

COMMON AFRICAN POLITICAL GOVERNANCE ISSUES: LESSONS FROM EARLY APRM REPORTS

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Introduction

The African Peer Review Mechanism (APRM) is an unprecedented effort to promote democracy and good governance in African politics. The idea behind it is that through mutual cooperation and ‘peer learning’ African states would identify and overcome their problems. The APRM recognizes the fact that many African states suffer from similar, if not identical problems (albeit to different degrees) and intends to address these through mutual cooperation and ‘peer learning’. An analysis of the APRM Country Review Reports of Ghana, Rwanda, Kenya, South Africa, Algeria and Benin shows the existence of certain patterns of problems in political governance. Among the most widely occurring problems in these states are land conflict, elections, human rights, separation of powers, lack of decentralization and corruption. Often states have the necessary rules in place to prevent some of these problems as well as potential abuse of power, but they are not followed in practice. The key problem is thus the deficient nature of constitutionalism, and the consequences that follow greatly stifle progress not just on the political landscape, but on the economic and developmental environment as well.

Parameters

The focus of this paper is on the problems facing countries. Problems lend themselves to better and more empirical observation than ideas about solutions, and the commonalities between the problems facing different countries can more readily be identified than putative solutions. Therefore, while the achievements of the countries and the recommendations of the Panel of Eminent Persons will receive some attention, they will not be discussed in the same detail and the problems.

Little distinction has been made between the material in the Country Review Reports drawn from the Country Self-Assessment Reports 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 an 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 in the issues raised. Indeed, these reports deal with six different countries and the issues they face are not identical. In preparing this paper, attempts were made to categorise things: this would allow common or related problems to be analysed. Ultimately, what has been attempted in this paper is to identify the common problems facing Africa in broad strokes, and to provide some analysis and discussion to a reasonable degree of detail, rather than splitting the problems into a more extensive list from the outset.

In the same vein, the question could be raised as to what makes an issue 'common'? There is no sharp answer to this, and the particular circumstances of one country will probably not exist in others. However, a problems experienced in one country might have parallels or lessons for others. The dislocation caused by Rwanda's genocide may not have a direct parallel in another country, but the problems may be 'common' to the extent that other countries have had to deal with other 'dislocation' issues – migration, refugees etc.

For the purposes of this study, the identified common governance issues are not listed in a chronologic order (as they appear in the reports), but in terms of their perceived importance.

Constitutionalism, Democracy and Good Governance

An absolutely key concept in studying the troubled political history of Africa is constitutionalism. In very broad terms it refers to the allocation, distribution and limitation of governmental power by a system of constitutional provisions and laws. The purpose of these arrangements is to create a system in which laws restrict or at least demarcate the parameters within which government power can be exercised. In a properly functioning constitutional state, these provisions would be accepted and respected with regard to all law-making and government operations. Constitutionalism cannot be said to exist in a situation in which such provisions are entirely absent, ambivalent or routinely ignored in practice. Such are the problems existing in many African states. Formal and informal systems co-exist uncomfortably together with severely negative implications for the country at large, manifesting themselves in corruption, lack of accountability, disregard for the rule of law, favoritism and authoritarianism.

Although the APRM aims to establish democracy and good governance in Africa, it does not provide concrete definitions of what these terms mean. This paper therefore aims to provide an explanation of some political concepts utilized by the APRM in order to provide the necessary background before demonstrating why some issues in African states' governance should be seen as problematic. It is also useful to provide a brief account of what democracy is and how it has originated. In its original Greek meaning, the term democracy means "rule of the people", as derived from the Greek words *demos* (people) and *kratos* (rule). However, the word *demos* could also be translated as 'mob'. Because of this Plato warned people about the dangers of democracy: its potential to turn into a rule of the mob. Centuries later, the French philosopher Alexis de Tocqueville supported this view by cautioning against "tyranny of the majority". The dangers of such a system are inherent in the fact that majorities are always able to take decisions favouring them at the expense of minorities.

The issues

Separation of powers: The separation of powers is an issue in most of the reviewed states. In order to prevent abuse by one sphere of government, a strict system of separation of powers is needed, supported by checks and balances. The existence of such a system, known as *trias politika*, prevents usurpation of power by one or many people or institutions. This is achieved through a separation of government into distinct spheres where each administrative branch (Executive, Legislature and Judiciary) is responsible

for conduct of its own duties and monitoring the other branches, to ensure that its powers are not being encroached upon. As a result, it depersonalises authority, prevents abuse of power and acts as safeguard from political domination by one of the governmental branches. Ideally, they form a governmental triangle of power, whereby two branches always oversee the third branch and ensure that it does not upset the balance of power and dominate the system. This is especially important in the case of the Executive, which is naturally inclined to seize more power than the other branches, because of its political importance and at times the 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 constitutional design, or indirectly through party loyalties.

