

**AU Commitments to Democracy in Theory and Practice:
An African Human Security Review**

By Anne Hammerstad¹

A Monograph for the African Human Security Initiative

Preface

This monograph is the result of the collaborative effort of many people and institutions. I am responsible for the choice of commitments and indicators in the field of elections and democratisation, as well as for developing the concepts and methods needed in order to conduct the review. However, since it is hard, if not impossible, to find one person who is an expert on democracy in all eight of the countries under review, the task of finding the answers to the many questions I posed was given to researchers and experts on each of the eight countries. This monograph relies heavily on the country reports submitted by these researchers. Without this pan-African (and beyond) collaborative effort, the monograph would not have been possible, and I wish to thank all the country reporters for their contributions. Their names and institutions are as follows:

Kato Lambrechts, Christian Aid (the Algeria report); Siegfried Pausewang, Christian Michelsen's Institute, and Professor Christopher Clapham, Cambridge University (Ethiopia); Dr Baffour Agyeman-Duah, Ghana Centre for Democratic Development (Ghana); Beatrice Munyendo, Institute for Policy Analysis and Research, Nairobi (Kenya); Dalue Mbachu, Associated Press (Nigeria); Abderrahmane Ngaidé and Dr Vincent Foucher, University of Bordeaux (Senegal); Michael Davies, SAIIA (South Africa); and Dr Paul Omach, Makerere University, Kampala (Uganda).

If other sources are not given, the facts and information used in this monograph can be found in the country reports written by these contributors. Without the reports, the monograph could not have been written. The country reports can be found in their complete form on the AHSI website at www.africanreview.org. However, as the one who assembled and analysed the information from the country reports, I am solely responsible for the final result that appears in this monograph, including faults or omissions.

Finally, I wish to thank the other AHSI partners and the British Department for International Development (DfID).

Introduction:

A shadow peer review of democracy and human security

The African Human Security Initiative (AHSI), a network of non-governmental African research organisations, launched in September 2003 a research programme that will monitor and review the compliance of African countries to a selection of commitments they have entered into as members of the African Union (AU). The inspiration for the project was provided by the New Partnership for Africa's Development and the African Peer Review Mechanism (APRM). The challenge of NEPAD for African political leaders is to improve governance on the African continent in order to create the conditions for growth and development, both through the continent's own efforts and by soliciting aid and investment from Western partners. The peer review mechanism is meant to monitor and encourage adherence to the NEPAD standards of good governance. Sixteen countries have so far signed up to the APRM and the first peer reviews are supposed to take place in 2004.²

The aim of the African Human Security Initiative is to add value to the official state-to-state peer review process. Although NEPAD is 'inherently a state-centric initiative, pitched at the level of African political leadership taking responsibility for the continent's development',³ the plan nevertheless envisages a supportive role for civil society. The question of how civil society can fulfil such a supportive role while retaining its critical distance from government is a question still under debate,⁴ but the AHSI partners agree with Khabele Matlosa of the Electoral Institute of Southern Africa when he said:

There should be a shadow process by civil society organisations so that if they can't participate in the formal process, they have their own process to keep it honest. As civil society, agencies must interrogate peer review, conduct research and share information with each other.⁵

It is in this spirit that the policy think tanks and research institutes that make up the AHSI partners decided to embark on a shadow peer review of a selection of countries that have signed up to the APRM. For this pilot project, eight countries are subject to review: Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda. The AHSI reviews do not attempt to follow slavishly the APRM methodology. Instead

of such duplication, the six partners have chosen to concentrate on particular aspects of good political governance that lie within the remit of their expertise. Since the partners define their research and policy work within the field of peace and security studies broadly defined, we have decided to focus on AU commitments to good governance that have a particular impact on *human security* on the African continent.

Within the AHSI project, this monograph by the South African Institute of International Affairs (SAIIA) will concentrate on democracy and election related commitments entered into by African leaders. Democracy is a very broad object of study. In order to adhere to the overall focus of the AHSI review project, the commitments reviewed in this monograph are therefore narrowed down to aspects of democracy that are particularly salient to human security.

Structure and contents of this report

This monograph aims to review the processes of democratisation in eight African countries with particular emphasis on institutions and practices that, if put in place and respected, would greatly enhance human security on the African continent. Chapter one will provide the context for the monograph by, first, defining key terms such as 'human security' and 'democracy'; and second, describe and discuss the seven commitments chosen for review. Chapters two to eight will review each of these seven commitments in turn, while chapter nine will sum up the findings of the report; provide some conclusions on the relationship between democracy and human security; and assess how democracy has fared over the last ten to fifteen years in the eight countries under review. While many problems and shortcomings are identified in the eight countries (many more in some than in others), the monograph concludes that all eight countries are more democratic today than they were ten to fifteen years ago. While a few (Ghana, Senegal and, particularly, South Africa) can be relatively satisfied with their progress, others (Algeria, Ethiopia and Uganda) took great strides in the late 1980s or early 1990s, but their democratisation process seems to have stagnated some steps short of democracy. Nigeria only returned to civilian government in 1999 and serious flaws are still apparent in its democratic system. The developments over the last two years in Kenya, however, provide grounds for optimism. All in all, despite the concern that some of the countries under review will be stuck with a system that dresses an essentially authoritarian or one-party system with the garbs of democracy, this review exercise does not give cause for Afro-pessimism – the trend since the early 1990s has been a positive one.

Chapter 1:

Reviewing democracy and human security in Africa

The core concepts of the AHSI project, such as 'human security', 'good governance', and 'democracy' are very broad. They need to be further defined and specified if they are to guide a practical research agenda. Thus a main task of this first chapter is to narrow down what 'democracy' means when seen from the perspective of 'human security'. This means defining both the concept of human security and that of democracy. Having done that, I will set out the AU commitments selected for review, together with a general motivation for why these particular commitments were chosen.

What is human security?

Human security has become a central concept in the vocabulary of academics, policy makers and civil society practitioners alike, because it provides a means with which to express and emphasise that the promotion of peace and security is quintessentially about protecting *people*, not just defending abstract collective entities such as 'states' or 'regimes'. However, the concept has some serious weaknesses. Foremost among these is the tendency to use the term as an all-encompassing umbrella covering all that is bad and sad in the world. As a result the concept risks becoming so broad that it loses its meaning. The first task of any study of *human security* must therefore be to define and delimit the meaning of the term.

There is not yet a general agreement on how human security should be defined. This study adheres to a school of thought that holds that the concept of security – whether human, national or international – must include the following three components: First, the term security always implies 'freedom from threat'. Second, the threat is understood in terms of survival. The threat is, in other words, of an existential quality. Third, this existential quality is accompanied by a notion of urgency and necessity – that something should be done immediately to save the object or value under threat.⁶ If we concentrate on human security rather than national security, a person's life, liberty and other basic human rights should be counted among such existential threats.

For the purpose of this study on democratisation, *human security* is confined to political (rather than environmental, social and economic) threats. However, to ensure that there

is a clear distinction between political problems and security threats (the difference lies in how threatening and urgent the problem is), it is necessary to narrow the definition further. In order to study the impact of political governance on human security this report will thus focus on issues that are related to:

1. Direct or indirect political violence against individuals or groups or the threat thereof.
2. Non-violent actions or processes (such as the stealing of elections through manipulation of voters lists) that have a strong likelihood of leading to political instability and violence (see point 1).

The relationship between good political governance and democracy

Good political governance can be defined as the sum of the institutions, processes and policies that are conducive to human development and rights. While democracy is not a perfect system of governance, it would be hard to argue that any other system has had the same success in protecting and supporting the political and economic rights of the people living within it. Thus, this monograph – together with the treaty and declarations of the African Union – understands good political governance as the furtherance of democracy and democratisation.

Democracy is in this regard not only understood as majority rule and the holding of regular elections. It includes all the paraphernalia of democratic governance: checks and balances, independence of the judiciary, party pluralism, minority protection, constitutional protection, political liberties such as freedom of speech and association, etc. For the AHSI project, the focus will be more on democratisation than democracy, since a core aim of the review is to assess whether a country's democracy record is improving or deteriorating. This provides a more just measurement of a state's commitment to democracy than a snapshot picture would have done.

The overall theme of the review is thus *the progress of democratisation from a human security perspective*. This leads us to the next question: Taking this understanding of good political governance as democracy/democratisation (depending on how far a country has come in its political development), what are the human security aspects of governance that we should focus on?

The review concentrates on aspects of democratisation processes that are particularly salient for human security. This emphasis leads us to a focus on systems and processes for the transfer of political power from one individual or group to another. The reason for this is straight-forward: the lack of peaceful mechanisms – or the lack of respect for such peaceful mechanisms – for the transfer of power has been one of the most, if not the most, common trigger for political repression, violence and even civil war on the African continent. Democratisation does not immediately eliminate such human security threats, but if a democratic system is given time to root itself in strong institutional safeguards and if the principles and values of democracy become internalised among the political elites of a country, then violent power struggles would be come something of the past. A properly functioning democratic system is one that takes power transfers out of the realm of security threats and into the realm of ordinary politics. However, the emphasis in that last sentence is on *properly functioning* the road to democracy is a risky one, and can lead to chaotic and violent conditions if key political actors do not play by the rules.

This review has identified four aspects of democracy that are in particular danger of causing human security threats if they are undermined or disregarded. These are:

1. The fairness of elections and electoral processes: Human security threats can be due to violence during the election; because of violence as a result of election outcomes; or as a result of the way in which the election was conducted (for instance, by delivering an unfair victory to a repressive government).
2. The right and opportunity to create or be a member of opposition parties and campaign on their behalf: The abuse of this right can lead to human insecurity because without legitimate channels through which dissent and disagreement can be voiced, the risk is high that political debate turns into political violence. In addition, from the perspective of individual security and rights, it is untenable for a state to allow a system where to be a member of an opposition party entails a personal security risk.
3. The adherence to constitutional caveats concerning limits on terms in office: This is a human security issue because if there is no peaceful way in which to get a

leader to stand down, then each transition of power is at risk of being violent, anarchic and destabilising.

4. The independence of the judiciary: This is a question of human security because an independent judiciary is an invaluable check on executive power and a necessary condition for the rule of law – which again protects the human security of citizens against the arbitrary use of power by authorities.

The choice of AU democracy commitments and how to review them

To sum up the previous section: the core focus of this study is the mechanisms, institutions and rules that ensure democratic and peaceful transitions of power. Before setting out the democracy commitments to be reviewed in this monograph, it is necessary to provide the case for why African leaders should be held to democracy standards at all. The previous section argued that democracy is valuable because, if its principles and institutions are strong and respected, it is a political system that is vastly more conducive to human security than any other the world has seen. This section will add to this argument by showing that commitments to democracy in all its aspects are not imposed from outside, but entered into by mutual agreement by African leaders themselves.

When going through the documents of the Organisation for African Unity and its successor, the African Union, African leaders' commitment to democracy is undisputed and can be found in AU and OAU treaties, memoranda of understanding, plans of action, conventions and communiqués. African states have committed themselves in unambiguous terms to democracy and the values that this political system entails. The AU documents that constitute the basis for this review project, all promote a generally and globally accepted understanding of the concept of democracy. This can be seen in the Lomé Declaration on Unconstitutional Changes of Government from 2000, where AU members spell out the principles underlying the organisation's 'common concept of democracy'. The Declaration states that:

'(...) without being exhaustive, we have also agreed on the following principles as a basis for the articulation of common values and principles for democratic governance in our countries:

- i) adoption of a democratic Constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;
- ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;
- iii) separation of powers and independence of the judiciary;
- iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;
- v) the principle of democratic change and recognition of a role for the opposition;
- vi) organization of free and regular elections, in conformity with existing texts;
- vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders;
- viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;
- ix) guarantee and promotion of human rights.

With this declaration in mind, it is time to turn to the particular democracy commitments that will be reviewed in this monograph. There should by now, in 2004, be no controversy involved in assessing African states according to their adherence to any of the democracy commitments evaluated here. This section will show that all the commitments reviewed here have been signed up to by African leaders. Furthermore, as the above quotation shows, the African Union has made it clear that it understands these commitments according to a universally agreed understanding of democracy.⁷ All the indicators except one chosen for this study are soundly within a generally accepted understanding of what democracy entails. For the one that is not – the insistence on term limits for heads of state and governments – African leaders have recognised the particular conditions that make this especially salient on the continent.⁸ A further discussion of the need for term limits is conducted in the introduction to chapter seven below.

The sources

All the commitments reviewed in this study have been endorsed by AU (previously OAU) Heads of State in various declarations, memoranda of understanding, action plans

and treaties. The AHSI partners have chosen 11 such documents as the basis for their review. The 11 are:⁹

- *The New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance*, Assembly of Heads of State and Government, Thirty-Eighth Ordinary Session of the Organization of African Unity (Durban, South Africa: AHG/235 (XXXVIII), Annex I, 8 July 2002);
- *The Durban Declaration in Tribute to the Organization of African Unity and on the Launching of the African Union*, Assembly of the African Union, First Ordinary Session (Durban: ASS/AU/Decl. 1 (I), 9-10 July 2002);
- *The New Partnership for Africa's Development (NEPAD)* (Abuja, Nigeria: OAU, October 2001);
- *The CSSDCA Solemn Declaration, Declarations and Decisions Adopted by the Thirty-sixth Ordinary Session of the Assembly of Heads of State and Government* (Lomé: AHG/Decl.4 (XXXVI), 12 July 2000); and the *CSSDCA Memorandum of Understanding* (Durban: OAU, July 2002);
- *The Lomé Declaration on the framework for an OAU Response to Unconstitutional Changes of Government* (Lomé: AHG/Decl.5 (XXXVI), 10-12 July 2000);
- *The Constitutive Act of the African Union* (Lomé, Togo: OAU, 11 July, 2000);
- *The Ouagadougou Declaration* (Ouagadougou: AHG/Decl. I (XXXIV), 8-10 June, 1998);
- *The Yaoundé Declaration (Africa: Preparing for the 21st Century)* (Yaoundé, Cameroon: AHG/Decl.3 (XXXII), 3-10 July, 1996);
- *Relaunching Africa's Economic and Social Development: The Cairo Agenda for Action* (Addis Ababa: AHG/Res.236 (XXXI), Annex, 26-28 June, 1995);
- *Declaration of the Assembly of Heads of State and Government of the Organisation for African Unity on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World* (Addis Ababa, 11 July 1990).

The commitments

Having set out the strong overall commitment of AU member states to democracy and some of the documents and treaties in which this commitment is spelt out, I will turn to the seven particular aspects of democracy to be studied in this review. The seven are listed below and their relationship with AU goals and commitments set out in detail in Table 1.

1. **Fairness of the electoral system:** Is the overall result of the electoral process seen as fair by most stakeholders and is the election outcome reflected in the composition of the legislative and executive powers?
2. **Electoral Commissions:** Do they exist, are they independent and well funded, and are their operations and rulings generally accepted as fair and impartial?
3. **The voter registration system:** Is everyone who, according to generally accepted principles of democracy, is entitled to vote, able and allowed to do so? Are their votes undermined by tampering with the voters' lists?
4. **Political pluralism:** Are political parties allowed to form, meet, and stand for elections? Can they campaign freely and do they have equal access to the media?
5. **An exclusive or inclusive political system:** Who has access to political power and to the benefits of public office, policies, goods and services?
6. **Limits to terms in office for Heads of State:** Are there such limits and are they adhered to?
7. **Independence of the judiciary:** Are courts independent from governments and do they exercise meaningful oversight over executive and parliamentary actions?

The table below gives some concrete examples of OAU and AU Heads of State directly endorsing these seven democracy commitments. The documents referred to here are only a sample of a host of OAU and AU declarations signed over the last ten to 15 years that demonstrate African leaders' broad and unquestioning commitment to democracy. Not all of the documents in the table below mention all seven commitments, but the overall conclusion from this selection of OAU and AU official literature is that African leader's commitment in principle to all the aspects of democracy and democratisation reviewed in this study are beyond doubt.

Table 1: OAU/AU democracy commitments divided into seven categories

CSSDCA Solemn Declaration (2000) and MOU (2002)	
General commitment to democracy	<u>Solemn Declaration, Plan of Action</u> , 'Stability': a) 'Intensify efforts aimed at enhancing the process of democratization in Africa. In this regard, the strengthening of institutions that will sustain democracy on the continent including the holding of free and fair elections should be encouraged'

1) Overall fairness of election system	<p>Apart from the general promise to intensify efforts at strengthening democratic institutions in the <u>Solemn Declaration</u>, the <u>MoU</u> (III.B.(20)) states: ‘Campaign Finance Reforms: Conclude by 2004 legal mechanisms for the institution of campaign finance reform including disclosure of campaign funding sources and for proportionate state funding of all political parties, to ensure transparency, equity and accountability in electoral contests’.</p>
2) Electoral commissions	<p>The <u>MoU</u> (III.B.(18)) commits African leaders to concrete targets: ‘Independent National Electoral Commissions: Establish by 2003 where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections in all African countries’.</p>
3) Voter registration system	<p>No concrete commitments, but a general promise to strengthen democratic institutions. The importance of a good voter registration system to ensure that citizens are allowed to exercise their right to vote, means that this promise would have to include commitments to creating or maintaining a robust and fair registration system.</p>
4) Political pluralism	<p><u>Solemn Declaration:</u> <u>Specific principles</u>, ‘Stability’: 11(d) ‘There shall be no hindrance to the promotion of political pluralism. All forms of extremism and intolerance foster instability’ <u>Plan of Action</u>, ‘Stability’: i) Protect and promote respect for Human Rights and Fundamental Freedoms, such as the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy’</p>
5) Exclusive or inclusive political system?	<p><u>Solemn Declaration: Specific principles</u>, ‘Stability’: 11(b) ‘The active and genuine participation of citizens of every country in the decisionmaking processes and in the conduct of public affairs must be fostered and facilitated’</p>
6) Term limits	<p><u>Solemn Declaration: Plan of Action</u>, ‘Stability’: b) ‘Adopt and implement a set of guidelines for dealing with unconstitutional and undemocratic changes in Africa in line with the Decisions that we took during the 35th Ordinary Session of our Assembly held in Algiers in 1999’ <u>MoU</u> (III.B.(16)) ‘Limitation to the Tenure of Political Office Holders: Adopt by 2005 a commonly derived Code of Conduct for Political Office Holders that stipulates among others, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it.’</p>
7) Independence of judiciary	<p><u>Solemn Declaration: Specific Principles</u>, ‘Stability’ 11 (a) ‘The Executive, legislative and judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability’ <u>Solemn Declaration: Plan of Action</u>, ‘Stability’: f) ‘Uphold and guarantee the rule of law, the protection and defence of the rights of citizenship as acquired at independence and as provided for in national constitutions’ <u>MoU</u> (III.B (14)) agreed to: ‘an independent judiciary’</p>

Durban Declaration in Tribute to the OAU (2002)

All seven commitments	<p>The Durban Declaration does not make explicit commitments to specific democracy goals, but restates the commitments made elsewhere such as in the AU Constitutive Act, NEPAD and the Lomé Declaration. It ‘undertakes to implement appropriate policies for the promotion of the culture of democracy, good governance, the respect for human rights and the rule of law, and the strengthening of democratic institutions which will consolidate the popular participation of our peoples on these issues’ (para. 18). 79. ‘With the New partnership for Africa’s Development, Africa undertakes to respect the global standards of democracy, which core components include (...) fair, open, free and democratic elections periodically organised to enable the populace [to] choose their leaders freely’ 183. ‘The New Partnership for Africa’s Development has, as one of its foundations, the expansion of democratic frontiers and the deepening of the culture of human rights’.</p>
Political pluralism	<p>79. [Cont’d] ‘political pluralism, allowing for the existence of several political parties and workers’ unions (...)’</p>

NEPAD (2001)

All seven commitments	79. 'With the New partnership for Africa's Development, Africa undertakes to respect the global standards of democracy, which core components include (...) fair, open, free and democratic elections periodically organised to enable the populace [to] choose their leaders freely' 183. 'The New Partnership for Africa's Development has, as one of its foundations, the expansion of democratic frontiers and the deepening of the culture of human rights'.
Political pluralism	79. [Cont'd] 'political pluralism, allowing for the existence of several political parties and workers' unions (...)'

Lomé Declaration on Unconstitutional Changes of Government (2000)

Fairness of electoral system	i) 'adoption of a democratic Constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;'
Independence of judiciary	vi) 'organization of free and regular elections, in conformity with existing texts;'
Political pluralism	iii) 'separation of powers and independence of the judiciary;' iv) 'promotion of political pluralism' v) 'the principle of democratic change and recognition of a role for the opposition' vii) 'guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders;' iv) 'the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections'.
Exclusive or inclusive political system?	iv) 'promotion of (...) any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;'

AU Constitutive Act (2000)

All seven commitments	Preamble: 'DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;' Article 3 'Objectives': '(g) Promote democratic principles and institutions, popular participation and good governance;' Article 4 'Principles': '(m) Respect for democratic principles, human rights, the rule of law and good governance;' '(p) Condemnation and rejection of unconstitutional changes of governments.'
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Ouagadougou Declaration (1998)

All seven commitments	1. 'work towards the establishment and consolidation of effective democratic systems, taking into account the socio-cultural realities of our States (...)'
Exclusive or inclusive political system	1. '(...) abolish exclusion and, in this regard, involve all and sundry without discrimination in the management of public affairs;'
Independence of judiciary	1. '(...) work towards the establishment and consolidation of a credible and independent justice accessible to all;'

Yaoundé Declaration (1996)

All seven commitments	The Yaoundé Declaration does not make specific commitments in the field of democracy and good political governance, although it mentions both as positive things. However, more time is spent in the declaration on how to protect unique African cultural values.
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Cairo Agenda for Action (1995)

Fairness of elect. system	II.10.a: 'launch programmes to promote (...) free and fair elections'
Political pluralism	II.10.a: 'launch programmes to promote (...) respect of the freedom of the press, speech, association and conscience'
Independence of judiciary	II.10.b 'ensure the speedy promotion of good governance, characterized by accountability, probity, transparency, equal application of the rule of law, and a clear separation of powers (...)'

