achieve their own ends.[16] Kenya's constituencies are represented by an MP and a number of local authority officials. The electoral commission determines constituency boundaries without consulting local communities. Furthermore, the president appoints the electoral commission without parliamentary approval and can task it with changing boundaries.

Although South Africa's CRR did not mention problems with the state's electoral commission, it did note that through the proportional representation system, MPs are elected through their position on a party list, meaning they are dependent on the party and not on the voters. The existence of 'floor-crossing' undermines the country's proportional representation system. A constitutional amendment 'permits two 15-day periods in every five-year parliamentary term, in which members of national, provincial and local assemblies may cross-over to other parties without losing their seats in the assembly'.[17] The report points out that this practice erodes the link between electorate and MPs, and reduces the possibility of strong opposition emerging, which in turn undermines checks and balances and oversight functions.

Finally, the Beninese CRR recognises the existence of a weak electoral system, e.g. the high cost of elections, bribery and the politicisation of the Independent National Electoral Commission (CENA). The CENA has to be constantly re-established because its members serve only for a single election. The report states that 'setting up these CENAs are often fraught with much delay and dilly dallying, and it is often difficult to build on the experiences of the previous ones'.[18] That apart, two million Beninese nationals do not possess birth certificates or identity cards, which means there is no secure and credible voters' register.

Electoral practice

Electoral practice can be defined as the actual conduct of elections, including registration, the holding of rallies by political parties, managing the voting day in all its various aspects and declaring results. Voting in both Ghana and Kenya is affected by ethnic politics. In Ghana, an ethnic pattern is emerging, while recent elections in Kenya have triggered ethnic violence. In terms of the Kenyan Societies Act, it is possible to create political parties based on ethnicity. As a result, political leaders often state openly their intention to facilitate access to political and social power for their particular ethnic groups. The Kenyan CRR states bluntly that 'political parties are regional, ethnic based and poorly institutionalised … they can be described as electoral vehicles for political entrepreneurs'.[19] In four of the reviewed states – Benin, Rwanda, Ghana and Kenya – problems with the electoral commission are reported.

In Rwanda, there are concerns about capacity, and an element of denial of political participation. Although political pluralism is embedded in the constitution, political parties are not able to operate freely, notably at grassroots level below the provinces. The CRR states: 'Political parties may be *de jure* authorised but [find it] *de facto* impossible to

realise and operate freely'.[20] According to the government, political competition for power in Rwanda is tightly structured to avoid repeating past conflicts and ethnic divisions. Critics, on the other hand, stress that this leads to intolerance and hinders democracy and the realisation of human rights. Jordaan notes that there were serious problems during the 2003 elections (such as jailing opposition politicians, intimidating political opponents, restricting the media and abusing state resources by the ruling party), which were not mentioned in the APRM report.[21]

In Ghana, at the time of writing the CRR, there was a public perception that the electoral commission was biased in favour of the then incumbent government, the New Patriotic Party led by John Kufuor. The report states that although 'political power is robust and open … [it is] fractious and, at times, explosive before, during and after elections'.[22] The electoral commission also suffers from a lack of resources – both human and material. Despite this, Ghanaians narrowly elected a new president in December 2008: John Atta Mills of the opposition National Democratic Congress. In reality, the electoral commission proved both independent and resilient. According to the National African Peer Review – Governing Council, recommendations in the APRM report were followed by legislation creating a database of individuals living in the country that helped to establish a credible voters' register.[23]

Bronwen Manby, senior programme advisor at the AfriMAP programme of the Open Society Initiative, points out that the Kenyan APRM CRR failed to identify crucial issues relating to the independence of the electoral commission.[24] The Beninese CRR states that the electoral practice in the country is not free from suspicion, and the electoral commission has become ineffectual in guaranteeing free, fair and transparent elections. The main problem is the lack of a transparent and secure voters' register, which raises concerns about the reliability of the voters' list. Bribery has also affected elections negatively.

RECOMMENDATIONS

Even though the Rwandan CRR is the only one that mentions political pluralism as a cross-cutting issue, all six reports provide recommendations on improving the electoral systems and practices in individual states.

Algeria: The CRR proposes amending the electoral laws to improve electoral representation in parliament, e.g. a 'possible solution is to introduce a preferential vote and to vote for candidates from different parties … another solution would be to encourage and ensure legal guarantees for exercising democracy within the statutory bodies of all political parties'.[25]

Rwanda: This CRR makes an attempt to address two issues — the capacity of the electoral commission and the principle of a secret ballot. It encourages the government to provide the electoral commission with more resources, thus enabling it to modernise the voters' register and increase its capacity to intervene in the election process. It also recommends a secret ballot rather than the present method in which voters line up behind their candidates.

