



CIVIL SOCIETY PERSPECTIVES ON AFRICAN UNION MEMBER STATE COMMITMENTS TO DEMOCRATIC GOVERNANCE



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Summary of results

Assessment of the compliance of Member States with the provisions of African Union (AU) governance instruments and African Peer Review Mechanism (APRM) recommendations has been a gradual process. AU institutions monitor and report on the levels of domestication and active compliance, but state reporting on implementation progress will take several years to institutionalise. The momentum provided by the institutionalisation of the African Governance Architecture (AGA) provides the space for civil society engagement on the levels of compliance.

The African Union recently formalised its African Governance Architecture (AGA) to consolidate the democratic governance norms, institutions and processes amongst AU Member States. The associated AGA Platform includes actors with a formal mandate to promote good governance including the AU Commission, people and human rights institutions, the APRM, the Advisory Board on Corruption, Economic, Social and Cultural Council (ECOSOC); Regional Economic Communities (RECs) and the Pan-African Parliament.

This study, a collaborative effort between the Open Society Foundation's Africa Regional Office (AfRO), the Wits School of Governance and civil society organisations in East, West and Southern Africa, provides a civil society assessment of AU Member States' capacity to actively implement AGA commitments. The findings and recommendations from this research should provide the depth of a civil society perspective on Member State compliance to AU commitments.

The report explores civil society organisations' (CSOs) perceptions and judgements about the extent to which Nigeria, Ghana, Ethiopia, Rwanda, South Africa and Zambia comply with signed and ratified governance commitments. These include the African Charter on Democracy, Elections and Governance (ACDEG); the African Union Convention on Preventing and Combatting Corruption (AUCPCC); and the African Peer Review Mechanism (APRM) recommendations.

The research process involved two workshops with a selection of CSOs to develop and validate the instruments. The theme areas and related indicators used in the instruments are drawn from ACDEG, AUPCC and the APRM. The areas are:

1. Constitutionalism and the rule of law
2. Democratic culture and political pluralism
3. Democratic institutions
4. Regular democratic elections
5. Popular participation

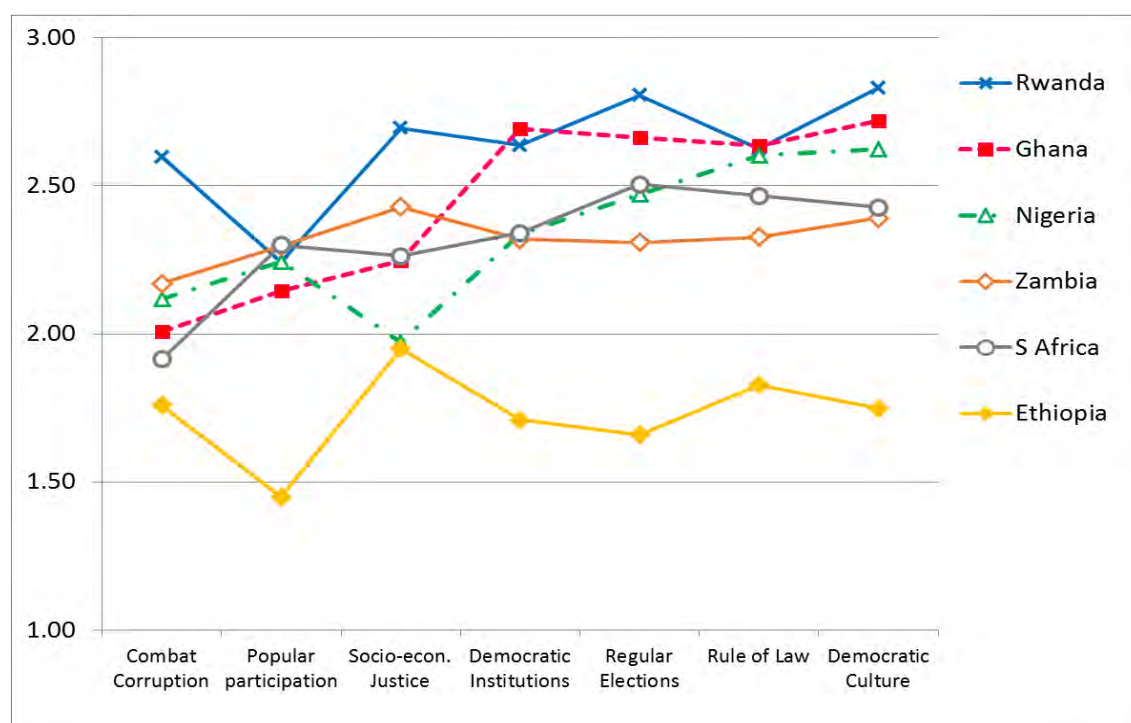
6. Socio-economic justice and service delivery
7. Combatting corruption

The instruments were then used by contracted CSOs in each of the countries to consider formal compliance with commitments, as well as capacity to comply and quality of compliance. The reports are based on a questionnaire administered to in-country CSOs, as well as reviews of relevant documentation, and interviews and workshops. The 116 questionnaires and 6 country reports were used to generate the integrated report.

All six countries comply with the formalities of democratic governance and anti-corruption. On paper, there are constitutions in place, legislatures, independent oversight institutions, regular elections managed by independent bodies, anti-corruption strategies and independent judiciaries. In practice, however, legislatures are often weak, oversight institutions lack authority and corruption is consistently rife across all six countries.

Ethiopia scores lowest in all the areas, and Rwanda and Ghana the highest. Rwanda and Ethiopia dip significantly on popular participation and democratic institutions which are key spaces for citizen engagement and the protection of human rights. This is no surprise given a growing authoritarian culture in these two countries. Nigeria, Ghana and Rwanda seem to do well in ensuring rule of law.

Summary overview of CSO perceptions on democratic governance



Active compliance is affected negatively by issues such as transparency and access to information. The Pan African Parliament is well positioned to

work with AU Organs and take a lead by providing access to relevant information as well as engaging actively with civil society.

Democratic principles, human rights and rule of law are all commitments that Member States make. A notable gap is the rights of the LGBTI communities. This is a matter of sensitivity but a balance between the sanctity of human rights relative to individual state or community preferences should be sought.

Programmes which raise awareness of the importance of parliamentary independence in ensuring accountability and strengthening country democracy are needed. Capacity building for parliamentarians requires championing by the PAP and its Member State representatives.

A more sustained momentum is required to ensure that Member States report on their commitments to the Convention and take steps to stem internal and cross-border corruption.

More work is required to engage issues of economic inclusivity and the manner in which governance improvement efforts are undermined by high levels of economic concentration and a growing reliance on extractive industries.

This collective effort by civil society demonstrates the value of a consolidated approach to assessing Member State compliance with AU instruments.

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Acronyms

A		CCI	Constitutional Council of Inquiry
ACC	Anti-Corruption Commission	CCMA	Commission for Conciliation, Mediation and Arbitration
ACDEG	African Charter on Democracy, Elections and Governance	CDD	Centre for Democratic Development
ACRWC	African Charter on the Rights and Welfare of the Child	CEDAW	International Convention for the Elimination of Discrimination
ADR	Alternative Dispute Resolution	CERD	International Convention on Eradication of Racial Discrimination
AFRC	Armed Forces Revolutionary Council	CGE	Commission for Gender Equality
AfRO	Open Society African Regional Office	CHRAJ	Commission on Human Rights and Administrative Justice
AG	Attorney General	ChSA	Charities and Societies Agency
AG	Auditor General	ChSO	Charities and Societies Organization
AGA	African Governance Architecture	COO	Chief Operating Officer
AGSA	Auditor-General of South Africa	CoRMSA	Consortium for Refugees and Migrants in South Africa
AIDS	Acquired Immune Deficiency Syndrome	COSATU	Congress of South African Trade Unions
ANC	African National Congress	CPI	Corruption Perception Index
APRM	African Peer Review Mechanism	CRC	Child Right Convention
AsgiSA	Accelerated and Shared Growth Initiative for South Africa	CRLC	Cultural, Religious and Linguistic Communities
ATP	Anti-Terrorism Proclamation	CSF	Civil Society Fund
AU	African Union	CSO	Civil Society Organization
AUCPCC	African Union Convention on Preventing and Combatting Corruption	CSOs	Civil Society Organisations
AUCPC	African Union Convention on Preventing and Combating	CSP	Charities and Societies Proclamation
C			
CAT	International Convention against Torture and other Degrading		

CUBP	Clinic Upgrading and Building Programme	F	
D		FEACC	Federal Ethics and Anti-Corruption Commission
DA	Democratic Alliance	G	
DAG	Development Action Group	GCAO	Government Communications Affairs Office
DeafSA	Deaf Federation of South Africa	GDP	Gross Domestic Product
DI	Democratic Institution	GEAR	Growth, Employment and Redistribution
DIF	Democratic Institutions Forum	GEC	Ghana Electoral Commission
DIRCO	Department of International Relations and Cooperation	GOE	Government of Ethiopia
DoJCD	Department of Justice and Constitutional Development	GTP	Growth and Transformation Plan
DP	Development Partner	H	
DPCI	Directorate for Priority Crime Investigation	HDI	Human Development Index
DPME	Department of Planning, Monitoring and Evaluation	HEAL	Halt Elder Abuse Line
DPSA	Department of Public Service and Administration	HIPC	Highly Indebted Poor Countries Initiative
E		HIV	Human Immunodeficiency Virus
ECOSO C	Economic, Social and Cultural Council	HOF	House of Federation
ECZ	Electoral Commission of Zambia	HOPR	House of People's Representatives
EDL	Essential Drugs List	HSF	Helen Suzman Foundation
EFF	Economic Freedom Fighters	HURISA	Human Rights Institute of South Africa
EHRC	Ethiopian Human Rights Commission	I	
EIO	Ethiopian Institute of the Ombudsman	IBA	Independent Broadcasting Authority
EISA	Electoral Institute for Sustainable Democracy in Africa	ICASA	Independent Communications Authority of South Africa
EPRDF	Ethiopian People's Revolutionary Democratic Front	ICC	International Criminal Court
ESAP	Ethiopian Social Accountability Programme	ICCPR	International Covenant on Civil and Political Rights
		ICESCR	International Covenant on

	Economic, Social and Cultural Rights	NGO	Non-governmental Organisation
ICNL	International Centre for Not-For-Profit Law	NGP	New Growth Path
ICRC	International Convention on the Rights of the Child	NHF	National Housing Forum
IDASA	Institute for Democracy in South Africa	NLC	National Liberation Council
IEC	Independent Electoral Commission	NMC	National Media Commission
IFP	Inkatha Freedom Party	NPA	National Prosecuting Authority
L		NPO	Non-profit Organisation
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersex	NPP	New Patriotic Party
M		NRC	National Redemption Council
MDGs	Millennial Development Goals	O	
MDRI	Multilateral Debt Relief Initiative	OECD	Organisation for Economic Co-operation and Development
MISA	Media Institute of Southern Africa	OFAG	Office of the Attorney General
MMD	Movement for Multi-Party Democracy	OFAG	Office of the Auditor General
N		OGP	Open Government Partnership
NACF	National Anti-Corruption Forum	OSF	Open Society Foundations
NADMO	National Disaster Mobilization Organization	P	
NCCE	National Commission on Civic Education	PAIA	Promotion of Access to Information Act
NCOP	National Council of Provinces	PASDE	Poverty Alleviation and Sustainable Development Program
NDA	National Development Agency	P	
NDC	National Democratic Congress	PCP	Parliamentary Capacity Program
NDP	National Development Plan	PF	Patriots Front
NDPP	National Director of Public Prosecutions	PMG	Parliamentary Monitoring Group
NEBE	National Election Board of Ethiopia	PNDC	Provisional National Defence Council
NEC	National Electoral Commission	PNP	People's National Party
		PP	Progress Party

Q		SMC	Supreme Military Council
QASA	QuadPara Association of South Africa	STATS SA	Statistics South Africa
R		STG	Standard Treatment Guidelines
RDP	Reconstruction and Development Programme	T	
RECs	Regional Economic Communities	TB	Tuberculosis
RGB	Rwanda Governance Board	U	
S		UDHR	Universal Declaration of Human Rights
SABC	South African Broadcasting Corporation	UNDP	United Nations Development Programme
SACME Q	Southern and Eastern African Consortium for Monitoring Educational Quality	UNDP	United Nations Development Program
SACP	South African Communist Party	UNIP	United National Independence Party
SADC	Southern African Development Community	UPND	United Party for National Development
SAHO	South African History Online	UPR	Universal Periodic Review
SAHRC	South African Human Rights Commission	V	
SANCB	South African National Council for the Blind	VAT	Value Added Tax
SAPS	South African Police Service	W	
SDGs	Sustainable Development Goals	WEF	World Economic Forum
SFO	Serious Fraud Office	WSG	Wits School of Governance
SGB	School Governing Bodies	Z	
		ZNBC	Zambian National Broadcasting Corporation

Glossary of terms

<i>Civil society</i>	Civil society is the communities of citizens, organised groups, families, non-governmental organisations, trade unions, professional associations and others, distinct from government and business. It comprises of citizens linked by common interests and collective activity.
<i>Combatting corruption</i>	States actively fight against corruption and related offences with the full participation of the media and civil society.
<i>Constitutionalism</i>	A system of constitutional government in which power is distributed and limited by a system of laws that the rulers must obey.
<i>Constitutionalism and the rule of law</i>	States openly support the constitution in their political organisation and the separation of power between the executive, legislature and the judiciary. Civil society acts freely in terms of the rule of law.
<i>Corruption</i>	Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. Corruption may include many activities including bribery and embezzlement, though it may also involve practices that are legal in many countries.
<i>Democracy</i>	Democracy is government by the people, for the people, with the people. In other words, state institutions are at the service of, and accountable to, its people, and citizens own and actively participate in social, economic and political development and management.
<i>Democratic culture and political pluralism</i>	States have the necessary legislative, social and policy frameworks to support and protect multi-party democracy, open debate and peace. Civil society is free to organise and exercise their democratic and human rights.
<i>Democratic institutions</i>	States have established public institutions, such as parliaments, electoral bodies, ombudsmen and independent commissions to promote and support democracy and constitutional order. Citizens perceive democratic institutions as reliable vehicles for exercising oversight and managing democratic practice.
<i>Elections</i>	A formal, organised process of selecting people for public office by voting, rooted in the notion of one person, one vote. Elections are often organised by an electoral authority, established by law.
<i>Human rights</i>	These are the rights inherent to all human beings, regardless of nationality, space, sex, ethnic origin, colour, religion or language. All are equally entitled to human rights without discrimination.

<i>Independent institutions</i>	Institutions established in legislation or the constitution as watchdogs or protectors of rights.
<i>Member State</i>	A country that is a member of the AU and has ratified or acceded to the Charters and APRM.
<i>Participation</i>	Public participation is a political principle or practice of allowing citizens or stakeholders to engage on decisions or issues. It may also be recognised as a right (to public participation).
<i>Popular participation</i>	States enable participation by being transparent; providing access to information; ensuring freedom of the press; and accounting for the management of public affairs. Civil society has the rights and space to engage.
<i>Regular democratic elections</i>	States hold regular, transparent, free and fair elections in accordance with the AU's requirements. Civil society can organise and vote in regular elections without fear of intimidation or harm.
<i>Rule of law</i>	The rule of law is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials. It is the restriction of power by subordinating it to well-defined and established laws.
<i>Service delivery</i>	Service delivery is the distribution of national resources to deliver basic services such as health, education, shelter, water and sanitation.
<i>Socio-economic justice</i>	The outcome of reducing poverty through inclusive growth, gender equality and youth empowerment. Social justice is directed towards addressing inequality through equitable strategies that support disadvantaged or marginalised groups.
<i>Socio-economic justice and service delivery</i>	States institutionalise good economic and corporate governance through policies that promote the equitable distribution of the nation's wealth and natural resources through effective delivery of services. Civil society have access to electricity, water, shelter, education and healthcare.

1 Democratic governance

Anne Mc Lennan, Wits School of Governance



1.1 Introduction

African civil society engagements on AU democratic governance instruments are varied but critical as a foundation for deliberation on the Shared Values Agenda and to strengthen the African Governance Agenda (AGA). To assist this process, the African Regional Office (AfRO) of the Open Society Institute (OSI), in partnership with regional and national civil society, provided a grant to the Wits School of Governance to develop an instrument and process for CSOs to assess Member State compliance with democratic governance instruments. The pilot assessment focuses on six countries within three regions – Rwanda and Ethiopia in East Africa, Ghana and Nigeria in West Africa, and Zambia and South Africa in Southern Africa.

Democratic governance principles and practices mapped in AU conventions are subject to varied interpretation and contestation. The overall meaning of democratic governance and interpretation of the level of compliance can vary significantly depending on context and region. At a macro-level, the AU has adopted a broad and progressive conceptualisation of democratic governance that incorporates functional (regular elections) and aspirational (inclusion, participation, and economic and social equality) aspects of democracy.

This assessment of democratic governance commitments includes formal regulatory compliance, as well as capacity for implementation. AU Member States have signed and ratified several governance-related instruments and commitments. These include the African Charter on Democracy, Elections and Governance (ACDEG); the African Union Convention on Preventing and Combating Corruption (AUCPCC); and the African Peer Review Mechanism (APRM), all of which stand at the heart of the AU's Shared Values Agenda.

The level of domestication of AU instruments and the status of Member State commitment to specific principles is largely unknown. In part, this is because monitoring and reporting mechanisms are yet to become fully functional. In the absence of actual follow-up and engagement with Member States there is limited incentive for reporting or compliance. Since civil society has been identified as a key player, the development of a civil society-driven mechanism to assess the level of government compliance is essential.

Governance is a contested concept but is understood to refer to how authority, voice and implementation is structured and exercised. Democratic

governance assumes that selection processes, as well as policy development and implementation, are based on inclusive participation. Ensuring state compliance to democratic governance is about accountability and depends, in part, on civil society to ensure that appropriate decisions are made and executed.

Compliance is a state of being in accordance with established guidelines, or the process of becoming so. Compliance is different from effectiveness. Compliance is about adhering to the provisions in charters and accords, whereas effectiveness is about whether goals are met or not. Compliance operates at two levels – formal in the sense of putting the basics in place; and substantive in terms of active commitment. Compliance is usually voluntary with positive incentives to follow guidelines (such as inclusion, efficiency, engagement) or enforced (compelled to do comply).

Most AU commitments rely on voluntary compliance, hence the importance of civil society oversight in identifying patterns of compliance to democratic governance, as well as areas for capacity development and support. In addition to formal compliance, capacity for compliance is important as it reflects the overall commitment of the Member State to institutionalising more diffuse decision-making systems and democratic institutions. This research attempts to assess formal compliance, as well as capacity, to the extent that this is possible.

Paper compliance capacity is the most straightforward indicator of the ability of a state to put policy on paper through democratic process. At this level of compliance, there may be insufficient capability or will to move beyond paper compliance to committed engagement with citizens. In contrast, active compliance capacity indicates a positive commitment to consult and work with citizens. Active capacity states should have satisfied citizens and an ability to ensure higher levels of delivery. Partial capacity indicates some movement towards addressing governance issues.

Research approach

The purpose of the project was to design and pilot an accurate and useful tool for civil society to hold government accountable. The research approach and instruments were developed and validated with CSOs over the period of a year. Two meetings were held in Nairobi, Kenya. One in December 2014 and the follow-up in October 2015. The design team went through an iterative process of identifying commonalities, developing indicators and refining.

Table 1.1 provides a themed summary of compliance requirements extracted from the ACDEG, AUCPCC and APRM. The research instrument explores compliance by looking firstly at levels of formal compliance (what is in place) and secondly at capacity for compliance (how it is working in

practice). This combination allows comparative analysis and country-specific assessment. The obligations and related indicators are core to the study, and serve as the basis for the country reports in the following sections.

Table 1.1: Compliance obligations and indicators

Area	Compliance obligation	Indicators of compliance
<i>Constitutionalism and the rule of law</i>	States openly support the constitution in their political organisation and the separation of power between the executive, legislature and the judiciary.	A democratic constitution is in place and respected as the supreme law. Democratic and inclusive constitution-making and constitution-amending processes is evident. Changes of government take place in accordance with the constitution.
<i>Democratic culture and political pluralism</i>	States have the necessary legislative, social and policy frameworks to support and protect multi-party democracy, open debate and peace.	A legal framework and policies for the promotion of democracy and political pluralism exists. Political parties compete freely and have space to operate. Civic education and democratic processes include marginalised groups such as youth, women, and persons with disability. Human rights are protected.
<i>Democratic institutions</i>	States have established public institutions, such as parliaments, electoral bodies, ombudsmen and independent commissions, to promote and support democracy and constitutional order.	Independent, accountable and resourced Parliament; Judiciary; Executive and public service oversight institutions (Ombudsmen and Human Rights Commission) are in place.
<i>Regular democratic elections</i>	States hold regular, transparent, free and fair elections in accordance with the AU's requirements.	An independent, accountable and well-resourced Electoral Management Body is in place. Elections take place in conditions that promote peace, tolerance and a democratic outcome Elections are managed per international best practice, ensuring a level playing field for all candidates.
<i>Popular participation</i>	States enable citizen participation by ensuring that they are transparent; provide access to information; guarantee freedom of the press; and are accountable in the management of public affairs.	There is an enabling regulatory and social environment for civil society. Citizens can access government information. Policy making, governance and development programmes allow for citizen contributions.
<i>Socio-economic justice and service delivery</i>	States institutionalise good economic and corporate governance through policies that promote the equitable	Minimum standards of basic education and health are guaranteed.

Area	Compliance obligation	Indicators of compliance
	distribution of the nation's wealth and natural resources.	Laws and policies promote equitable economic development. Government policies promote poverty alleviation and socio-economic rights.
<i>Combatting corruption</i>	States actively fight against corruption and related offences with the full participation of the media and civil society at large.	An independent, accountable and well-resourced anti-corruption commission exists. A multi-stakeholder anti-corruption strategy is in place. An implementation strategy is in place and operationalised.

Chapter 8 provides an overview of the research approach and instruments. The research process enabled CSOs to gather as much data and information as possible in a short period with limited resources. Researchers were expected to use the tools in a comprehensive way, including a triangulation of findings. The process involved the following steps:

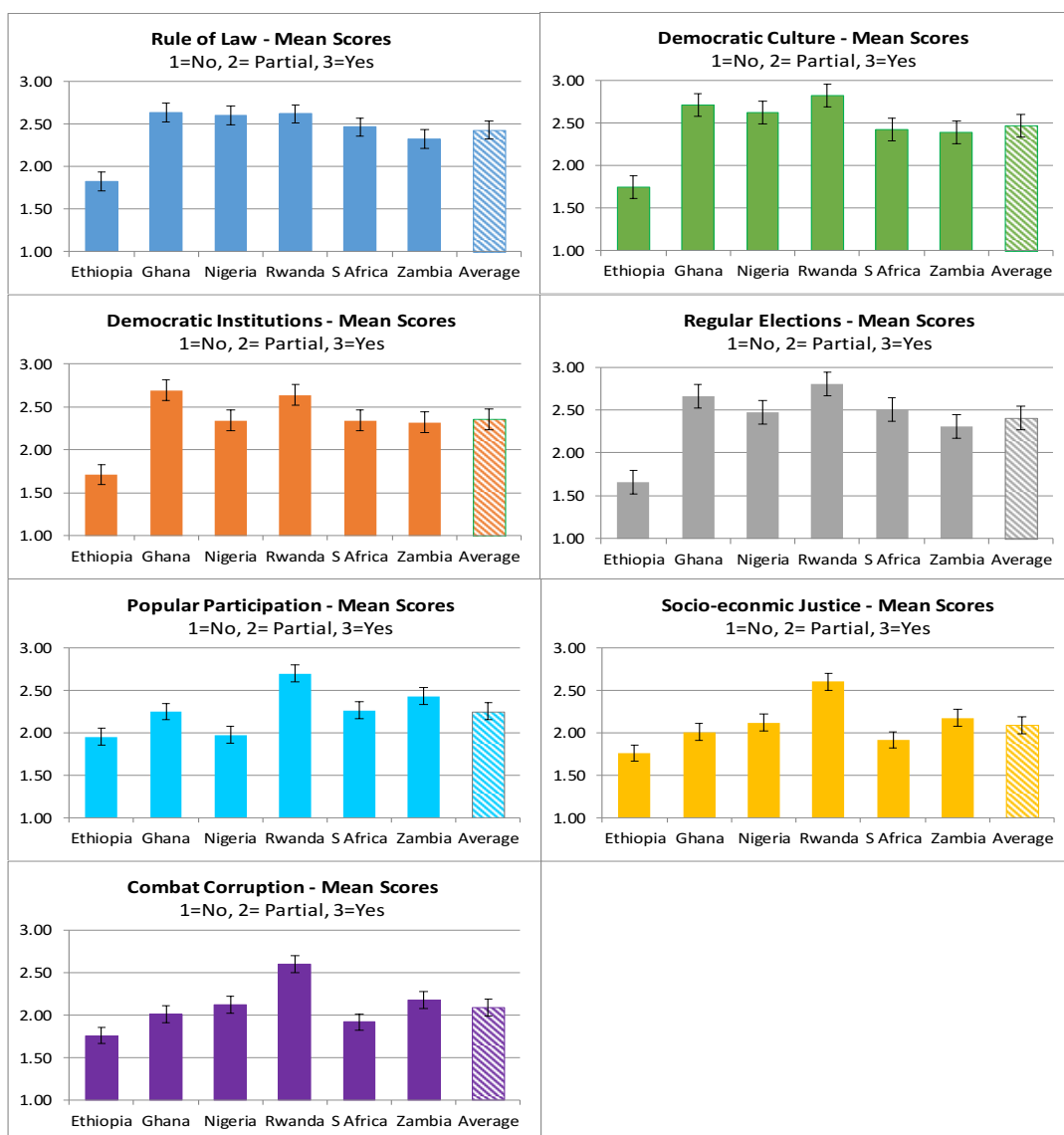
- Collection and collation of existing data and desktop research to allow for a preliminary assessment.
- A survey of a minimum of 15 in-country CSOs or more if possible. A total of 116 surveys were completed and analysed.
- Interviews and a minimum of four focus groups (engagements with stakeholders and informants).
- Diagnostic assessment of the desktop research, surveys and interviews led to the development of a narrative report and country analysis,

1.2 Compliance and capacity

All six countries comply with the formalities of democratic governance and anti-corruption. On paper, there are constitutions in place, legislatures, independent oversight institutions, regular elections managed by independent bodies, anti-corruption strategies and independent judiciaries. In practice, however, legislatures are often weak, oversight institutions lack authority and corruption is consistently rife across all six countries.

Ethiopia scores lowest in all the areas, and Rwanda and Ghana the highest (see Figure 1.1). Rwanda and Ethiopia dip significantly on popular participation and democratic institutions which are key spaces for citizen engagement and the protection of human rights. This is no surprise given a growing authoritarian culture in these two countries. Nigeria, Ghana and Rwanda seem to do well in ensuring rule of law.

Figure 1.1: Mean scores of the respective domains for each country

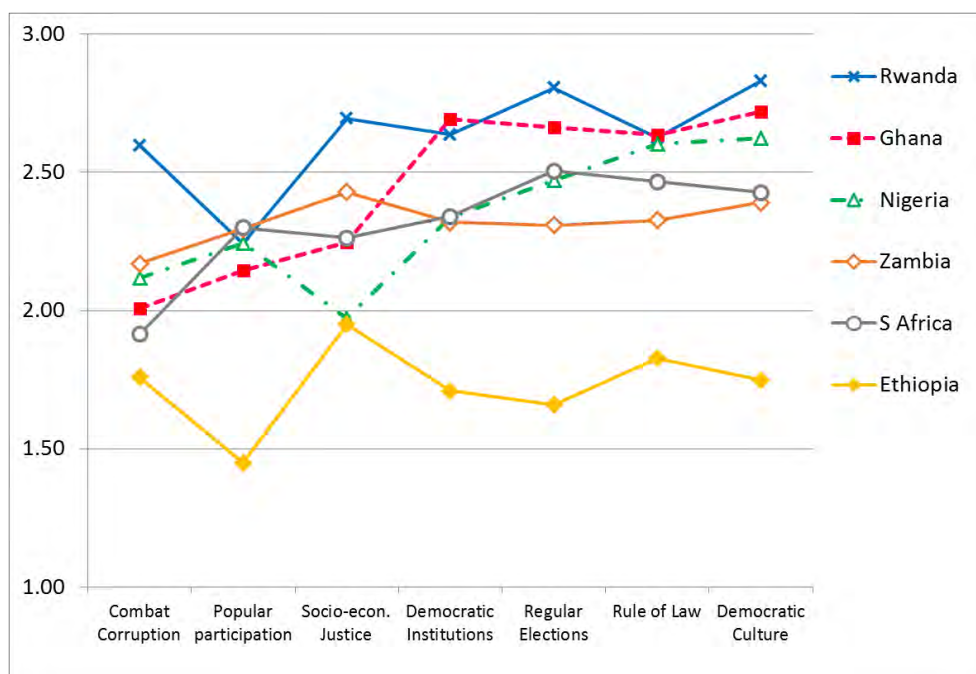


The averages for Rule of Law, Democratic Culture, Democratic Institutions and Regular Elections are higher than those for Popular Participation, Socio-economic Justice and Corruption. This suggests that states can develop laws and institutions and manage democratic process but enabling active participation, securing socio-economic justice and dealing with corruption are either more difficult to activate or require higher levels of political risk.

Figure 1.2 allows for more convenient comparative assessment by showing the mean-score “profiles” of each country drawn across the seven domains. The order of the domains has been rearranged for clarity and to minimise overlaps, showing broadly increasing values from Combatting Corruption on the left up to Democratic Culture on the right. At the bottom-left of the graph Ethiopia scores a mean of 1.8 for Corruption items (the yellow

diamond), and near the top-right Ghana scores a mean of 2.7 for the Democratic Culture items. (The numerical mean scores reflected in the graph are shown in a table in Section 8.)

Figure 1.2: Mean-score profile of the countries across domains



This graph shows that based on the views of in-country CSOs, Ethiopia (yellow line) has the lowest overall profile, and Rwanda's (blue line) the highest. Indeed, in both countries the scores for the different domains don't vary greatly, except for their sharply lower scores on Popular Participation (1.5 and 2.2), and for Ethiopia's best score on Socio-economic Justice.

Zambia (brown) and South Africa (grey) have closely similar profiles, with Zambia scoring slightly higher on Combatting Corruption, Popular Participation and Socio-economic Justice, and South Africa scoring slightly higher on Regular Elections, Rule of Law, and Democratic Culture.

Ghana (dotted red) rises from a low base on the left three domains to second-highest on the right three domains, and higher than South Africa and Zambia. Nigeria (dashed green) would be quite similar, except that it drops sharply on Socio-economic Justice.

Further analysis of the data, detailed in chapter 8, allowed for cross-domain conceptual linkages to see whether this may be revealing of how democratic governance is conceptualised. It does so by seeing how different items "clump" into factors or underlying latent constructs. Factor analysis involves art as well as science, rather like identifying what may be major themes or minor nuances in a pile of qualitative interview transcripts.

It turns out that while as many as thirteen statistically significant factors could be distinguished, the last five would add very little to our understanding of the important patterning in the data. Accordingly, seven- and eight-factor solutions were examined, and the eight-factor version turned out to be more insightful. The full table of variables arranged within the eight new factors is in Appendix D of chapter 8. The meaning of the underlying constructs is construed from the most strongly loading items.

The eight factors are freedoms, judiciary, elections, legality and probity; citizen based anti-corporate corruption; protection of minorities and vulnerable groups; parliamentary and executive accountability including women; financial accountability of government; equal opportunity; lawful change of power; and enabling NGO culture.

These eight factors offer a defensible take on how respondents are linking the 66 items in the patterning of their answers. The first factor spans what respondents identify as the core ingredients of democratic governance: fundamental freedoms; an independent judiciary; sound elections; and equality before the law. It accounts for 43% of the variance in the data. Thus, countries' weighted factor scores on this first factor indicate the extent to which they are essentially democratic.

The other seven factors together account for 25% of the variance. The most important of them, the second factor (accounting for 8% of the variance) suggests an interesting cross-domain linkage of public empowerment in relation to corporate corruption. The third factor (4%) likewise links constitutional protection of minority rights and national programmes for vulnerable groups.

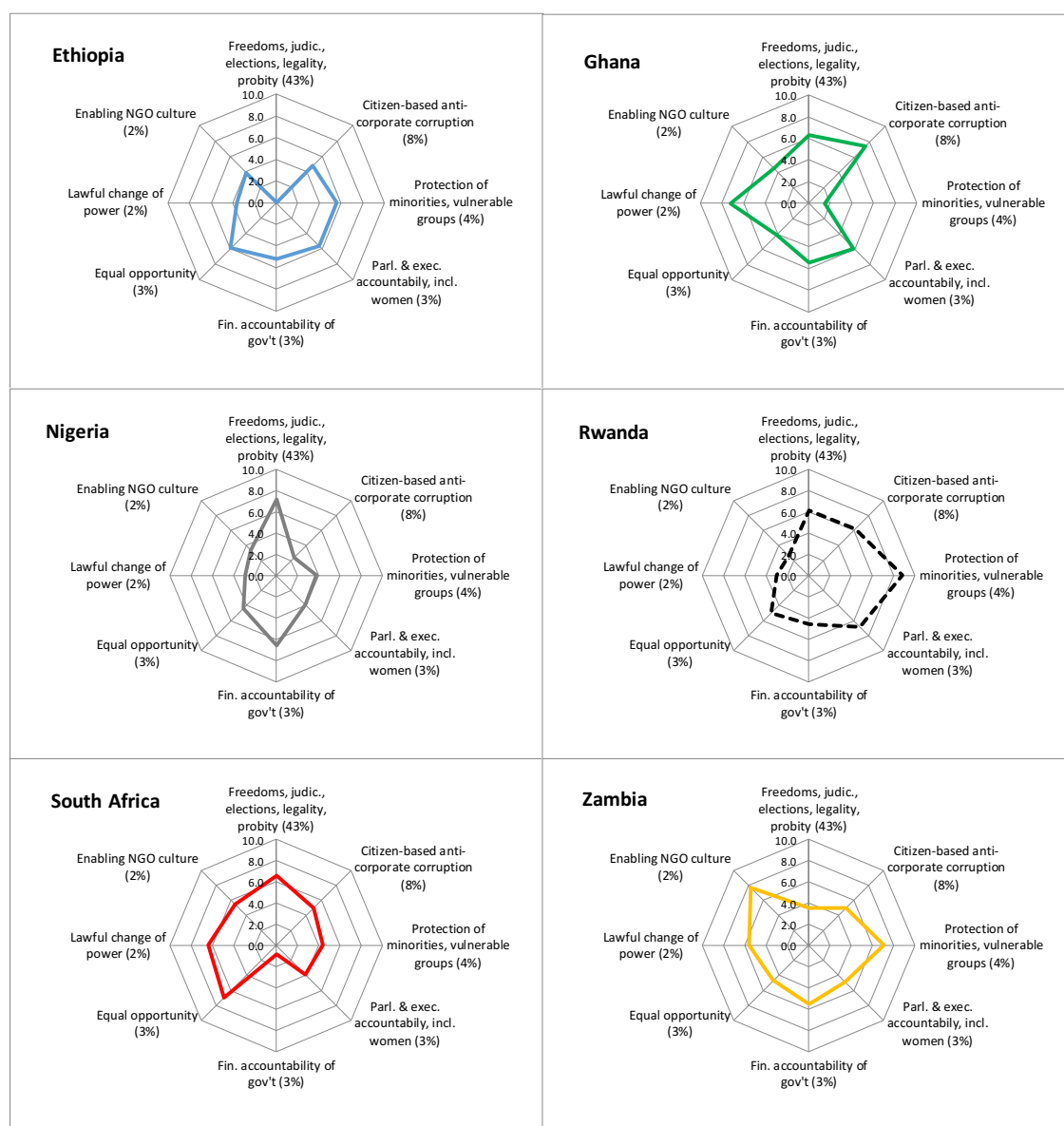
For convenient discussion of the polar diagrams, the factor scores have been re-scaled to run from 0=No through 5=Partial to 10=Yes. The top-most twelve o'clock point in each diagram in Figure 1.3 is the weightiest and shows CSO responses to the construct of democratic governance. Ethiopia fares worst at zero, followed by Zambia at 3.5 out of 10. On this factor the best is Nigeria, at 7.2, with the other three countries range from between 6.1 and 6.6.