Declaration on Fundamental Changes (1990)

All seven commitments	10. '(...) We accordingly recommit ourselves to the further democratization of our societies and to the consolidation of democratic institutions on our countries.'
Independence of judiciary	10. '(...) A permitting political environment which guarantees human rights and the observance of the rule of law (...)' [This is not directly on the independence of the judiciary, but the rule of law is precarious without such independence]

The eight countries under review

Limitations of time and resources made it impossible this time around to do a study of all the 16 countries that have signed up to the APRM so far. For this pilot project, eight countries will be subject to review. The countries are Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda. These countries are among the most active in promoting the goals of the New Economic Partnership for Africa's Development (NEPAD) and they have all signed up to the African Peer Review Mechanism (APRM). They are selected due to this commitment to NEPAD and because they constitute a geographically representative mix of countries from North, Southern, East and West Africa. An added factor is the relative importance of this group of countries. Collectively they account for 43 percent of the African continent's population, and 33 percent of its Gross Domestic Product.¹⁰ However, considering that most African countries are relatively small both in terms of their economy and of their population, our selection would have been very skewed if we had only concentrated on the continent's most populous countries. Thus, Senegal and Uganda are part of the survey, while Egypt is not – leaving Algeria to represent North Africa.

Conclusion

Having defined the key concepts of the study and introduced the countries and commitments to be reviewed, the next seven chapters will discuss each commitment in turn. While neither the list of commitments nor that of the indicators used to assess adherence to them is exhaustive, the study provides an informative picture of the status

and progress of good political governance and human security in the eight countries under review.

Chapter Two

From votes to political power: How fair is the electoral system?

There is no such thing as a perfect electoral system. As a result, a great variety of systems can be found across the democratic world, varying in how they determine voter constituencies, how they transform votes into seats, how often elections are held, and how many levels of government are up for election. This is as it should be: the best electoral system is one that suits the particular cultural, geographical and political conditions in the country in which it is employed. Most electoral systems are a variant of the Westminster model (a single constituency first-past-the-post system) or proportional representation (multi-constituencies where parties are assigned seats according to the proportion of the constituency votes they win). Some countries have a centralised political system, where all major political decisions are made in the capital, while others have a federal system where voters elect both national (federal) and regional representatives.

The Westminster model works well if the electorate appreciates a system that delivers a strong government backed by a majority in parliament. It can, however, lead to huge disparities between votes cast and mandates given. In particular, in elections contested by three or more candidates, the winning candidate may receive less than one half of the votes cast. Since the Westminster model makes it unlikely that there will be more than three major parties, it provides the country with a clear government and a clear opposition.

This bipolar system functions less well in politically divided societies, where several different social groups fight to protect their interests through political representation. In such societies a system of proportional representation that reflects a broader spectrum of political parties and opinion is usually seen as more legitimate. While the weakness of Westminster's principle of first-past-the-post is its potential lack of representativeness, the danger of proportional representation is that it often delivers weak governments that rely on multi-party coalitions to stay in power.

Finally, in countries where political divisions are both strong and follow geographical lines, some sort of a federal system is usually viewed as the most viable option to ensure

that all citizens feel included in, rather than threatened by, the system of majority democracy.

The electoral systems mentioned above are all equally compatible with democracy, and all have their strengths and weaknesses. Blatantly undemocratic practices, such as the gerrymandering of constituencies, the buying of votes, and the abuse of state resources for the governing party's election campaigning, are of course out of bounds whatever the system. But apart from such obvious abuse, the fairness of a country's overall electoral system cannot be measured against one predetermined standard. Instead the main questions must be: Is the system well-suited to the particular ethnic, national, political, religious and other cleavages within society? Does it assuage the fears and suspicion of sub-groups within the country while delivering a government strong enough to govern? And, is there broad agreement within the country that the system leads to a legitimately elected parliament and government? This last question relates to the *perceptions* of major stakeholders in society. Since there is no objective truth concerning which system is superior, the perceptions of legitimacy or illegitimacy held by the people living with this system decide how successful it is in consolidating and strengthening democracy. Thus, a system that works well in one country may turn out to be a disaster for democracy in another.

The eight countries under review in this study have chosen very different electoral systems. Many of them have also adjusted their electoral laws in the last decade (some of them several times), a sign that they are still in the process of determining which system suits their own conditions the best. This chapter does not give an exhaustive account of each country's practice, but highlights particular problems or strengths relating to: how votes are transformed into seats; how constituency boundaries are demarcated; and whether state resources are abused for election campaigning purposes. The chapter will conclude by discussing the overall perception of the fairness of each country's electoral system and look at whether, when it comes to electoral systems, the institution of democracy has been strengthened or weakened over the last decade.

How are votes transformed into seats?

All eight countries use different methods of transforming votes into seats, and many have chosen a hybrid version that fuses elements of proportionality with first-past-the-

post. While some function well and are generally seen as fair, others are faced with serious problems.

Several of the methods reviewed produce a great disparity between voter preferences and seats. Ghana and Kenya have standard single constituency, first-past-the-post systems, both in parliamentary and presidential elections, with the usual consequences of rewarding the biggest party. However, in the case of Ghana's presidential elections this is mitigated by the requirement that the winning candidate must obtain more than 50 percent of votes cast. A run-off is organized within 21 days if no candidate is able to obtain more than 50 percent in the first round of elections. In Kenya, on the other hand, even the president can be elected with less than 50 percent of the votes. The first-past-the-post system has played a significant role in Kenyan politics over the last decade. In 1992 and 1997, the ruling Kenya African National Union (KANU) won both the presidential and parliamentary elections with a minority vote. In 2002, the opposition parties agreed on one presidential candidate under the National Rainbow Coalition (NARC) and captured the presidency with 62 percent of the votes. The table below shows how the Kenyan electoral model gives strong preference to a two-party system: it kept KANU in power as long as the opposition was split, and delivered power to the opposition as soon as it united.¹¹ The country's draft constitution makes provision for proportional representation and the creation of extra 90 seats based on party lists. If this is adopted, Kenya will have a mixed member representation of first past the post and proportional representation.¹²

Table 1: Election Results in Kenya for 1992, 1997 and 2002

1992			1997			2002		
	% Votes	% Seats	Party	% Votes	% Seats	Party	% Votes	% Seats
KANU	36.8	53.2	KANU	41.0	51.0	NARC	62.3	60
FORD ASILI	26.8	16.5	DP	31.0	18.6	KANU	31.2	30.0
FORD KENYA	17.7	16.5	NDP	10.8	10.0	FORD PEOPLE	5.9	6.7
DP	19.3	12.2	FORD KENYA	8.1	8.1	OTHER	0.5	3.3
OTHER	0.8	1.6	SDP	7.9	7.2			
			OTHER	1.8	5.0			

Senegal has a hybrid system where just under half the representatives to the National Assembly are elected in a proportional system with national lists, and just over half in a one-round first-past-the-post election at the *département* level. This system grants a substantial majority for the ruling party while allowing the representation of a number of minority parties, which get one or two seats through the proportional system. However, it penalises middle-sized opposition parties. For instance, in the 2001 legislative elections, the ruling coalition Sopi won 89 of the 120 seats (i.e. 75 per cent) with only 49.6 per cent of the votes, while the Parti Socialiste got only 10 seats (i.e. 8.3 per cent) with 17 per cent of the votes.

In the case of Ethiopia it should be kept in mind when discussing the country's electoral model that the most serious obstacles to democratisation in Africa's oldest state are found outside the formal institutions of democracy. Intimidation of opposition candidates and voters is foremost among these obstacles, and will be discussed later in this report.¹³

Ethiopia has a complicated electoral system, and voters elect members of both regional and federal parliaments and different voting systems are used at the different levels. The federal elections are held according to the single constituency first-past-the-post system. In elections to the regional parliaments, each administrative district (or *woreda*) is allocated a number of seats proportional to its population, and each voter has as many votes as there are seats. The candidates gaining most votes (up to the number of seats available) are elected. This system tends to provide highly disproportionate results. Provided that voters vote on party lines, all of the candidates for the party that receives most votes will be elected and no candidates from minority parties. Finally, Ethiopia has an indirectly elected second chamber, the House of the Federation, which comprises representatives of the different nationalities, elected by the parliaments of their respective states.

Like Ethiopia, Nigeria – Africa's most populous country with 126 million people – is also a federal state, consisting of 36 states and a federal capital territory. 774 local government councils form a third tier of government. Nigeria operates a presidential system of government based on the United States model. The winner of the presidential election must have a majority of the votes (or if only one candidate is running, he must have

more yes-votes than no-votes) as well as a quarter of the votes cast in two-thirds of all the states. If no candidate achieves this, a run-off is held within seven days of the result of the first election.¹⁴ Similar provisions also apply for governors and local council chairs.

In Algeria, a constitution allowing for multi-party elections was introduced in 1989. However, when discussing electoral models in Algeria, it is important to keep in mind that a key power in Algerian politics is still the unelected body of the military generals.

The electoral system introduced in Algeria in 1989 was the most inventive of the eight countries under review and amounted to an extreme version of first-past-the-post: If one party won a majority of the popular vote, it would receive *all* the seats in the legislative assembly. This led to the opposition Islamic Salvation Front (FIS) winning all seats in the 1990 local election and to the same result in the first round of the December 1991 national elections. As a result the military cancelled the second round of national elections. New elections were not held until 1997, when a new election law introduced a system of proportional representation, where all parties able to muster at least five percent of the votes are guaranteed representation in the National Assembly.

Algeria's presidential election system is also based on the first-past-the-post principle. However, more important are the many and strict constitutional requirements for presidential candidates, imposed by the military generals to ensure that their preferred candidate is elected and thus ensuring their continuing hold on power. At a formal level, presidential candidates have to collect 75 000 electoral signatures, or 600 signatures from elected representatives in local, provincial or national assemblies. In addition they have to be above a certain age and have proof of service during the 1954 national liberation war. At an informal level, once the military generals have chosen their candidate, the latter will receive generous campaigning assistance in the form of media exposure, and 'doctoring' of the election results, if necessary. There were widespread allegations of election fraud during the 1995 and 1999 presidential elections.

Uganda is another country that has introduced many aspects of electoral democracy while resisting others. While in Algeria it is the pervasive role of the military that hampers a truly democratic election, in Uganda it is the 'Movement' system of politics, which forbids political parties to run for elections in the name of national unity (on the

argument that party politics is divisive and therefore dangerous to the country's cohesion). The Ugandan electoral system, introduced with the Constitution of 1995, is another example of an inventive approach that takes some aspects of traditional Western electoral models and rejects others.

Under the Ugandan 'Movement' system, candidates offer themselves for elections under the principle of 'individual merit' rather than as members of political parties. The presidential and parliamentary elections of 1996 and 2001, and the local government elections of 1998 and 2002, were all conducted under this arrangement. This system disadvantages opposition candidates, and only a few are elected. Candidates are expected to fund their own election campaigns, but the ruling National Resistance Movement (NRM) government through the NRM Secretariat offers financial and logistical assistance to 'Movement candidates'. A committee of Movement politicians identifies those who are eligible for support. The effect of this bias towards Movement candidates is so strong that the method with which to transform votes into seats (Uganda employs a first-past-the-post system) becomes of relatively little importance.

South Africa is the only of the eight countries that has a traditional system of proportional representation where the head of state is not elected separately but acquires his position based on his party's victory in the parliamentary elections. Parliament consists of two houses, the National Assembly and the National Council of Provinces. For the elections in 1994 and 1999, the closed party list system, a variant of proportional representation, was used to elect the members of the National Assembly. The second house, the National Council of Provinces, consisted of delegations nominated by each of the nine provincial legislatures and a delegation from the South African Local Government Association (SALGA).

As a result of South Africa's proportional system, no substantial minority lacks parliamentary representation. As Lijphart (1995) notes with regards to the 1994 election, there was a high correspondence between seat percentages and vote percentages.

Table 2: Votes and seats in South Africa's democratic elections

1994	1999
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Party	% Votes	% Seats	Party	% Votes	Seats	% Seats
ANC	62.65%	63.00%	ANC	66.35%	266	66.5%
NP	20.39%	20.50%	NNP	6.87%	28	7.00%
IFP	10.54%	10.75%	IFP	8.58%	34	8.50%
FF	2.17%	2.25%	FF	0.80%	3	0.75%
DP	1.73%	1.75%	DP	9.56%	38	9.50%
PAC	1.25%	1.25%	UDM	3.42%	13	3.25%
ACDP	0.45%	0.50%	ACDP	1.43%	6	1.50%

Thus, the definite majority commanded by the ANC is in line with the amount of popular support that the party receives and is not related to the way in which the electoral system functions. Due to the ANC's great popularity, the proportionality of the electoral system has not led to a weak and dependent government, as has been the problem, for instance, in some of the Nordic countries.

Constituency boundary demarcation

Another central aspect of a country's electoral system is how and by whom the boundaries of election districts are determined. Are the boundaries seen as fair and reasonable? Or are they determined in such a way as to give a particular ethnic, social or religious group an unfair proportion of seats? Do political actors regularly fiddle with constituency boundaries (gerrymandering) in order to gain such unfair election advantages? Are there institutions in place to ensure that such politisation of boundary demarcation becomes impossible – or at least very difficult?

Most of the countries in this review have their constituency boundaries determined by independent electoral commissions. In some cases there are boundary review committees to advise the electoral commission; and in one case (Algeria), the task is left to the National Assembly. Most of the countries have set down principles for how to determine constituency boundaries in their constitutions.

In South Africa, the independent electoral commission is responsible for deciding constituency boundaries, but the size and borders of South African constituencies are of much less political importance than in the other seven countries under review. This is because the country's national and provincial legislatures' electoral systems are based on

national and provincial party lists. The elections for these houses therefore do not involve true constituencies. As Faure (1999, 6) observes, “in a certain sense, the election of 200 National Assembly members according to regional party lists make the nine regions/provinces extremely large multi-member constituencies (MMCs).” Provincial boundaries are established by the constitution and are not open to change – thus ensuring that gerrymandering is not an option.

Ethiopia and Nigeria, the two federal states in the study, face the challenge of creating constituency boundaries that do not give unfair advantage or disadvantage to particular ethnic groups while still ensuring that all such groups have political representation. Both countries have provisions in their constitution to ensure that boundary reviews are fair. In Ethiopia, a confederal state where the regions are defined on the basis of ethnicity, there is also a provision that constituency boundaries should be sensitive to ethnic divides. There seems to be general agreement that the present boundaries are reasonable and gerrymandering is not an issue. However, as will be discussed later in this report, other political practices and structures of bias and intimidation ensure that Ethiopia’s governing coalition does not need to resort to gerrymandering to ensure electoral dominance.

According to Nigeria’s constitution, responsibility for the delineation of constituency boundaries lies with the Independent National Electoral Commission (INEC), but alterations of the boundaries only come into effect if approved by the National Assembly and after the current term of the affected legislative houses has come to an end. Since the 1999 elections that ended 15 years of military rule in Nigeria, no new constituencies have been introduced.

There have been few complaints about constituency boundaries in Nigeria, but with one significant exception. The situation in the oil-rich southern Niger Delta near the town of Warri is an example of how potent a political issue the demarcation of constituency boundaries can be. The Urhobo and the Ijaw communities, two of the three main ethnic groups in that region, have long accused the authorities of manipulating constituency with the result that the Itsekiris have won underserved majorities in all elections conducted since 1999.

The discontent came to a head in the run-up to the 2003 presidential elections. In March 2003 fighting between armed militias of the Ijaw and Itsekiri claimed more than 100 lives in two weeks as the military became embroiled in pitched battles with Ijaw militants. A ceasefire was called after the state governor acknowledged the Ijaw complaints and said he would put pressure on the electoral commission to redraw the boundaries.¹⁵ However, the electoral boundaries were not be redrawn in time for the first presidential ballot on 12 April, and violence resumed. In districts dominated by Ijaws the elections were boycotted, electoral officials were driven away, and the electoral commission's offices in the town of Koko were burned down along with the voting materials stored there.¹⁶

In Ghana, Kenya and Uganda the Electoral Commission has the constitutional power to determine the demarcation of constituencies, but must do so according to strict principles set down in the constitution. Among these is the principle that the electorate should be divided into constituencies of roughly the same size. While this has made gerrymandering more difficult to carry out and easier to expose, it has not been a guarantee against boundary controversies. In Uganda, the demarcation of constituencies is generally seen as fair. In Ghana, controversies have been muted since the political parties have no direct role in the demarcations. However, shifting population and uneven population growth (rather than political manipulation) have caused gross numerical inequalities to emerge. According to the 2000 census figures there should be an average of 92,000 people in each of the 200 constituencies. However, in the 22 constituencies of Greater Accra Region each has an average of 132,000 whereas an average of 72,000 reside in the 8 constituencies of the Upper West Region. If the national average of 92,000 is used as the population quota as defined by the Constitution, some regions will have to concede legislative seats to others. This is politically sensitive, but unless it is undertaken political representation cannot be said to be equal or proportional in Ghana.

Constituency boundaries have been the object of stronger controversy in Kenya, and allegations have been made of political interference and gerrymandering. For instance, the Embakasi constituency in Nairobi with 151,358 registered voters and the Wajir North constituency with 8,862 voters both return one single Member of Parliament. This is in contradiction to section 42 of the Kenyan constitution, which states that all constituencies shall contain as nearly equal numbers of inhabitants as appears to the electoral commission to be reasonably practicable. There seems to be a need, then, for

the electoral commission to embark on a comprehensive review of election boundaries in order to rectify such discrepancies.

In Algeria and Senegal, the two French-speaking countries in this selection, it is the legislative assembly rather than an independent commission that determines constituency boundaries. In both countries, this has led to the gerrymandering of boundaries by the parliamentary majority. In Algeria, this happened in 1989, when a parliament dominated by the governing party, FIS, modified electoral districts to ensure overrepresentation from rural areas, which are traditional FLN strongholds.¹⁷ In Senegal, gerrymandering took place ahead of the 1996 election, when the ruling *Partie Socialiste* broke the Dakar region up from four communes into 43 'communes d'arrondissement' to ensure that the whole of the capital did not fall into the hands of the opposition.¹⁸

Abuse of state resources for election purposes

The use and abuse of government resources is another key determinant of whether an electoral system can be considered as free and fair. Since this chapter is concerned with elections only, it will confine the discussion to the abuse of state resources at election time. It asks first, whether state resources, including government vehicles, planes, equipment, as well as money, are used by the ruling party for election campaigning. Second, it looks at the prevalence of vote buying and the provision of other direct economic incentives to induce voters to vote for a particular party.

It should be self-explanatory why such practices are detrimental to democracy. In the case of the use of government resources to campaign, this gives an unfair and undemocratic advantage to governing parties. The tendency to collapse state and governing party interests into one is a widespread problem on the African continent. Vote buying is perhaps even more serious, since it creates and maintains a system of clientelism rather than democracy. Leaders earn the support of their followers not because their plans for running the country are popular with the electorate, but because they give out short-term and direct pay-offs. This undermines a main principle of democratic governance: by divorcing election victories from political programmes through vote buying, the key democratic idea of making governments accountable for their policies to their voters is undermined.

Vote buying and/or the abuse of state resources during elections are a problem for democracy in all but one of the countries under review. South Africa is the only country in the selection where there is general consensus that such abuses are not a substantial issue. In Ethiopia, Nigeria and Kenya the problem is serious (but of a different nature in each country).

In Ethiopia, the ruling parties have made extensive use of official vehicles, machinery and staff for election campaigns.¹⁹ There have been some reports of the use of state resources to buy votes²⁰, but under the prevailing circumstances, state officials can normally use coercive pressures to ensure electoral success for the ruling party, and do not need to use financial inducements. In Uganda, there is a financial bias towards funding the campaigns of 'Movement' candidates. As in Ethiopia, vote buying is less of a problem than is the intimidation of non-Movement candidates and supporters. In Nigeria, there have only been two elections (1999 and 2003) since the return to democracy from military rule. In 1999, the military government was accused of orchestrating the victory of President Olusegun Obasanjo through the use of state resources and power in his favour. Both the 1999 and 2003 elections were marred by a host of irregularities including both economic incentives and intimidation of voters. As will be discussed in chapter three, these are only some of the techniques used to rig Nigerian elections. Algeria is another example of a country where the abuse of state resources is only one among many undemocratic techniques with which the ruling parties fight elections.

In Kenya, the ruling party has continually used state resources for its campaigns. In the 1992, 1997 and 2002 elections, there was widespread use by the ruling KANU party of government vehicles, as well as the diversion of state resources to party coffers.²¹ Vote buying was also rampant in 1992 and 1997, and took the form of KANU agents buying voting cards in opposition dominated areas to ensure that people did not vote.

The trend has continued despite the change of government after the 2002 election. In the November 2003 by-elections following the deaths of the Vice-President and the Minister of State in the Office of the President, the Rainbow Coalition (NARC) government also used state resources, especially government vehicles and planes, in its campaign.

