BUILDING FREEDOM? SECURING CONSTITUTIONALISM AND CIVIL LIBERTIES IN AFRICA: AN ANALYSIS OF EVIDENCE FROM THE APRM

TERENCE CORRIGAN

FREEDOM IN AFRICA, 2015

- Free
- Partly free
- Not free

African perspectives. Global insights.

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Please note that all currencies are in US$ unless otherwise indicated.

Cover: Map based on data drawn from Freedom House data, http://www.freedomhouse.org

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EXECUTIVE SUMMARY

Africa's turn to electoral democracy over the past three decades has rightly been hailed as a significant achievement, but it has not rid the continent of restrictive and authoritarian governance impulses. This report attempts to interrogate the concept of 'freedom' and how it is faring in Africa. To do so, it conceptualises freedom in terms of 'constitutional liberalism', and discusses this conceptualisation in relation to two broad themes: constitutionalism and civil liberties.

'Freedom' is a natural concern for the African Peer Review Mechanism (APRM), the continent's innovative system of voluntary governance evaluation. Comprehensive in its scope and explicitly empowered to review participating countries' political dynamics, it is uniquely placed to provide the data for such an examination. The Country Review Reports of 12 countries that have undergone the APRM process have been studied to glean insights into the state of constitutionalism and of three important civil liberties (freedom of speech, freedom of association and freedom of religion).

The records of African countries in relation to constitutionalism and the protection of civil liberties are varied. The three-tier categorisation developed by the US-based Freedom House – ranking countries as 'free', 'partly free' or 'not free' – is a valuable organisational tool and yields valuable insights.

Africa's 'free' countries – represented in this study by Benin, Ghana, Mauritius and South Africa – tend to have constitutions whose guarantees are respected in fact. Citizens' liberties are generally extensive and protected, and characterised by an independent media and vibrant civil society.

The 'partly free' countries – represented here by Mozambique, Nigeria, Tanzania and Zambia – generally have the legal and constitutional infrastructure of freedom in place, but show significant deficiencies in implementation or in the political culture. Court orders may not be observed, or party–state conflation may undermine formal guarantees.

The 'not free' countries – represented here by Algeria, Ethiopia, Rwanda and Uganda – have circumscribed constitutional and legal environments. Constitutionalism is underdeveloped and the ability to exercise freedoms is typically restricted. The media and civil society are controlled, particularly when it comes to engaging in political matters. In this respect, laws proscribing or restricting associations have proven a major hindrance to the growth of civic activism – this being perhaps best illustrated by the Ethiopian Charities and Societies Proclamation of 2009.

The analysis suggests that a number of common challenges to freedom exist across Africa. The first is executive dominance, which can undermine the separation of powers that is important for constitutional order. The second is ideology, since normative commitment to freedom is not necessarily universal. The third is securitisation, where concerns for the state's stability are used to justify the abridgement of citizens' freedoms. The fourth is general administrative dysfunction, where state weaknesses make it essentially impossible to maintain the conditions necessary for lawful, civic freedom.

The report concludes by suggesting that the APRM can make a significant contribution to the future of freedom on the continent. Its services as a diagnostic instrument are exceptional, although certain improvements could be made. For example, it could link with the African Commission on Human and Peoples' Rights or the various UN rapporteurs. Most importantly, the expansion of freedom in Africa will hinge largely on the political will of its advocates: the difficult conditions that exist in some parts of the continent make their activism a challenging task, but a critical one for its future.

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ABBREVIATIONS & ACRONYMS

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Commission on Human and Peoples' Rights
AFP	African Partnership Forum
APRM	African Peer Review Mechanism
CRM	Country Review Mission
CRR	Country Review Report
CSAR	Country Self-Assessment Report
CSO	civil society organisation
CSP	Charities and Societies Proclamation
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
HCP	High Council of the Press
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
NPoA	National Programme of Action
OAU	Organization of African Unity

INTRODUCTION

'We live in a democratic age. Through much of human history the danger to an individual's life, liberty and happiness came from the absolutism of monarchies, the dogma of churches, the terror of dictatorships, and the iron grip of totalitarianism. Dictators and a few straggling totalitarian regimes still persist, but in reality they are anachronisms in a world of global markets, information, and media. There are no longer respectable alternatives to democracy; it is part of the fashionable attire of modernity. Thus the problems of governance in the 21st century will likely be problems within democracy. This makes them more difficult to handle, wrapped as they are within the mantle of legitimacy.'

Fareed Zakaria[1]

In 1997, the journal Foreign Affairs published an insightful article by the scholar and journalist Dr Fareed Zakaria titled 'The rise of illiberal democracy'.[2] With the so-called 'third wave of democratisation' in mind, he argued that while democracy in the sense of elections and mass political participation was gaining ground globally, it was doing so without producing the personal and civic freedoms, or the structural protections against abuse, associated with the world's mature (and largely Western) democracies. Yet it was precisely these liberties and protections that were the attraction of the concept of 'democracy' for many around the world. As more and more countries came under elected governments, democracy in its minimalist, electoral formulation was proving an often-indifferent barrier to the very pathologies it was meant to remedy.

For Zakaria, the heart of the matter was that Western democracy had been underwritten by what he termed 'constitutional liberalism'. This referred to the institutions, political conventions and culture that had paired democratic practice with freedom, accountability and legal predictability. In practice, this has been expressed through strong constitutions, independent judicial systems, free media and rights vested in individuals – such as the right to practice religion, to express opinions and to associate and assemble with others. Constitutional liberalism was the arrangement that made the citizens of democracies 'free'. However, what was occurring in many emerging democracies was that participatory politics was frequently characterised by overbearing executives, cowed and partisan judiciaries, weak parliaments, intimidated media operations and the repression of citizens' autonomy. Zakaria has not been alone in recognising these trends. Other scholars[3] have pointed out that rather than an interregnum between authoritarianism and

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1   Zakaria F, 'The rise of illiberal democracy', *Foreign Affairs*, November/December 1997, p. 42.

2   *Ibid.*, pp. 22–43. This was later incorporated into a book-length treatise, *The Future of Freedom*.

3   Carothers T, 'The end of the transition paradigm', *Journal of Democracy*, 13, 1, January 2002, pp. 5–21; Levitsky S & LA Way, 'The rise of competitive authoritarianism', *Journal of Democracy*, 13, 2, April 2002, pp. 51–65.

a constitutionalist-liberal democratic future, a distinct form of democracy is emerging. This new political system conforms to some democratic forms but rejects much of its substance. A strong strain of authoritarian culture tends to pervade it, and the degree of freedom available to those subject to it is limited.

The implications of this are profound. It is constitutional liberalism that restrains majoritarian impulses and enables citizens to assert themselves in democratic politics. Democracy and freedom are not interchangeable, and need to be pursued along separate (albeit linked) paths. Indeed, the quality of freedom enjoyed by citizens hinges less on their enfranchisement than on the rights and liberties they are accorded, and the degree to which these are respected and protected.

Analytically, a constitutionally liberal order would emphasise two key features. The first is constitutionalism. More than merely having a constitution, this implies a particular approach to governance in which entrenched rules – rather than simple power, or even popular mandates – are supreme. Constitutionalism can be seen as a framework within which governance takes place predictably and according to a set of values. It is a critically important condition for defining and protecting civil liberties. It is defined in broad terms thus:[4]

> Constitutionalism is descriptive of a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law. Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials. Thus Charles H. McIlwain has written that the essential quality of constitutionalism is that 'it is a legal limitation on government; it is the antithesis of arbitrary rule ...' Another eminent scholar of constitutional law, Howard Jay Graham, has observed that 'constitutionalism ... is the art and the process of assimilating and converting statute and precedent, ideals and aspirations, into the forms and the Rule of Law – into a Fundamental and Supreme Law'. Throughout the literature dealing with modern public law and the foundations of statecraft the central element of the concept of constitutionalism is that in political society government officials are not free to do anything they please in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme, constitutional law of the community. It may therefore be said that the touchstone of constitutionalism is the concept of limited government under a higher law.

The second hallmark of a constitutionally liberal order is civil liberties. These are the entitlements that allow people to operate as stakeholders in a society and press for their own interests. Civil liberties are a part of, though not synonymous with, the broader family of human rights. Human rights refer to a wide range (one could argue, a growing range) of entitlements that people have by virtue of being human. Civil liberties encompass a more limited set of rights, focussing on the ideas of participation in society and freedom. These guarantee the quality of personal autonomy in a society: the rights to speak one's mind freely, to practice a religion, to assemble and to form associations, for example. These

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4   Wiener PP, *Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas*, vol. 1. New York: Charles Scribner's Sons, 1972, pp. 485–496.

rights essentially demand that the state be willing to step back and allow others to act unhindered, provided they do so within the law. Prof. Andrew Altman observes that civil rights are linked to the notion of citizenship – ownership and participation in a political community. 'Civil rights', he comments, 'are the basic legal rights a person must possess in order to have such a status. They are the rights that constitute free and equal citizenship and include personal, political, and economic rights.'[5]

Queues begin to form at Du Noon, Cape Town in preparation for voting in local elections in 2011. While participatory processes increasingly characterise politics, it is unclear whether they imply expanded civil liberties

Zakaria's work emphasises that constitutional liberalism is a separate phenomenon from democracy. It nevertheless suggests that a strong foundation of the former is a major asset in democratisation, and in enhancing the quality of democracy that emerges. Perhaps most significantly, a constitutionally liberal order provides greater space for citizens to organise their participation in democracy, and opens avenues for demanding accountability. Indeed, a wellspring of constitutional liberalism is a 'pessimistic' view of politics, a scepticism around the use of power. It demands that governments' actions be scrutinised and justified as a matter of course. To this end, it stresses restraints on power, the necessity for institutions independent of the state, and the need to enable individuals to make a

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5   Altman A, 'Civil rights', in Zalta EN (ed.), *The Stanford Encyclopedia of Philosophy*, Summer 2013, http://plato.stanford.edu/archives/sum2013/entries/civil-rights/.

wide range of political choices. Appropriately managed, it creates an environment for transparent, citizen-centred governance and extensive personal choice.

FRAMING THE ANALYSIS

These ideas provide the backdrop and inspiration for this report. Freedom for a country's citizens, bounded by a strong constitutional order and both regulated and facilitated by the rule of law, is a considerable asset for a democracy. This report examines these conditions as they exist in Africa, through the lens of the African Peer Review Mechanism (APRM). The APRM, Africa's indigenous governance review system, arose from the New Partnership for Africa's Development (NEPAD). Seeking comprehensively to interrogate the governance dynamics of its participating states and their adherence to a set of normative standards (set out in various African and international agreements), the information it has assembled constitutes a rich vein of source material for understanding the continent (See Box 1).

To do this, this report is organised into four sections. The first contextualises the analysis by discussing the APRM and its normative assumptions, as well as the relevant African historical background. The second and third examine the state of constitutionalism and civil liberties respectively. These are intended to scrutinise several key themes related to freedom – freedom being understood here broadly to mirror the concept of constitutional liberalism above. It looks at the substantive experiences of a selection of African countries in the realms of constitutionalism and civil liberties. The latter are addressed through an analysis of three core elements of a civil liberties regime: freedom of expression, freedom of association and freedom of religion. The fourth and final section attempts to distil the conclusion and implications of the analysis.

The primary sources for this study are the Country Review Reports (CRRs) produced on 12 of the 17 countries that have undergone review through the APRM system. The countries selected are Algeria, Benin, Ethiopia, Ghana, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Tanzania, Uganda and Zambia.[6] These countries represent a respectable spread of the APRM's activities across the continent – regionally, culturally and linguistically diverse, taking in both more developed and less developed countries. They are also, as is explained more fully below, a diverse group politically; constitutional governance and civil liberties are more advanced in some than in others. As such they provide a good basis for making some general observations about conditions in Africa as a whole.

Within the CRRs, the inquiries focussed on the APRM's 'democracy and political governance' thematic area. Specifically, it looked at the inquiries about the supremacy of

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6   The other five countries that have been reviewed but were not included in this study are Burkina Faso, Kenya, Lesotho, Mali and Sierra Leone.

the rule of law and of the constitution, the separation of powers, and the protection and promotion of civil and political rights.[7]

Although the APRM reports have been widely commended for their comprehensiveness and detail,[8] supplementary sources have been consulted to assist in interpreting the content produced by the APRM. Data produced by the US-based Freedom House has been of particular use. Its tripartite categorisation of countries as 'free', 'partly free' and 'not free' (described in more detail below) has been employed as an organising principle for the information from the CRRs. In addition, the opinions of observers and activists in the governance arena in the relevant countries were sought, albeit with mixed responses.

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7   APRM (African Peer Review Mechanism) & AU, *Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism*, APRM Secretariat, 2012, Objectives 1, 2, 4.

8   Gruzd S, 'The Africa Peer Review Mechanism: Development Lessons from Africa's Remarkable Governance Assessment System', SAIIA (South African Institute of International Affairs) Research Report, 15. Johannesburg: SAIIA, January 2014.

CHAPTER 2

MEASURING GOVERNANCE:
THE AFRICAN PEER REVIEW MECHANISM

The APRM is uniquely placed to analyse freedom in Africa. More than any other peer review system, the APRM conducts a comprehensive assessment of countries' governance. Significantly, its purview extends to the political sphere. This was a response to the growing recognition that Africa's developmental malaise was an outgrowth of failures in its governance systems.[9] In principle, little can be excluded from its inquiries, and the reviews undertaken have interrogated countries' constitutional and legal arrangements as well as their application in fact. By so doing so, it has provided a rich, textured base of source material to examine the state of freedom in Africa.

BOX 1	WHAT IS THE APRM?

The APRM is a process encouraging African societies to analyse their problems, assess their progress towards improved governance, and promote for effective reform. As of July 2015, 35 countries have voluntarily joined. Arising out of the NEPAD initiative, it has existed as an agency formally independent of the AU, although its work has generally been seen as aligned to that of the AU. In 2014, a decision was taken to integrate the APRM into the AU system, as an autonomous entity.

To participate in the process, a country's government will sign a Memorandum of Understanding with the continental APRM authorities indicating its willingness to undergo review and its commitment to the process. Domestic institutions will be established to facilitate an assessment of governance in the country. The results of this review are incorporated into a Country Self-Assessment Report (CSAR), along with a draft National Programme of Action (NPoA), the latter being a measure to remedy shortcomings. This is followed by the visit of a Country Review Mission (CRM). This is a delegation of respected scholars and experts who conduct an independent study of the country and produce their own report. They are led by a member of the Panel of Eminent Persons, which is a small body of highly respected Africans who are responsible for managing the process across the continent. A draft CRR is submitted to the country by the panel and its secretariat for comment, recommendations are put to the participating country, and the country is expected to amend its draft NPoA accordingly.

Important to note is that the APRM's inquiries are structured around adherence to a set of international and continental standards and codes, which in turn relate to a questionnaire. It demands an examination of the country's performance in four broad thematic areas:

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9   OAU (Organization of African Unity), NEPAD Framework Document, 2001, pp. 5, 6, para. 22, 26.

democracy and political governance; economic governance; socio-economic development; and corporate governance. (The original questionnaire, finalised in 2004, was revised and an updated version – incorporating several issues absent from its predecessor – was published in 2012.)

The final CRR is produced by combining the previous reports – principally the CSAR and the results of the CRM's discussions and investigations. It is presented to the Forum of the Heads of State for discussion and final review. This body consists of the leaders of all the participating countries. It tends to convene on the margins of AU summits (although not all AU members are participants in the APRM). Once the country has been reviewed by the forum, it must agree to deal with the various problems that have been identified. Other states undertake to assist the country in its efforts, and to take action if the country does not try to deal with these issues. Finally, the country reports annually on progress in implementing the NPoA, and prepares itself for subsequent reviews (which are meant to occur every two to four years).