The ideal country profile would be a large, approximately round polygon indicating good scores on all factors, especially the top-most one. It is illuminating to see which countries collapse on which attributes. For example, Ghana does best (7.4) on tackling corruption, followed by Rwanda (6.2). Nigeria is much the worst on this factor (2.4), with the other three countries near 5.

Rwanda and Zambia do best on protecting minorities, while Ghana is worst. A notable gap however is that except for South Africa and Rwanda, all the countries either ban or criminalise same-sex relationships. Africa has a poor track record in supporting the human rights of lesbian, gay, bisexual and

transgender (LGBT) communities. 37 African nations criminalize same-sex relationships, and in many countries, even those with progressive law, LGBT citizens face social discrimination and the threat of violence. In some countries, this is reinforced by hostile government officials and rhetoric.

Figure 1.3: Polar diagrams of eight-factor scores by country



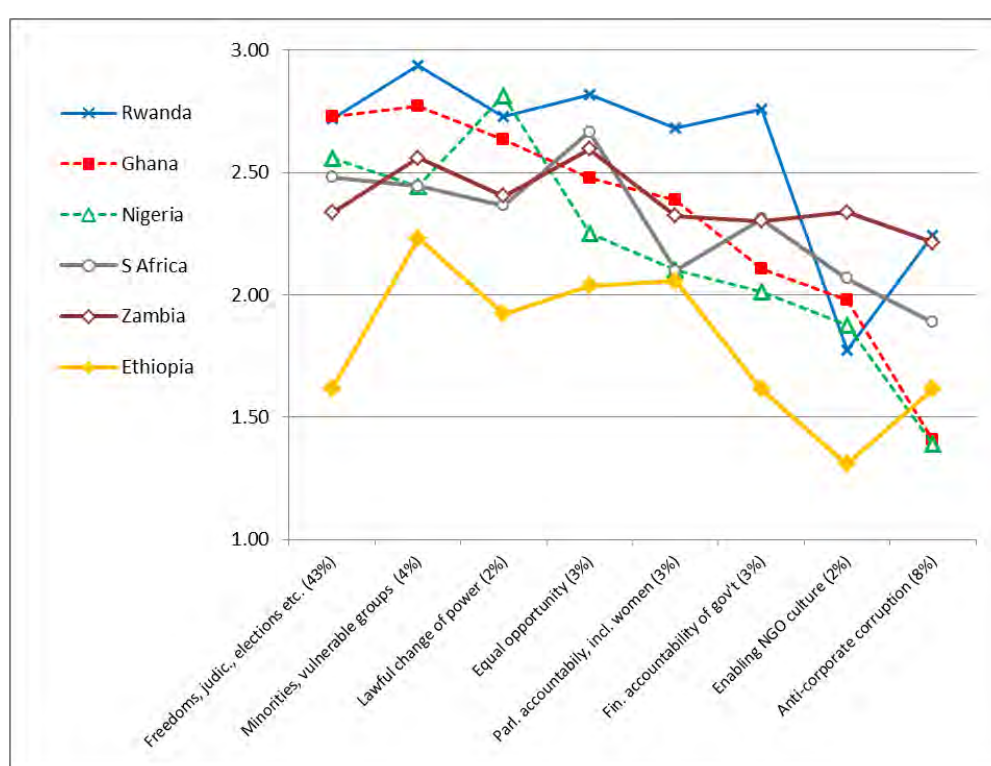
Only Zambia scores well on the creating of an enabling culture for CSOs and NGOs, with Rwanda at the opposite end. Ghana and Rwanda lead on parliamentary and executive accountability, perhaps due to the way in which the political governance system is structured in both countries. Rwanda is one of two countries to have more than 50% women in parliament.

South Africa's score on the financial accountability of government is close to zero reflecting current concerns with corruption within government and a ruling party and government that seems unwilling to act. The

independence of the judiciary is holding the state to the rule of law. Finally, most of the countries, except Ethiopia struggle with the meeting the requirement for equal opportunity through the provision of education, health care and social support.

Figure 1.4 shows the score for the eight factors using a 'lite' version of the compliance instrument (see Appendix D in chapter 8). The figure shows the profile version of the polar diagrams. There are some revealing comparisons with the new eight latent constructs as well as some analogous overall country similarities and differences emerge from the new empirically-driven conceptualisation.

Figure 4: Country profiles 'lite' grouped into the 8 factors



Ethiopia, as before, scores lowest and Rwanda highest, overall. Both spike slightly upwards on attending to minorities or vulnerable groups, and sharply downwards on NGO culture (like the previous popular participation). Zambia and South Africa are close on the dominant initial factor, democratic governance (as well as minorities, power change, and equal opportunity); but South Africa does less well on anti-corporate corruption, NGO culture and parliamentary accountability.

Ghana is best (with Rwanda) on democratic governance (as well as minorities, power change, and equal opportunity), but then does much less well than Zambia or South Africa on the second-strongest factor, anti-corporate corruption, and government financial accountability. Nigeria fares

marginally better than South Africa and Zambia on democratic governance, but fares as badly as Ghana on anti-corporate corruption, and government financial accountability. It does best of all on lawful change of power.

In summary then, all six countries are compliant in the areas of democratic governance related the elections, separation of powers, and independent institutions. The essential elements of good democratic governance are in place and operational with limits and variations across the different countries and regions. Nigeria and Ghana seem to have successfully shifted the trend to military coups that characterise many West African countries.

Creating spaces for active participation and partnering with citizens or CSOs seems to be more of a challenge. Just socio-economic development and providing good quality education and health care is elusive. While most countries provide universal education and health services, the quality of provision is uneven or poor. Also, the rights of the vulnerable or marginalised are not always protected.

The capacity for compliance ‘scores’ reflect the perceptions of CSOs in relation to the data collected are shown in Table 1.1. Many of the insights from Table 1.1 confirm what is known from the surveys. The table can be read vertically and horizontally. On the vertical, Rwanda is shown to be actively compliant in all areas. It is not clear if this fact or is a result of a repressive environment. However, despite an apparent reversal of democratic culture, Rwanda is making strides in many of the specified areas. Nigeria follows on active capacity, reflecting a growing trend to improve participation in the country.

Ethiopia’s capacity remains mostly on paper, followed closely by Zambia. This confirms Ethiopia’s survey scores. Although Zambia does well in formal compliance, its capacity for more active engagement is limited. Partial capacity is most prevalent suggesting that there is a committed attempt to move beyond paper compliance, with some important progress for some countries.

A vertical reading shows that corruption and socio-economic justice are areas in which there is little more than paper compliance (except for Rwanda). Corruption is a difficult issue in all the countries, and difficult to manage, despite the existence of anti-corruption bodies and policy. Key challenges are following through on corruption findings as well as a lack of cooperation with CSOs and the media. Also, meeting the socio-economic rights of citizens and finding mechanisms to address social challenges is challenging in contexts of low economic growth and high inequality.

Table 1.2 Formal, partial or active compliance capacity

Compliance criteria Paper Partial Active	Nigeria	Ghana	South Africa	Zambia	Ethiopia	Rwanda
Constitutionalism and the rule of law						
Culture of constitutionalism and rule of law	3	3	2	2	2	3
Competent, resourced and independent court	3	2	3	2	2	3
Citizen awareness and education	2	2	2	1	2	3
Constitutional amendments	2	3	3	2	1	3
Sustainability of constitutional practice	2	3	3	1	2	3
Democratic culture and political pluralism						
Democratic law-making	3	3	3	1	2	3
Diversity of views and opposition	3	3	3	2	1	3
Inclusion and anti-discrimination	2	2	2	2	2	3
Civic education	2	2	1	1	2	3
Human rights and fundamental freedoms	2	3	2	1	1	3
Strong democratic institutions						
Independence of democratic institutions	2	2	2	1	2	3
Powers and sanction of democratic institutions	2	2	3	2	2	3
Autonomy and resources	3	2	2	1	2	3
Accountability and reporting	2	2	3	1	2	3
Regular democratic elections						
Functioning of elections monitoring body	3	2	3	2	2	3
Election campaigns	3	3	2	1	2	3
Electoral observation	3	3	3	3	1	3
Level playing field	2	2	2	2	1	3
Voter education	2	2	3	2	1	3
Popular participation						
Role of civil society and citizens	3	3	1	2	1	3
Access to information and state broadcaster	3	2	2	1	1	3
Decentralisation and local participation	3	2	2	2	2	3
Freedom of association and action	3	3	2	2	1	3
Socio-economic justice and service delivery						
Socio economic rights of citizens	2	1	1	2	2	3
Social services budgeting vs others	2	2	2	3	3	3
Protection of people with disabilities	1	2	2	2	1	3
Mechanisms to address social challenges	1	2	2	3	1	3
Corporate sector governance and monitoring	1	2	1	1	1	3
Combatting corruption						
Capacity of anti-corruptions institutions	2	1	1	2	1	3
Approach to fight against corruption	1	1	1	2	2	3
Anti-corruption law	3	2	3	2	3	3
Mechanisms to deal with corruption hotspots	1	1	2	2	1	3
Transnational cooperation on corruption	1	2	1	1	2	3
Corporate sector regulation	1	2	1	2	2	3

1.3 Country profiles

Rwanda

The key findings from Rwanda indicate that citizens are generally satisfied with Rwanda's implementation of its governance commitments. The Constitution is the supreme law and the rule of law is adhered to.

There is a democratic culture and strong governance institutions enshrined in the Constitution. The country has held regular democratic elections in the last fifteen years and there is a general feeling that citizens have freedom to participate as the government consults them on key issues.

There is consensus that the government has taken positive steps to ensure socio-economic justice and effective service delivery. The case of Rwanda is sensitive and must be approached from that perspective. The memories of the genocide permeate the society and in most cases speaking of the government in a 'negative' light is almost considered unpatriotic.

This was evidenced from the data collected in the online survey which in some cases seem contrary to information that is within the public domain. While civil society organisations in Rwanda are visible and even vibrant, there remains a lot of underlying suspicions and government control and it was a challenge to get organisations to feel they could speak freely and did not have to be guarded with information.

It was therefore necessary that the validation of the findings be conducted by a Rwandese national to ensure positive participation and reassure participants that the information collected would not be presented in a negative manner.

Rwanda has, since 1994, made significant progress in building and consolidating constitutional democracy. Because of the war and genocide of 1994, there was a total breakdown of institutional, systems, structures and human capacity. The country has gone through the painful challenge of rebuilding the entire governance infrastructure. After almost a decade of transition (1994-2003), Rwandans adopted in a referendum a new Constitution on 26th May 2003. The Constitution is enshrining governance principles.

Table 1.3: Rwanda's formal compliance and capacity

Constitutionalism and the rule of law		
Culture rule of law	The Constitution and the law protects all citizens equally.	Active
Citizen education	There is an abundance of civic education.	Active
Constitutional amendments	A constitutional amendment was made in December 2015 via a referendum.	Active
Democratic process and political pluralism		
Diversity of views and opposition	There does not seem to be a diversity of views or opposition.	Active
Inclusion and anti-discrimination	There is opportunity for women to participate in politics.	Active
Human rights and fundamental freedoms	Human rights and fundamental freedoms are protected.	Active
Strong democratic institutions		
Independence of institutions	Citizens generally feel that the country has strong democratic institutions.	Active
Powers and sanction	There is a separation of powers with sanction which works, although the executive is dominant.	Active
Autonomy and resources	There is independence of institutions and the national human rights commission is autonomous and funded.	Active
Accountability and reporting	There is a big push on performance of individuals in office and this has ensured accountability.	Active
Regular democratic elections		
Functioning of EMB	The electoral management body is well equipped to handle elections and to monitor elections.	Active
Election campaigns	The playing field is equal for all candidates as they all have access to state media and stick to the code of conduct.	Active
Electoral observation	Elections are observed as per legal provisions.	Active
Voter education	Sufficient voter education is carried out by the electoral management body.	Active
Popular participation		
Role of civil society and citizens	The government registers CSOs and there is cooperation with CSOs. But some CSOs view the government as controlling.	Active
Access to information and media	Citizens have access to information and the media.	Active
Decentralisation	Local participation is active to the lowest levels.	Active
Freedom of association and action	Citizens are free to associate.	Active
Socio-economic rights		
Socio economic rights of citizens	Citizens' socio-economic rights are addressed.	Active
Social services budgeting	There is an audit of government ministries and while the results are made public some citizens feel that the audit reports are not entirely transparent.	Active
Mechanisms to address social challenges	There are mechanisms to deal with education and health challenges.	Active
Combating corruption		
Capacity of institutions	The two institutions tasked to deal with corruption have capacity and Rwanda is ranked as the fourth least corrupt country in Africa.	Active

Ethiopia

The Federal Democratic Republic of Ethiopia is signatory to all the existing African governance instruments adopted by the African Union (AU). It is also party to all but one of the core international human rights treaties. A full one-third of the Constitution is dedicated to human and democratic rights, and under Article 9.4 of its Constitution, the government further absorbs into public law its international treaties and all international agreements ratified by Ethiopia are an integral part of the law of the country.

The system is federal and parliamentary. The federation comprises nine ethno-national regional states and two city administrations. The regions are subdivided into "zones", which are further sub-divided into "woredas" (districts) and "kebeles" (villages), the latter forming the smallest official governmental units.

Staggered multi-party parliamentary elections are held every five years under the administration of a National Election Board. Local government officials at the kebele and woreda levels, over three-and-a-half million in all, are elected through another round of elections also held every five years. Despite Ethiopia's democratic constitution, a single party - the Ethiopian People's Revolutionary Democratic Front - has dominated the government for the last quarter of a century.

While the Constitution and policy provisions make clear distinctions, in practice the separation of party and state is hardly observed, and more so at local levels of government. Permeating all the formal branches of governance (across the executive, the judiciary and the legislature) is a fused party-state structure. There are frequent vertical and horizontal moves within the party-state structure. Hence, it is not unusual to find one person an MP today, a member of the parliamentary staff and a civil service official tomorrow.

Many in the ministerial or bureau level government are senior party officials, often leaders of their local parties and members of the Central Committee at the centre. The Constitution also provides for an independent judiciary. However, a culture of executive dominance compounded by overlaps between senior party and executive posts renders the institution weak.

Table 1.4: Ethiopia's formal compliance and capacity

Constitutionalism and the rule of law		
Culture and rule of law	Democratic constitution in place and rule of law adhered to.	Partial
Citizen awareness and education	Insufficient.	Partial
Constitutional amendments	Procedures exist, but not practiced.	Paper
Constitutional practice	Unrest spreading, but can be met through good governance	Partial

Democratic process and political pluralism		
Diversity of views and opposition	Single party dominance.	Partial
Civic education	Mandatory civic education in schools, but dominated by party ideology.	Partial
Human rights and freedoms	No independent press, constrained civil society.	Paper
Strong democratic institutions		
Independence of institutions	Financial and ideological constraints.	Partial
Powers and sanction	Statutory powers are constrained by limited practical authority.	Partial
Autonomy and resources	Under budgeted.	Partial
Accountability and reporting	Accountability to government bodies good, none to the public.	Partial
Regular democratic elections		
Functioning of EMB	Efficient, but party-controlled.	Partial
Election campaigns	Tilted toward ruling party.	Partial
Electoral observation	Only AUOM invited in recent years.	Paper
Voter education	Pre-to post-election phase dominance of ruling party.	Paper
Popular participation		
Role of civil society and citizens	Repressive, restrictive environment for civil society.	Paper
Access to information and media	Restrictive environment.	Paper
Decentralisation	Government infrastructure strong and decentralised.	Partial
Freedom of association & action	Repressive legislation.	Paper
Socio-economic rights		
Socio economic rights of citizens	Pro-poor, good growth, but challenges of equitable distribution, youth bulge and sustaining the middle class.	Partial
Social services budgeting	This is well done.	Active
Addressing social challenges	Greater inclusion necessary.	Paper
Corporate sector governance	Opaque, parastatal (party-statal) dominance. Restrictive environment for foreign companies.	Paper
Combatting corruption		
Capacity of institutions	Shrinking with new structure.	Paper
Anticorruption approach	Not transparent.	Partial

Ghana

Like many countries in Sub-Saharan Africa, Ghana has had a chequered political and democratic history. Since obtaining independence from British colonial rule on 6 March 1957, it has suffered setbacks to democratic governance by three military interregnums. After more than a decade of constitutional and democratic hiatus, Ghana made a successful transition from military authoritarian rule to democracy in 1992.

More significant than the regime change was the inauguration of the Fourth Republican Constitution, which was overwhelmingly adopted in a

nationwide referendum on April 28, 1992 and came into force in January 1993. Ghana's liberal democracy guarantees constitutionalism. The current democratic arrangement seems to be exceptional because it has survived for 24 years. Ghana's liberal constitution makes important provisions to promote sound democratic governance.

The Constitution provides for the functioning of the three arms of government, the legislature, the executive and the judiciary, which are separate in theory. Regrettably, however, important developments have posed grave threats to upholding constitutionalism in Ghana. Democratic constitutionalism is weakened by a hegemonic presidency.

The hybrid system has compromised the exercise of an effective checks and balances system, which is notable in the executive presidential system of government. The subordination of parliament to the executive has undermined the value of countervailing power, which is the foundation of the executive presidential system and constitutionalism.

Table 1.5: Ghana's formal compliance and capacity

Constitutionalism and the rule of law		
Culture and rule of law	All actions of government and state institutions occur in accordance with the Constitution.	Active
Citizen awareness and education	Only a cross section of the population is aware of the constitution, its provision and relevance.	Partial
Constitutional amendments	Only legitimate amendments to the constitutions have been done.	Active
Constitutional practice	The Fourth Republican Constitution has lasted for 24 years without any interruption.	Active
Democratic process and political pluralism		
Diversity of views and opposition	Dissenting views are tolerated and opposition voices have reflected in decision-making.	Active
Inclusion and anti-discrimination	While there are no anti-discriminatory laws, the disadvantaged/marginalised groups have been included in the decision-making process; still room for improvement.	Partial
Civic education	Programmes to educate citizens on democratic values, their duties and responsibilities have been piecemeal and irregular. The constitutional body charged to undertake this exercise is not sufficiently funded.	Partial
Human rights and freedoms	Generally, citizens enjoy their rights and freedoms without unduly suffering abuses.	Active
Strong democratic institutions		
Independence of institutions	There is perception that some independent state institutions such as the Electoral Commission are not fully independent and have been manipulated by successive governments.	Partial
Powers and sanction	Most state institutions such as the Ombudsman and the Media Commission have weak powers of sanction.	Partial
Autonomy and resources	Almost invariably, all state institutions do not possess financial autonomy.	Partial

Accountability and reporting	Most institutions such as the legislature, the executive and its branches behave as if they are not accountable to any superior body. Similarly, reporting of institutional activities leaves much to be desired.	Partial
Regular democratic elections		
Functioning of elections monitoring body	The Electoral Commission is performing its election management functions but it is perceived as not being independent and fair	Partial
Election campaigns	All political parties exercise unrestrained political campaigns. There has never been a levelled playing field during elections - abuse of incumbency and misuse of public funds for electoral gains are regular features.	Active
Electoral observation	Both international and domestic observers have been granted permission to undertake observation exercises.	Active
Voter education	Voter education has been carried out haphazardly without achieving efficient results.	Partial
Popular participation		
Role of civil society & citizens	Civil society and citizens have the freedom to operate and take part in the political process and the enabling political environment is friendly.	Paper
Access to information & media	Although there is no freedom of information law yet, access to information is generally good, but selective and not uniform. It is difficult to access information on important activities of government that have relevance for transparency and accountability. Access to state broadcaster is acceptable.	Partial
Decentralisation	Decentralisation has receded to centralisation as the political elite have recaptured power already transferred to the grassroots.	Partial
Freedom of association and action	Citizens and groups have the freedom to gather and organise and meet as associations and pursue their lawful activities.	Active
Socio-economic rights		
Socio economic rights of citizens	There is too little for citizens to do to achieve these rights even though aspects of economic rights are enshrined in the constitution.	Paper
Social services budgeting	Social services have received much attention in government budgets at national and local levels, but are rarely delivered.	Partial
Mechanisms to address social challenges	A ministry of gender and social protection has been created, but has taken little action to tackle social challenges facing the marginalised groups in society.	Partial
Corporate sector governance	Institutions for monitoring corporate bodies have not been performing; corporate governance is weak. Regulations on corruption are found in most corporate institutions but these regulations are not deterring enough to the perpetrators.	Partial
Combatting corruption		
Capacity of institutions	These institutions exist in name with no energy to strike against corruption. Government officials known to be corrupt have seldom been investigated. Where they have been some investigations, they have been superficially executed to cover up.	Paper

Anticorruption approach	Purely rhetorical than action.	Paper
Mechanisms to deal with hotspots	There are no well-established means of dealing with hotspot cases of corruption in the country.	Paper
Transnational cooperation	Donors have been particularly unhappy about the prevalence of corruption and government's response to it.	Partial

Nigeria

The key findings from Nigeria indicate that citizens have varying views on different aspects of governance and largely feel that while Government is making strides in its implementation of its Governance commitments, there is still a lot that needs to be done especially in having the effects trickle down to the citizens in a country as vast and populous as Nigeria.

The Constitution is the supreme law of the land with a separation of powers and independence of the different arms of government. However, in a country with a combined legal system, there is a general feeling that while the Constitution is the supreme law of the land, in practice, there are instances where tradition and religious laws seem to supersede the Constitution. This is especially so in the northern part of the country which largely practices Sharia Law and where Boko Haram is very active.

The governance institutions are independent with the judiciary being one of the most independent arms of the government, and this is a well-received improvement for an institution that was previously seen as playing the tune of the incumbent government. Combatting corruption remains one of the more difficult issues in a country that has on numerous occasions featured on the lower digits of most corruption indexes.

There is a general feeling that non-elite citizens are not aware of their constitutional rights and as such are not able to effectively hold their governments to account. The country has held regular democratic elections in the last fifteen years with the last elections being testament to growth in the democratic culture and political pluralism of Nigeria. There is consensus that the Nigerian government has taken positive steps to ensure formal compliance to socio-economic justice and effective service delivery.

However, this has not always translated into actual service delivery, especially in the current recession following the falling of crude oil prices. It was also evident that at the state level, there are differences in implementation of some of the policies as some states were doing relatively well while others lag.

Table 1.6: Nigeria's formal compliance and capacity

Constitutionalism and the rule of law		
Culture of constitutionalism and rule of law	The Constitution of Nigeria is the supreme law of the land. There are instances where traditional/religious laws have taken precedence.	Active
Competent, resourced and independent court	The Judiciary has passed judicial pronouncements that have removed governors allied to the ruling party from office.	Active
Citizen awareness and education	There is a general feeling that citizens are not aware of the Constitution and that it is not for all the people.	Partial
Constitutional amendments	The process of constitutional amendment is well defined in the constitution. However, a majority feel that this does not work unless it is in the interest of the current government.	Partial
Sustainability of constitutional practice	While there is a Constitution in place, the implementation of the law is not impressive for the citizens especially in smaller states.	Partial
Democratic process and political pluralism		
Democratic law-making	Citizens feel that there are processes that allow for democratic law making. The electoral legislation system allows for peaceful and credible elections.	Active
Diversity of views and opposition	Citizens agree that the laws allow for diversity of views. The opposition can operate freely and has access to state media, even if not in equal measure.	Active
Inclusion and anti-discrimination	Political parties have not outlined an enabling environment for women to participate.	Partial
Civic education	There is more that can be done as civic education is not adequate	Partial
Human rights and fundamental freedoms	Nigeria currently has its most vibrant media in recent history. There are institutions that look at protection human rights bit there are still human rights violations such as extra-judicial killings.	Partial
Strong democratic institutions		
Independence of democratic institutions	The appointment of judicial officers is transparent as the National Judicial Commission recommends judges to the president who then forwards the names to the senate for approval. Judges have security of tenure and receive funds as a first line charge. The executive however is not seen as being as independent.	Partial
Powers and sanction of democratic institutions	The National Human Rights Commission is independent.	Partial
Autonomy and resources	The Commission and the Judiciary receive funds as first line charges. However, the funding is not sufficient.	Active
Accountability and reporting	There is legal framework for accountability of the democratic institutions. Parliament is not seen as being accountable to citizens. They perform their oversight role only when there is public outcry over an issue.	Partial
Regular democratic elections		
Functioning of elections monitoring body	The Electoral Act and the Constitution legislate on elections. The Independent National elections commission works with all stakeholders and is considered transparent.	Active

Election campaigns	The last election campaign reflected growth in electoral process in Nigeria as campaigns were conducted in a peaceful manner.	Active
Electoral observation	The Independent National Elections Commission has an election code of conduct with stakeholders to allow for election observer missions. Civil society organisations can apply for observer status.	Active
Level playing field	The playing field is level.	Partial
Voter education	While there is voter education, it is not adequate.	Partial
Popular participation		
Role of civil society and citizens	Civil society can operate freely. There is a requirement for registration with the corporate affairs commission.	Active
Access to information and state broadcaster	The Freedom of Information Act allows for citizens to access information. Some states that are more open than others, but overall citizens are satisfied with progress.	Active
Decentralisation and local participation	Generally, citizens have room to participate in local government decision-making.	Active
Freedom of association and action	There is freedom of association as evidenced by the ease of registration of political parties and CSOs.	Active
Socio-economic rights		
Socio economic rights of citizens	Citizens have access to subsidised drugs for HIV and malaria. There is free basic education but primary school education is the responsibility of the state and the local government. However, in many Northern states, children do not go to school.	Partial
Social services budgeting vs others	There is a lot to be done. Tax regimes are stricter in southern states and as such they are better able to provide for social services than northern states.	Partial
Protection of people with disabilities and special needs	The Persons with Disabilities Bill is still pending before the National Assembly.	Paper
Mechanisms to address social challenges	There are some mechanisms in place but they are not adequately funded and implementation is not monitored. While basic education might be free, there are those that will not take it up and there are no repercussions.	Paper
Corporate sector governance and monitoring	While there is some corporate sector governance and monitoring, it is not sufficient or transparent.	Paper
Combatting corruption		
Capacity of anti-corruption institutions	There are many anti-corruption institutions, but they are not coordinated and do not seem to share information. The institutions have some capacity but they can do more.	Partial
Approach to fight against corruption	As stated there are many agencies but there is a lack of trust among the agencies. The vulnerabilities of corruption have been reduced especially in the government sector.	Paper
Anti-corruption law	There is existing anti-corruption legislation.	Active
Mechanisms to deal with corruption hotspots	This is not very clear to the citizens. There has been progress with arms deals, and the military must now comply with the Procurement Act unlike before when arms deals were shrouded in mystery.	Paper

Transnational co-operation on corruption	The agencies are not seen as having synergy and sharing information.	Paper
Corporate sector regulation	There is a feeling that corporations adhere to national laws. However, citizens are not aware of agreements made with international companies.	Paper

Zambia

Civil society agrees that Zambia has made important strides towards institutionalising formal democratic institutions and processes in the country reflecting some level of formal compliance evident in regular elections, multiparty democracy, and supported democratic institutions, but suggests that “we have been lukewarm on meeting some of our international obligations under these frameworks”.

CSOs are of the view that Zambia is more than formally compliant with the African Union conventions, and is moving forwards to institutionalise democracy. While democratic structures are in place and elections are undertaken, there does remain a concern about low levels of citizen engagement and participation, including during elections.

This highlights a sense of alienation of the average citizen from the democratic process. This can be explained by a perception that democracy has not and cannot deliver basic livelihood improvements, which is the primary interest of poor and rural citizens removed from the urban centres and the services offered herein.

Since gaining independence in 1964, Zambia has seen two changes in government: in 1991 and 2011, and both were peaceful transitions. The strength of Zambia’s electoral system has been tested and it is widely agreed to run free and fair elections. Furthermore, the country’s ability to run elections is maturing. The strength of democratic institutions is undermined by the power of the Executive and the President’s role in appointing the board and leadership of many key institutions.

A few areas of formal and substantive non-compliance were highlighted, such as intimidation of dissenters and constraints on media freedom (in both law and in practice). Furthermore, questions about how democratically political parties are managed have been raised. This was evidenced in the run-up to the 2015 Presidential by-election where there were leadership contests that had to be resolved through the courts.

Civil society suggests that external pressure was often more effective to drive implementation than internal pressure but nevertheless recognised the role of civil society and citizens in providing internal pressure. Civil society and citizens would need to know and be aware of the commitments made.

Zambia is often perceived within the region as a country with a principled commitment to multi-partyism and a robust electoral democracy.

However, there have nevertheless been some serious concerns raised about governance in Zambia. There have been five major amendments to the constitution in six decades; reflecting a very high turnover rate.

Public perceptions about an endemic culture of corruption also reinforces this apparent delinking of service delivery and political governance in the minds of citizens. While there are many significant concerns about the health of Zambia's democracy, it was argued by more than one of the participants of the research that the democratic project in Zambia is nevertheless not in any material trouble.

This points to a series of contextual considerations which augment and reinforce the governance architecture (e.g., culture, identity, history). These are not, however, static and so, to ensure sustainable and robust foundations for the democratic project going forward, there remains a need to nurture and support compliance to the more formalised structures and processes as guided by the AU instruments.

Table 1.7: Zambia's formal compliance and capacity

Constitutionalism and the rule of law		
Culture of constitutionalism and rule of law	The constitution is the highest law in the land. There are regular multi-party elections and change of power.	Partial
Competent, resourced and independent court	A constitutional court has been established. President appointed five judges in March 2016.	Partial
Citizen awareness and education	Recent changes to the constitution with insufficient sensitisation.	Paper
Constitutional amendments	There have been five major amendments since independence.	Partial
Sustainability of constitutional practice	Executive and the legislature have too much influence.	Paper
Democratic process and political pluralism		
Democratic law-making	Zambia has a long history of multi-partyism but a weak and fragmented opposition. Issues of vote buying in parliament.	Paper
Diversity of views and opposition	Legal framework allows rights of NGOs and the media to function - political parties are guaranteed rights in principle, in practice there is some discrimination.	Partial
Inclusion and anti-discrimination	Progressive laws: The constitution plus supporting legislation, e.g. the Societies Act CAP 19, Electoral Act, Electoral Code of Conduct protect opposition parties. In practice, there are various vulnerable groups.	Partial
Human rights and fundamental freedoms	Freedoms guaranteed in the constitution but contradicting laws in practice - The Public Order Act constrains freedom of assembly and political interference results in not only censorship but insidiously also self-censorship in the media.	Paper
Strong democratic institutions		
Independence of democratic institutions	Executive influence in both appointment and management of democratic institutions	Paper

Powers and sanction of democratic institutions	The 2016 Constitution has made strides to address right to sanction.	Partial
Autonomy and resources	Commissions, parastatals and judiciary have insufficient human capacity and inadequate budgets.	Paper
Accountability and reporting	In practice, a highly-centralised system, prone to cadre deployment undermining accountability.	Paper
Regular democratic elections		
Functioning of elections monitoring body	Electoral Commission of Zambia (ECZ) was established in 1996.	Partial
Election campaigns	Electoral Code of Conduct Regulation of 2011 - no regulation governing how election campaigns are funded, including no mandatory disclosure and no expenditure ceiling (EISA, 2014).	Paper
Electoral observation	Election observers are welcomed, including international, regional and local.	Active
Level playing field	The Constitution (2016) ensures media freedom of expression, of coverage and reporting - In practice this is more biased.	Partial
Voter education	The ECZ did undertake voter education programmes - the timeframes were short and widely considered to be insufficient.	Partial
Role of civil society and citizens	Zambia has a vibrant civil society, but manipulations of legal framework also constrain the role of civil society.	Partial
Access to information and state broadcaster	Still weak in practice. Access to information is not guaranteed within the current supporting legal framework.	Paper
Decentralisation and local participation	The government has embarked on a goal of decentralising governance. Strengthened under the Constitution of 2016, but still weak in practice.	Partial
Freedom of association and action	Legislation protects the rights of citizens and civil society.	Partial
Socio economic rights of citizens	The Constitution is recognised as key to service delivery and socio-economic justice in so far as it guides policy and law. In practice, weak implementation.	Partial
Social services budgeting vs others	The 2016 budget has set aside a considerable portion of the fiscus to activities that support livelihoods. This includes education, health, housing, environmental protection and social protection.	Active
Protection of people with disabilities and special needs	Progress is being made to tailor the education offered to people with disabilities, especially physical disabilities - currently weak in practice.	Partial
Mechanisms to address social challenges	The sixth National Development Plan extends to 2016. A process has begun on formulating the seventh NDP.	Active
Corporate sector governance and monitoring	Issues around laws; lack of transparency around corporate taxes; and inconsistently applied laws, particularly as applies to foreign mining companies.	Paper
Combating corruption		
Capacity of anti-corruption institutions	Legislation in place but these are not effectively applied and interpreted - concerns of political interference and loopholes.	Partial

Approach to fight against corruption	Various anti-corruption laws and commissions as well as civil campaigns.	Partial
Anti-corruption law	Kaunda's Anti-Corruption Act, Mwanawasa's national strategy, the National Anti-Corruption Policy, and the Whistle-blowers/ Public Interest Disclosure Act.	Partial
Mechanisms to deal with corruption hotspots	The Anti-Corruption Commission - supported by: Auditor General, the Ombudsman (Commission of Investigations), the Director of Public Prosecutions.	Paper
Transnational cooperation on corruption	Zambia has not played a strong role in promoting this to its neighbours and peers.	Partial
Corporate sector regulation	Perceptions of corruption have increased, but according to Transparency International's Corruption Perception Index and the WEF's Corruption and Ethics Ranking as in World Bank, 2016, corruption is decreasing.	

South Africa

The findings suggest that South Africa has well-structured constitution and legal framework, which forms a foundation for a society that adheres to democratic principles and the rule of law. South Africa's political environment has fostered a multiparty system in which different political parties with similar and dissimilar views have equal opportunities to contest elections. South Africa has had multiple free and fair democratic elections since the end of apartheid and these elections appear to have been inclusive of stakeholders such as CSOs and external observers.

The democratic culture in South Africa is strong and is supported by several state institutions and laws that exist to guard against undemocratic practices such as human rights violations, discrimination and corruption. Several different mechanisms have been implemented to include previously marginalised groups such as black South Africans in the country's socio-economic development endeavours.

There also numerous platforms that facilitate communication and transparency between the state and the people in addition to laws and spaces for involving all citizens in the state's decision-making processes. While formal compliance is strong, South Africa faces significant challenges in ensuring a substantive level of compliance for the instruments that have been signed and ratified.

South Africa's legal framework is particularly ambitious in the provision of socio-economic rights, and by comparison with other African states is significantly more progressive. It appears that there is disconnect between signing these protocols and the awareness and evidence of enactment by government to make the expression of these more tangible to South African citizens.

While South Africa has significant participation and engagement before signing or contributing to the creation of the AU protocols, this mostly involves academics, well organised CSOs and similar institutions. For general citizens however, the status of various AU instruments and the commitments under these is very low. There is also very weak reporting and monitoring of protocols.