In Ghana and Senegal, the situation has improved in recent years. In Senegal, the boundary between state and party has been blurred so long that politicians are very much used to employing state resources, particularly vehicles, during election campaigns. Clientelism also plays a major part: politicians on all sides give out 'presents' to both individuals (bags of rice, cash, t-shirts, tickets for the Mecca pilgrimage) and groups (privileged access to collective goods, meals during campaigns). But the ruling party or coalition, which controls state resources, enjoys a greater clientelistic capacity than the opposition parties. The Parti Socialiste, which ruled from 1960 to 2000, gained from its relationship with the powerful Muslim marabouts. The marabouts 'advised' their followers on voting behaviour – in exchange for a series of individual and collective advantages.

Despite this advantage, the Parti Socialiste lost the 2000 election. By then, popular discontent had eroded the clientelistic capacity of the Senegalese state and the marabouts had become increasingly reluctant to endanger their own popularity by supporting an unpopular state. Clientelism nevertheless remains a major feature of Senegalese politics.

In Ghana, ruling parties have also abused their incumbency by using state resources. The problem was acute during the 1992 and 1996 elections. The PNDC military regime that metamorphosed into the National Democratic Congress (NDC) won both the 1992 and 1996 elections. Both times the party blatantly used state resources, vehicles, and other equipment to conduct the campaign. The 2000 elections, however, witnessed less abuse. By then the electoral system had become more transparent and consensual, and the media and civil society had become more active in monitoring the voting process. The New Patriotic Party (NPP) government that came to power in 2001 has promised to desist from using state resources during election campaigns.²² The first test for this resolve will be the December 2004 elections.

Conclusion

This chapter has looked at commitment to a core principle of democracy: the commitment to create, maintain and respect institutions and processes that ensure that votes are transformed into seats in a fair and transparent manner. The three indicators studied in this chapter provide opportunities for both optimism and concern. The cause for optimism is clear: All eight countries have electoral systems and practices that are

fairer today than they were in the early 1990s. South Africa exchanged apartheid with universal suffrage and majority rule. South Africa's electoral structures and institutions are solid and well-functioning. Senegal and Ghana's systems still suffer some weaknesses, such as a clientelist tradition and the abuse of state resources and power to further the election campaign of the ruling party. However, the two countries' most recent elections were great improvements on earlier ones.

Nigeria made an important leap in 1999, when the military rulers handed power over to the elected president Olusegun Obasanjo. However, the country still has a long way to go before it can be said to have a robust and fair electoral system respected by all political actors, including the ruling party, the military, and even the electoral commission.²³ There was no measurable improvement in standards from the 1999 to the 2003 election. Algeria went some way in the direction of democracy during the period of review (with a setback in the early 1990s), although the trappings of electoral democracy, introduced in 1989, are still overlaid by the behind-the-scenes power of the military. Ethiopia and Uganda are two other countries with the trappings of a democratic electoral system, but where power structures seriously impede the proper functioning of this system. Despite such shortcomings, it is important to acknowledge the improvements that have taken place over the last 10-15 years in the four countries.

Kenya is the only of the eight countries under review to maintain the same electoral system throughout (almost) the whole review period. While the system has stayed the same since 1992, the positive tendency in Kenya is that political actors (in this case, the opposition) have learnt to adapt to the strengths and weaknesses of the country's pure version of the first-past-the-post model. However, gerrymandering, vote buying and abuse of state resources during elections are serious problems, and it remains to be seen whether the new ruling coalition has the will to tackle these problems.

Chapters three and four will deal with two other important commitments to the regular holding of free and fair elections – independent electoral committees and just and transparent voter registration systems.

Chapter Three:
Electoral Commissions:
Success or failure in overseeing free and fair elections?

It may at first glance seem overly legalistic to concentrate on the existence and independence of electoral commissions in a review of democracy commitments from a human security perspective. However – as discussed in chapter one – among the most salient human security threats facing the African continent today are the insecurity, violence and upheaval resulting from disputes over how elections are conducted. This has also been the case in several of the countries studied in this review. For instance, electoral rules and procedures were at the centre of the political struggle in Senegal, especially in the late 1980s and first half of the 1990s, when flawed elections were accompanied by street battles and the arrest of opposition politicians. In Nigeria, elections still bring with them widespread violence, in some areas in the form of near-civil war, as the example of the Ijaws in chapter two showed.

The creation of an independent and strong electoral commission is a key measure with which election violence can be prevented. If functioning properly and if surrounded by the appropriate safeguards, such an institution takes the control of how an election is held out of the hands of politicians and their supporters and places it in the hands of disinterested officials who are responsible to the constitution and electoral laws, not to the government. As a result, abuse and fraud becomes much harder to instigate and complainants have an independent authority where they can take their grievances. As a result, disputes over election results are less likely to occur, and if they do occur, they are less likely to lead to violence.

All of the countries under review have electoral commissions in one form or another, although their strength, independence and efficiency vary. This chapter will first describe the organisational arrangements in each country, and then discuss how well the commissions have fared in supervising and controlling elections in the last ten to 15 years.

Electoral Commissions: roles and responsibilities

Algeria

In Algeria, several bodies are tasked with running local, provincial, national and presidential elections. There are electoral commissions at the commune and district levels dealing with local and district elections, but no such body exists for national elections. Instead the Constitutional Council, established by the 1989 constitution, is tasked to pronounce on the legality of national parliamentary and presidential elections and referendums: it screens presidential candidates to ensure that they have fulfilled constitutional requirements and scrutinises their campaign accounts; and it adjudicates appeals to election results and pronounces the outcome of national elections. Since its establishment it has made more than 350 legally binding decisions on contested election results in five elections and one referendum. The Council has nine members. Three are appointed by the president, including the Council's president which serves for a term of six years; two are elected by the lower house of parliament; two are elected by the upper house of parliament; one is elected by the Supreme Court; and one by the High Judicial Council. Decisions are taken by majority vote.

In addition to the Constitutional Council, a National Independent Commission for Supervision of the Presidential Elections (CNISEP) was established in 1999, to oversee presidential elections in Algeria. It consists of delegates from the 25 registered political parties in Algeria and four officials representing the Interior, Communications, Justice and Foreign Affairs ministries. It organises elections, verifies electoral operations based on reports from the different municipal and district electoral commissions; and allocates airtime on public television for presidential candidates. The Algerian president appoints the presiding officer.

The final addition to the array of Algerian electoral oversight bodies is the independent electoral panel set up in 2002 by President Bouteflika to oversee national parliamentary elections. One of its functions is to allocate airtime to the many parliamentary candidates on state-owned radio and television, which it did by holding a national lottery.

Ethiopia

In Ethiopia there is a National Electoral Board (NEB), established under Article 102 of the Constitution, as 'an impartial and autonomous agency (...) responsible for ensuring

that all Federal and State elections shall be free and fair.’ Its members are appointed by the House of People’s Representatives, on the nomination of the prime minister, and are thus in practice subject to government control. Unlike the Algerian system where oversight and organisation is separated between different bodies, the NEB is responsible both for overseeing and organising elections.

Ghana

Ghana’s 1992 Constitution provides for an Electoral Commission. The commission consists of a chairman, two deputy chairmen and four other members, who are appointed by the President, acting on the advice of the Council of State.²⁴ Political parties have no role in such appointments. The chairman of the commission has the same terms and conditions of service as Justices of the Court of Appeal, which means he or she cannot be removed arbitrarily and has to retire on attainment of the age of 70. The chairman can only be removed by the president if recommended to do so by a special committee set up by the Chief Justice, on the grounds of ‘stated misbehaviour or incompetence or on ground of inability to perform the functions of [the] office arising from infirmity of body or mind.’²⁵ The Electoral Commission is responsible for the organisation of elections, including the logistics of procuring and disseminating election materials, as well as for dealing with election-related complaints.

Kenya

The Electoral Commission of Kenya (ECK) was created in 1991, the year when Kenya reverted to multiparty politics. The Constitution gives the ECK the powers to oversee the conduct of elections as an autonomous body. According to Section 41 (9) of the constitution, the Commission shall not be subject to the direction of any other person or authority in the exercise of its functions. Section 41 (11) states that any decision of the commission shall require the concurrence of a majority of all its members. The Constitution further stipulates that the commission shall consist of a Chairman and not less than 4 and not more than 21 members appointed by the President. In 1992, all commissioners were appointed by the President. From 1997, due to the Inter-Parties Parliamentary Group (IPPG) agreement, parties nominate commissioners according to their parliamentary strength. A member of the commission may be removed from office only for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour. In this case, the President appoints a tribunal to recommend whether the member ought to be removed.²⁶

Members of the Commission serve for five-year terms, and are eligible for reappointment.

Nigeria

The make-up and function of Nigeria's Independent National Electoral Commission is determined by the constitution. The president appoints the commission's chairman, subject to confirmation by the Senate.²⁷ The chairman can only be removed from office by the president with the support of two-thirds of the members of the Senate and 'shall not be subject to the direction or control of any other authority or person'.²⁸ The president also appoints twelve other members of the commission. All appointees must be 'of unquestionable integrity' and 'not less than 40 years of age'. Apart from the age criterion, it is left to the discretion of the president and the Senate to determine who is a person of unquestionable integrity. Since one party is in firm control of the Nigerian legislature, it may be a less than objective decision. The commission is in charge of running elections, announcing results, and dealing with complaints.

Senegal:

After turbulent elections marred by irregularities and violence in the late 1980s and early 1990s, and an outcry of protest from opposition parties regarding how elections were conducted, the president set up an Observatoire National des Elections (ONEL) in 1997. While the opposition wanted a strong electoral commission that arranged, observed and pronounced on the results of elections, the ONEL, as its name implies, is purely an observer body. It is also a temporary institution, created shortly before each election, and dissolved afterwards. Article 3 of its founding law stipulates that the ONEL members must not 'be solicited nor given instructions or orders by any public authority', but this is undermined by its weak powers and the fact that the president appoints the head and 9-member steering committee of the body.

Several other government institutions are involved in the conduct of elections: The Judiciary, and its various constituent parts (the Cour d'Appel and the Conseil Constitutionnel) validates candidates, designates commissions in each voting centre, proclaims the results and makes judgments in cases of election disputes. The Direction Générale des Elections, a section of the Ministry of the Interior created in 1997, is in charge of the technical organisation of the elections. And electoral commissions, designated in part by the Judiciary and including representatives from the political

parties, are in charge of watching and counting the votes. The ONEL thus has only limited powers, but may propose corrective measures to the executive authorities.

South Africa:

While the South African constitution refers to an Independent Electoral Commission²⁹, it was the Independent Electoral Commission Act 150 of 1993 that first established a commission to administer and organise free and fair elections. The commission, whose members were nominated by all political parties, was replaced by a new Electoral Commission in 1996.³⁰ This commission was established as one of six institutions supporting constitutional democracy under Chapter 9 of the 1996 constitution. The Electoral Commission Act requires that the Commission consists of five members, one of whom must be a judge. The members are appointed by the President from nominees put forward by a National Assembly committee, which is proportionally composed of members of all parties represented in the Assembly. The nominees are chosen from a list of candidates recommended by a panel that consists of the President of the Constitutional Court, a representative of the Human Rights Commission, a representative of the Commission on Gender Equality and the Public Prosecutor. Nominees must be South African citizens, not have a high party-political profile, and must be recommended by a resolution adopted by a majority of the members of the National Assembly. The term of office of a member of the commission is seven years.³¹

South Africa also has an Electoral Court to “review any decision of the Commission related to an electoral matter”.³² The Electoral Court consists of a chairperson, who is a judge of the Supreme Court, two other judges of the Supreme Court, and two other South African citizens. The President appoints all members of the Electoral Court on the recommendation of the Judicial Services Commission.

The Electoral Commission Act (1996) guarantees the independence of the commission.³³ A member of the Commission can only be removed by the President on grounds of misconduct, incapacity or incompetence, and as long as such a removal is recommended by the Electoral Court and endorsed by a majority of the members of the National Assembly.³⁴

Uganda:

In Uganda, the Electoral Commission (EC) is charged with the management of elections. The EC chairperson, deputy chairperson and five members are appointed by the president, with the approval of parliament. Members of the EC hold office for seven years, renewable once.³⁵ Although the constitution stipulates that the EC must be independent, in practice its members are appointed by the president without the input of opposition political groups.

Do the electoral commissions do their job?

All countries under review have some sort of electoral commissions with legal mandates for their work. This section will ask, first, are the legal protections of the commissions' independence strong enough? And, second, are the commissions strong enough in practice to ensure that elections are free and fair?

Constitutional and legal guarantees

Ghana, Kenya, and South Africa seem to have adequate legal mandates and protection for their Electoral Commissions, both in the way their members are selected and in the strong safeguards put in place to ensure that they cannot be replaced due to political considerations.

In the case of Algeria, the several bodies that together have the mandate to organise and oversee elections and adjudicate on election issues, also seem to have adequate constitutional and legal protection. However, there are two important exceptions. First, the chairmen and leaders of all the electoral bodies are appointed by the administration, without any restrictions on the government's choice (such as a shortlist provided, for instance, by a panel of judges of the high court). This circumscribes the independence of these bodies.

Second, although Algerian election laws allow political parties to post up to five observers at each polling station, neither the Constitutional Council nor the National Independent Commission for Supervision of the Presidential Elections (CNISEP) can enforce that observers are in fact in place to monitor the voting and counting. Neither body posts their own independent observers. This means that, particularly in military barracks and in mobile polling stations in rural areas, there were often no observers

present. Due to the security situation in the southern provinces and the ongoing state of emergency, international observers were only able to monitor about three per cent of all polling stations.

In Ethiopia, Nigeria, Senegal and Uganda, there are not enough constitutional or other legal guarantees of independence and mandate. In Ethiopia, Nigeria, and Uganda, the problem is that same as in Algeria, that the leader of the electoral commission is appointed by the president, on the nomination or approval of a parliament that is dominated by the ruling party or coalition. In most cases, the same procedure is in place for the removal of commission members, thus not leaving enough safeguards against personally or politically motivated sackings.

In Senegal, the leaders of ONEL (the election observation body) are appointed by the president, and only keep their jobs for the duration of an election period. Also, while ONEL is allowed to set up structures in all regions, departments and Senegalese diplomatic missions, the composition and functioning of these structures are determined by decrees from the executive. In Senegal this lack of legal safeguards has turned out to be less of a problem than in Algeria, Ethiopia, Nigeria and Uganda. However, formal rules and safeguards are not guarantees that electoral commissions do their job properly, and sometimes, as the fortunate case has been in Senegal, ONEL has had leaders and members who aimed to conduct their office in an impartial and independent manner regardless of the institutional weaknesses of their organisation. The next section discusses how the electoral commissions in the eight countries have fared in practice, regardless of their legal mandates and guarantees.

Independence and power in practice

Two different factors impinge on the ability of electoral commissions to fulfil their task of ensuring that elections are free and fair. The first is lack of resources: it does not matter how many legal guarantees there are or how independent-minded the chair of the commission is, if there are not enough resources to monitor and ensure that election conduct on the ground follow proper electoral standards. This includes having sufficient logistical and human resources to print and send out voting material on time and to physically control ballot boxes, both during polling and vote counting. Second, in some of the countries under review, legal guarantees and resources (the latter often provided by overseas donors) matter less, since the parties or coalitions in power – and sometimes

the members of the electoral commissions themselves – do not sufficiently respect electoral laws and principles.

Several of the countries under review have adequate financing of their electoral commissions. This is the case with South Africa, Ethiopia, There is broad agreement that the South African electoral commission has enough resources to organize and administer elections in a satisfactory manner.³⁶ For instance, the Electoral Commissions Forum of SADC Countries found that, in 1999, there was no shortage of IEC personnel at the voting stations and that ‘the electoral staff opened and re-sealed the ballot boxes in full view of the political party agents, the international observers and the domestic civil society observers.’³⁷ According to the Electoral Act of 1998 every registered party contesting an election can appoint two party agents for each voting station, where votes are normally counted, and four party agents when votes are counted at some place other than a voting station.³⁸ In South Africa’s first democratic election in 1994, the Inkhata Freedom Party was accused of tampering with the ballots in its stronghold Kwazulu/Natal, while in 1999 the Electoral Commissions Forum of SADC Countries found that although party agents were not present in every station, in general ballots were not tampered with – thus showing an improvement in the electoral commission’s ability to ensure that the casting and counting of votes were not manipulated.

In Ethiopia and Ghana, resources would have been short if it were not for overseas aid.³⁹ However, as the result of generous donor assistance, both Ethiopia’s NEB and Ghana’s Electoral Commission appear to have had broadly sufficient resources to provide reasonably efficient administration of recent elections. In Ethiopia, the timing of elections to the different regional parliaments has been staggered, to allow the NEB to concentrate its resources on each region in turn. In Ghana, there have been sufficient independent electoral officers to administer elections and physically control ballots, although the commission has had to rely extensively on the Public Service Commission to provide vehicles to transport election materials and on the police and military for their protection. However, this involvement by the security agencies has been endorsed by all parties and no difficulties have been reported.

In Kenya, the funding of the electoral commission has improved during the review period. It has had its own secretariat since July 1998. By 2003, the commission had 600

staff members, with four in each district. The Commission prepares a budget for approval by Parliament.⁴⁰ According to IED and UNDP officials interviewed, the government provides sufficient funds to ECK during elections. However, the Commission is under-funded prior and after elections. This hampers functions such as voter education and voter registration. Apart from the government, the commission has been funded by international and regional organisations as well as overseas donors.

In Senegal, the ONEL relies heavily on state institutions for the financing and execution of its tasks. This is a weakness of the system, and around 1999 the ruling party did indeed try to curb the ONEL by squeezing it financially, but since then the body seems to have been adequately funded.

In Algeria, the problem is not that the different electoral oversight mechanisms do not have enough funding or human resources, because they have a very limited task that does not include active (and expensive) election monitoring. The factors that prevent them from doing their job are instead security problems in some regions and restrictive laws in general.

In the last two countries the funding situation is less than satisfactory. In Nigeria, reports from various observer groups showed that the electoral commission lacked sufficient human and material resources as well as commitment to conduct free and fair elections. There were inadequate logistic resources, including vehicles and other means of transport to take election materials to voting centres on Election Day. Similarly in Uganda, the commission is inadequately funded and facilitated. The late enactment of electoral laws and late approval and release of funds have compounded this problem and impeded the planning and implementation of the commission's programmes. In addition the commission has been haunted by mismanagement, wasteful expenditures, irregular allowances, diversion of funds, and double payments.

Resources aside, do political actors – and the electoral commissions themselves – respect the mandate of the commissions and the words of the electoral laws? Again the situation varies between broadly satisfactory (South Africa) to the broadly problematic (Algeria and Uganda).

In South Africa, the members of the Independent Electoral Commission are generally perceived as fair and impartial, with a couple of exceptions where it has been accused of adopting the governing party's line. In 1999, the IEC decided that voter registration only take place within the country, thereby excluding citizens living abroad from voting like they had been able to do in 1994. This decision was more beneficial to the ruling party since the demographics of those citizens living abroad suggest that they would be more likely to vote for an opposition party. Two opposition parties complained, but the Electoral Court ruled that the commission had acted fairly.⁴¹

Over the last decade, Ghana's electoral committee has made great progress both when it comes to its ability to ensure that elections are held according to proper standards and when it comes to the public trust and support it commands. After a controversial 1992 election during which the electoral commission was accused by many of being biased towards the ruling regime, the commission took several measures to improve its standards and its standing. It introduced, with the support of all major political camps, translucent ballot boxes, picture voter identification documents and the counting of ballots at the polling station at the close of balloting. As a result, the commission fared better during the 1996 elections; while the transparency and openness with which it conducted the 2000 elections won the commission greater credibility, legitimacy and respect. It has subsequently been able to successfully challenge government attempts to fiddle with its authority, and there is now widespread agreement among all the political parties, including the ruling party, and civil society that the government should not dabble in electoral matters.⁴² In a 2002 survey, 82 percent of an expert panel assessed the commission as 'always or largely' impartial and transparent in its activities.⁴³

Kenya has not come as far as South Africa and Ghana, but there have been clear recent improvements. During the 2002 elections, the electoral commission showed a remarkable improvement in the exercise of its powers. Since 1992, the occurrence of ballot rigging has also decreased from election to election, with particular improvements in 2002 (although some incidents still took place). An important reason for this was the heavier presence of observers, recruited from local NGOs and religious organisations, at polling stations.

Senegal and Ethiopia are examples of countries where the electoral oversight system is flawed (more so in Ethiopia than in Senegal), but where the electoral commissions nevertheless have done a surprisingly good job considering the circumstances. In Senegal, as in Ghana and Kenya, the situation has improved considerably over the last decade or so. Created in 1997, the Observatoire National des Elections (ONEL), despite its weaknesses (described earlier), did much better than expected during the 1998 elections, and as a result gained considerable credibility. As a result of this, the ruling Parti Socialiste PS tried to circumscribe the ONEL ahead of the next election by changing eight of the nine members of its steering committee, including the leader, General Niang. However, this stirred bitter resistance from the opposition as well as from the ONEL itself, and the government's chosen new ONEL-leader was forced to resign. Thus, with the support of the opposition, the press and the civil society, the ONEL managed to gain and maintain its autonomy and legitimacy. The ONEL has been successful in ensuring the fairness of the electoral process, and the executive power now has little influence over how elections are run. Nevertheless, the ONEL remains very much dependent on the state. The current governing coalition, which used to support the creation of a more independent electoral commission rather than the current observer body, seems to have abandoned this idea since their coming to power in 2000. This is perhaps not a good sign.