Judging by the APRM reports, although it seems that all the states have the necessary provisions entrenched in their constitutions with regard to separation of powers, these provisions do not necessarily materialise in practice.

In Algeria, the entanglement of the Executive and Legislative powers is evident, with an imbalance of power in favour of the former. Although the Parliament has an extensive range of legislative powers, these powers are shared with the Executive. The President is able to legislate by means of decree and without prior approval of the Parliament. Introduction of legislation by the Parliament is also limited, as according to the Constitution it has to be supported by at least 20 Members of Parliament (MPs). In addition, questions are raised about the independence of the Judiciary, even though its powers are formally enshrined in the Constitution. The reason for that is the fact that the President resides over the Higher Council of the Magistracy and essentially appoints judges. The situation in Benin is similar, as although there are several Constitutional provisions that establish the separation of powers, the President of the country has noticeable influence over both the Legislative and the Judiciary. The report also notes that the poor institutional capacity of the Legislative and the Judiciary further undermines the separation of powers in Benin, and could result in abuse and personalisation of power by the President. The Beninese Parliament is considered to be weak, under-equipped and suffering from a lack of initiative in instigating legislation. Financial consideration seem to play a large part here, as the report notes that “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.”²

Ghana’s self-assessment acknowledges the fusion of the Executive and the Legislative branches. This stems from the country’s Constitution, according to which most of the Ministers must be chosen from among the MPs. As a result, during the time of the APRM review, there were 88 Ministers and Deputy Ministers in Ghana, who were also MPs. Given that so many MPs are cabinet and junior ministers (and as a result hold loyalty to the Executive), the representative, legislative and oversight functions of the Parliament are limited. The report states that “the Parliament is neither effective nor independent of the Executive branch.”³ The independence of the judiciary is also under threat, as there is no upper limit regarding the number of Judges of the Supreme Court that can be appointed. In Kenya, although the Constitution provides for a principle of separation of powers, the Executive has evolved to become the dominant arm of the government, with the Legislature becoming subordinate. It is also claimed that the

Judiciary is subject to control and influence from the Executive, due to the President appointing the Judicial Service Commission. The report states that the Kenyan Parliament has attempted to provide checks on the Executive, however unsuccessfully. According to the report, independence of the Judiciary in South Africa is not under question, but the role of the Parliament is. Regarding the former, the report states that the Judiciary is widely perceived as independent from the domination of the Executive. This is supported by the fact that laws were previously re-written after the intervention of the Judiciary. The report notes the existence of constitutional provisions aimed at safeguarding the Judiciary, such as protection from arbitrary removal from office, security of tenure, and a guarantee against the reduction of salaries. Regarding the former, it is noted that the Parliament has been reluctant to criticise the Executive on controversial topics, such as the arms deal and HIV/AIDS. The report also notes that due to South Africa's parliamentary system of government, according to which the Executive is taken from the Legislature and the majority of parliamentary seats are occupied by the ruling party (ANC), the line which separates powers of the Executive and the Legislative may be blurred. Furthermore, South Africa bases parliamentary representation on pure proportional representation through party lists. MPs sense of duty is directed "upwards", towards party leaders – who control their careers – rather than "downwards" to the voters who elect them. (Recommendations on this are discussed below.)

The common issues of the reviewed states could be identified as the domination of power by the Executive, inability of the Legislature to provide a system of checks and balances and the lack of judicial independence.

Separation of powers is not mentioned as a cross-cutting issue by any of the reports. However, the majority of them do make several recommendations with regard to improving the situation in the concerned states.

Recommendations

Algeria: Of the six reviewed states, this report is the most thorough, making a number of suggestions with regard to strengthening constitutional guarantees with respect to 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."⁴

Benin: The report takes a different approach and 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 (JSC) from the Executive (since the President of the republic and the minister of justice are also the chairman and second vice-chairman respectively of the JSC).

Ghana: It is suggested the need to “revise power of the President to establish ministries by subjecting this law to Parliamentary approval”⁵, which might not be the optimal solution, given the fact that the Parliament includes 88 (out of a total 230) MPs, who are cabinet and junior ministers. Although for a while the number of ministers has decreased, the most recent (June 2008) APRM progress report notes that these appointments are once again on the rise and the number currently stands at 89.⁶ The report also recommends strengthening parliamentary committees, in order to enable them to effectively oversee and provide a system of checks and balances against the executive. The final suggestion of Ghanaian report is to evaluate the desirability of the position of minister of parliamentary affairs, since it tends to blur the lines between the Executive and the Legislature.