Table 1.8: South Africa's formal compliance and capacity

Constitutionalism and the rule of law		
Culture of constitutionalism and rule of law	The Constitution is the supreme law and is protected by a strong and independent constitutional court. However, the rule of law is not adhered to.	Partial
Competent, resourced and independent court	There are strong independent courts, although the justice system overall favour the privileged.	Active
Citizen awareness and education	There is citizen education and some awareness.	Partial
Constitutional amendments	The constitution and state power, page 17.	Active
Sustainability of constitutional practice	Since the adoption of the Constitution, changes to the government have adhered to the Constitution.	Active
Democratic process and political pluralism		
Diversity of views and opposition	There is political pluralism although the ANC remains the dominant party.	Active
Inclusion and anti-discrimination	There is anti-discrimination legislation but it is not always followed.	Partial
Civic education	There are several forums for civic engagement at all levels of government.	Paper
Human rights and fundamental freedoms	The Constitution has a bill of rights which protects socio-economic rights and fundamental freedoms. There are challenges with regard to inclusion of the disabled and other vulnerable groups.	Partial
Strong democratic institutions		
Independence of democratic institutions	South Africa has many democratic (Chapter 9) institutions, many of which are under-resourced.	Partial
Powers and sanction of democratic institutions	Many have powers, and courts have effective in ensuring implementation.	Active
Autonomy and resources	While these institutions may be independent according to the Constitution, they are highly susceptible to being influenced by political actors.	Partial
Accountability and reporting	Most Chapter 9 institutions report to parliament.	Active
Regular democratic elections		
Functioning of elections monitoring body	The Independent Electoral Commission manages elections effectively.	Active
Election campaigns	There is an electoral code of conduct but it is not always adhered to.	Partial
Electoral observation	Electoral observation is welcomed.	Active

Level playing field	The playing field is not equal.	Partial
Voter education	The Independent Electoral Commission, page 30.	Active
Popular participation		
Role of civil society and citizens	The role of civil society organisations, page 36	Paper
Access to information and state broadcaster	Fact box - Promotion of Access to Information Act (PAIA) & Broadcasting Act of 1999, page 34.	Partial
Decentralisation and local participation	Fact box – Ward committees & Izimbizo, page 34.	Partial
Freedom of association and action	National Constitution: Chapter 2 – Bill of rights; Regulation of Gatherings Act of 1993, page 36.	Partial
Socio-economic rights		
Socio economic rights of citizens	Fact box, page 38.	Paper
Social services budgeting vs others	Government Spending, page 41.	Partial
Protection of people with disabilities and special needs	Social Assistance Act 13 of 2004, page 23.	Partial
Mechanisms to address social challenges	Fact box – GEAR; RDP; AsgiSA, page 38.	Partial
Corporate sector governance and monitoring	Taxation and corporate regulation, page 42.	Paper
Combatting corruption		
Capacity of anti-corruption institutions	Anti-corruptions institutions seem to lack grit or teeth to follow through on investigations.	Paper
Anti-corruption law	Prevention and Combatting of Corrupt Activities Act.	Active
Mechanisms to deal with corruption hotspots	National anti-corruption efforts only partially successful in managing corruption,	Partial
Transnational cooperation on corruption	SADC protocol against corruption & UN Convention against corruption.	Paper
Corporate sector regulation	There are national anti-corruption efforts but they are not effective.	Paper

1.4 Conclusions

The AGA framework, approach and platform serve to deepen coordination and provide a more consolidated approach towards the implementation and monitoring of AU instruments on democratic governance. Ideally, and in keeping with the content of the instruments and related commitment to civil society participation, Member States are required to report to the AU, and CSOs are expected to provide their views and inputs from the ground. This research provides useful insights on the perceptions of civil society about democratic governance, but stands separate to Member State reports as many have not been submitted per the provisions of instruments that have been ratified.

All six countries generally comply with the formalities of democratic governance and anti-corruption. On paper, there are constitutions in place, legislatures, independent oversight institutions, regular elections managed by independent bodies, anti-corruption strategies and independent judiciaries. With some variation, all the countries meet basic standards for democratic government in terms of rule of law, democratic institutions, culture and regular elections. The variations relate to country history and context and political leadership.

In practice, however, legislatures are often weak, oversight institutions lack authority and corruption is consistently rife across all six countries. Socio-economic justice is a persistent challenge related to low levels of economic growth, inequality and poor regard for basic needs. In many of the countries, patronage networks enable small elites to benefit from growth. Popular participation is similarly affected by an uneven distribution of power and resources. In some of the countries CSOs struggle to hold governments to account due to repressive conditions.

The design of the instrument has proven robust but going forward, it would be prudent to trim the questions and deal with duplication. The proposed 'lite' version of the survey, detailed in chapter 8, allows for a manual calculation of results as well as a year on year assessment of progress. The pilot has provided insights not only on compliance to democratic governance commitments, but on the relationship of CSOs to their states.

The following policy implications can be considered by CSOs as well as the Africa Union Commission, African Peer Review Mechanism (APRM) Secretariat, African Union Advisory Board on Corruption (AUABC) Secretariat and the Pan African Parliament Secretariat.

- **Ensure regular, free and fair democratic elections**

Although most countries do conduct regular elections, the playing fields are often rigged in favour of the ruling party or country elite. This can lead to a loss of faith in the democratic process and lower voting turnouts. The African Union Commission (AUC) and Regional Economic Councils (RECs) might want to consider developing election observation standards that identify active compliance as well as formal conditions.

Political parties should be encouraged to have more transparent selection processes for their electoral candidates. There is a need for increased integration of the citizenry in party processes, in order to enable them to be genuinely involved in procedures for choosing candidates in their respective parties. Added collective efforts from AGA member organisations need to be focused on the challenges of building and sustaining credible and policy focused political parties.

- **Commit to popular participation and political pluralism**

Some countries have made important improvements in popular participation including Nigeria and Ghana. Active compliance is affected negatively by issues such as transparency and access to information. Legislation regarding these aspects of democracy is positive but needs to permeate through interaction with stakeholders. The Pan African Parliament is well positioned to work with AU Organs and take a lead by providing access to relevant information as well as engaging actively with civil society.

- **Value democratic principles, human rights and rule of law**

Democratic principles, human rights and rule of law are all commitments that Member States make in terms of formal compliance. Many states have constitutions that guarantee democratic process, rule of law and basic human rights and freedoms. A notable gap in this regard is the rights of the LGBTI communities who remain vulnerable and ostracised in many countries. This is a matter of sensitivity in some Member States, but needs to be engaged with to ensure there is appreciation of the sanctity of human rights relative to individual state or community preferences.

- **Respect democratic institutions and the separation of powers**

While most countries have a separation of powers and a number of democratic institutions including public protectors and human rights commissions, there is a tendency for the executive to dominate legislatures. This might be due to dominant party systems or the way in which governance is structured. The PAP might want to consider programmes which raise awareness of the importance of parliamentary independence in ensuring accountability and strengthening country democracy. Capacity building for parliamentarians has historically been a terrain of neglect and requires championing by the PAP and its Member State representatives.

- **Condemn and reject corruption and indemnity**

While many countries have dedicated anti-corruption commissions, these have struggled to manage corruption. It seems action is what is most effective. A more sustained momentum is required to ensure that Member States report on their commitments to the Convention and take steps to stem internal and cross-border corruption. The Advisory Board on Corruption has to establish strategies to ensure that reports on levels of corruption include input from civil society as per the relevant provisions within the Convention. Such reports must include actions to be taken.

- **Deliver socio-economic justice through transparent and fair service provision**

Service delivery and access to education has increased significantly but many countries struggle to fulfil the requirements of the AU's Continental Education Strategy. There has also been steady progress in access to

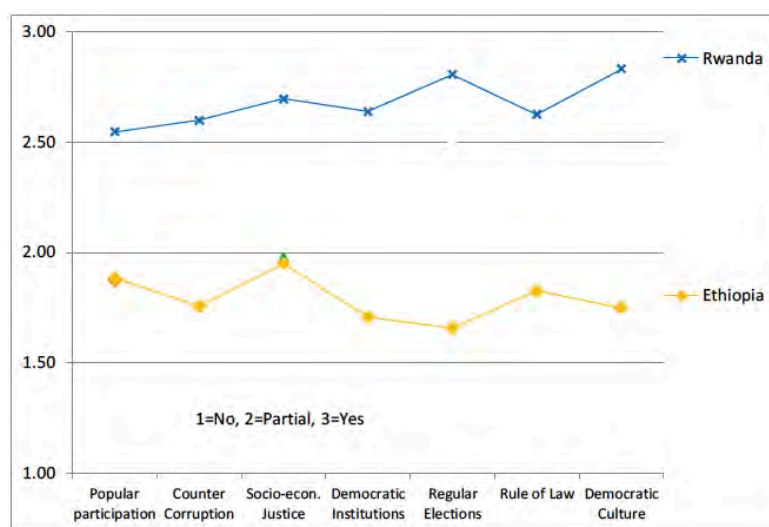
healthcare. However, governments should bolster efforts to foster increased access in poorer areas. Other gaps have to do with unemployment and regulation of the corporate and mining sectors. More work is required to engage issues of economic inclusivity and the manner in which governance improvement efforts are undermined by high levels of economic concentration and a growing reliance on extractive industries.

This collective effort by civil society is a demonstration of the value of a coordinated and consolidated approach to assessing Member State compliance with AU instruments. The demand for multiple and overlapping governance and democracy reports from Member States is unsustainable as they create added pressure on state systems. The process is inefficient and ineffective for an under resourced AU system. In addition to the propositions for the future, it is essential that the AU system recognises the value of coordination and collaboration, as has been done within this modest initiative from civil society.

This requires moving beyond having AGA as a framework for possible coordination, towards a situation where its participating structures recognise that having greater impact means engaging with the duplication and overlaps between, for example the APRM and the African Charter on Democracy, Elections and Governance. This need for reform is recognised in the current AU Reform Initiative and has to be seen as an opportunity to consolidate as has been done by civil society in this research.

East Africa

The East African region comprises Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan,



Tanzania and Uganda. There seems to be a trend away from hard-won democratic participation in this region. Many of the countries continue to deal with internal conflict and the inevitable migration of refugees to places of safety.

East Africa places second lowest after Central Africa in the Mo Ibrahim ten-year review of governance, showing a slight decline over time in democratic participation, from a very low score in 1996¹. The region splits between countries with significant improvements in democratic governance, notably, Rwanda, Kenya and Seychelles.

The two countries selected for the CSO assessment are Ethiopia and Rwanda, which feature at opposite ends of the regional spectrum. Rwanda's most significant improvements in ten years are in human development and welfare, followed by education and health. Although Rwanda improved in all areas, democratic participation, human rights and national security lag. The research results suggest similarly that CSOs perceive Rwanda and Ethiopia to be least effective in ensuring the conditions for popular participation.

In contrast, Ethiopia scores the lowest across all the countries in the study, operating very much at formal compliance on paper rather than in practice. However, it has improved in overall governance according to the Ibrahim Index. It is most improved in the areas of health, gender and accountability. There is a decline in participation, also evident in the research results.

¹ Mo Ibrahim Foundation. (2017). A Decade of African Governance 2006-2016. 2016 Ibrahim Index of African Governance. <http://mo.ibrahim.foundation/iiag/downloads/>

2 Rwanda

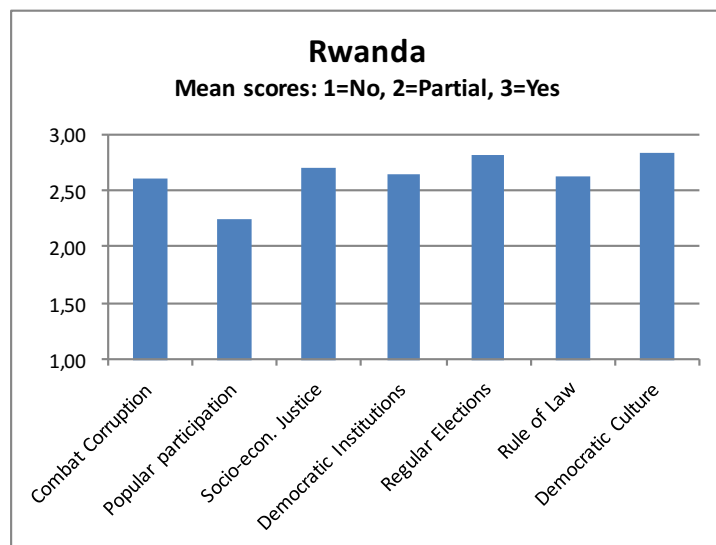


Carol Waiganjo & Osai Ojigho, State of the Union (SOTU)

2.1 Introduction

The case of Rwanda is sensitive and must be approached from that perspective. The memories of the genocide permeate the society and in most cases speaking of the government in a ‘negative’ light is considered unpatriotic. This was evidenced from the data collected in the online survey which in some cases seems contrary to information that is within the public domain.

Figure 2.1: Mean compliance scores for



While civil society organisations in Rwanda are visible, and even vibrant, there remains a lot of underlying suspicion and government control and it was a challenge to get organisations to feel they could speak freely and not have to be guarded with information. It was therefore necessary that the validation of the findings be conducted by a Rwandese national to ensure positive participation and reassure participants that the information collected would not be presented in a negative manner.

Rwanda has, since 1994, made significant progress in building and consolidating constitutional democracy. Because of the war and genocide of 1994, there was a total breakdown of institutional, systems, structures and human capacity. The country has gone through the painful challenge of rebuilding the entire governance infrastructure¹. After almost a decade of transition (1994-2003), Rwandans adopted a new constitution in a referendum on 26th May 2003².

Country context and governance

Rwanda is a sovereign state in both eastern and central Africa. With an estimated population of approximately 11 million inhabitants, it has a surface area of 26,338km²³ and is bordered by Uganda, Tanzania, Burundi and the Democratic Republic of Congo. Its population is composed of 51.7% women and 48.3% men. The economy is based on agriculture, which employs 85% of the country's households yet only contributes 37% of the gross domestic product (GDP). The population increases by about 2.8% annually⁴.

For centuries, Rwanda existed as a centralised monarchy under a succession of Tutsi kings, who ruled through cattle, land and military chiefs. The king was supreme but the rest of the population, Bahutu, Batutsi and Batwa, lived in symbiotic harmony. In 1899, Rwanda became a German colony and, in 1919, the system of indirect rule continued with Rwanda as a mandate territory of the League of Nations, under Belgium.

From 1959, Batutsi were targeted, causing hundreds of thousands of deaths and sending almost two million into exile⁵. The Gergoire Kayibanda regime was overthrown by General Juvenal Habyarimana in 1973. Since then the army has been the most powerful force in Rwandan political life⁶. In 2000, Parliament voted out President Bizimungu, who was heading a Government of National Unity, and appointed the then vice-president and Minister of Defence, Major General Paul Kagame, as the President of the Republic to lead the coalition government.

In 2003, President Paul Kagame was elected with landslide majority to serve a term of seven years. In 2010, he was re-elected to serve a second term⁷. To his admirers, he is a visionary leader, but to his critics he is a despot who tolerates no opposition. Mr Kagame has been criticised for trampling on freedoms, building up the army to assert his authority, and using anti-genocide legislation to clamp down on opponents⁸.

Rwanda has a presidential system of government and recognises a multi-party system of government. The President is head of state, head of government and commander-in-chief of the defence forces. The three arms of government, Judiciary, Executive and Parliament, are independent and autonomous while remaining complementary. Executive power is vested in the president and the executive. The members of the cabinet, including the Prime Minister, are appointed by the President. As per the Constitution, the cabinet is accountable to the President and the Parliament.

The bicameral Parliament comprises the Chamber of Deputies and the Senate. The Chamber of Deputies consists of 80 members, 53 of whom are directly elected by universal suffrage every five years. The remaining 27 represent women (24 seats) youth (two) and disabled people (one)⁹.

The Constitution provides for an independent Judiciary comprising the Supreme Court, the High Court, and the provincial, district and municipal tribunals. The Supreme Court is the final court of appeal and the constitutional court. The president and vice-president of the Supreme Court are elected by the Senate¹⁰. In addition to the Judiciary, Rwanda has *gecáca* courts, which are often referred to as traditional courts, which are seen to only deal with crimes against humanity especially crimes arising from the genocide. The *gecáca* courts allow for ordinary Rwandans to judge each other. These courts were a crucial element of the Truth, Justice and Reconciliation process in Rwanda and were started in 2002.

The constitution and law provide for an independent judiciary, and the judiciary operates in most cases without government interference. However, there were constraints on judicial independence and government officials sometimes attempted to influence individual cases. Authorities generally respected court orders¹¹.

Rwanda acceded to the APRM in March 2003 and has since then had one review completed in 2005. The self- assessment report is seen to have been largely government-dominated and as such limited in its autonomy. The self-assessment identified progress in implementation of good governance principles among them¹²:

- Recognised that there have been efforts to promote constitutional democracy but identified concerns in opening political space for competition of ideas and powers, the voting system in local communities and the overall capacity of the Electoral Commission.
- There have been efforts in implementing decentralisation through a participatory, bottom-up approach. However, it has been identified that fiscal power is yet to be handed over to local authorities.
- There have been positive steps by government to promote economic and social rights. However, this is not without challenges largely due to a lack of resources, lack of awareness and social and cultural traditions that hinder change.
- There is progress on freedom of information with a new press law established in 2003 and a High Court of the Press was established to authorise and approve media permits. However, it is not clear if the court promotes or undermines freedom of expression.
- The government has made steps to facilitate equal access to justice by restructuring the justice sector. However, there is no Judicial Service Commission and this compromises the Judiciary.
- The Rwandan government retains a zero-tolerance policy against corruption. The report however called on the government to avoid duplication of mandate and achieve effectiveness through rationalisation of anti-corruption bodies.

- Rwanda is still struggling with maternal health indicators which have not shown any improvement in the last couple of years.
- Rwanda actively promotes women in all areas of society and has been recognised and applauded for this the world over.

The APRM process has been lauded as Rwanda was one of the first countries to put itself up for review. However, it has been argued that the process was heavily influenced by government representatives and civil society organisations were consulted rather late, and even then, their views did not necessarily make it to the report. The process has therefore been not being fully transparent and there is a feeling that ‘the report repeats the priorities, recommendations and strategies of the government as they are quoted in various official documents’¹³.

Nonetheless, the report recognised some concerns for Rwanda which could impede their progress. One concern has been that while governance and democratic institutions are well established, there is a lack of capacity within the institutions to perform their tasks effectively. Another concern is the Rwandese political system that is characterised by “absolute consensus” rather than “voluntary participation” by political parties due to the existing restrictions on political rights and freedoms. Another key concern is Rwanda’s overreliance on development¹⁴ leading to questions of sustainability of some of the initiatives.

2.2 Constitutionalism and the rule of law

The Constitution of Rwanda which was adopted by referendum on May 26th, 2003 is the supreme law of the land. It provides for a presidential system of government, with separation of powers between the three arms of government. The government has taken steps to ensure that there is constitutional civilian control of the military. Interestingly, most of those interviewed did not feel that there had been any Constitutional amendments made that would allow for the incumbent government to stay in power.

Rwanda’s High Court ruled that parliament can amend the Constitution to remove the two-term presidential limit. In December 2015, 98% of Rwandans voted to approve the revised constitution¹⁵. The amendment allows the sitting president to run for another seven-year term, and two more subsequent five year terms¹⁶. While it has been argued that the constitutional amendment was procedurally arrived at, there have been indications that citizens did not feel they had much choice and voted as they were expected to vote. It is worth noting though that the Rwandan government has ‘strongly condemned and totally rejected’ unconstitutional changes of government in other states.

The Constitution of Rwanda which was adopted by referendum on 26 May 2003 is the Supreme law of the land. It provides for a presidential system

of government, with separation of powers between the three arms of government. The constitution is seen as the supreme law of the land and all other laws and policies are subjected to it. Since the current president came into power, there have not been any unconstitutional changes of government.

Table 2.1: Rwanda - formal compliance to constitutionalism

✓	The Constitution is the supreme law.	The Constitution was adopted by referendum on 26 May 2003.
✓	Citizens are equal before the law.	Citizens' rights are protected in the Constitution.
✓	Constitutional change is democratic.	In December 2015, 98% of Rwandans voted to approve the revised constitution to remove the two term Presidential limit.
✓	Civilians control of the military.	There is civilian control of the military, although the President is commander-in-chief.
✓	No unconstitutional changes or refusals to relinquish power.	There have been no unconstitutional changes to government and Rwanda condemns unconstitutional change

More than 50% of those who completed the online survey did not think there had been any amendments in the Constitution to facilitate the staying in power of the incumbent government. In 2015, the High Court ruled that parliament can amend the Constitution to remove the two term presidential limit. In December 2015, the constitutional amendment was put to a referendum and 98% of Rwandans voted to approve the revised constitution¹⁷. The amendment which changed term limits allows the incumbent president to run for another seven-year term, and two more subsequent five-year terms¹⁸. The constitutional amendment was conducted in line with constitutional provisions for amending the law and was therefore procedural.

The Rwandese Government has taken steps to ensure constitutional civilian control of the military. This is especially important for Rwanda which was under military for very many years and continues to have remnants of military rule in how they conduct their affairs. It is worth noting though that the Rwandan government has and continues to 'strongly condemn and totally reject' any unconstitutional changes of government in other states.

2.3 Democratic culture and political pluralism

Generally, citizens feel they can assemble peacefully. While registration of civil society organisations remains the prerogative of government, they can operate freely and conduct their business. There are anti-discrimination laws in place and these are seen to be effective. There are provisions for political party funding and the electoral legislation is seen to promote credible elections.

Women's political participation is robust with Rwanda providing an enabling environment for women's participation in politics. As a result, Rwanda is one of only two countries in the world that have more women than men in parliament at 63.8%¹⁹. Human rights are well protected in law and citizens feel that their fundamental freedoms are protected and they are afforded meaningful opportunities for government-citizen dialogue.

Table 2.2: Rwanda - formal compliance to democratic culture

✓ Policies for citizen participation exist	Freedom of assembly is protected and there are legislative forums for government-citizen dialogue. Power sharing, decision making by consensus and inclusiveness enshrined in the Constitution.
✓ Political party formation and funding protected	The <i>RGB</i> (2011) is the legal authority for registering political parties. Section A58 of the Constitution requires parties to join the Consultative Forum of Political Organisations in Rwanda.
✓ Conducive conditions for civic organisation	<i>National Dialogue Forum</i> allows citizens to review governance annually.
✓ Civic education in place	<i>National Civic Education</i> programme (<i>Itorero</i>) educates citizens as well as enables discussion on home-grown solutions.
✓ Rights of minorities and vulnerable protected	There are more women than men in parliament because of policy that makes provision for women, youth and persons with disabilities
✓ Anti-discrimination laws in place	The Constitution has anti-discrimination laws and prohibits political parties from organising on an ethnic, regional or religious basis.

Rwanda's political system places the highest emphasis on national unity and reconciliation, and the Constitution enshrines the principle of power sharing, decision making by consensus and inclusiveness. The Constitution limits the ruling party to a maximum of 50% of Cabinet seats, with the rest of Cabinet seats divided proportionally among other parties represented in Parliament. Cabinet Ministers are barred from concurrently serving in the Legislature²⁰.

Under section A58 of the Constitution, all registered political parties are required to join the Consultative Forum of Political Organisations in Rwanda, where parties meet to discuss government policies and promote consensus. The law specifically prohibits political parties from organising on an ethnic, regional or religious basis. The consultative forum, which receives its budget from government, funds the activities of political parties.

The Rwanda Governance Board (RGB) is the legal authority responsible for registering political parties. The RGB was established in 2011, and has responsibility "to promote the principles of good governance and

decentralisation, monitor the practices of good governance in public and private institutions and conduct research related to governance for achieving good service delivery, sustainable development and prosperity”²¹. In the 2013 elections, political parties stated that the RGB had ensured that they could campaign freely.

Article 24 of the organic law which governs political parties and politicians, requires political parties to inform the Rwandan Governance Board within 30 days, should they receive donations to the value of 1 million Rwandan francs or more. Furthermore, political parties are not allowed to accept donations and bequests from foreigners or businesses in which foreigners are shareholders. Article 25 states that contributions that are “likely to undermine independence and integrity of the Country” are strictly forbidden²².

Women’s political participation is robust with Rwanda providing an enabling environment for women’s participation in politics. As a result, Rwanda is one of only two countries in the world that have more women than men in parliament at 63.8%²³. Government has also put in place affirmative action provisions that allow for marginalised groups to be represented with provision being made for women, youth and persons with disabilities.

The National Dialogue Forum provides a forum for Rwandans to participate in annual discussions evaluating governance. The forums provide a means through which citizens hold their leaders accountable. In addition to the Forum, the National Civic Education programme (*Itorero*) provides an opportunity for citizens to participate in searching for home grown solutions to emerging challenges. This is also the programme through which the government provides civic education on integrity, responsibility, patriotism, etc.

Rwanda has ratified all international human rights treaties. The Constitution contains provisions against discrimination and Rwanda has enacted laws on the elimination of all forms of discrimination, including the law on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism and the law Punishing the Crime of Genocide, Crimes against Humanity and War Crimes. Other laws like the Penal Code, the Labour Law, the Land Law, the Law on Matrimonial Regime, Succession and Gifts, as well as the law governing the General Statutes for Rwanda Public Service, contain provisions against discrimination²⁴.

2.4 Strong democratic institutions

Rwanda has made remarkable strides in creating strong democratic institutions which are protected and enshrined in law. The Rwanda National Commission for Human Rights is provided for under Article 177. It was

created by law in March 1999 and its independence and autonomy is guaranteed by law²⁵. The Commission is also well funded to carry out its mandate. The Office of the Ombudsman has power to prosecute, request for administrative sanctions, request for review of judgment etc²⁶. The National Electoral Commission (NEC) is provided for under Article 180 of the Constitution²⁷.

The Judiciary is independent and appointments to the Judiciary are seen to be done through a credible process. The institutions are accountable to the people. There is a big push on performance of individuals in office and this has played a role in ensuring that institutions remain accountable to the people.

The Public Prosecution Authority also plays a key role in the protection and promotion of human rights (especially through its programmes on tracking genocide fugitives), the protection of witnesses and victims, the fight against gender based violence and the fight against corruption and drugs²⁸.

Article 177 of the Constitution provides for the Rwanda National Commission for Human Rights. The Commission was created by law in March 1999 and its independence and autonomy is guaranteed by law²⁹. The Commission is also well funded to carry out its mandate. The Commission has a specific mission of educating and raising public awareness on human rights and providing guidance upon request or on its own initiative on bills related to human rights and engages state bodies to ratify international conventions related to human rights and take steps to domesticate these conventions in the national legislation.

The Commission also investigates violations on human rights committed within the territory of the Republic of Rwanda by state organs, public officials abusing their powers, organisations and individuals. The Commission is empowered to launch cases before civil, commercial, labour and administrative courts in case of violation of human rights. Each year the Commission submits a report of its activities to the Parliament and gives copies to the President of the Republic, the Cabinet and the Supreme Court³⁰.

The Office of the Ombudsman is an independent public institution established under the Constitution. It acts as the link between citizens and public and private institutions. The Office of the Ombudsman has the power to prosecute, request for administrative sanctions, and request for reviews of judgments.³¹ It is tasked with preventing and fighting injustices, corruption and other related crimes in public and private administration; receiving and examining complaints from individuals and independent associations against the acts of public officials and private institutions and to mobilise these officials and institutions to find solutions to such complaints; as well as receiving declarations of assets of senior government officials and other government officials with the aim of preventing the embezzlement of public funds.

The Judiciary is independent and is comprised of the Supreme Court, the High Court, and provincial, district and municipal tribunals. The Supreme Court is the final court of appeal and is the constitutional court. The president and vice-president of the Supreme Court are elected by the Senate³² and appointments to the Judiciary are seen to be done through a credible process. Rwanda also has traditional courts, known as the *gecáca* courts, which allow for ordinary citizens to judge each other. As earlier stated, the courts were begun in 2002 and deal with cases of crimes against humanity.

Table 2.3: Rwanda - formal compliance with democratic institutions

✓	Separation of powers legislated	The Constitution provides three independent arms of government. The president is head of state, head of government and commander-in-chief of the defence forces. The ruling party has only 50% of cabinet seats and the rest are for other parties.
✓	Human rights commission operational	The Rwanda National Commission for Human Rights was created in 1999 and its autonomy is guaranteed by law.
✓	Parliament check on power of the executive	A bicameral parliament comprises the Chamber of Deputies and the Senate. The Chamber of Deputies consists of 80 members. 53 are directly elected by universal suffrage every five years. 27 represent women (24), youth (2) and disabled people (1).
✓	Independent institutions protect democracy	The Office of the Ombudsman has power to prosecute, request for administrative sanctions. Article 177 of the Constitution provides for the Rwanda National Commission for Human Rights.
✓	Strong supported independent judiciary	The Judiciary comprises the Supreme Court, High Court, and the provincial, district and municipal tribunals.
✓	Access to (traditional & ADR) justice	<i>Gecáca</i> courts, referred to as traditional courts, deal with crimes against humanity and allow ordinary Rwandans to judge each other. Mediation Committees (<i>Abunzi</i>) put in place in every village of the country.

Mediation committees, known as *Abunzi*, are in every village of the country, and have effectively improved expeditious administration of justice by practical involvement of the community members in resolving minor disputes. It is worth mentioning that by end of 2009 more than 38,005 disputes had been completely resolved by *Abunzi*³³.

The Public Prosecution Authority also plays a key role in the protection and promotion of human rights, especially through its programmes on

tracking genocide fugitives, on the protection of witnesses and victims, on the fight against gender based violence and on the fight against corruption and drugs³⁴.

2.5 Regular democratic elections

The National Electoral Commission is well equipped to handle and monitor elections with the last election having been successfully conducted in 2013. The African Union sent an observation mission to Rwanda in 2013 at the invitation of the government of Rwanda. The 30-member team deployed by the AU Chair reported that the elections had largely been free and fair and met the required threshold³⁵. There is a working code of conduct with other stakeholders. The Rwanda Civil Society Election Observation Mission has been permitted to observe every national and grassroots election since 2008³⁶. The country has a robust national mechanism to resolve electoral disputes.

The legal framework governing legislative elections in Rwanda consists of various laws including the 2003 Constitution, Law No 37/2013 of 16/06/2013, Modifying and Complementing Law No 27/2010 of 19/06/2010 relating to elections as modified and complemented to date; and Instructions of the National Electoral Commission No 03/2013 of 23/07/2013: Governing Legislative Elections, Chamber of Deputies September 2013³⁷.

The National Electoral Commission (NEC) is provided for under Article 180 of the Constitution³⁸. The Commission is a seven-member commission. The government presents names of nominations to the Senate for approval. Once they are approved, they are then appointed by presidential order. According to the NEC's own materials, the seven commissioners are from "different political parties and civil society". During elections, the Commission works permanently from one month before elections until the publication of results. A permanent executive secretariat, headed by an executive secretary, supervises the daily activities of NEC and manages personnel and property³⁹.

The current open elections with lining up behind candidates at the cell level reduce administrative costs massively. The non-secrecy of the vote at these elections is undesirable especially because the elected representatives at the cell level have further representative functions⁴⁰. The National Electoral Commission is yet to introduce the secret ballot in cell level elections.

Table 2.4: Rwanda - formal compliance to regular democratic elections

✓	Regular elections	Elections take place every five years
✓	Independent EMB in place	The National Electoral Commission is provided for under Article 180 of the Constitution and can run elections.
✓	National mechanism for election disputes	The country has a mechanism to resolve disputes at national level.
✓	Code of conduct for electoral stakeholders	There is a working code of conduct.
✓	Equitable access to the media	
✓	Election observation conditions	Both the AU and the Rwanda Civil Society Election Observation Mission can observe elections.

2.6 Popular participation

The government has the sole power to register or deregister any NGO. There are legal restrictions for funding but most feel that the government has formed working partnerships with civil society. The Rwanda Access to Information law (2013) enables the public and journalists to access information possessed by public organs and private bodies carrying out businesses in relation to the public interest. The law also qualifies information that government will not release to the public. Rwanda has a civic education programme known as Itorero which was introduced in 2009 to rebuild the nation's social fabric and mobilise Rwandans to uphold important cultural values among them patriotism, integrity and responsibility⁴¹. The National Itorero Commission is responsible for overseeing the programme.

The government has the sole power to register or deregister any NGO. NGOs are registered under the Non-Governmental Organisation Registration Act. All foreign and local NGOs are required to apply for a permit before they can operate in Rwanda. NGOs must meet certain criteria to be registered. The Rwanda Governance Board registers NGOs in Rwanda.

The legal framework for civil society in Rwanda underwent reform in 2008, following the enactment of the Organic Law no. 55/2008 of 10/09/2008 governing NGOs. This 2008 law and subsequent laws were a result of extensive consultation, but the impact of these laws on civil society in Rwanda has been muted due to inadequate implementation. Notably, CSOs are often required to produce extensive documentation to obtain legal status, though the law sets out a limited number of requirements⁴².

There are legal restrictions for funding regardless of this; most feel that the government has formed working partnerships with civil society. The Rwanda Access to Information law (2013) enables the public and journalists to access information possessed by public organs and private bodies carrying out businesses in relation to the public interest.

Table 2.5: Rwanda - formal compliance to popular participation

✓	Law regulating the NGO sector	The NGO Registration Act regulates permit requirements and processes for local and foreign NGOs and the Rwanda Governance Board registers NGOs. There is inadequate implementation and CSOs are often required to produce unnecessary documentation.
✓	Restrictions on sources of funding	There are legal restrictions on funding.
✓	Government CSO working partnerships	There is a perception that government and CSOs have useful partnerships and working relationships.
✓	Access to & freedom of information law	Rwanda Access to Information law (2013) enables the public and journalists to access information possessed by public organs and private bodies. Newspapers, internet usage and radio stations have proliferated and a Press Court deals with challenges.
✓	Budget consultations at all levels	Article 167 of the Constitution of Rwanda provides for decentralised entities. The National Decentralisation policy approved in 2001 provides avenues for budget participation at all levels.

Article 167 of the Constitution of Rwanda provides for decentralised entities and reiterates that they are the foundations of community development. The National Decentralisation Policy was approved in 2001 as a mechanism to achieve good governance principles (through improved participation, promotion of transparency and accountability, and setting up responsive decentralised structures), enhance local economic development (through efficiency and effectiveness in implementation of development programmes) and bringing quality and accessible services closer to citizens⁴³.

Freedom of expression is reflected in the increase of media outlets in the country. The number of newspapers rose from 15 in 2003 to 57 in 2010; from one national radio that existed in 1997 to over 19 radio stations are operating in the country. National radio has established branches in all provinces to enable mass participation. More than 50% of the adult Rwandan population own and use mobile phones for communication. Some print media have evolved from weekly into dailies, such as The New Times and Imvaho Nshya. Some international radio stations have been licensed to operate on FM frequencies in Rwanda, including BBC, DW and VoA.⁴⁴

2.7 Socio-economic justice and service delivery

There is legislation to deal with malaria, HIV, maternal health and education. Primary education is free for all citizens and it is compulsory. There is an audit of all government ministries as an Auditor General is in place. The results of the audits are released to the public, but there are mixed reactions on whether those results are entirely transparent.

Article 49 (1) of the Constitution stipulates that every citizen is entitled to a healthy and satisfying environment. Rwanda has developed various sector policies that enable citizens to access health facilities, especially the Health Sector Policy (2005), the Policy Governing the Standards of Health Services in Rwanda (2009), the National Policy for Community Health (2008), the National Policy to Fight against HIV/ AIDS (2005), the National Policy on Condoms (2005), the National Nutrition Policy (2005), the Policy on Community-based Health Insurance (2004), the National Policy on Reproductive Health (2003), the Environmental Health Policy determining conditions for school hygiene (2008) and the Policy on Water and Sanitation (2004)⁴⁵. The Law No 01/2007 of 2007 defines modalities for the protection of people with disabilities.

Several programmes are available for the promotion of maternal and child health. These programmes include family planning, antenatal care, community health care, delivering health facilities, Emergency Obstetric and Neonatal Care, the construction and equipment of maternity wards, capacity building of the midwives, increase in the number and quality of health professionals and the introduction of community-based health insurance⁴⁶. Universal health insurance is a medical care programme to enable citizens to acquire and access medical assistance to overcome health challenges.

Table 2.6: Rwanda - formal compliance to socio-economic justice and services

✓	Free compulsory basic education to all	Primary education is free for all citizens and it is compulsory. There is specific policy related to the education of girls.
✓	Healthcare & measures of combat diseases	There is legislation for health, education and several related laws related to malaria and HIV. This includes Universal Health Insurance and special measures for the disabled.
✓	Company tax payments public	It registers a particularly strong performance in <i>Business Environment</i> , in which it ranks 2 nd on the continent and shows the second largest improvement (+18.4), and in <i>Rural Sector</i> , as the highest scoring country.
✓	Regulation of foreign companies and mining	
✓	Environmental protection measures	There are environmental health measures in place.
✓	Government reduction of unemployment	

Rwanda ratified the Convention on the Protection of the Rights of Persons with Disabilities and its optional protocol. Ministerial orders have been enacted with the aim to facilitate people with disabilities to have access to education, healthcare, ICT, sports and cultural integration, easy access to

different infrastructures including buildings and transport means⁴⁷. The National Council of Persons with Disabilities is tasked with monitoring the implementation of programmes for persons with disabilities. Persons with disabilities are represented in all levels of administration including parliament.