In Ethiopia, the National Electoral Board (NEB) is generally regarded as heavily dependent on the leadership of its General Secretary, Mr. Assefa Birru, who is widely credited with doing an admirable job under difficult circumstances. The NEB has organised the logistical side of elections energetically and efficiently. Concerning its responsibility of ensuring the fair conduct of elections, it has been criticised for adopting an overly narrow and legalistic approach. This has favoured the ruling parties by discounting many accusations of unfair practices brought against them by opposition parties. However, the NEB did disallow the results of the 2000 elections in fourteen constituencies won by the ruling coalition, and required new elections to be held. Nevertheless, many problems remain: Opposition parties have complained that local-level election officials are heavily recruited from the ranks of local government officials, who are of necessity members of the ruling party. In practice, however, state and government in Ethiopia have been so closely linked, and qualified individuals especially in rural areas are so heavily restricted to the ranks of state employees, that it is virtually impossible to recruit officials who do not have links to government in some capacity. Most importantly, the NEB is doing a relatively good job within very strict

parameters: as long as its General Secretary is on good terms with the prime minister and as long as the activities of the NEB do not threaten the dominance of the ruling coalition of the EPRDF parties, it will be able to continue to do its job. Ethiopia thus still has a considerable way to go before it has an independent electoral commission with the will and the power to ensure free and fair elections.

Algeria, Nigeria and Uganda's electoral bodies struggle with a weak perception of legitimacy among election observers, opposition parties and democracy groups. In Algeria, the dependence of electoral bodies on the executive (discussed earlier in this chapter) is reflected in its actions and decisions. For example, despite the finding of a parliamentary commission of enquiry that the absolute victory of the RND in the October 1997 local elections was obtained through fraudulent means – after they have been declared free and fair by district electoral commissions – there was no call by the Constitutional Council to cancel the results in those provinces where massive irregularities had taken place. Thus, despite the various checks and balances set up by the administration during the 1997, 1999 and 2002 elections, their dependence on government means that they have not fulfilled their task properly. As a result, ordinary Algerians' trust in the electoral system has not improved.

In Nigeria, the members of both the original electoral commission appointed by the military in 1999 and the replacements named by president Obasanjo since he took office were people with no obvious political affiliations. Yet the commission's 'performance leading up to and during the April 12 [2003] national assembly elections made it the object of significant criticism for its perceived lack of independence from the executive branch of government, and for a wide range of institutional and professional shortcomings,' reported the National Democratic Institute.⁴⁴ Monitors also reported instances where people supposed to be election officials connived with partisans to hijack ballot boxes and voting materials to places where they were stuffed with already thumb-printed ballots. Malpractices also continued during the counting process, when electoral officials allowed thugs hired by dominant parties in some areas to bar representatives from other parties from the counting centres. It was in these centres that most of the results were altered and falsified.⁴⁵ There were also reports that some election officials were threatened with the sack if the government in power in their particular states was not returned to office.⁴⁶

Coming to the last of the three countries with seriously flawed electoral oversight systems, the legitimacy of Uganda's electoral commission is dented, among other things, by the way in which its members are recruited. Patronage links have influenced recruitment and some staff have been irregularly appointed, including people unqualified for their positions. Such staff were 'not easy to discipline since they were connected to 'big' people'.⁴⁷

[T]he reality at the EC does not reflect the aspirations suggested in the constitutional and legal provisions of the constitution and the EC Act respectively. The apparent lack of independence of the Commission; the lack of clear, assertive and impartial leadership exhibited by the EC Chairperson; unclear recruitment procedures and methods; unethical and inappropriate social relations in EC; opaque funds management and suspicious contract tendering system all pose serious concerns to the great majority of Ugandans and leaders.⁴⁸

In addition, the work of the commission was impeded by the government's late enactment of electoral laws. All electoral laws and election programmes originate with the executive, which then communicates them to parliament for approval.⁴⁹ In the run-up to the March 2001 election, the Presidential Elections Act was not passed by parliament until November 2000, and assented to by the president on 8 December 2000. This late enactment led to, among others, the delay in the printing and issuing of voters' cards, and made the display of the voters register within the prescribed period impossible.

Conclusion

It is safe to say that all eight countries under review have improved their electoral oversight mechanisms over the last ten to fifteen years. South Africa and Ghana have created robust systems that leave little to be desired, and Kenya and Senegal have made great improvements. However, for the remaining four countries, progress has to a strong degree been confined to the formal creation of electoral oversight bodies, while the practical will and ability of these bodies to ensure that elections are free and fair have been seriously circumscribed. Thus, it is important to keep in mind that the AU commitment to create independent electoral commissions must mean more than just

setting up such an institution: constitutional and legal guarantees respected by all parties, including the government; robust hiring and firing procedures that cannot be tampered with for political reasons; sufficient human and financial resources to enable the commissions to carry out their mandate in practice; and the independence and courage of the commission and election officials to protect the principles of free and fair elections; are all crucial if electoral commissions are to perform the task they are meant to perform.

Chapter Four:

Voter registration systems:

Ensuring that voters vote - and nobody else

Fraud and violence on polling day is not always the most serious threat to free and fair elections. Experience has shown that more discrete and often more effective ways of rigging results take place in the months leading up to the election. Tampering with voters' rolls can have a great impact on election results. The ability to ensure the fairness, transparency and robustness of a country's voter registration system is therefore a crucial component of a democratic system – regardless of what model of democracy a particular country chooses.

This chapter will follow the approach of the previous two chapters on electoral practices by, first, looking at the formal system put in place regarding who can vote, how eligible voters can register and check that they are properly registered, and whether the rules or practices of voter registration have the effect of creating unwarranted obstacles to certain groups among the population. Second, the chapter asks whether the laws and regulations of voter registration are respected in practice, or whether they are undermined in the attempt to benefit a particular political party or parties.

Systems of voter registration

This section looks at the following questions: Who is entitled to vote and how can people who are entitled to vote ensure that they will be able to do so? Does the voter registration system include everyone who is entitled to vote, or is registration made difficult for certain categories and groups of people? Are some groups disenfranchised and are these groups politically significant? This latter question is particularly important in countries, such as Nigeria, Ethiopia and parts of Algeria, where voting tends to follow geographical and ethnic lines. If one region or ethnic group were to be discriminated against in the voter registration process, this would not only contradict democratic principles, but also create a seedbed of discontent along ethnic fault lines that may destabilise the political system.

All the countries under review have, at least in theory, adequate rules regarding who can vote. Generally, voters must be at least 18 years of age and of 'sound mind', and no

social, religious or ethnic groups are formally excluded from the voters' roll. While some (for instance Algeria) allow citizens living abroad to vote and others (for instance Kenya and South Africa) do not, neither practice can be said to be inherently more democratic. While some would argue the more inclusive the system the better, others would counter that people who do not live in a country should not be allowed to decide for those who do live there on how it should be run. It should be said though, that the tendency is for strong democracies to allow their citizens abroad to vote.

Similarly, some of the eight countries require eligible voters to show up in person to register on the voters roll (for instance Ghana, Kenya before 2000 and Nigeria) while others use existing censuses and registers as the basis for their roll (for instance Algeria). Many have introduced a system where the voter only needs to register if his or her situation has changed since last election (for instance Kenya after 2000 and South Africa). All practices are perfectly compatible with democracy and whether to choose one or the other depends on how good and up-to-date information the state already has regarding its citizens. For instance, in the Scandinavian countries with their strong and relatively intrusive state, voters do not need to register because the state already knows who they are and where they live, while in the United States, where the ideal is for the state machinery to be as small and keep as little information on its citizens as possible, voters must register in order to vote.

Whether they need to register or not, it is important that citizens are able to check and correct their registration details with relative ease. All eight countries under review have rules allowing political parties and ordinary citizens to do so (as well as query names that should not be on the list). However it is not always made easy in practice to do so. In Nigeria's 2003 election, organisational shortcomings meant that there was in practice no way in which to check the veracity of the voters' list.⁵⁰ There have also been problems in Uganda of the voters' list being displayed for too short a period or not at all in some cases. In addition, there have been several failures to update the Ugandan voters' register. The same voters' register that was used for the Constituent Assembly elections in 1994 was used for the 1996 presidential and parliamentary elections, and the 1997-98 local council elections.⁵¹ While voters who were not on the register were still able to get voter registration cards, the ensuing discrepancy between the register and the cards issued

created confusion over how many voters there really were in Uganda, thus making rigging easier and undermining the credibility of elections.

South Africa, on the other hand, is a paragon of easy voter access: for the 2004 election, it was possible for citizens to find out whether they are registered online at www.elections.org.za; by calling a toll-free number; by visiting any Municipal Election office during office hours; or at one of 17,000 voting stations during the two registration weekends in November 2003 and January 2004.

Having said that on most counts (listed above) the eight countries have adequate formal rules and systems of voter registration, there are nevertheless some problems. In several countries voters in rural areas have to travel far to register or check their registration. In Algeria, the rural Sahara and mountainous areas are scarcely populated and residents have to travel far to municipal centres to verify that they are registered on electoral lists. Most Berbers, who make up a quarter of the Algerian population, reside in these areas. To compound their disadvantage in the registration process, many Berbers do not speak or read Arabic or French, the official administrative languages. In north-east Kenya's arid and semi-arid areas, pastoralists are registered using mobile voter registration centres. Registration clerks follow the pastoralists to watering points in order to register them. However, if they fail to register during the designated registration period, pastoralists would have to travel long distances to the District Headquarters to register.

In South Africa, the voter registration system follows sound democratic principles. However, it is worth mentioning that the country's rules on who may vote have become increasingly restrictive over the last decade. While it was enough with some form of proof of identity to vote in 1994, voters in 1999 had to register beforehand and permanent residents were no longer allowed to vote. While citizens overseas were allowed to vote, no mechanisms were set up for them to register at the diplomatic stations. The registration rules for the 2004 election have become even stricter, not allowing most citizens living abroad and prisoners serving a sentence without the option of a fine to vote.⁵² On the other hand, the logistics of registration improved from 1999 to 2004: 2000 more registration and voter stations in rural areas were planned for the 2004 elections after it was shown that voters there had to travel further to register and vote than urban voters did during the 1999 election.⁵³ A remaining difficulty for rural voters is

that, should they not have registered during one of the registration weekends organised by the electoral commission, and therefore need to register at their municipal election office rather than at a registration station, they are likely to have to travel a much greater distance than urban voters to do so.

In Ghana, a minor problem is the time consumed by the registration process in some rural areas. Potential voters have to apply to be registered at their nearest registration centre during a limited period set aside for voter registration. The voter fills in a form and adds his thumbprint. Voters may have to go twice to the registration centre, first to register and then on an appointed day, to take his picture and collect his card. This is particularly the case in rural areas, while urban voters are generally able to register and receive the card on the same day. The limited number of cameras and other logistics created this situation, and a program to equip the electoral commission for the March 2004 registration is hoped to alleviate the problem. Apart from this minor issue, the formal system of voter registration in Ghana works well and seems equally fair to urban and rural dwellers in all regions. Registration centres are opened in all the more than 20,000 polling centres countrywide with sufficient registration materials and the requisite number of registration officials. It is also easy for voters to check their registration details when the voters' lists are displayed at all 20,000 centres six months after the registration period. However, the next section will show that informal, illicit practices are undermining the results of the formal registration process.

In Kenya and Senegal, the problem does not necessarily lie within the remit of the electoral commission, but with other government departments. In order to register, Kenyan and Senegalese voters need an official identification document, such as a national identity card or a passport. In Senegal, the production of identification documents tends to be disorganised, and subject to manipulation. This has hampered the registration process, particularly of first-time voters who at the age of 18 need to get their first identity card before they can register to vote.

Similarly in Kenya, identity documents are issued by government departments, and the process is slow, tedious and often associated with corruption. Moreover, since in the run-up to elections, many people hurry to apply for identity papers at the same time, there tends to be congestion. During the 1992 and 1997 elections in Kenya when voter

registration was carried out only during a period of one or two months in the election year, many people who had just turned 18 years could not get voters cards because they were unable to acquire National Identity Cards in time. In 1997, potential voters were hindered from registration because of the delay in the issuance of a new generation ID cards. In some areas, people were turned away because they possessed old generation National Identity Cards or police abstracts.⁵⁴ All in all, the combination of a short designated time for voter registration and the slow pace of issuing identity documents meant that many potential voters were not able to register within the required period.⁵⁵ For the 2002 election the problem was reduced as the voter registration process was made continuous.

In Nigeria, although the voter registration system looks fine on paper, it is fraught with problems – some due to logistical mismanagement or lack of resources, others due to abuse and fraud. This leads us to the next section on the *practice* rather than the formal system of voter registration.

The practice of voter registration: from capacity problems to fraud

Only two of the countries under review can boast of few abuses and problems regarding how the voters' roll is compiled. In South Africa, there is broad consensus that the system is working well and contributing to strengthening the country's young democracy. In Ethiopia, there are no (known) major complaints with the formal system of voter registration or with how this system is working in practice. However, observers tend to agree that the reason for this is that the problem lies elsewhere: with more than half the seats up for election not contested at all (except by the government candidate), another quarter only contested by private candidates (not organised opposition parties), and the remainder often made hazardously difficult for the opposition to contest, it seems that the ruling parties are so assured of victory that they see no need to restrict voter participation.

Senegal's voter's registration system fares relatively well, and has improved substantially in recent years – thanks to the pressure and mobilisation of the opposition parties to ensure an accurate voters' roll. Voter registration was at the heart of the opposition's campaign prior to the 2000 election. There was a sense that the sitting government did not want to update and audit the electoral register in order to get its own supporters additional voting cards and to avoid the electoral mobilisation of youth, considered as

more prone to vote for the opposition. During the course of 1999 and 2000, the government and opposition progressively agreed that the administration would revise the register and that it would then be audited by the Front pour la Régularité et la Transparence Electorale (FRTE), a gathering of most opposition parties, together with civil society organisations. The register was also made available online prior to the elections. Of the previous 3.5 million voters, only those who had actually fetched their voting cards in 1998 were counted (approx. 1.8 million), new voters were registered (approx. 1 million) and others were removed (approx. 170,000). In the end, the updated register identified 2,724,368 voters. It should be mentioned, however, that the debate has revived in recent months: the new government under President Wade had promised to replace the updated register by a new one. This has not yet happened and some opposition parties see this as a sign that shady practices are still taking place.

In Kenya, apart from the weakness in the formal system of having to rely on the (lack of) ability of government departments to provide voters with identity documents in time for the registration period, the country's voter registration system also suffers from the practical problem of human error. The practice of manual field registration, and then the transfer of the information from manual files to computers, have led to an excessive amount of mistakes making their way onto the final voters' roll. During the registration in 2002, a significant number of voters were disenfranchised when their names were not found in the computerised voter's register even though they had registered and possessed voter cards. An average of ten people per polling station were barred from voting because of such mistakes.⁵⁶

In the remaining countries, fraud related to the voters list has been a serious problem. In Algeria, the generally held belief is that turnout numbers are regularly inflated and ballot boxes stuffed in the polling booths in military barracks and mobile voting stations. Most Algerians are also convinced that election figures are distorted during the counting process at provincial or district level. Such lack of confidence has led to voter apathy.

In Uganda, mismanagement and organisational shortcomings are behind many of the problems related to voter registration, although there is also suspicion that some of the flawed outcomes of the registration process are not accidents. While the electoral commission is responsible for compiling, maintaining, revising and updating the voters'

register,⁵⁷ local council officials assist the commission officials in identifying people resident in their areas during the registration of voters. Local council officials are by law officials of the Movement. They play a central role in voter registration since Uganda does not have national identity documents. There do not seem to be cases where officials hinder known opposition sympathisers from registering. But they have been responsible for multiple registrations and the registration of minors, with the aim to ensure that certain candidates win. As mentioned before, there has also been a problem with the display of the voters' register. And even in the cases where mistakes on the register have been reported, they have not been corrected. This has resulted in a number of problems: missing names, multiple registrations, registration of minors, uncontrolled numbers of voters' cards in circulation, and the registration of people where they are not suppose to register.⁵⁸ This has enfranchised people who are not eligible to vote and disenfranchised eligible voters. Some of this problem may be due to human error, but it has been so persistent and skewed in favour of particular candidates, that it has created the impression of being a calculated attempt to influence election outcomes, especially presidential elections.

A particular problem in Uganda – as in Algeria – is the registration of soldiers. For reasons of 'national security' there is little control with this process. Soldiers are highly mobile, and vote in whichever barracks they stay at the time of elections, irrespective of where they are registered. Add to this the existence of an unknown but large number of non-existing, 'ghost' soldiers on the army payroll, and it becomes clear that the military vote is highly prone to fraud and manipulation.⁵⁹

Voter registration in Ghana has also been mired in controversy because of suspicions over the accuracy of numbers. The number of registered voters has been unrealistic compared to the country's population, and the chairman of the electoral commission has admitted publicly then that the voters' register has been 'bloated'. For instance, in 1996 when the population was estimated at about 16 million (old census figure) 9.2 million were reportedly registered. In 2000 when new official census figures put the population at 18.5 million, the EC registered 10.7 million voters, exceeding 100 percent of citizens of voting age. It has been alleged that unqualified individuals (particularly the under-aged) have been registered at the behest of political candidates. In order to deal with this

recognised problem, the electoral commission has introduced a new system of registration with nationwide photo IDs for the 2004 election.

Nigeria has the biggest voter registration problems among the eight countries under review. The problem includes the printing of excessive numbers of voter cards, piles of which find their way to particular candidates who distribute them among their supporters. For the 1999 elections 53.16 million out of an estimated voter population of 60 million registered.⁶⁰ But the electoral commission conceded that there were some serious lapses in the process. Most of these centred on the activities of corrupt electoral officials, who hoarded registration cards, engaged in double registration, or sold registration cards to some politicians with the obvious intention of using them to rig the elections. This led to artificial scarcities in several places with the result that even a former military head of state, Major-General Muhammadu Buhari was unable to register in the capital, Abuja.⁶¹

For the 2003 elections, the electoral commission decided to computerise the voter register and record the fingerprints of those registered in order to improve the security of the voting system and help eliminate fraud. However, prospective voters, who turned out massively nationwide, spent hours of futile waiting at designated centres without getting their name on the register. The electoral commission was quick to admit that something untoward was going on. While about 60 million voters had been expected to register, 70 million cards were actually printed. And despite having sent out 66 million cards six days into the 10-day exercise, scarcity persisted. The registration period ended with millions of people not able to register despite queuing desperately in front of the registration centres. According to the commission chairman, there was 'widespread hoarding of forms by lower-level officials, possibly in collusion with other unscrupulous persons for purposes other than those for which they are meant'. The commission also said there was massive 'double, multiple and under-age registration' in many parts of the country. It also admitted it had been less than efficient in monitoring the availability and use of registration materials.⁶²

Other irregularities included many instances where registration centres in government party strongholds were moved without notice or closed before official closing time in order to disenfranchise the opposition.⁶³ In some parts of the country registration was

not possible at all due to ethnic or religious clashes, killing hundreds of people over the preceding year. In mainly ethnic Ijaw areas in the Niger Delta, armed militants prevented voter registration in protest of what they considered skewed delineation of constituency boundaries in favour of their ethnic Itsekiri rivals.

Despite the electoral commission's decision to organise another three days of voter registration to give prospective voters another chance to register for the 2003 election, the National Democratic Institute nevertheless concluded:

The total number of registered voters was implausibly high in many constituencies across the nation, and there is no check on the veracity of the registry itself. At many polling stations, the number of registered voters was not known. The fact that these numbers are not publicly known means it is not possible to calculate voter turnout.⁶⁴

Conclusion

The voter registration systems of the eight countries under review cross the whole spectrum from solid and fair (South Africa) to malleable and chaotic (Nigeria). The situation in Nigeria shows how important a correct and transparent voters' list is, not only for the holding of free and fair elections, but also to ensure that voting does not turn into violence.

Chapter Five:
The level of political pluralism:
Party politics and the right to be critical

The remainder of the monograph will move away from election-specific democracy criteria to other factors that ensure a strong and vibrant democratic society. As mentioned in chapter one of this report, the regular holding of elections – even when they are conducted in a free and fair manner – is not enough as a characteristic of a mature democracy. To put it in social science terms, free and fair elections are a necessary, but not sufficient, variable. The remainder of this report will concentrate on some other necessary variables that deal with the political system as it functions between elections.

This chapter looks at the level of political pluralism in the eight countries under review. Political pluralism is here meant to include primarily whether, and to what degree, a country's political system allows different and differing opinions to be represented in a multi-party system. Broader questions of how the state cares for different groups and segments of society and whether there are biases regarding who benefits from public goods and services will be discussed in chapter six, which asks how inclusive or exclusive are the political systems of the eight countries.

As previously, the chapter will look at both formal arrangements and informal practices. Regarding the formal system, the chapter asks: Are (opposition) political parties allowed to form and what are the legal and administrative restrictions on their formation? Do opposition parties have avenues of obtaining funding by legal means and are they allowed to arrange meetings and other activities free of police or other interference? Can citizens demonstrate and exercise freedom of speech, even when that freedom is used to criticise the government? If political parties are allowed to form and meet, are they also allowed to run and campaign for political office? The informal practices include: If the legal system allows multi-party politics, is this system respected in practice? Are informal barriers put in place to undermine the organisation and operation of opposition parties? Are intimidation and fear used to hamper the activities of opposition parties?