Benin: The CRR addresses two problems: the voters' list and the need to establish a new electoral commission before every election. It suggests that the government should 'put in place a reliable voters' register based on a permanent computerised electoral list … release funds to conduct meetings in the countryside and villages … [and] resolve … the problem of identification for many Benin nationals who do not possess identity cards'. It also proposes that the electoral commission be established 'for a fixed period of time, to be renewable once'.[26]

South Africa: In the CRR, recommendations are made on two issues. It is suggested that the government address the 'adverse effects of floor crossing'[27] by reconsidering the Van Zyl Slabbert Commission's recommendations to combine party lists with a district-based electoral system at all levels of government.[28] The CRR also identifies a need to 'find creative ways to make MPs more accountable to the electorate and less to the party hierarchy that determines the party list'.[29] This rather nebulous recommendation concedes, perhaps, the difficulty of resolving the problem. South Africa's list system does, after all, work well for political parties in that it provides a means of disciplining parliamentarians. But accountability is thus left entirely to the senior party officials who assign seats to selected representatives.

Ghana: The recommendations are not extensive. Government is asked to 'make provision in the electoral law for the continuous registration of voters and, when the need arises, to ensure citizenship electoral entitlements'.[30]

Kenya: The CRR encourages parliament 'to speed up the adoption of the Political Parties Bill, which would prohibit the registration of political parties based on ethnic or regional membership'.[31]

CORRUPTION

Corruption is an issue appearing in all four thematic areas of the APRM (democracy and political governance, economic governance and management, corporate governance, and socioeconomic development). Therefore, the following section lists observations and recommendations from all sections of the CRRs in order to achieve a holistic picture.

According to the reports, corruption is a problem applicable to all the states reviewed. In most cases, it is perceived to be a major problem affecting the public sector. Corruption is widely regarded as a cross-cutting issue in Africa and is listed as such in the reports of Algeria, Benin, Ghana, Kenya and South Africa.

In Ghana, Kenya and Rwanda, the current sanctions against corruption seem simply ineffective. But in Algeria it is both the absence of a code of ethics and sanctions and unsatisfactory management control that create the problem. The Algerian CRR notes the

absence of a clear mechanism for separation of powers, which limits … the capacity of the parliament to exercise the control function in respect of public finances; and the absence of a clear institutional framework on a central and a local level to fight corruption.[32]

Issues regarding the separation of powers are not exclusive to Algeria. The Beninese CRR states that the ineffective separation of powers limits the national assembly in exercising control over public finance. It adds that corruption has become systemic in public admin-istration and local authorities, and nepotism and favouritism at all levels have made it endemic. The Ghanaian CRR says that nepotism and patronage make corruption worse. Contributing factors include weak powers of prosecution in corruption cases; 'the gift-giving culture'; a 'lack of perception of corruption as a criminal act'; 'a weak code of conduct of public officials'; and 'non-transparent procedures in public administration'.[33]

The 2008 Transparency International Corruption Perceptions Index ranking for the six reviewed countries is given in Table 1 below.

Table 1: Transparency International Corruption Perceptions Index ranking for the six reviewed countries, 2008

Country	Score	Rank
South Africa	4.9	54
Ghana	3.9	67
Algeria	3.2	92
Benin	3.1	96
Rwanda	3.0	102
Kenya	2.1	147

Note: A score of 10 is 'completely uncorrupt' and 0 is 'completely corrupt'; 180 countries were measured.

Source: Transparency International Corruption Perceptions Index, 2008, <http://www.transparency. org/policy_research/surveys_indices/cpi/2008>, accessed 9 September 2008.