Key national policies guiding education include the Girl's Education Policy⁴⁸ to ensure that the girl child has equal access to universal education as the boy child, the Special Needs Education Policy⁴⁹ for certain categories of Rwandans requiring special attention, as well as the Policy on Science, Technology and Innovation⁵⁰. The One Laptop per Child programme was put in place with the mission to distribute laptops to primary schools all over the country. The education for children with physical or mental disabilities was introduced and 386 teachers were trained in the methodology for such classes⁵¹.

2.8 Combatting corruption

The Rwanda Anti-Corruption policy (2012) outlines the primary anti-corruption agency as the Office of the Ombudsman. Several other institutions with core anti-corruption functions include the National Public Prosecution Authority, the Rwanda National Police, the Office of the Auditor General of State Finances, and the Rwanda Public Procurement Authority⁵².

The National Anti-Corruption Advisory Council was put in place to create a framework of exchange of information on corruption, to avoid collusion and to set collective efforts among institutions on fighting against corruption. Rwanda is also governed by international treaties on anti-corruption that it has ratified, including the African Union Convention against Corruption (AUCAC), the United Nations Convention against Corruption and the East African Community Treaty. Corruption cases are handled by different institutions.

Rankings made by the World Bank over the last ten years show that Rwanda has made considerable progress from a score of 20.0% in 1996 to 70.8% in 2010, emerging the fourth least corrupt country out of 53 countries in Africa after Botswana (79.9%), Cape Verde (74.6%) and Mauritius (73.2%).⁵³ According to Transparency International, over the period of 2006 to 2011, corruption has declined from 2.5 out of 10 in 2006 to 5.0 in 2011, appearing the most improved in the East African region. East African countries scored as follows in 2011: Rwanda (5.0), Burundi (1.9), Kenya (2.2), Uganda (2.4) and Tanzania (3.0).

According to the 2013 Corruption Perception Index published by Transparency International, Rwanda was ranked fourth least corrupt in Africa with a score of 53. Only five African countries scored above 50, namely Botswana, Cape Verde, Seychelles, Rwanda and Mauritius. Worldwide, Rwanda ranked 49th least corrupt⁵⁴.

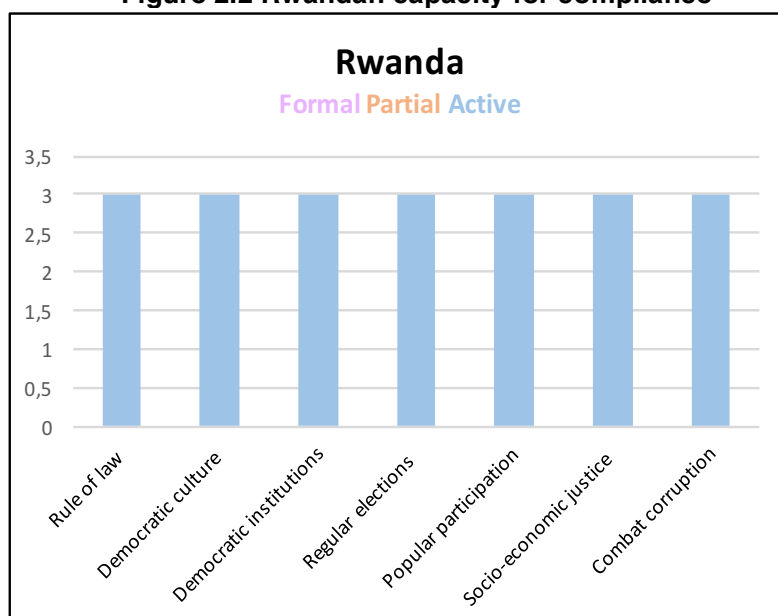
Table 2.7: Rwanda – formal compliance on combatting corruption

✓	Anti-corruption commission operational	The primary anti-corruption agency is the Office of the Ombudsman as specified in the Rwanda Anti-Corruption policy (2012).
×	Government, media & civil society partnership	National Anti-Corruption Advisory Council was put in place to create a framework of exchange of information on corruption.
✓	Access to information & civic education	Legislation provides for access to information and civic education.
	Declaration of assets for public servants	
✓	Whistle blower protection law and reporting	This is evident in the reduction of corruption cases over the years.

2.9 Conclusions

The key findings from Rwanda indicate that citizens are satisfied with Rwanda's implementation of its governance commitments (see Figure 2.2). The Constitution is the supreme law and the rule of law is adhered to. There is a democratic culture and strong governance institutions enshrined in the Constitution.

Figure 2.2 Rwandan capacity for compliance



The country has held regular democratic elections in the last fifteen years and citizens feel they have freedom to participate as the government consults on key issues. There is consensus that positive steps have been taken to ensure socio-economic justice and effective service delivery.

Figure 2.2 suggests that the 11 CSOs that completed the questionnaires as well as the CSOs and others interviewed, perceive Rwanda to be not only compliant, but actively meeting the AU commitments that have been ratified by the government. There has been consistent economic growth and improvement in services, especially health and education. Rwanda has also made significant inroads towards gender equality⁵⁵.

There do, however, seem to be some diverging trends at play. The Ibrahim Index, for example, notes declines in the Political Refugees and

Government Involvement in Armed Conflict indicators. And anti-corruption efforts seem to be undermined by reversals in Corruption Investigation and Diversion of Public Funds⁵⁶. More concerning, however, are the negative trends in Human Rights Violations (-25.0) and Civil Liberties (-14.6).

Concerns about levels of active democracy are evident in news coverage over the past 8 years, as well as academic and political research on Rwanda. Some suggest that Rwanda is following “a dangerous road to authoritarianism” by using law to silence the media and repress civil liberties⁵⁷. Filip Reyntjens argues that

*Rwanda is a clear case of hegemonic authoritarianism, where regular, seemingly multiparty elections serve only to consolidate a dictatorship. Given the government’s repression of opposition parties and voices, Rwanda does not even meet the requirements of electoral authoritarian regimes: Its elections are insufficiently pluralistic, competitive, and open*⁵⁸.

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³ <https://en.wikipedia.org/wiki/Rwanda>

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¹² APRM Country Review Report of the Republic of Rwanda, June 2005

¹³ Critical review of the African Peer Review Mechanism process in Rwanda, Kigali, January, 2007, Ligue des Droits de la Personne dans la Région des Grands Lacs, p. 14.

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3 Ethiopia

Awetu Simesso



3.1 Introduction

The Federal Democratic Republic of Ethiopia (FDRE) is a signatory to all the existing African governance instruments adopted by the AU, including the APRM, ACDEG and AUCPCC. It is also party to all but one of the core international

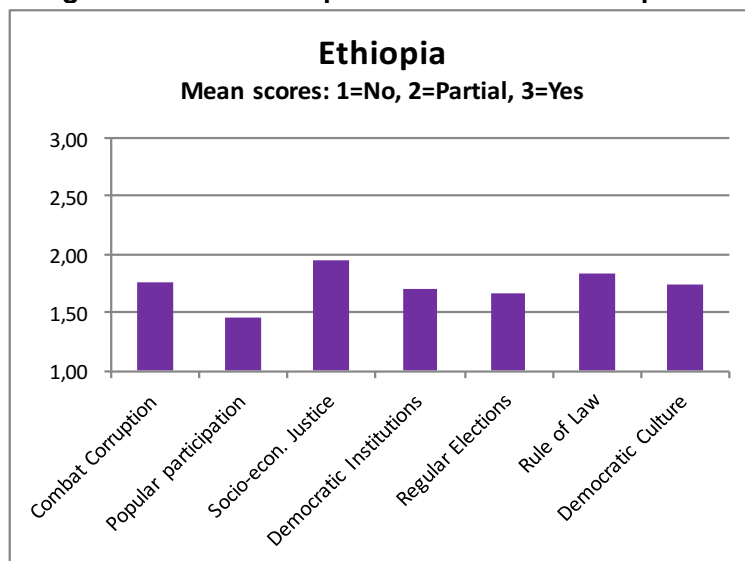
human rights treaties. A full one third of the constitution is dedicated to "human and democratic rights" and under Article 9.4 of its constitution, the government further absorbs into public law its international treaties: "all international agreements ratified by Ethiopia are an integral part of the law of the land".

The governance system is federal and parliamentary. The federation comprises nine ethno-national regional states and two city administrations. The regions are subdivided into "zones", which are divided into *woredas* (districts) and *kebeles* (villages), the latter forming the smallest official governmental units.

Staggered multi-party parliamentary elections are held every five years under the administration of a National Election Board (NEBE) to seat a 547-member House of People's Representatives, nine regional parliaments and two city councils. Local government officials at the *kebele* and *woreda* levels, over three-and-a-half million in all, are elected through another round of elections also held every five years.

Despite Ethiopia's democratic constitution, a single party, the Ethiopian People's Revolutionary Democratic Front (EPRDF), has dominated the government for the last quarter of a century. The currently ruling EPRDF is

Figure 3.1: Mean compliance scores for Ethiopia



a coalition of four parties - the Tigray People's Liberation Front, the Amhara National Democratic Movement, the Oromo People's Democratic Organisation and the Southern People's Democratic Movement. The EPRDF, along with allied parties in the other regions, controls 100 percent of the seats in the national and regional legislatures, and, by extension, the executive at both levels. The EPRDF and its allies also control the sub-regional local government bodies.

3.2 Constitutionalism and the rule of law

While the Constitution and policy provisions make clear distinctions, in practice, the separation of party and state is hardly observed, more so at local levels of government. A fused party-state structure permeates all the formal branches of government (across the executive, the judiciary and the legislature). There are frequent vertical and horizontal moves within the party-state structure. Hence, it is not unusual to find one an MP today, a member of the parliamentary staff and a civil service official tomorrow. Many in the ministerial or bureau level government are senior party officials, often leaders of their local parties and members of the executive or central committee at the centre.

Table 3.1: Ethiopia - formal compliance to constitutionalism

✓	The Constitution is the supreme law.	Ethiopia does have a democratic Constitution as the primary basis for rule of law.
✓ x	Citizens are equal before the law.	Statutory equality is blunted by perceptions of ethnic stratification among respondents.
✓ x	Constitutional change is democratic.	Amendment procedures exist, but have not been tested.
x	Civilians control of the military.	The law stipulates and ensures formal civilian control of the military, but respondents insist that military and security apparatus are under autonomous party control.
✓ x	No unconstitutional changes or refusals to relinquish power.	There has been no unconstitutional power succession but the ruling party/government has either totally or partially refused to relinquish powers during the past fifteen years.

The largest number of survey respondents answered affirmatively to the question of whether a constitution is in place as the supreme law of the land, and large numbers also agreed that there has been no unconstitutional power succession in the last 15 years. A majority (nine out of thirteen, or 69%) felt that the government has either totally or partially refused to relinquish powers during the past fifteen years. Eleven out of thirteen or nearly 85% felt that there is no constitutional civilian control of the armed forces

3.3 Democratic culture and political pluralism

Table 3.2: Ethiopia - formal compliance to democratic culture

✓	Policies for citizen participation exist	Policies do exist but are no activated.
×	Conducive conditions for civic organisation	Conditions for civic organisation restrict organisation and mobilisation.
✓	Civic education in place	Limited civic education in place.
✓	Rights of minorities and vulnerable protected	The rights of women are protected.
	Anti-discrimination laws in place	

Most respondents perceived that election rights, political party formation, media rights and parliamentary independence were abrogated except for law for elections and statutes promoting women's rights. Other areas which are critical to the strengthening of democracy and good governance are the development of a vibrant and independent mass media and a viable civil society sector to ensure that the voices of citizens are heard. Both sectors make a vital contribution to balancing a “supply-side” approach to governance with the “demand side” and improving citizen-state relations.

3.4 Strong democratic institutions

Democratic institutions are statutorily in place. However, they are practically challenged by lack of independence - most significantly in the legislature and the judiciary, both of which are controlled by the executive, itself, in turn, controlled by a disciplined single ethno-national party. In the CSO survey, an overwhelming 92.3% of the respondents felt that the country does not protect the institutional, procedural, decisional and operational independence of the judiciary. An equal percentage felt that judges' appointments and security tenure were not transparent, while 100% felt that the judiciary was neither transparent nor accountable to the public.

Appointments to head the watchdog institutions are opaque at best, and although to ensure accountability, they answer to parliament, parliament itself is perceived to lack independence. Attitudes toward democratic institutions were consistently lukewarm, displaying dissatisfaction with performance.

In general, the study found that all the democratic institutions have standard statutory rights, but face capacity challenges including under-resourcing, procuring and retaining skilled staff and providing adequate and up-to-date work environment including facilities and access to internet services. The generation and implementation of core activities have tended to wax and wane depending on the availability of international development partner support.

Table 3.3: Ethiopia - formal compliance with strong democratic institutions

✓	Separation of powers legislated	A separation of powers is guaranteed in the Constitution. The executive effectively controls the judiciary and the legislature.
✓	Human rights commission operational	There is an Ethiopian Human Rights Commission, which protects local legislation as well as international law.
×	Parliament check on power of the executive	Parliament check on executive is limited, although parliamentary oversight committees are visibly more vociferous.
✓	Independent institutions project democracy	Appointments to head watchdog institutions lack transparency, but the institutions, including a Human Rights Commission, Ombudsman, an Ethics and Anti-Corruption Commission and an Auditor General do exist.
✓	Strong supported independent judiciary	The Constitution does provide for an independent judiciary, but its independence is questioned.
×	Access to (traditional & ADR) justice	Despite replicating institutions in the regional states, rural areas, where 80% of the population resides, have limited access to justice and institutions of reprieve.

In addition to a constitution committing both federal and regional legislative, executive and judiciary organs to democratic governance, the government has established several formally independent democratic institutions, including the Ethiopian Human Rights Commission, the Ethiopian Institute of the Ombudsman, the Federal Ethics and Anti-Corruption Commission, the National Election Board of Ethiopia and the Office of the Auditor General. It also has in place a National Human Rights Action Plan to monitor executive adherence to human rights operating out of the office of the Attorney General (AG).

In the federal system, every democratic institution has a counterpart in nearly all the regional states. The institutions, therefore, have a presence at least in the capitals of most of the federated states, although in the largely rural country that houses 80% of the population, access to justice and other institutions of reprieve remain challenges.

The Ethiopian Human Rights Commission (EHRC) was established by Proclamation Number 210/2000 carefully designed along the provisions of the Paris Principles¹ on National Human Rights Institutions, vested with the authority to investigate, by its volition or at the behest of any citizen or agency of the country, any allegations of human rights violations

¹Principles relating to the Status of National Institutions (The Paris Principles) adopted by the UN General Assembly Resolution 48/134 of 20 December 1993.

lodged against a body or an individual that runs contrary to the country's constitutional provisions and the treaties it has entered internationally.

These include all but one of the core human rights treaties, including the International Convention on Economic, Social and Cultural Rights (ICESCR 1993), International Convention on Civil and Political Rights (ICCPR 1993), International Convention on Eradication of Racial Discrimination (CERD 1976), International Convention on Elimination of all forms of Discrimination against Women (CEDAW 1980), International Convention against Torture and Dehumanizing Treatment (CAT 1994), International Convention on the Rights of the Child (CRC 1991), as well as the African Charter on Human and Peoples' Rights (ACHPR).

Over its twelve years of existence, the Commission has been mildly effective in promoting human rights throughout the country, through such means as: the gradual establishment of branch offices in all of the regional states, linked to the head commission through an eleven-member Council of Commissioners; forming human rights clubs in schools; human rights education in the media; the translation of the major international instruments into local languages; the establishment of legal aid centres in collaboration with university law schools and CSOs.

However, more work is needed in the human rights protection area, where the Commission is yet to exercise its mandate as might be expected beyond some quiet, albeit successful, advocacy for prison reform. The EHRC also usefully collaborated with the Ministry of Justice (Now Attorney General's Office) in establishing the National Human Rights Action Plan (NHRAP), an executive-based human rights monitoring agency as recommended by the Vienna Conference of 1993.

Studies it has conducted on controversial issues like “villagisation” in Gambella, the sugar industry and the 2016 unrest in the Oromia and Amhara regions have been less well-received, widely criticised by domestic and international human rights organisations as being too biased toward the government's account.

There is a shortage of competent professionals to staff the Commission's offices, and turn-over rates are high. The gaps are most evident in the regional offices, which struggle to find and retain staff with monitoring, investigative and research skills.

Formed in response to the 2009 Universal Peer Review (UPR) recommendation that this 1993 Vienna Conference institution be established in Ethiopia, the National Human Rights Action Plan was founded in 2013. It is designed to assist the executive branch to meet its human rights obligations, as opposed to the EHRC which monitors it. Its regional offices collate reports from government institutions on compliance with human

rights treaties. It then funnels reports on performance to parliament through the Attorney General.

The government has recently drafted the NHRAP's first five-year plan, a second phase following its first three-year plan of 2013-16. The process is being led by the AG in collaboration with the EHRC. The Coordination Office is established to coordinate, design and implement the NHRAP, as well as to provide technical and secretarial support to the National Steering Committee. The NHRAP aims to promote, protect and support implementation of human rights as enshrined in the Ethiopian constitution.

The Ethiopian Institution of the Ombudsman (EIO) was established by Proclamation Number 211/2000 to investigate and help bring to justice any executive official who has allegedly perpetrated administrative malfeasance based on complaints about public offices lodged by citizens or other offices, or by its own initiative. The Institute now has six branch offices (Oromia, Amhara, Tigray, SNNPR, Dire Dawa and Gambella). It has no offices in four of the nine regional states. Afar, Ethiopian Somalia and Harar are served by the Dire Dawa office. The headquarters holds quarterly meetings with and receives monthly reports from the branch offices. The Council of Ombudsmen meets biannually.

Over the years, the EIO has been able to increase its visibility through establishing five regional offices. Much of its work, however, has been limited to collating "freedom of information" requests under Proclamation 590/2008 on the Freedom of Mass Media and Access to Information. This demanding and important task has tended to distract the institute from its core mandate of which is addressing grievances lodged against the executive. For example, requests for school transcripts submitted to the Ministry of Education or birth certificates to Woredas, are here registered as EIO requests. While clearly official record keeping is important, whether an Ombudsman's Institute should be responsible for this is more questionable.

3.5 Regular democratic elections

Staggered multi-party parliamentary elections are held every five years under the administration of the National Election Board of Ethiopia (NEBE) to seat a 547-member House of People's Representatives, nine regional parliaments and two city councils. Local government officials at the kebele and woreda levels, over three-and-a-half million in all, are elected through another round of elections also held every five years. Despite Ethiopia's democratic constitution, a single party has dominated the government for the last quarter of a century.

The capacity to administer elections in so many precincts is a daunting task, and the conduct of elections has always been satisfactory. Capacity, however, does not translate into democracy. From the pre- to the post-

election phases, elections continued to be marred by uneven fields, partisan governance of elections and mismanaged election disputes.

Election observation has always been testy. Only the African Union Election Observation Mission was invited to the last election of May 2015. In the survey, elections receive low "no" and "partial" grades, suggesting overall dissatisfaction with the electoral system. In the current government, the EPRDF controls all the federal, regional and local government seats, and by extension, the executives at all levels. Opposition parties are constantly subjected to legal and extra-legal harassment, including fund limitations, intimidation of supporters, voter intimidation, vote manipulation, imprisonments and even killings.

Table 3.4: Ethiopia - formal compliance to regular democratic elections

✓	Regular elections	Well-managed elections take place every five years, staggered for different levels of government.
✓	Independent EMB in place	National Election Board of Ethiopia is a public body that reports to parliament.
×	Code of conduct for electoral stakeholders	Opposition parties are constantly subjected to legal and extra-legal harassment, including fund limitations and intimidation of supporters.
×	Equitable access to the media	Media access is controlled.
×	Election observation conditions	Election observation is limited and contested.

The National Election Board of Ethiopia is a public body that reports to parliament and oversees and manages the different elections including the five-year general election and local elections. The last general election (for the federal parliament and state councils) was held in May 2015, and for this election the NEBE hosted a record turn-out of 34.6 million voters (out of the 36.8 million registered voters). It also manages another cycle of local elections for 3.6 million seats in Woreda and Kebele Councils.

The sheer size of Ethiopia, the large variety of languages and the dispersal of its population across thousands of rural townships, render both national and local elections significantly challenging affairs. While the NEBE has repeatedly demonstrated its capacity to effectively plan and administer large-scale elections, even in the face of ever expanding electorates, much remains to be done to assuage persistent opposition claims and international criticism that the pre-election playing field and post-election vote aggregation phases are marred with unevenness and irregularities.

Among the areas that observers point out as persistently needing improvement are: more equitable distribution of resources in the pre-election phase among the ruling party and contestants, including broadcast air time

and budget allocations, better and more transparent electoral dispute management, and, better voter education both for staff and the public.

3.6 Popular participation

Across the board, CSOs were clear about the demarcation of authority for regulating the sector, but somewhat resentful of the absence of actionable will by the government to enable full partnership. A full 69% felt that there was no or only partial room for CSO or media inclusion in government development activities.

Other areas which are critical to the strengthening of both democracy and good governance are the development of a vibrant and independent mass media and a viable civil society sector to ensure that the voices of citizens are heard. Both sectors make a vital contribution to balancing a “supply side” approach to governance with the “demand side” and improving citizen-state relations.

In 2009, the government issued the Charities and Societies Proclamation (Proclamation No. 621/2009) (CSP) to regulate the activities of NGOs in the country. The law categorises charities into "Ethiopian", "Resident Ethiopian" or "Foreign", and bars all but Ethiopian charities from engaging in the promotion of human rights, justice or conflict resolution of any sort².

Article 2.2 defines these charities as ones "formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia, and (are) wholly controlled by Ethiopians" and limits the amount of money they raise from foreign sources to 10% of their operational funds. International NGOs and Resident Ethiopian Charities, those authorised to receive unlimited foreign funds, are restricted exclusively to service delivery.

From the CSP's inception as a draft in 2008 until it went into effect in 2010, questions about whether it violated basic freedoms of assembly abounded. The number of CSOs engaged in human rights, governance and women's rights promotion in the country stands at less than three%, as compared to over 20% among peer African countries.

The CSP also created a Charities and Societies Agency (ChSA) with what have been criticised as excessive and intrusive powers to oversee the implementation of the law and henceforth administer the sector, shifting the registry functions from the then Ministry of Justice (MoJ), now AG, to the agency. Now, today, six years after the law went into full effect, the number of CSOs registered is only coming back to its 2009 level.

This number, which hovers around 3,000, is very low compared with peer countries in Africa, let alone advanced democracies. Neighbouring Kenya, for example, with only half of Ethiopia's population, houses some

²Charities and Societies Proclamation (Proclamation No. 610/2009).

9,000 NGOs; Mauritius, a small island African country that has achieved middle income status under a "dominant" party, Triple-M, houses over 14,000 NGOs.

Table 3.5: Ethiopia - Formal compliance to popular participation

✓	Law regulating the NGO sector	Charities and Societies Proclamation (<i>Proclamation No. 621/2009</i>) regulates the activities of NGOs.
×	Restrictions on sources of funding	The CSP places restrictions on types of work and sources of funding, especially for Ethiopian NGOs.
×	Government CSO working partnerships	These are limited.
×	Access to & freedom of information law	Despite freedom of information and media legislation, many media professionals are imprisoned or in exile.
	Budget consultations at all levels	

CSOs report that the CSP's net effect on the sector has been adverse and inconsistent with the spirit of the constitution and the priority given to good governance. The toll has been hardest on Ethiopian charities - CSOs engaged in human rights defence and governance advocacy. The stipulation that 90% of their funds must come from local sources has drained international donations.

Under rubrics like the Ethiopian Social Accountability Program (ESAP)³ and bilaterally painstakingly negotiated exceptions like the EU's Civil Society Fund (CSF)⁴, a small trickle of assistance reaches local human rights activists and defenders. Co-relationally, a recent statistical study found that only 2-3% of Ethiopian CSOs are engaged in human rights defence or governance, in comparison with over 20% for the rest of the comparative set of countries in Africa. The numbers were similar for NGOs invested in women's rights.

Often dubbed the "fourth branch" of democratic governance, a **free media** is central to all democracies as a guarantor of the people's will. Freedom of speech and the ancillary freedom to write and report - publish and broadcast - studied opinions on all matters pertaining to and contributing toward the public good, including scrutiny of public and private agencies - are permitted to flourish in advanced and even middling democracies.

³ A multi-donor support for CSO inclusion led by the World Bank, in development project governance oversight that has been relatively effective in service delivery. Its continuance is currently in question.

⁴ Ameliorating the starvation for funds that Ethiopian charities face, CSF is a EU fund allotment managed by a tripartite donor-CSO-GoE body. CSF support is considered local per Article VI of the Cotonou Agreements.

Proclamation No. 590/2008 to "provide for the freedom of the mass media and access to information" is the operative law. The Government Communications Affairs Office (GCAO) is responsible for its implementation. Despite the constitutional guarantees of freedom of information, specific proclamations and existence of democratic institutions, Ethiopia has had the infamy of the highest number of media professionals in exile in the world and among the largest numbers in prison, many held under charges of "terrorism".

Controversially, the current state of emergency has outlawed use of social media. Citizens have had their satellite dishes dismantled for allegedly watching diaspora-based opposition channels. Telephone outages and internet blockage are commonplace. The government-recognised, but unregistered, Media Council does not support the wide Anti-Terrorism Proclamation (ATP), although it urges differentiation between journalists *per se* and activists.

A free press such as provided for in the Ethiopian Constitution is one of the pillars of democracy. It is also a check on public officials as it holds them accountable in the public eye. In keeping with Ethiopia's overall development, expansion of communications infrastructure has occurred rapidly. Television, FM radio and community radio stations abound. Their content, however, is somehow constrained, thus undermining the same policy declaration of the government, as well as the constitution. Opposition websites are also blocked frequently by the telecommunications monopoly that controls internet, phone, and other electronic and broadcast systems.

Notwithstanding the need for a regulatory framework in keeping with the government's public statements and the constitution, much can be done to support the development of a free and independent press in Ethiopia. The need in democracies for an independent voice that provides independent coverage of public affairs cannot be over-emphasised. Revisiting aspects of the ATP that have been severely criticised as a broad net to dissuade dissenting political opinions may be prudent.

3.7 Socio-economic rights and service delivery

Beyond the expressly rights-designated legal institutions, the government argues that it has absorbed all rights into its Growth and Transformation Plan (GTP), the five-year strategic plan that guides its development agenda, now in its second phase. Overall, the country has shown remarkable economic growth over the past twelve years.

The government's Agricultural-development-led Industrialisation (ADLI) programme has yielded growth overall, with a high 7-8% annual increment to the agricultural output base, and double-digit GDP growth overall in the best years. Between 2003/04 and 2013/14, annual GDP growth averaged 10.8%, compared with an average of 5% for the region. While

expansion of the service sector and growth in agriculture accounted for much of the expansion in the economy, public investment in infrastructural development, road building and construction, mega projects like dams and electric service, tap water and health service expansions, have absorbed a huge labour force.

Because of a coupling of infrastructure development with the government's pro-poor strategy, according to World Bank data, the percentage of Ethiopians living in extreme poverty (defined as living on less than \$0.6 per day) declined from 38.7% in 2004-05 to 26.9% in 2009-2010, a decline of 9.1% over a ten-year period. However, there are challenges. While the percentage of those living in extreme poverty has been reduced, because of population growth, the absolute number of those affected has remained unchanged at 25 million out of an estimated population of 96 million. GDP per capita, at approximately \$1,300, remains among the lowest in the world.

Table 3.6: Ethiopia - formal compliance to socio-economic justice

✓	Free compulsory basic education to all	There is free compulsory education, including an expansion at the tertiary level.
✓	Measures of combat diseases	Health improvements are evident.
✓	Regulation of foreign companies and mining	There is strong regulation of foreign companies.

The World Bank also cautions that Ethiopia's strong economy is vulnerable to shocks, both natural and man-made. Fear has been expressed that a calamity the size of the Great Famine of 1984-85 would pull back down at least half of the people that have been lifted out of poverty. Although so far Ethiopia appears to have managed well the challenge of last year's El Nino, which affected some 10.2 million people, or more than one tenth of its population, it is still not possible to measure the likely fall out from the ongoing La Nina. Equally importantly, the net adverse impact of the ongoing unrest in Oromia and Amhara on the macro-economic outlook remains unknown.

Compounding the economic challenge is the demographic challenge with its attendant youth bulge. A population of nearly 100 million people, with 65% under the age of 25, many of them job seekers, is projected to rise unabated until the year 2050 or so. The average annual rate of population increase is 2.89% (2015), the 10th highest level among all countries. The median age is 17.7.

The federal system has enabled an evolution in modernity to what were formerly regarded as rural backwater towns. These are now connected to one another and the capital with an impressive infrastructure of roads and telecommunications full of universities, some thirty-five of them now, up from

only five or so a decade ago. They graduate over half-a-million young, middle-class job seekers each year.

The same process of rapid social and economic change has also generated a "revolution of rising expectations", with a skewed "want: get" ratio⁵. Because of the massive expansion of places in higher education, hundreds of thousands of new graduates now seek meaningful and rewarding employment. The government's pro-poor policy that has worked so far has aimed to keep the lumpen proletariat in check. It may not so easily satisfy an aspirational middle class, literate group that seeks white-collar work.

Ethiopia's spectacular economic performance over the past twelve years and its successful health and education programmes that have enabled meeting many of the millennium development goals, although questions linger about party-statal, persistent inflation and a youth bulge.

3.8 Combatting corruption

The Federal Ethics and Anti-Corruption Commission (FEACC) was founded to educate government and the public about ethics and corruption, monitor, report on and, if need be, investigate and prosecute, alleged violations in the form of unethical and corrupt behaviour and practises by public officials. However, controversially, this year its investigative and prosecutorial powers were transferred to a newly expanded AG's office, giving birth to wide speculation that an already under-performing institution was being further weakened⁶.

Survey responses displayed a lack of faith in the institution overall. Most felt that the leadership appointments were not transparent, and that even then, the institution had not been given adequate powers. They also felt that civil society and the media did not have adequate access to information about corruption and were not embraced as partners in such cases.

Personal interviews and a research visit to at least one regional commission showed a relatively more vibrant institution that can benefit from greater visibility. Although by no means spectacular, the commission has prosecuted hundreds of alleged cases of corruption and retrieved for the treasury over Birr 2 billion (US\$ 106 million) of embezzled money. Public cooperation with the Commission increased markedly with the Witness Protection Proclamation issued in 2010.

⁵Popular among students of revolution and change in Political Science, this term associated most with historian Craig Brinton (1966), refers to how revolutions are often waged not by the most dispossessed, unemployed elements in society, but by literati in the upwardly mobile middle class that experiences a gap between "want and get". See also Ted Gurr, *Toward a Theory of Revolution*, *American Sociological Review*, 27, 1, February 1962, pp.5-19.

⁶ Interviews with AG, FEACC and Regional EACCs, and several CSOs, May 2016.

Table 3.7: Ethiopia - formal compliance on combatting corruption

✓	Anti-corruption commission operational	Federal Ethics and Anti-Corruption Commission (FEACC) was founded to educate government and the public about ethics and corruption.
×	Government, media & civil society partnership	Pervasive self-censorship in the media and legal limitations in CSO advocacy curtail this partnership.
×	Access to information & civic education	Owing to the Charities and Societies Proclamation, CSO partnership in the endeavour is curtailed.
×	Declaration of assets for public servants	Although a law does exist and has been effected, survey respondent CSOs were relatively unaware.
×	Whistle blower protection law and reporting	Though a whistle blower protection law exists, respondent CSOs appeared to be unaware of this.

Such activities enabled Ethiopia to advance in Transparency International's Corruption Perception Index rankings from 137th in 2005 to 113th in 2012. While Ethiopia is often praised as doing better than its peers in Africa in combatting corruption, its position in international rankings is still a cause for concern, as is the dismay expressed by citizens at the high visibility of corruption of all kinds and at all levels. The country's fast-growing economy will likely spur temptations for the familiar ailment - underscoring the need to continue to support the mission to combat corruption.

The recent reorganisation the justice sector in 2016, transforming the Ministry of Justice into the Office of the Federal Attorney General, has also transferred the duty of investigating and prosecuting alleged corrupt officials from FEACC to this office. The impact of this change on the effectiveness of national anti-corruption efforts remains to be seen.

The Office of the Auditor General acts under the authority of Proclamation 669/2010, issued to bring the seventy-three-year-old institution in line with the Lima and Mexico Declarations⁷. It is an independent body reporting to parliament and which has the authority to audit any office in the public and private sectors. Among the democratic institutions, it stands out as perhaps the single most independent and effective body. As a recent UNDP study confirms:

The offices of the Auditor General across Ethiopia are appropriately trained and capacitated, allowing them to carry out their con situational mandates in accordance with internationally recognized standards, and an institutional framework where audit work is followed up by due parliamentary process and reported in the public domain, leading

⁷See: Henrik Otbo, SAI Independence: A Founding Principle of INTOSAI, *International Journal of Government Auditing*, October 2009.

*to greater accountability of the executive to the legislature and its citizens.*⁸

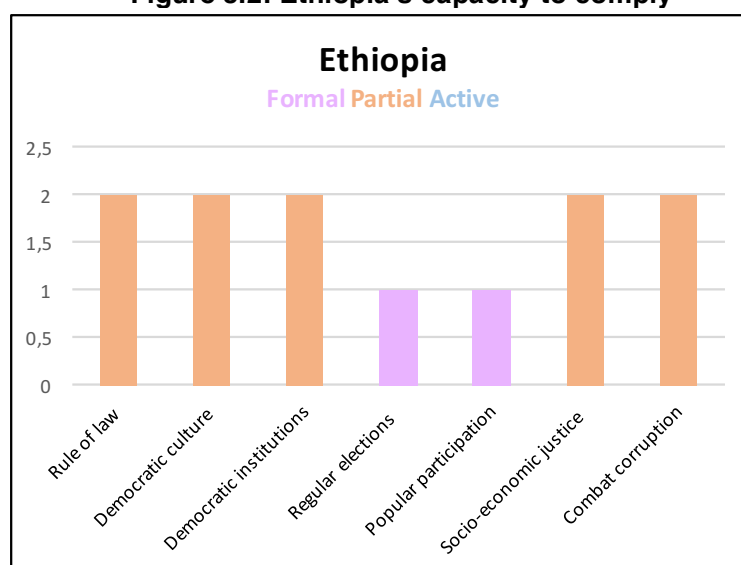
The priority here appears to be less one of upgrading the institution than helping it to consolidate its gains and enabling it to reach out to the public and to build better linkages with the institutions it oversees. Stronger public financial management mechanisms and improvements in the legal framework, accompanied by parliamentary oversight, and reforms in budget, cash, accounts and public property management, enhanced internal audit, the adoption of IT systems and training in personnel, all have contributed toward eliminating severe audit backlogs and helping the country to earn virtually universal praise and secure one of the highest rankings on the continent in the Public Expenditure and Financial Accountability ratings.

3.9 Conclusions

The study found that democratic institutions have standard statutory rights, but face capacity challenges including under-resourcing, procuring and retaining skilled staff and providing adequate and up-to-date work environment including facilities and access to internet services. Both the generation of and implementation of core activities have tended to wax and wane depending on the availability of international development partner support.

Although democratic institutions are statutorily in place, they are practically challenged by lack of independence - most significantly in the legislature and the judiciary, both of which are controlled by the executive, itself, in turn, controlled by a disciplined single ethno-national party. Appointments to head the watchdog institutions are opaque at best, and although to ensure accountability, they answer to parliament, which itself lacks independence *vis a vis* a strong executive, which also controls the

Figure 3.2: Ethiopia's capacity to comply



⁸UNDP, *Op.cit.*, p.18

judiciary. Attitudes toward democratic institutions were consistently lukewarm, displaying dissatisfaction with performance.

Across the board, CSOs were clear about the demarcation of authority for regulating the sector, but somewhat resentful of the absence of actionable will by the government to enable full partnership. A full 69% felt that there was only partial or no room for CSO or media inclusion in government development activities. Ethiopia's spectacular economic performance over the past twelve years, including its successful health and education programmes, have enabled meeting many of the millennium development goals, but questions linger about party-statal, persistent inflation and a youth bulge.