The progress of democratisation since the end of the Cold War is evident when looking at the existence of multi-party pluralism in the selection of countries reviewed here. While none of the eight countries allowed party plurality at the end of the 1980s, by 2004 all except one had introduced some version of a formal system of multi-party politics.⁶⁵ The exception is Uganda, which has rejected party politics in favour of a 'movement' system. The system in some of the other countries (Algeria, Ethiopia) is too weak and limited for these countries to be called fully-fledged pluralist democracies. This section will first describe the countries that have come far in creating institutions and laws that support multi-party pluralism; then turn to those that still have shortcomings; and finally discuss Uganda, which has rejected party pluralism altogether.

The front-runners

Ghana, Kenya, Senegal and South Africa have made great progress over the review period when it comes to institutionalising a system and practice of multi-party pluralism. Particularly South Africa, but the other three also, have strong formal systems and laws allowing political parties to form, meet, criticise the government, and put forward candidates to stand for political office. Equally important, they do no longer have serious practical impediments to multi-party pluralism, although, as this section will show, the gains are very recent and some problems remain.

The constitutions of all four countries guarantee the right of citizens to form parties and to express their political views, including criticising the government.⁶⁶ While South Africa and Kenya allow parties to form along identity lines (except extreme ones such as overtly racist ideologies), Ghana and Senegal do not allow parties to form on the basis of ethnic, religious, regional or other divisions, on the grounds of preserving national unity. This is also the case in Algeria, but as the discussion below shows, it is a significantly more critical problem in the North African state than in Ghana and Senegal, due to the former's strong popular support and government repression of Islamist parties and the discrimination against the country's Berber minority. Another, probably unwarranted, restriction in Ghana, is the clause that prospective parties must furnish the electoral commission with proof that it is a *national* party, by showing that it has at least one founding member in each district of Ghana. However, Ghana currently has nine registered political parties, seven of which competed in the 2000 elections and four of which won seats in Parliament, implying that the requirement of national reach has not

been too great a hinder to party formation. In South Africa, the parliamentary dominance of the ANC is not due to any malfunctioning of party pluralism, but a result of its strong popular support. Senegal, which did not have a multi-party system until 1981 has had an explosion of parties since then: There were 28 parties in 1998, 41 in 1999, and around 60 at present, approximately twenty of which are significant.

In Kenya, a *de facto* one party state since 1969 and a *de jure* one from 1982, reverted to multiparty politics in 1991. However, the system remained flawed until compromises on reform were reached by the Inter-Parties Parliamentary Group (IPPG) in 1997. Before then, the governing party ensured an uneven playing field in several ways: First, by allowing the registrar discretionary powers not to register, or to deregister, parties. Registration of opposition parties would be delayed until shortly before elections. The IPPG agreed that a backlog of registration applications should be cleared, resulting in the number of political parties rising from eight to 27 before the 1997 election. In 2002 there were a total of 51 registered parties. The new draft constitution suggests that registration of parties should be left to the electoral commission.

Second, opposition candidates were prevented from handing in nomination papers in government party strongholds and making areas of the country no-go areas for opposition candidates. The police made opposition rallies difficult to hold across the country, by refusing to grant licences to hold them or by withdrawing the licences in the last minute. This was also changed in 1997, when the licensing requirement was abolished. Now parties only have to notify the police, and although there are still some repression by authorities of unwanted gatherings, the rights of opposition parties, trade unions, and civil society groups to mobilise has never before been better respected or enjoyed in Kenya.⁶⁷

Third, public finances were used extensively to support government party election campaigns. While still a problem, this has improved and may improve further if the present government's promise to fight corruption stays on course. And, finally, a pro-government broadcasting monopoly was maintained until late in the election campaign. The IPPG negotiated that the Act of the Kenya Broadcasting Corporation be amended to include equitable access to publicly funded media by all political parties and candidates during campaign periods. While the KBC still suffers from the interference of state officials, there was a great improvement in media access for opposition parties during the

2002 election campaign, particularly in the print and electronic media. State TV coverage was still biased towards the ruling party candidate.⁶⁸

Similar improvements on all counts have taken place in the three other countries: Ghana, South Africa and Senegal now only require notification of the police to hold rallies, and demonstrations are seldom disrupted.⁶⁹ The discretionary power of the police to ban a planned gathering on grounds of public security is seldom exercised. While people's right to demonstrate was vastly improved in South Africa with the democratic transition in 1994, the changes in Ghana and Senegal are more recent: In Senegal, the police could only ban demonstrations on grounds of 'public order'. Since this term leaves considerable room for interpretation, it was used regularly under the Parti Socialiste regime to ban marches and meetings by the opposition. During the 1980s and 1990s, rallies and meetings by the opposition often led to violent clashes with the police and demonstrations would regularly result in opposition figures being jailed for short terms. But such instances have grown rarer and rarer with the progressive democratisation in Senegal.

In Ghana, likewise, the environment for citizens' political expression has improved dramatically over the last four years, and particularly since the peaceful change of government in 2001. Before then, political rallies were often broken up with violence. For instance, in 1996 pro-government forces countered a massive demonstration by a coalition of opposition forces, resulting in the death of some five persons. It was also common for critics of the government to be harassed by the security agencies. In contrast, mass opposition demonstrations (dubbed "Kafo Didi") in Accra and Kumasi were held in 2003 without much difficulty. Criticism of the government is rife and intense and opposition newspapers such as *Democrat*, *Palaver* and *Insight* are often extremely critical without suffering government retribution. This improvement in press freedom is also relatively recent in Ghana. Bias towards the governing party was rife during the 1992 and 1996 elections,⁷⁰ while the past four years have witnessed remarkable progress in media pluralism and liberalism. It is therefore expected that the media coverage of the 2004 campaign will improve considerably.

South Africa's media is also free and uses its right to be critical. However, the public broadcaster, SABC, has repeatedly been accused by opposition parties of being biased to the ANC. While there has been more coverage of ANC activities, no claims of direct political bias against the SABC have yet been upheld by independent media complaint bodies. In 1999, the Media Monitoring Project found that the situation improved closer to the election.⁷¹

A free and diverse media is a relatively recent phenomenon in Senegal. The growth in local rural radio stations has been particularly significant from a democracy point of view: they promote political debates in local languages and contribute to the mobilisation of citizens. Radios have also had a positive impact on election conduct, since journalists reporting results straight from each voting centre via mobile phones has helped suppress counting manipulations. The creation in 1992, after prolonged campaigning by the opposition, of an independent body to verify that access to the state media would be fair, also improved the situation.

However, problems remain in Senegal: There is still a tradition of self-censorship among journalists (for instance about the war in Casamance or about cases of misappropriation of public funds) and collusion between certain journalists and elite groups sometimes blur the line between political advertisement and journalism. Since President Wade's coming to power, there have been a growing number of cases of harassment against journalists.

Political parties in Ghana and Kenya do not receive state funding.⁷² In Ghana, only citizens can make contributions in cash or kind to a political party. Most parties have not provided public accounts of how they fund their activities, but it is believed that personal donations by a few wealthy individuals are the main sources for funding election campaigns in Ghana. It is also suspected that ruling parties fund themselves through kickbacks from public contracts awarded to party loyalists and other corrupt practices. In short, managing political party funds is problematic in Ghana. Kenya also suffers from opaque arrangements for the financing of parties and, to deal with this, the new draft constitution suggests that the parties should receive state funding and be subject to public scrutiny. South Africa allows both public and private funding of political parties and donations by foreign nationals. In Senegal, no media advertisement is allowed and

access is opened to the state media, in order to attempt to reduce campaign costs and hence reduce the impact of inequalities in resources between political parties.

In Ghana, all parties have been able to campaign freely and safely everywhere in the country. There have never been 'no-go areas', although there is often tension when a party 'invades' the strongholds of opponents. In South Africa, the environment is generally safe, although in both the 1994 and 1999 elections there were some no-go areas for most, if not all, political parties. This was particularly the case in areas of KwaZulu-Natal where, depending on the particular group allegiances in the area, it was too unsafe for either the ANC or the Inkhata Freedom Party to enter. At least 160 areas were identified as 'no-go' zones.⁷³ In Senegal, access for campaigners has only been a problem in one area of the country: In Casamance, the separatist Mouvement des Forces Démocratiques de Casamance has tried to impose a ban on all political activities in the area. A number of electoral convoys (a PS convoy in April 2001, a PDS convoy in April 2002) have been attacked. Nevertheless, some level of campaigning has taken place in Casamance throughout the years, and elections have been organised, through discrete negotiations. Sometimes influential marabouts have forbidden party activities. This happened in Médina Gounass (Upper Casamance) during the presidential (2000) and legislative elections (2001).

The less than pluralist systems

Algeria, Ethiopia and Nigeria are here categorised as somewhat short of fully pluralist countries. There are different reasons for this in the different countries. Singling out these three countries, does not mean that everything is perfect in the four previous ones. However, the problems experienced in Algeria, Ethiopia and Nigeria are at a more profound level.

Algeria cannot be described as a fully pluralist democracy. After being introduced in 1989, the multi-party system was quickly restricted again. The Algerian constitution of 1989 guaranteed freedom of association to all Algerian citizens, opening up for the free formation of political parties. Almost 50 secular and Islamic-oriented political parties contested the first-ever multiparty municipal elections in 1990 and the first-ever multiparty general elections in 1991. The Islamic Salvation Front (FIS) won more than 50 per cent of the vote, which prompted the military powers to cancel the second round of legislative elections in January 1992. Parliament was disbanded, and only functioned

again after the 1997 parliamentary elections. This time, the revised 1996 constitution explicitly prohibited the formation of political parties based on ethnic, language, regional, corporatist (trade union), or religious identity, thus legalising the ban on FIS and other Islamic parties.

The Interior Minister dissolved 30 political parties before the 1997 elections based on their failure to comply with restrictive constitutional and administrative criteria for registration. In 2002, many candidates were disqualified from contesting national elections for belonging to or being considered too 'close' to the Islamic party FIS.⁷⁴ In Kabylia, home to about two million Berbers, most residents boycotted the 2002 elections. The restrictions on party formations meant that this significant Algerian minority community were not allowed to create political parties to represent their interests. Non-governmental organisations have to get licences from the Minister of the Interior, and many have been refused formal registration. Trade unions, other than the government-aligned General Union of Algerian Workers (UGTA) are not allowed to organise meetings freely, and face continuous threats from the police.⁷⁵

Algerian parties that have been approved by the Minister of the Interior are entitled to state funding. However, during the 1997 local, provincial and municipal elections, there were widespread allegations that the newly formed RND party, supported by the ruling military clan, received more funding from state coffers than other parties.

An added obstacle to multi-party politics is the state of emergency operating intermittently in many parts of Algeria. Although the constitution guarantees 'legal' political parties the freedom to campaign for elections, violent protests hampered election campaigning in the Berber-dominated Kabylie province during the 2002 elections. The sweeping powers given to security forces, the Minister of the Interior and local governors (walis) under state of emergency legislation also hinder political activism and campaigning. In regions such as Kabylie, anti-government protesters are routinely rounded up, arrested, and kept in detention.⁷⁶ While several cases of unlawful arrest led to the conviction of individual perpetrators, the majority of cases of abuse by the security forces in their low-scale 'war' against militant Islamism have not been heard by the courts, or have been dismissed. The security forces continue to act with impunity, even

in cases of legitimate or non-violent protests. Their targets are usually supporters and leaders of what are considered radical Islamist groupings.

Ethiopia never set out as optimistically as Algeria (for then to retreat), but the country changed from a Marxist-Leninist authoritarian and centralist state to (at least formally) a federal multi-party democracy in 1991. Ethiopia's restrictions on pluralism are of the exact opposite nature to those of Algeria. Ethiopia's political system since 1991 is based on ethnic federalism (after Stalin's theory of nationalities) – each nationality has the right to self-government and secession as the ultimate resort. In this ethnic federal system, people can participate in political activities *only* as members of ethnic parties and organisations: there are no such things as national political parties, and the ruling coalition, the EPRDF, is a conglomerate of ethnically based parties claiming to represent the nationalities of their respective regions, and dominated by the Tigray People's Liberation Front.

There are a large number of opposition parties in Ethiopia, indicating that there is no significant constraint on their formation. However, due to the ethnic federal system, parties are registered within specific regional states and can only present candidates for election within these regions. The great majority of opposition parties are therefore restricted to particular regions. Any would-be national opposition party would have to demonstrate support across different regions, in order to be registered there, and this places a considerable obstacle in the way of nationwide opposition parties. Opposition parties also struggle financially and do not get state funding.⁷⁷

In practice, even regionally based opposition parties face a hard time. Their meetings are often subject to considerable harassment by the authorities. At the rural level opposition candidates are often discriminated against when seeking to stand for election. Candidates are required to secure the signatures of a certain number of voters within the constituency in order to stand for election, and the signatures for opposition candidates are liable to be scrutinised and rejected on flimsy grounds by the authorities. The right to assemble is guaranteed by the constitution, but demonstrations and rallies are in practice controlled, often by violence. In one of the worst incidents, peaceful demonstrators in the city of Awassa in March 2002 (who were opposed to a planned change in the legal status of the city) were machine-gunned by government forces, causing numerous deaths. There is little judicial redress from excesses by government or police: the police operate as an arm of the

government. The courts, though nominally independent, are too slow to provide real redress, and are also liable to varying levels of government interference.

Finally, opposition parties' access to media is restricted in both Algeria and Ethiopia. In Ethiopia, opposition parties have no access to radio and television, and only limited access to print media during election campaigning. In Algeria, there were some improvements from the 1990 and 1991 elections, but both in 1997 and 2002, the government-sponsored party received more airtime than other parties on the public broadcaster, although electoral regulations stipulate that all parties should be awarded the same time. The Algerian independent press suffers from subtle forms of control: Parastatal and state institutions, which provide a substantial amount of advertisement income for newspapers, have stopped advertising in papers whose contents challenge the president or administration.⁷⁸ State-run printers also contribute to the pro-government bias. In August 2003, and not for the first time, the state-run printers refused to print six daily newspapers, which had published reports on alleged corruption scandals and abuse of power involving the president and his close aids.⁷⁹

Despite significant improvements in recent years, Nigeria should also be classified as a partly rather than fully pluralist polity. This is mainly due to subversive actions taken by the police, government and even the electoral commission, rather than the country's constitutional and legal system.

The constitution grants every Nigerian the right to freedom of expression and freedom to associate with other persons and form or belong to political parties. It also confers the power to recognise and register political parties to the electoral commission.⁸⁰ This latter caveat led to restrictions on plurality due to the electoral commission's decision to impose costly fees and strict criteria, including that the party must have offices in at least two thirds of the provinces, on potential parties. As a result, only three parties were registered in 1998. In the build up to the 2003 elections, about 40 new political parties seeking registration argued that these conditions were unconstitutional, and 27 of the parties took the matter to court. Several court rulings during 2002 led to the conclusion that the electoral commission had indeed acted unconstitutionally and that the only requirements political parties needed to meet for their registration was to provide their logo and constitution, along with the addresses of its offices and principal officials.⁸¹ All the 27 parties were subsequently registered, bringing the number of parties registered for

the 2003 elections to 31. In early 2003, the courts also ruled that the electoral commission's 'processing fees' were illegal.⁸²

While the last few years has seen great improvements in political parties' right and ability to register and stand for elections, other aspects of pluralism have not improved to the same degree. The police authorities in Nigeria have a record of viewing the public rallies by opposition parties and government critics with suspicion. For instance, a rally called by the main opposition All Nigeria People's Party in the northern city of Kano on 23 September 2003 against alleged rigging of the general elections, was dispersed by the police with tear gas and batons. The following day, the party vice presidential candidate and former Senate president, Dr Chuba Okadigbo, died after his health was said to have deteriorated following heavy inhalation of tear gas.⁸³ Human rights and pro-democracy activists who held peaceful demonstrations against President Obasanjo's government in Nigeria's biggest city of Lagos on 3 December 2003 were similarly dispersed.⁸⁴

Finally, political parties do not have equal access to the media. The ruling parties (nationally and in the provincial states) dominate the state-owned media. The privately owned media organisations are hampered by factors including: 'the financial instability of the Nigerian media, the low purchasing power of the population, illiteracy, electricity shortages, media reliance on sponsorship for survival, media culture of deference to the party of power, problems of professional development and the weakness of both government and self-regulation'.⁸⁵

The 'no-party state'

As mentioned already, Uganda has a so-called no-party or 'movement' system and as such fails by definition in a review of multi-party pluralism. Parties are allowed to exist, but not to forward candidates for elections, hold rallies or campaign. This lack of pluralism does not mean that Uganda's system by necessity has nothing going for it. The debate on whether the introduction of a competitive – and sometimes aggressive – multi-party system too early on in a democratisation process is desirable or dangerous is a valid and interesting one. However, it does mean that, first, Uganda's political system cannot be called a fully-fledged democracy according to generally agreed standards; and, second, that despite signing up to the AU Heads of State's many statements on the desirability of pluralist democracy,⁸⁶ the country's leadership has not committed itself in practice to introducing such a system.

An important question when reviewing Uganda's system is whether there are signs of any intension from the NRA leadership to, slowly and gradually, introduce a pluralist system. At the moment, there does not seem to be such an intension. The 1995 Constitution retained the Movement system, although it included a provision for the people to change the system at the end of the fourth year of parliament. A referendum was consequently held in June 2000, where voters were presented with the choice between the Movement and a multi-party system. Over 90 percent voted to retain the Movement system for another five years.⁸⁷ However, there were several problems with the referendum. The major political parties who opposed what they deemed to be the monopoly politics of the NRM government boycotted the referendum. There was general voters' apathy, reflected in a voter turnout of 51 percent. The NRM government was accused of making the referendum into a vote of confidence for the movement leaders and president Museveni in particular rather than a question of what political system these leaders should work under.

The Movement system is meant to be broad-based, inclusive and non-partisan. However, in practice it guarantees the monopoly of politics by the state party, the NRM – making it a one-party rather than a no-party state. All politics are conducted within the official framework, and every citizen is a member of the NRM. A system that does not allow autonomous political activities and does not provide opportunities for the expression of dissenting viewpoints will inevitably begin to display repressive characteristics sooner or later. Indeed, Ugandan politics are tainted by the fear and intimidation experienced by citizens who would like to express other views than those of the official movement. While the media has been liberalised during the period under review, it is still dominated by the state-sponsored (and therefore richer) newspaper and broadcast stations.

Conclusion

Generally, the commitment to multi-party pluralism has strengthened considerably within this collection of eight states. However, in Algeria, Ethiopia and Uganda, gains made are overshadowed by formal and informal, legal and extra-legal, mechanisms with which to ensure that opposition parties do not rise to prominence. In some, if not all, of the other countries, improvements are very recent. Sustained efforts, by government and opposition, are necessary to ensure that the positive trend continues.

Chapter Six:

Exclusive or inclusive political system:

Who are the beneficiaries of state resources, jobs and goods?

Even with a multi-party system with regular elections, a country may still have a relatively exclusive and excluding political system. The commitment to promote an inclusive political system is not so much about the processes of party politics or elections, but a commitment to let citizens from all segments of society benefit from the goods that the state provides and from the opportunities that participating in political institutions such as the bureaucracy brings. If, for instance, members of the bureaucratic elite are recruited almost exclusively from one ethnic group, then other groups are cut off from the opportunity to develop and influence policy decisions from inside the state machinery. Similarly, if public goods such as clean water, hospitals and schools benefit certain regions rather than others, some groups will be given a lesser stake in their own society than justice in a democratic system would warrant. In other words, this commitment is about avoiding marginalisation and strengthening nation building.

The importance of an inclusive political system is an important element of a functioning democracy. Inclusion softens the effects of losing political power, thereby making election results or other aspects of the transfer of power less of an existential issue: regardless of the party in power, the state and its institutions are there to protect and assist all citizens. An inclusive system makes violence in connection with contests for power less likely and therefore greatly enhances human security for opposition as well as government supporters among the populace.

Since many of the exclusion problems faced by the eight countries under review are of different nature and origin, this chapter will deal with one country at the time rather than cluster them together. The chapter will first look at the countries with relatively fewer problems of exclusion, before it turns to those where an exclusive political system poses a real threat to human security. The accounts below are close to those provided in the AHSI country reports on democratisation.⁸⁸

Relatively inclusive political systems

Ghana, Kenya, Senegal and South Africa are here grouped together as the more inclusive among the eight political systems under review. However, there are still problems of exclusion and marginalisation at play in all these countries. Common for all four countries is the discrimination against women (if not in law, then in practice). Other factors such as corruption, patronage, bias towards regime supporters when hiring for the public services or the uneven regional distribution of resources, also still occur in these countries. They have nevertheless all come a long way in the last decade and the positive trend seems to be consolidating.

Ghana:

There has been something of an explosion in political participation in Ghana over the period under review. Voter turnout has been higher in the last three general elections than before, and civil society groups have flourished, both in terms of numbers and membership. Opinion leaders submit memoranda to Parliament and its committees, and stakeholders review Bills pending before Parliament. An independent media, new research institutions and advocacy groups are keeping the newly politicised citizens better informed as well as providing some inputs into policy decisions. With more than a dozen newspapers, most of them independently owned, and about 75 radio stations (2 state-owned) nationwide and 4 television stations (3 independent), the media have become a major forum – open for all citizens irrespective of gender, religion or ethnicity – for the discussion of national policy.

There is also a real effort to include different regions and ethnic groups in governing structures. The directive *Principles of State Policy* requires the president to make appointments that reflect the ‘national character’, that is, the geographical and ethnic composition of the country. The government, as well as political parties in their nominations, tend to respect this directive in practice. For instance, the 2000 elections saw both leading parties (NDC and NPP) put forward presidential candidates from the ‘south’ and their running mates from the ‘north’. The selection of Cabinet ministers also reflects regional diversities.

