

AFRICAN ACCOUNTABILITY

What Works and What Doesn't

Edited by Steven Gruzd and Yarik Turianskyi

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FOREWORD

Advocate Thuli Madonsela, South African Public Protector

I am honoured to write the foreword for *African Accountability: What Works and What Doesn't*, edited by Steven Gruzd and Yarik Turianskyi of the South African Institute of International Affairs. This book is timely as Africa navigates the implementation of Agenda 2063 and hopes to accelerate its pace, as it rises in pursuit of its full potential as an equal of fellow global players. It also comes at a time when the UN has completed reflections on successes and lessons learnt in the implementation of Millennium Development Goals while entering the next chapter, entailing the implementation of Sustainable Development Goals.

More important, though, is this book's potential contribution to the search for sustainable global peace. Its cutting-edge analysis of governance and accountability in contemporary Africa is particularly apposite given the growing concerns regarding the impact of impunity on sustainable democracy and peace in nation states, the continent and the global system.

Indeed, good governance and accountability are central pillars of a functional modern democratic state and inextricable from the search for sustainable peace. Linked to good governance is the rule of law. Through good, effective and efficient governance, states seek to ensure adherence to the rule of law, safeguard human rights, manage economic performance, promote inclusive development and minimise conflict. Accountability, on the other hand, provides citizens with mechanisms to hold responsible those they have entrusted with public power and collective resources, when things go wrong. That accountability is possible through access to independent institutions that adjudicate grievances impartially and the enjoyment of a real opportunity to change the government on a regular basis, through free and fair elections.

As Africa seeks to accelerate its rise, many African states continue to face numerous political, economic and social challenges that have arisen since de-colonisation: corruption, poverty, dominant executives, lack of development and patronage. While the challenge of disputed elections is decreasing, it sadly remains part of the landscape. Many of the problems bedevilling the continent's quest for growth and peace are rooted in deficient governance, itself a legacy of the colonial state. It would appear that African leaders in many countries took over an established anti-democratic, semi-authoritarian system of rule and merely continued with this, adjusting it to their own needs along the way.

Increased accountability holds the key to fixing these problems, which can be achieved by building the capacity of continental institutions, such as the Pan-African Parliament and the African Peer Review Mechanism (APRM), as well as domestic institutions, including offices of the ombudsman, parliaments, courts and engaged civil society. Global accountability mechanisms such as the International Criminal Court also have a role in ensuring there is no impunity when domestic and regional instruments fail, despite legitimate concerns about them, which understandably need to be addressed.

Increased accountability, based on the rule of law, with no person or interest seen to be above the law, is an essential part of good governance, which in turn is a non-negotiable requirement for sustainable development and peace on the continent. In this regard, it is important to note that with Africa's history of resistance, so-called 'benevolent dictatorship' cannot anchor sustainable development on the continent, despite some successes along this path, most probably temporary, on the Asian continent.

This book correctly notes discrepancies between practical realities on the ground and commitments by African political leaders through charters and other transversal governance instruments and accountability institutions such as the APRM. Political will, demonstrable through the conferment of adequate funding to the innovative regional accountability instruments and deference to decisions by such institutions, needs to be more clearly evident.

Of course, having institutions that are seen as decoys undermines the value they were established to add, which is to foster good governance, democracy, justice and, ultimately, inclusive growth and peace.

This book aptly touches on growing weaknesses in the ability of the legislative branch of government to curb executive excesses, while pointing out gaps in judicial accountability in the contemporary African state and implications for democracy, governance and the rule of law.

The establishment of innovative administrative accountability institutions, particularly the watchdogs loosely referred to as ombudsman institutions, while taking into account their diverse remits and remedial powers, presents an opportunity to address some of the accountability gaps, governance failures and democracy weaknesses. This is the thinking underpinning the African Charter on Democracy, Elections and Governance. However, these too need political will demonstrable through adequate funding, real independence and the deference to their findings and remedies modelled by the first president of democratic South Africa, Nelson Mandela.

Civil society, incorporating the media, is increasingly emerging as a game changer with regard to public accountability. However, many African governments demonstrate open hostility towards civil society and have attempted to control, regulate and undermine the sector. This is to the detriment of good governance, as dissenting voices include whistle-blowers who offer a needed mirror to change course and get back on track in the event of derailment. The muzzling of civil society is also a threat to democracy and sustainable peace, because without outlets for dialogue, the attraction of violence becomes irresistible to those who are unhappy or who demand social justice.

This book tackles these debates and challenges, and is an important addition to the literature on accountability in Africa.