Of the six states reviewed, Kenya is perceived to be the most corrupt. The APRM Kenyan CRR claims that corruption is extensive in most governmental ministries and departments, corporations, local authorities, and the bureaucracy, as well as in the executive, legislature, judiciary and military. Bribery of public officials by corporations does not carry harsh penalties. In the cases of Kenya and Algeria, it is also noted that high levels of corruption discourage foreign investments. Overall, it is apparent that the problem is widespread and in some cases endemic in African states that have undergone the review process. With the exception of South Africa, all reports state that low salaries in the administration and the public sector lead to people seeking additional sources of income, often resulting in corruption. The South African government does not acknowledge that corruption is a serious problem, stating that the perception is worse than the reality. But the South African CRR does note that the 2006 Transparency International Bribe Payers Index 'ranked South African firms operating overseas as being 7th worst in propensity to bribe when operating outside their country'.[34]

RECOMMENDATIONS

Algeria: The CRR urges an awareness campaign on corruption. It suggests that the National Organ for the Prevention and Fight against Corruption be made more effective, and the national strategy be monitored. It advises that the independent and public press should be strengthened in investigating and denouncing cases of corruption.[35]

Benin: The CRR stresses consistency in prosecuting those guilty of corruption and says there should be 'systematic punishment of all acts that violate the provisions of basic law and the requirements of proper public management and accounting, from the top right down to the lower echelons of government'.[36] It recommends that the national assembly implement the following nine-point anti-corruption campaign: (i) demonstrate the political will and determination of the government in the fight against corruption in order to give hope and encouragement to the people; (ii) implement the required administrative and institutional reforms; (iii) set up a legal and effective anti-corruption framework; (iv) stabilise public finances and increase the return on public funds; (v) consolidate and strengthen the rule of law; (vi) improve the transport sector; (vii) support the activities of civil society; (viii) improve the attitudes and work ethic of public servants and improve their salaries; and (ix) adopt a pragmatic approach in the implementation of anti-corruption policies.[37]

Ghana: The CRR notes that it is necessary to 'seek the cooperation of civil society and private business organisations to improve performance in aspects of corruption control'. It urges the government to pass two laws: one to protect whistleblowers and the other to ensure freedom of information. And it suggests consolidating bodies working on anti-corruption matters.[38]

Kenya: The CRR recommends a broad and long-term programme to promote 'honesty, integrity and committed service'.[39] It states that the rule of law must be maintained, irrespective of a person's status and that the attorney-general's office 'needs to speed up strengthening of capacity for investigating and evidencing cases'.[40]

Rwanda: The CRR suggests that to fight corruption, the government should do the following: provide civil society and media with the necessary resources; make it an offence to give a false declaration of assets; consider creating a single institution comprising all anti-corruption agencies; and strengthen the right of citizens to access administrative documents and information.[41]

South Africa: The CRR encourages the government to maintain the independence and capacity of anti-corruption institutions, but urges that they be better co-ordinated.

HUMAN RIGHTS

To one degree or another, all the reviewed states have problems with human rights, especially women's and children's rights. Both of these groups are marginalised, and their rights are often abused politically and socially. Dealing with refugees and internally displaced persons is also a common human rights issue.

Women's rights

The most common human rights problem is violence against women, which manifests itself in physical abuse and rape in all six countries, but also includes female genital mutilation in Benin and Kenya. Although most states have laws guaranteeing women's rights, the de facto situation is fundamentally different. Societal perceptions are exemplified by Kenya's CRR, which states that women are seen 'not as leaders, but as housewives'.[42] Another example is provided by the customary law of Dahomey, Benin, which stipulates that 'a woman has no legal power … she is part of the man's assets'.[43] Such societal mores need to be addressed by increasing the status of women. Increased political participation is crucial, but is not a miracle solution.

One test of women's role in society is provided by their involvement in governance structures. Table 2 shows that high representation does not always solve all problems – women are still abused in Rwanda, whose parliament consists of almost 50% females – but under-representation in the political sphere correlates with abuse in society. Benin and Kenya have low percentages of women MPs, and women generally have a diminished role in society.

Table 2: Comparison of women in parliament in the six reviewed countries, 2007

Country	Percentage of women in parliament
Rwanda*	48.8
South Africa	32.8
Ghana	10.9
Benin	8.4
Algeria	7.2
Kenya	6.7

* Following Rwanda's 2008 parliamentary elections, the proportion of women has risen to above 50%, the highest in the world.

Sources: Global Database of Quotas for Women, <http://www.quotaproject.org/country.cfm?SortOrder=LastLowerPercentage%20DESC>; Association for Women's Rights in Development, 'Kenya's elections: How did women fare?', <http://www.awid.org/eng/Issues-and-Analysis/Library/Kenyas-elections-How-did-women-fare>; Inter-Parliamentary Union, 'Women in parliament in 2007', <http://www.ipu.org.pdf/publications/wmn07-e.pdf>, all accessed 9 October 2008.