After winning the 2000 election, the ruling NPP government has attempted to enhance political inclusiveness by making both substantive and symbolic appointments of

opposition party members to important positions. For instance, the government nominated and supported the appointment of NDC Parliamentarian Dr. Ibn Chambas as Executive Secretary of ECOWAS. While the members of the main opposition party have been included in this way, some minority groups seem marginalized, a factor that may be attributable to the Westminster political model of 'winner takes it all'.

The situation has improved less when it comes to the participation of women in political structures. For instance, only nine percent of parliamentarians are women and only 15 percent of Cabinet members.

Kenya: corruption and gender hampering inclusion

In Kenya, the group most excluded from participating in the country's governing structures is women. Very few women are nominated as candidates for political office, and even fewer succeed in winning elections. The higher up in party or state hierarchies one looks, the fewer women one finds.⁸⁹ The new draft constitution suggests a will to deal with this problem, by recognising that women have equal rights and dignity to men⁹⁰ and by safeguarding the political representation of women in at least one third of elected and appointed positions.

There is also an element of inferior access to governing structures for some ethnic groups. The unequal size of constituencies gives some ethnic groups disproportionate representation in parliament. The value placed on age in Kenyan society also makes representation in public office elusive for youth.

The withdrawal of the public service staff list in 1978 made it difficult to assess the ethnic composition of the public service. While all Kenyans can hold posts in the civil service provided that they meet the basic qualifications, regime supporters and the politically well connected tended to be appointed both during the KANU era (up to 2002) and after.⁹¹ Significant minorities such as Arabs, Asians and Europeans largely shun competition for elected public office. By their nature, local authorities tend to be ethnically homogenous, save for the ones in larger metropolitan centres such as Nairobi and Mombasa.

If looking at the distribution of public goods rather than jobs, the state has not done particularly well in delivering publicly valued goods to its citizens. Problems such as huge

debt servicing commitments and low institutional capacity are part of the reason for this. However, corruption has also led to great amounts of public money ending in the pockets of members of the political elite.

Some groups suffer worse hardships than others due to their low position in Kenyan society: First, women, who have a harder time accessing land and credit due to discriminatory customary and statutory laws. Second, smallholders who have been driven off their farms through political and ethnic conflict, or have suffered expropriation at the hands of the political elite. And, third, pastoralists and others whose access to land has depended on collective communal rights, which have been eroded by the government.

Senegal: an inclusive system with some exceptions

As in Ghana, there is no significant ethnic or political marginalisation in Senegal. The Senegalese state asserts its non-religious character and the constitution rejects all forms of discrimination, whether based on gender, ethnicity, religion or political orientation. More informally, the Senegalese authorities have a history of co-opting leaders from all ethnic and regional backgrounds. A number of biases nevertheless affect the inclusiveness of the political system.

The most serious examples of exclusion and discrimination in Senegal today take place in the troubled Lower Casamance province. After a separatist rebellion started in the early 1980s, the people of Lower Casamance has lived for twenty years in a situation of low intensity armed conflict, which has killed a few thousand people and largely run down the local economy. As a result of this rebellion, members of the Diola ethnic group have frequently been targeted by the security forces, and Amnesty International and other human rights organisations have documented extra-judicial killings and other atrocities against civilians.

Senegal has long had an 'urban bias': since colonial times, cities – and particularly the capital Dakar – have received the brother share of the authorities' attention and spending. Agricultural surpluses have been used to pay high urban wages, subsidise food staples for city dwellers and generally to invest in public goods and infrastructure.⁹² This in turn led to massive internal migrations.

Language is another potential exclusive factor. Senegal has one official language, French, and six 'national languages', the languages of the country's main ethnic groups (Diola, Malinké, Pular, Sérère, Soninké and Wolof). While there has long been the pretension of making efforts to use 'national languages' in the public administration, French remains the formal language and that of all documents. This is a serious problem of potential exclusion (this time particularly touching the less educated) in a country where French is not widely spoken, and even less read. In the actual functioning of the public administration other languages, particularly Wolof, which has become Senegal's lingua franca, are used for communication.

The position of the Wolof language is in itself a sign of one group's privilege. Historically, the Senegalese state was closely associated with one ethno-religious group – the Wolof of central and coastal Senegal. The Wolof were organised under Muslim marabouts and grew groundnuts, Senegal's main cash crop and long the main source of state income. Under the dominance of the Wolof, the marabouts acted as *grands électeurs* and delivered the votes of their followers to the ruling party in exchange for goods and privileges for their communities and themselves. However, this system of exchanging votes for privilege weakened in the 1990s with the collapse of the groundnut economy and the mounting opposition of many disciples to their marabouts' pretence at political guidance.

In terms of gender equality, Senegal also has far to go. In the current 120-strong National Assembly, there are 21 female members, while only five of 34 cabinet members are women. The situation has improved over the years, but women are still a minority in politics and are usually restricted to minor and/or 'female' roles, such as Health and Family, though some have occasionally taken important jobs in Wade's cabinets, including Trade (Aicha Agne Pouye) and, for a while, the Premiership (Mame Madior Boye).

South Africa: the potential threat of one-party dominance

South Africa's Constitution forbids any sort of discrimination by the state on any grounds, 'including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'.⁹³ In practice this provision is generally respected, and the authorities still pride themselves on having made a 'rainbow nations' out of an apartheid state. Gender

equality, at least in politics (probably less so within the confines of family life), has come further in South Africa than in any other of the eight countries under review.

There are, however, two areas in which the political system has been accused of being skewed towards benefiting the ruling coalition or particular groups of society. The first is the government's programme of affirmative action to address the historical injustices of apartheid (the so-called Black Empowerment policy). It is however difficult to argue too hard that this practice is discriminatory, considering the country's obvious need to shift the (previously highly discriminatory) balance of power within the country. Second, various incidents of corruption and abuse of office (or accusations thereof) by individual senior members of the political establishment have led critics to argue that a sense of impunity is spreading among the ANC elite. However, such abuses are not considered to be widespread enough to be a true reflection of the political system.

Over time, the dominance of the ANC in South African politics and government may create problems of exclusion based on party membership in the future. When the same party is likely to stay in power for the foreseeable future, it is a rational and prudent reaction of ambitious people to align themselves with this party, thereby contributing to perpetuating the party's dominant position. This could increase the incidence of patron-client relationships in the future.

Politics of exclusion and marginalisation

Algeria, Ethiopia, Nigeria and Uganda are facing relatively more serious problems of exclusion and marginalisation. In Ethiopia and Nigeria, part of this problem is connected to the sheer size of the countries' populations and the great diversity of ethnic groups living within their borders.⁹⁴ While ethnicity and regional differences also play a part in Uganda and (more so) in Algeria, the biggest problem (which also occur in Nigeria and Ethiopia) in these two countries are closer related to the uneven distribution of public goods, positions and resources between regime members and close supporters and collaborators, on the one hand, and opposition groups and ordinary citizens with no political connections, on the other.

Algeria: the schism between power and responsiveness

Many of Algeria's political problems become clearer when seen from the point of view of (the lack of) political inclusivity. An important reason behind the huge popularity of the

Islamic Salvation Front during the first multiparty elections in 1990 was the unresponsiveness of the one-party state to the needs of its citizens. The vast hydrocarbon wealth generated in the south of the country did not find its way to the central budget and did not lead to more employment or better quality jobs for ordinary Algerians. About a third of the Algerian labour force is unemployed. In contrast, the FLN party elite (before the introduction in 1989 of multi-party politics) enjoyed privileged access to foreign goods and benefited from their corrupt management of state-owned enterprises. Widespread reports continue to accuse a 'secret mafia' of military leaders and government officials of hoarding oil and gas export revenues.⁹⁵

Apart from this abuse of state resources by a small political elite to the detriment of a poor population, there has been particular discrimination against Algeria's Berber population, which makes up a quarter of the country's population. The situation has improved recently, when the Berbers were given official recognition as a minority group with special needs. Amazigh has become one of the official languages in Algeria, in addition to French and Arabic. In practice, however, Berbers still tend to be treated as second-class citizens.

The main fault line between included and excluded, and the biggest problem for the future of Algeria's democracy, is the *de facto* continuation of military rule. Although Algeria is a *de jure* multi-party democracy with a popularly elected executive and a formal separation of powers, a clan of military generals still run the country in reality.⁹⁶ They control political power in Algeria through control of the presidency – and by ensuring that their preferred candidate gets voted into office.⁹⁷ The president was given extensive powers, including the right to pass laws when parliament is not sitting, in the 1996 constitution, approved through a highly controversial referendum. The constitution also assigns the president the task of 'Supreme Chief of the Armed Forces of the Republic' and gives him the right to appoint the head of government, provincial administrators, magistrates, high officials of security bodies, and the president of the Council of State.

The all-pervasive influence of an un-elected cabal of military leaders has led to voter apathy. Many potential voters do not believe that their votes will ever lead to a change in real power, no matter who holds 'formal' power in the executive as a result of the outcome of elections. It is widely believed that the results of the 1997 legislative elections

were 'fixed' to create a balance between the different competing parties to give legitimacy to the system while ensuring that the government party, the RDN in this case, wins the majority of seats.⁹⁸ As a result of such pervasive perceptions of manipulation and rigging, many Algerian voters decide to stay at home on Election Day.

The Algerian electorate also tend to be cynical about the true intentions of political parties. They do not believe that the governing parties, the FLN and RDN, represent the interests of their constituents, since the manipulation of election results gives candidates little incentive to bother to compete for votes.⁹⁹ This lack of representativeness can also be seen in the parties' behaviour in parliament. Parliamentarians stay quiet on issues of real importance to most Algerians, such as the government's failure to respond adequately to the October 2003 earthquake that hit parts of the country; the continued killings of Algerians in political violence; the crisis in Kabylie province; and the cases of 7000 Algerians who have 'disappeared' during the civil war. Improbably, the lower house of parliament did not propose one single law in 2003. Critics allege that the government is 'buying' the silence of opposition parliamentarians on such sensitive issues.¹⁰⁰

As a result of all these factors, most Algerians feel excluded from the political system: they do not believe it represents their views and votes, and they do not feel that it responds to the problems they face.

Ethiopia: a history of marginalisation and privilege

Ethiopia has a long history of marginalizing important groups, notably peripheral peoples, pastoralists, and Muslims (the three coincide to a significant extent), while endowing privilege on others, notably Orthodox Christians, speakers of Amharic and to a lesser extent Tigrinya. Under the imperial government between 1889 and 1974, Amharic-speaking Orthodox Christians from the central province of Shoa were at a considerable advantage, and the aim of the imperial rulers was to assimilate the rest of the population under the same language and faith. When taking over power in 1991, the EPRDF government justified its introduction of a system of ethnic federalism as a means of rectifying this history of discrimination, and of assuring the different ethnic groups control over their local affairs and equal representation in central government. As a result, there has been a considerable increase in the level of representation by local peoples in their own regional government.

However, despite the government's formal commitment to inclusivity (through the division of the country into ethnic segments), the Tigray region and its people are widely perceived as privileged by the existing political regime. Tigrayans have a disproportionate number of the most sensitive positions within the current government. They are also often placed in positions of low formal status but high influence within the administrations of regional states. At the other side of the spectrum, the Oromo (the largest group in the country constituting about 32 percent of the population) are generally perceived as the most marginalized. The Oromo are formally represented in government by the OPDO, a party with little support in most parts of Oromiya. Individuals suspected of being involved with Oromo opposition groupings are subject to harassment, imprisonment, and sometimes death.

Tigrayans, the group with the strongest political position in Ethiopia today, come from an ecologically degraded and famine-prone area in the north. Thus, a significant element of Ethiopia's current political economy is the government's need to take revenues away from the principal producing areas and redistribute them in favour of its own home base in Tigray. There is a widespread popular perception, backed by very visible levels of infrastructural development in the regional capital, Mekele, that Tigray region is receiving preferential treatment. Government officials justify this on the grounds that Tigray was subject to exceptional levels of adverse discrimination under the previous Marxist-Leninist *Derg* regime. At that time, the Tigray region was a war zone, with high levels of destruction and bombing of the civilian population.

There are also discriminatory tendencies on regional levels. Citizens of each regional state have preferential access to civil service posts within their own region. As a result, regional governments (which in former times were heavily dominated by appointees from the central and privileged parts of the country) are now much more representative of the peoples and regions that they govern. However, this also means that better qualified civil servants from outside many regions have been replaced by less qualified regional citizens. Regional outsiders have also been subject to varying degrees of informal discrimination, harassment, forcible ejection, and in some cases killings. Some commentators are concerned that the 'ethnicisation' of the Ethiopian state structures over the last decade has opened a Pandora's Box of ethnic rivalries and hostility that will be difficult to close again. The trends towards

inclusion at regional levels of members of the 'right' ethnic groups have led to a greater level of exclusion between the regions and ethnic groups that make up the state of Ethiopia.

Nigeria: ethnic strife over resources

Nigeria is a country of more than 250 distinct ethnic and language groups, three of which – the Hausa-Fulani of the north, the Yoruba of the southwest and the Igbo of the southeast – make up more than 60 percent of the population of over 120 million. The rest are ethnic minorities, the biggest of which are the Ijaws of the southern Niger Delta, who number somewhere between four and seven million people.

Nigeria's constitution and legislation do not endorse any form of discrimination. There is a constitutional principle of reflecting the 'federal character' of the country in appointments to public office. A quota system for employment in the civil service and placements in educational institutions seek to ensure that all ethnic groups are accommodated. But this has not in reduced cries of marginalisation and cheating by parts of the country.

Complaints of discrimination, marginalisation and exclusion are rampant in Nigeria. It is a generally held belief in Nigeria that the ethnic or interest group that controls the government is in a position to distribute patronage, including civil service appointments and deciding where to spend government money. People in the southeast, including the oil-producing Niger Delta, often argue that they have the worst infrastructure in the country because they have little influence in the federal government, while the north and the southwest have better infrastructure due to their relative influence. 'In Nigeria, control of government often represents virtually unaudited control over resources', said New York-based Human Rights Watch in a recent report on Nigeria.¹⁰¹

The Igbo and the Ijaw communities have been particularly vocal in their complaints about discrimination. In the case of the Igbo community, ever since their unsuccessful attempt at seceding as the Republic of Biafra in the civil war of 1967 to 1970, people in the region have complained of being systematically punished through denial of amenities; poor infrastructure and low general government spending; exclusion from top jobs in government; and political under-representation in the federal system due to incorrect (too low) census figures for the region.¹⁰²

In the case of the Ijaws of the Niger Delta, they inhabit a region that produces most of the Nigeria's oil while still remaining the country's most impoverished region. A sense of being cheated out of the oil wealth of their land have fuelled restiveness in the region, leading in the past decade to inter- and intra-ethnic conflicts and disruption of oil production by peaceful and violent protests, including through sabotage. In Nigeria, then, exclusion and marginalisation of certain groups have had a strong impact on human insecurity in the country.

Uganda: the movement or nothing

The previous chapter described some of the negative effects of Uganda's 'movement' system. The monopoly of politics created by this system easily breeds intolerance and encourages unanimity of views or conformity. Inevitably, non-conformity tends to result in exclusion from political and public office. Appointments to positions such as Resident District Commissioners (RDC), presidential advisors, ambassadors and other Foreign Service posts, membership of constitutional and *ad hoc* commissions are based on patronage and political co-optation. The wide-ranging power granted to the president by the constitution has compounded the tendency towards patronage and personal rule.

The situation in Uganda was certainly not better before the introduction of the movement system in 1986. However, while there was progress and optimism in the first years of movement rule, and particularly around the time of the 1994 Constituent Assembly and the writing of a new constitution, this optimism began to wane after the presidential elections of 2001. Today, because the state and the movement have become synonymous, Ugandans who are not co-opted into the movement system, benefit less from the protection and assistance of the state.

Conclusion

This chapter on processes and practices of political inclusion and exclusion has highlighted the need to study some less visible and obvious aspects of democracy. Political exclusion and marginalisation is not just a human security issue for those forced to live a life of less opportunity and protection from the machinery of state authority. It is also a potential national security threat, when aggrieved sub-groups begin to express their complaints with violence (as, for instance, Islamist terrorists in Algeria and Ijaws in Nigeria have done).

As was the case with the commitments studied in previous chapters, there have been considerable improvements in building inclusive political systems in the eight countries under review. The process has come further in Ghana, Kenya, Senegal and South Africa. While Kenya's gains have been so recent as to warrant caution in making any conclusions, prospects for further improvement and consolidation look relatively good in Ghana, Senegal and South Africa.

In Algeria, Ethiopia, Nigeria and Uganda, on the other hand, the opening up of the political system seems to have stagnated. There is a real danger that earlier gains may be lost again as the political elites that were behind establishing their countries' new and more democratic systems in the late 1980s and early 1990s begin to backtrack in attempts to stick to power.

Chapter Seven:

Term limits for Heads of State

The question of whether term limits should be included as a core element of African democracy has been a controversial one. The reason for this is that most European democracies do not have term limits for their heads of government (and in the case of monarchies, they certainly do not have term limits for heads of state). Why then, critics ask, should such a condition be imposed on Africa states? The answer is: for several reasons.

First, that a good and useful principle is not introduced in one country is no excuse for not introducing somewhere else. This argument should resonate well with many proponents of 'an African style of democracy'. These proponents often complain that the ideals and institutions of the colonial powers should not be imposed wholesale on African countries, but be adapted by Africans to their own cultures and needs. The need for term limits in Africa is related to the earlier discussion in this study¹⁰³ of the human and national security threats related to transfers of power on the continent. Too often power is shifted from one leadership to another through violence or the threat thereof. African leaders have tended to remain in office for too long, in many cases for several decades, usually becoming increasingly unresponsive to the needs and wishes of the population as the years go on. A prudent look at the continent's post-colonial history should thus lead to the conclusion that term limits are not just desirable, but necessary.

Second, the need for term limits is greater in the developing democracies of Africa than in for instance, Britain and Scandinavia. In these latter countries, pressure within the ruling party from aspiring leaders as well as pressure from outside the party via the ballot boxes, means that leaders who stay in power for more than a decade (like Margaret Thatcher) are an anomaly. In many African countries, leaders who refuse to hand down power peacefully have rather been the rule than the exception, making the introduction of term limits a much more urgent question – indeed making it a human security issue.

Third, although the need may be bigger in African countries than in most European ones, there is arguably a good case to be made for introducing term limits across Europe as well. In Britain, for instance, it seems to be a broad agreement among Conservatives

and non-Conservatives alike that Prime Minister Margaret Thatcher stayed in power for too long and became increasingly out of touch with party supporters and voters in general towards the end of her last term. Similar criticisms are now beginning to be lodged against Prime Minister Tony Blair. There is often an unwritten 'rule' in countries without formal term limits that leaders should step down after a suitable period. In the United States, formal term limits were not introduced until President Franklin D Roosevelt [check] broke this unwritten rule and ran for a third and fourth term.

Fourth, when taking a closer look at the Western countries that have introduced term limits, such as the United States and France, these countries have presidential systems where the president, as the head of state, is either also the head of government (as in the United States) or has significantly more power than the head of government (as in France, where the position of president is more important than that of prime minister). Most African countries have similar systems where the leader of the executive has extensive personal powers vis-à-vis cabinet and parliament. In such systems, regular and guaranteed changes at the top are more important than in systems where power is spread more widely.

Seven out of the eight countries under review have imposed term limits on their heads of state and government during the course of the last decade. The exception is Ethiopia, where there is indeed a limit of two terms for the head of state – the President – while the prime minister, who is the head of government and holds the real power in the country, has no limitations on how long he can stay in office. Of the others, most have introduced term limits so recently that it is too early to test whether they have been (or rather, will be) respected or not.

This chapter will give an overview of the situation in each of the eight countries, ranked according to how far they have come in implementing temporal limitations on political power in law and in practice. Thus, the chapter will start with the countries that: first, have introduced term limits in their constitutions; and second, have had leaders who have stepped down voluntarily before or at the end of his last legal term. The chapter will continue with countries that have legal term limits, but no example in practice of whether these will be respected (the 'wait and see' category). It will then turn to countries that have term limits, but have disregarded them – or look set to disregard them by instituting

processes to overturn or change the dictates of the constitution. Finally, we come to Ethiopia, where the AU commitment to introduce term limits for the head of government (rather than the unimportant ceremonial figurehead of the president) has not been acted on.

Introducing term limits and keeping them

South Africa has an executive president and no prime minister.¹⁰⁴ The president's tenure is limited to two terms of approximately five years each (the exact time depending on how early or late within the required time period a national election is called). Nelson Mandela, who became South Africa's first democratically elected president after the 1994 election, handed over the reins as leader of the ANC party in December 1997 and decided not to run for a second term as president – thus stepping down *before* he was legally obliged to do so. Mandela's vice-president and successor as ANC leader, Thabo Mbeki, was elected as president in 1999. President Mbeki is running for a second term in 2004 following his re-election as party leader in December 2002. He will therefore have to step down in 2009. While there have surfaced from time to time rumours and fears that President Mbeki will try to run for a third term – through supposedly changing the constitution with the help of the ANC dominated Parliament – there has been no public suggestions by President Mbeki to date of such an intention. The action of the previous president, Nelson Mandela, has set a strong precedent against tampering with the term limits.

Ghana, like South Africa, has a hybrid system of presidential and parliamentary governance. The President is both Head of State and Head of Government. The Constitution limits incumbents to a maximum of two 4-year terms.¹⁰⁵ Since the coming into effect of the Constitution, there have been three elections and one change of government. Jerry Rawlings, the country's long-serving leader, introduced and won democratic elections in 1992, and won again in 1996. Term limits were not applied to his years in office before the 1992 election, but Rawlings respected the new rules and did not run in 2000. The opposition NPP, led by John Agyekum Kufuor beat Rawlings' party, NDC, whose candidate John Atta-Mills had been the incumbent vice president. The next elections will take place in December 2004.