Kenya: A recommendation is made to increase accountability of the Parliament through the introduction of recall laws, as well as strengthening the oversight of the Parliament by reinforcing checks and balance mechanisms, providing increased capacity building and reconsidering the separation of portfolio ministers from the Legislature in order to guarantee the separation of powers.

Rwanda: Of all the reviewed states, this report 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.”⁷

South Africa: The report states the 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.”⁸ While this recommendation points to areas that need improvement, it is insufficient in providing practical solutions as to how they could be “strengthened”.

Elections: Problems surrounding elections appear to be another common challenge for all the reviewed states, with the exception of Algeria (although it too has experienced problems, when elections were cancelled between 1991 and 1995). However, specific problems with regard to elections tend to differ from country to country, and it is best to categorise them according to issues with electoral systems and issues with electoral practices.

- **Electoral System:** The term electoral system can be defined as a legal system that enables citizens to make choices through which a government is voted into power. Weak electoral systems allow for manipulation of the voting process by elites and/or the ruling party. The Kenyan report notes that the electoral system has apparent weaknesses and inequalities. The biggest problem reported is the existence of significant variations in constituency sizes. For example, the biggest constituency is twenty times bigger than the smallest one. It notes: “Even though the Constitution specifies the criteria to be used in delimiting constituencies, the Electoral Commission has not taken steps to inform Kenyans how and why it has created particular constituencies. Thus, 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.”⁹ Although the report does not note this, critics such as Ong’ayo¹⁰ have claimed that politicians

manipulate the country's constituency system in order to achieve desirable outcomes. Kenya's constituencies are represented by a member of parliament and a number of local authority officials. The Electoral Commission determines the boundaries of these constituencies. However, the decision is taken without consulting the local communities. Furthermore, the President appoints the electoral commission without approval of Parliament and is able to give it the task of changing the boundaries of the constituencies. In the case of South Africa, although the report did not mention problems regarding the state's electoral commission, it did note that MPs are elected through a closed list, meaning that they are dependent on the party and not on the voters. It is also important to point out the existence of 'floor-crossing', which undermines the country's proportional representation system, as "the Fourth Amendment Act in the Constitution 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".¹¹ The report points out that this practice erodes the link between the electorate and the MPs, and reduces the possibility of strong opposition emerging, which subsequently undermines the system of checks and balances, as well as the oversight functions of the Parliament. Finally, the Beninese report acknowledges the existence of a weak electoral system, for example, the high cost of elections, bribery and politisation of the Independent National Electoral Commission (CENA). With regard to the latter, it must be said that the office terms of its members end with the completion of each election, and there is a need to establish the CENA before each 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".¹² Apart from that, there is also the fact that two million Beninese nationals do not possess birth certificated or identity cards, which results in the absence of a secure and credible voters' register.

- **Electoral Practice:** As distinct from the electoral system, electoral practice can be defined as the actual conduct of elections in a country. Voting in both Ghana and Kenya is affected by the existence of ethnic politics. In Ghana, an ethnic pattern is emerging, while in Kenya elections tend to bring ethnic violence. A further problem in the latter is that according to the Kenyan Societies Act, it is possible to create political parties based on ethnicity, as a result of which political leaders often openly state their intention to facilitate access to political and social power of their ethnic groups. The report goes as far as to state that "political parties are regional, ethnic based and poorly institutionalised...they can be described as electoral vehicles for political entrepreneurs."¹³ In four of the reviewed states – Benin, Rwanda, Ghana and Kenya – problems with the electoral commission have been reported. In Rwanda, concerns exist with regard to its capacity. There is also an element of denial of political participation in the country: although the principle of political pluralism is embedded in the constitution, political parties are not able to operate freely, due to the existence of conditions such as political parties not being able to operate at the grassroots below the provincial levels. The report states that "political parties may be de jure authorised but de facto impossible to realise and operate freely".¹⁴ However, it must be pointed out that, at least according to the government, political competition for power in

Rwanda is tightly structured in order to avoid repeating past conflicts and ethnic divisions. Critics, on the other hand, stress that this leads to intolerance and hindrance of democracy and human rights. In Ghana, on the other hand, there is a perception on the part of the public that the Electoral Commission is biased in favour of the current government. The report states that although “political power is robust and open... (it is) ...fractious and, at times, explosive before, during and after elections”.¹⁵ Apart from that, the Electoral Commission suffers from a lack of resources – both human and material. The Beninese report 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 – this has raised concerns about the reliability of the voters’ list. Apart from that, the report also mentions bribery as an issue that negatively affects elections.

Even though the Rwandan report is the only one that mentioned political pluralism as a cross-cutting issue, all six reports provide recommendations on improving the electoral system and practice to the concerned states.