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We are honoured to have an inspiring foreword written by an inspiring South African, the Public Protector, Advocate Thuli Madonsela. Her brave and untiring work fighting for justice is appreciated and admired.

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Johannesburg
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CHAPTER 1



INTRODUCTION

Yarik Turianskyi & Steven Gruzid

Africa has the potential to be the continent of the future. Its natural resources are in demand and have fuelled significant growth and trade with other parts of the world, particularly China. There is a marked spirit of entrepreneurship, ingenuity and innovation. Free and fair democratic elections are an increasingly common feature of the political landscape. *The Economist's* 'Africa rising' narrative of 2011 has replaced its 'Hopeless continent' headline of 2000. The new paradigm of Africa as a success story is gaining traction. In Steven Radelet's *Emerging Africa*, the author identifies 17 African states that are shedding negative perceptions and, through hard work in the political and economic spheres, are creating a new image of themselves. Radelet lists five crucial factors that have led to these positive changes: an increase in more democratic and accountable governments; the implementation of more sensible economic policies; the end of the debt crisis; the spread of new technologies; and the emergence of a new generation of leaders.¹

African Accountability: What Works and What Doesn't? focuses on political, social and technological aspects of the current governance and accountability landscape in Africa. Unlike Radelet's work, this book is not exclusively Afro-optimistic. However, neither is it overly Afro-pessimistic, in line with *The Economist's* gloomy forecast at the onset of the new millennium. Rather, it tries to adopt a balanced, Afro-realistic approach, giving credit where it is due while also pointing out deficient areas that need reform. Most chapters include recommendations on how the current status quo could be improved.

Sometimes it may appear as though improvements in African governance are sluggish, marginal and quickly reversible. And, indeed, governance reforms have been rather slow, complex, inefficient and difficult to implement.

This point is most accurately represented by the African Peer Review Mechanism (APRM), which was established in 2003 to improve governance in individual member states and on the continent as a whole. Membership is open to all African Union (AU) members and the APRM focuses on four areas of governance: political, economic, corporate and social. Following internal and external reviews, a country commits to addressing identified challenges through a National Programme of Action (NPoA). As of November 2015, 35 countries have voluntarily signed up, 17 of which have completed their first reviews. Although the APRM has the potential to significantly improve the governance landscape in Africa, and while its reviews have generally been praised as honest, balanced and comprehensive, the same cannot be said for NPoA implementation, which has been deficient in most member states. Problems are thus identified and reforms proposed, but these reforms are not realised.

In fact, the discourse on good governance and democracy itself has been fading. These concepts were prominent throughout the 1990s and early 2000s, but the past decade has seen the focus shift towards economic development. Economic successes in countries such as Rwanda are being hailed as a model for the rest of Africa, yet research shows that they often happen at the expense of human rights and personal freedoms. The ‘third wave’ of democratisation on the continent culminated in an increased number of elections, the AU’s rejection of unconstitutional changes of government and the establishment of the APRM. The emergence of investors that do not emphasise democracy and human rights, such as China and Russia, further shifted the debate away from good governance in Africa. For instance, bilateral trade between Africa and China grew from \$10.6 billion in 2000 to \$198.49 billion in 2012.² The \$200-million headquarters of the AU in Addis Ababa was a gift from the Chinese government, as a ‘symbol of deepening relations’.³ African countries are increasingly ‘looking east’ to these alternative sources of political support, investment and development assistance.

Democracy discourse is therefore often reduced to conversations about elections, which happen every four to five years and rarely change much, while issues of corruption, maladministration and dominant executive power linger. Although a regular change of power is necessary – 10 of Africa’s rulers have been in power for 20 years or longer⁴ – elections do not guarantee the establishment of open societies. For instance, numerous African states have recently passed legislation aimed at curbing the activities of civil society organisations and violating the rights of the lesbian, gay, bisexual and transgender communities.

Freedom House provides interesting data in its annual ‘Freedom in the World Index’. It measures the electoral process, political pluralism, participation and functioning of governments, and then classifies states according to three categories. In 2000, out of 53 African states, nine were ‘free’, 26 ‘partly free’ and 18 ‘not free’. Thirteen years

on, little had changed. Ten states were classified as 'free', 22 as 'partly free' and 21 as 'not free'. In fact, this shows more regression than improvement. In some cases, such as Mali, the 2012 coup was the main reason for the political change that caused the lower ranking.