The term limit restriction is one of the 'entrenched' provisions of Ghana's constitution. They can only be changed by a referendum, not by legislation or presidential decree. The

idea of changing the term limits was floated by the then ruling NDC party in 1997, but was quickly shot down by a barrage of civil society and opposition party protests. No practical steps to change the term limits have been attempted by the executive, and the principle of term limits now seem fairly well entrenched in Ghanaian democracy.

The Kenyan president, as Head of State and Commander-in-Chief,¹⁰⁶ has had a constitutionally imposed term limit of two five-year terms since 1991. During that period there have been three elections, and the term limits have been respected. President Daniel Arap Moi, who in 1991 had already served for more than two terms, was allowed by a court order to begin afresh as a new president entitled to two terms. He won the 1992 and 1997 elections, but stepped down for the 2002 elections when his two terms expired. When President Kibaki took over power in 2002 he was only Kenya's third president since independence.

The 'wait and see' countries

Term limits were not introduced until 2001 in Senegal. Before that, the country had two very long-serving political leaders: President Senghor ruled from 1960 to 1981 (he was elected in 1960, 1963, 1968, 1973 and 1978). He resigned to be replaced by Abdou Diouf, who presided over Senegal from 1981 to 2000 (elected in 1983, 1988 and 1993). In 1992, the previous 5-year mandate was prolonged to seven years by a constitutional amendment voted by the Assembly. Following Wade's victory over Diouf in 2000, the new constitution of 2001 reduced the duration of terms from seven to five years (implemented from the next forthcoming presidential election) and limited the number of terms to two.¹⁰⁷ Constitutionally, the term limits can only be amended through a referendum or a constitutional reform voted by the national assembly. The test of Senegal's adherence to the principle of term limits will (assuming that Wade stands for a second term) not be until 2012.

Under Nigeria's constitution the president, the executive head of state, is entitled to a maximum of two four-year terms in office. The same rule applies to state governors. President Obasanjo, whose election in 1999 ended more than 15 years of brutal military dictatorship, is now into his second and final term.

So far, due to military interference, there has never been occasion in Nigeria to determine whether an elected president would obey his term limits. The first post-

independence elected government was overthrown by the military in 1966 just after its re-election. The next spat of democratically elected governance took place when the military handed back the reins to an elected leader in 1979. However, President Shehu Shagari, Nigeria's first executive president under an American-style system, suffered the same fate as previous democratic leaders when he was overthrown by the military three months into his second term. This time, it looks like President Obasanjo will be able to sit out his second term, making 2007 the year when constitutional term limits will be tested for the first time.

Algeria's 1996 constitution also confines the president to two terms in office. In practice the term limitation has never been tested, since the power dynamics between president and military leaders have overridden the democratic processes. The first president under the 1996 constitution, Liamine Zeroual, resigned before his term of office expired, due to political difficulties with the military leaders. The current president, Abdelaziz Bouteflika, elected in 1999, will probably not stand for election in 2004, since he has fallen out of favour with the military and has been ousted as leader of his FLN party. The major problem in Algeria, then, is that while the constitutional term limits on the head of state ensure that formal power changes hands after two terms, the constitution does not define the role, limits and function of the military. In a way, then, Algeria should not be categorised among the 'wait and see' countries, but together with Ethiopia, where term limit are introduced for less important political actors, but not for the real incumbents in power.

From the theory to the practice of stepping down

The Ugandan president is head of both state and government. Term limits of maximum two terms of five years were introduced with the new constitution of 1995. Two presidential elections have so far been held under this constitution (in 1996 and 2001), both of which were won by the incumbent president, Yoweri Museveni. His last term expires in 2006.

Since the constitution is less than ten years old, the provision on term limits has yet to be tested. However, some signs bode ill for its survival. In 2001, the president appointed a commission to gather people's views and present proposals for amending the constitution. The commission presented its report to the Minister of Justice and Constitutional Affairs on 10 December 2003. The report has not yet been made public.

However, it is expected to contain recommendations on the presidential term limits. Sections within the NRM – the movement – are advocating for the two term limit to be removed in order to allow president Museveni to stand for election again in 2006. This has caused a split within the NRM and the Ugandan population in general. So far, the president has not come out to allay fears that he is interested in a third term. Accordingly, uncertainty abounds regarding Uganda's next election and whether peaceful transfer of power will take place. Such fears are not unfounded: Uganda has never experienced a peaceful transfer of power from one leader to another since independence. Military coups d'etat and civil wars have been the norm.

Term limits as a guise

In Ethiopia, executive power is vested in the prime minister, while the office of President is titular. There is a limit of two six-year terms for the President; but no limits for the prime minister, the actual leader of the country. There is no process in place at present to introduce such limits. If wanting to institute changes (whether to remove term limits for the president or to add them for the prime minister), the ruling coalition has such a high level of political control that it would have little difficulty in altering legal arrangements through the procedures provided.

There has never been a democratic transfer of power in Ethiopia, and peaceful transfers have only taken place twice, both times on the occasion of the natural death of the emperor: in 1913 emperor Iyasu succeeded on the death of Menilek, and in 1930 emperor Haile-Selassie succeeded on the death of Zawditu. Violent transfers of power occurred in 1855, 1868, 1871, 1889, 1916, 1936, 1941, 1974 (twice), 1977 and 1991.

The present leader, Meles Zenawi, has been in power since 1991, initially as president, and soon after, with the introduction of the new constitution of the Federal Democratic Republic of Ethiopia, as prime minister. At no time in Ethiopian history has a government been democratically elected through free and fair elections contested by rival political parties or movements. The present government has an authoritarian origin, as a guerrilla movement guided by a Marxist-Leninist ideology. Its approach to government has been consistently authoritarian, albeit limited to some degree by domestic and (perhaps especially) international political considerations. The prospects for the introduction of term limits for the executive head of government are therefore slim.

Conclusion

Term limits for executive heads of state and government have been introduced in all but one of the eight countries during the course of the last ten to fifteen years. Only three of the countries have a track record so far of political leaders stepping down voluntarily before or at the end of their tenure (in Algeria, presidents may have stepped down, but because of conflicts with the behind-the-scenes military powers). Another two countries have introduced the necessary constitutional safeguards, but we have to wait and see whether these will be respected when push comes to shove. In one country – Ethiopia – there is no intention to introduce term limits in the foreseeable future. Finally, in Algeria, the question is at one level a matter of whether incumbents will step down voluntarily and not due to undemocratic pressures. However, at a deeper and more significant level, the situation is similar to Ethiopia: the people who wield real power – in the case of Algeria the military nomenclature – have no intention to impose term limits on themselves.

Chapter Eight

The independence of the judiciary: Constitutional guarantees and practical clout

A major task of the judiciary is to provide criminal justice and ensure that citizens obey the laws of the country. However, an equally important task, particularly for the higher courts, is to function as the third independent arm of government, checking the legality of the executive's policies and balancing the executive's urge for far-reaching powers with the constraints of the constitution. The independence of the judiciary and the non-partisan execution of its role as a watchdog over the executive's adherence to constitutional principles is therefore a necessary component of a well-functioning and vibrant democracy. It is a safeguard against arbitrary use of power and coercion by the executive branch against individuals and groups within the population.

As in previous chapters, a distinction is made between, on the one hand, constitutional and legal guarantees of the judiciary's independence, and on the other, the degree to which this independence is respected in practice, by the executive powers as well as by judges themselves. For the sake of comparison the countries are grouped into the following categories: First, countries that have strong constitutional and legal safeguards against political interference in the work of the judiciary, and where political actors also respect these in practice. In this group we find South Africa in a class of its own. In the second group are the countries that have the necessary constitutional guarantees of the independence of the judiciary, but which experience some problems of abuse or lack of capacity in practice. These are Nigeria, Uganda (both of which score higher in this chapter than in any previous ones) and Kenya. Third, Ghana and Senegal, which have both tended to score higher on the other commitments reviewed in this study, have some flaws in the constitutional guarantees and institutional arrangements of the judiciary – flaws that are reflected in some political abuses of the legal system. Fourth and last come Algeria and Ethiopia, the two countries that by now can be singled out as having come the least far in their democratisation process according to the commitments discussed in this shadow peer review. The constitutions of both countries provide too weak protection of the judiciary against the many and serious political manipulations and abuses of the judicial system that have taken place during the review period.

Before we turn to the four categories, it is important to highlight a problem common to all eight countries under review: the judiciary's lack of resources, staff and infrastructure. While this problem may be more acute in some countries (Nigeria) than others (South Africa), it is a serious hindrance for the judiciary's ability to perform its proper role. The consequences of resource problems and a backlog of cases pose a less serious threat to democracy in countries that suffer little political interference with the judiciary than in countries where the law is used as a coercive tool against political opponents. Some countries, like South Africa and Ghana, have or are about to put in place particular mechanisms to make sure that politically sensitive or otherwise important cases are fast-tracked.¹⁰⁸ In other countries political disputes have to wait for as long as other cases, thus undermining the workings of democracy. In Nigeria, for instance, none of the hundreds of petitions filed immediately after the 2003 general election complaining about aspects of how the election was held had been heard eight months later.

Regardless of political abuse of the judiciary or not, it is a breach of individual human rights and a serious human security problem if potentially innocent people have to wait for years until their cases are heard, especially in cases such as in Nigeria where suspects have been kept in detention for up to ten years awaiting trial.¹⁰⁹

The power of a strong constitution

South Africa's constitution is famous across the world as a strong and liberal document. This can be seen in the numerous safeguards put in place to ensure the independence and power of the judiciary. Apart from guaranteeing that 'the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice',¹¹⁰ it has also put in place strict procedures for the hiring and tenure of judges – particularly the judges of the Constitutional Court – to ensure that qualified candidates without obvious party-political connections and biases are appointed and that, once they are appointed, they cannot be fired for reasons of political expediency.¹¹¹ Therefore, it can be said that judges have security of tenure. Furthermore, no abuses of the system have taken place.¹¹²

The courts have functioned well as the third independent arm of the state and exercised meaningful oversight over executive and parliamentary actions. The judiciary is generally considered to be politically neutral and non-partisan. Although there have been instances

where complaints have been lodged over partisan judges, the Constitutional Court has in such cases unanimously rejected the claims.

Court rulings are respected by the executive. For instance, President Mandela had to obey a Constitutional Court order after a judgment¹¹³ ruled that he had acted unconstitutionally in amending the Local Government Transition Act, 209 of 1993. The only wobble in the South African government's respect for the decisions of the courts came in 2002, when the Minister of Health, Dr Manto Tshabalala-Msimang, for a brief time indicated her will to ignore the ruling by the Constitutional Court that the state must provide the anti-retroviral drug Nevirapine to prevent mother-to-child transmission of HIV. However, the minister soon backtracked after a media storm of criticism.¹¹⁴

Arriving at judicial independence

Compared to the many problems Nigeria faces regarding the other commitments to democracy studied in this monograph, the country's judicial system is faring relatively well. One reason for this may be the country's choice of an American model of democracy where the Supreme Court has a strong, independent and highly respected role within the political system. The independence of the judiciary is guaranteed in the Nigerian constitution, with slightly fewer safeguards regarding hiring and firing than in South Africa. Nevertheless, it is difficult for the president to make inappropriate appointments to the supreme and high courts since he needs a two-thirds majority in the Senate to back his decision.¹¹⁵

The courts have generally exercised real oversight over executive and parliamentary actions. For instance, in May 2002 the Supreme Court nullified as unconstitutional an electoral act passed and signed into law a year earlier, which extended the tenure of local government councils by one year.¹¹⁶ Similarly the courts called the electoral commission to order when it imposed unconstitutional guidelines for the registration of political parties.¹¹⁷

Thus, the judiciary has largely been successful in portraying itself as politically neutral and unbiased in dealing with matters concerning the ruling party. However, some individual judges have blemished this reputation. For instance, Justice Fred Egbo-Egbo of the Federal High Court in Abuja had over time established a reputation as a judge who always made rulings in favour of the federal government, particularly the presidency.

However, the National Judicial Council sent the judge on indefinite suspension on 8 October 2003 after he made one of his most controversial verdicts:¹¹⁸ The judge, becoming part of a political campaign led by a businessman known to have close political ties with president Obasanjo to overthrow the governor of Anambra State, ruled that the governor must vacate his office despite clear constitutional provisions shielding the governor from such litigation while still in office.¹¹⁹

Uganda's 1995 Constitution also provides adequate guarantees for the independence of the judiciary.¹²⁰ The president appoints the Chief Justice, justices of the Supreme Court, justices of the Court of Appeal and judges of the High Court, on the advice of the Judicial Service Commission and the approval of parliament. Judges have security of tenure and, as is the case in South Africa, the constitution sets stringent provisions for their removal from office.

Despite operating in a difficult political context, and at times being objects of criticism by high-level politicians, the courts have managed to remain relatively free of political interference and retained the ability to provide meaningful oversight over executive and parliamentary actions. The judiciary has jealously guarded its independence and has made some courageous decisions that are unfavourable to the incumbent regime. While the lack of party politics and the tendency to attempt to suppress opposition viewpoints have shown up as serious impediments to further democratisation in Uganda, the strength of the judiciary may become an important pillar on which to build a stronger democracy in the future.

Kenya has more – and more serious – practical problems than the two previous countries in this group, but like those two, it has proper constitutional guarantees of the independence of the judiciary, most of which have been in place since 1963. These guarantees include the security of tenure for judges.¹²¹ However, there have been cases where judges have left without a judicial tribunal hearing. In 1986 two High Court judges retired early without giving reasons why, while two other judges resigned amidst tremendous publicity in 1987 and 1988.¹²²

While the judiciary and courts are formally independent from the executive, the president's wide-ranging powers and systems of patronage have led to individual members of the judiciary being indebted to him.¹²³ Kenya has as a result had a history of

political interventions in individual legal cases. In early 1998, the UN Special Rapporteur on the independence of judges and lawyers came out with strong criticism of Kenya's judiciary, drawing the government's attention to:

(...) the fact that the judicial system was under-funded and that the President of Kenya made "presidential comments" publicly predicting the outcome of pending cases. Pursuant to one such comment, former Chief Justice Hancox reportedly issued a circular to all magistrates ordering them to follow the President's directive. Further, it was alleged that sensitive political cases were not allocated to judges who are regarded as being either pro-human rights or completely independent. In addition, the Special Rapporteur received allegations that lawyers supporting human rights or opposition parties were harassed and economically sanctioned. In this regard, lawyers suffered excessive tax demands and they often received threats, were summoned to the police station for questioning and were asked to surrender clients' files.¹²⁴

Kenya's serious problems regarding the independence of the judiciary are less related to the judiciary's constitutional status than to the fact that both government politicians and some judges do not respect this constitutional status. Ghana and Senegal, discussed below, on the whole have a more independent judiciary than Kenya does, but are discussed separately because the problems faced in these countries are often due to legal loopholes rather than outright disregard for the law.

Legal loopholes and political opportunism

Ghana's constitution states that 'the judiciary shall be independent and subject only to the Constitution' and that '[n]either the President nor Parliament nor any person acting under the authority of the President or Parliament or any other person whatsoever shall interfere with Judges or judicial officers (...) in the exercise of their judicial functions'.¹²⁵ However, some strategic loopholes undermine this constitutional guarantee. First among these are the vast appointing powers granted to the president and, particularly, his ability to appoint an unlimited number of judges to the Supreme Court. This means that, although the president cannot sack judges easily,¹²⁶ and must have the approval of the majority of parliament,¹²⁷ he can generally stack the Supreme Court with appointees who are friendly disposed to the government. For instance, when taking office in 2001, President Kufuor added four justices to the Supreme Court at a time when the Court was hearing a politically controversial trial of officials of the former NDC government. Thus,

presidential dominance, in law and in practice, is a major factor undermining the effectiveness of the judiciary in functioning as a guard dog of the constitution and as a counteracting force vis-à-vis the executive.

Another potential loophole is the Chief Justice's power to determine the composition of the Supreme Court panel that gets to hear and decide a given case. This opens up for a politically malleable Chief Justice to use this power to benefit his or her political allies. However, the current Chief Justice, George Acquah, appointed in June 2003, is widely respected as a fair and impartial jurist and reform-minded administrator.

Ghana's juridical loopholes are compounded by practical limitations, including the judiciary's weak finances and operational dependence on the executive branch. Constitutionalism is also undermined by the prevailing culture of paternalism and patron-client relation. Politicians and public officials dispense patronage and largesse in exchange for votes and support. In such a system patrons expect clients to show gratitude. Thus, questioning the actions of patrons or asserting one's rights under the constitution are actions viewed as unacceptable.

The question whether the judiciary is politically neutral is partly a matter of perception. However, the method with which Supreme Court judges are appointed raises suspicions of bias among the populace. The independence of the judiciary has been tested many times since 1993 in cases brought by private parties challenging particular governmental act as unconstitutional. The government is also routinely sued and named as defendant in commercial cases. The outcomes of these cases do not reveal a consistent or predictable pattern: the government has lost several but won others. Concerns about judicial independence nevertheless continue to be voiced. There is a widespread perception of judicial corruption, which is made worse by the long time it takes from filing a case to the delivery of judgment.

Senegal's problems are similar to those of Ghana. The separation of powers has long been entrenched in Senegal's Constitutions.¹²⁸ Still, in Senegal (as in France, Senegal's institutional role-model), in reality this independence is less assured. There is widespread belief that the highest ranks in the judiciary are politically biased. This is particularly the case for the Conseil Constitutionnel, all of which members are nominated by the

president. While President Wade repeatedly denounced the political nature of his predecessor President Diouf's nominations while he was in opposition, he has not shied away from copying this tactic when in power. He has thus replaced all of Diouf's nominees as soon as their mandates came to end, replacing them with a number of his own supporters – including Mireille Ndiaye, the widow of Fara Ndiaye, the former second in command of the ruling party, PDS.

In the lower sections of the judiciary, there is widespread knowledge of corruption and of judges letting themselves be influenced by political or religious notabilities. Before the change of government in 2000, the courts rarely acted against the ruling party in electoral matters. In 1993, electoral controversies led to the head of the Cour Constitutionnelle resigning and his deputy being murdered after he held back the publication of the election results. His murder is still unsolved. There was however one good result from this traumatic event, since it gave momentum to supporters of a stronger, more institutionalised and independent judiciary in Senegal. Finally, as is Ghana, lack of resources has greatly compounded the problems of political influence over low-paid and overworked judicial officers.

The judiciary as an arm of government rather than a separate state power

Algeria and Ethiopia both have constitutional and practical impediments to an independent judiciary. In both cases the problem lies with the idea and practice of treating the judiciary as an arm of government rather than as its counterweight. Both countries have nominal guarantees in their constitution that judicial power is independent and is tasked with holding the executive to account. However, in Algeria, the appointment of magistrates and their transfer and career progress are decided by a High Council of Magistrates, which is presided over by the Algerian president. The president thus wields a form of direct political control over the decisions of magistrates. This control has shown itself in how the thousands of court cases concerning disappeared persons have fared in the legal system. About 7000 people arrested by the various branches of the security forces since the outbreak of civil war in 1992 have 'disappeared' without any report to their families of whether they are dead or alive or why they have been arrested. So far, not one case brought against security forces to criminal courts has led to a successful conviction, and state prosecutors and judges have found various ways of blocking such cases.¹²⁹

Ethiopia does not have a tradition of courts acting independently as a constraint on the executive branch of government. Some judges in some parts of the country have at times attracted attention by asserting their independence of government officials in cases where the latter have had a private interest. Probably most famous of these cases took place in Addis Ababa, when a judge sentenced the minister of justice to jail for four weeks after he refused to hand over a suspect to the courts. However, the minister was immediately pardoned by the president, at the prime minister's request, and the judge was soon after transferred in a move widely seen as punishment.¹³⁰ Furthermore, although there is a Constitutional Court, it has no power to overrule legislation on constitutional grounds, but can only refer such cases to the House of the Federation (the part of the legislature that represents the different 'nations, nationalities and peoples' of Ethiopia) for final decision.

In rural areas, the concept of judicial independence hardly exists in practice: Judges are partisan – on the side of the government – and do not see their role as that of upholding the constitution or exercising meaningful oversight over the executive or legislature. In theory, judges have security of tenure until retirement. In practice, local administrators have removed judges they do not consider loyal. Finally, the Ethiopian judiciary is severely under resourced and struggles to recruit adequately qualified judges due to poor pay and difficult working conditions. Compounding this, the 'ethnic federal' character of the Ethiopian state means each region needs to find judges who belong to their appropriate nationality to fill the positions in their courts.

Courts are congested and extremely slow, with a long backlog of cases that have pended for years. This also affects politically sensitive cases: For instance, no sentences have yet been handed down for members of the previous regime who were charged with gross human rights violations after their overthrow in 1991.

Conclusion

Apart from Ethiopia and Algeria, the review of the independence of the judiciary reveals many positive policies and practices – as well as some problems and shortcomings. The overall conclusion based on this sample is that African judiciaries have often done a good job of fighting for their own independence and for the respect of their countries' constitution, even when faced with severe obstacles including the harassment and murder of judges.

Chapter Nine

Conclusion

A relatively clear picture has been gradually building over the course of this study. This is that there is a palpable difference between Ghana, Kenya, Senegal and South Africa, on the one hand, and Algeria, Ethiopia, Nigeria and Uganda, on the other. The latter group tends to fare worse on most of the indicators studied here. They also have in common the existence of powerful political actors who operate outside the norms and principles of a democratic system.