Recommendations

Algeria: The report proposes to improve electoral representation in the Parliament through the amendment of certain electoral laws. For example, 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”.¹⁶

Benin: The report specifically addresses two problems raised earlier in the paper: problems with the voters’ list and the need to establish a new CENA prior to every election. Regarding the first problem, the report 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...to resolve...the problem of identification for many Benin nationals who do not possess identity cards”. The report recommends addressing the second problem through “establish(ing) the CENA for a fixed period of time, to be renewable once”.¹⁷

South Africa: Recommendations are made on the three issues raised earlier. It is suggested that the government “address(es) adverse effects of floor crossing”¹⁸ (par 152). The report therefore suggests that the Van Zyl Slabbert Commission’s recommendations to combine party lists with a district-based electoral system at all levels of government should be reconsidered.¹⁹ Finally, the report states 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”.²⁰ The last recommendation is nebulous in the extreme, conceding perhaps the difficulty of resolving this problem: South Africa’s list system does, after all, work well for political parties in that it a means by which uncooperative or excessively independent parliamentarians can be disciplined – accountability is entirely to senior party officials who assign seats to their parties’ selected representatives.

Rwanda: The report makes an attempt to address two issues – that of the capacity of the Electoral Commission and the principle of secret ballot. The report encourages the government to provide the Electoral Commission with more resources, which would

enable it to modernise the voters' register and increase its intervention capacities. It is also recommended that the method of voting in local elections (whereby voters line up behind their candidates) to be changed to the secret ballot method.

Ghana: the report is not extensive in the recommendations made. The 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”.²¹

Kenya: the report encourages the 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.”²²

Corruption: Corruption is an issue that can be found across the four thematic areas of the APRM, not just in the Democracy and Political Governance thematic area. Therefore, the following section lists some observations as well as recommendations from sections other than Political and Democratic Governance, in order to get a holistic picture of corruption in the six reviewed states.

Common Issue: Corruption

According to the reports, corruption is a problem applicable to all the states that have undergone the review process. In most cases, corruption is perceived to be a major problem that affects the public sector by both the public and authorities. Corruption is widely perceived as a cross-cutting issue in Africa and is listed as such in the reports of Algeria, Benin, Ghana, Kenya and South Africa.

Although it seems that in Ghana, Kenya and Rwanda the current sanctions against corruption are simply ineffective, in the case of Algeria it is the absence of a code of ethics and sanctions as well as unsatisfactory management control that creates the problem. The Algerian report also 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”.²³ Issues regarding separation of powers are not exclusive to Algeria, as the Benin report states that due to ineffective separation of powers, the National Assembly is limited in exercising control over public finance. It further adds that corruption has become systemic in the public administration and local authorities. Apart from that, nepotism and favoritism at all levels are mentioned as factors which make corruption endemic. The Ghana report points to the existence of nepotism and patronage as factors that worsen corruption. Other factors include weak powers of prosecution in corruption cases; “the gift-giving culture”; “lack of perception of corruption as a criminal act”; “a weak code of conduct of public officials”; and “non-transparent procedures in public administration.”²⁴ The report also notes a further problem, which it claims to be applicable to the overall African setting: the fact that many traders do not operate in formal banking systems (in spite of handling large amounts of cash) when conducting cross-border operations.

In the 2008 Transparency International Corruption Perceptions Index ranks the six reviewed states as follows:

Table 1: How 6 APRM Countries Rank in terms Corruption Perceptions²⁵

Rank	Country	Corruption perception index
54	South Africa	4,9
67	Ghana	3,9
92	Algeria	3,2
96	Benin	3,1
102	Rwanda	3,0
147	Kenya	2,1

Source: Transparency International. A score of 10 is ‘completely uncorrupt’, a score of 0 is ‘completely corrupt’

Of all the reviewed states, Kenya appears to be most affected, with the report claiming that corruption is extensive in most governmental ministries and departments, corporations, local authorities, the bureaucracy, as well as in the executive, legislative, judiciary and military. Bribery of public officials by corporations does not carry harsh penalties. In the cases of Kenya and Algeria, it was also noted that the high levels of corruption discourage foreign investments. Overall, it is apparent that the problem of corruption 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, which often results in corruption. The South African government is a notable exception to the other reviewed states, as it does not acknowledge that corruption is a serious problem, stating that the perception of corruption is worse than the situation in reality. The report does nevertheless 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”.²⁶

Recommendations

Algeria: The report recommends implementing an awareness campaign regarding corruption in Algeria. It also suggests consolidating the National Organ for the Prevention and Fight against Corruption and ensuring effective implementation, as well as monitoring of the national strategy for the fight against corruption. Lastly, the report advises to “strengthen the independent and public press in the area of investigations and denunciation of cases of corruption”.²⁷