The APRM is organised around a set of governance standards. These are conventions, charters and agreements – both African and global – with whose requirements states participating in the APRM are required to comply. The numerous standards that define the APRM provide a fairly comprehensive normative framework for understanding the demands on countries in respect of constitutionalism or civil liberties.

The standards provide important insights into the value orientation of the APRM. The first of these is that constitutionalism and civil liberties are seen as central to resolving Africa's developmental and political impasses. The Organization of African Unity's (OAU) 1999 Plan of Action for the Promotion and Protection of Human Rights noted that arbitrary governance, poor governance, the absence of an independent judiciary, and a lack of freedom for the media and for citizens undermined Africans' human rights.[10] Returning to this theme shortly thereafter, the OAU's 2002 Memorandum of Understanding at its 2002 Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) held thus:[11]

> Good governance including accountability, transparency, the rule of law, elimination of corruption and unhindered exercise of individual rights as enshrined in the African Charter of Human and Peoples' Rights and those of the Universal Declaration of Human Rights is a pre-requisite for sustainable peace and security in Africa as well as a necessary condition for economic development, cooperation and integration.

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10   OAU, Plan of Action for the Promotion and Protection of Human Rights, 1999, para. 8.
11   OAU, Memorandum of Understanding, Conference on Security, Stability, Development and Cooperation in Africa, 2002, I (h).

The second insight is that the APRM clearly supports (conceptually, at least) the view that rights are universal in their applicability, across all countries and to all people. The Universal Declaration of Human Rights provides as follows:[12]

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The third observation, a close relation of the second, is that the standards accord importance to the individual. The standards are not oblivious to 'collective' rights, but the fundamental liberal impulse that the individual human being is the key subject of rights regimes and political participation cannot be overlooked. The quotes above demonstrate the explicit focus on the individual. The Declaration on Democracy, Political, Economic and Corporate Governance, adopted under the auspices of NEPAD, commits to the 'equality of all citizens before the law and the liberty of the individual'.[13]

A fourth is that consolidating and protecting constitutionalism and civil liberties demands proactive intervention. African countries, for example, were enjoined to[14]

> adopt, and in some cases recommit, to the fundamental tenets of a democratic society as stipulated in the CSSDCA Solemn Declaration as an African common position, namely, a Constitution and a Bill of Rights provision, where applicable, free and fair elections, and independent judiciary, freedom of expression and subordination of the military to legitimate civilian authority, rejection of unconstitutional changes of government.

Moreover, citizens are explicitly to have the right to campaign for the promotion of human rights and freedoms.[15] This is an important consideration, as it legitimises the activism of ordinary people to expand the scope of their freedom. This is a crucial dimension of modern democratic citizenship.

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12   UN, Universal Declaration of Human Rights, 1948, Article 2.

13   AU, NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, 2002, Article 7.

14   OAU, 2002, *op. cit.*, III B (14).

15   UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1998.

A fifth observation is that the CRRs suggest that progress in implementing the APRM's democracy and political governance standards has been mixed.[16] Typically, countries have acceded to particular agreements, but have failed to ratify them or to domesticate them in domestic legislation. The Zambia CRR gives a flavour of this: 'The CRM found that even though Zambia has signed a significant number of protocols that are essential for enhancing democracy and development, the country appears to have lagged significantly in applying, implementing and enforcing the various instruments.'[17] The Rwanda CRR comments on 'the limited extent to which Rwanda had actually implemented the international conventions and protocols to which the country had already acceded'.[18] The Tanzania CRR further notes difficulties in meeting reporting requirements when these are built into the relevant standards.[19]

Various CRRs suggest reasons for this state of affairs, including the importance of standards,[20] capacity constraints and indifferent political will,[21] and well as the need for lengthy processes of consultation to raise awareness and to take 'responsible' decisions.[22] The Uganda CRR provides a fairly comprehensive list of issues, probably applicable to countries other than itself as well:[23]

> The reasons advanced for not signing or ratifying some of the international and African standards and codes of governance include lack of information on the benefits to the government and the people of the ratification of such instruments; limited human resources

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16   Panel of Eminent Persons, APRM, *Country Review Report of the People's Democratic Republic of Algeria* (Algeria CRR), APRM Secretariat, July 2007, pp. 6–60; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Benin* (Benin CRR), APRM Secretariat, January 2008, p. 65; Panel of Eminent Persons, APRM, *Country Review Report of the Federal Democratic Republic of Ethiopia* (Ethiopia CRR), APRM Secretariat, January 2011, pp. 67–69; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Ghana* (Ghana CRR), APRM Secretariat, June 2005, pp. 15–16; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Mauritius* (Mauritius CRR), APRM Secretariat, July 2010, pp. 71–81; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Mozambique* (Mozambique CRR), APRM Secretariat, June 2009, pp. 99–101; Panel of Eminent Persons, APRM, *Country Review Report of the Federal Republic of Nigeria* (Nigeria CRR), APRM Secretariat, June 2009, pp. 69–78; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Rwanda* (Rwanda CRR), APRM Secretariat, June 2006, pp. 31–32; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of South Africa* (South Africa CRR), APRM Secretariat, May 2007, p. 73; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Uganda* (Uganda CRR), APRM Secretariat, January 2009, pp. 43–46; Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Zambia* (Zambia CRR), APRM Secretariat, January 2013, pp. 74–79.
17   Zambia CRR, *op. cit.*, p. 75.
18   Rwanda CRR, *op. cit.*, p. 31.
19   Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Tanzania* (Tanzania CRR), APRM Secretariat, January 2013, p. 44.
20   Nigeria CRR, *op. cit.*, p. 78.
21   Zambia CRR, *op. cit.*, pp. 74–75.
22   Benin CRR, *op. cit.*, p. 66.
23   Uganda CRR, *op. cit.*, p. 43.

in responsible ministries for dealing with such issues; and prudence due to financial implications that are likely to occur during the implementation of ratified instruments.

THE AFRICAN EXPERIENCE

The APRM invites Africa to choose freedom as a governance principle – although, as an initial observation, the uneven history of accession and implementation of the various standards raises questions about whether this is an invitation that all of Africa's governments are prepared to accept. Africa has been a major beneficiary of third wave democratisation. Most African countries now practice a form of multiparty democracy, albeit of varying degrees of probity. Several countries, such as Ghana, Nigeria and Zambia, have experienced reasonably peaceful changes of power through elections. But this is marred by countervailing trends, including the securitisations of politics, outright repression of opposition interests, restrictions on non-state media and the partisanship between bureaucracies and security services. Zakaria's observation may be pertinent to Africa: 'Democracy is flourishing; constitutional liberalism is not.'[24]

No political phenomenon can be properly understood outside its historical context. Post-colonial Africa's elites have stressed the consolidation of political power and socio-economic development, and the very concept of 'freedom' has been a nationalist one, prioritising national independence and self-sufficiency. That Africa's states have had to grapple with extensive – at times existential – challenges underlines this. The liberal concepts of individual liberty and restraints on government power have proven to be highly contested.

In practice, this has been evidenced in governments' throwing off legal restraints on their powers, seeking control over citizens and minimising opportunities for power to be challenged.

It is important to note that it was not merely governance practice that developed, but also a set of ideas about appropriate political practice in Africa. Leading figures among Africa's post-colonial leadership argued that 'Western' democracy was neither suited to nor desirable for Africa. Tanzania's influential leader Julius Nyerere, for example, argued that Africans had a cultural inclination towards communitarianism, and democracy had to be practiced within the limits of a single party, focussed on achieving common, national goals. 'This is our time of emergency,' he said, 'and until our war against poverty, ignorance and disease has been won, we should not let our unity be destroyed by a desire to follow someone else's "book of rules".'[25]

These currents of thought have not been unique to Africa. They mirror a long-standing, global (and probably unresolvable) debate around the extent of freedom that is

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24   Zakaria F, *op. cit.*, p. 23.
25   Quoted in Emerson P, *Defining Democracy: Voting Procedures in Decision-Making, Elections and Governance*, 2nd edition. Heidelberg, Dordrecht, London and New York: Springer, 2012, p. 102.

appropriate, whether in principle or in any given context. But it is the experience of various Asian countries that has articulated a powerful argument for recognising culturally and developmentally specific versions of 'democracy', based on so-called 'Asian values' – a formula that typically involves strong, activist states; a focus on stability and order, with priority given to economic development; and limited room afforded to citizens to dissent. Perhaps the most eloquent proponent of this idea was Singapore's Lee Kuan Yew. According to a major work on his life and thought, he did not believe everyone 'yearned for democratic freedoms, prizing free speech and the vote over other needs such as economic development. Asian societies, he contended, were different, having evolved separately from the West over the centuries.'[26] The remarkable socio-economic progress made by Singapore (as well as by some other authoritarian Asian societies such as Taiwan and South Korea, into the 1980s, and lately, China) has provided a powerful argument to support this.

All of this is deeply resonant for contemporary Africa. Many African countries retain tangible strains of their authoritarian pasts in their political cultures. Challenges posed by poverty and underdevelopment invite thinking about how development might be expedited. The fragility and vulnerability of some of the continent's states may cast freedom as an unaffordable luxury. A yearning for an authentic African cultural foundation to the continent's political arrangements may lead to a rejection of supposedly alien ideas. In some cases – such as South Africa and Mozambique – ruling parties are composed of so-called 'national liberation movements'. These parties' identities were shaped by their experiences of resistance and a self-conception of embodying the 'nation', leading to the equation of dissent with sedition.[27] And there are no doubt those who would invoke all of these arguments merely to legitimise their hold on power. Africa is democratising, but the lesson of recent history is that this process will not inevitably produce the freedom with which democracy has traditionally become associated.

However, there have been substantial achievements in Africa's recent history that demonstrate the attraction of freedom. Campaigns by citizen groups in various countries have doggedly defended core constitutional principles and civic freedoms such as presidential term limits and media freedom – at times very successfully. And there have been shifts (both quiet and dramatic) in the conduct of governance over the years that have enhanced the horizons of freedom on the continent.

A wide-angle perspective on Africa's trajectory is provided by the *Freedom of the World* reports produced annually since the 1970s by Freedom House. Freedom House examines 'freedom' globally by analysing separately the state of political democracy and civil

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26   Han FK, Fernandez W & S Tan, *Lee Kuan Yew: The Man and His Ideas*. Singapore: Times, 1998, p. 126.

27   Johnson RW, 'The final struggle to stay in power', Focus, 25, Second Quarter, 2002; Melber H, 'From liberation movements to governments: on political culture in Southern Africa', African Sociological Review, 6, 1, 2002, pp. 161–172; Southall R, *Liberation Movements in Power: Party and State in Southern Africa*. Woodbridge & Pietermaritzburg: James Currey & University of KwaZulu-Natal Press, 2013.

liberties in individual countries, and then using the composite result to describe them as 'free', 'partly free' or 'not free'.

The results (see Appendix 1) are illuminating, demonstrating a general movement towards greater freedom on the part of the 12 countries under review. In 1980, only two of these countries, Ghana and Nigeria, were ranked 'free', although coups in both countries would soon reduce this to 'not free'. The dominant state of these countries – eight of the 12, or two-thirds of the total – was 'not free'. This was a decade in which military rule was common, one-party systems respectable and individual freedom frequently suspect. A decade later there were some important glimpses of progress. Benin and South Africa had improved their ratings, becoming 'partly free', while Mauritius had become 'free'. But freedom in Africa was still a rare commodity, and seven of the 12 countries were ranked 'not free'.

By the turn of the millennium, however, it had become clear that change was underway. By this time, four of the 12 countries – Benin, Ghana, South Africa and Mauritius – were ranked 'free', while a further five were ranked 'partly free'. This pattern has broadly held until the present. For most of these countries, the rankings they held by this time signified a long and painful journey. South Africa, for example, had transitioned from its system of racial oligarchy – apartheid – and the numerous subsidiary restrictions on personal autonomy, repressive security legislation and a low-key civil war, to a vibrant (if not fully consolidated) democracy under a highly regarded constitution and aggressive assertion by citizens of their rights. Ghana, in the 1990s, was able to overcome nearly 30 years of instability, punctuated by regular military rule. In the past two decades it has witnessed peaceful, democratic changes of government, vigorous public policy engagement and the growth of an outspoken free media. Tanzania, Mozambique and Zambia have all discarded their one-party systems, and spaces have opened for activism that would once have been impossible.

None of this is to suggest that freedom has triumphed. By 2015, four of the countries – Algeria, Ethiopia, Rwanda and Uganda – were ranked 'not free'. For Ethiopia and Uganda this represented a regression, since both had previously been ranked 'partly free'. This is not unique to Africa. Freedom House has for some years been drawing attention to an overall retreat of freedom globally.[28] In this respect, it is perhaps also significant that Ethiopia, Rwanda and Uganda have all been hailed internationally for their successes at economic reform – providing evidence against arguing for freedom when socio-economic development is desperately required.

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28   Freedom House, *Discarding Democracy: Return to the Iron Fist: Freedom in the World 2015.* Washington DC & New York: Freedom House, 2015, p. 1.

FIGURE 1   FREEDOM IN AFRICA, 2015

Free

Partly free

Not free
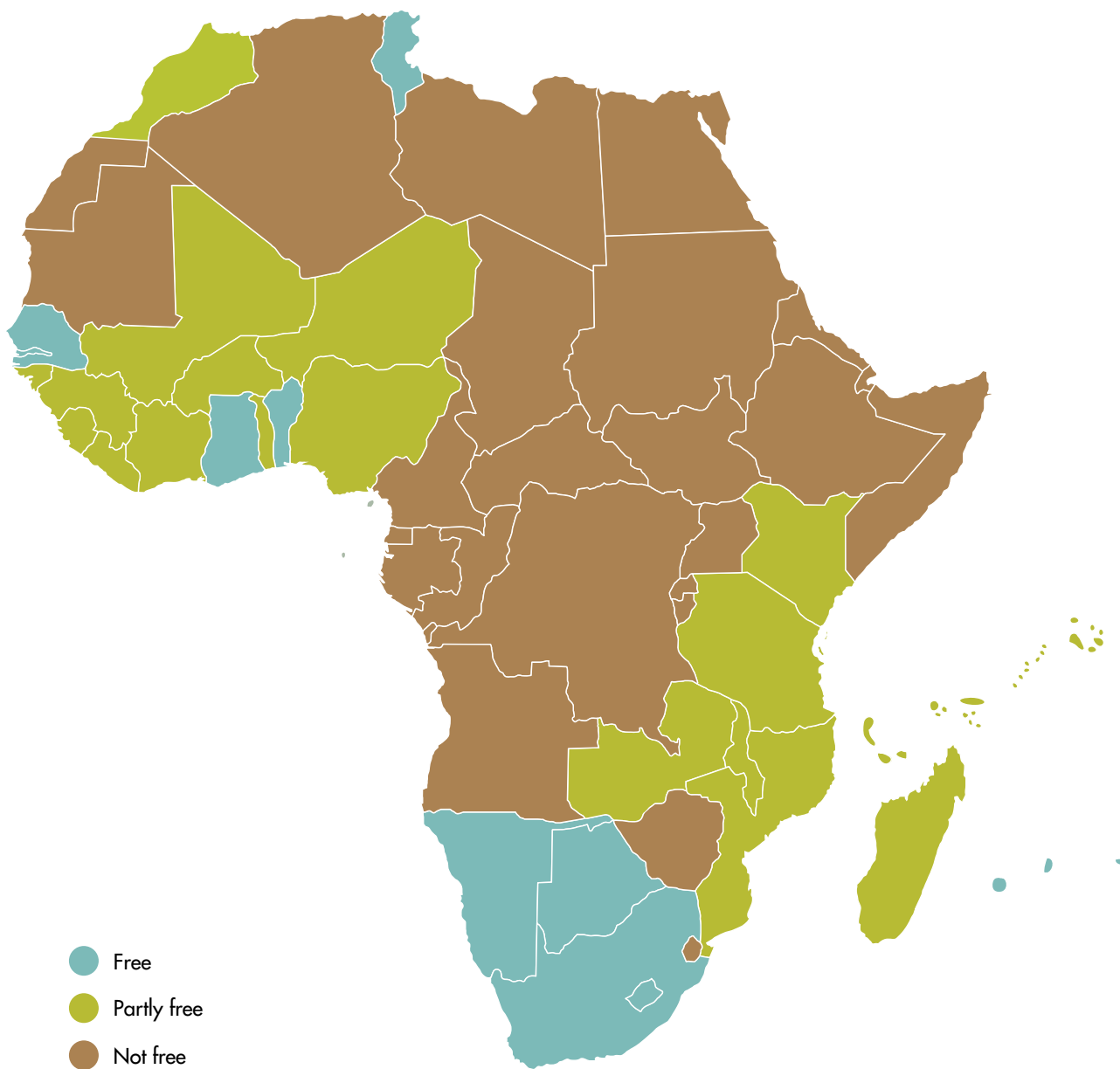
Source: Map based on data drawn from Freedom House, Freedom in the World 2015, Individual Countries' Ratings and Status, https://freedomhouse.org