Children's rights

Children are also a vulnerable group. Physical abuse, child trafficking, child prostitution, economic exploitation and drug use are serious problems in Algeria, Ghana, Benin, Kenya and South Africa. Universal access to education is another identified problem. In Ghana, it has been reported that some schools charge parents a $50 fee for the education of every child, which many cannot afford. In Algeria between 2000 and 2005, an estimated 2.5 million students dropped out of school as families could no longer afford school fees.[44] The Beninese CRR states that free primary education appears to be a myth – particularly

for girls. Although the South African CRR does not list such problems, it does note that a significant number of children are not registered and do not have birth certificates, which affects their rights and access to services.

Refugees

The CRRs of four of six reviewed states – Algeria, Benin, Kenya and South Africa – note problems with refugee rights. Particularly, Algeria has problems with refugees' temporary living conditions, while Benin struggles to find them work and integrate them into society. Kenya and South Africa appear to have the biggest refugee problems. The former lacks a legal framework to protect refugees, while the latter lacks awareness of refugee rights at local government level. The South African CRR warns about the refugee problem, lists it as a cross-cutting issue, and states that 'xenophobia against other Africans is on the rise and should be nipped in the bud'.[45] The caution was ignored by the South African government until, in May 2008, the country suffered an outbreak of violent attacks on foreign nationals, resulting in more than 60 deaths and the displacement of more than 17 000 people.[46]

Table 3 shows the total number of refugees and people in refugee-like situations in 2007 in each of the countries under discussion. It should be noted that such estimates are problematic – many refugees are too scared to be registered, while others do not qualify for this status and therefore remain undocumented.

Table 3: Refugee numbers in the six reviewed countries, 2007

Country	Refugees
Kenya	265 729
Algeria	94 137
Rwanda	53 577
Ghana	34 958
South Africa	36 736
Benin	7 621

Source: UN High Commissioner for Refugees, 'Immigration statistics', *Statistical Yearbook 2007: Trends in Displacement, Protection and Solutions*, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?id=4981c3dc2&tbl=STATISTICScountry-territory-asylum>.

RECOMMENDATIONS

Gender issues (particularly gender inequality) are mentioned as a cross-cutting issue in the CRRs on Algeria, Benin, Ghana, Kenya and South Africa. The reports on Algeria and Kenya list youth unemployment as such, while that on South Africa similarly identifies violence against women and children. The CRRs on Algeria, Benin and Ghana stress the need to accelerate the adoption of child protection codes and domestic violence bills. All reports say that there should be improved access to education, particularly at pre-school and primary school. Kenya's CRR goes as far as

suggesting that the government should criminalise the act of not sending children to school. Not a single report mentions refugee rights as a cross-cutting issue.

Algeria: The Algerian CRR states that human rights need to be strengthened under envisaged constitutional reform. A national gender policy should be adopted, which would provide guidelines to all societal sectors. Education on women's rights should take place across the board: in the public service, the courts and schools. The CRR suggests that government should develop judicial and institutional frameworks to regulate problems related to refugees.

Benin: This CRR stresses the need to strengthen education on human rights, particularly in primary and secondary schools. It recommends quotas, revised electoral laws and legal provisions to ensure equal access by women to assemblies, the public service and political organisations. It advocates adequate measures to combat all forms of child exploitation and child trafficking, and urges government to be more active in integrating refugees into society.

Ghana: Affirmative action laws are recommended for both women and youth in organs of decentralised governance. The CRR suggests that government initiate a policy to commit itself and all political parties to adopting a 40% quota for women in 'all spheres of public society'.[47]

Kenya: This CRR says that government and civil society should work to eliminate negative cultural attitudes towards women, and government must enforce laws against female genital mutilation. For children, it suggests that authorities 'adopt a time-bound national action plan to combat child trafficking and other forms of child labour'.[48] It recommends that a clear policy on refugees be implemented and discriminatory screening practices be abolished.

Rwanda: This CRR asks the government to engage in more capacity building to enhance the effectiveness of women parliamentarians. It also states that current efforts to achieve gender equality must be maintained. The CRR states that the 'Rwandan authorities [should] step up efforts to provide education, health and housing' for refugees.[49]

South Africa: This CRR urges the necessity of appointing more women magistrates and judges and makes a practical recommendation to assign more policewomen to cases of violence against women. As in the Benin report, it recommends that efforts to prevent child trafficking are stepped up. The CRR indirectly addresses refugee rights through the cross-cutting issues of racism and xenophobia. It recommends strengthening institutions intended to protect vulnerable groups (which includes refugees); addressing the excessive violence and corruption by security forces in handling refugees; and seeking ways to mitigate the push factors in neighbouring countries that encourage people to leave them.[50]