Benin: The report stresses consistency in prosecution of those guilty of corruption, through stating a need for “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”.²⁸ It is thus recommended that Benin’s National Assembly should implement a nine-point national anti-corruption, as follows: “i) demonstrate the political will and determination of the Government in the fight against corruption 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 ethics of public

servants and improve their salaries; ix) adopt a pragmatic approach in the implementation of anti-corruption policies.”²⁹

Ghana: The report 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 also says that the government must pass two laws – a Whistleblowers’ Bill and a Freedom of Information Bill – implementation of which should help to address the problem. Lastly, it is suggested to “consider consolidating different bodies working on anticorruption matters”.³⁰

Kenya: The report recommends that a broad and long-term programme should be implemented, which would promote “honesty, integrity and committed service”.³¹ It is also stated that the rule of law must be maintained, irrespective of the person’s status and that the Attorney General’s office “needs to speed up strengthening of capacity for investigating and evidencing cases”.³²

Rwanda: the report suggests that in order to fight corruption, the government should do the following: “provide civil society and media with the necessary resources to support fight corruption”; “institute an offence in respect of false declaration of assets”; “consider creating a single institution that would comprise all existing agencies dealing with corruption”; and “strengthen the right of citizens to access administrative documents and information.”³³

South Africa: the report encourages the government to maintain both the independence and capacity of the institutions entitled with fighting corruption. It is also recommended to devolve more power to local institutions as a means of fighting corruption and engage media in this matter. Lastly, the report points out that coordination between the roles of different anti-corruption institutions should be improved.

Human Rights:

To one degree or another, all of the reviewed states have problems with human rights. This is especially evident in the sphere of women’s and children’s rights. Both of these groups are marginalised and their rights are often abused politically and socially.

Women: The most common problem is violence against women. Such violence is manifested in physical abuse and rape in all reviewed states, and also takes the form of female genital mutilation in Benin and Kenya. Politically and socially, although most states have necessary laws in place which constitutionally guarantee women’s rights, the *de facto* situation is fundamentally different. The way women are perceived by the society is problematic – exemplified by Kenya’s report stating that women are seen as “not as leaders, but as housewives”.³⁴ 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”.³⁵

An index of women’s prominence in society may be demonstrated by their involvement in governance structures.

Table 2: Comparison of Women in Parliament in 6 APRM States³⁶

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 %

Source: International Parliamentary Union

Children: Children are also regarded as a vulnerable group, especially in terms of rights and access to education. 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. For example in Ghana, it has been reported that some schools charge parents a \$50 fee per child, which many cannot afford. In Algeria, the number of school dropouts has increased. The Benin report states that free primary education appears to be a myth – particularly for girls. Although the South African report does not list such problems, it does nevertheless note that a significant number of children are not registered and do not have birth certificates, which affects their rights and access to services. It is also important to mention that four out of six reviewed states – Algeria, Benin, Kenya and South Africa - have problems with refugee rights. Particularly, Algeria has problems with the refugees’ temporary living conditions, while refugees in Benin struggle to find work and integrate into society. However, Kenya and South Africa are the two states with seemingly the biggest refugee problems, since the former lacks a legal framework for the protection of refugees and the latter lacks awareness of refugee rights at the local government level. With regard to South Africa, it is also important to note that the report warned about xenophobia being a problem in the country, even going so far as listing it as a cross-cutting issue, stating that “xenophobia against other Africans is on the rise and should be nipped in the bud”.³⁷ However, the caution was ignored by the South African government and in May 2008 the country suffered an outbreak of violent attacks on foreign nationals, resulting in more than 60 deaths and displacement of over 17,000 people.³⁸

The table below shows the total number of refugees in each of the countries under discussion. The figures refer to (WHICH) year.

Table 3: Comparing Refugee Numbers in 6 APRM States³⁹

Country	Total number of Refugees
Kenya	251,271
Algeria	91,101
Rwanda	45,206
Ghana	53,537
Benin	30,294
South Africa	29,714

Source: Nation Master

Cross-cutting issue: Human Rights

Not a single report mentions refugee rights as a cross-cutting issue. Gender issues (particularly gender inequality) are mentioned as a cross-cutting issue by the reports of Algeria, Benin, Ghana, Kenya and South Africa, while the reports of Algeria and Kenya also list youth unemployment as such and South Africa identifies violence against women and children as one.

Recommendations:

Algeria: The report states that under the envisaged constitutional reform the status of human rights needs to be strengthened. A national gender policy should be adopted, which would provide guidelines to all societal sectors. Education on women's rights should also take place at all levels of the society, such as the public service, the courts and schools.

Benin: The report stresses the need to strengthen education on human rights, particularly in primary and secondary schools. It is also recommended to adopt quotas, revise electoral laws and legal texts to ensure equal access of women to assemblies, public service and political organizations. The report also says that adequate measures must be taken to combat all forms of the exploitation of children and child trafficking.