CHAPTER 3

CONSTITUTIONALISM

Constitutionalism implies limits to state and government powers, establishing the parameters within which citizens' rights are predictably secured. The objective is to prevent abuse by any part of the system, and to ensure that power is exercised in accordance with specific principles. To achieve this, power is formally distributed throughout the political system, so as to create a matrix of checks and balances. The classic formulation is that power is divided between the legislative branch, the executive and the judiciary, with each managing its own affairs and acting as a brake on the others. Through this arrangement, constitutionalism helps create the space for freedom throughout society, while simultaneously dealing with the fraught question of 'how much' freedom is desirable.[29]

Sensitivities to the need for constitutional governance are reflected in a number of standards. Most explicitly and emphatically, this is taken up by the AU's African Charter on Democracy, Elections and Governance (ACDEG). This charter requires that 'state parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power',[30] and that they must 'entrench the principle of the supremacy of the constitution in the political organisation of the State'.[31]

In addition, a number of standards foreground the importance of the rule of law, arguably the key feature of a constitutional order. For example, the ACDEG requires that states observe the rule of law: 'State parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.'[32] The African Charter on Human and Peoples' Rights asserts that 'every individual shall be equal before the law' and that 'every individual shall be entitled to equal protection of the law'.[33] The centrality of the rule of law is also clearly evident in the UN's International Covenant on Civil and Political Rights, requiring in numerous contexts that government action be regulated by law.[34]

The standards also demand another key element of constitutionalism, namely the separation of powers. The Declaration on Democracy, Political, Economic and Corporate Governance requires 'adherence to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments'.[35] This formulation is important, since it draws attention to the particular need to fortify the judicial and

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29   See Bryner GC & NB Reynolds, *Constitutionalism and Rights*. Provo: Brigham Young University, 1987; Vile MJC, *Constitutionalism and the Separation of Powers*, 2nd edition. Indianapolis: Liberty Fund, 1967.

30   AU, African Charter on Democracy, Elections and Governance, 2007, Chapter 4, Article 5.

31   *Ibid.*, Chapter 4, Article 10.

32   *Ibid.*

33   OAU, African Charter on Human and Peoples' Rights, 1981, Chapter 1, Article 3.

34   UN, International Covenant on Civil and Political Rights, 1966, Part III, Article 14.

35   AU, 2002, *op. cit.*, Article 7.

legislative arms of the state vis-à-vis the executive. Although by no means an issue unique to Africa, an extensive body of scholarship[36] has drawn attention to executive dominance on the continent and to the impact this has on the political environment on the continent: an executive seeks particular governance outcomes, and to do so may ignore or actively undermine countervailing forces. Given a suitable set of circumstances – economic or political crises, endemic corruption, widespread popular opposition – this can result in repression and stifling of the spaces necessary for citizens to exercise meaningful freedom.

The value of constitutionalism is spelt out in some of the CRRs, both for its intrinsic importance and for its implications for development. The Ghana CRR notes:[37]

> The supremacy of the Constitution and entrenchment of the rule of law are the basic foundations on which all the institutions of governance, the private sector and civil society are grounded. The constitution and the rule of law offer protection of individual life; security of property; sanctity of contracts; protection from the government's arbitrariness or abuse of power; and the assurance that one can enjoy the fruits of one's labour. Without constitutionalism and the rule of law, no one will venture into productive and creative activities, or create wealth and employment and thereby promote human development and the alleviation of poverty.

The overall evaluation of the state of constitutionalism in the various countries' CRRs tracks quite closely the degree of freedom in each, as assessed by Freedom House. Among the countries ranked 'free' – Benin, Ghana, Mauritius and South Africa – constitutionalism is generally respected and guarantees a range of rights.[38] Particularly high praise is accorded to Mauritius, with its CRR commenting on the respect it has shown for the constitution and the independence of its democratic institutions.[39]

The 'partly free' countries – Mozambique, Nigeria, Tanzania and Zambia – tend to have the basic constitutional infrastructure in place. However, developing a solid system of constitutionalism remains an incomplete project. A consistent deficiency is a failure to balance power across the arms of the state. Specifically, the CRRs affirm the ongoing dominance of executives.[40] Thus, the Zambia CRR remarks: 'Constitutionalism, the

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36   See, for example, Prempeh HK, 'Presidents untamed', in Diamond L & MF Plattner, *Democratization in Africa: Progress and Retreat*, 2nd edition. Baltimore: Johns Hopkins University Press, 2010, pp. 18–32; Mustapha AR & L Whitfield (eds), *Turning Points in African Democracy*. Woodbridge & Rochester: James Currey, 2009; Mohiddin A, 'Unchecked Executive Powers: Lessons in Effective Government Design', SAIIA Occasional Paper, 1, May 2008; Van Cranenbergh O, 'Restraining executive power in Africa: Horizontal accountability in Africa's hybrid regimes', *South African Journal of International Affairs*, 16, 1, April 2009, pp. 49–68; Van de Walle N, 'Presidentialism and clientelism in Africa's emerging party systems', *The Journal of Modern African Studies*, 41, 2, June 2003, pp. 297–321.

37   Ghana CRR, *op. cit.*, p. 21.

38   Benin CRR, *op. cit.*, p. 86; Ghana CRR, *op. cit.*, p. 25; Mauritius CRR, *op. cit.*, p. 95; South Africa CRR, *op. cit.*, pp. 81–82, 86–87.

39   Mauritius CRR, *op. cit.*, p. 95.

40   Mozambique CRR, *op. cit.*, p. 111; Nigeria CRR, *op. cit.*, p. 64; Tanzania CRR, *op. cit.*, p. 55; Zambia CRR, *op. cit.*, p. 31.

separation of powers, the institution of checks and balances and the rule of law are therefore questionable in Zambia.'[41] Moreover, a failure to exercise restraint on the executive can breed a sense of impunity, as the Mozambique CRR notes: 'Excessive powers of the executive vis-à-vis the legislature and judiciary leads to the perception that members of the executive are above the law and violations of the law by the government officials will go unchallenged.'[42] The Tanzania CRR notes that some state officials routinely disregard court orders.[43] In the case of Nigeria, the CRR points out that the country's constitution provides for a strong executive that has some similarities to the military regimes it replaced,[44] and that it is not designed to enforce separation of power and the checks and balances necessary for a constitutional order.[45]

Similar dynamics of executive dominance, although to a more profound degree, afflict the 'not free' countries – Algeria, Ethiopia, Rwanda and Uganda.[46] Particular provisions in the Ethiopian and Rwandan constitutions actively undermine the separation of powers. The Rwandan judiciary, for example, is appointed by the executive. The president of Rwanda both nominates and appoints the president and deputy president of the Supreme Court. The president of the Supreme Court then presides over the powerful Superior Council of the Judiciary – which appoints and disciplines judges.[47]

It appears that the overall state of the political environment is a major contributor to the failures of constitutionalism. In Uganda the CRR notes that the cultural underpinnings of constitutionalism in that country are 'embryonic'.[48] The Rwanda CRR examines the political context in greater detail, noting: 'The approaches taken by the Rwandan Constitution to the principles of separation of powers, political competition and organisation, and enjoyment of fundamental civil and political freedoms are consciously directed towards building national unity, consensus and inclusiveness, given its past.'[49] (This is a clear case of the subordination of 'freedom' to perceived national and societal interests – one which developmental authoritarians worldwide would recognise.) It also argues that the manner in which the state in Rwanda is structured and functions essentially leads to a fusion of powers rather than a separation.[50] This manifests itself in highly restrictive outcomes for civil liberties.

The state of the judiciary and the rule of law, as particular guarantors of the constitutional order, are accorded special attention. Overall, the CRRs point to courts that are attempting to enforce the law but are finding it difficult to do so. In some cases, this arises from

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41 Zambia CRR, *op. cit.*, p. 31.
42 Mozambique CRR, *op. cit.*, p. 111.
43 Tanzania CRR, *op. cit.*, p. 55.
44 Nigeria CRR, *op. cit.*, pp. 64, 90.
45 *Ibid.*, p. 64.
46 Algeria CRR, *op. cit.*, pp. 87–88; Rwanda CRR, *op. cit.*, p. 42; Uganda CRR, *op. cit.*, p. 83.
47 Rwanda CRR, *op. cit.*, p. 42.
48 Uganda CRR, *op. cit.*, p. 59.
49 Rwanda CRR, *op. cit.*, p. 30.
50 *Ibid.*, p. 42.

general resource and capacity constraints, as well as corruption.[51] Some countries – such as Algeria and Mozambique – lack a tradition of independent judiciaries and constitutional litigation.[52]

Concerns about judicial independence emerge repeatedly in the various CRRs, most prominently (though not exclusively) in the 'not free' countries. This may take the form of political 'manipulation' or 'pressure' on the judiciary – as in Nigeria[53] and Uganda[54] – or more formalised systems that restrict its authority. The Algeria CRR contends that there are some serious ambiguities in the manner in which the judiciary is managed – the country's president presides over the Higher Council of the Magistracy, which in turn presides over the judiciary. There are also concerns about the political allegiance of judges and their handling of sensitive cases; referring to the Algeria APRM opinion survey, the CRR notes that more than half of respondents viewed the independence of Algeria's judiciary negatively.[55] Benin has recently experienced a troubling controversy that has called into question its rule of law. In 2013, a judge – Angelo Houssou – dismissed charges against alleged conspirators in a coup attempt the previous year. Houssou was then detained while travelling to Nigeria. Claiming harassment, he sought asylum in the US.[56]

The Ethiopia CRR notes that the independence of the judiciary is respected at higher levels, but sometimes interfered with at lower levels.[57] It also points out that in contrast to the position in other countries, the courts do not resolve disputes around constitutional interpretations – this function is left to the House of the Federation. This is because the Ethiopian political system assumes that resolving constitutional issues is largely a political matter. The CRR obliquely critiques this by arguing that 'the arrangement portends a possible difficulty. In a dispute that is, or is perceived to be, related to partisan politics, an impartial judicial decision would be more readily accepted and respected than one by a single-party-dominated House of the Federation which would be seen as a judge in its own cause contrary to the cardinal principle of natural justice.'[58] Other analysts have taken this critique further, arguing that in Ethiopia the law has been used to serve the interests of the ruling party: one scholar suggests it is more appropriate to describe the situation in Ethiopia as rule by law than rule of law.[59]

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51   Mozambique CRR, *op. cit.*, p. 110; Nigeria CRR, *op. cit.*, pp. 102–103.

52   Algeria CRR, *op. cit.*, p. 84; Mozambique CRR, *op. cit.*, p. 110.

53   Nigeria CRR, *op. cit.*, pp. 102–103.

54   Uganda CRR, *op. cit.*, p. 84.

55   Algeria CRR, *op. cit.*, p. 86.

56   Tola E, 'Judge in Benin president poison case caught "trying to flee"', *Africa Review*, 22 May 2013, http://www.africareview.com/News/Judge-in-Benin-President-poison-case-tried-to-flee/-/979180/1859642/-/11yrvrm/-/index.html; Reuters, 'Judge in Benin poison plot flees to the United States – union chief', Thompson Reuters Foundation, 5 December 2013, http://www.trust.org/item/20131205184106-2fog7/?source=search.

57   Ethiopia CRR, *op. cit.*, p. 99.

58   *Ibid.*, p. 98.

59   Abebe A, 'Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical', CGHR (University of Cambridge Centre of Governance and Human Rights) Working Paper, 1. Cambridge: CGHR, April 2012.

Across the CRRs, other challenges to constitutionalism are identified. The Ethiopia and Tanzania CRRs note that dominant party regimes create a situation where political loyalties override the institutional separation that is essential for balancing power.[60] This is obliquely recognised in the South Africa CRR as well: while South Africa's legislature has done much commendable work in giving expression to the will of the country's people, it has not distinguished itself in holding the executive to account.[61]

The Benin CRR argues that constitutional rule is undermined by pervasive 'indiscipline' in society.[62] That latter observation underlines the danger to constitutionalism – indeed, to governance in general – of social disorder. Across the continent, this takes many forms. These range from the truly destabilising, such as armed insurgencies, crime and political violence, to the apathetic and reckless, such as irresponsible road usage or unproductive work ethics, through to such essentially survivalist activities as street trading and informal settlement. While these differ profoundly in their specific consequences and their moral implications, they all constitute challenges to the structure and security that the law is intended to bring to society. They also make the law and the constitutional framework seem inadequate, if not redundant, for dealing with societies' challenges. In addition, they cast doubt upon the prospects of inculcating respect for and appreciation of a constitutional order among the population at large – without which a constitutional project is unlikely to succeed.

The Constitutional Court in Johannesburg, South Africa

Source: http://www.mediaclubsouthafrica.com/images/stories/conhill/lo-res/conhill_lo_08.jpg, Janine Erasmus & Wilma den Hartigh

60   Ethiopia CRR, *op. cit.*, p. 97; Tanzania CRR, *op. cit.*, p. 55.
61   South Africa CRR, *op. cit.*, pp. 102–103.
62   Benin CRR, *op. cit.*, pp. 80–81.

It is important to stress that the CRRs do not fixate entirely on failings. A positive message to emerge from the APRM is that, for all their limitations, the continent's courts are making some progress. Thus, the Nigeria CRR records that the country's judiciary has risen in the public's esteem, the considerable challenges it faces notwithstanding.[63] In this respect, South Africa is noteworthy. The CRR commends the high standards its judiciary has maintained, while noting that it is pursuing its own 'transformation' project, attempting to ensure greater racial and gender representation within its ranks – the CRR calls for this to be expedited.[64] It does, however, caution prudence in ensuring that appointments are made on merit. It also records concerns about pending legislation that could undermine judicial independence, for example by giving more influence to the executive to appoint judges and manage the judiciary's administration.[65] (Subsequent amendments to this legislation removed some of the contentious provisions; the Superior Courts Bill of 2003 had, for example, been viewed as posing a threat to judicial independence. It lapsed and a revised version – along with associated constitutional amendments – largely mollified its critics' concerns, by vesting overall control of the judiciary under the chief justice rather than an executive authority.)[66]

Looking at the South Africa CRR from the perspective of the years that have elapsed since it was compiled, some observations serve to illustrate the achievements and challenges that constitutionalism faces on the continent. South Africa's constitutional order is well regarded globally. It has pioneered the idea of 'transformative constitutionalism', in terms of which constitutional principles would be consciously used to overcome developmental deficiencies and infuse inclusion and justice throughout society.[67] The judgements of its Constitutional Court have been extensively studied, and have made a significant contribution to international jurisprudence.[68] The country's courts are regularly approached by interest groups to press their rights, often explicitly in reference to constitutional principles.