In 2011, the government submitted a report to the APRM. The peer review recommendations urged strengthening judicial independence, strengthening the EHRC and other watch dog institutions like the FEACC, the OFAG and the NEBE, involving and strengthening CSO participation, and revisiting relevant laws pertaining to freedom of speech, assembly and association.

The country review panel warned against "asymmetries between regional states and... ensuing regional inequalities", cautioned that rigidities in "democratic centralism" practiced by the party "can yield top-down governance and intolerance" and advises guarding against "re-homogenisation by a national group". To counter these trends, it urged strengthening legislative and judicial independence and strengthening oversight institutions like the NEBE, the EHRC, the FEACC and the EIO and balancing merit-based principles with affirmative action. (APRM: Country Report, Ethiopia, pp. 64-66.).

The country review mechanism called attention to shortcomings in the media laws pointing out that they had "nugatory effect on freedom of expression" contravening Article 29 of the Constitution. It also found that opposition parties had been denied rights of "freedom of assembly" guaranteed under Article 30. It noted the lack of reparations to victims of rights violations, indicating that such violations appeared existent especially in the Ogden and in association with the local elections of 2008, in addition to the well-publicised allegations of such in the 2005 elections.

It also cautioned that the Charities and Societies Proclamation might limit access to justice for victims of human rights violations. (APRM: Country Report, pp. 93-94.). The panel suggested revisiting all the relevant laws impinging on freedoms of expression, assembly and association and urged yet again the need to fortify the capacities, mandates and performance of the courts. (APRM: Country Report, p. 94.). Judicial independence, the strengthening all democratic institutions, involving and strengthening CSO participation, revisiting relevant laws pertaining to freedom of speech, assembly and association are all suggested by the Panel of Eminent Persons.

Many of the findings of this survey and review exercise are the same as the findings of the APRM Country Review Mission, and the recommendations for improved governance are like the review panel's recommendations.

Pursuant to the review, the government developed and submitted a National Plan of Action (NPOA), with time tables for verifiable progress in the areas suggested. However, it also unequivocally stated: "the NPOA does not single out and places no particular emphasis on any of the thematic areas; instead all the objectives dealt in the four thematic areas are taken as a necessary condition for poverty reduction." (APRM: Country Report, p. 294.) In other words, the recommendations would be subsumed by the GTP.

There is little question that Ethiopia has tried to mainstream democratic and human rights into all its development portfolios or the GTP. However, it is also clear that such domestication has not assuaged the popular demand for change and for broader, meaningful political participation.

Events in Ethiopia in the last year have only underscored the importance of balancing economic growth visions with political equity. The unrest in Oromia and Amhara last year⁹ only underscore that popular perceptions of good governance are short of expectations. Whether they are at the core driven by narrowly economic needs or political ones, the challenges that have manifested can be best addressed through improved democratic governance.

The best thing going for Ethiopia is that a constitution and democratic institutions that can potentially quickly and efficiently implement reforms are in place from the federal down to the kebele levels.

On balance, there is no challenge mentioned by the respondents in this study that Ethiopia cannot fix. If the government cultivates the will, it can enter authentic dialogue with critics, open to accommodate change, including revisiting controversial laws, if need be.

Many of the specific objectives set in the NPOA by the government make for specific, actionable, time-bound goals and yardsticks that can benefit from greater visibility and inclusion both in substance and priority setting. If the government cultivates the will, it can adopt the recommendations offered by the APRM.

Specifically, it is urged that

- the government recommit itself to its international and constitutional commitments,

⁹ Although because of sheer size these two largest regional states with a combined 70% of the country's population inevitably propels them into the public eye, similar sporadic unrest has persisted over the years in at least 4 "emerging" regions, including Somalia, Benishangul-Gumuz, Gambella and Afar.

- implement the NPOA (also utilizing innovative fora like the Democratic Institutions Forum and the National Women's Caucus),
- commit to increased visibility for African governance mechanisms, including the APRM.

These call for greater, all-inclusive civil society media and think-tank involvement, along with traditional and religious leaders -- in short, greater participation.

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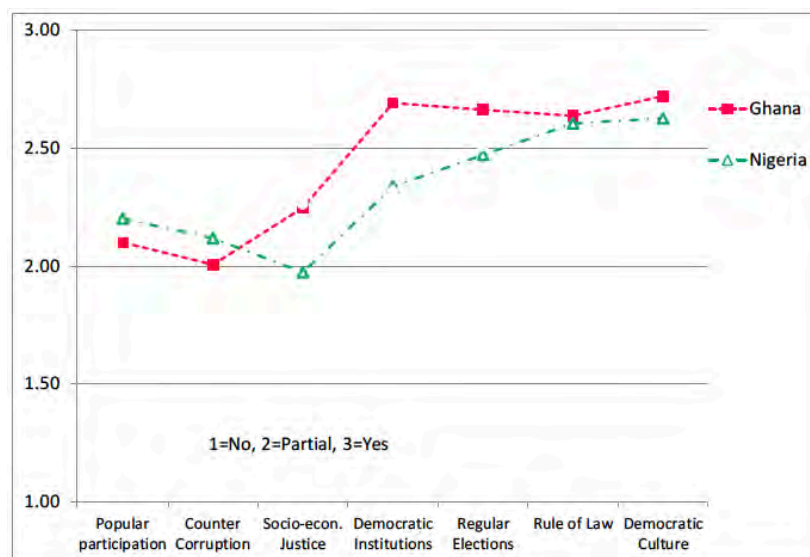
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West Africa

The West African region comprises Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.



Significant progress has been made in the consolidation of democracy, reducing HIV prevalence and protecting the environment. However, some countries in the region continue to suffer the devastating effects of violent extremist organisations, such as Boko Haram and Al-Qaeda.

West Africa places second on the Mo Ibrahim Index, driven by improvements in 12 out of its 15 countries¹. It is also the only region that has had no reversal in safety and security and a reduction in government involvement in armed conflict. Despite improvements in growth, economic and social exclusion continue to be drivers of conflict.

The two countries selected for the CSO assessment are Ghana and Nigeria. These are the two most compliant countries after Rwanda. Both countries are operating above 2.5 in all areas relation to formal democracy. They also lead in democratic performance. Although both countries register economic growth, they struggle with issues related to equity and social justice.

Ghana ranks among the ten best performing countries on the Index but its performance has weakened over the decade. There are concerns about economic opportunity, safety and human development. The decline in economic opportunity echoes issues raised by CSOs in this study, and seems to be driven by poor service delivery and water and sanitation infrastructure. Health indicators have declined but education has improved significantly.

¹ Mo Ibrahim Foundation. (2017). A Decade of African Governance 2006-2016. 2016 Ibrahim Index of African Governance. <http://mo.ibrahim.foundation/iiag/downloads/>

While Nigeria has improved consistently over ten years, it still ranks in the bottom half of continental rankings. It faces specific challenges in safety and rule of law due to interior armed conflict. In participation and human rights, Nigeria is one of the most improved countries in Africa. It has also made strides in electricity provision, but has deteriorated in education.

4 Ghana

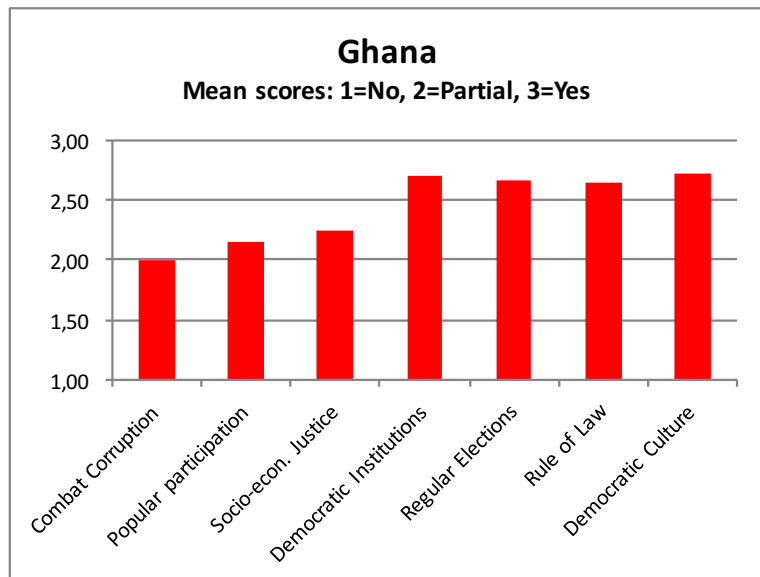


Franklin Oduro, Centre for Democratic Development (CDD) ¹

4.1 Introduction

Like many countries in Sub-Saharan Africa, Ghana has had a chequered political and democratic history. Since obtaining independent from British colonial rule on 6 March 1957, it has suffered a setback to its democratic governance by three military

Figure 4.1: Ghana's mean compliance scores



interregnums. The first democratic rule from 1957 ended in February 24, 1966 by the military junta which formed the National Liberation Council.

After about three years (October 1969), it transferred power to the Progress Party (PP) but in early 1972 the National Redemption Council, later the Supreme Military Council (SMC) truncated the PP government of Professor Kofi Busia, and in mid-1979, the Armed Forces Revolutionary Council (AFRC) supervised a political transition that ushered in the civilian government of the People's National Party (PNP) under the presidency of Dr Hilla Limann (Austin and Luckham 1975; Chazan 1983).

However, on December 1981, the Provisional National Defence Council (PNDC) of Jerry Rawlings terminated the PNP regime (Chazan 1987). For eleven years, the PNDC ruled until Western governments and their donors combined their efforts with some disorganised domestic opposition coalition to disengage Rawlings' authoritarian rule from the political scene (Gyimah-Boadi and Debrah 2005; Ninsin 1998).

¹ The CDD Team for the Ghana study included Professor Emmanuel Debrah of the Department of Political Science, University of Ghana, Legon.

After more than a decade of constitutional and democratic hiatus, Ghana made a successful transition from military authoritarian rule to democracy in 1992. More significant was the inauguration of the Fourth Republican Constitution, which was overwhelmingly adopted in a nationwide referendum on April 28, 1992 and came into force in January 1993. Ghana's liberal democracy guarantees constitutionalism. Despite the reputation of military for overthrowing Ghana's democratic processes, and the fear that the Fourth Republic might be short-lived, the current democracy has survived 24 years (Prempeh 2004; Gyimah-Boadi 2001).

There have been many studies of the institutions and structures as well as the functions they perform. Much is known about the normative factors that have shaped the workings of the democratic institutions, as well as critical forces that have militated against Ghana's democratic development - which has been trumpeted as a model of democratic accomplishment on several international platforms (Debrah 2011).

4.2 Constitutionalism and the rule of law

Ghana's liberal constitution has provisions to promote sound democratic governance. The constitution ensures that while government is empowered to provide public goods and services, its exercise of power is limited (Prempeh 2003; Debrah and Asante 2016) by provisions which promote checks of one organ against the other. The countervailing powers are to be found in vertical and horizontal accountability arrangements. Throughout the Fourth Republic, presidential nominees for ministerial portfolios have been scrutinised by Parliament beyond the review process by the Appointments Committee.

Parliament has acted to interrupt many executive policy proposals that were deemed to be controversial and lacked universal popular support. Similarly, popular checks against government have manifested through petitions from groups and individuals on the eligibility of certain nominees (Democracy Watch 2005). Relying on its majority power in parliament, where necessary, the executive has carried through most of its policy proposals even in situations where parliamentary veto on such bills were imminent (Debrah and Asante 2016). Upon appeal from groups and individuals, the judiciary has quashed important moves by both parliament and the executive.

An important manifestation of constitutionalism in Ghana's Fourth Republic is the limit set on the term of public office holders. The constitution allows two terms of four years for the president, and Members of Parliament (MPs) have terms of four years subject to renewal by popular approval. This limit on term of office is also enforced at the lower level of government, so that the district chief executives have the same terms as the president and that of MPs applies to assembly members (Debrah 2014).

Furthermore, regular and competitive elections have allowed the electorate to scrutinise elected officials. Electoral mechanisms have allowed the electorate to demand political accountability from the government. The robustness of the political accountability process has enhanced a real peaceful political turnover and power alternation between two opposing political parties (Gyimah-Boadi 2004; Debrah 2016).

Regrettably, there are grave threats to upholding constitutionalism in Ghana. Democratic constitutionalism is weakened by sweeping presidential powers in the appointment of ministers and other top bureaucratic positions. This fosters a hegemonic presidency (Gyimah-Boadi 2004). For example, successive presidents have abused Supreme Court appointments because there no ceiling to the number of justices that can be appointed. To have a Supreme Court ruling on a case involving one of his political foes reviewed, President Kufuor hurriedly appointed another justice to the Supreme Court. President Atta Mills filled boards of state institutions and parastatal organisations with party cronies. These appointees are pliable to the actions of the appointing authority (Democracy Watch 2005; Debrah 2004; Gyimah-Boadi 2004).

The hybrid presidential system has compromised the exercise of effective checks and balance, which is notable in the executive presidential system of government. The subordination of parliament to the executive has undermined the value of prevailing countervailing power, which is the foundation of the executive presidential system and constitutionalism (Gyimah-Boadi 2004). It is ironic that the due process of law on which the hybrid system is based has served as a constraint on parliament's ability to demand executive accountability. Ministers who are MPs are restrained by the binding principle of collective responsibility from criticising policy proposals of government introduced in Parliament. Pro-government MPs without ministerial portfolios do not criticise government bills because patronage (Debrah 2005; Gyimah-Boadi 2004; Prempeh 2003).

The resurgence of patronage politics, in which members of society including youths, vulnerable groups and the poor, have been tied to the apron strings of the political elite has worked against mass-elite accountability. The political elite has secured the support of the masses through the distribution of state largesse (where patrons have dispensed favours), and the demand for accountability from citizens has grown weak. Increased poverty, joblessness and ignorance have become characteristics of Ghana's lower class. Consequently, according to Gyimah-Boadi (2004:7) *'citizens and taxpayers become the agents of their elected officials and public servants while the latter group become the principals'*.

The constitution is deemed the fundamental law of the country to which all other laws are subject. Major decisions and actions of the government and

its institutions proceed in accordance with the constitution. Not surprisingly, an overwhelming majority (86.4%) of the respondents confirmed that the current constitution is the supreme law of the country. They further asserted that all subsidiary laws, rules, practices and government policies are meaningful only within the framework of the constitution. In other words, there is no law in Ghana that exists outside, or in competition with the Fourth Republican Constitution.

Only 4.5% expressed doubt that the constitution is above all other laws, and 9.1% indicated partial compliance. It is appropriate to say that, in Ghana, the constitution is sovereign because it encapsulates the overwhelming desires, aspirations and wishes of the people. For instance, legislative and executive instruments, rules and procedures that have been framed to govern the conduct of public affairs and elections are subordinated to the Constitution of the Republic.

Table 4.1: Ghana - formal compliance to constitutionalism and rule of law

✓	The Constitution is the supreme law.	The Fourth Republican Constitution, which was overwhelmingly adopted in a nationwide referendum on 28 April 1992, came into force in January 1993.
✗✓	Citizens are equal before the law.	The political class and the elite have more privileges.
✓	Constitutional change is democratic.	Change is democratic, by referendum, and the judiciary monitors carefully.
✓	Civilians control of the military.	The military is subordinated to the authority of a civilian government. The President is the supreme commander of the military.
✓	No unconstitutional changes or refusals to relinquish power.	There have been no unconstitutional changes since 1992. Term limits are restricted to 2 4-year stints only and this is strictly enforced.

An important ingredient in the promotion of checks on the powers of rulers in a democracy is the extent to which citizens are treated as equal before the law. In democracies that promote equality of all citizens, the same laws, rules and procedures apply to all categories of persons without favour. Only half of the respondents said that equality of citizens before the law is respected. A significant proportion of respondents (45.5%) observed that there is a partial compliance with this provision. Their judgment is guided by the fact that the president is granted immunity from prosecution while in office. Also, the constitution has indemnified cohorts of politicians who committed past atrocities.

Indeed, the political class and the elite in general enjoy a disproportionate amount of privileges which put them above the ordinary citizen thereby rendering equality before the law virtually unachievable. Hence, only 4.5% of respondents said there is no equality of citizens before

the law. Whereas all citizens are equally protected by the law in theory, in reality there are important areas of their lives such as personal safety in which the law is biased against them. Hence, only 27.3% believe that citizens are equally secured by the law. 45.5% believe the country is partially committed to this principal. Thus, Ghana has a long way to go in achieving equal treatment of all persons before the same law.

The military is subordinated to the authority of the civilian government. This is necessary to eliminate any vestiges of authoritarian rule and prevent the re-emergence of autocrats even under a democratic regime. The Constitution makes the president the supreme commander of the military achieving civil control over the military.

This reality is reflected in respondents' assessments, in which 81.8% acknowledged the president as the Commander-in Chief of the Armed Forces. For instance, the president appoints all military heads. The constitution defines the scope of activities of the military and responsibilities of the service commanders. By law, the military appointees and their units are individually accountable to the president through the ministers (either Defence or Interior) in the performance of their respective responsibilities. A minority 9.1% thinks rather that civilian control of the military is not guaranteed by the Constitution and there is a partial commitment to this protocol.

It has been said that the survival of democracy in Africa largely depends on the extent to which the military is prevented from engaging in activities that are counter-constitutional. Unlike in some African countries, where transitions to constitutional rule suffered setbacks by the recapture of the democratic space by the military, Ghana has enjoyed a continuous and uninterrupted constitutional rule since returning to democratic governance in 1992. For 24 successive years, there has been no attempt at unconstitutional overthrow of the civil government and the constitution. Respondents almost unanimously (95.5 per cent) stated that there has been no attempt to subvert the constitution since 1992. Indeed, the current democratic dispensation is the longest since Ghana attained independence 1957.

A common cause for the defeat of democracy in Africa is the refusal of incumbent governments to relinquish political power after losing competitive elections. Such acts have caused state collapse in many countries in the continent. Fortunately, Ghana is one of the few countries that have avoided incumbents' unwillingness to concede defeat and transfer power to the opposition syndrome. 90.9% said that there have been smooth power transfers in Ghana. In all, there have been two major power alternations in which a serving president that lost an election successfully transferred power to the winning opposition party candidate. By conceding electoral defeats, the

incumbents allowed the opposition party candidate to ascend to the presidency thereby averting post-election inter-party conflict.

An often-cited factor against democracy in Africa is the deliberate alteration of constitutions to promote incumbents' staying in power. Ghana remains one of the few countries that has not experienced this behaviour by incumbent presidents. 91% of respondents' state that the constitution has not been altered to prolong the term of incumbents since 1992.

It can be argued that only leaders who are strong believers in democracy are able to condemn the uprising of anti-democratic forces against democratically elected governments. While some neighbouring countries have suffered factionalist conflicts and internal disorder leading to unconstitutional changes of governments, Ghana has been a peaceful democratic country. In instances where neighbouring countries or others faced disruptions of their democratic processes, Ghana has openly repudiated anti-democratic forces. In many cases, the government of Ghana issued formal statements of condemnation of those unconstitutional interferences in the democratic affairs of those countries.

Over two-thirds of respondents (72.7%) concurred with the fact that Ghanaian governments have raised the democratic banner very high by denouncing anti-democratic behaviour whenever it happened in some parts of the continent. For instance, coups d'états against elected presidents in Burkina Faso, Guinea, Cote D'Ivoire and others were condemned by the government of Ghana.

4.3 Democratic culture and political pluralism

One of the interesting developments in Ghana is that democracy has become something of a culture and political pluralism is firmly entrenched in the body politic. Many studies have already revealed good knowledge of the meaning of democracy and clear understanding of its workings in the country by the citizenry. A large majority of Ghanaians have a liberal and universal conception of democracy that hinges on civil and voting rights and on equality of participation and representation. In many documented empirical studies, democracy is not only admired by many Ghanaians, they also believe that transformation of their lives can only happen through it.

Ghana's constitution contains a Bill of Rights to safeguard the human rights of the citizenry. The provisions of the constitution give citizens have the right to life and dignity, freedom of movement, association, and organisation and assembly, amongst others. It also grants to citizens the freedom of expression, thought, belief and religion. Efforts have been made to enact legislation to strengthen areas of public life that have suffered injustices and abuses. For instance, the Criminal Libel Law was repealed in 2001 to promote free media.

Similarly, the Domestic Violence Act was passed to restrain actions that perpetrate violence against women. The Act creates an environment for women to develop their potential, along with men, in the participation of decision-making for increased productivity (Democracy Watch 2005). To eliminate discrimination against persons with disabilities the Disability Law was promulgated, which obligates organisations and institutions to provide easy access to buildings for persons with disabilities. Since the law was passed, there has been significant improvement in the exercise of the rights to freedom of movement by persons with disabilities.

One of the highlights of Ghana's democracy is political pluralism. The liberalisation of the political landscape has led to the rise of competitive politics in which political parties with different ideological affinities and values compete. There are about twenty registered political parties. Two of them, the New Patriotic Party (NPP) and National Democratic Congress (NDC), are the most active and strong. Party competition is ingrained in the electoral laws and parties have the right to fair inter-party competition, mobilisation of voters and equal chances of winning elections (Debrah 2016; Debrah 2004; Agyeman-Duah 2005; Gyimah-Boadi and Debrah 2008).

Table 4.2: Ghana - formal compliance to democratic culture

✓	Policies for citizen participation exist	A bill of rights protects civil liberties. The Representation of the People's Act 451 ensures that all adult citizens to participate in the decision-making process.
✓ x	Political party formation and funding protected	Ghana's democratic environment promotes political party formation and functioning. There is no legal constraint on the formation of parties, but access to funding is a challenge.
✓	Conducive conditions for civic organisation	Political pluralism is strong and citizens can engage freely in political and civil issues.
✓	Civic education in place	Citizenship education is a compulsory subject which aims to inculcate democratic values throughout the education process.
✓	Rights of minorities and vulnerable protected	The Domestic Violence Act was passed to restrain actions that perpetrate violence against women. A Disability Law ensures access to buildings.
x✓	Anti-discrimination laws in place	There are no discriminatory laws and policies that discourage other groups and individuals in the society, except for the criminal law which makes same-sex relationships illegal.

Ghana's governance framework embodies provisions that safeguard unrestricted participation of all citizens in decision-making processes at national and sub-national levels. For instance, the multiparty system promotes opposition political activities. Parliament is structured along ruling party and

opposition party division. Opposition politics has been vibrant both inside and outside parliament. Strong criticism by the opposition against the government have helped to obstruct the passage of contentious bills into law, and constructive comments have enhanced the quality of laws passed. 90.9 percent of respondents affirmed that important provisions of the constitution and other legislation such as the Representation of the People's Act 451, allow all adult citizens to participate in decision-making processes.

One of the most effective ways by which governments promote political education is through the design of educational policies that incorporate civic programmes (that aim to educate citizens about democratic values). In Ghana, civic education forms an integral part of educational policies. One of the compulsory courses offered to pupils at the basic school level is Citizenship Education, which aims to inculcate democratic values in children at an early stage. Yet, less than half of respondents (45.5%) said that civic education constitutes an essential aspect of educational policy, and 18% denied that the country's educational policies contain civic education programmes. A minority (35 per cent) noted that there is partial compliance with this provision. Similarly, exactly half of respondents confirmed that the educational policy make provision for public awareness of democracy.

From basic to tertiary education there are courses on democracy. At the secondary level, Social Studies is a compulsory course for students, and Government and Political Science are additional subjects at the higher level. Hence, 50 per cent affirmed in their responses that educational policies promote awareness of democracy. But a significant number (45.5%) thinks that only a partial commitment has been made to the creation of public awareness to democracy in educational policies. The divided opinion among respondents suggests that some people may not be aware of the prevalence of civic education and creation of public awareness of education in the education policies. But the views of the minority must not be discarded because it may point to a real weakness in the educational policies.

Ghana's democratic environment promotes political party formation and functioning through legislation such as the Political Parties Act 574 and Representation of Peoples Act, eliminating legal constraints on the formation of political parties. However, access to funding by political parties is problematic. A minority of respondents said that the existing legislation promotes political parties' access to funding, while the majority suggest that existing legislation does not encourage political parties' access to funding.

Legislation which allows citizens the chance to participate in the activities of political parties is an important determinant for gauging the level of democratic growth in a country. Ghana has gone very far by crafting a legislative framework which fosters public participation in party politics. For

instance, all respondents said that there are laws supporting the participation of ordinary citizens in political party activity.

Important avenues that facilitate regular dialogue between government and the citizens form a part of Ghana's democracy. For instance, a little over half of respondents (59%) indicated that there is some form of interaction between the two. However, a significant figure, 41%, believe that Ghana has demonstrated just a partial commitment to this protocol. This may be true because the People Assembly/Town Hall meeting concept that began in 2001 has been poorly organised with only the educated getting the chance to engage in the dialogue session. What has put the common person off is the fact that English, rather than local dialects, is the medium of communication.

There are no discriminatory laws and policies that discourage other groups and individuals in society. Ghana has laws that check against forms of discrimination. Ghana is a society where social and political stereotypes and other barriers have been nipped in the bud. Similarly, Ghanaian society is gradually emerging as a free one in which minorities and vulnerable groups and individuals have an equal treatment before the law.

Statutes such as the Persons with Disability Act 715, guarantee the rights of vulnerable groups. The Children Act 560 and other administrative regulations such as the Local Government Act 656 and the Civil Service (Amendment) Act 600 form part of the governance system. Most respondents (63.6%) confirmed that legislation guarantees the rights of vulnerable groups. However, a significant number of respondents (36.4 per cent) said that there is only a partial commitment to this provision. In Ghana women suffer social and economic discrimination, especially in the Northern parts of the country, yet no attempt has been made through legislation to address their plight.

There is no doubt about the relevance of civil society to the democratic process. For instance, the growing number and importance of civil society organisations in Ghana is indicative of their acceptability by the government. The flourishing of civil society organisations in the country owes much to the congenial legal environment that promotes their effective functioning. This reality is supported by findings from this study where 91% of respondents said that Ghana has passed legislation that encourages civil society.

In a democracy, citizens as well as organisations need to enjoy the right to peaceful assembly. The ability of organisations whether formal or informal to hold public meetings without intimidation is an important prerequisite for democracy. An overwhelming majority of respondents (91%) has confirmed that Ghana is a country where citizens and organisations are able to conduct non-violent public meetings. This makes Ghana a free country where groups and associations have unrestricted freedom to organise their activities.

Ghana is making progress with the promotion of women rights. A little over half of respondents (59%) said that Ghana promotes the right of women

to participate in governance, but a significant number (36%) noted that only a partial commitment has been made to this issue. While it is true that Ghanaian women are being encouraged to be active citizens in the governance front, not much has been done to promote their competition in decision-making processes. For instance, there are no quota systems to empower them politically.

Free media is an important ingredient in a democracy. It is even said that the ability of citizens to engage in the political process largely depends on the extent to which the media enjoys freedom to operate in the country. But it has been argued that the media can be free when the legal regime provides sufficient safeguards for them to perform their role in the democratic process. Respondents are unanimous in their view that the laws of Ghana have promoted freedom of the media. State legislation protects media freedom thereby promoting their independence.

4.4 Strong democratic institutions

The Constitution establishes three separate arms of government, the Legislature, Executive and Judiciary. Law-making functions are assigned to parliament, the executive is responsible for the execution of law and the judiciary interprets the law and adjudicates disputes (Gyimah-Boadi 2004; Prempeh 2003). Yet, the constitution has structured the legislature and executive in a manner that ensures a fusion of the two. The hybrid arrangement promotes a popularly elected president and a vice-president, and the composition of many the team of ministers from parliament, while the rest is drawn from outside it, and a judiciary that is strictly independent of both the legislature and executive (Prempeh 2003).

Ghana's constitution has created important democratic and governance institutions. In addition to the traditional state institutions, the constitution has created strategic governance institutions with a charge to dispense justice, accountability, freedoms and general order of society. These include the National Media Commission (NMC), which promotes media freedom and regulates the media landscape to protect both practitioners and the public against excesses. The work of the NMC has been appraised by Debrah *et al.* (2014), Kumado (1996) and Gadzekpo (2005) as effective in mediation and regulation. For instance, many popular surveys have given high approval rating for the role the media has played in Ghana's democratic process even though over liberalisation of the media has led to overcrowded voices, insults and recourse to hate-speech (CDD-Ghana 2016).

The National Commission on Civic Education (NCCE) educates citizens regarding their rights, duties and obligations. The relatively high popular knowledge of rights in Ghana may reflect the extent to which citizens have imbibed democratic values through lessons from civic education (Debrah *et*

al. 2014). But large numbers of rejected ballot papers in general elections suggest this may be inadequate.

The Commission on Human Rights and Administrative Justice (CHRAJ) is the equivalent of the ombudsman elsewhere. CHRAJ is viewed relatively efficient in terms of rendering justice to persons. Its ability to probe some high-profile corruption cases, even against incumbent ministers and state functionaries, gives credence to how it has acted to advance the course of democratic progress in the country. Most respondents think that the institution possesses adequate powers to advance human rights. However, 32% thinks that Ghana has performed this function partially. In recent times, the change of leadership of the CHRAJ has weakened the institution's ability to assert its authority.

Parliament has not been able to hold the executive in check. Hence there is the likelihood that the executive is growing in influence. 35% of respondents believe that parliament has served as a countervailing force to the executive, in contrast to 55% who see parliamentary oversight of the executive as partial. The hybrid system has constrained parliament's capacity to exert control over the executive.

In a democracy, vertical accountability is fostered through principal-agent relations where the electorates hold their elected constituency leaders accountable for their parliamentary deeds. Less than half of the respondents recognised that MPs are accountable to their constituents. The split in opinion is because parliament is generally viewed as having made significant progress in the performance of its constitutional mandate. It has been recorded in many scholarly works and previous surveys as having promoted democratic spirit of competition through healthy debates.

The performance of MPs has also seen steady improvement. But most MPs have not kept in regular touch with their constituents (Lindberg 2007). Many MPs continue to pay irregular visits to their constituencies, and after elections there are few interactions. Most MPs claim that excessive financial demands on them by constituents are the principal reason for withdrawal from their constituents (Debrah 2016). Also, MPs from the ruling party have played a nominal role in parliamentary affairs. For instance, they rarely scrutinise bills or debate the issues. They have acted to reflect their partisan parochial interest rather than constituents' perspectives (Debrah and Asante 2016).

Independent constitutional bodies have flourished under Ghana's Fourth Republic. The creation of these independent constitutional bodies such as the CHRAJ, NMC and NCCE aim to safeguard the democratic order. Given the prominence of these institutions in Ghana, it is not a surprise that more than two-thirds of the respondents are of the view that they do protect the established democratic order. These independent governance institutions are

accountable to a competent national organ although many were uncertain about whether these institutions account to the Supreme Court and the Constitution.

All the respondents agreed that Ghana's democracy guarantees an independent judiciary. The judges are appointed through established constitutional procedures. In Ghana, branches of the judiciary can be found outside the nation's capital, Accra. Thus, whether at the regional and district levels, the judiciary is present. As a result, justice has been made accessible to the citizenry at all levels.

Table 4.3: Ghana - formal compliance with strong democratic institutions

✓	Separation of powers legislated	A separation of powers is guaranteed in the Constitution, but there is a Constitution has structured the legislature and executive in a manner that ensures a fusion of the two
✓	Human rights commission operational	The Commission on Human Rights and Administrative Justice has been effective but a change of leadership as weakened the institution.
✓	Parliament check on power of the executive	Parliament has not managed to hold the executive in check.
✓	Independent institutions protect democracy	There are several independent institutions that function to protect democracy. These include a Commission on Human Rights and Administrative Justice and a Media Commission.
✓	Strong supported independent judiciary	The judiciary is independent and well resourced. Judges are appointed through a credible process.
✓	Access to (traditional & ADR) justice	ADR is an integral part of Ghana's judicial system.

Alternative Dispute Resolution mechanisms have emerged as an important platform for resolving conflicts in modern democratic societies. The growing legitimacy for this institution means that citizens can receive quick redress to their grievances. Evidence from the study demonstrates that ADR is an integral part of Ghana's judicial system and its importance has been duly acknowledged by the rest of society. 91% confirmed that Ghanaians have embraced the ADR concept and are using it as a means of resolving disputes besides formal courts.

4.5 Regular democratic elections

Since authoritarian rule was dislodged in 1992, relatively free and fair elections have been held in Ghana every four years. After amending the errors that marred the founding election of 1992, in which the losing opposition charged that it had been robbed of election victory due to massive rigging by the NDC, subsequent elections have proven to be fair in their processes and

outcome (Gyimah-Boadi 2008). The culture of political and democratic stability and growing confidence in Ghana's democratic prospects of domestic and international organisations as well as development partners, are predicated on the periodic elections producing a winner and a willing opposition (Agyeman-Duah 2005; Debrah 2015).

While not perfect, the successive elections (six so far) have produced peaceful political turnovers and power alternations – where incumbents that lost competitive elections have transferred power to the opposition, which in turn handed over to another when it lost – an unprecedented democratic phenomenon in Sub-Saharan Africa (Debrah 2015).

Elections in Ghana are governed by important legislation such as the Political Parties Act 574 and Constitutional Instrument 75, which provide the framework for political participation by citizens. Most respondents believe that the electoral laws have been designed to promote peaceful elections and enhance credibility. A minority indicated that the country has demonstrated a partial commitment to this protocol. Perhaps this group of respondents are speaking to loopholes in the electoral laws that give leeway for gerrymandering, and their inability to promote the financial interest of opposition parties vis-à-vis incumbent campaign finance.

Most respondents believe that Ghana's Electoral Commission (EC) has adequate power to effectively manage elections in the country. However, the appointment of the election management bodies has been bedevilled with controversies in several jurisdictions, thereby casting doubt on their ability to carry out their election management functions. The majority view, 68%, is that the EC has always been appointed through a credible process. A very small minority disagreed. Again, the recent appointment of the Chairperson of the EC sparked controversy as some groups feel that she is not politically neutral.

Most respondents think that the EC is transparent because it has disclosed information regarding management of elections. However, one-third viewed the EC as partially compliant. There seems to be a deficit in the EC's provision of information on its election management activities. Recently, the EC has clashed with other political and civil society groups on areas of electoral governance including a lack of openness on the voters' register, transfer of votes, collation and declaration of election results.

Election mechanics should be able to resolve possible disputes where they occur. Weak or non-existent dispute resolution mechanisms have caused uncontrolled pre-and post-electoral conflicts in many parts of Africa. 77% of the respondents think that the electoral processes and system embody mechanisms for resolving election disputes. They also agree that the instruments are robust enough to contain all election related disputes in the country. For example, in 2012 when the NPP challenged the presidential

election results at the Supreme Court, the dispute was disposed within a reasonable period.

The EC has convinced election stakeholders, particularly political parties, to consent to a code of conduct that details certain rules of engagements even though they are not binding legally. Nevertheless, the election codes have been recognised by respondents as a useful instrument for promoting inter-party harmony. More than two-thirds of respondents confirmed that there is a working electoral code of conduct that regulates the behaviour and actions of the electoral actors. It is partly true that the EC has not publicised the existence of the codes to the public. Also, given that is not enforceable at the court, some people have not understood its usefulness.

Table 4.4: Ghana - Formal compliance to regular democratic elections

✓	Regular elections	Elections, held every four years, are governed by the Political Parties Act 574 and Constitutional Instrument 75 which provide the framework for citizens' political participation.
✓	Independent EMB in place	An Electoral Commission is established to manage election processes. Its independence is slightly contested.
✓	National mechanism for election disputes	There is a credible national mechanism for managing election disputes.
✓	Code of conduct for electoral stakeholders	There is a working electoral code of conduct that regulates the behaviour and actions of the electoral actors.
✓	Equitable access to the media	The issue of equitable access is contested but there is legislation in place. State media is dominated by the ruling party.
✓	Election observation conditions	Ghana has provided a congenial environment that has aided AU election observation activities.

Elections are to produce acceptable outcomes to all competitors. One way of achieving this is the extent to which all participants gain access to state media coverage of their electioneering activities. Levelling the playing field by making it possible for candidates and their parties to gain access to the mass media foster voters' confidence in the electoral process and the election outcome. Half the respondents felt that all parties have fair access to media coverage of their political programmes, while others view access as partial or unfair, in part because the state media is dominated by the ruling party.

Over the years, some groups have championed the participation of women in elections at both the national and local levels. Yet, only a little over half of respondents, 59%, believe that this effort has yielded dividends in getting women to show interest in the elections. There are 32% who said the situation regarding women's participation in elections is, at best, partial. This

suggests that not much has been done to instigate women electoral participation in Ghana.