Ghana: The adoption of affirmative action laws is recommended for both women and youth in organs of decentralised governance. Apart from that, it is also suggested that government initiates a policy which would bind the government and all political parties to adopt a 40% quota for women in "all spheres of public society."⁴⁰

Kenya: The report says that the government and CSOs should work towards eliminating negative cultural attitudes towards women, and the former must also enforce laws against female genital mutilation. Regarding children rights, it is suggested that Kenyan authorities "adopt a time-bound national action plan to combat child trafficking and other forms of child labour."⁴¹

Rwanda: The report asks the government to engage in more capacity building as a means of enhancing the effectiveness of women parliamentarians. It also states that current efforts at gender equality must be maintained.

South Africa: The report specifically points to the necessity of appointing more women magistrates and judges and makes a very practical recommendation to assign more policewomen to cases of violence against women. Similar to the Benin report, a recommendation is made to step up efforts to prevent child trafficking.

Parallel recommendations: Rights of the child

The Algeria, Benin and Ghana reports stress the necessity of accelerating the adoption of child protection codes and domestic violence bills, and all the reports stress the need to improve access to education, particularly at pre-school and primary school levels. Kenya's report goes as far as suggesting that the government should criminalise the act of not sending children to school.

Recommendations: Refugees

Algeria: The report suggests that the government should develop both judicial and institutional frameworks, which would ease the regulation of problems of refugees.

Benin: The report states that the government should pursue a more active integration of refugees into the society.

Kenya: The report recommends the establishment and implementation of a clear policy on refugees and the abolition of existing discriminatory screening practices of refugees within the country.

Rwanda: The report focuses more on helping refugees, stating that the “Rwandan authorities (should) step up efforts to provide education, health and housing for refugees”.⁴²

South Africa: report indirectly addresses the issue of refugee rights through the cross-cutting issue of racism and xenophobia. South African report recommends to strengthen institutions that are intended to protect vulnerable groups (which includes refugees); “address the issues of excessive violence and corruption by security forces in handling refugees”; and “seek ways of mitigating the push factors from neighbouring countries to reduce a flux of refugees”.⁴³

Land Conflict: All of the reviewed states appear to experience problems relating to land, which most often manifest in conflicts for land. The Algeria report points to the existence of the Land Act of 1990, which makes provision for the principle of restitution to former owners of land nationalised 20 years earlier. This provision is the source of many conflicts between the initial landowners, those who have been using it since the nationalisation, and the administration. Benin is also enduring land conflicts in the country’s rural areas, owing to flaws in the legal mechanisms which govern land. In Ghana, both land ownership and land use constitute an area of conflict, while in Kenya conflicts occur over the politicisation of land ownership and land rights. Exacerbating the problem in the latter state is the fact that competition for scarce resources and opportunities has taken on ethnic dimensions. The Kenya report also notes problems due to land often being used for public purposes by the government, and from forceful removal of populations from environmentally protected areas. Finally, land conflicts in Rwanda arise from high population density, particularly because of problems with land distribution.

Land has been mentioned as a cross-cutting issue in the reports of Algeria, Benin, Kenya, Rwanda and South Africa. However, in spite of that, very few specific recommendations were made to address this issue.

Recommendations: Land conflict

Algeria: The report does not provide specific recommendations, merely stating that “this question calls for special attention if tensions and conflicts are to be defused”.⁴⁴

Benin: The report states that government should “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 which legal provisions such a code should contain. It also recommends that the government should “strengthen and re-energise the

village committees on conflict resolution, to ensure the peaceful and amicable settlement of rural conflicts” without specific suggestions on how this could be achieved.⁴⁵

Ghana: the report proposes implementing the already existing proposals on the “introduction of a comprehensive land law providing 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” as well as suggesting that the government “complete(s) the review of the 1999 Land Policy recommendations and formulate(s) a plan for their implementation”.⁴⁶

Kenya: The report puts emphasis on the land issue and recommends that it is to be “addressed with greater political determination that goes beyond a merely legalistic approach. Government was urged to adopt and implement redistribution and reallocation policies to enforce equitable access to, and use of land”.⁴⁷

South Africa: The Socio-Economic Development section of the report states that both the government and the Civil Society Organisations (CSOs) should “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 per cent delivery target”.⁴⁸(Socio economic development)