But the hope vested in the country's constitution as an agent for 'transformation' has begun to fade. This despondency has its roots in the country's political and economic

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63   Nigeria CRR, *op. cit.*, pp. 102–103.

64   South Africa CRR, *op. cit.*, pp. 98–99, 100–101.

65   *Ibid.*, pp. 100–101.

66   SANews.gov.za, 'Cabinet approves new-look superior courts bill', 20 May 2010, http://www.sanews.gov.za/south-africa/cabinet-approves-new-look-superior-courts-bill; South Africa, Department of Justice and Constitutional Development, 'New superior courts bill to be tabled in Parliament', *SabinetLaw*, 5 January 2011, http://www.sabinetlaw.co.za/justice-and-constitution/articles/new-superior-courts-bill-be-tabled-parliament; Hlongwane S, 'No. 17: A constitutional amendment (almost) everyone agrees on', *Daily Maverick*, 22 November 2012, http://www.dailymaverick.co.za/article/2012-11-22-no-17-a-constitutional-amendment-almost-everyone-agrees-on/#.Vd4YWO8ViP8.

67   Langa P, 'Transformative constitutionalism', *Stellenbosch Law Review*, 17, 3, 2006, pp. 351–360.

68   For interesting commentary on this, see Fritz N, 'Judiciary can give Zuma tips on soft power', *Business Day*, 6 August 2012, http://www.bdlive.co.za/articles/2011/11/07/nicole-fritz-judiciary-can-give-zuma-tips-on-smart-power.

fortunes. Among the key challenges identified are persistent poverty and socio-economic inequalities; the growth of chauvinistic identity politics; and a disregard by some politicians for the importance of the country's judiciary.[69] This has been manifested in populist attacks on the constitution and judiciary, demands for an unrestrained hand for state agencies to deal with lawlessness or socio-economic problems, and on occasion a failure to comply with court orders. At times, this reaches into the senior echelons of the government and the ruling party, and involves questioning the constitutional order. One notable instance has been an opinion piece by Dr Ngoako Ramathlodi, then deputy minister of correctional services, published in 2011, which argued that South Africa's constitutional order represented 'fatal concessions' and a 'compromise tilted heavily in favour of forces against change'.[70] As this research report was being prepared, a controversy erupted over the failure of the government to execute an arrest warrant, issued by a South African court, for Sudanese President Omar al-Bashir. The warrant was issued in terms of domestic legislation committing it to enforcing its obligations as a party to the Rome Statute of the International Criminal Court. The government's view was that it could not arrest an African head of state – especially one in the country for an AU summit – as this would disrupt its relationships with other states.[71] Subsequently, Gwede Mantashe, Secretary General of the ruling ANC, publically accused some of the country's courts of bias against it, and of wanting to hamstring governance.[72] Arguing that the arrest warrant intruded into political territory, he said that 'court orders like this will from time to time be disregarded',[73] suggesting that a troubling precedent has been set for the rule of law.

The key theme to emerge from the CRRs is that Africa evinces a nominal commitment to constitutionalism, but this is unevenly held and unevenly adhered to in practice. The constitutions of the less free societies – Ethiopia and Rwanda, in particular – contain provisions that work against effective constitutionalism. Across all of the countries, whatever their level of freedom, constitutionalism is undermined in some measure by the limited capacity available to the states, by the inhospitable political and economic climate and, at times, by a lack of commitment to constitutionalism by certain political interests. The absence of a regime of properly functioning rule of law also figures prominently. Courts stand as the bulwark against arbitrary power – something that is intrinsic to a constitutional system of government, and an indispensable guarantor of civil liberties.

69   *Legalbrief Today*, 'The future of "transformative constitutionalism" in South Africa', 12 August 2008, http://www.legalbrief.co.za/article.php?story=20080812130754767.

70   Ramathlodi N, 'The ANC's fatal concessions', *The Times*, 1 September 2011, http://www.timeslive.co.za/opinion/commentary/2011/09/01/the-big-read-anc-s-fatal-concessions.

71   Davis G, 'SA govt may ditch ICC over al-Bashir debacle', *EWN*, 24 June 2015, http://m.ewn.co.za/2015/06/24/ANC-SA-may-ditch-the-ICC-over-al-Bashir-debacle.

72   Comrie S, 'Gwede Mantashe singles out "problematic courts"', *City Press*, 22 June 2015, http://www.news24.com/SouthAfrica/News/Gwede-Mantashe-singles-out-problematic-courts-20150622.

73   Retief H, 'Newsmaker – revolution, nostalgia rule Gwede Mantashe', *City Press*, 28 June 2015, http://www.news24.com/SouthAfrica/News/Newsmaker-Revolution-nostalgia-rule-Gwede-Mantashe-20150628.

Perhaps the most important expression of these dynamics is that the executive remains the locus of power in Africa's states, and that countervailing forces have yet to find a solid footing. All of this is in line with what SAIIA researcher Yarik Turianskyi argued in a six-country analysis – published in 2009 – of the early APRM reports. His analysis found that a key problem was the lack of proper constitutionalism, with the overweening dominance of executives being a primary issue.[74] It is also consonant with the arguments made by Prof. H Kwasi Prempeh that Africa stands at the dawn of a new era of constitutionalism, but does so precariously. One the one hand, a new intellectual consensus on the virtues (and inevitability) of democracy and constitutionalism has emboldened civil societies and judiciaries, and campaigns for presidential term limits – among other factors – are digging foundations for constitutional order. On the other, lingering executive dominance, strongly centralised states and intransigent bureaucracies are undermining these foundations. He remarks: 'Contemporary Africa's democracy and constitutionalism projects are still works-in-progress, and relatively young ones at that. As "time is an important determinant of institutionalization," it is yet too soon to become disenchanted or pessimistic about the prospects for constitutionalism or democratic consolidation in Africa.'[75]

74   Turianskyi Y, 'Common Political Governance Issues: Lessons from Six Early APRM Reports', SAIIA Occasional Paper, 28. Johannesburg: SAIIA, March 2009.
75   Prempeh HK, 'Africa's "constitutional revival": False start or new dawn', *International Journal of Constitutional Law*, 5, 3, 2007, pp. 469–506.

CHAPTER 4

CIVIL LIBERTIES

In examining the political dynamics of its participating countries, the APRM interrogates the state of various rights and entitlements that citizens should, in terms of the standards, be able to call on. To analyse what the APRM reveals about civil liberties, three core freedoms are discussed below. These are freedom of expression, freedom of association and freedom of religion. This is not a comprehensive treatment of the civil liberties landscape. But each of these is of profound importance to the broader state of freedom, with deep implications for the personal autonomy of individuals and for the character of the democratic environment. These rights are also consistently covered, to a greater or lesser degree and with a few exceptions, across all the CRRs, while others, such as the right to privacy, are not.

FREEDOM OF EXPRESSION

Freedom of expression (the freedom to impart and receive information and opinions in private and in public) is foundational for a free society. Without it, participation in democratic processes and the exercise of citizenship – the active participation by individuals in the political life of a society – are fatally undermined. It is instructive that the importance of freedom of expression was recognised by the UN General Assembly in its first session in 1946 – a time when there was the imperative of building a global order that would not be wracked by the abuses of war, genocide and repression. 'Freedom of Expression,' it noted, 'implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious efforts to promote the peace and progress of the world.'[76] Dr Rikke Frank Jørgensen makes the following observations:[77]

> Freedom of expression is a fundamental human right that draws on values of personal autonomy and democracy. It is closely connected to freedom of thought and is a precondition for individuals' self-expression and self-fulfilment. The European Court of Human Rights has described freedom of expression as one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man. Since the ideas put forward during the Enlightenment, freedom of expression has been one of the fundamental human rights, and it has taken its place in all major international instruments protecting human rights.

Freedom of expression is likewise recognised by the APRM. Among African documents, the African Charter on Human and Peoples' Rights sets out a clear guarantee, noting that 'every individual shall have the right to receive information' and that 'every individual

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76   UN Resolution A/RES/59(I), para. 1, 14 December 1946.

77   Frank Jørgensen R, 'The right to express oneself and to seek information', in Frank Jørgensen R (ed.), *Human Rights in the Global Information Society*. Cambridge, MA: MIT Press, 2006, pp. 53–54.

shall have the right to express and disseminate his opinions within the law'.[78] The OAU's 1999 Declaration and Plan of Action for the Promotion and Protection of Human Rights 'recognises that the media are important actors for building bridges between governments and peoples: it, therefore, urges States parties to guarantee a free and independent press within their national borders to enable it to play a role in the promotion of human rights in Africa'.[79]

Internationally, the UN's 1948 Universal Declaration of Human Rights – arguably the most venerable global human rights instrument – makes an expansive claim for freedom of expression: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'[80] This declaration was complemented two decades later by the International Covenant on Civil and Political Rights, which evinces a similarly broad understanding of the concept: 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'[81]

The CRRs present an uneven overview of the degree of freedom of expression in the respective countries. This may be because it is examined as one element of a larger basket of rights, rather than as a discrete, stand-alone inquiry. It should also be understood that while the standards implicitly and explicitly demand media freedom, the APRM has not dealt with this as an issue in its own right – although it is frequently through the media that free expression makes an impact on governance. The first iteration of the questionnaire excluded specific reference to the media (aside from references to financial journalism in the corporate governance thematic area).[82] One seasoned journalist and media activist, Raymond Louw, argued that media freedom as an element of good governance had been met with resistance by the continent's leadership. In NEPAD's Declaration on Democracy, Political, Economic and Corporate Governance, which introduced the concept of the APRM, free expression ('inclusive of the freedom of the press') was to be protected, although qualified by the adjective 'responsible'. Later, as the APRM was being designed, it ignored three important African declarations on media freedom, which might have had the status of standards.[83] Some examination of the media has, however, been undertaken

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78   OAU, 1981, *op. cit.*, Chapter 1, Article 9.

79   OAU, 1999, *op. cit.*, para. 21.

80   UN, 1948, *op. cit.*, Article 19.

81   UN, 1966, *op. cit.*, Part III, Article 19.

82   UNESCO (UN Educational, Scientific, and Cultural Organization), Declaration of Windhoek on Promoting an Independent and Pluralistic African Press, 1991; UNESCO, African Charter on Broadcasting, 2001; ACHPR (African Commission on Human and Peoples' Rights), Declaration of Principles on Freedom of Expression in Africa, 2002.

83   Louw R, 'Media and 'Good Governance' – a Key Feature of APRM Glossed Over'. Johannesburg: SAIIA, 2006, http://www.aprmtoolkit.saiia.org.za/analyses-of-the-aprm/analysis-of-the-aprm-process/item/336-media-and-good-governance-a-key-feature-of-the-aprm-glossed-over-this-article-focuses-on-the-fact-that-the-aprm-does-not-list-the-existence-of-a-free-media-as-a-necessary-feature-of-good-governance-raymond-louw.

by the APRM structures despite these limitations, and the revised questionnaire, released in 2012, contained a direct query about the state of the media.

FIGURE 2   FREEDOM OF THE PRESS, 2013

- Free
- Partly free
- Not free
- No information

Source: Map based on data drawn from Freedom House, Freedom of the Press 2013, Scores and Status 1980–2015, https://freedomhouse.org

It is clear both from the CRRs and from other research carried out in Africa that freedom of expression is enjoyed unevenly across the continent. Formally, there appears to be an overall acceptance of freedom of expression. The CRRs on Algeria, Benin, Ethiopia, Ghana, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Tanzania, Uganda and Zambia all report constitutional or legal guarantees for this ideal.

This application of these guarantees is another matter. For the most part, this is done through commentary on the state of media freedom. The APRM CRRs illustrate a strong relationship between societal freedom – as set out in the Freedom House categorisation – and the freedom of the media environment. Little is to be found in either the Ghana or Mauritius report about media freedom. This is disappointing, since it would draw attention to a significant achievement.[84] In the case of South Africa, the CRR points to the existence of a 'free and vigilant media'.[85] Benin deals with this issue in greatest detail, arguing that a strict denial of media freedom in the past (during the so-called 'revolutionary era') has given way to what the CRR terms 'total freedom that is akin to anarchy'.[86] Benin's media is said to be rife with abuses, including defamation, rumour mongering and a lack of professionalism. This, it argues, rather than the still extant censorship in the public media, is the greatest threat to media freedom. Efforts to address these problems through the National Audiovisual and Communication Authority have not proven effective, which raises the need for better self-regulation.[87]

Among the 'partly free' countries, a combination of enduring official suspicion and existing regulations undermines the broad nominal guarantees afforded by their laws. In Mozambique, the CRM was informed repeatedly that in spite of guarantees of free expression, criticism of the government is conflated with political opposition.[88] Journalists experience harassment from time to time, although this has not stopped the country's media from growing.[89] Nigeria's media is vibrant, diverse and active, although there are instances of harassment of journalists.[90] In Tanzania, the space for free expression has been expanding in recent years, but the CRR notes that some significant impediments continue to exist. For example, various pieces of legislation can be – and have been – called upon to hinder free expression. These include the Newspaper Act, which was used to close down publications in the 1990s.[91] The Zambia CRR claims that the country has a 'relatively free' media, but with certain restrictions. There are still laws that restrict media freedom, and it is acknowledged that the media is subject to occasional harassment.[92]

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84   On the other hand, one may speculate that it also indicates that a free media is widely accepted and institutionalised, and in that sense, now unremarkable in these countries.

85   South Africa CRR, *op. cit.*, p. 112.

86   Benin CRR, *op. cit.*, p. 87.

87   *Ibid.*

88   Mozambique, *op. cit.*, pp. 97, 117.

89   *Ibid.*, p. 117.

90   Nigeria CRR, *op. cit.*, p. 99.

91   Tanzania CRR, *op. cit.*, pp. 70–71.

92   Zambia CRR, *op. cit.*, pp. 70, 100.

The 'not free' countries tend to be highly controlled environments, with a real threat of sanctions to journalists and media that transgress – although the CRRs seem to be reluctant to make overtly negative findings. Thus, the Algeria CRR contends that there is general endorsement by the state of freedom of expression (based on survey evidence) and that the media is protected in fact – noting that 'no journalist has been sanctioned for his or her opinion in recent years'.[93] However, the CRR also reports that political parties' access to the media for electioneering purposes was controlled, and largely limited to those parties represented in the country's assemblies. While the CRR notes that airtime is 'equitable' during election periods, the overall environment for open political expression is viewed as compromised. Private television channels have failed to gain approval, and public protests have been subjected to stern controls.[94]

In Ethiopia, the CRR notes the emergence of a 'vibrant' media in the country's urban centres, particularly in Addis Ababa.[95] However, this sits uncomfortably with its acknowledgement of complaints about the restriction of the media, and of harassment by the government.[96] It remarks:[97]

> The Ethiopian Constitution, in line with international human rights instruments, makes provision for derogations to fundamental rights and freedoms in appropriate circumstances. The law authorizing such derogations, however, ought not to render the protected right nugatory. Unfortunately, laws governing the media appear to have had that effect on the freedom of expression protected under Article 29 of the Constitution. Journalists, editors and publishers report harassment and prosecution for alleged violations of press laws, so that many are obliged to routinely practice self-censorship. During the interactive sessions, opposition political party leaders complained that out of fear, the media go to the extent of distorting their public statements.