The phenomenon of coups is unfortunately still prominent on the continent, although the situation is improving. According to a recent study,⁵ there were 125 failed and 78 successful coup attempts between 1946 and 1999, but only 27 failed and 10 successful attempts between 2000 and 2012. This averages out to 3.83 coups a year in the 20th century and 3.03 since the turn of the new millennium. While the decline of 0.80 a year is notable, African states are still clearly under threat of unconstitutional changes of government. One of the key differences between the Organization of African Unity (OAU) and the AU is their responses to such occurrences. Article 30 of the Constitutive Act of the AU stipulates: 'Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.'⁶ Author and researcher Issaka Souaré argues that only almost a decade after the end of the Cold War and against a backdrop of increasing democratisation on the continent did Africa's leaders begin to change their attitudes.⁷

In order to examine these and other issues and propose solutions, *African Accountability: What Works and What Doesn't?*⁸ looks at both continental and domestic governance and accountability. Chapters 2 to 6 examine continental adherence to these issues, with chapters 7 to 11 focusing on domestic compliance.

At the continental level, efforts to set Africa on a steady and sustainable path are examined, such as the AU's 50-year development plan, Agenda 2063, the emerging African Governance Architecture (AGA), as well the interplay between the AU's African Charter on Democracy, Elections and Governance (ACDEG) and the APRM.

The momentum of democratisation in Africa has been marked by both progress and reversals. Until the early 1990s, the democracy project was not at the top of the national, regional or continental agendas of nation-building, or regional and continental integration. The second chapter looks at two important continental governance frameworks, both of which have become key aspects of African integration, anchored to the twin doctrines of pan-Africanism and African Renaissance during the AU era: the APRM and the ACDEG. The recent coming into force of the latter has raised questions about its coexistence with the former. Khabele Matlosa, Director of Political Affairs at the AU Commission, and with intimate knowledge of the practical modalities of both the APRM and the ACDEG, discusses their similarities and differences. He concludes that Africa has a place for both.

Yet both might have to fight for their place under the sun if the AGA continental framework becomes fully operational in the near future. Collaboration and

coordination among AU and regional economic community organs and institutions with the mandate to strengthen governance, human rights and democracy have been ad hoc and unpredictable. The results have been inefficiency, ineffectiveness and duplication of efforts and resources. Although significant progress has been made in articulating and establishing common frameworks, challenges remain. The establishment of the AGA and its African Governance Platform is aimed at addressing this deficiency. George Mukundi Wachira, who heads the Secretariat responsible for the AGA in the AU Department of Political Affairs, provides a brief overview of its structures and future plans.

Complementing this, by broadly looking at the AU and its current initiatives, is a chapter by analysts Tjiurimo Alfredo Hengari and Yarik Turianskyi in which the authors reflect on the continental organisation's 50th anniversary. This milestone provided a fitting moment for the AU to examine its achievements, challenges and way forward. When compared with the OAU, the AU has been more successful in achieving greater security on the continent, thereby fostering development. However, many challenges still beset Africa and the AU is currently unable to present a united stance on democratic governance challenges through the consistent application of agreed-upon continental policies.

While this chapter briefly refers to Agenda 2063 – the AU's 50-year vision document – the new initiative is given a more in-depth examination by Tim Murithi of the Institute for Justice and Reconciliation. The AU has adopted a broad range of treaties, protocols and norms relating to peace, security, gender issues, governance, trade and economic development in order to guide the conduct and behaviour of its member states. Murithi argues that the AU has attempted to play a continental role as a norm entrepreneur. He contends that a number of the specific goals of Agenda 2063 can be achieved within the proposed timeframe, but with the important caveat that African governments have to be prepared to genuinely pool their sovereignty upwards to the AU as a supranational authority.

The part on continental accountability is concluded with a chapter by researcher Shola Omotola on the AU and democratic values, from an electoral perspective. Since its launch on 9 July 2002, the AU has made the promotion of democracy and good political governance for the development and stability of Africa one of its main priorities. Omotola claims that despite the positive impact made by the AU's declarations on governing democratic elections and the observing and monitoring thereof, more work needs to be done. Elections in Africa remain one of the weakest links in the democratisation process, and are often a liability instead of an asset. He argues that the AU's election-monitoring activities have been undermined by two closely related challenges: the contexts of electoral governance in host countries, and administrative and implementation difficulties.

While the first half of the book looks at the continental level, the second half examines accountability within national borders. At the domestic level, it looks at a mixture of traditional and innovative accountability processes. To what extent do African parliaments hold executives to account, and fulfil their oversight mandates? How effective are institutions such as the ombudsman in promoting and protecting the rights of citizens in their interactions with governments? And what state mechanisms can civil society use to hold governments accountable?