Bureaucratic issues: Public services represent another problematic area in the reviewed states. Bureaucracy and lack of decentralisation are particularly described as areas that need improvement. The Algeria report lists bureaucracy, corruption and favoritism as main obstacles to an efficient public service, as well as pointing out an exodus of officials to the private sector because of low salaries. With regard to decentralisation, the situation is such that due to insufficient financial resources, poor implementation of legislation, and the limited role of local assemblies, decentralisation is ineffective. Benin faces an acute staffing problem, poor definition of the status of local authority officials, impunity and inadequate control, which results in “lazy and incompetent” public officials.⁴⁹ Similarly to Algeria, patronage and favoritism are also an issue, as promotions are often based on personal affiliation and not on merit. The efficiency of Benin’s decentralisation is questioned and a need is stated for increased participation at grass-root levels. Even though no decentralisation problems are reported in South Africa’s report, the state also faces problems of bureaucracy and staffing, particularly because of a lack of skilled civil servants. The Ghana report simply points out a lack of decentralisation and 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 problematic due to the fact that the central government retained more power than it devolved. Apart from that, it appears as though local authorities are actually more accountable to the central government rather than the electorate, through the Ministry of Local Government. Finally, Rwanda’s report does not list lack of decentralisation as a problem, but nevertheless points to the existence of challenges to building an efficient civil service, particularly the “discontinuity caused by a lack of records, which does not allow follow-up of decisions” and a lack of “local government civil service commission to which issues of service delivery can be directly reported”.⁵⁰

Cross-Cutting Issue: Bureaucracy and Decentralisation

None of the reports mention bureaucracy per se as a cross-cutting issue.
Only two of the reports – Benin’s and Ghana’s - identify decentralisation problems as a cross-cutting issue.

Recommendations: Bureaucracy

Algeria: The report suggests modernising structures; defining jobs and responsibilities; creating an objective and successful performance assessment system; and strengthening mechanisms for service delivery.

Benin: The report suggests giving clearer job descriptions to enhance the role of the public service; promote the development of a new administrative culture; implement a new salary structure; implement an efficient information management system; implement a regulatory mechanism to eradicate the problems mentioned in the report (such as laziness and tardiness); pass a law on the depoliticisation of the public service; and strengthen the mechanisms for the control and assessment of services.

Ghana: It is recommended to “adopt measures...financial, legal, moral and ethical, to enable the public service to deliver more effectively and efficiently”; “develop an enforceable code of conduct, including a declaration of assets and liabilities for public officials”; and develop policies “aimed at mainstreaming gender in the public service”.⁵¹

Kenya: The report is vague in its recommendations, advising the government to “initiate a strategic plan that would harmonize different initiatives”; asking the Attorney General’s office to “speed up the strengthening of capacity for investigating and evidencing cases”;⁵² and stepping up anti-corruption programmes, particularly the use of whistleblowers and anti-corruption units in ministries.

Rwanda: The report acknowledges that as the country’s administration is being rebuilt, staff training needs to be improved particularly with regard to civic education. It is also noted that it would be beneficial to build up a Civil Service Commission and a Civil Servants Union, which would help to increase the level of training and improvement of the civil service.

South Africa: The report states that necessary incentives must be created in order to attract qualified staff to the public service; designing strategies to attract back the skilled labour which emigrated; and stepping up competence and accountability of the public service.

Recommendations: Decentralisation

Algeria: The report provides a significant number of recommendations with regard to improved functioning of decentralisation. Particularly it suggests that the government should “accelerate the procedures aimed at promoting decentralisation”⁵³ – specifically laws that would provide for: increased communal power, resources and financial autonomy; improved institutional capacities of communal assemblies; gradually transferring power and resources from the central government to territorial administrations; and clarifying the rules on the distribution of competencies between the state and its territorial communities.

Benin: The report is quite extensive in its recommendations for decentralisation and an improved bureaucratic service. Recommendations are made to set up district, village and neighbourhood councils; transfer powers to the communes (subject to decentralisation laws); clearly demarcate the territorial borders of each commune (which would decrease intercommunal conflicts); introduce greater decentralisation reforms to promote the autonomy of local authorities; and reduce supervisory control over the local assemblies.

Ghana: The report recommends to “lift the ban on political party activity in decentralised systems, including political party campaigns on the basis of party affiliations”.⁵⁴

Kenya: The report vaguely states that the “*challenge of decentralisation should be a major focus of devolution as part of constitutional reform agenda.*”⁵⁵

Rwanda: The report recommends that power should be devolved to local authorities and that more mechanisms should be established to involve citizens and CSOs in local government. However, no specific solutions are proposed.

Conclusion

With the exception of the South African report, it is clear that the biggest overall problem is the lack of constitutionalism in the reviewed states. In the majority of cases, rules are embedded into the constitutions of their respective states, but are disregarded in practice. The APRM points states to African and international standards. However, as this study demonstrates, this is not always sufficient, as the adoption of such standards does not guarantee that they are followed in practice. Questions remain of how the APRM could ensure that its members abide by the principles of constitutionalism and how informal structures of power be eradicated in African governance. With regards to problems surrounding land and particularly land reform, government must establish clear rules and guidelines and proceed to apply them universally. Mechanisms providing conflict prevention and mediation should also be established, as much land conflict occurs between different ethnic groups. Establishment of universal laws, combined with conflict prevention, is likely to diminish the problem.