The Rwanda CRR notes that the legacy of the 1994 genocide has engendered a 'cautiousness' towards media freedom. A High Council of the Press (HCP) operates to oversee regulations and licensing of the media, and the CRR states: 'It has not been possible to confirm whether freedom of expression is being promoted or undermined by the regulatory regime supervised by the HCP.'[98]

In the case of Uganda, measures have been taken to protect the freedom of the media, although these are undermined by requirements for journalists to be licenced, by stiff defamation laws, and by the powers vested in the minister of information to ban publications.[99]

93　Algeria CRR, *op. cit.*, p. 78.
94　*Ibid.*, p. 72.
95　Ethiopia CRR, *op. cit.*, p. 47.
96　*Ibid.*, pp. 90, 91.
97　*Ibid.*, p. 93.
98　Rwanda CRR, *op. cit.*, p. 12.
99　Uganda CRR, *op. cit.*, pp. 73–74.

The banner of a freedom of information group flies prominently at a march organised to protest corruption in Cape Town, South Africa in September 2015

Cutting across the various CRRs, the practical barriers to free expression and free media are elucidated. Widespread illiteracy retards the flow of information.[100] Rural dwellers – a solid majority in most of Africa – also tend be less well served by the media than their urban counterparts.[101] There is also mention of the difficulties of obtaining information in indigenous languages.[102]

There are, however, some gaps in the treatment of freedom of expression in the CRRs. Foremost is the inadequate consideration of the full range of restrictions that exist. While the CRRs discuss some of the overarching inhibitors, they are not always suitably explored. Thus, while Rwanda's 'cautiousness' is mentioned, the CRR does not analyse in detail its proscriptions on propagating 'genocide ideology' – whether this is a necessary bulwark against ethnic conflict or a convenient justification to limit criticism, or, for that matter, whether its policies are in fact conducive to inter-ethnic peace.[103] Similarly, South Africa's CRR has little to say about the use of 'hate speech' prohibitions, and the jurisdiction of its equality courts, which are dedicated to adjudicating matters of discrimination. The importance and sensitivity of this was shown when the former leader of the ruling party's youth league was convicted of hate speech in 2011. He had repeatedly sung

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100   Mozambique CRR, *op. cit.*, p. 117.

101   Zambia CRR, *op. cit.*, p. 101; Tanzania CRR, *op. cit.*, p. 71.

102   Zambia CRR, *op. cit.*, p. 101.

103   See Jansen YO, 'Denying genocide or denying free speech? A case study of the application of Rwanda's genocide denial laws', *Northwestern Journal of International Human Rights*, 12, 2, Spring 2014, pp. 191–213.

a political song which seemed to call for the killing of white Afrikaners – but which his party, largely responsible for the existence of the legislation banning hate speech, maintained was part of its political heritage. Others maintained that the case was flawed in its conception, since Afrikaners had no right to appeal to legislation that was implicitly meant to protect victims of past discrimination.[104]

Another major gap is the relative silence on criminal libel and 'insult laws', defamation provisions that target alleged defamation of the 'honour' or 'dignity' of the country, its symbols or its head of state. Often imprecisely worded, these are ripe for abuse, providing a thin, quasi-legal pretext to harass media critical of countries' authorities. It is difficult to see how they can be compatible with the APRM's standards. A recent report by the World Press Freedom Committee and Freedom House discussed such laws in 17 member states of the AU,[105] but it is likely that they are more widespread. A number of members of the APRM system have such legislation. Some, such as Rwanda, have used them as part of a larger arsenal of provisions focusing on the media.[106] As this report was being prepared, a Zambian musician, Fumba Chama, was charged on similar grounds, after performing a song that appeared to ridicule President Edgar Lungu.[107] Moreover, calls from individuals within the South African government for the introduction of such legislation[108] demonstrate that this remains a threat to free expression.

Possibly more important, as noted above, is the endorsement of this freedom subject to the qualifier 'responsible'. This has been a long-standing element of debate around (particularly) the media in Africa. Agenda 2063, the AU's current long-term development vision, envisages that 'a vibrant, diverse and responsible press that informs the public of their duties and obligations and holds all branches of government accountable would be the norm'.[109] It is noteworthy that this formulation does not explicitly talk about a 'free' press. It is unclear what would constitute 'responsible' media. Certainly, in its NPoA, the South African government indicated that it wished to ensure that all news stories were

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104 For differing perspectives on this, see, for example, Council for the Advancement of the South African Constitution, Submission on behalf of the Council for the South African Constitution in Supreme Court of Appeal, Case No. A.815/2011, 2 August 2012, http://www.politicsweb.co.za/politics/afrikaners-no-vulnerable-minority--geoff-budlender; Giliomee H, 'Afrikaners would've had no place in this country', *Politicsweb*, 10 October 2011, http://www.politicsweb.co.za/news-and-analysis/afrikaners-wouldve-had-no-place-in-this-country; Child K, 'ANC "appalled" by Malema hate speech ruling', *M&G Online*, 12 September 2011, http://mg.co.za/article/2011-09-12-anc-appalled-by-malema-hate-speech-ruling.

105 McCracken P, *Insult Laws: Insulting to Press Freedom – A Guide to Evolution of Insult Laws 2010*. Paris & Washington DC: World Press Freedom Committee & Freedom House, 2012.

106 Noorlander P, 'How Paul Kagame has used the law to muzzle Rwanda's media', *The Guardian*, 9 August 2010, http://www.theguardian.com/law/2010/aug/09/rwanda-paul-kagame-media-censorship.

107 Mfula C, 'Zambian police arrest musician for mocking president', *Reuters*, 8 June 2015, http://www.reuters.com/article/2015/06/08/us-zambia-crime-idUSKBN0OO1LX20150608.

108 Ndenze B, 'Call for insult law', *IOL News*, 15 November 2012, http://www.iol.co.za/news/politics/call-for-zuma-insult-law-1.1423784#.VXX03DqJjIV.

109 AU Commission, 'Agenda 2063: The Africa We Want' (Draft Document), May 2014, p. 17.

backed by verifiable sources. This would likely undermine much investigative journalism while saving the government considerable embarrassment. It is certainly debateable whether this is a path that is without controversy. The APRM could have provided a valuable service by offering some insights and analysis to further the debate on these matters.

It is important to acknowledge that the CRRs were published from 2005 to 2013, and that each describes the situation as it existed at that time. Interim developments may have changed this, and may offer additional insights into the trajectory of freedom of expression in Africa.

Freedom House is again a useful reference. It conducts an annual evaluation of the state of media freedom – Freedom of the Press – alongside its Freedom in the World index. (See Appendix 2) In its latest edition, for 2015 (with data covering 2014), it laments the general decline in media freedom around the world. In Africa, it has identified 'ongoing cycles of repression and recovery'.[110] Over the past three decades, freedom of expression and of the media has made much progress, although in recent years this has begun to waver.

In 2014, two of the four 'free' countries have media that are also so ranked by the Freedom of the Press index. These are Ghana and Mauritius. Benin and South Africa, by contrast, have recently seen their status decline from 'free' to 'partly free'. A further four countries' media environments – Mozambique, Nigeria, Tanzania and Uganda – were ranked 'partly free'. With the exception of Uganda ('not free' overall, and thus with a media somewhat in advance of the general society), this matched the overall state of freedom in these countries. The media environments in the final four countries – Algeria, Ethiopia, Rwanda and Zambia – were adjudged 'not free'. Thus, Zambia's media environment is somewhat more restricted than society at large.

African governments are turning to restrictive legislation, often citing security concerns, to limit media space. This has been the case in some of the continent's freer societies. Violent disorder – as in parts of northern Nigeria – generates an environment hostile to any media activity.[111] (Mirroring this mindset, the Tanzanian government commented in its response to the CRR that Tanzania had a good record on freedom of expression, but 'would not allow any media to pose a threat to national peace and stability'.)[112] The decline in media freedom in South Africa and Benin is noteworthy. In Benin's case, this has arisen from the use of criminal libel laws against journalists as well as the influence of political interests on reporting.[113] In South Africa's case, there has been an increasing resort to legislation undermining the flow of information – such as invoking the apartheid-era National

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110   Freedom House, *Freedom of the Press 2015: Harsh Laws and Violence Drive Global Decline*. Washington DC & New York: Freedom House, 2015, p. 19.

111   *Ibid.*, pp. 19–20.

112   Tanzania CRR, *op. cit.*, p. 388.

113   Freedom House, *Freedom of the Press 2008*, 'Country reports', 2008, pp. 25–26, https:// freedomhouse.org/sites/default/files/Country_Reports_2008.pdf.

Key Points Act, or passing the highly controversial Protection of State Information Bill (although the president subsequently sent it back to Parliament for further deliberation, and its ultimate fate remains uncertain as the president has not yet signed it) – as well as growing physical danger for journalists.[114]

The state of freedom of expression described in the CRRs can be viewed as one of profound ambiguity. The following observation, by Prof. Nicolas van de Walle and Dr Daniella Resnick, offers a good summation:[115]

> The media is a key tool for enhancing other types of civil liberties, especially freedom of expression. Fortunately, today's media environment in Africa is much more diverse than in previous decades. In fact, while there were only ten independent radio stations in all of Africa in 1985, Tower notes that there were 150 private stations in Mali alone in 2005. However, the sustainability of independently media is often hampered by poor journalism training, the insufficient regulatory capacity of the profession and a lack of critical inputs and infrastructure, including advertising revenue, newspaper print, video cameras, and radio transmitters. There have also been some notable improvements, including the nullification of Nigeria's Press Council Act in 2010, which relaxed constraints on the media industry, and the enshrinement of media freedoms in Kenya's newly adopted constitution. However, formal anti-media laws have recently been passed or currently are being considered, including Botswana's Media Practitioners' Act and South Africa's Protection of Information Bill.

FREEDOM OF ASSOCIATION

The ability of people to come together to promote their interests is fundamental to political and social activity. Having the right to do so, and exercising this right, is essential for a free society. It allows interests to be articulated – and disarticulated – and provides a vital avenue for individuals to challenge powerful interests within society. A free society is likely to have a wide diversity of such associations, freely formed by interested people and existing independently of state or commercial interests. It is no coincidence that totalitarian regimes of all stripes have always been eager to control, co-opt or constrict such groups. As Thomas Emerson argued, defending individual liberties from the encroachment of institutionalised forces in society demands that people join together with others and pool their strengths and resources. This is, he said, 'essential to the democratic way of life'.[116]

These ideas have a particular resonance for Africa. Much of the post-colonial era was dominated by political elites – liberation movements, military juntas, personal rulers

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114   Freedom House, *Freedom of the Press 2012: Breakthroughs and Pushback in the Middle East, Selected Data From Freedom House's Annual Press Freedom Index.* Washington DC & New York: Freedom House, 2012, p. 308; Freedom House, 2015, *op. cit.*, p. 21.

115   Resnick D & N van de Walle, 'Introduction: Why aid and democracy? Why Africa?' in Resnick D & N van de Walle (eds), *Democratic Trajectories in Africa: Unravelling the Impact of Foreign Aid.* Oxford: Oxford University Press, 2013, p. 16.

116   Emerson TI, 'Freedom of association and freedom of expression', *The Yale Law Journal*, 74, 1, November 1964, pp. 1–35.

– who looked with suspicion on independent voices and autonomous bodies, especially when their activities intruded into the political realm. While Africa always retained some civil institutions – churches being a prime example – building and empowering them is an ongoing project for encouraging the growth of freedom on the continent.

In its very design, the necessity of a robust culture of association is axiomatic to the APRM. The APRM base document refers to the need to consult with 'civil society organizations (including the media, academia, trade unions, business, professional bodies)'.[117] Within its standards, the principle of freedom of association – albeit not without qualifications – is accepted. Article 10 of the African Charter on Human and Peoples' Rights states that 'every individual shall have the right to free association, provided that he abides by the law', and that 'subject to the obligation of solidarity provided for in article 29, no one may be compelled to join an association'.[118] The same document also guarantees free assembly, again within the law.[119]

Underlining the importance of freedom of association to democracy and elections, the ACDEG calls on African countries to 'create conducive conditions for civil society organisations to exist and operate within the law'[120] and to '[foster] popular participation and partnership with civil society organisations'.[121] Indirectly acknowledging the developmental benefits offered by this freedom, the Plan of Action for the Promotion and Protection of Human Rights notes 'the importance of promoting an African civil society, particularly NGOs [non-governmental organisations], rooted in the realities of the continent and calls on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development'.[122]

Freedom of association is recognised in international instruments as well. The Universal Declaration of Human Rights guarantees everyone the right to peaceful assembly and association, and prohibits compelling people to belong to associations.[123] The same provisions are included in the International Covenant on Civil and Political Rights.[124]

Before looking at the content of the CRRs, it is informative to examine the qualifications placed on this right in the African standards, specifically the African Charter on Human and Peoples' Rights. The requirement that these rights are to be exercised within the law is in itself reasonably innocuous, although it should be remembered that it dates from 1981, at which time numerous countries made particular types of associations (including opposition parties) illegal. More remarkable is the principle of solidarity (in Article 29), which can override individual conscience, specifically a wish not to associate with a given group. Article 29 demands inter alia of individuals that they place themselves at

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117   NEPAD, African Peer Review Mechanism, Base Document, 2003, para. 19.
118   OAU, 1981, *op. cit.*, Part 1, Chapter 1, Article 10.
119   *Ibid.*, Part 1, Chapter 1, Article 11.
120   AU, 2007, *op. cit.*, Chapter 5, Article 12.
121   *Ibid.*, Chapter 9, Article 27.
122   OAU, 1999, *op. cit.*, para. 17.
123   UN, 1948, *op. cit.*, Article 20.
124   UN, 1966, *op. cit.*, Part III, Articles 21 and 22.

the disposal of the state and society, to contribute to its defence and wellbeing, and to strengthen 'national solidarity' and 'African unity'. In so doing, it appears to enable states to assert themselves vis-à-vis individual citizens on the grounds of security and ideology. Given the era in which it arose, this article was probably intended to allow for compulsory enrolment of citizens in mass official political organisations and national development efforts. Likewise, the provisions for freedom of assembly are significantly qualified by listing the grounds on which this may be restricted – these being laws 'enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others'.[125] In practice, however, these so-called 'clawback' clauses have not provided governments with the means to abridge their citizens' civil liberties. The approach adopted by the ACHPR has interpreted these clauses restrictively. For example, while countries may seek to justify their actions in terms of national law, the ACHPR has tempered this by requiring that such laws conform to international human rights standards, that they be of a general application, and that the burdens they impose on people not be disproportional to the benefits that they seek to produce.[126]

The state of associational freedom is dealt with in some depth in the CRRs. As is the case with their treatment of freedom of expression, countries' constitutions and legal systems generally recognise this freedom and offer protection for it.[127]

Considerable attention is paid to interrogating the environment for expressions of this freedom – mostly political parties, labour unions and civil society organisations (CSOs). This is a limited sample of the bodies that would flourish in a free society, and the various CRRs address this issue in differing degrees of detail. But political parties, labour unions and CSOs are, after all, likely to be engaged in pressing political points, and therefore respectable indicators of the overall state of play.

The 'free' societies appear, unsurprisingly, to demonstrate the most vibrant societal organisation, which are held explicitly by the CRRs to be contributors to entrenching democracy. The case of Ghana illustrates this well. Having emerged in the 1990s from a past marked by autocracy, political competition between parties has become an accepted part of the culture,[128] although this is circumscribed by certain categories of people – such as members of the security services and traditional leaders – being barred from active participation.[129] The latter restriction can, however, be justified as congruent with practices in many free societies, aimed at separating sensitive state functions from partisan antagonisms. Perhaps more concerning from a freedom of association perspective is that political parties are prohibited from standing for district assemblies. (Interestingly, the

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125   OAU, 1981, *op. cit.*, Part 1, Chapter 1, Article 11.