LAND

All reviewed states appear to experience problems over land, particularly regarding ownership. The Algerian CRR points to the Land Act of 1990, which provides for the restitution

to former owners of land nationalised 20 years earlier. This creates conflict among initial landowners, current users and the administration. Benin also endures conflicts in rural areas arising from legal flaws governing land. In Ghana, both ownership and use create conflicts. In Kenya, conflicts occur over the politicisation of land ownership and land rights, and are exacerbated by an ethnic dimension in the competition for scarce resources and opportunities. The Kenyan CRR notes problems arising from land used for public purposes by the government, and from forced removals from environmentally protected areas. In Rwanda, conflicts arise in distributing land in a country with a high population density.

RECOMMENDATIONS

Land is mentioned as a cross-cutting issue in the CRRs of Algeria, Benin, Kenya, Rwanda and South Africa. Despite this, very few specific recommendations are made.

Algeria: No specific recommendations are made, but the CRR states that 'this question calls for special attention if tensions and conflicts are to be defused'.[51]

Benin: The CRR urges government to 'draw up and implement the Rural Code, so as to avoid conflicts in rural areas, which are inhabited by the majority of the population', without going into details of the legal provisions required. It also recommends that government 'strengthen and re-energise the village committees on conflict resolution, to ensure the peaceful and amicable settlement of rural conflicts', without specifying how this could be achieved.[52]

Ghana: This CRR proposes that existing proposals be implemented to introduce a comprehensive law to provide easy access to land in both systems of tenure, bearing in mind the needs of vulnerable groups, especially women: 'The law should provide adequate security of tenure, especially (but not only) for individual users in customary land tenure systems.' Government should also 'complete the review of the 1999 Land Policy recommendations and formulate a plan for their implementation'.[53]

Kenya: The CRR emphasises the land issue and recommends that it be 'addressed with greater political determination that goes beyond a merely legalistic approach'. Redistribution and reallocation policies should ensure equitable access to and use of land.[54]

South Africa: Government and civil society are urged to 'explore innovative and creative ways of accelerating land reform in order to redress the current imbalances in land ownership, and ensure its equitable distribution and the achievement of the 30% delivery target'.[55]

PUBLIC SERVICE DELIVERY

Public services represent another problem area. In particular, bureaucracy and lack of decentralisation need improvement. The Algerian CRR lists bureaucracy, corruption and favouritism as the main obstacles to an efficient public service and notes an exodus of

officials to the private sector because of low salaries. Insufficient financial resources, poor implementation of legislation and the limited role of local assemblies mean that decentralisation is ineffective. Benin faces an acute staffing problem, poor definition of the status of local authority officials, impunity and inadequate control, all resulting in 'lazy and incompetent' public officials.[56] The efficiency of the country's decentralisation programme is questioned and a need is seen for increased participation at the grassroots level.

Patronage and favouritism are an issue in Algeria, where promotions are often based on personal affiliation and not merit. Even though no decentralisation problems feature in South Africa's report, the state faces problems of bureaucracy and staffing, particularly because of a shortage of skilled civil servants. The Ghanaian CRR simply points out a lack of decentralisation and an over-abundance of bureaucratic red tape. In Kenya, there is a general lack of trust in state institutions and a reported lack of accountability by public officials. Decentralisation remains a problem, because the central government retains more power than it devolves. Local authorities appear more accountable to the central government than the electorate. Rwanda's CRR does not list absence of decentralisation as a problem, but nevertheless points to the 'existence of challenges in building an efficient civil service.' The report refers to 'discontinuity caused by a lack of records, which does not allow follow-up of decisions' and the lack of a 'local government civil service commission to which issues of service delivery can be directly reported'.[57]

RECOMMENDATIONS

None of the CRRs mentions bureaucracy per se as a cross-cutting issue. Only two – those of Benin and Ghana – identify decentralisation problems as a cross-cutting issue.

Algeria: The CRR suggests modernising structures; defining jobs and responsibilities; creating an objective and successful performance assessment system; and strengthening mechanisms for service delivery. The Algerian CRR provides a significant number of recommendations for improving decentralisation. It suggests that government should 'accelerate the procedures aimed at promoting decentralisation'[58] – specifically through laws providing for increased communal power, resources and financial autonomy; improved institutional capacities of communal assemblies; the gradual transfer of power and resources from central government to territorial administrations; and clarified rules on the distribution of competencies between the state and its territorial communities.