International observation has become a norm and a salient aspect of the electoral processes of developing democracies. Hence, continental groupings such as the AU have positioned themselves to offer election monitoring services. This is in sharp contrast to the period of the founding elections where Western governments and their agencies thronged to observe African elections. However, in recent times the AU has been at the centre of election observation in member-states. Evidence from this study clearly shows that Ghana has provided a congenial environment that has aided AU election observation activities. 91% of respondents declared that the political and electoral atmosphere in Ghana has been conducive for the AU election observation team to carry out their activities.

4.6 Popular Participation

In the past, state apparatuses were used to control the participation of NGOs in the governance process. The law, which regulates the NGO sector, empowers the government to register and deregister all non-state organisations. 59% confirmed that the government is solely responsible for registering and deregistering NGOs. However, third disagreed suggesting instead that the government institution, the Registrar-General, is responsible for NGO registration.

Legal constraints on financial support for NGOs have recently attracted considerable attention. In some previously authoritarian societies that have transited to democracy, vestiges of authoritarian tendencies persist in which those governments create conditions to impede NGO access to funding. Such behaviours, albeit subtle, are largely perceived as a deliberate strategy to cajole NGOs to submit to their dictates. The findings show that, in Ghana, there are no legal restrictions on funding for NGOs. 64% indicated there are no legislative constraints on funding for NGOs. There is no legislation on funding for NGOs.

There are working collaborations between the government and NGOs, but some view these partnerships as partial. State-NGO collaboration may not be too strong because government deals more with NGOs whose key figures have personal relationship with the president and his party.

Successive governments in Ghana have been grappling with whether to pass a freedom of information bill into law or not. The government's indecision regarding a freedom of information legislation has been recognised by respondents who decried the non-existence of such law (73%). Only a minority, 23%, indicated that Ghana has a freedom of information law. Perhaps these people are convinced that the Freedom of Information Bill will be passed into law.

Ghana may be among those countries where government-citizen dialogue on salient policy issues has not taken root. This is because only a minority said that citizen-government dialogue is strong, while most respondents described the prevailing government and citizen dialogue as merely partial. In 2001, government created the “People’s Assembly” platform where the president engages in face-to-face interactions with the citizenry. These “town hall” meetings have not stimulated real government-citizen interaction because they have been hijacked by the elite.

Evidence from the study suggests that appropriate structures at the local level to promote citizens’ participation suffer some weakness. A little over half of respondents suggest that only partial commitment has been made towards the provision of structures at the local government level to aid effective local participation. There seems to be a gradual weakening of local government due to the creeping phenomenon of elite recapture, where attempts have been made by the central government to whittle down the impact of local citizens’ participation through recentralisation of decentralised structures (Debrah 2014; Ayee 2004). Political controls have manifested in frequent dismissals of district chief executives and undue delays in transfers of mandatory funds to district assemblies (District Assembly Common Fund) (Debrah 2016).

Table 4.5: Ghana - formal compliance to popular participation

✓	Law regulating the NGO sector	NGOs are required to register with the state although this is contested.
✓	Restrictions on sources of funding	There are no legal restrictions on funding for NGOs.
✓ x	Government CSO working partnerships	There are weak working relationships between NGOs and government.
x	Access to & freedom of information law	Ghana does not have freedom of information legislation.
✓ x	Budget consultations at all levels	There are forums for consultation but they seem to be poorly supported, inactive or subject to elite capture.

4.7 Socio-economic justice and service delivery

Socio-economic justice now constitutes a priority developmental issue in emerging countries. Like many African countries, Ghana is working towards the promotion of policies and programmes that aim at creating a just society. Over the years, governments have provided support for vulnerable groups. The National Disaster Mobilisation Organisation (NADMO) has provided humanitarian services for internally displaced persons, refugees and asylum seekers from neighbouring and other African countries.

Ghana actively explores strategies to bring education to its citizens. For instance, free education such as the Free Compulsory Universal Basic Education, Education for All and the School Fee Abolition Programme have

been implemented with varying degrees of success. The National Education Sector Annual Review (2013) report revealed increased numbers of mainstream pupils with special educational needs by 13% at the basic school level.

Enrolment growth in the kindergarten level was higher by 16% even though the sector is challenged by limited number of specialist educational facilities for pupils and teachers (Akyeampong *et al.*, 2007; Avotri 2000;). Although a simple majority thinks that basic education is free in Ghana, some respondents who gave partial or no response, one can conclude that free basic education has not fully materialised. For instance, government has not been able to enforce its policy of compulsory and free education. Pupils continue to pay school fees and other levies and personal expenditures thereby alienating many school going children from the classroom.

Periodic auditing of institutions that use state funds is an essential component of the good governance agenda. It is important that institutions that spend tax payers' money account for how and why they have used them. This helps to engender citizens' confidence in the institutions, and forms a sound justification for the payment of taxes by citizens. As revealed by the study, there is high public confidence and satisfaction in how the state institutions have been accountable. For instance, 82% indicated that government ministries, departments and agencies undertake regular and thorough auditing of the use of state funds.

While periodic auditing may take place in most government institutions, there is a concern that such activities have not been carried out independently. For instance, if government exercises excessive control over an auditing body, it will lack the ability to undertake thorough and independent checks on the finances of such state institutions. This study has revealed that majority of respondents, 77% regard the Auditor-General, the body responsible for carrying out financial auditing of all state institutions as having the capacity to conduct an independent audit of their accounts. Only a minority did not affirm this position. It is not too certain whether most people know that government organisations conduct independent auditing of their accounts.

Disclosure of audit reports conducted by the Auditor-General to the larger public is widely regarded as key to the attainment of good governance in Ghana. It is believed that sharing information on auditing of funds used by government ministries will enable citizens to appreciate the relevance of state institutions in the democratic process. Making audit reports on state institutions available to the public has been done to the satisfaction of the citizenry. The Auditor-General's report on financial accountability of the state institutions is published for public knowledge. It is also true that it takes a long time for the report to reach the public domain.

Over the years, government has entered agreements with mining companies to prospect or extract minerals in several parts of country. Regrettably, most critics of the mining deals claim that such agreements have been concluded outside the view of the public. This general apprehension is reinforced by respondents as the majority denounced the non-disclosure of mining agreements between the government and mining companies.

Countries that promote open governance systems have established mechanisms by which citizens can verify funds that companies operating in the jurisdiction pay to the government. Such a transparent system serves as basis for holding companies accountable to the citizens. Yet, it is not so in Ghana. More than two-thirds of respondents, 77.3%, believe that the system of taxation in the country does not allow citizens to know how much tax the private companies pay to the government. Only 9% of respondents think that the tax system provides means for the public to know the amount of taxes payable to government by the companies that carry out mining activities in the country.

Table 4.6: Ghana - formal compliance to socio-economic justice and service delivery

✓	Service delivery & audits	The Auditor-General has capacity to conduct independent audits of government departments. Findings are disclosed to the public.
✓	Free compulsory basic education to all	Free education such as the Free Compulsory Universal Basic Education, Education for All and the School Fee Abolition Programme have been implemented.
✓	Measures of combat diseases	Ghana has made a committed effort to deal with malaria and HIV.
×	Company tax payments public	The system of taxation does not allow citizens to know how much tax the private companies pay to the government.
×	Regulation of foreign companies and mining	Regulation of mining is opaque. There are concerns about foreign companies' compliance with national laws.
×	Environmental protection measures	Government policy on the environment is soft and ineffective.
×	Government reduction of unemployment	Policy impact is minimal. Graduates who not have had any job offers have teamed up to the form the Ghana Graduate Unemployment Association.

Concerns have emerged among citizens of many African countries about foreign companies' compliance with national laws. But it is unlikely whether most citizens know whether foreign companies comply with the state laws or not. As can be gleaned from the findings, a little over half of respondents (54.5%) described the situation in partial terms, which suggests that it is not

too clear to them whether foreign companies comply with the national laws. 14% believe that foreign companies comply with the laws while 32% said foreign companies do respect Ghanaian laws.

Government policies aimed at job creation have not yielded the required dividend. As can be discerned from the findings, none of the respondents said government's employment policy has been effective. On the contrary, a high number of respondents (a little over two-thirds) denied that government policies of job creation have been effective. Indeed, in Ghana, a large proportion of the youth are without jobs. The unemployment situation is so disheartening that graduates who not have had any job offers have teamed up to the form the Ghana Graduate Unemployment Association.

For some time, environmental issues have engaged the attention of governments and non-governmental organisations alike. But much is expected of governments to initiate pragmatic measures to protect the environment. What makes the difference is the level of government's commitment to bring improvements in the environmental protection efforts. The number of who scored "partial" for government's efforts to protect the environment is higher than those who said government is doing something about protecting the environment. More disturbing is that 32% said that the government has not demonstrated real commitment to improving the protection of the environment. Environmental conditions in several mining communities are deplorable. There is rampant destruction of water bodies, degradation of the soil and sanitation crisis in the cities. Yet government's soft policies have failed to halt the rate of destruction of the environment.

Governments have been encouraged to draw up national programmes to reduce the effect of many diseases on the population. Malaria is a serious disease afflicting Ghana. Over the years, governments have made efforts through well designed national programmes such as Roll Back Malaria and the use of insecticide-treated mosquito nets to reduce the impact of malaria. 82% of the respondents acknowledged this effort by the government to control malaria.

Similarly, programmes to reduce the spread of HIV/AIDS have received priority attention of government. Although a minority rated the government's programmes in HIV/AIDS control as partial, a majority affirmed the fact that the government has demonstrated seriousness in tackling the pandemic. This is because national programmes have been implemented to contain the situation. Ghana has also made has made significant progress with child mortality programmes. Government's maternal health programmes seem to be effective as all the respondents felt that Ghana was making inroads.

4.8 Combatting Corruption

Many studies have revealed the prevalence of corruption in Ghana (CDD 2000). In a CDD Survey Report (2000), corruption was rated as a major developmental challenge. There is a high prevalence of corruption in both the public and private sectors. 86% of households saw corruption as serious problem and about 82% said corruption is worse every year. In 1996 it was estimated that about \$30 billion of aid to Africa, an amount that is double the annual GDP of Ghana, Kenya and Uganda, ended up in foreign bank accounts (Celarier 1996). Levine's 1975 study of Ghana shows that most of the income appropriated through corrupt means was stashed in foreign bank accounts used for the purchase of luxury imports or simply frittered away in a vain and frivolous show of wealth. On the contrary, little or none of the ill-gotten wealth was invested locally. In 2006, the Minister for Transport in Ghana resigned his position for reportedly paying \$100,000 to his American concubine (*The Ghanaian News*, September/October 2006).

Dealing with the canker of corruption has been problematic. An effective mechanism for dealing with corruption is setting up multiple anti-corruption institutions and agencies with the power to combat corruption. In Ghana, these include the CHRAJ, the Economic and Organised Crime Office, the Bureau of National Investigation and the Criminal Investigation Division. Most respondents confirm that there are institutions to fight corruption.

Table 4.7: - formal compliance on combatting corruption

✓	Anti-corruption commission operational	Institutions to combat corruption include CHRAJ, Serious Fraud Office, Economic and Organised Crime Office, Bureau of National Investigation and the Criminal Investigation Division.
✓ x	Government, media & civil society partnership	Media and CSOs have been identified as useful partners in the fight against corruption.
✓ x	Access to information & civic education	Media and CSOs have limited access to information on corruption. Programmes to sensitise the public about corruption have proven to be an effective mechanism for combatting corruption.
✓ x	Whistle blower protection law and reporting	Whistle-blowers in Ghana are not guaranteed adequate protection under the law.

However, it has been argued that the mere creation of anti-corruption institutions is not enough ensure success in the fight against the corrupt. Ghana's drive to combat corruption seems to be problematic because only a minority view anti-corruption institutions as credible. Many of these institutions have failed to demonstrate commitment to fighting corruption as they fail to act to bring perpetrators to book.

The CSOs have been identified as useful partners in the fight against corruption, but unfortunately collaboration has not taken place. Or where it has, it is limited because government has always downplayed media exposures of corruption cases. Government has even insisted that the media substantiate allegations of corruption against state officials. The partnership between the government, and the media and civil society to combat corruption has not matured yet.

Media and CSOs have limited access to information on corruption. It may be the case that government is protecting or shielding its agents from media harassment because the media always use unofficial means to obtain information on official corruption.

Programmes to sensitise the public about corruption have proven to be an effective mechanism for combatting corruption. The evidence gathered from this study suggests that the government has not shown interest in financing national programmes to educate the public on corruption. For instance, only 4.5% said that government has committed funds to the education of the public on corruption. Most respondents, 73%, were forthright in their opinion that the government has not provided funding for this. There is a general perception among the populace as well as evidence-based research (Debrah, et al., 2015) that government has starved these institutions of funds thereby weakening their capacity to perform their functions.

Whistle-blowers are important agents in the fight against corruption. Those who provide information about corruption need to be protected against reprisals from those whose corrupt deeds have been exposed. Whistle-blowers in Ghana are not guaranteed adequate protection under the law. For instance, in recent exposure of corruption cases by the investigative journalist, Aremeyaw Anas Aremeyaw, some of the culprits have threatened to sue him, and he constantly disguises himself before any public appearance.

Since corruption is a socio-economic and political problem, and undermines good governance, citizens are always encouraged to volunteer information about corruption cases. It is regarded as a duty of a responsible citizen to report corrupt practices to state authorities. The reality is that it is not easy for ordinary citizens to report on corruption cases because there is no incentive in making such reports. Citizens feel that their identities could be revealed or nothing would come out of their revelations.

There have been slogans, political statements and policies to deal with corruption. The NPP's Kufour, who rode to power on the campaign of Zero Tolerance for Corruption, took some initiatives through institutional reforms to stem the tide of both political and bureaucratic forms of corruption in some areas. In 2003, the government passed legislation on public financial management, namely the Internal Audit Agency Act, the Public Procurement

Act, and the Financial Administration Act. This legislation creates central boards to supervise the financial functions of government agencies. These reforms, if well-implemented, could provide useful deterrents to corruption by increasing the perception that corrupt activities will be detected.

Early reports on the creation of these new institutions are worrisome, and reflect the shortcomings of the Kufuor administration's overall approach to anticorruption reforms (Keith 2005). In assessing how the institutional framework for combatting corruption has worked out, Prempeh (2003) focused on the performance of the Serious Fraud Office (SFO) in addressing corruption in Ghana. He observed that by pursuing, investigating and helping to prosecute those responsible for fraud, the SFO has helped the nation to avoid financial losses by saving state money. He explained that the creation of the SFO has offered a real attempt for government to implement the policy of 'zero tolerance for corruption'.

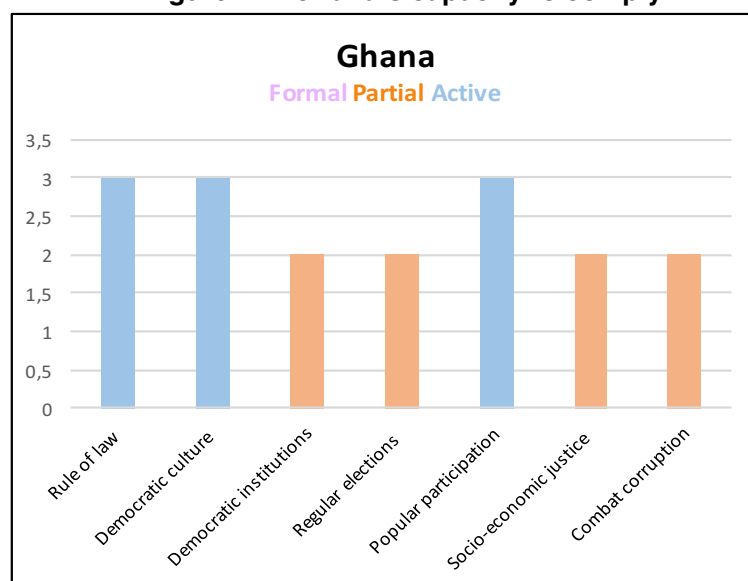
The Procurement Act (Act 663 of 2003) has been passed and institutions such as CHRAJ, SFO, the Economic and Organised Crimes Office have been set up, but corruption has not abated. The reason, according to Enu-Kwesi (2014), is a lack of political will that has led to incapacitating the financial capabilities of the institutions. For instance, the government delivered only 6.4 billion cedis of the 7.2 billion cedis budgeted to the SFO in 2003 and CHRAJ has consistently suffered heavy annual budget cuts (Keith 2005; Enu-Kwesi 2014).

4.9 Conclusions

The findings of this research suggest that Ghana is not only formally compliant in many of the areas but also active in its attempts to build democracy in the country. The only negative areas seem to be in the areas of corruption and socio-economic justice. The

economy seems to be subject to elite capture and poor corporate governance. This tallies with the Mo Ibrahim ten-year review.

Figure 4.2: Ghana's capacity to comply



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5 Nigeria

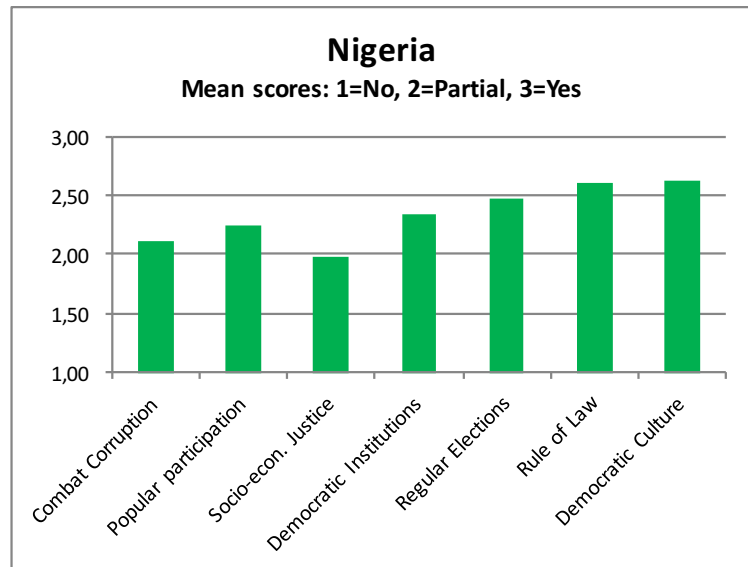


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5.1 Introduction

There is consensus that the government has taken positive steps to ensure formal compliance to socio-economic justice and effective service delivery. However, this has not always translated into actual service delivery, especially in the current recession following the falling of crude oil prices. It was also evident that at the state level, there are differences in implementation of some policies, as some states were doing relatively well while others lag.

Figure 5.1: Nigeria's mean compliance



The military had been in power in Nigeria since 1966 after a military coup, with a string of military coups following this. Democratic rule was restored to Nigeria in 1999, when the Constitution of the Federal Republic of Nigeria was enacted. The constitution was enacted on 29 May 1999, inaugurating the Nigerian Fourth Republic¹. Since then, Nigeria has made significant progress in enhancing constitutional democracy and respect for the rule of law. In January 2011, the then President Goodluck Jonathan signed two amendments to the Constitution.

Nigeria is a federal constitutional republic in West Africa. It comprises 36 states and the Federal Capital Territory, where the capital, Abuja is located. With approximately 184 million inhabitants, it is the most populous country in Africa and the seventh most populous in the world. As of 2015, Nigeria is the world's 20th largest economy, worth more than \$500 billion and \$1 trillion in terms of nominal GDP and purchasing power parity respectively². Nigeria has six geographical areas known as 'zones' which are seen as a 'historically legitimate solution to the centralisation or monopolisation of power by a particular lineage' which also creates a measure of political stability'³.

Nigeria gained independence in 1960. Since then, electoral democracy has been the basis of legitimacy for the exercise of political power. At the same time, political instability has been a feature, driven by regional and ethnic tensions which tested the integrity of the territory during the Biafra war, and by a troubled political settlement, and an increasingly centralised oil economy. This has contributed to frequent regime crises and military interventions. For 32 out of 55 years since independence, Nigeria was under military rule⁴.

Democracy was ushered back by the then military Head of State, Gen. Abdulsalami Abubakar, a man who would go down in history as the father of the fourth republic, as he did not only willingly transfer power to a democratically elected president, Olusegun Obasanjo, but also provided a constitution which continues to serve as a guide for governance⁵.

Upon gaining independence from the British in 1960, Prime Minister Sir Abubakar Taffawa Balewa led a coalition government. In January 1966, he was killed in a military coup and Major General Johnson Ironso took over. In July 1966 Ironso was killed in a counter-coup and Lieutenant Colonel Gowon took over until 1975, when he was overthrown by Brigadier Murtala Mohammed. A year later, Mohammed was assassinated in a failed coup and his deputy, Lieutenant General Olusegun Obasanjo replaced him and introduced an American-style presidential constitution.

This led to an election in 1976 ushering Alhaji Shehu Shagari to power. There was a bloodless coup in 1983 and Major General Muhammed Buhari took power before another bloodless coup in 1985 that ushered in Ibrahim Babangida to power. In 1993 elections were annulled by the military and power was transferred to an interim national government. This led to General Abacha seizing power and suppressing the opposition. In 1999, parliamentary and presidential elections were held and Olusegun Obasanjo was sworn in as president, ushering back democracy⁶. In 2003, the first legislative elections since the end of military rule in 1999 were held. In 2015, Muhammadu Buhari made history by becoming the first opposition candidate to win an election in Nigeria.

Nigeria is a federal republic with a presidential system of governance. The president is elected through universal suffrage and is the head of government and chief of state. The president is eligible to two four-year terms. The presidential candidate needs to secure more than 50% of the national vote and at least 25% of the vote in at least two thirds of the states. The Constitution of Nigeria provides for a bicameral National Assembly with a 360-member House of Representatives (known as the Green Chamber) and 109-member Senate (known as the Red Chamber).

At the state level, there is a governor who is eligible to two four-year terms and a House of Assembly of 20 - 40 representatives depending on the state

population. Elections for the House of Representatives and the Senate are held concurrently while state legislature elections are conducted separately⁷.

Legislatures under military governments have had almost no power, and even under civilian control, the legislature has only recently become an effective check on the president's power⁸.

Nigeria acceded to the APRM in 2003 and has since then had one review, completed in 2008. The APRM process found the following:

- While Nigeria has signed, ratified and domesticated several international conventions, the culture of respect for human rights is yet to take root largely due to the prolonged military rule, with a rising tide of ethno-religious violence and militancy in the Niger Delta.
- There are glaring unequal power relations between the central government and constituents.
- The credibility of the electoral commission is very low and their impartiality and independence has been questioned. Even after the successful 2015 presidential election, there are still questions on the efficiency of the Independent National Elections Commission.
- There is a low level of observance of separation of powers and greater possibility for abuse of power at the lower levels of governance.
- The Court of Appeal and the Supreme Court have demonstrated their capacity to implement the constitution impartially however this cannot be said to be true for the lower courts.
- While there are many anti-corruption agencies which exist, they face various constraints due to the insufficient coordination of anti-corruption work, inadequate funding and questions on their efficiency, effectiveness and impartiality.
- Nigeria faces many gaps in implementing its governance commitments due to weaknesses in its constitution, high levels of corruption, political apathy, a growing culture of political violence, human rights violations and youth militancy. There are also questions of the State's commitment to good governance.

The APRM process in Nigeria was seen to be highly inclusive and included men, women and youth and took into consideration political orientation, social diversities, professional and occupational groups, civil society and non-governmental organisations, labour and trade unions, ethno-cultural/religious orientations, faith-based organisations and the media⁹. The recommendations coming from the process included calling on the government to strengthen and reinforce its programme of national value orientation, to inculcate socio-cultural and religious tolerance among different communities, strengthen institutions and empower them to fight corruption and to show political will to enhance good governance.

5.2 Constitutionalism and the rule of law

The Constitution of the Federal Republic of Nigeria which was adopted on 29 May 1999 is the supreme law of the land. It provides for a federal republic with a presidential system of governance. There is a separation of powers between the three arms of government with a strong executive, an elected legislature and an independent judiciary. The government has ensured that there is civilian control of the military, in a country that has been under military rule for so long.

However, there is also a feeling that the constitution is not for all people, with many being of the view that application of the constitution is impeded in some states where state law is implemented even where it contravenes the constitution. In the 2015 presidential election, Muhammadu Buhari became the first opposition candidate to ever win an election in Nigeria. This has been seen by citizens as a testament to improvement in adherence to the rule of law. Although the constitution proclaims personal freedom and a secular state, it also permits Muslims to follow Sharia law¹⁰.

Table 5.1: Nigeria - formal compliance to constitutionalism and rule of law

✓	The Constitution is the supreme law.	The current constitution was enacted on 29 May 1999, inaugurating the Nigerian 4 th Republic. There were two amendments in January 2009.
✓ x	Citizens are equal before the law.	Application is impeded in some states where state law (usually religious) contravenes the Constitution.
✓	Constitutional change is democratic.	A change process is defined but only works if the amendment benefits the incumbent government.
✓	Civilians control of the military.	There is civilian control of the military.
✓	No unconstitutional changes.	There have been not unconstitutional changes since 1999.

The constitutional amendment process is well defined in the constitution. However, a majority feel that this process does not seem to work unless the amendment is in the interest of the incumbent government. An example was given of a proposed amendment to correct a flaw in the local government system that would allow local governments to control their own budgets. This amendment failed as it was opposed by governors. However, constitutional amendments to amend the electoral processes were successful in 2010 and 2014.

The law provides for equality before the law but a majority feel that the law does not protect them equally. This is especially in areas in the North where Boko Haram is very active and in cases where religious /tradition laws are seen to take precedence even when they contravene the constitution.

There have been no unconstitutional changes of government and no constitutional amendments to increase term limits to facilitate the incumbent government staying in power. The 2015 election which saw the election of the opposition candidate to president has reinforced in the citizens an increased respect for the rule of law.

5.3 Democratic culture and political pluralism

Citizens feel that there are processes that allow for democratic law-making. The electoral legislation system allows for peaceful elections and steps have been taken to ensure credibility of elections. The opposition is able to operate freely and is able to access state media, even if not in equal measure. The constitution provides guidelines and a simple criterion for the registration of political parties.

There is consensus that political parties have not created an enabling environment for women to participate in politics. At the federal level, the Gender Inequality Bill and the Persons with Disabilities Bill are still pending before the national assembly. At the state level, there are different initiatives to promote women, youth and persons with disabilities.

Nigeria currently has its most vibrant media in recent history. Most citizens feel that media freedom is being experienced on a wide scale especially with the avenues for media created by new and emerging media. However, there is still a feeling that at the state level, it remains easy to control the media.

The Gender Inequality Bill is pending at the national level and there is currently no statute on affirmative action. At the state level, there are policies in place to promote women, youth and persons with disabilities.

At the national level there is a push to ensure representation of minority groups.

The Independent National Elections Commission (INEC) is responsible for the registration and deregistration of political parties in Nigeria and looks at political party funding. INEC regulates the amount an individual can contribute to a political party and according to the Electoral Act, 2010 as amended, political parties cannot accept monetary or other contribution of a value more than one million Naira unless it can identify the source of the money or contribution to the Commission¹¹.

Corporate bodies are prohibited by law from contributing any money to political parties or candidates. Section 91 of the Electoral Act 2010 goes further by limiting how much a candidate can spend on elections, with a presidential aspirant being the highest amount at one billion Naira. The Commissioner of Police is mandated to provide security for all election candidates and one is not allowed to use private security firms to provide security.

CSOs can operate freely and conduct their business without intimidation from the government. All CSOs must register at the Corporate Affairs Commission and some states have additional bodies which they must register with. While CSO funding is not regulated, CSOs must report all monies received to the Economic and Financial Crimes Commission for purposes of ensuring they are not being used for money-laundering or terrorist activities.

Freedom of the media is guaranteed by the 2011 Freedom of Information Act which guarantees citizens the right to public information. There are more than 100 national and local news publications, the most influential of which are privately owned¹². Radio remains the main source of information for most Nigerians. However, in the 12 northern states in which Sharia law operates, there is some antagonism towards free expression. Public agencies which are responsible for media licensing and regulation are run by officers appointed by the government. Nigeria is also committed to the Open Government Partnership which will form a legal framework for the government (federal, state and local) to comply with all transparency and accountability standards¹³.

Table 5.2: Nigeria - formal compliance to democratic culture

✓	Policies for citizen participation exist	There are processes that allow for democratic law making.
✓	Political party formation and funding protected	INEC is responsible for the registration and deregistration of political parties in Nigeria and looks at political party funding. There is a limit to the amount an individual can contribute to a party. Corporate bodies cannot contribute at all.
✓	Conducive conditions for civic organisation	CSOs are able to operate freely and conduct their business without intimidation from the government.
✓	Civic education in place	There is civic education but not enough.
✓ x	Rights of minorities and vulnerable protected	Political parties have not created an enabling environment for women in participate in politics, although INEC has a gender division in the Voter Education, Publicity, Gender and Civil Society Liaison Department that promotes women political participation. The Gender Inequality Bill and the Persons with Disabilities Bill are still pending before the national assembly.
✓ x	Anti-discrimination laws in place	While religious freedom is guaranteed, there are states in the North, and local governments. that have placed limits on religious activities and imposed a dominant faith.

The National Assembly has taken steps by opening political space for CSO participation thereby improving its oversight role and creating an atmosphere for public debate.

While religious freedom is guaranteed constitutionally under article 38 and is guaranteed in practice, there are instances when states, especially those in the North, and local governments have placed limits on religious activities and imposed a dominant faith¹⁴.

5.4 Strong democratic institutions

There is separation of powers between the three arms of government namely the judiciary, the executive and the legislature. The judiciary consists of a Supreme Court, Court of Appeal, Federal high court and at the state level there are high courts, Sharia courts and customary courts¹⁵. The president appoints Supreme Court judges subject to confirmation by the Senate. The Nigerian legal system is a combined legal system with statutory law, English common law, customary law and Islamic law being recognised and applied. The executive includes representatives from all 36 states and has overriding power as it controls the financial autonomy of the other branches of government.

Table 5.3: Nigeria - formal compliance with strong democratic institutions

✓	Separation of powers legislated	There is a constitutional separation of powers, but low level of observance at lower levels.
✓	Human rights commission operational	The National Human Rights Committee is relatively strong.
✓ x	Parliament check on power of the executive	The executive includes representatives from all 36 states and has overriding power as it controls the financial autonomy of the other branches of government.
✓	Independent institutions project democracy	There is an established Public Complaints Commission.
✓	Strong supported independent judiciary	Court of Appeal and the Supreme Court have demonstrated their capacity to implement the Constitution impartially but not the lower courts.
✓	Access to (traditional & ADR) justice	Citizens have access to ADR.

Nigeria has democratic institutions which are relatively strong. The National Human Rights Commission was established under the National Human Rights Commission Act 1995 in line with the UN resolution for states to establish national human rights commissions. The Commission has six zonal offices and deals with different human rights issues. It is responsible for creating an enabling environment for the promotion, protection and

enforcement of human rights and to provide public enlightenment, research and dialogue on human rights issues¹⁶. The Commission can make recommendations to the Federal government for the prosecution of human rights offences. The commission also has express power to enforce its decisions. All decisions of the governing council can be registered as decisions of the High Court. The judiciary also has a division that deals with human rights issues. The Commission and the judiciary receive funds as a first line charge¹⁷, but most citizens felt the funding is not enough

The Public Complaints Commission is established by the 1999 Constitution¹⁸ and the Public Complaints Commission Act. The Commission is seen as one of the foremost anti-corruption agencies established in the country. The Commission is the sole agency to address all administrative injustices at the federal, state and local levels¹⁹. The Commission aims at promoting social justice for the individual citizen. It is also to provide a viable option for Nigerians or anyone resident in Nigeria seeking redress against injustice arising from administrative bureaucratic errors, omission or abuse by officials of government, or limited liability companies in Nigeria. The Commission also has the role of improving public administration in the laws, procedures, practices, rules and regulations and standard behaviour of officials²⁰. The Commission is an independent body and has power to access all government information and can make orders to produce documents from government.

The judiciary is independent and has two levels. It consists of the Supreme Court, The Federal Court of Appeal and the three-tier court including the Federal High Court, the High Court of a state, the Customary Court of Appeal of a state and the Sharia Court of Appeal of a state²¹. Supreme Court judges are appointed by the president subject to confirmation by the Senate. However, in order to bring the administration of justice closer to the people, the Court of Appeal has multiple divisions (currently sixteen) in various parts of the country while the Federal High court has a division in each of the 36 states²². The Nigerian legal system is a combined legal system with statutory law, English common law, customary law and Islamic law being recognised and applied.

The lowest courts in the country are all state courts and include the Magistrate Courts, the Customary Courts and the Sharia Courts that handle Sharia law cases. While the Constitution proclaims Nigeria as a secular state, it also permits Muslims to follow Sharia law. Sharia law operates in 12 northern states and local courts recognise customary law. The Nigerian judiciary has been commended by many Nigerians and international observers for performing admirably in the dispensation of justice.

The appointment process for judicial officers starts with the National Judicial Council (established by s153 of the constitution) which recommends

judicial officers to the president who then forwards the names to the senate for approval. Judicial officers have security of tenure and their finances are disbursed as a first line charge. In addition to this, citizens can use alternative dispute resolution mechanisms. The judiciary is currently seen as one of the more independent institutions with a transparent appointment process.

The Public Prosecution Authority also plays a key role in the protection and promotion of human rights, especially through its programmes on tracking genocide fugitives, on the protection of witnesses and victims, on the fight against gender based violence and on the fight against corruption and drugs²³.

The Executive/Cabinet are an independent arm of government. Members of the cabinet are appointed by the president and oversee 19 government agencies. The cabinet members also report to the president. The executive also controls the financial autonomy of other branches of government and as a result of this yields more power than the legislature.

Neither the civil service nor the judiciary is typically powerful or impartial enough to act as an effective constraint on the power of the executive although the federal judiciary has shown itself to be an increasingly important check²⁴.

5.5 Regular democratic elections

The constitution and the Electoral Act, 2010 legislate on elections. The Independent National Elections Commission (INEC), which has a presence in 36 states, is established by the constitution to among other things ‘organise elections to all political offices’²⁵. The functions of the commission are also set out in the Elections Act, 2010²⁶ and include making electoral regulations where it is deemed necessary. The commission’s officials are appointed through a constitutional process and work with all stakeholders.

There are thirty-seven election management bodies (EMBs) in Nigeria, namely INEC and thirty-six State Independent Electoral Commissions (SIECs)²⁷. In addition to conducting elections, INEC is tasked with voter registration, civic education, conducting referendums, delineating election constituencies, registering and deregistering political parties, monitoring organisation and operation of political parties. INEC is also responsible for arranging for audits of political party finances and monitoring election campaigns.

INEC has 13 Commissioners with 1 Chair and 12 National Commissioners. The president appoints commissioners who are then vetted by the Senate. Resident electoral commissioners oversee the SIECs. SIECs conduct local government elections in the 36 States while the INEC conducts the area council elections in the Federal Capital Territory (FCT)²⁸. The State

Independent Electoral Commissions are independent of INEC and their activities are not monitored by INEC.

The Electoral Act and the Constitution do not provide for independent candidates. A candidate must be a member of a political party and be sponsored by that party to be eligible to contest an election²⁹. Members of the public are permitted to take part in political parties' activities once they are members of those political parties. There is no law preventing someone from joining more than one political party.

INEC has an election code of conduct with stakeholders to allow for election observer missions and civil society organisations can apply for observation status. Election petition procedures are governed by the Constitution and the Electoral Act. The Constitution establishes the election tribunals while the Electoral Act outlines the rules governing the process of election petitions³⁰.

INEC has a gender division in its Voter Education, Publicity, Gender and Civil Society Liaison Department that promotes political participation by women. The Commission seeks to encourage women to participate in election by providing a platform for equal access and participation in elections. The environment for women's participation is at different levels and depends on the political party. The South West region has done a lot to create an enabling environment for women's participation in politics. It is also an offence to deny any political candidate access to the media.