126   Viljoen F, *International Human Rights Law in Africa*, 2nd edition. Oxford: Oxford University Press, 2012, pp. 329–333.

127   Algeria CRR, *op. cit.*, pp. 77, 78; Benin CRR, *op. cit.*, p. 86; Ethiopia CRR, *op. cit.*, p. 47; Ghana CRR, *op. cit.*, p. 25; Mozambique CRR, *op. cit.*, p. 103; Nigeria CRR, *op. cit.*, p. 99; Rwanda CRR, *op. cit.*, p. 40; South Africa CRR, *op. cit.*, p. 91; Tanzania CRR, *op. cit.*, p. 50; Uganda CRR, *op. cit.*, p. 74; Zambia CRR, *op. cit.*, pp. 101–102.

128   Ghana CRR, *op. cit.*, p. 23.

129   *Ibid.*, p. 20.

Ghana CRR does not deal with this analytically, merely calling for this restriction to be reviewed.)[130] Labour unions are free to organise, although a small percentage of the workforce is in fact unionised.[131] The 'blossoming' of Ghanaian civil society comes in for particular acknowledgment,[132] not least for the part CSOs have played in civic activism: 'In recent years, they have worked together to challenge the legitimacy of government policies and to expand the political space in the country.'[133]

In Benin and South Africa, the critical roles played by civil society in the political sphere are highlighted. In Benin, political parties are specifically recognised by the constitution.[134] There has been a proliferation of them, demonstrating a high degree of freedom in the environment, but this has come with its own set of problems, such as ethnic mobilisation, lack of internal democracy and fictitious membership.[135] The CRR also notes the expansion of Beninese civil society and indicates that CSOs have been taking up essentially political issues, partly because of cynicism about the country's political groups.[136]

South Africa is a multiparty democracy, and offers considerable ideological choice at election time. Civil society is described as 'vibrant',[137] and its contributions are mentioned in passing throughout the report – although it also notes that CSOs are not always adequately capacitated for engagement and lack funding.[138] There are indications of tensions between civil society and the government,[139] but this must be seen in the context of the country's prevailing politics. The political opposition has failed to pose a serious electoral threat to the ruling party and, for reasons of sentiment or ideology, many activists have been reluctant to identify themselves with the opposition. But when faced with doubtful policy choices – such as the South African government's reluctance to supply anti-retroviral drugs to people living with HIV – confrontation became inevitable. CSOs have been the vehicle for this. At times, this has proven an effective strategy for policy change.[140]

Among the 'partly free' countries, significant formal or implied restrictions characterise the exercise of associational freedoms. In Mozambique, the change to a multiparty system has afforded citizens the opportunity to express themselves through membership of political parties. But a 'systemic' conflation of party and state, arguably a hangover from the one-party era, has made realising this right troublesome and potentially costly. 'It may put pressure on all those in opposition to renounce membership of their parties

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130   *Ibid.*, p. 24.
131   *Ibid.*, pp. 90–91.
132   *Ibid.*, p. 25.
133   *Ibid.*, p. 32.
134   Benin CRR, *op. cit.*, p. 75.
135   *Ibid.*, pp. 75–76.
136   *Ibid.*, p. 70.
137   South Africa CRR, *op. cit.*, p. 5.
138   *Ibid.*, pp. 106, 108.
139   *Ibid.*, p. 19.
140   See Ranchod K, 'State–civil society relations in South Africa: Some lessons for engagement', *Policy: Issues and Actors*, 20, 7, February 2007.

An opposition party in Mozambique holds a rally. The ability to mobilise support is a foundation of a free society, but in much of Africa, it is unevenly respected.

to enjoy equal opportunities in the public service or, rather lead to the surrender of those discriminated against, creating in them resentment and alienation from the state. Neither of these outcomes is conducive to the sustenance of multi-party democracy.'[141] A similar conflation exists in the labour field, undermining the independence and effectiveness of unions.[142]

Moreover, while the Mozambican government recognises the important role that CSOs can play in developmental endeavours, official suspicion is a powerful disincentive for CSOs to involve themselves in governance and policy advocacy.[143]

The Tanzania and Zambia CRRs show some similarities to that of Mozambique. In Tanzania, nominally a multiparty system, the dominance of the ruling party, weak opposition and sometimes-partisan behaviour by institutions such as the electoral commission and security forces undermine this in practice.[144] Labour unions exist in Tanzania, but the state continues to exert influence over them.[145] As in Mozambique, this compromises their independence.

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141   Mozambique CRR, *op. cit.*, pp. 105–106, 117.
142   *Ibid.*, p. 223.
143   *Ibid.*, p. 119.
144   *Ibid.*, pp. 50–51.
145   *Ibid.*, pp. 141, 156–157.

In Zambia, the environment for civil society is sometimes hostile, owing to suspicions from the government. This manifested itself in a tense relationship, although it is clear that many organisations in Zambia are quite prepared to engage in politicised activism (in 2001, a civil society coalition defeated an attempt by then-president Frederick Chiluba to run for a third term of office).[146] Nevertheless, the CRR describes moves at the time of its compilation to require CSOs to register, imposing the means for state control over them:[147]

> Typically, civil society representatives in the CRM stakeholder consultations lamented the fact that the government often considers CSOs as 'opposition' rather than partners. This was especially so when they criticised the abuse of human rights and the state of corruption. Civil society participants in the CRM consultation meetings also pointed out that the proposed NGO Bill would curtail the freedom of association and participation since it calls for the State to register and regulate NGOs.

In Nigeria, after the transition to civilian rule, political parties are flourishing, although they are frequently ideologically incoherent and undemocratic in their internal operations.[148] (During the preparation of this report, Nigeria underwent a peaceful electoral change of government.) The country has a wide range of CSOs as well as interest groups across society.[149] Civil society has ventured into the political terrain, and its mobilisation proved influential in defeating the attempt by then-president Olusegun Obasanjo in 2006 to extend his presidential tenure to a third term.[150] Indeed, one analyst has suggested – based on a study of the conflict-prone Niger Delta – that civil society groups in Nigeria are increasingly articulating firm political positions. While this has had the benefit of raising the profile of issues and demanding effective state responses, it could also drive sectional interests and provoke repressive reactions. Given the nature of the conflict, the interest groups involved and the heavy-handed nature of state responses, it is unclear whether this will contribute towards greater democratic openness.[151]

The environments in 'not free' countries are far more restrictive, typically enforced by proscriptive legislation. It is worth noting that each of these underwent extreme traumas in their recent past – devastating civil wars in Algeria, Ethiopia and Uganda, and outright genocide in Rwanda. The narrow space available for societal association owes much to these experiences and the perceived need to be vigilant against destabilisation arising as a result of liberalisation. The impulse towards securitisation in these countries' approach to associations is unmistakeable.

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146 See Chella C & S Kibanda, 'Lessons in Effective Citizen Activism: The Anti-Third Term Campaign in Zambia', SAIIA Occasional Paper, 6. Johannesburg: SAIIA, July 2008.

147 Zambia CRR, *op. cit.*, p. 95.

148 Nigeria CRR, *op. cit.*, pp. 94–95.

149 *Ibid.*, pp. 65, 99.

150 *Ibid.*, p. 48.

151 Ikelegbe A, 'Civil society, oil and conflict in the Niger Delta region of Nigeria: Ramifications of civil society for a regional resources struggle', *Journal of Modern African Studies*, 39, 3, September 2001, pp. 437–469.

Freedom is often mistrusted. The constrained environment in Rwanda, a product of the political reconstruction after the genocide, provides an illustrative framework. Opposition parties and CSOs, although legal, face restrictions that hamstring their ability to make a political impact. The CRR comments:[152]

> The existence of core aspects of democracy and political freedoms were not clearly visible. First, for healthy competition for power there should be adequate guarantees of equity of access to the political space for all contending political organisations at all administrative levels. Second, in a democracy, the political environment should be sufficiently liberal to afford equal chance for all individuals appropriately qualified, in accordance with standards that are fair and generally accepted by the citizens, to compete for political office.

Similar circumstances prevail elsewhere. In Algeria, a multiparty system exists, but, in the words of the CRR, the 'establishment of political parties is subject to the restrictive control and approval of the state authorities'.[153] According to the figures provided in the CRR (published in 2007), more parties had been dissolved than approved under the country's legislation.[154] Labour unions are likewise subject to some state control.[155]

The position of Algerian CSOs is somewhat ambivalent. On the one hand, the CRR applauds the growth of civil society in Algeria as a major strength, and at various points notes the contribution that it is making to the country through its developmental and philanthropic work.[156] On the other, it laments the absence of civil society input into various governance processes – such as the budget[157] – and repeatedly calls for greater civil society input in others, such as the fight against corruption.[158] The CRR is less detailed about the legal and institutional context within which Algerian civil society operates. While acknowledging that civil society faces 'strict control',[159] it provides only a rudimentary insight into how this is exercised. Central to this is the Law on Associations, which is briefly mentioned in the CRR.[160] This law has been criticised for the wide discretion it gives to the state authorities to refuse registration – including a provision denying registration to bodies whose founders have 'demonstrated conduct contrary to the interests of the fight for national liberation'.[161] The Algeria NPoA proposed reforms to this law with an eye to enhancing citizen participation.[162] In 2012, in the wake of the

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152   Rwanda CRR, *op. cit.*, p. 37.
153   Algeria CRR, *op. cit.*, p. 71.
154   *Ibid.*, pp. 71–72. In recent years, significantly more parties have been approved.
155   *Ibid.*, p. 81.
156   *Ibid.*, pp. 67, 115, 116, 120.
157   *Ibid.*, p. 165.
158   *Ibid.*, pp. 177–178.
159   *Ibid.*, p. 81.
160   *Ibid.*, p. 51.
161   Freedom House, *Freedom of Association Under Threat: the New Authoritarians' Offensive Against Civil Society*, 2008, https://freedomhouse.org/report/freedom-association-under-threat-new-authoritarians-offensive-against-civil-society/freedom#.VXCA9TqJjIU; https://freedomhouse.org/report/freedom-association-under-threat-new-authoritarians-offensive-against-civil-society/algeria#.VXCD8jqJjIU.
162   Algeria CRR, *op. cit.*, p. 348.

Source: http://www.istockphoto.com/photo/protest-in-tunisia-20303862?st=3c14017

Protestors in Tunis, Tunisia in 2011

Arab Spring, a new law was approved, incorporating many of the restrictive features of the old one. According to the International Center for Not-For-Profit Law, an international body promoting an enabling environment for CSOs, this law gives the government wide latitude to refuse registration to organisations, provides inadequate means to appeal such a decision, and allows the government to suspend organisations' operations or even dissolve them on unspecific grounds. It has made the environment for CSOs tougher and some have chosen to close down voluntarily rather than attempt to navigate it.[163]

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163   International Center for Not-For-Profit Law, 'NGO Law Monitor: Algeria', 26 April 2015, http://www.icnl.org/research/monitor/algeria.html.

The Ethiopia CRR is more forthright. It details a nominally competitive party system,[164] but reports numerous complaints of intimidation and of an unfair political playing field in favour of the ruling party, an example of which has been the inability of opposition parties to campaign at times because the authorities deny them the requisite permits.[165] A notable element of the associational environment in Ethiopia arises from its 2009 Charities and Societies Proclamation (CSP). This imposes restrictions on CSOs working in such fields as governance and human rights. These groups are legally obliged to raise 90% of their income locally, which in the context of an extremely poor country such as Ethiopia is prohibitively hard to do.[166]

In Uganda, multipartyism was only introduced with constitutional reforms in 2005. Parties are now part of the political system, and the constitution explicitly bars Parliament from establishing a one-party state.[167] However, the CRR notes that they are new institutions and that they struggle with numerous challenges; more seriously, opposition parties tend to be viewed as 'rebels'.[168] The Uganda CRR stresses that a key problem is the lack of a stable democratic culture.[169]

Uganda has experienced, in the words of the CRR, 'a significant measure of political liberalisation'.[170] A growing community of CSOs testifies to this.[171] It notes that subsidiary legislation has been put in place to regulate its organised civil society, mentioning the NGO Registration Act as an example.[172] However, it is by no means clear that this is an enabling piece of legislation. It appears that this is motivated by security concerns on the part of the government. (One critique notes that the NGO Registration Act defines NGOs as bodies 'established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services to the community or any part of it'[173] – a definition that ignores those focussing on policy or governance.) And by affording the government broad supervisory powers, such legislation could better be seen as a limitation on freedom of association.[174]

A mixed picture of associational rights emerges, correlating with the overall degree of freedom enjoyed by each country. It is, however, possible to recognise the key themes to emerge from the APRM's enquiries.

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164 Ethiopia CRR, *op. cit.*, p. 81.
165 *Ibid.*, pp. 85, 91.
166 *Ibid.*, p. 94.
167 *Ibid.*, p. 64.
168 Uganda CRR, *op. cit.*, p. 63.
169 *Ibid.*, p. 67.
170 *Ibid.*, p. 33.
171 *Ibid.*, p. 74.
172 *Ibid.*, p.74.
173 Human Rights Watch, *Curtailing Criticism: Intimidation and Obstruction of Civil Society in Uganda*, 2012, p. 15.
174 *Ibid.*

The CRRs suggest that across Africa, the scope for autonomous organisation by interest groups has grown markedly over the past three decades. This has been both an inspiring signifier of the growth of freedom in Africa and an engine to drive it. However, it is also evident that in recent years, this freedom has met official resistance – to the extent that the ACHPR produced a highly critical report on the state of freedom of association on the continent.[175] This has been most evident in the use of registration requirements to constrain organisational activity. As the Ethiopian experience (in particular) has shown, these can constitute major impediments to civil society. Many organisations are especially vulnerable given their dependence on foreign funding, although it is difficult to see what alternatives exist in countries without local benefactors. Casting these measures as a defence of a state's sovereignty has considerable appeal. As one academic observer of the Ethiopian political landscape remarked: 'The Charities and Societies Proclamation and other associated ones like the Anti-Terrorism Proclamation and the Revised Election Guidelines are quite prohibitive by all international human rights standards, but hold attraction to many repressive regimes on the continent. I am informed that some 20 on the continent have started to digest the CSP, in particular.'[176]

In addition, African political parties and CSOs face a plethora of environmental and internal difficulties: a lack of finances, expertise and organisational ability poses significant challenges. It is notable that some of the more impressive efforts of civil society mobilisation – such as in opposition to presidents' attempts to bend constitutions to prolong their stay in office – have been possible because of the existence of a clear, identifiable issue. The challenge is to ensure that this momentum is sustained and that CSOs and political parties can sustain themselves as institutions – which will allow them to articulate the political aspirations of Africa's people.

FREEDOM OF RELIGION

Religion is an important marker of individual and group identity. It provides a framework for understanding the wider world, conceptualises matters of conscience and offers adherents a sense of belonging. It encapsulates powerful urges and aspirations within people, and is perceived to stand 'above' people's pedestrian, day-to-day experiences – although religion can have a profound impact on how people live their day-to-day lives. It can draw considerable loyalty from its adherents.

The freedom to manifest and practice religion is both a principled acknowledgment of the limits of appropriate state involvement in citizens' lives and choices (deriving from a view that in a free society, matters of faith, conscience and community affiliation are best left to the individual's choice) and a pragmatic recognition that state bias in these matters can generate powerful political antagonisms. But the appeal of religious freedom is not universal. It has not been uncommon for governments, out of ideological principle or opportunism, to attempt to imbue their societies with a religious (or anti-religious)

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175   ACHPR, *Report of the Study Group on Freedom of Association and Assembly in Africa.* Banjul: ACHPR, 2014.