Overall, electoral systems are established in Africa and although some require tweaking, there are fundamental systems in place for conduct of free and fair elections. However, it is electoral practice that represents the major challenge. In spite of the existence of formal rules, governments are often able to manipulate them to their advantage. Stronger CSOs, opposition and media, combined with diplomatic pressure from the outside could help, although a case like Zimbabwe easily disproves that point. The problem is that manipulation of formal rules for elite advantage is embedded into the culture of many African states.

Apart from that, it is clear that women and children are marginalized groups in Africa. Both suffer from abuse and children are also often denied access to education. These problems cannot merely be solved by increasing the capacity and funding of relevant institutions, as a much larger change in society is required. It is commendable that many of the reports recommend establishing educational programmes that would teach people about human rights, starting at the primary school level.

Regarding the separation of powers, it is possible to see a pattern whereby the executive develops as a stronger part of the government and proceeds to subject the legislature to its influence. The majority of the states examined in this study appear to be executive dominated. The existence of formal rules is insufficient, as it goes back to the

point made earlier about problems of constitutionalism. Lack of decentralisation could be attributed to the central authorities being unwilling to give up their power, which relates to an earlier point about executive domination. On the other hand, in many ways problems with bureaucratic staff relate to the over-arching issue of corruption and pose a serious concern to administration of reviewed states.

Solutions of the problems identified in this study require significant political will on the part of the local government. Although it could be argued that the APRM represents such a will on behalf of African states that are signatories to the process, it seems that currently the individual political will is lacking, by the reviewed states, to commit their efforts and resources towards eradicating the identified issues.

Endnotes

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² APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 221

³ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 63

⁴ APRM Panel of Eminent Persons, *Country Review Report of the People's Democratic Republic of Algeria*. June 2007, paragraph 253(1)

⁵ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 64

⁶ National African Peer Review Mechanism – Governing Council (Ghana). Third Bi-annual progress report for the period January-June 2008. Internet: <http://www.naprm-gc.com/npa07/images/downloads/ThirdBi-AnnualProgressReport.pdf>. Access: 8/10/08

⁷ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Rwanda*. November 2005, Par 121

⁸ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, Par 212

⁹ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Kenya*. May 2006, page 71

¹⁰ Ong'ayo, A. 2008. The Post-election Violence in Kenya: An overview of the underlying factors. Internet: <http://www.pambazuka.org/en/category/comment/46094>. Access: February 19th, 2008.

¹¹ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, paragraph 135

¹² APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 142 par 153

¹³ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Kenya*. May 2006, page 69

¹⁴ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Rwanda*. November 2005, paragraph 106

¹⁵ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 8

¹⁶ APRM Panel of Eminent Persons, *Country Review Report of the People's Democratic Republic of Algeria*. June 2007, paragraph 197(2)

¹⁷ APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008,

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¹⁸ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, paragraph 152

¹⁹ Dr. Frederick van Zyl Slabbert headed the Electoral Task Team commissioned in 2002 by President Thabo Mbeki to assess the South African Electoral system and make recommendations for its improvement

²⁰ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, paragraph 152

²¹ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 42

²² APRM Panel of Eminent Persons, *Country Review Report of the Republic of Kenya*. May 2006, page 76

²³ APRM Panel of Eminent Persons, *Country Review Report of the People's Democratic Republic of Algeria*. June 2007, paragraph 561

²⁴ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 103

²⁵ Transparency International Corruption Perceptions Index (2008). Internet:

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²⁶ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, paragraph 939

²⁷ APRM Panel of Eminent Persons, *Country Review Report of the People's Democratic Republic of Algeria*. June 2007, paragraph 305(5)

²⁸ APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 902

²⁹ APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 267

³⁰ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 113

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³³ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Rwanda*. November 2005, paragraph 135

³⁴ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Kenya*. May 2006, page 104

³⁵ APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 279

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- ⁴² APRM Panel of Eminent Persons, *Country Review Report of the Republic of Rwanda*. November 2005, Paragraph 156
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- ⁴⁵ APRM Panel of Eminent Persons, *Country Review of the Republic of Benin*. January 2008, paragraph 142
- ⁴⁶ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Ghana*. June 2005, paragraph 26
- ⁴⁷ APRM Panel of Eminent Persons, *Country Review Report of the Republic of Kenya*. May 2006, page 66
- ⁴⁸ APRM Panel of Eminent Persons, *Country Review Report of the Republic of South Africa*. October 2007, Paragraph 860
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