In Algeria and Nigeria, the role of the military remains central for understanding the political dynamics of the country. While in Algeria military leaders still hold *de facto* political power, they have receded more into the background in Nigeria. However, considering the long history of military coups in Africa's biggest country, the potential interference of the military if election results go against their preferred candidate (despite rigging and manipulations) still overshadows Nigeria's democratisation process. There are nevertheless many redeeming features of Nigeria's political system, such as the relatively independent judiciary and the many improvements that have taken place since 1999 and the return of civilian rule. In Algeria, however, the process of democratisation seems to have stagnated at a stage short of democracy.

In Ethiopia and Uganda, military coups may perhaps be less of an issue, but both countries have a political leadership with weak democratic credentials and credibility. There are few signs (and more signs to the opposite) that the existing political regimes in these two countries would give up power voluntarily to an opposition party, regardless of its popular support or election victories. This seems particularly clear in Ethiopia, where power transfers (except when occurring due to the natural death of the leader) have never taken place peacefully and where a system of bureaucratic hinders combined with intimidation and harassment have ensured that opposition parties are kept in check. In Uganda, the government's commitment to democracy is more ambivalent, and many positive developments have taken place over the last ten to fifteen years, including the adoption of a new constitution in 1995. However, as Paul Omach in his country report writes, Uganda is at a crossroads, and the next few years will show whether it goes further down the path of democracy or lapses back into one-party, one-person,

authoritarian rule. Whether President Yoweri Museveni decides to run for an unconstitutional third term or not will be a key indicator of which path Uganda will choose.

Generally, while there has been a process of democratisation in all four countries since the end of the Cold War, this process is not likely to progress further until all politically powerful actors (whether on-stage or behind the curtains) within Algeria, Ethiopia, Nigeria and Uganda change heart and begin to believe in the desirability of fully-fledged democracy for their countries.

The other group of four countries, Ghana, Kenya, Senegal and South Africa, have come further in their democratisation. South Africa is a fully-fledged democracy, with the caveat that the sitting government has not yet been faced with a real challenge to its power. The test that remains for South Africa is whether, when some time in the (perhaps distant) future it loses an election, the ANC government will step down gracefully.

All four of the 'group of hopefuls' have embarked on their democratisation push very recently. Apart from South Africa, where the great shift took place in 1994, the major gains have taken place in the last two to four years, when power was handed over to the opposition by long-serving leaders who had run their countries for decades. Considering this recent history, the prospects for democratic change and consolidation on the African continent are indeed hopeful even in countries with seemingly entrenched regimes. However, to conclude this report, recent gains can also easily be lost again. It will take a concerted and sustained effort from government and opposition parties, media and civil society groups, judges and lawyers in the judicial system, and not least, the military, for democracy to grow deep and strong roots in all eight countries that have been subject to this review.

¹ Dr Anne Hammerstad is a senior researcher with the South African Institute of International Affairs, one of the partners of the African Human Security Initiative.

² The sixteen countries are: Algeria, Burkina Faso, Cameroon, Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa and Uganda. Of the 16, Ghana and South Africa will be the first two countries to be reviewed.

³ African Human Security Initiative, *Human and State Security in Africa – a Conceptual Framework for Review* (Pretoria: AHSI, December 2003, draft 3), p. 20.

⁴ See African Human Security Initiative, *Human and State Security in Africa – a Conceptual Framework for Review* (Pretoria: AHSI, December 2003, draft 3), pp. 17-22.

⁵ Matlosa interviewed in eAfrica, 'How Should Civil Society Respond to Peer Review', in *eAfrica: the Electronic Journal of Governance and Innovation*, volume 1, October 2003 (Johannesburg: SAIIA, October 2003), p. 13.

⁶ Anne Hammerstad, *Refugee Protection and the Evolution of a Security Discourse: The United Nations High Commissioner for Refugees in the 1990s* (Oxford, DPhil thesis, 2003), p. 30.

⁷ Jakkie Cilliers and Kathryn Sturman, *Commitments by African Heads of State to Peace, Democracy, Human Rights and Associated Issues*, Paper no. 58 (Pretoria: ISS, July 2002).

⁸ The importance of term limits is noted in the Memorandum of Understanding for the AU's *Conference for Conflict, Security, Stability, Development and Co-operation in Africa* (CSSDCA).

⁹ The documents, together with many others, can be found on the AHSI website, at www.africanreview.org/commit.htm.

¹⁰ Jakkie Cilliers and Kathryn Sturman, *Human and State Security in Africa – A Conceptual Framework for Review*, AHSI Report no. 1 (Pretoria: AHSI, third draft, January 2004), p. 1. [check publishing details]

¹¹ Donor Information Centre on Elections in Kenya. Elections 2002: Presidential Elections Results at a Glance

¹² *Ibid*, p 132

¹³ See Christopher Clapham, *African Human Security Initiative: Country Profile – Ethiopia* (www.africanreview.org, 2003); Siegfried Pausewang, *Local Democracy and Human Security in Ethiopia: Structural Reasons for the Failure of Democratisation*, SAIIA Report (Johannesburg: SAIIA, forthcoming); and Siegfried Pausewang, Kjetil Tronvoll and Lovise Aalen, *Ethiopia since the Derg: A Decade of Democratic Pretension and Performance* (London: Zed Books, 1992)

¹⁴ *Ibid*, Section 134. [fix reference]

¹⁵ Dulue Mbachu, 'Majority ethnic group offers ceasefire in Nigeria's troubled oil delta', *The Associated Press*, 27 March 2003.

¹⁶ 'Delays, violence mar Nigerian elections', *The Associated Press*, 12 April 2003.

¹⁷ *Library of Congress Country Studies: Algeria* (Washington: December 1993).

¹⁸ Richard Vengroff, *Decentralization, Democratization and Development in Senegal*, Paper prepared for delivery at the Yale Colloquium on Decentralization and Development (Yale, 21 January 2000), p. 10.

¹⁹ Pausewang et al, *Ethiopia since the Derg*, p. 12.

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- ²⁰ Pausewang et al, *Ethiopia since the Derg*, p. 167-8
- ²¹ Njuguna Ngethe, Jeremiah Owiti, and Shadrack W. Nasongo, *Democracy Report* op. cit., p30 [FIX REF]
- ²² For the latest promise see: "NPP won't abuse incumbency," *Daily Graphic*, December 9, 2003, p. 12
- ²³ See chapter three.
- ²⁴ Art. 89 of the Constitution established the Council "to counsel the President in the performance of his functions. It has a membership of 25, eleven of whom are appointed by the President; ten elected to represent the 10 regions; and 4 institutional representatives.
- ²⁵ Ghana's Constitution (1992), art. 146.
- ²⁶ Kenya's Constitution, Section 41 (5,6,7).
- ²⁷ Nigeria's Constitution, Section 154.
- ²⁸ Nigeria's Constitution, Section 158.
- ²⁹ South Africa's Constitution (1993), Act 200.
- ³⁰ The Electoral Commission Act 51 of 1996.
- ³¹ *Ibid*, Sec. 7(1). [check reference]
- ³² Electoral Commission Act, 51 of 1996, Sec. 20(1).
- ³³ Independent Electoral Commission Act, 150 of 1993, Sec. 8(1), and Electoral Commission Act, 51 of 1996, Sec. 3(1).
- ³⁴ *Ibid*, Sec. 7(2)(3)(a). [check reference]
- ³⁵ Constitution of the Republic of Uganda, 1995.
- ³⁶ In February 1999, the commission had 178 full-time national staff, 142 full-time provincial officials, and 4,443 local electoral officers. In addition, over 72,500 temporary staff did voter registration and 220,000 volunteers were used for the 1999 election. In 1998/1999, the IEC's budget was R640 million. Bam, B and M. Mchunu, *Briefing by the IEC* (12 February 1999), www.polity.org.za/html/govdocs/speeches/1999/sp0212.htm. The figures were also satisfactory leading up to the 2004 election, with R478m being allocated for 2004/05. See National Treasury, 'Revenue Trends and Tax Proposals', in *Budget Review 2003* (2003), www.polity.org.za/pdf/NatBudgetReview2.pdf
- ³⁷ Electoral Commissions Forum of SADC Countries, *South African Elections Observer Mission Report – June 1999*, (Auckland Park: Electoral Institute of Southern Africa, 1999), p. 29.
- ³⁸ Electoral Act, 73 of 1998, Sec. 58.
- ³⁹ See: National Governance Programme, *Funding of Key Governance Institutions: A Research Report* (Accra: August 2003, unpublished).
- ⁴⁰ Electoral Commission of Kenya, *Towards Free and Fair Elections* (Nairobi: June 1999), p 10.
- ⁴¹ Sapa, *No Vote for South Africans Living Abroad* (26 April 1999), www.anc.org.za/elections/news/apr/en042707.html.
- ⁴² See Breda Atta-Quayson, "Procurement of materials for Election 2004: EC's Committee now in place," *Daily Graphic*, December 9, 2003, p. 1.
- ⁴³ UNECA, Executive Summary, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report – Ghana* Unpublished.
- ⁴⁴ 'Statement of the National Democratic Institute International Election Observer Delegation to Nigeria's April 19 Presidential and Gubernatorial Elections', 21 April 2003, www.ndi.org

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- ⁴⁵ See reports of local and foreign election monitors at the website of the United Nations Electoral Assistance Project, www.unnigeriaelections.org/observer_reports/april/23/.
- ⁴⁶ From interview by Dulue Mbachu (see his country report on Nigeria at www.africanreview.org) with a civil servant who worked as an election official in Delta State.
- ⁴⁷ Republic of Uganda, *Report of the Select Committee on Election Violence* (September 2002), pp. 27 and 32.
- ⁴⁸ Republic of Uganda, *Report of the Select Committee on Election Violence*.
- ⁴⁹ Republic of Uganda, *Report of the Select Committee on Election Violence*, p.19
- ⁵⁰ 'Statement of the National Democratic Institute (NDI) International Election Observer Delegation to Nigeria's April 19 Presidential and Gubernatorial Elections', 21 April 2003, www.ndi.org
- ⁵¹ Geoffrey B. Tukahebwa, 'The Legal and Institutional Framework of the 1996 Presidential and Parliamentary Elections in Uganda', in Sabiti Makara, et. al., *Voting for Democracy in Uganda.*, p. 37
- ⁵² Electoral Laws Amendment Act, No. 34 of 2003, Sec. 8(2)(f).
- ⁵³ Electoral Institute of Southern Africa (EISA). *South African IEC: Overview of the delimitation process and Geographic Information Systems (GIS)*, www.eisa.org.za/WEP/southafrica_iec2.htm (n.d.).
- ⁵⁴ Institute for Education in Democracy, *Report of the 1997 General Elections*, Op. cit., p. 48
- ⁵⁵ Institute for Education in Democracy, *National Elections Data Book*, op. cit., p. 13
- ⁵⁶ Institute for Education in Democracy, *Enhancing the Electoral Process in Kenya*, Op. Cit., p. 91.
- ⁵⁷ Uganda's Constitution (1995), art. 61 (e).
- ⁵⁸ Geoffrey B. Tukahebwa, 'The Legal and Institutional Framework of the 1996 Presidential and Parliamentary Elections in Uganda', pp. 36-39; Republic of Uganda, *Report of the Select Committee on Election Violence.*, pp. 124-125
- ⁵⁹ An investigation of ghost soldiers in the army is currently taking place. See Ogen Kvin Aliro and Alex B. Atuhaire, 'inyefunza to Lead New Investigation' in *The Monitor* (Kampala: 3 December 2003) p. 1.
- ⁶⁰ Adewale Maja-Pearce, *From Khaki to Agbada: A handbook for the February, 1999 elections in Nigeria* (Civil Liberties Organisation, 1999), pp. 35.
- ⁶¹ Oma Djebah, 'Hiccups in voters' registration', *The Guardian*, 19 October 1998.
- ⁶² IRIN, 'Nigeria: Focus on the problems of voter registration', *United Nations Integrated Regional Information Network* (Nigeria: 25 September 2002, www.irinnews.org).
- ⁶³ *Ibid* [check in original report]
- ⁶⁴ *Statement of the National Democratic Institute (NDI) International Election Observer Delegation to Nigeria's April 19 Presidential and Gubernatorial Elections* (21 April 2003), www.ndi.org
- ⁶⁵ South Africa had several political parties also during apartheid, but the racial segregation and the exclusion of non-white parties from the elections that really counted, meant that this system could not be characterised as multi-party pluralism.
- ⁶⁶ E.g. the Constitution of the Republic of South Africa 1996, Act 108 of 1996, Sec. 19(1).
- ⁶⁷ Njuguna Ngethe, Jeremiah Owiti, and Shadrack Nasongo, *Democracy Report for Jamhuri Y Kenya*, op cit, p. 17.
- ⁶⁸ European Union Election Assistance and Observation Mission in Kenya 2002, *Preliminary Statement*, (December 2002), p. 2.
- ⁶⁹ See e.g. South Africa's Regulation of Gatherings Act, Section 1(vi).

⁷⁰ See: *Media Coverage of the 2000 Elections*, Accra: Ghana Centre for Democratic Development, Research Report 8, 2001, pp. 37-38.

⁷¹ Electoral Commissions Forum, *South African Elections Observer Mission Report*, p. 19.

⁷² E.g. Ghana's Constitution, art. 55, sec. 15; and Ghana's Political Parties Act, 2000, Part III, sec. 23-24.

⁷³ Electoral Commissions Forum, *South African Elections Observer Mission Report*, p. 18. [YEAR!]

⁷⁴ Human Rights Watch, World Report: Algeria', 2003

⁷⁵ Algeria Watch, 2003

⁷⁶ Sallah Eddine Sidhoum, 'Situation des droits humains en Algérie Année 2000, *Algeria Watch*, March 2003

⁷⁷ Siegfried Pausewang, Kjetil Tronvoll and Lovise Aalen, *Ethiopia Since the Derg: A Decade of Democratic Pretension and Performance* (London: Zed Books, 2002), p. 12.

⁷⁸ This leads to independent newspapers exercising self-censorship about the military's role in Algerian politics. Human Rights Watch, World Report: Algeria, 2003

⁷⁹ Al Jazeera.net, 26 August, 2003. .

⁸⁰ Sections 39-40.

⁸¹ IRIN, Nigeria: Supreme Court gives green light to new parties', *United Nations Integrated Regional Information Network*, 11 November 2002, www.irinnews.org.

⁸² IRIN, Nigeria: Court rules fees charged by electoral body illegal', *United Nations Integrated Regional Information Network*, 7 February 2003, www.irinnews.org.

⁸³ Chuks Okocha and Yakubu Musa, 'How Okadigbo was tear-gassed – Witness', *ThisDay*, 27 September 2003.

⁸⁴ IRIN, Nigeria: Police break up march by human rights protesters', *United Nations Integrated Regional Information Network*, 3 December 2003, www.irinnews.org.

⁸⁵ 'Presidential and Gubernatorial Elections 2003, Second Preliminary Statement', EU Election Observation Mission, 22 April 2003, www.eueomnigeria.org.

⁸⁶ For instance, the OAU document setting out the NEPAD goals includes among these 'political pluralism, allowing for the existence of several political parties and workers' unions (...)'. See chapter one, table 1.

⁸⁷ Republic of Uganda, *Report on the Referendum 2000 on Political Systems in Uganda*, (Kampala: Electoral Commission, January 2001).

⁸⁸ See preface on the names of the writers of the country reports, and go to www.africareview.org to read the reports in their entirety.

⁸⁹ Institute for Education in Democracy. *Report of the 1997 General Elections*, Op. cit., p. 104-105

⁹⁰ The Institute for Education in Democracy, *Enhancing the Electoral Process in Kenya*, Op. cit., p. 128

⁹¹ Njuguna Ngethe, Jeremiah Owiti, and Shadrack Nasongo, *Democracy Report for Jamhuri Ya Kenya*, op cit p. 8.

⁹² This inequality appears in all sorts of indicators: in 1999, the Human Development Index reached 0.61 for Dakar, while the Senegalese average was 0.43; in the same year, the Human Poverty Index was 29.77 for Dakar, against a Senegalese average of 43.83 (60.14 for the region of Kolda).

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- ⁹³ Constitution of the Republic of South Africa 1996, Act 108 of 1996, Sec. 9(3).
- ⁹⁴ See Marina Ottaway, Jeffrey Herbst and Greg Mills, 'Africa's Big States: Towards a New Realism', in *Policy Outlook* (Washington: Carnegie Endowment for International Peace, February 2004).
- ⁹⁵ Japan Today, 3 September 2002
- ⁹⁶ See Hugh Roberts, 'Algeria's Contested Elections', *Middle Eastern Report*, Winter 1999; Salah-Eddine Sidhoum, *Algeria Watch*, March 2003; Salima Ghezali in *Libération*, 29 March 1999. Human Rights Watch, 2003 reports that none of the military security agencies have any public accountability.
- ⁹⁷ Mahamoud A Shaikh, Muslimedia, March 1-15, 1999
- ⁹⁸ See footnote 2 [add footnote]
- ⁹⁹ For in-depth analysis see Lahouari Addi, *Le Quotidien d'Oran*, 12-15 October 2003
- ¹⁰⁰ See Algeria Interface, 4 February 2003 for details of payments made to parliamentarians.
- ¹⁰¹ Human Rights Watch, [The Warri Crisis: Fuelling Violence](#), December 2003, www.hrw.org
- ¹⁰² See Boniface Egboka, 'The Yorubas, the Hausa-Fulani and Nigerian Destiny', at www.nigerdeltacongress.com/warticles/yorubas_the_hausafulani_and_nige.htm.
- ¹⁰³ See Chapter One.
- ¹⁰⁴ South Africa's Constitution, Article 83(a) and 85(1).
- ¹⁰⁵ Ghana's Constitution, Article 66.
- ¹⁰⁶ Kenya's Constitution, Section 4. The constitution is currently under review. There is a feeling among many Kenyans that too many powers are vested in the President. The draft constitution therefore suggests that there should be an office of Prime Minister next to the presidency.
- ¹⁰⁷ Senegal's Constitution, article 27.
- ¹⁰⁸ This was the case in the South African Constitutional Court's ruling on the use of different types of identity documents to register for the election in 1999. See *New National Party v Government of the Republic of South Africa*, 1999 (3) SA 191 (CC).
- ¹⁰⁹ Civil Liberties Organisation, *Annual Report 1999*, CLO, p. 37.
- ¹¹⁰ South Africa's Constitution, section 165.
- ¹¹¹ Constitution of the Republic of South Africa 1996, Act 108 of 1996, Sections 174(4), 176, AND 177 (1).
- ¹¹² Some minor issues were raised by the UN rapporteur on the independence on judges and lawyers in his country report in 2001, but overall the South Africa judiciary, particularly the higher courts, was regarded as independent. See Param Kumaraswamy, *Civil and Political Rights, Including Questions of Independence of the Judiciary, Administration of Justice, Impunity: Report of the Special Rapporteur on the independence of judges and lawyers, submitted in accordance with Commission resolution 2000/42: Addendum, Mission to South Africa* (Commission on Human Rights, fifty-seventh session, doc. no. E/CN.4/2001/65/Add.2, 25 January 2001).
- ¹¹³ Executive Council of the Western Cape Legislature v President. 1995 (4) SA 877 (CC)
- ¹¹⁴ *Minister of Health v Treatment Action Campaign*, 2002 (5) SA 721 (CC).
- ¹¹⁵ Nigeria's Constitution, section 6.
- ¹¹⁶ Mike Ikhariale, 'The Rule of Law Triumphs as Supreme Court Nullifies Obnoxious Sections of Electoral Law', <http://www.gamji.com/NEWS1260.htm>.
- ¹¹⁷ See chapter three above.
- ¹¹⁸ Kemi Ogedengbe, 'Justice Egbo-Egbo Suspended', *Daily Trust*, 9 October 2003.

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- ¹¹⁹ Joseph Nwankwo, 'Quit office now, Ngige tells Egbo-Egbo', *Daily Times*, 9 September 2003.
- ¹²⁰ Constitution of the Republic of Uganda, 1995, (art. 128)
- ¹²¹ Kenya's Constitution (2001), section 61(1,2) and 62(4,5,6).
- ¹²² James Thuo Gathii, *The Dream of Judicial Security of Tenure and the Reality of Executive Involvement in Kenya's Judicial Process* (Nairobi: Kenya Human Rights Commission, 1994), p, 12-14.
- ¹²³ Njuguna Ngethe, Jeremiah Owiti, and Shadrack Nasongo, *Democracy Report for Jamhuri Ya Kenya*, op. cit p. 9.
- ¹²⁴Param Cumaraswamy, *Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment: Report of the Special Rapporteur on the Independence of Judges and Lawyers* (The Commission on Human Rights, fifty-fourth session, doc. No. E/CN.4/1998/39, 12 February 1998).
- ¹²⁵ Ghana's constitution (1992), articles 125 and 127.
- ¹²⁶ Ghana's Constitution, article 146.
- ¹²⁷ Ghana's Constitution, article 144.
- ¹²⁸ Senegal's Constitution (2001), articles 88 and 90.
- ¹²⁹ For evidence and details see *Human Rights Watch* Volume 15(11): 'Truth and Justice on Hold: New State Commission on Disappearances', December 2003
- ¹³⁰ Pausewang, *Local Democracy and Human Security in Ethiopia: Structural Reasons for the Failure of Democratisation*, SAIIA Report, forthcoming (Johannesburg: SAIIA, 2004).