176   Email communication from academic observer of Ethiopian politics, 2 June 2015.

identity. Some leaders or political movements may harbour messianic ambitions around forging new identities for their countries. Others may feel that the potential for sectarian conflict is simply too hazardous to risk.

From the APRM's perspective, the exercise of religious freedom is integrally linked to the concept of 'managing diversity'. Managing diversity has arisen repeatedly throughout the various CRRs, and has been designated an emerging governance issue, with important implications for governance on the continent.[177] While recognising that diversity can be an asset – adding to the vibrancy of national cultures, with the potential for mutual learning and innovation – it recognises the danger of the politicisation of diversity.

Religious freedom is widely addressed in the standards. The African Charter on Human and Peoples' Rights states in its second article that all the rights it accords are applicable to all without distinction or ideological grounds – specifically including religion.[178] A subsequent article provides a direct guarantee of religious freedom: 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.'[179]

Provisions ensuring religious freedom have also been laid down by various UN instruments. The Universal Declaration of Human Rights outlines what this entails:[180]

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This theme is picked up in other standards, including the UN's Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[181] the International Covenant on Civil and Political Rights,[182] and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[183] Where discrimination arises, the latter declaration demands that states take action to 'enact or rescind legislation' to prohibit such discrimination.[184]

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177   APRM Secretariat, 'Thematic Paper: Emerging Governance Issues in Africa: Perspectives from the APRM Process', 11th Meeting of the African Partnership Forum (APF), Addis Ababa, Ethiopia, 17–18 November 2008, pp. 11–12.
178   OAU, 1981, *op. cit.*, Part 1, Chapter 1, Article 2.
179   *Ibid.*, Part 1, Chapter 1, Article 8.
180   UN, 1948, *op. cit.*, Article 18.
181   UN, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, Article 2.
182   UN, 1966, *op. cit.*, Part III, Articles 19, 27.
183   UN, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981, Articles 1, 2.
184   *Ibid.*, Article 4.

While these provisions seek to assure religious freedom, others attempt to limit its invocation for partisan ends. Thus, in its opening paragraphs, the African Charter on Human and Peoples' Rights notes a duty to combat discrimination.[185] The International Covenant on Civil and Political Rights demands that advocacy of sectarian hatred be prohibited by law.[186] And the Memorandum of Understanding on the OAU's Conference on Security, Stability, Development and Cooperation in Africa states as follows: 'No political organisation should be created on the basis of religious, sectarian, ethnic, regional or racial considerations. Political life should be devoid of any extremism.'[187]

The CRRs deal with religious freedoms, in theory and practice, although unevenly and inconsistently. Constitutionally, religious freedoms are widely respected. This is spelt out in a number of the CRRs.[188] One issue that crops up across several of the countries is the role of 'harmful' religious beliefs (alongside other cultural and social traditions) in undermining the rights of women.[189] Sometimes this is evident in informal prejudices, and in others it may be codified in law. In the Algeria CRR, modest criticism is voiced of the influence of religion in connection with the rights of women, specifically the Sharia principles informing inheritance provisions in the country's Family Code.[190] The Nigeria CRR, meanwhile, notes that the Convention on the Elimination of all Forms of Discrimination Against Women places an onus on states to take action against such social practices.[191]

In the 'free' countries, religious bodies are generally able to operate independently without hindrance – in the case of Mauritius, some even receive subsidies.[192] These countries also tend to see a fairly high degree of activism by religious groups. In Ghana religious leaders have been involved in efforts to promote ethics and combat corruption,[193] and are running initiatives to support small entrepreneurs.[194] In Benin, religious authorities (among others) provide mediation services that allow people to bypass the congested courts.[195]

While sectarian relationships are sometimes strained, institutions exist to mediate these relationships and engender co-operation. Thus, in Mauritius, the politicisation of religious identity is an ongoing source of tension, exacerbated by the distribution of religious and

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185 OAU, 1981, *op. cit.*, Preamble.
186 UN, 1966, *op. cit.*, Part III, Articles 20 (2).
187 OAU, 2002, *op. cit.*, I (n).
188 Algeria CRR, *op. cit.*, p. 78; Benin CRR, *op. cit.*, p. 87; Ghana CRR, *op. cit.*, p. 25; Ethiopia CRR, *op. cit.*, pp. 90–91; Mauritius CRR, *op. cit.*, p. 101; Nigeria CRR, *op. cit.*, p. 83; Rwanda CRR, *op. cit.*, p. 39; South Africa CRR, *op. cit.*, p. 82; Tanzania CRR, *op. cit.*, p. 65; Uganda CRR, *op. cit.*, p. 74.
189 Ethiopia CRR, *op. cit.*, pp. 106, 230; Mozambique CRR, *op. cit.*, p. 134; Nigeria CRR, op. cit., p. 118; Uganda CRR, *op. cit.*, p. 270.
190 Algeria CRR, *op. cit.*, p. 294.
191 Nigeria CRR, *op. cit.*, p. 118.
192 Mauritius CRR, *op. cit.*, p. 83.
193 Ghana CRR, *op. cit.*, p. 33.
194 *Ibid.*, p. 99.
195 Benin CRR, *op. cit.*, p. 86.

ethnic groups in 'enclaves'.[196] To help promote inter-faith tolerance, religious leaders have formed the Council of Religions.[197] In Benin, a faith-based consultation framework (recognised by the CRR as a best practice)[198] fosters inter-faith co-operation and contributes to the country's democracy and development.[199] Benin is also commended in its CRR for the high level of religious tolerance amid religious diversity, with Christian, Muslim and traditional groups coexisting peacefully.[200] (It notes, however, that religious bodies, among others, have attempted to influence the country's politics.)[201] In South Africa, the CRR points briefly to the existence of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,[202] an official body whose remit is to champion the rights of such communities within the context of the country's overall constitutional democracy.

The experience of religious freedom in the 'partly free' countries is more varied. No significant restrictions on religious activity are reported in Mozambique, although political parties are enjoined not to use motifs that would incite sectarian tensions.[203] The Catholic Church played a significant role in ending the country's civil war – another intervention linked to religious bodies that is listed as a best practice.[204] Religious bodies are also conducting social development programmes, with the CRR noting the promotion of adult literacy.[205]

The Tanzania CRR reports a high level of tolerance between faiths.[206] However, the opening of the political system in the 1980s from one-party rule, combined with the stresses of economic reform, has driven a revived focus on ethnic and religious difference.[207] A key issue has been the demand by some Muslim voices for the introduction of Islamic courts. Integrating Islamic *Kadhis* courts into the formal legal system – as one of a number of reforms associated with larger constitutional reform – has proven a divisive issue in Tanzania. Some members of the country's Christian community have spoken out about this, arguing that it compromises the secular nature of the country.[208] The CRR remarks that 'these claims must be addressed imaginatively and constructively before, drawing on

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196 Mauritius CRR, *op. cit.*, p. 93.

197 *Ibid.*, p. 83.

198 Benin CRR, *op. cit.*, p. 74.

199 *Ibid.*, p. 72.

200 *Ibid.*, p. 87.

201 *Ibid.*, p. 78.

202 South Africa CRR, *op. cit.*, p. 92.

203 Mozambique CRR, *op. cit.*, p. 111.

204 *Ibid.*, pp. 96, 103.

205 *Ibid.*, p. 120.

206 Tanzania CRR, *op. cit.*, p. 65.

207 *Ibid.*, p. 218.

208 The Citizen (Tanzania), 'Proposal for Kahdi courts set to spark fierce debate', 27 January 2015, http://www.thecitizen.co.tz/News/national/Proposal-for-Kadhi-courts-set-to-spark-fierce-debate/-/1840392/2603414/-/128s5bez/-/index.html; Ng'Wwanakilalal F, 'Tanzania president warns of rising religious tensions before referendum', *Reuters*, 29 March 2015, http://www.reuters.com/article/2015/03/29/us-tanzania-politics-idUSKBN0MP0O420150329.

the experience of countries such as Kenya and Nigeria, they become political and may be mobilised to seriously undermine the inter-religious and inter-racial harmony existing in Mainland Tanzania'.[209]

The Zambia CRR has little to say about the state of religious freedom or the contribution made by religious bodies to society. Its primary concern is the constitutional description of Zambia as a 'Christian nation', which it argues 'could be a source of discrimination and possible social, cultural, religious, and political conflicts'.[210] While this is a valid concern, it offers no such examples in practice.

Nigeria's multi-faceted diversity has played a part in past instability. Religious identity – despite the secular nature of Nigeria's constitution – remains a point of tension.[211] Indeed, the CRR says that Nigeria's people have been 'profiled in enclaves on the basis of ethnicity or religion' by political leaders, and that this has undermined the development of a common sense of belonging.[212] It notes instances where this has become the basis for policy, effectively constituting a form of state-sponsored discrimination:[213]

> But religion, like ethnicity, is regularly politicised by the political elite as a tool to achieve the narrow political goals of both individuals and groups in Nigeria. There was a bitter national debate when the northern state of Zamfara became the first state to implement the Islamic Sharia law in its entirety in January 2000. By the end of 2001, such other northern states as Kebbi, Sokoto, Niger, Kaduna, Bauchi and Borno had fully established Islamic law. The imposition of strict Islamic law in multifaith communities has attracted much debate and criticism in a country already considered a hotbed of religious conflicts.

Religious freedom in the 'not free' societies is surprisingly cursorily addressed. In Algeria, Islam is overwhelmingly the religion of the population. It is also constitutionally the state religion, although the Algeria CRR regards this as unproblematic, since it claims that minority religions are protected, and the Algerian government honours the contribution of Christianity to the country's history.[214] However, this sits uncomfortably with what has not been covered in the CRR. Drawing on his own experience and interactions with the Algerian government, Catholic Archbishop Emeritus of Algiers, Henri Teissier, offers the following view of religious freedom in Algeria: 'The Algerian constitution recognises Islam as the state religion, but guarantees freedom of religious worship. The personal religious orientations of citizens belong to them and them alone. But the state must protect Islam and consequently cannot accept deliberate initiatives of proselytism with the aim of converting Muslims.'[215]

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209   Tanzania CRR, *op. cit.*, p. 218.

210   Zambia CRR, *op. cit.*, p. 279.

211   Nigeria CRR, *op. cit.*, p. 83.

212   *Ibid.*, p. 42.

213   *Ibid.*, p. 83.

214   Algeria CRR, *op. cit.*, pp. 65, 78.

215   Teissier H, 'Algeria: A strange case of religious freedom', Oasiscenter.eu, 25 February 2011, http://www.oasiscenter.eu/articles/religious-freedom/2011/02/25/algeria-a-strange-case-of-religious-freedom.

The Ethiopia CRR has little to say about religious freedom. It notes that the Ethiopian state attempts to monitor religious tensions to prevent them from turning violent.[216] Ethiopia's Muslim population, which historically had felt aggrieved at their status as a minority in a predominantly Christian country, have been accommodated and granted equality by the constitution.[217] This view may be questioned, however, given the emergence of a Muslim protest movement in 2012 that accused the government of interfering in Muslim religious affairs under the guise of fighting terrorism.[218]

Interestingly, neither the Algeria nor the Ethiopia report interrogates the freedom (or lack thereof) to operate in the context of laws governing CSOs. Analysis by other bodies shows this legislation has a significant impact on the freedom enjoyed by religious bodies.[219]

The Uganda CRR presents no evidence of any official harassment of religious adherents or organisations. It does record 'manipulation by unscrupulous individuals', such as the Kanungu massacre where the followers of a sect were burnt to death, evidently by the sect's leadership.[220] It also reports religious groups' activism, especially around HIV prevention.[221] Finally, very little is said about the state of religious freedom in Rwanda.

The CRRs reveal little evidence of official restrictions on the exercise of religion, at least in its spiritual sense. As a measure of personal conscience, these countries demonstrate a substantively free environment. However, in reporting on the role that religions and religious organisations play, the CRRs' primary concern is with the manner in which they influence, or are influenced by, the broader socio-political environment. It is here that the scope of religious freedom often fails. The securitised legal infrastructure of a state such as Ethiopia, and the difficulties of operating in it, is a good illustration.

Neither do the CRRs significantly explore the challenges posed to religious freedom by insurgent groups, especially where these are associated with a religious agenda – although it should be remembered that factors other than religious fervour are likely fuelling such conflicts. The example of Boko Haram in contemporary Nigeria is a good one.

Nor do they explore such instruments as blasphemy laws. Much like the insult laws discussed previously, these seek to penalise perceived offences to religious figures (deities,

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216   Ethiopia CRR, *op. cit.*, p. 73.

217   *Ibid.*, p. 91.

218   Sandner P, 'Muslim protests raise slender hopes of change in Ethiopia', *Deutsche Welle*, 9 August 2013, http://www.dw.de/muslim-protests-raise-slender-hopes-of-change-in-ethiopia/a-17010674; *IRIN News*, 'Briefing: Ethiopia's Muslim protests', 15 November 2012, http://www.irinnews.org/report/96787/.

219   See Aid to the Church in Need, 'Algeria Country Report', *Religious Freedom in the World Report – 2014*, November 2014, http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/algeria.pdf; Aid to the Church in Need, 'Ethiopia Country Report', *Religious Freedom in the World Report – 2014*, November 2014, http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/ethiopia.pdf.

220   Uganda CRR, *op. cit.*, p. 74.

221   *Ibid.*, p. 34.

prophets, etc.) or to symbols and belief systems. They exist in a number of AU member states, including Algeria, Ethiopia and parts of Nigeria. While they (may) seek both to protect the 'honour' of religions and to prevent sectarian tensions – the latter hardly an unreasonable intention – these laws are not necessarily compatible with the free exercise of religion. Where they are paired with a state religion, the risk arises that blasphemy laws will be drafted and applied so as to limit the protection they afford to one religion, while ignoring or even acquiescing in the denigration of others.[222] Above all, they stand to limit inquiry into and comment on religious belief systems, a matter of concern to scholars as well as activists. For the APRM, this should be of particular concern too, given its own commitment to fostering gender equality, and the adverse role it has identified religion as sometimes playing in this regard.

The CRRs demonstrate that ideological and sectarian impulses remain strong in some states. Three of the countries – Algeria, Zambia and Nigeria (partially) – retain an overt religious identity. While this does not necessarily undermine the freedom of the individual to his or her beliefs (and declarations of state religion may coexist with respect for individual choice), it is difficult to avoid the conclusion that having a state religion can create 'insiders and outsiders'. The potential for this to become a source of implicit coercion on individuals is clear.

This is especially so where religious orientation becomes an engine for policy. As the Nigeria CRR observes, applying religious law to a multi-religious environment carries enormous conflict potential. Analyses of the controversy surrounding the introduction of Sharia have pointed out that both its proponents and opponents have appealed to the principles of religious freedom and democracy in justifying their positions. The introduction of Sharia was seen by many as a legitimate reform in keeping with the cultural orientation of the majority of the population of the respective states, and as a means of rejuvenating the society and its institutions.[223] But by so doing, the Sharia states gave the appearance of excluding the concerns of a large part of the people under their jurisdiction. Here, incidentally, is a fine example of illiberal democracy. In the long run, this is likely to prove unsustainable. In the words of one scholar: 'It is far from certain that these demands can be made to accommodate a definition of democracy that treats the rights of non-Muslims, women, and minorities in Sharia states as equal to the "religious rights" of Muslims to live under the Sharia.'[224]

A cardinal lesson implicit in the CRRs is that religious non-partisanship in the state is a principle worth defending – with the curious exception of Algeria. It is unclear why the

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222 This situation has been noted in Pakistan, and has attracted considerable media attention in recent years, since blasphemy laws have been invoked with gravely negative consequences for the Christian minority.