Table 5.4: Nigeria - Formal compliance to regular democratic elections

✓	Regular elections	Regular elections do take place. There is voter education but it is insufficient. The participation of women is promoted.
×	Independent EMB in place	There are 37 EMBs - INEC and 36 SIECs. INEC is responsible for all related voting activities as well as audits of party finances. SIECs are independent of INEC.
✓	National mechanism for election disputes	Election tribunals are in place and petitions can be made. The court is empowered to intervene in internal disputes within political parties. The Court of Appeal has original jurisdiction for both presidential and vice-presidential election petitions.
✓	Code of conduct for electoral stakeholders	INEC has a code of conduct for all stakeholders. There is no legislation on political party funding.
✓	Equitable access to the media	It is an offence to deny any political candidate access to the media.
✓	Election observation conditions	CSOs can apply for observer status. There is a code of conduct for observer missions.

The Electoral Act, 2010 (as amended) under s 87(10), (11) provides that the court is empowered to intervene in internal disputes within political parties. The Court of Appeal has original jurisdiction for both presidential and vice-presidential election petitions. The President of the Federal court of Appeal, in consultation is also responsible for setting up election tribunals as and when deemed necessary. The National Assembly election tribunal deals with petitions arising from the Senate and House of Representatives elections while the governorship and legislative election tribunals deal with gubernatorial and state house of assembly elections. There are calls and moves towards alternative dispute resolution being used to deal with some election petitions.

5.6 Popular participation

The Government has the sole power to register or deregister any NGO. All civil society organisations are required to register with the Corporate Affairs Commission and some states have additional requirements for such organisations to also register with a state body. Civil society can operate freely and while there is no restriction on funding, there is a requirement that civil society organisations must declare money received to the Economic and Financial Crimes Commission (EFCC) purely to prevent money-laundering and terrorist groups from using civil society organisations to bring funds into Nigeria.

The Freedom of Information Act³¹ allows citizens to access information by making public records and information more readily available. It was however pointed out that while citizens are satisfied with this on the whole, some states are more open with information than other states.

It was also clear that generally citizens have room and freedom to participate in local government decision making and have freedom of association. “Freedom of speech, expression and press are constitutionally guaranteed. They are however limited by laws on sedition, criminal defamation and publication of false news”³².

The right to peaceful assembly and association is constitutionally guaranteed under article 40. This is however limited by federal and state governments which frequently ban events which they deem as ‘threatening national security’³³.

The Freedom of Information Act³⁴ guarantees citizens the right to public information. However, while this is the case, citizens indicated that in some instances government agencies refuse to release information even if it is sought through the right channels. In December 2015, the Senate proposed a social media bill with a view to regulating the use of social media in Nigeria. The bill was however not successful and was not passed.

Table 5.5: Nigeria - Formal compliance to popular participation

✓	Law regulating the NGO sector	There is no formal regulation of NGOs and CSOs except to register with the Corporate Affairs Commission and some states have additional requirements for such organisations to also register with a state body.
✓	Restrictions on sources of funding	There is no restriction on funding, but money received must be reported to the EFCC to prevent money-laundering and terrorist groups from CSOs to bring funds into Nigeria.
	Government CSO working partnerships	
✓	Access to & freedom of information law	Freedom of Information Act allows citizens to access information. However, some government agencies refuse to release information.
	Budget consultations at all levels	

As earlier indicated, while freedom of speech, expression and press are constitutionally guaranteed, they are not absolute rights and are limited by other laws on sedition and defamation. It has been acknowledged that

‘while media remains largely free and vibrant, Nigeria retains outdated criminal law provisions that impede freedom of speech and expression. Journalists also frequently suffer intimidation and harassment related to their work³⁵. As a result of this, journalists have been known to practice self-censorship refraining from covering sensitive political, social, ethnic or religious issues³⁶.

Nigeria has a very vibrant and active civil society. There is no formal regulation for civil society organisations in Nigeria but they are required to register with the Corporate Affairs Commission. The Corporate Affairs Commission is a commission set up under the Companies and Allied Matters Act and is tasked with regulating the formation and management of Companies in Nigeria. In some states, there will be additional registration required with specific institutions, however there is no formal regulation of civil society organisations. In addition to the above, CSOs must declare all monies received to the EFCC who will ascertain the purposes of the funds.

Freedom of expression is evidenced by the huge number of news publications and radio stations. There are more than one hundred national and local news publications in Nigeria with the most influential publication houses being privately owned. There is also freedom of assembly and association as evidenced by the ease with which one can register a political party and civil society organisations.

5.7 Socio-economic justice and service delivery

Primary health care in Nigeria is the primary responsibility of the local government authorities while at the same time being the concurrent responsibility of the 3 tiers of government i.e. federal, state and local agencies. Total expenditure on health is 4.6% of GDP³⁷. The local government authority is mandated to finance and administer primary health care with the help of the National Primary Health Care Development Agency³⁸. Primary health budgets go through the state government.

Nigeria has a National Health Insurance which was created in 1999 and covers government employees, organised private sector, children under five, permanently displaced persons as well as inmates. Citizens have access to subsidised drugs for HIV and malaria and there are programmes run by the government on malaria such as the Presidents Malaria Initiative and the National Malaria Control Programme.

There is free basic education but primary school education is the responsibility of the state and the local government. Because of this, access to education is state-dependent, with some states having stricter and better-implemented policies.

Taxation regimes are better and stricter in the southern states and because of this, the southern states are better placed to provide social services than the northern states. It was also indicated that while there is some corporate sector governance and monitoring, it is not sufficient or transparent and citizens will usually not have much information available to them.

The legal framework that regulates socio-economic rights in Nigeria is largely ambiguous and scattered across several existing legislations. Nigeria has ratified numerous treaties and policies and this demonstrates, at least in principle, a willingness to protect socio-economic rights. National social security spend is very low at 1.4% of total government expenditure³⁹. Certain provisions of Chapter II of the Constitution provide for socio-economic rights. There have however been many discussions on the whether these rights can be specifically inferred from Chapter II.

The African Charter on Human and People's Rights has been ratified and enacted as law in Nigeria and as such is seen to apply in Nigeria. The Charter is intended to promote and protect human rights and basic freedoms in the African continent. As a result of the Charter, the federal government of Nigeria established some agencies and commissions to provide welfare services in order to comply with the Charter. However, the World Bank-sponsored structural adjustment programme imposed in 1986 caused the complete or partial withdrawal of spending on public welfare⁴⁰.

There are a number of laws that are seen to protect socio-economic rights without expressly stating so. The Nigerian Education Bank Act, 1993 was established to approve and disburse loans for educational purposes. The Compulsory, Free, Universal Basic Education Act, 2004 provides for compulsory, free universal basic education for all children of primary and junior secondary school age in the Federal Republic of Nigeria. It further seeks to provide punishment for parents for failing to comply with its provisions⁴¹. While these laws promote education for children, more than 50% of children in rural Nigeria spend more than 3 hours a day working. Primary school education is the responsibility of state and local governments and therefore implementation of the legislation varies amongst the states. For example, in Delta state, there are education marshals who ensure that children between the ages of 5 - 11 attend school.

Table 5.6: Nigeria - formal compliance to socio-economic justice

✓	Free compulsory basic education to all	There is free basic education but primary school education is the responsibility of the state and the local government. Because of this, access to education is dependent on which state you are in with some states having stricter and better implemented policies.
✓	Measures of combat diseases	Citizens have access to subsidised drugs for HIV and malaria and there are programmes run by the government on malaria such as the Presidents Malaria Initiative and the National Malaria Control Programme.
✓	Company tax payments public	Taxation regimes are better in southern states and they provide better services.

States enjoy exclusive legislative jurisdiction over matters of child law under the Nigerian Constitution. The Child Rights Act law was passed at the federal level, but is only effective if state assemblies also enact it. To date, only 16 of the country's 36 States have passed the act⁴². While the Child Rights Act prohibits early marriage, it competes with Sharia law, especially in the northern states which practice early marriage and which have not enacted the Child Rights Act. In 2003, the federal government inaugurated the children's parliament with a view to providing a platform through which children can engage with decision makers on decisions that would affect them.

Health care in Nigeria is the concurrent responsibility of the three tiers of government. The total expenditure on healthcare is 4.6% GDP. There is no provision in the constitution which expressly provides for a 'right to adequate medical care as may be necessary for health and wellbeing'⁴³. While there are federal legislations, state legislations also exist to lend voices against violations of women's health but as earlier stated, these are scattered through various laws.

The National Health Act, 2014 provides a framework for the regulation, development and management of a health system and sets standards for rendering health services in Nigeria⁴⁴. The Act sets up the National Health System which among other things protects, promotes and fulfils the rights of the people of Nigeria to have access to health care services⁴⁵. States are obligated to ensure that they adopt legislation that will ensure equal access to health care and health services.

In addition to that, they are obligated to provide for those who do not have sufficient financial means to access health care and health insurance. The National Health Insurance Scheme, 1999 was established with the purpose of providing health insurance which shall entitle insured persons and their dependents the benefit of prescribed good quality and cost effective health services. The government provides for its funding and administration.

The National Policy on HIV/AIDS, 2003 provides for the protection of the rights of all Nigerians living with or affected by HIV/AIDS. The policy also affirms the federal government's commitment to provide access to cost effective care and support for those infected, including the provision of anti-retroviral drugs.

Nigeria does not have legislation that specifically addresses persons with disability. The Persons with Disability Bill is still pending having gone through the national assembly and forwarded to the president for assent. The bill has been stipulated as "an Act to ensure full integration of persons with disabilities into the society and to establish a National Commission for Persons with Disabilities and vest it with the responsibilities for their education, health care and the protection of their social, economic, civil rights"⁴⁶.

5.8 Combatting corruption

There are several laws that deal with corruption among them the Corrupt Practices and other Related Offences Act⁴⁷, the Money Laundering Prohibition Act⁴⁸, the Economic and Financial Crimes Commission Establishing Act⁴⁹, the Money Laundering Prohibition Act, and the Fiscal Responsibilities Act (2010)⁵⁰. In addition to the above, the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act have some provisions that deal with combatting corruption.

These laws establish several institutions among them the Economic and Financial Crimes Commission (EFCC) which is primarily charged with enforcing laws relating to banking, money laundering, advance fee fraud and other crimes related to economic and financial crimes⁵¹. The EFCC has no time limitations and can deal with economic and financial crimes regardless of when they took place. The EFCC has capacity to prosecute directly. The Independent Corrupt Practices and Other Related Offences Commission

(ICPC) focuses on curbing bribery and corruption within the civil/public service. It is however limited as it can only deal with offences committed from the year 2000. The Fiscal Responsibility Commission (FRC) monitors budget implementation by ministerial department agencies at federal and state level⁵². The FRC therefore acts as a check to ensure that funds are not misappropriated. The FRC is also tasked with deriving annual budgets. Unfortunately, the institutions are not coordinated and information sharing is difficult due to trust issues among the agencies.

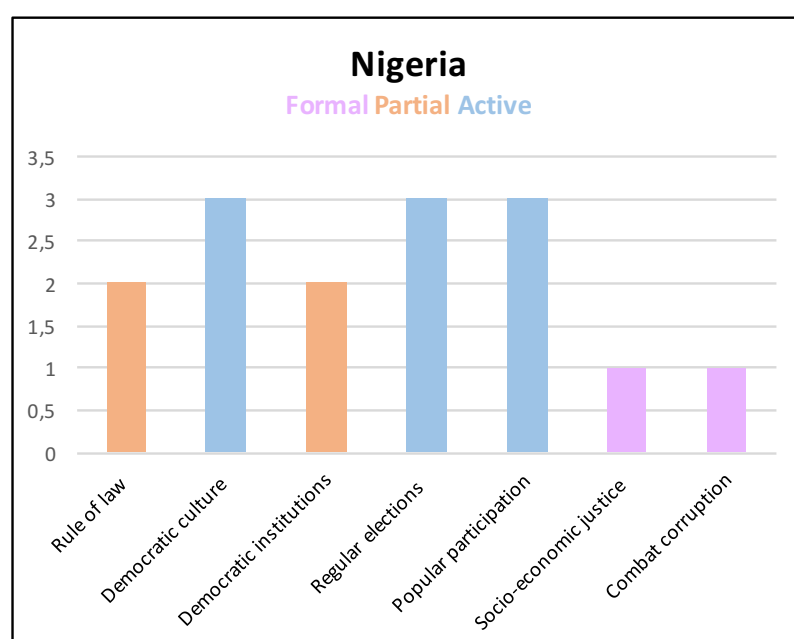
Table 5.7: Nigeria - formal compliance on combatting corruption

✓	Anti-corruption commission operational	There are a number of laws that deal with corruption. The Economic and Financial Crimes Commission is charged with enforcing laws relating to banking, money laundering, and advance fee fraud.
×	Government, media & civil society partnership	Institutions are not well coordinated and do not share information amongst themselves.

5.9 Conclusions

The key findings from Nigeria indicate that citizens have varying views on different aspects of governance. Many think the government is making strides in implementing governance commitments, but there is still more to be done to impact citizens in a country as vast and populous as Nigeria.

Figure 5.2: Nigeria's capacity to comply



The constitution is the supreme law of the land with a separation of powers and independence of the different arms of government. However, in a country with a combined legal system, there is a perception that tradition

and religious laws seem to supersede the constitution. This is especially so in the north which practices Sharia law and where Boko Haram¹ is very active.

The judiciary is one of the most independent arms of the government, and this is an improvement as the institution was previously seen as playing the tune of the incumbent government. Combatting corruption remains one of the more difficult issues in a country that has often featured on the lower digits of corruption indexes. There is a sense that average citizens are not aware of their constitutional rights and not able to effectively hold government to account. Nigeria has held regular democratic elections in the last fifteen years with the last elections being seen as testament to growth in democratic culture and political pluralism in Nigeria.

¹ https://en.wikipedia.org/wiki/Constitution_of_Nigeria

² <https://en.wikipedia.org/wiki/Nigeria>

³ www.globalsecurity.org/military/world/nigeria/government.htm

⁴ <http://www.multidisciplinaryjournals.com/wp-content/uploads/2016/06/FULL-PAPER-PARTY-POLITICS-AND-DEMOCRATIC-GOVERNANCE.pdf> pg.1

⁵ <http://connectnigeria.com/articles/2015/05/nigerias-democracy-the-journey-so-far/>

⁶ www.bbc.co.uk/news/world-africa-13951696

⁷ www.africacheck.org/factsheets-nigerias-election/

⁸ www.apgovnigeria.weebly.com/political-institution.html

⁹ <http://www.transcampus.org/JORINDV7Jun2009/JournalsV7NO1Jun20094.html>

¹⁰ www.globalsecurity.org/military/world/nigeria/government.htm

¹¹ http://www.inecnigeria.org/?page_id=28

¹² www.freedomhouse.org/report/freedom-press/2015/nigeria

¹³ www.followthemoneyng.org/2016/09/09/citizen-engagement-and-governance/

¹⁴ www.freedomhouse.org/report/freedom-press/2015/nigeria

¹⁵ www.globalsecurity.org/military/world/nigeria/government.htm

¹⁶ www.nigeriarights.gov.ng

¹⁷ First-line charges are budget allocations that do not pass through the Presidency, but are made directly to the National Assembly.

¹⁸ S 315(5b)

¹⁹ www.pcc.org.ng

²⁰ www.pcc.org.ng

²¹ www.globalsecurity.org/military/world/nigeria/government.htm

²² https://en.wikipedia.org/wiki/Law_of_Nigeria

²³

http://www.undp.org/content/dam/rwanda/docs/demgov/RW_UPR%20Report%20submitted%20by%20the%20GoR.pdf

²⁴ www.globalsecurity.org/military/world/nigeria/government.htm

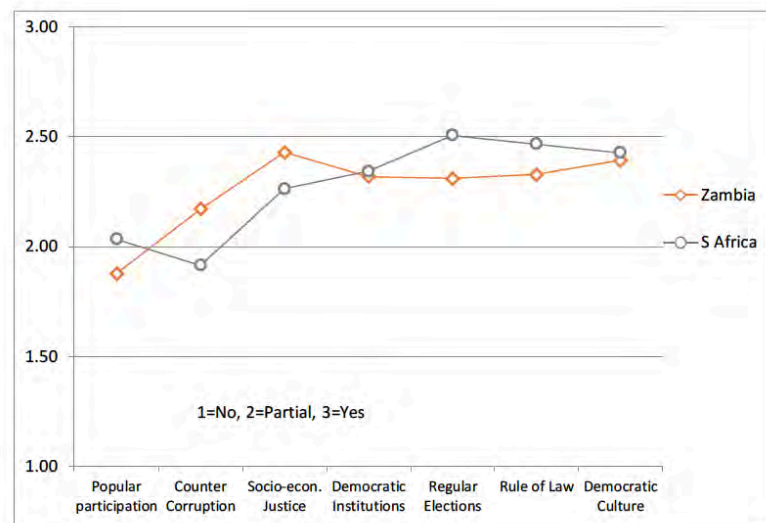
²⁵ www.inecnigeria.org

¹ A militant group founded in 2002, the group's official name is Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, which in Arabic means "People committed to the propagation of the Prophet's Teachings and Jihad. They launched military operations in 2009 to create Islamic state. They were declared a terrorist group in 2013.

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- ²⁶ Section 2
- ²⁷ http://www.inecnigeria.org/?page_id=28
- ²⁸ http://www.inecnigeria.org/?page_id=28
- ²⁹ http://www.inecnigeria.org/?page_id=28
- ³⁰ www.loc.gov/law/help/nigeria-elections-law/index.php
- ³¹ 2011
- ³² www.freedomhouse.org/report/freedom-world/2016/nigeria
- ³³ www.freedomhouse.org/report/freedom-press/2016/nigeria
- ³⁴ 2011
- ³⁵ www.hrw.org/world-report/2016/country-chapters/nigeria
- ³⁶ www.freedomhouse.org/report/freedom-press/2015/nigeria
- ³⁷ Maternal Health in Nigeria with leadership, progress is possible , a report of the CSIS Global Health Policy Center-
https://csisprod.s3.amazonaws.com/s3fspublic/legacy_files/files/publication/130111_Cooke_MaternalHealthNigeria_Web.pdf
- ³⁸ A federal parastatal responsible for the development and enforcement of guidelines on primary health implementation.
- ³⁹ <https://assets.publishing.service.gov.uk/media/57a0896940f0b64974000082/hdq1202.pdf>
- ⁴⁰ www.thisdaylive.com ,Chapter II and Socio-Economic rights, May 3 2016 , Femi Falana
- ⁴¹ <http://nigeria-education.org/literature/compulsory-free-universal-basic-education-act-2004>
- ⁴² https://www.unicef.org/nigeria/children_1938.html
- ⁴³ www.cheld.org Appraising the legal and policy framework for maternal health in Nigeria-The way Forward September 3, 2013
- ⁴⁴ <http://www.nassnig.org/document/download/7990> , National Health Act, 2014
- ⁴⁵ S 1(e) National Health Act, 2014
- ⁴⁶ <http://guardian.ng/features/law/persons-with-disabilities-bill-and-the-burden-of-presidential-assent/>
- ⁴⁷ Cap C31(2004)
- ⁴⁸ 2004
- ⁴⁹ 2004
- ⁵⁰ www.spaaajibade.com April 15, 2013 ‘Executive Summary of anti-corruption legislations with a view to advising foreign investors in Nigeria on anti-corruption programmes.
- ⁵¹ www.nairaland.com
- ⁵² <http://csj-ng.org/blog/the-role-of-the-fiscal-responsibility-commission/>

Southern Africa

The Southern African region comprises Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.



Southern Africa hosts four of the top ten scoring countries on the Mo Ibrahim Index. It has improved on average by +1.3 points over the past 10 years and scores high in all areas except human development. Safety and security and rule of law have declined in the region.

The two countries selected for the CSO assessment are Zambia and South Africa as these are the only two countries in the region that have acceded to all the conventions. Both South Africa and Zambia are post-colonial states and neither has experienced a coup, a characteristic of south Africa. The countries have similar formal compliance profiles. From similar scores for democratic institutions and culture, Zambia scores slightly higher in anti-corruption and socio-economic justice, and South Africa for elections, rule of law and participation.

However, both countries demonstrate a gap between levels of formal compliance and capacity. Both have partial capacity to comply suggesting that they straddle paper compliance capacity and active commitment. This is due to the political and patronage networks in terms of how government works. In both countries, CSOs play an important role in holding government to account.

6 Zambia



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6.1 Introduction

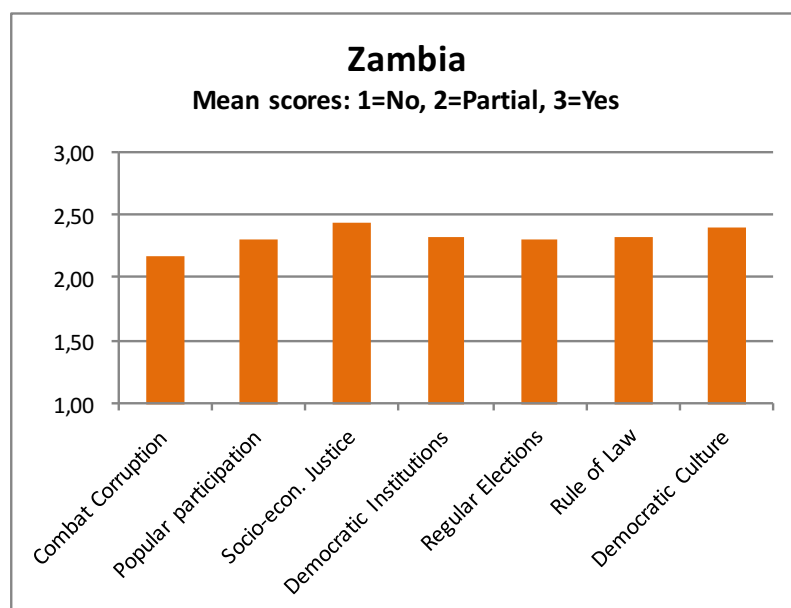
Zambia has peacefully handed over power from one political party to another through elections at least twice since independence, enhancing the country's reputation as a stable electoral democracy. Zambia is perceived within the region as a country with a principled commitment to a

robust, multiparty electoral democracy. There have nevertheless been some concerns raised about governance in Zambia. Because of the timing of the research, two major themes dominated discussions with civil society; namely the new constitution (ratified in January 2016) and the upcoming August 2016 elections.

There have been five major amendments to the constitution in six decades; reflecting a very high turnover rate. There remain, however, many who feel frustrated that the process was not more 'people centred' and are sceptical as to whether this amendment will 'stand the test of time'. This high turnover was important enough for the 2013 APRM Country Review Report to recommend efforts to ensure greater stability within the constitution.

Concerns have also been raised about past elections considering weaknesses in (i) the institutional and legal framework informing the workings of elections as well as (ii) low levels of voter participation, (iii) high levels of partisan reporting by the media, (iv) low levels of representation by minorities (including women) and (v) considerable constraints to internal democracy within political parties.

Figure 6.1: Zambia's mean compliance scores



Some expressed fears that the August 2016 election might be violent. These proved to be accurate, as there were street clashes in the August elections. 133 people protesting the re-election of President Edgar Lungu were arrested following skirmishes with ruling party supporters. Lungu, leader of the Patriotic Front (PF), won 50.35 % of the vote, against 47.67 % for Hichilema, of the United Party for National Development (UPND), but the latter claimed the elections were rigged.

While it is possible to describe Zambian civil society, and arguably even Zambian media, as active, there are worrying trends informing how citizens engage with government between elections. For example, intimidation of the media, discrimination against opposition parties, threats of deregistration of critical civil society organisations and limits on access to information all serve to undermine the various channels through which popular participation and pluralism can be achieved.

These channels need to be strengthened and protected as a way in which to embed the value of pluralism and diversity. In this respect, the recent creation of the Constitutional Court is welcomed as an additional protection of the constitutional rights of all Zambians.

Low levels of citizen involvement (as opposed to CSOs) and interest in governance matters were highlighted as especially concerning considering that a lack of accountability is a natural consequence of low levels of demand by citizens of politicians. Concerns about the efficacy of sensitisation processes were raised (both around the elections specifically, as well as more generally regarding civic education in Zambia).

This has also in part been explained by a sense of alienation of the average citizen from the democratic process due to perceptions that democracy has not and cannot deliver livelihood improvements at the most basic level, which is the primary interest of poor and rural citizens removed from the urban centres. Public perceptions about an endemic culture of corruption also reinforces this apparent delinking of service delivery and political governance in the minds of citizens.

Yet, while this research has highlighted many significant concerns about the health of Zambia's democracy, more than one of the participants felt that the democratic project in Zambia is not in any material trouble. This points to a series of contextual considerations which augment and reinforce the governance architecture. These are not, however, static and so, to ensure sustainable and robust foundations for the democratic project going forward, there remains a need to nurture and support compliance to the more formalised structures and processes as guided by the AU instruments.

Context and governance

Zambia is a landlocked country in the north of SADC, with eight neighbours. The demography is very diverse with many different ethnic groups having settled in Zambia from its neighbours. This historical diversity has been augmented by the movement of economic refugees into Zambia. There is a concerted effort to build a sense of unity within this diversity. There are some common propositions which support this unification. For example, English is the national language and is the most widely spoken second language in Zambia. The state is officially a Christian state and most citizens are classified as Christian with the 2010 Census showing 95.5% of citizens to be Protestant or Catholic.

A former British Colony, it was part of the Protectorate of Northern Rhodesia. The country gained independence in 1964 and thereafter played an important role in the liberation of other southern African countries.

President Kenneth Kaunda led the country in entrenching a form of African Socialism although officially the country was not aligned to either super power in the Cold War. This, however, was undermined when the oil crisis in 1973 struck. Thereafter, the country followed the model several other developing countries followed of borrowing international money, falling into debt and then needing to adhere to the terms the structural adjustment programmes from the 1980s. At one stage, Zambia had one of the highest per capita debt ratios in the world. It was only in the early 2000s that the country started to recover and show growth, in large part due to the commodities boom and the copper mining industry as well as political stability returning following the transition to multi-party democracy.

The country is a unitary republic with a separation of powers between the Executive (President and Cabinet), the National Assembly (Legislature) and the Judiciary. As a presidential representative democracy, citizens vote directly for the president as well as for members of the National Assembly through a 'First Past the Post' system. The president can be in power even if his party is not in majority in the legislature. The president is limited to two terms. There are several other constraints on the nominations process for president, including pertaining to citizenship and educational minimum thresholds.

There has been much talk of electoral reform, considering very low levels of representation from women and minorities in the National Assembly. A set of electoral changes have recently been introduced through the latest constitutional amendment of 2016. This includes that the president needs to win an absolute majority (50% plus 1). In addition, the introduction of the vice president as a running mate means there is no longer a need to conduct by-elections in the event of the death of a sitting president.

Zambia is a lower-middle income country with a growing population counted at just under 13,1 million at the time of the 2010 Census (Zamstats, 2010). Until the mid-2000s the country was burdened by very high debt levels accrued from the period post the 1973 oil crisis. Following a period of structural adjustment and thereafter debt forgiveness (through the Highly-Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative), the economy began growing again in the early 2000s where at one stage it was one of the fastest growing economies in the world (notably off a low base and linked to Chinese growth and increased demand for minerals). Growth slowed in 2015 to about 3.6% in part linked to the downturn in commodity prices.

Major industries include mining (copper) and agriculture. While the former is important for GDP and foreign currency reserves, the latter is a significantly greater contributor from an employment perspective (there are some disparities here where the Zamstats 2012 Labour Force Survey describes labour participation in agriculture, forestries and fisheries as 52.2% of the workforce while other sources including the CIA Factbook put this statistic as high as 85%; Zamstats 2013, CIA, 2016).

Zambia has a very high rate of poverty, where the Living Conditions Monitoring and Survey Report of 2010 found 60.5% of the population fell below the national poverty line (Zamstats, 2012) while larger proportions fall below the poverty and extreme poverty lines when one looks to international standards (World Bank consumption based data shows 78.9% fell below the US\$3.10 per day at 2011 PPP while 64.4% fell below the extreme poverty line of US\$ 1.90 per day, 2011 PPP; World Bank, 2016).

This is especially problematic in the rural areas. Poverty is explained by and compounded by very high levels of unemployment (13% of the total labour force according to the Zambian definition but up to 29% in urban areas in 2010; Zamstats 2012). Inequality is a serious issue, including between the emerging elite and the rest of the country as well as between urban and rural areas. Zambia was rated at 55.62 on the GINI coefficient with about 45% of income share held by the richest 10% of the population in 2010; (World Bank, 2016).

Zambia fares poorly on several of the Human Development Index (HDI) metrics quoted by in the UNDP Human Development Report 2015 report although it is notable that there have been some significant improvements (e.g., life expectancy at birth improved from about 40 to 60.1 years between 2000 and 2015). Zambia ranked as the 139th country out of 188 on the HDI ranking (UNDP, 2015).

The 2010 census shows 70.2% of the population are literate and notes a significant disparity between rural and urban areas (60.5% relative to 83.8%;

Zamstats, 2010) as well as between men and women (70.9% and 56% respectively as established in 2015 according to the CIA Factbook, 2016).

Most poor people live in rural areas but the rate of urbanisation is considerable with population growth in urban areas captured at 4.2% relative to the national average of 2.8% in the 2010 Census (Zamstats, 2012). Rapid urbanisation is causing considerable housing shortages in the large cities. This is resulting in inflation in the property market. It also undermines living conditions of those in the cities that cannot afford formal housing. The country has been described as not conducive to business by global metrics such as the WEF Competitiveness Index where Zambia ranked 96th out of 139.

6.2 Constitutionalism and the rule of law

The constitution has been the centre of much debate in Zambia for as long as the country has been independent. Since the 1996 amendment, which was largely seen to lack credibility, citizens have been rallying around the call for a more ‘people-centred constitution’. Twenty years later, in January 2016, the journey toward this aim took an important step forward when the Constitution of Zambia (Amendment) Act 2 of 2016 was ratified by President Lungu. This section will focus on constitutionalism in Zambia, including the formal aspects (Table 2.1) as well as the substantive aspects on how effectively a culture of constitutionalism has been entrenched in the country.

Table 6.1: Zambia - formal compliance to constitutionalism

✓	<i>The Constitution is the supreme law.</i>	The Republic of Zambia has a new Constitution (Amendment) Act 2 of 2016. This marks the fifth major amendments since independence in 1964 (amendments in 1964, 1973, 1991, 1996, 2016).
✓	<i>Citizens are equal before the law.</i>	The constitution sets out the rights and responsibilities of citizens, the rule of law and the architecture of the state.
✓	<i>Constitutional change is democratic.</i>	Constitutional changes are subject of a referendum.
✓	<i>Civilians control of the military.</i>	The defence force is legally “subordinate to civilian authority, as vested in the State organs” (Clause 191 of the Constitution Amendment Act). In practice, this is exerted through Parliament and the courts.
✓	<i>No unconstitutional changes or refusals to relinquish power.</i>	There have been no unconstitutional changes, nor has any incumbent President attempted to retain power. But ‘constitutional uncertainty’ is a major challenge.

The Republic of Zambia has a new Constitution (Amendment) Act 2 of 2016. This marks the fifth major amendments since independence in 1964

(amendments in 1964, 1973, 1991, 1996, 2016). The constitution is the highest law in the land. It sets out the rights and responsibilities of citizens, the rule of law and the architecture of the state. The constitution sets out that all citizens are equal before the law and equally protected by it, where equality is an identified national value and is enshrined in the constitution (including the Preamble).

Most changes to the constitution can be made through parliament and ratified by the president. A minimum of two thirds of the National Assembly must vote in favour of any amendments. There are, however, some articles that can only be changed through a referendum. The August 2016 referendum proposed an amendment to the articles on how the constitution be changed. Although 71% of voters voted in favour, the turnout of 44% was below the threshold required to validate the result.

The referendum attempted to modify the Bill of Rights (Part 3 of the constitution) as well as several aspects of the electoral system, including the majoritarian principle for electing the president, the vice president as running mate to the president, limitations on the term of the presidency and appointments of cabinet and provincial ministers.

The president is only allowed two five-year terms in office. Since 2002, each president has stayed in office no longer than seven years. Cabinet ministers and provincial ministers are appointed by the president from within parliament. The defence force is legally “subordinate to civilian authority, as vested in the State organs” (Clause 191 of the Constitution Amendment Act). In practice, this is exerted through parliament and the courts.

The new constitution recognised the need for a Constitutional Court to, amongst other things, interpret the new constitution, handle election petitions and deal with complaints from individuals regarding the constitution. The court has since been established, where the president appointed five judges in March 2016. The appointment of judges falls within the mandate of the president ratified by the National Assembly and on advice of the Judicial Services Commission. There is reportedly already a “traffic jam” on the road to the Constitutional court.

Since the establishment of the new constitution, government has been actively involved in disseminating copies of the constitution, including through print and radio newspapers. A draft bill of rights was widely circulated through popular press as well as public service days in the lead up to the referendum.

Zambia’s preferred approach to international affairs and sanctioning neighbours for non-compliance to AU obligations and principles is currently depicted by civil society representatives as, at best, “quiet diplomacy”. As such, it was recognised that civil society was likely not aware of the actions

taken by government to promote constitutionalism and the rule of law in neighbouring countries.

A culture of constitutionalism

There is a culture of constitutionalism and rule of law in Zambia evident, for example, in how elections have been held at least every five years since the reintroduction of multipartyism and how there have been two changes in ruling party (UNIP to MMD in 1991 and MMD to Patriots Party in 2011). In the last 15 years, there have been five sitting presidents, none of which has stayed in office for more than seven years (two had shorter terms as they died in office). Prior to this, there had been an attempt by MMD's President Chiluba to amend the constitution to allow himself a third term.

This was prevented following considerable pressure both within in the MMD and from opposition parties and civil society organisations (e.g. Oasis Forum). Similarly, there was only one failed coup attempt since the introduction of multiparty democracy in 1991. This was driven by a captain in the military. It was, however, immediately crushed. Both cases demonstrate commitment by citizens to uphold the constitution and the multiparty democracy. The survey responses support these findings with 94% of respondents confirming that term limits have not been amended in the constitution. Furthermore, 87% of respondents believe that the electoral legislation promotes peaceful elections (EISA Survey 2016).

This notwithstanding, the issue of constitutional instability has been raised as a serious issue in the country; one that undermines the ability of any one constitution to become entrenched and one that has resulted in considerable polarisation in the country. Zambia has operated under five constitutions since independence which presents a high rate of constitutional change. The APRM report found constitutional instability to be one of the major challenges to democracy and good governance in the country, a point acknowledged at the time by President Sata (APRM, 2013: 32 and 358). It was hoped that the outcome of various constitutional review processes would be able to address this by delivering a 'people-driven constitution' that could 'stand the test of time'.

More on the new Constitution

After twenty years of debate, three constitutional review processes (the 2003 Mung'omba review, the 2006 National Constitutional Conference and the 2011 Silungwe Technical Committee) and extensive engagement of citizens at local, district, provincial and national levels, a major amendment to the constitution was ratified by President Lungu in January 2016. In some ways, this new constitution has finally adopted some of the key recommendations made in previous review processes, including the institution

of a Constitutional Court, the need for an absolute majority in presidential elections (50% plus one) and the need for the vice president to serve as a running mate who can take over office in the event of the death of a sitting president.

Even where many of the clauses requested have been included in the amended constitution, there remains a level of frustration or dissatisfaction with the new constitution amongst some civil society organisations, media outlets and opposition parties. These in large part seem to relate to two key issues. The first is that civil society was said to have taken an “all or nothing” approach to negotiations around the constitution. As such, focus group participants mentioned cases where concessions could have been negotiated but were ultimately excluded because of a lack of willingness to find compromises. One participant in the focus group noted that “all the changes that you see made to the draft constitution, there are clear and direct personal interests motivating those changes” (EISA Focus Group, 2016).

The second issue points to an underlying dissatisfaction with the process by which the changes were approved and ratified. Much of the debate in the 20 years since 1996 focused on disputes about the roadmap for how the constitution should be amended (e.g., through referendum, a constituent assembly, through parliament, or a combination of the above). Ultimately the government elected to ratify many of the changes to the constitution through parliament only submitting the draft Bill of Rights to a referendum. The issue of how the constitution was to be adopted is key to the credibility of the output, where it is felt that the executive and the National Assembly had too much influence over the final content agreed to.