Benin: The CRR suggests clearer job descriptions to enhance the role of the public service; the development of a new administrative culture; a new salary structure; an efficient information management system; a regulatory mechanism to eradicate problems like laziness and tardiness; a law to depoliticise the public service; and stronger mechanisms to control and assess services. This CRR offers extensive recommendations for decentralisation and an improved bureaucratic service. It suggests the establishment of district, village and neighbourhood councils; the transfer of powers to communes (subject to decentralisation laws); clearly demarcated territorial borders

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for each commune to reduce conflict; the promotion of local authority autonomy; and reduced supervisory control over local assemblies.

Ghana: The CRR recommends 'measures … financial, legal, moral and ethnical, to enable the public service to deliver more effectively and efficiently'; an enforceable code of conduct, including making public officials declare assets and liabilities; and new policies 'aimed at mainstreaming gender in the public service'.[59] It also recommends lifting 'the ban on political party activity in decentralised systems, including political party campaigns on the basis of party affiliations'.[60]

Kenya: The CRR is vague in its recommendations, advising government to 'initiate a strategic plan that would harmonise different initiatives'; asking the attorney-general's office to 'speed up the strengthening of capacity for investigating and evidencing cases';[61] and advising the stepping up of anti-corruption programmes, particularly the use of whistleblowers and anti-corruption units in ministries. The report states vaguely that the 'challenge of decentralisation should be a major focus of devolution as part of constitutional reform agenda'.[62]

Rwanda: The CRR acknowledges that as the country's administration is being rebuilt, staff training needs to be improved, particularly regarding civic education. It declares that it would be beneficial to build up a civil service commission and a civil servants union, to increase levels of training, and to improve service. It is recommended that power be devolved to local authorities and that more mechanisms be established to involve citizens and civil society organisations in local government. No specific solutions are proposed, however.

South Africa: The CRR states that incentives should be created to attract qualified staff to the public service; strategies should be designed to attract back skilled labour that has emigrated; and the competence and accountability of the public service should be stepped up.

CONCLUSION

With the exception of South Africa, it is clear that the biggest overall political and governance problem in the countries reviewed is the lack of constitutionalism. In most cases, provisions in the constitution are disregarded in practice. The APRM CRRs emphasise the need to conform to African and international standards. However, as this study reveals, while constitutional commitments may be a key preliminary step, they do not guarantee implementation. Questions remain as to how the APRM can ensure that its members abide by the principles of constitutionalism and how informal power structures can be eradicated in African governance. The APRM has shown its ability to act as an early warning mechanism, as it identified the potential for violent ethnic clashes in Kenya and xenophobic violence in South Africa. However, the governments of both countries failed to act on the recommendations made in the reports, and violence broke out in both states. It is therefore valid to question the role that the APRM plays in African governance if its recommendations are disregarded by its member states. Solutions to the problems identified in this study require the exercise of significant political will by the governments involved.

Participation in the APRM process indicates a willingness by individual states to change their governance rules and structures if need be; however, we are yet to see the necessary will to commit efforts and resources to eradicating the problems identified throughout this paper. Thus, in order for the APRM to become a catalyst for positive governance change in Africa, joining the mechanism should remain voluntary, but following up on the recommendations should become mandatory.

Many of the governance issues identified in this paper are not exclusive to the APRM pioneer states or the African continent in general. Corruption and executive dominance are problems that occur worldwide – including in the most advanced democratic states. However, in Africa, these issues are more pronounced than elsewhere, because constitutionalism is weakly implemented and the rule of law and accountability are not entrenched in political systems. Adherence to constitutionalism and the rule of law would solve many of Africa's other governance problems. However, given African states' record of political systems where formal and informal rules exist side by side, this is no easy task. Should the APRM recommendations become mandatory, its member states would be forced to implement them, most likely under supervision from their 'peers' or an overarching APRM body, thus ensuring compliance. Such a scenario would be politically unprecedented, but may be the only way to strengthen good governance in Africa. Joining the APRM shows political will on behalf of a state's leaders to open them-selves up to review, identify governance issues and discuss the way forward with their peers. Now these leaders need to show that they also have the necessary political will to produce positive change in their countries – with the help of the APRM.

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South African Institute of International Affairs
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PO Box 31596, Braamfontein 2017, Johannesburg, South Africa
Tel +27 (0)11 339-2021 · Fax +27 (0)11 339-2154
www.saiia.org.za · info@saiia.org.za

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