223 Badamasiuy J & AA Okene, 'Shari'ah implementation in a democratic Nigeria: Historical background and the quest for developmental legality', *Journal of Politics and Law,* 4, 2; September 2011, pp. 144–152; Kendhammer B, 'The sharia controversy in northern Nigeria and the politics of Islamic law in new and uncertain democracies', *Comparative Politics*, 45, 3, April 2013, pp. 291–311.

224 Kendhammer B, *op. cit.*, p. 308.

Algeria CRR endorses Algeria's definition of itself as Islamic, but the Zambia CRR takes issue with Zambia's definition of itself as Christian. If the APRM system is to advance a set of normative standards for governance on the continent, it must be consistent.

In this vein, two issues are especially important. The first is conceptual clarity on what constitutes freedom of religion. At various points in the CRRs, the terms 'freedom of religion' and 'freedom of worship' is used. It is not clear whether this is deliberate or merely an imprecise turn of phrase. But these are not necessarily synonymous. A strong argument is that freedom of worship refers to the more limited entitlement to commune with one's deity, while freedom of religion allows for the exercise of religion in the public arena.[225] This includes the right to debate, embrace or reject doctrines publically, attempt to persuade others of one's views, and conduct one's life according to one's religious principles. If religious freedom is to mean freedom, it is the latter definition that the APRM must use as its standard.

The second issue is that freedom of religion demands an unambiguous right on the part of individuals to choose in matters of religion. To conceive of a religious community as immutable is to deny the fundamental freedoms that the standards imply.[226]

The CRRs do suggest that religious bodies have the capability to be useful allies in developmental endeavours, and in enhancing the quality of countries' governance. It is noticeable how often recommendations in the CRRs suggest that religious bodies might be involved in addressing problems. This is an implicit recognition that they have a clear role to play in contemporary African societies. This in turn raises the question as to how they can fit into the modern democratic order that the APRM seeks to create. In the Algeria and Benin CRRs, there are oblique comments about this. The Algeria CRR calls for consideration of 'the new role of religion and multi-secular traditions and practices that constitute the foundation of a society proud of its identity and culture'.[227] In Benin, 'the weight of religions, traditions and multi-secular practices constituting the base of a society a bit too proud of its identity and its culture should consequently be questioned in the debate on the modernization of the State and the society'.[228] Both of these appear to support the need for religious freedom and for allowing religious identity to alter as individual choices change.

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225 This has principally been raised by religious adherents and religious freedom activists in the US, with reference to that country's supposed move away from a robust commitment to the 'free practice of religion' to a more limited 'freedom of worship'. For a pithy exposition, see Torre S, 'Watering Down Religious Freedom to "Freedom to Worship"', The Heritage Foundation, 18 September 2014, http://www.heritage.org/research/commentary/2014/9/watering-down-religious-freedom-to-freedom-to-worship.

226 For a discussion relevant to this theme, see Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, A/HRC/22/51, UN General Assembly, 24 December 2012, p. 6, para. 23.

227 Algeria CRR, *op. cit.*, p. 306.

228 Benin CRR, *op. cit.*, pp. 304–305.

A sign in a Tanzanian village advises visitors to dress with consideration for the local religious and cultural beliefs. In many countries, the intersection of religion and politics is a matter of considerable importance for governance.

Despite the prominent role that religious bodies have played in policy debate and civil society activism in South Africa, its CRR says very little on this score. Moreover, South Africa's constitutional formulation is an interesting one for a free, secular society, albeit one in which religious adherence remains strong. As Ebrahim Rasool, South Africa's erstwhile ambassador to the US, has observed: 'The option that we eventually adopted and that's placed in the constitution is one of the secular state, but with an active role for religion, that guarantees freedom and even guarantees access to resources in order to make sure that religions are equitably represented.'[229] Given the important social role that religion plays in many African societies, such an approach may be a useful template for other countries.

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229   Rasool E, 'Religion and politics in South Africa', in Chidester D, Tayob A & W Wiesse (eds), *Religion, Politics, and Identity in a Changing South Africa*, vol. 6. Muenster: Waxman Verlag, 2004, p. 99.

CHAPTER 5

CONCLUSION

Following its colonial and post-colonial experiences of autocracy and authoritarianism, Africa has turned to democracy as its normative political framework. But – as Zakaria observes – freedom does not necessarily arise from electoral democracy. Freedom arises through a robust constitutional order and respect for the civil liberties that formalise, deepen and expand democratic culture.

Constitutionalism and civil liberties are important considerations for Africa's governance regimes. The APRM, as a long-term, broad assessment of the state of governance in the countries involved, is a unique instrument to evaluate them. In doing this, the APRM has performed a stellar service. Its inquiries lead to several broad observations. Overall, there is a broad commitment – in theory – to constitutionalism and the protection of civil liberties. In the formal arrangements across most of the countries, elements of the conceptual contours of constitutional liberalism can be discerned.

A respect for constitutional liberalism is also evident in the APRM system, from the standards that have been adopted as measuring sticks to the value orientation that comes through in the CRRs. For advocates of freedom on the continent, these are considerable resources.

It is also true that considerable progress has been made in turning these commitments into reality. The correspondence between the Freedom House rankings and the thrust of the qualitative material presented in the APRM reports not only vouches for the quality of the APRM reviews but also demonstrates the differential progress made by the various countries. It is a significant achievement that some of the countries reviewed – notably Benin, Ghana and South Africa – have largely shaken off their authoritarian pasts, and are, in a real sense, free societies.

This normative commitment is not without caveats. Worldwide, after flourishing for a period since the late 1980s, freedom has begun to wither. Africa has seen this. And in several of the countries studied here, commitments to freedom remain largely theoretical. A country may grant a right in principle, but then restrict it through countervailing legislation. More prominently, states' commitments are frequently applied unevenly in reality. A guarantee of free speech, for example, means little when security services or rebel groups harass journalists. A guarantee of free association is undermined when governments set conditions that make the continued operations of CSOs perpetually uncertain.

State curtailment of freedom is driven by several impulses. The first is executive dominance. This need not necessarily undermine constitutional governance (much less civil liberties), but in practice the APRM has pointed to the wide latitude that African heads of state and government are accorded, along with weak checks on the exercise of their power.

The second impulse is ideology. Not all countries – whether that is understood as their ruling elites or their general populations – are comfortable with the idea of a free society. Rather, there is considerable evidence of a view of government as the embodiment of a national-cultural community, and governance as a protective or developmental function – a 'gift of the emir', in one formulation.[230]

The third is securitisation. Arguably the fiercest challenger of freedom, this is especially prominent in interfering with freedom of association. Concerns for states' stability are real, although it is not always clear whether a distinction is drawn between this goal and maintaining incumbent rulers' hold on power. Neither is it clear that the various restrictions on association and speech are in fact in the long-term interest of the stability they are intended to promote. By retarding the development of an organised and active civil society, they may in fact be removing a key avenue for democratic engagement and active citizenship. The remaining options for protesting grievances may then fall outside the law and a democratic culture. The outcome is a degraded experience of freedom now, and limited prospects of its developing in future. As an observer of the Ethiopian situation remarked: 'Governmental capacity to contain simmering and, alas, increasing, anger will, likely, be strained. On the surface, all is calm ...'[231]

The fourth impediment originating with the state is administrative dysfunction, where laws cannot be implemented, or where recourse to the courts is rendered theoretical because of a lack of capacity. This is a challenge to freedom that arises irrespective of the intentions of the state in question.

Threats to freedom arise not only from the state. Just as state dysfunction undermines freedom, so too can dysfunction in society – whether this is the 'indiscipline' identified in the Benin CRR, or the existence of armed insurgencies in Nigeria or Uganda. Such conditions may produce a consequence-free licence or a state of asphyxiating intimidation; they will not produce an environment conducive to the exercise of democracy-enhancing freedom.

Assuming that robust freedom is desirable, and the standards would certainly seem to lean that way, what can be done to encourage it? More specifically, what role can the APRM play in this?

In the first instance, the APRM system – for those working within it, for activists hoping to engage with it, and for countries subject to it – could do worse than invoke the subtitle of the AU's Agenda 2063 for inspiration: 'The Africa We Want'. This phrase suggests the centrality of political will and commitment to the continent's future. For those seeking to use the APRM to promote freedom, irrespective of the position they occupy, the prospects for success hinge on the level of their commitment. This is especially true for those within the APRM system, its panel, its secretariat and its CRM members.

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230   Goui B, 'Algerian angst: Can it agree on constitutional change', *Policy Alternatives, Arab Reform Initiative*, February 2015, p. 7.
231   Email communication from academic observer of Ethiopian politics, 2 June 2015.

It has been noted before that the APRM has proven itself an exceptionally useful diagnostic tool. This study is further evidence of this. By shining a light on the state of constitutionalism and civil liberties, it provides the impetus to begin national conversations. In practice, the treatment given this issue is uneven. Constitutionalism is accorded relatively full treatment, but the engagement with civil liberties is frequently truncated. Ideally, CRMs should pay more attention to the latter, examining their constitutional bases, relevant legislation and practical implementation. In practice, this is probably beyond their capacity at present.

It would be possible to improve the manner in which the CRRs report on civil liberties. This could be done by making more express the links between countries' obligations under the APRM system – in terms of the standards against which their governance systems are to be measured – and the existing civil liberties environment. The focus would be on practical, lived experiences, although constitutional and legal provisions are of course important. This would provide a firm basis to critique shortcomings and identify best practices. Closer co-operation with the ACHPR would be beneficial – something for which provision has actually been made.[232] Co-operation could similarly be explored with UN rapporteurs.

The APRM system must also pay attention to conceptual clarity and consistency across its various engagements. It must be clear as to what it is promoting. Confusion over, say, 'freedom of worship' and 'freedom of religion' or between a 'free media' and a 'vibrant media' cannot be allowed to intrude into the CRRs. Moreover, if standards are to be upheld for the continent, they must be upheld evenly. In this respect, it is regrettable that, for example, the treatment of official religious identity is handled so differently in the Algeria and Zambia CRRs.

Related to consistency and clarity is continuity. The CRRs show that there are strong interlinkages between the various elements constituting freedom. Without constitutionalism, the exercise of individual rights will lack the protection needed. Freedom of expression is necessarily complemented by freedom of association, when the airing of grievances gives rise to citizens' activism. Freedom of religion depends on freedom of association to ensure the right of religious bodies to operate, and on freedom of expression to spread their various messages.

Taken together, freedom provides a potential enhancing structure for democracy in Africa. In the absence of freedom, civic activism is near impossible; and civic activism is arguably the prime guarantor of democracy. Commenting on the situation in South Africa, the highly-regarded political analyst, the late Dr Frederick Van Zyl Slabbert, wrote a few years ago:[233]

> Even if it is so that some intellects in government crave for a 'Gramscian hegemony' over the masses, they haven't got a snowball's hope in hell. The scope and diversity of civic action

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232   ACHPR, *Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism*, ACHPR/Res168(XLVIII), 2010.

233   Van Zyl Slabbert F, *The Other Side of History: An Anecdotal Reflection on Political Transition in South Africa.* Johannesburg and Cape Town: Jonathan Ball, 2006, p. 152.

simply defies such hegemony. Voluntary associations in the areas of literacy, health, skills development, business management, orphan care, combating AIDS, perform magnificently. I have met and observed many of them. Of course, government can play an important enabling role, but if it does not do so, it will simply be regarded as irrelevant. There is boundless arrogance in the notion that you have the right to tell ordinary commonsense folk how and what to think.

Finally, freedom is not an inevitable condition. The considerable variations seen in the countries reviewed by the APRM, not to mention the experiences worldwide over the past decade, are testimony to that. As the APRM moves on to new reviews, it will find itself having to deal with ever more 'unfree' countries. It will find itself confronted with circumstances in which it must come out clearly on the side of its values and its standards. This will demand considerable will. But if freedom is to be a defining part of the continent's future, is a necessary choice. Alive but struggling in Africa, freedom needs to be nurtured.

APPENDICES

APPENDIX 1	FREEDOM IN THE WORLD INDEX															
	1980			1990			2000			2007			2015		
	Status	Political rights	Civil rights	Status	Political rights	Civil rights	Status	Political Rights	Civil Rights	Status	Political rights	Civil rights	Status	Political rights	Civil rights (2014)
Algeria	Not free	6	6	Partly free	4	4	Not free	6	5	Not free	6	5	Not free	6	5
Benin	Not free	7	6	Partly free	6	4	Free	2	2	Free	2	2	Free	2	2
Ethiopia	Not free	7	7	Not free	7	7	Partly free	5	5	Partly free	5	5	Not free	6	6
Ghana	Free	2	3	Not free	6	5	Free	2	3	Free	1	2	Free	1	2
Mauritius	Partly free	3	3	Free	2	2	Free	1	2	Free	1	2	Free	1	2
Mozambique	Not free	7	7	Not free	6	6	Partly free	3	4	Partly free	3	4	Partly free	4	3
Nigeria	Free	2	3	Partly free	5	5	Partly free	4	4	Partly free	4	4	Partly free	4	5
Rwanda	Not free	6	6	Not free	6	6	Not free	7	6	Not free	6	5	Not free	6	6
South Africa	Not free	5	6	Partly free	5	4	Free	1	2	Free	2	2	Free	2	2
Tanzania	Not free	6	6	Not free	6	5	Partly free	4	4	Partly free	4	3	Partly free	3	3
Uganda	Partly free	4	4	Not free	6	5	Not free	6	5	Partly free	5	4	Not free	6	5
Zambia	Not free	5	6	Not free	6	5	Partly free	5	4	Partly free	3	4	Partly free	3	4

Source: Freedom House, Freedom in the World, *Individual Countries' Ratings and Status*, https://freedomhouse.org/report-types/freedom-world#.VXm-8joViP9

Note: Those whose ratings average 1.0 to 2.5 are considered free, 3.0 to 5.0 partly free, and 5.0 to 7.0 not free.

The scores for Ghana in 1980 reflect the brief democratic interlude of the government of Hilla Liman. Freedom House data for 1979 gives it a rating of 4 for both political and civil rights – making it a 'partly free' country. Ratings for the rest of the 1980s defined it squarely as a 'not free' society

APPENDIX 2	FREEDOM OF THE PRESS INDEX				
	1980	**1990**	**2000**	**2007**	**2014**
	Status	**Status**	**Status**	**Status**	**Status**
Algeria	Not free	Partly free	Not free	Not free	Not free
Benin	Not free	Partly free	Free	Free	Partly free
Ethiopia	Not free	Not free	Not free	Not free	Not free
Ghana	Partly free	Not free	Partly free	Free	Free
Mauritius	Free	Free	Free	Free	Free
Mozambique	Not free	Not free	Partly free	Partly free	Partly free
Nigeria	Partly free	Partly free	Partly free	Partly free	Partly free
Rwanda	N/A	N/A	Not free	Not free	Not free
South Africa	Partly free	Partly free	Free	Free	Partly free
Tanzania	Not free	Not free	Partly free	Partly free	Partly free
Uganda	Partly free	Not free	Partly free	Partly free	Partly free
Zambia	Partly free	Not free	Not free	Not free	Not free

Source: Freedom House, *Freedom of the Press, Scores and Status 1980–2015*, https://freedomhouse.org/report-types/freedom-press#.VXnBKDoViP8

Note: Nigeria's score for 1980 was split between 'free' for print media and 'partly free' for broadcasting; Zambia's score for 1980 was split between 'partly free' for print media and 'not free' for broadcasting