Civil society has long sought to use courts to secure the accountability of the state. Constitutions and other founding legal documents typically tend to enumerate the rights that the individual may claim against the state, and circumscribe the powers that the state may lawfully wield. As courts are the means by which such rights may be vindicated and the extent of state powers determined, they provide an obvious avenue of accountability that civil society can pursue. Analyst and activist Nicole Fritz uses telling examples from Zimbabwe, South Africa and Kenya of how civil society has effectively sought accountability through the courts.

The theme of elections, briefly touched upon in the previous section, is discussed further in a domestic context. Ivan Crouzel of the Paris-based Institute for Research and Debate on Governance looks at the link between elections and instability in Africa, while Adele Jinadu provides a comprehensive examination of the management of elections in West Africa. While elections have become commonplace in Africa over the past 20 years, several recent examples have shown that they can also crystallise tensions and cause violence (as happened in Kenya, Côte d'Ivoire and Zimbabwe) and can fail to legitimise power. In Africa, the stakes are high, with access to resources through electoral victory a major prize. Crouzel discusses how the issues of power and the associated resource sharing are fundamental to limiting the risk of elections triggering instability. The chapter argues that an understanding of the issue of power and the associated resource sharing is fundamental to limiting the risk of elections triggering instability in fragile political contexts. He states that procedures aimed at limiting and containing electoral violence can only be effective if they form part of the institutionalisation of the electoral system as a whole.

Jinadu's chapter interrogates models of electoral management bodies (EMBs) in six countries, namely Benin, Cape Verde, Ghana, Nigeria, Senegal and Sierra Leone. He points to key historical and material forces that helped frame and shape their electoral management and processes. These are: the state as a site for zero-sum politics; the progressive violation of the principle of isolation of administration from politics; and the combination of political and legal influences that help foster a culture of impunity. In reviewing national debates over strengthening electoral management processes, the chapter focuses on five main challenges, namely the preferred model of EMBs; the cost of elections; electoral dispute adjudication; EMB partnerships with state and non-state stakeholders; and presidential-term limits.

Jinadu concludes that the major challenges facing African EMBs revolve round contradictions between the political economy and mainstream ethical values.

The final two chapters of the second half revolve round institutions that should, in theory, provide more accountability at the domestic level – ombudsmen and parliaments. The institution of the ombudsman plays an important role in promoting accountability and good governance. The effectiveness of this institution, however, depends on a number of factors, including level of independence, the extent of its powers, jurisdiction, functions, funding, accessibility, operational efficiencies and accountability. John Mubangizi, Deputy Vice-Chancellor and Head of the College of Law and Management Studies at the University of KwaZulu-Natal, provides a historical overview of the ombudsman as an institution in Africa, followed by an examination of five African case studies: Tanzania (as the oldest established ombudsman office in Africa), Namibia (for its generally broad mandate), Ethiopia (for its high level of independence), South Africa (as a success story) and Malawi (as a ‘basket case’).

Researcher Lia Nijzink then tackles the role of African parliaments in promoting accountability. In democracies all over the world, including Africa, parliaments are constitutionally mandated to serve as the main representative body that holds governments to account. Chosen by the electorate and mandated by the constitution, parliaments generally have a range of powerful tools to fulfil their oversight responsibility. Nijzink observes that, in Africa, parliaments rarely make use of constitutionally mandated powers in their oversight work. The overall picture on the continent, she argues, is thus one of weak parliaments giving more or less free rein to strong presidents with extensive powers, in turn affecting democratic development.

In the concluding chapter, the editors of this book bring together the main themes found in the various chapters: the need for developing stronger public institutions at the domestic level and political will at the continental level to assist countries in implementing policies that will ultimately result in a more prosperous and freer Africa.

The link between democracy and development is often questioned. Some claim that authoritarian states have demonstrated an ability to increase the well-being of their populations while avoiding the relaxation of political control over them.⁸ Yet Radelet claims that, in the African context, this relationship is ‘crystal clear’. In Africa, democratic governments have been successful, while authoritarian governments have failed. The good news is that more and more African countries are meeting the basic requirements of democracy, such as political rights, civil liberties and political institutions. For Africa to develop, it seems clear that it needs good governance. Without it, corruption thrives, maladministration is pervasive and citizens are

denied essential services. *African Accountability: What Works and What Doesn't?* examines where Africa is headed and what lessons have been learnt on its journey.

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