These detractors point to the consequences of this decision by referencing omissions in the final amendment act when compared to previous versions that included the technical and popular recommendations made in the review and engagement processes; for example to reform the electoral system to a mixed system which included at least some proportional representation as a way of promoting representation of minority and vulnerable groups; to appoint cabinet from outside of parliament instead of inside as the case; and to limit the power of the executive and reinforce a greater separation of powers (e.g. reducing the role of the executive in appointing the heads of major democratic institutions such as the judiciary, the public media broadcaster, Chapter 18 institutions).

Various high profile civil society groups as well as opposition parties have rejected the process (e.g., the Grand Coalition). It is not yet clear whether this will undermine one of the key goals of constitutional stability in the long run.

6.3 Democratic culture and political pluralism

A culture of democracy and political pluralism is achieved not only through elections but also between elections. This is achieved directly through enabling citizens regular and meaningful engagement with government on policy development and implementation as well as through intermediaries such as an empowered civil society, an independent press and protections for opposition parties. The rights of these intermediaries or ‘channels’ needs to be strengthen and protected as a way in which to embed the value of pluralism and diversity. Zambia’s performance in this respect is inconsistent. Theme five will focus on the ability of citizens to meaningfully engage while this section focuses on the legal framework supporting democracy and pluralism as well as the channels through which citizen views are heard.

Democratic Culture

Zambia fought for and achieved multipartyism in 1991 and has since remained committed to this principle. One participant explained that “we owe it to ourselves to protect our legacy” in reference to the high levels of tolerance in Zambia and the electoral successes experienced in the past (e.g., reintroduction of multipartyism and the peaceful transitions in government). Many of the civil society organisations involved in the focus groups reflected on the culture of Zambians as an important factor explaining the current status of Zambia’s democracy. The traits suggested included a very peaceful people with goodwill and moral values. It was also noted that there is generally a high level or respect for authority, including politicians. This was often used to explain some of the successes in the past (e.g., peaceful transitions of government) as well as some of the challenges faced by the nation (e.g., reduced likelihood of a challenge to corruption).

Legal Framework for Pluralism

In general, there was satisfaction that the legal framework establishes a solid foundation for democracy. This includes laws that guarantee the rights of NGOs and the media to function. While there are some gaps and weaknesses within these laws, these have been extensively discussed and debated. These include concerns with the Public Order Act in particular in relation to how it has been applied to constrain freedom of assembly, the NGO Act in particular in relation to the risk of abuse of the registration process, the ZNBC Act in particular in relation to the independence of state media from the influence of the governing party and the executive. These gaps notwithstanding, there was a commonly expressed feeling that the laws are generally progressive but that the concern is more on how these are interpreted, applied (or not applied) and enforced. One of the exceptions to the above is the lack of policy or legislation on access to information. This was

commonly agreed to be a very serious constraint to democracy and citizen participation. One participant explained that “information is almost impossible to get” requiring advocacy organisations and journalists to sometimes resort to “unorthodox methods” to access information.

Table 6.2: Zambia - formal compliance to democratic culture

✓	<i>Policies for citizen participation exist</i>	There are legal provisions for citizen participation in governance. These include formal channels such as referenda, as governed by the Referenda Act (CAP14). It is noted that referenda have seldom been held (the 2016 referendum marks only the second referendum since independence). Less formal means are also employed including multi-stakeholder meetings, workshops, indabas, etc.
✓	<i>Political party formation and funding protected</i>	The constitution provides for and protects opposition parties. There are many political parties but effectively there have only been five that were large enough to compete for seats in the National Assembly in the previous two national elections. Political party funding is secured through fundraising amongst internal and external sources to the party.
✓	<i>Conducive conditions for civic organisation</i>	Freedom of assembly and association is guaranteed in the constitution and there is a Public Order Act which should protect this right. Freedom of expression and of movement are also guaranteed.
✓	<i>Civic education in place</i>	A draft freedom of information (access to information) bill has been discussed since 2002 but has not yet materialised. In 2010, the High Court made a ruling which validated the autonomy of the IBA.
✓	<i>Rights of minorities and vulnerable protected</i>	The rights of minority groups are guaranteed and protected in the constitution as well as in legislation.

There are policies as well as practices which support participation of citizens in decision making (e.g., during policy formulation). The most notable recent example is the extensive engagement at local, district, regional and national levels through the constitutional review process. However, again, the question of how participation is managed in practice has been raised in relation to the question of representivity (e.g., how representative of the cross section of views in the sector are those who are formally engaged? How representative are any of these organisations’ views of the citizens on the ground?). While 65.6% of respondents in the survey recognised there were legal provisions for citizen participation in governance, only 35.5% recognised there to be meaningful platforms for citizen-government dialogue. There is also no clear view on how effectively government engages citizens where the majority of respondents were ambivalent when describing government’s efforts to involve citizens through engagement (80.6% answered ‘Partial’) (EISA Survey. 2016).

Opposition parties

Since 1991, Zambians have been committed to multi-partyism. There are many small parties in the country but only a small handful of ones contending for position. The first past the post electoral system has implied that small parties and those representing minorities are unlikely to have a successful candidate. Even given the large number of opposition parties and the relatively high proportion of votes for opposition parties in both the presidential and parliamentary elections, they are generally considered “weak and fragmented” (Simutanyi, 2013:14). This in part relates to concerns about the opposition parties themselves and in part to discrimination against opposition parties in practice.

Regarding opposition parties themselves, concerns have been raised by various sources that political parties lack distinction. The focus is not on providing alternative ideologies but rather on pitting the personalities of the leaders in competition. Some participants in the focus groups suggested that manifestos are rarely discussed during political campaigning and that there may even be candidates who do not fully understand their own manifestos. Perhaps as a result, the Zambian citizens have not demonstrated entrenched loyalties to any one party. As such, there has been real contestation in elections between parties, where each major election has been contested by a different set of parties often with declining margins of difference. This, together with the emerging patterns of ethno-regional voting and concerns related to declining party membership, arguably undermines the sustainability of opposition parties and the credibility of parties especially in the context of low voter turnout (Simutanyi, 2013; Momba, 2005).

It has been argued that while political parties are guaranteed rights in principle, in practice there is some discrimination in particular during elections (for example, campaign funding, unbalanced media coverage, abuse of state resources for campaigning). Political party funding is secured through fundraising amongst internal and external sources to the party. It is felt that this approach disadvantages the smaller parties, as state resources are often made use of by the ruling party in elections. Accounting on donations and use of campaign funds could be strengthened in all parties (EISA, 2005:34). This is described further under theme four.

A real concern has also been raised in relation to ‘vote buying’ where parties in the past have convinced successful MPs to switch allegiances to secure an outright majority in parliament. There are reports that this has caused voter fatigue given the considerable number of by-elections that have needed to be run in these cases. There are reportedly more independent candidates standing in this election than there have been in previous elections. This in part can be explained by historical movements of candidates between the MMD and PF.

The media

The media forms a very important bridge between citizens and government (the so called ‘fourth estate’). This role is especially important in light of the low levels of civic awareness and participation and the corresponding need for citizens to take a more active role in holding leaders accountable (described further under theme five). The status of press freedom has been a significant issue for more than 15 years, where Freedom House characterises the press as generally ‘Not Free’ in Zambia.

Some critical media outlets have been harassed, had their licenses revoked or simply shut down. The most recent incident is the closing of The Post newspaper in June 2016. While this was done for tax reasons, the threat is perceived only to be associated with those media houses considered critical or partisan in favour of the opposition. Independent journalists critical of the government face considerable harassment and often imprisonment including the Public Order Act and Penal Codes (e.g., State Security Act).

The concerns about abuse of state media do need to be couched in an understanding of public access to media. Most rural households access their media predominately through a plethora of radio stations, including many small, local and independent stations. There is less evidence of political interference in radio. There are several small, local radio channels that are still independent. These are, however, monitored closely and live shows, for example, are sometimes prohibited. And while the range of radio frequencies has in some cases been curtailed, censorship is otherwise more difficult to achieve in radio (more information is available through Freedom House on Press Freedom, 2012 - 2015).

State broadcasters are generally said to be pro-government and therefore presenting partisan news. Similar issues are also said to be true of private broadcasters. Political interference results in not only censorship but insidiously also self-censorship. Concerns were raised in focus groups about the professionalism of journalists where inaccuracies, partisan reporting and single-source stories are prevalent. To address this, there are efforts underway to regulate the media (e.g., through the newly established voluntary Zambia Media Ethics Council). One participant described how, to get balancing news, one “needs to read at least three newspapers”. “If you read two different newspapers in Zambia, you may think from one that Zambia is close to hell, and the other, that it is close to heaven” (EISA Focus group. 2016).

Human rights and minority rights Issues

The 1996 constitution had recognised several civil and political rights but the new bill is proposing to augment and expand these (e.g., to include new clauses such as the right to access of information). The proposed bill of rights also introduces new economic, social, cultural and environmental rights that

were not included in the original constitution (e.g., rights to food, work, education, and housing, a clean and healthy environment, etc.). In addition, special rights are being proposed for certain categories of people (e.g., persons with disabilities, youth, the elderly, etc.). Without these rights enshrined, there has been limited ability to enforce these rights. It is notable, however, that this new bill does include a proviso in Article 45 that they should be realised progressively, where budgetary constraints will be taken into consideration.

Prior to this new proposed bill of rights, Zambia had made many rights related commitments through existing legislation as well as by becoming signatories to international treaties (e.g., African Charter on Human and People's Rights; International Covenant on Economic, Social and Cultural rights). A human rights commission was established although concerns have been raised with how effectively this institution fulfilled its mandate.

From a minority rights and anti-discrimination perspective, there was a very notable divergence of views on the extent to which the constitution treats all people as equal before the law (42% of participants indicated 'Yes' while 32% and 23% indicated 'Partial' or 'No'). A similar trend can be seen related to whether people are equally protected by the law (26%, 39% and 23% for 'Yes', 'Partial' and 'No' respectively). Through engagement, concerns around vulnerable and minority groups were focused largely on women, youth and people with disabilities. Other communities known to be vulnerable in Zambia but not identified by civil society through the focus groups include the LGBTI community who do not have legal rights in Zambia as well as foreigners who have recently fallen victim to xenophobic attacks.

6.4 Strong democratic institutions

The constitution describes and protects the rights of a comprehensive set of democratic institutions. These institutions are important for good and democratic governance in Zambia. This is especially important in the context of a recognised “excessively centralised political system” and associated the need to reinforce a separation of powers (APRM, 2013: 29). This section looks at the democratic institutions in place in Zambia to address these concerns, focusing on their accountability structures, resourcing and capacities to deliver on their democratic mandates.

Appointments and accountability

The process by which appointments are made in these institutions was a topic of much debate in the recent constitutional review process. In the focus groups (EISA 2016) civil society organisations expressed disappointment that few changes were made in this respect. The survey results (EISA 2016) revealed no clear trend in responses on how accountable parliament and

Chapter 18 institutions were to the public (16%/ 48%/ 35% and 32%/45%/16% respectively answering ‘Yes/ Partial/No’).

The way in which appointments are made in these democratic institutions poses a risk of undue political influence in both who is appointed and how the institutions are managed. The APRM report found that these institutions are at risk of deploying “party cadres” resulting in “inappropriate placements” as well as “low morale and low productivity” (2013: 29). Self-censorship also becomes an issue in this environment. These impact not only on the efficacy of these institutions but also on their accountability to the wider public.

This should, in part, be protected in so far as the National Assembly needs to be involved in decisions. However, given the very centralised political system and the weakness of the National Assembly this check occurs more in theory than in practice. While the National Assembly is voted in by citizens through elections, similar issues around political interference and influence have nevertheless been raised. The executive is said to have undue influence because of the powers of the President (e.g., the right to dissolve the Parliament), entrenched political patronage and the blurring of lines between the party and state (civil service). All of this undermines accountability of the one institution designed to provide a check on the powers of the Executive.

Table 6.3: Zambia - formal compliance with strong democratic institutions

✓	<i>Separation of powers legislated</i>	Parliament is elected directly by the public through a ‘first past the post’ electoral system.
✓	<i>Human rights commission operational</i>	The draft Bill of Rights has included access to information and press freedom in the revised section on political and civil rights. This will be voted on in the upcoming referendum.
✓ ✗	<i>Parliament check on power of the executive</i>	The Executive is said to have undue influence because of the powers of the President (e.g., the right to dissolve the Parliament), entrenched political patronage and the blurring of lines between the party and state (civil service).
✓	<i>Independent institutions project democracy</i>	Chapter 18 of the constitution establishes the framework for a range of other democratic institutions.
✓	<i>Strong supported independent judiciary</i>	There are provisions for an independent judiciary including the newly established Constitutional Court, the Supreme Court, the High Court, the Subordinate Courts and the Local Courts.

Resources

The APRM argued that “the various commissions and parastatal bodies do not seem to have adequate budget or human capacity to fully perform their state functions” (2013: 29). It further recommends that there is a need to

guarantee the budgets for such institutions to reduce centralising of power in the Executive and the President in particular who have influence over budgets (2013: 33). It went on to make an example of the independence of the judiciary which it argued was undermined not only by the appointments process but also because of “insufficient human capacity and inadequate budgets” (2013:29). Even so, the World Economic Forum’s review on judicial independence has shown a considerable improvement over ten years, where the country was ranked 94 out of 139 countries in 2006 and then improved to a ranking of 62 in 2015. (World Bank, 2016).

Linked to resourcing constraints are often issues related to access. The number of, location of, and staffing of these institutions and their offices impacts on the ability of citizens to access their services. Some, such as the auditor general and new public protector, have only got offices in the capital or major centres. Access is also compromised to vulnerable groups (e.g., those without transportation, without literacy, without English, without information). Resourcing constraints undermine the ability of these institutions to achieve their mandates.

Powers

In addition to the resourcing constraints and appointment processes, there are concerns about whether these institutions have sufficient powers to deliver on their Constitutional mandate. For example, the Auditor General was recognised as a particularly strong institution delivering non-partisan findings. However, it was also noted that their reports were often not followed up or enforced (focus group inputs as well as in the APRM, 2013: 324).

Commissions such as the Human Rights Commission were also identified as needing further empowerment to enable it to monitor and sanction breaches, including private sector breaches (APRM, 2013: 35). This matter was submitted to discussion in the constitutional review process where ideas on how to strengthen the power of these institutions included through providing the institutions the right to sanction or prosecute offenders or through involving parliament more actively in following up and enforcing the findings (also discussed in the APRM, 2013:324).

Participants in the focus groups did recognise that the new constitution was amended to address some of these concerns. For example, the Human Rights Commission now has the right to take human rights issues to court where previously this was not the case. There have also been material changes to the rights of the ECZ and the auditor general.

Causes and consequences of weak institutions

Participants in the research emphasised that institutions were weakened by a culture of focusing on individuals not structures. This not only makes

them prone to self-interest but also undermines implementation and stability (e.g., when there is a change of leadership). The lack of systems, monitoring, coordination and enforcement to embed policies beyond just the whim of an individual was identified as a serious constraint.

The consequence remains that power is centralised in the executive in Zambia, where both the National Assembly and the judiciary have been characterised as “junior partners” unable to provide an adequate check on this power (APRM, 2013: 29). To the contrary, this arrangement provides the executive an ability to act as a check on these institutions which is sometimes counterproductive.

6.5 Regular democratic elections

There was an interesting reflection in focus groups on the health of electoral democracy in Zambia. All participants acknowledged the significant achievements Zambia has made with regards to peaceful transitions in government. While there are sometimes election petitions, these were generally felt not to be too serious and managed effectively through the Electoral Commission of Zambia (ECZ). When benchmarked against other African countries, it was felt that this set an important example for the continent.

However, there was more divergence of opinion as participants began to reflect on Zambia’s democracy when measured against a more robust yardstick of what makes for a healthy democracy. Some of the concerns identified relate to the legal and institutional framework while others focus on low voter participation, unbalanced reporting through the media, constraints to internal democracy within parties, and representation of minorities. Some argued that these are signs of a normal, maturing democracy and evidence of progress being achieved. Others felt that “without those ingredients (democracy) remains compromised”.

The ECZ is funded through parliamentary appropriations and donations as per the Electoral Commission Act (articles 12 -13). Otherwise, there is no regulation governing how election campaigns are funded, including no mandatory disclosure and no expenditure ceiling (EISA, 2014).

While the institutions are in place to support formal democracy through elections, voter turnout has historically been low and declining. The average voter turnout at all elections since 2001 has only been 32.5% as quoted by Simutanyi (2013). While a higher proportion of registered voters have turned out at the polls, this proportion has also been dropping since 2006 to an all-time low of 32.36% in the 2015 by election.

Weaknesses in the legal and institutional framework

Elections are managed by the ECZ and as such the independence of, powers for and resourcing of this body has a material impact on the quality of elections. As with other democratic institutions, the appointment of members of the ECZ by the president could raise questions about the independence of the commission. Interestingly EISA's election and pre-election monitoring has found on several occasions that no stakeholders raised concerns about the independence of the ECZ (2014: 13; 2016:3). This marks an improvement from 2001 where the EU election team raised concerns about the competence of the ECZ as well as its independence (EISA, 2005:7). More significant concerns have, however, been raised about the powers of the institution.

Table 6.4: Zambia - Formal compliance to regular democratic elections

✓	<i>Regular elections</i>	There have been five major elections in the past 15 years (2001, 2006, 2008, 2011, 2016), including two Presidential by-elections required due to the death of the sitting President.
✓	<i>Independent EMB in place</i>	The Electoral Commission of Zambia (ECZ) was established in 1996 in response to the requirements established under. Members of the Commission are appointed by the President (ratified by the National Assembly) and serve a seven -year term. There are provisions which would allow for a member to be recalled by the President (e.g., mental instability, bankruptcy) but this rarely happens.
✓	<i>National mechanism for election disputes</i>	The ECZ is mandated to resolve election disputes. They have constituted one national and 74 district conflict management committees and have invested resources into training these committees. They are also mandated to provide voter education.
✓	<i>Code of conduct for electoral stakeholders</i>	The Electoral Code of Conduct Regulation of 2011 serves to establish the rules for behaviour during election campaigns, including for parties, the media and citizens.
✓	<i>Equitable access to the media</i>	The constitution (old Articles 11 and 20) provide the media freedom of expression, of coverage and reporting. They are also compelled to provide equitable access and balanced reporting during elections by the Electoral Code of Conduct Regulation
✓	<i>Election observation conditions</i>	Election observers are welcomed, including international and regional as well as local (e.g., EISA, SADC, Conference of Presidents of the European Parliament, local CSO alliances).

For example, the Conference of Presidents of the European Parliament found in 2011 that members of the ECZ had themselves pointed to the need to empower the ECZ to prosecute breaches in electoral law (2011: 3). Civil society has reinforced this observation by describing the ECZ as “toothless... issuing vague threats and empty statements”. According to the survey results only 45 % of respondents believe that the ECZ has sufficient powers to effectively manage elections (EISA 2016, question 25). This was said in relation to how effectively the ECZ has been able to enforce and sanction infringements on the electoral code of conduct.

This issue is especially pertinent in the run up to the 2016 elections given a series of new risks including “unprecedented violence and intimidation” in the lead up to the impending August elections (it is still notable that this violence is relatively mild relative to pre-election violence in many other African countries), emerging ethno-regional campaign tactics and greater conflict between media houses in this election.

Concerns have been raised about the ECZ’s ability to deliver on its mandate. This was especially problematic in the 2015 election which had not been planned for (a by-election following the death of President Sata, where there was neither time for nor funds to support a comprehensive voter registration process; EISA 2014:13). This has been referred to by civil society as explaining lower voter turnout in these elections. This could have been an anomaly as EISA did not identify similar challenges in the 2016 national general election (2016).

Voter participation, sensitisation and the media

A set of questions about how effectively elections represent the will of the people are raised when one reflects on the statistics of voter turnout at election times (described briefly above) as well as the declining margins by which candidates have won seats, in particular in recent elections (e.g., 1.96% to the MMD in 2008, 6.56% to the PF in 2011 and 1.66% to the PF in 2015). The decline in the turnout of voters in the Zambian national presidential elections has been explained with reference to voter fatigue especially associated with the number of by-elections as well as voter registration and the timing of elections in the cases of the 2008 and 2011 by-elections in particular.

The ECZ has sought to address low participation through increased sensitisation. Working with partners including civil society organisations, voter education campaigns have been undertaken in the run up to elections. For example, in the lead up to the 2015 presidential by-elections, a range of different voter education activities were undertaken (such as through the press and more directly through voter education facilitators at the ward level).

This was especially notable given the short timeframes in which the elections were organised due to the 90-day requirement. Voter education

activities are also underway in the run up to the 2016 election. Civil society organisations have remained critical around the efficacy and reach of these activities, evidenced, in their opinion, by not only the low voter turnout by also the high number of rejected or spoilt votes, for example in the previous election (as argued in CF/ FODEP/ ZNWL, 2015:3).

The media can play an important role in voter awareness raising. However, in the run up to the 2016 election, a trend identified in previous elections continued with skewed reporting raised as a serious concern. For example, Media Monitoring Africa's review of coverage of the 2015 presidential election showed how the media (i) focused on politicians, political parties, political violence and election logistics instead of on some of the more substantive issues like policy, economics and service delivery, (ii) gave preference to the views of politicians instead of citizens, and (iii) under reported the views of women including both from the citizenry and from the candidates elect (2015). Similarly, only 10% of respondents in the survey felt that candidates had equitable access to state media coverage during the campaigns (EISA Survey 2016, question 30).

Party internal democracy and representation of minorities

While multi-party democracy is highly valued, the question of internal democracy within parties is questioned. While all political parties have committed to run on democratic principles as per the requirements of the constitution, the 2015 presidential election resulted in notable issues related to leadership successions within at least two of the major parties (PF and MMD). In both cases, the courts needed to become involved in determining the legitimate leadership (e.g., described in EISA 2014: 4 and 6). This continues a trend where leadership concerns and factionalism have been a pervasive part of party politics since the reintroduction of multi-party democracy (OS: 2013: 15).

Concerns have again been raised about the process of selecting candidates for parliament in the upcoming election. Participants of the focus groups speculated that the financial resources available to candidates affected their chances of success in the adoption process given the low levels of party funding available but the high levels of expenditure required during the campaign process. The extent to which finances influence the adoption process also has two further consequences, namely by making these candidates more vulnerable to corruption and undermining other goals that should influence the process (e.g. representation of minorities and women in parliament).

Women constituted 50% of the voter register (as per the 2014 register also used for the 2015 Presidential by-election) and yet are significantly under-represented in parliament (e.g., 13.9% of parliamentarians are women). The

low number of women in parliament can in part also be explained by the low number of candidates selected in the adoption process. Some explained that this also relates in part to a low appetite amongst women to become involved in politics.

This may explain why only 13% of respondents in the survey did not believe that women were able to fully participate in the country's elections (EISA Survey 2016, question 31). Zambia's performance here has been counter to commitments made in international protocols as well as targets set domestically. The first past the post system further undermines the ability of women and minorities to win elected positions. There have been requests to consider a mixed electoral system that includes some proportional representation or to ring-fence seats for minorities (e.g., women, youth, and people with disabilities). This was rejected during the recent constitutional review process.

6.6 Popular participation

This section builds on the theme examining democratic culture and political pluralism to look at the extent to which citizens and civil society are empowered to engage with Government and meaningfully influence policy development and implementation between elections, including at the local level.

Access to information

The lack of information available to the public is one of the major constraints that has been identified to enhancing the ability of local citizens to engage and to hold leaders accountable. Since access to information is not guaranteed within the current legal framework, citizens do not have recourse to enforce authorities to release public information. Furthermore, Transparency International Zambia indicated that its research shows considerable reluctance amongst public servants to make information available on request even where this information is classified as publically available.

The consequence of this culture of secrecy is that activists and journalists have resorted to "unorthodox methods" to access and share information (as described in several of the focus groups). It is hoped that the new clauses contained within the draft bill of rights will go some way to addressing this issue in future (e.g., proposed Article 22 on access to information).

Civil society and freedom of assembly

There is a long tradition of civil society in the country, particularly heightened around the period of struggle for multi-party democracy in the late 1980s and early 1990s (ZCSD/CIVICUS, 2010). This includes local

offices of international NGOs and local NGOs, church related organisations, trade unions and academics all of which have a considerable influence within society and political parties.

Table 6.5: Zambia - Formal compliance to popular participation

✓	<i>Law regulating the NGO sector</i>	There are various pieces of legislation that protect the rights of citizens and civil society including the NGO Act of 2009, the Public Order Act CAP 113 and the Societies Act CAP 119.
✓ x	<i>Government CSO working partnerships</i>	This is contested. Some think there are partnerships and others not.
✓	<i>Access to & freedom of information law</i>	<p>Lack of information available to the public is one of the major constraints that has been identified to enhancing the ability of local citizens to engage and to hold leaders accountable.</p> <p>Need to institute access to information legislation has been recognised since 2002 and various drafts have been considered since this time. The PF promised to institute this legislation immediately upon winning the 2011 election. This, however, did not transpire until the draft Bill of Rights was put to referendum which includes reference to the access to information and freedom of the media.</p>
✓	<i>Budget consultations at all levels</i>	The government has embarked on a goal of decentralising governance, as part of the effort to reduce the powers centralised in the Executive and enhance citizen participation at the local level. A policy has been put in place and the new constitution has strengthened this process although not as much as some members of civil society had hoped it might.

Several participants in the focus groups described Zambia as having a vibrant civil society. This includes both advocacy and service delivery organisations. The rights of these groups are secured through the freedom of assembly and freedom of speech guaranteed in the constitution (as it was in the 1996 Amendment) as well as in various other legislation (e.g., the NGO Act, the Public Order Act, Societies Act). However, it is notable that these acts can and have also been used to constrain these freedoms in the past (as described earlier).

Such manipulations of the law have prompted some to suggest that there is a shrinking space for advocacy NGOs. This is in part because of the reduction in donor financing available linked to the economic status of

Zambia as a middle-income country. However, it is also ascribed to the actual- and self-censorship linked to political interference and threats.

There was a divergence of opinion on whether government has formed working partnerships with civil society organisations in the survey (41.9% answered 'Yes' while 54.8% answered 'Partial'). It was noted by two participants in the research process on separate occasions that civil society has had very high expectations about the level to which they could influence government (e.g., around the constitutional review process as well as the timing of the upcoming referendum). This has prompted some of the disappointment.

In some cases, it was suggested that this could have been unreasonable especially where they "moved the goalposts". It was also suggested that, in cases where government did show some willingness to negotiate a compromise, it was the uncompromising stance of certain civil society organisations that prevented a compromise arrangement from being accepted. Finally, it was recognised that civil society in Zambia was sometimes a little myopic; focussing on a narrow range of issues and leaving out discussion on some important matters.

This analysis does point to one of the observable features amongst all four focus groups which was the willingness of many civil society organisations to volunteer critiques of themselves as a sector. In all four focus groups, representatives identified their responsibility toward some of the issues they raised concern around (e.g., sensitisation, also described further below). Certain participants also reflected on the extent to which their views could be considered representative.

One person noted alarm that in some cases "we have replaced the people; we give statements on behalf of people". It was felt that this was a very dangerous trend since, like politicians, many organisations and individuals are operating for (some) self-interested reasons. Several noted that the civil society sector is "donor driven" where issues become trendy when donor money is available but fall off the agenda when money is withdrawn (to some extent, this was evident of the fight against corruption as described further in theme seven).

Citizen involvement and sensitisation

As described under theme two, there were concerns raised through the survey on the effectiveness of government efforts to engage citizen. This underscores the point raised in a study on the status of civil society in Zambia that platforms for government/citizen dialogue are developed in an ad hoc manner and result in limited meaningful influence on policy making and implementation (ZCSD and CIVICUS, 2010). So, while citizen involvement and pluralism are enshrined values underpinning the state since the

reintroduction of multi-partyism, neither of these is considered a strength in Zambia (Simutanyi: 2013).

Two major challenges were identified to the active participation of citizens. The first, as discussed above, is limited access to comprehensible and quality information. The second is a reportedly low level of interest or demand to be involved from the citizens themselves. While there is a vibrant civil society and, arguably, a vibrant media, this has not on its own translated into an active citizenry involved in decision making and holding leaders accountable. Where citizens do engage, some civil society organisations felt that this was on the “wrong topics” in large part because of a lack of understanding on the rights and responsibilities of a citizen and their leaders.

The topic of how to stimulate demand on the part of citizens was of much interest to all CSOs interviewed in this research process given the understanding that there will be low levels of accountability if citizens do not expect leaders to account. This is best achieved by sensitising citizens to the issues of democracy, elections and the constitution. The focus at the time was largely on the referendum and upcoming election.

The argument was made that this should be continuous even between elections, where this is reportedly not the case. There were many examples listed of how government and civil society have been embarking on sensitisation missions, including through the media (newspapers, radio including listener groups) and more directly (through workshops, public service days at public venues, and SMS campaigns).

As indicated above, civil society organisations and the media showed an impressive reflection on their responsibilities and roles in building awareness and capacity amongst stakeholders to engage in the democratic project. There was also healthy and critical reflection on the weaknesses in these activities historically (e.g., choice of language, exclusion through vocabulary and jargon). Nevertheless, while sensitisation was widely recognised as critical to embedding democracy and securing greater space for pluralism and tolerance, it was widely felt that sensitisation has not been effective in achieving its objectives.

Rather, it was described that citizens continue to show low levels of appreciation for the importance of, for example, the constitution and the associated Bill of Rights, to their daily lives and livelihoods. Even where efforts have been made to explicitly highlight the messages in terms of the interests of citizens (e.g., in the APRM process), this has not made a considerable and sustainable impression on citizens to become more active in demanding their rights. There was also a critique raised that government had often reneged on their role in leading and driving such sensitisation.

Engagement at the local level

A further reflection on involving citizens in local decision making suggests a similar trend. There is a lack of confidence in whether government has provided appropriate structures to meaningfully consult with citizens at the local level (65% answered 'Partial'). This in part can be explained by the very slow pace at which decentralisation policies are said to have been implemented. While there are some positive examples of changes having been achieved (e.g., with education boards) there is impatience that the objectives are not being delivered.

From an implementation perspective, it was suggested that there may be perverse incentives or unintended consequences of the policy when one looks at the detail of how power is devolved at the local area and who specifically this benefit. It was felt, however, that at least the change in how executive mayors and council chairpersons were selected (elected not appointed) would increase the credibility and accountability of local democratic institutions.

While citizens technically should be involved in priority setting through the national budgeting process (e.g., through committees such as the village, ward, district committees as well as through provincial and national parliamentary committees), the "process remains a very technical tool out of reach of the ordinary person". This, because it is a highly technical exercise that has not been clearly communicated in a way local people will understand (e.g., choice of language, access to meetings, etc.). If input is provided it is often not meaningful (e.g., submission of budget requirements versus input on prioritisation and trade-offs). There was also a concern that certain committees (e.g., the Constituents Development Fund committees) are highly politicised. KPMG in their summary of the 2016 Budget noted that the government is reviewing these CDFs as they have "not always met noble objectives" (2016:13).

The auditor general releases an annual audit of ministries. Respondents to the survey recognised that audit results are released to the public but there was divergence on the extent to which this was considered independent (45.2% answered 'Yes' while 35.5% and 19.4% answered 'Partial' and 'No' respectively). This was at odds with the discussions in focus groups which largely agreed that the auditor general was well recognised as an independent and effective institution. The auditor general is said to often identify significant anomalies and disparities, especially financial. Civil society feels frustrated that the findings and recommendations are, however, often not acted upon.

6.7 Socio-economic justice and service delivery

Following structural adjustment programmes in the 1980s and 1990s, there were significant declines in the social services delivered in terms of both

reach and quality. In the last 15 years, considerable improvements have been achieved off this low base. The challenges nevertheless remain considerable not least because the Zambian economy has recently been hard hit by low commodity prices related to the dependence of the economy on the copper price. This has resulted in significantly reduced export earnings and an increased current account deficit, fuelling increasing debt. This is a significant concern especially in light of the country's history of unsustainable debt and the link between current accounts, foreign reserves and service delivery.

Table 6.6: Zambia - formal compliance to socio-economic justice

✓	<i>Free compulsory basic education to all</i>	All citizens have the right to equal education according to the constitution as well as the Education Act (2011). The Free Primary Education policy has resulted in net enrolment increases from 71% in 1999 to 97% in 2013 (EEFA, 2015). In 2012 Zambia was criticised for investing less in education than its neighbours (RTE 2012) but has increased the national budget allocation to peak at 20% in 2014 and 2015 dropping to 17.2% in 2016.
✗	<i>Measures of combat diseases</i>	For many years, Zambia has been recognised as one of the few African countries to meet the AU targets on health (15% as per the Abuja Declaration in 2001). A decreasing proportion of the budget has been allocated to health of late. Health facilities are poorly resourced (including human resources), in rural areas. Congestion and unreliable supply of medicines is a problem in both rural and urban areas. (CSPR, 2012).
	<i>Company tax payments public</i>	Taxation regimes are better in southern states as they provide better services.
	<i>Regulation of foreign companies and mining</i>	Details of agreements with mining companies and information on the taxes paid by large corporations was not shared with the public.
	<i>Environmental protection measures</i>	The development plan aims to diversify the economy with a focus on developing a wider range of mining opportunities, agriculture and agro-processing, manufacturing, tourism and energy,
	<i>Government reduction of unemployment</i>	The 2016 budget has set aside a considerable portion of the fiscus to activities that support livelihoods (54%). This includes education, health, housing, environmental protection and social protection. Government has defined a strategy which involves employment creation including through an Industrialisation and Job Creation Strategy, a Youth Empowerment Action Plan and preferential procurement for local businesses.

While one of the major objectives of a multi-party democracy is to deliver better lives to the people, changes in the political system in the 1990s have not necessarily translated into better service delivery at the local level. It is therefore understandable that citizens would have less incentive to support and participate in the political governance framework. This section looks at how the government promotes socio-economic development and livelihood opportunities (human capital and job opportunities) as well as how it protects livelihood assets (e.g., environmental protection and corporate regulation).

Free education is only available until grade 7 where after there are significant dropout rates (political parties have been making promises to revise this but nothing has yet materialised). While the government has invested its efforts to date in securing access, there remain concerns about quality, which have recently been receiving more attention. Recent studies have highlighted concerns about whether students are learning adequately, especially in foundation phase mathematics and reading (EEFA, 2015).

Since 2014, considerable investment of time and resources has been made into early childhood education (pre-primary) which seeks to address a gap previously identified in the education system. Another important shift has been the introduction of a two-tiered education system – academic and vocational/skills streams. This marks an important shift as basic education is therefore being phased out.

Efforts are underway to tailor the education offered to people with disabilities, especially physical disabilities, so as to ensure that these people are not excluded. This is in keeping with international commitments such as UNICEF on promoting the rights of children with disabilities and United Nations Convention on the Rights of Persons with Disabilities.

Socio-economic rights and accountability

The constitution was recognised as key to service delivery and socio-economic justice in so far as it guides policy and law. However, this link is generally not understood by citizens who cannot see the relevance of the former in terms of their livelihood related priorities (e.g., water, food security, etc.). As such, citizens have taken less interest in influencing and monitoring changes to the legislative framework (e.g., voting, engaging).

An example of how significant the gap in awareness here is can be seen in the following example. Civil society reflected on how citizens often express gratitude when services are delivered (clearly indicating that they are not aware of their rights to these services as well as to the ways in which they have directly contributed to the fiscus through VAT if not also taxes). One participant explained that “we feel that the services we receive come as a gesture from political leaders” rather than because of any recognised right (EISA Focus Group. 2016).

This has several consequences: it makes citizens vulnerable to vote buying where candidates make personal contributions and donations to win favour, it discourages activism in pushing for rights and demands for accountability and it means citizens direct their requests and concerns to the wrong places (e.g., villages are waiting for MPs to have vegetable gardens established).

The proposed Bill of Rights, while there are some questions about what is left in or what the implications of some of the inclusions may be, will in general significantly strengthen the rights of the population to socio-economic development and service delivery. If this Bill of Rights is included in the amended constitution, it will become justiciable.

However, there are concerns about how enforceable these will be given the progressive realisation clause (Article 45). One participant underscored this point by asking “if there is no food or no medicine, then how many people could refer to the Constitutions to achieve service delivery?” further emphasising how removed the rights contained in the draft Bill of Rights and the new constitution are from people’s lives.

In addition to questions asked about how the Bill of Rights will be implemented, are questions of whether the new Bill of Rights would influence the resourcing set aside for service deliver. The answers to these questions are not yet clear.

Corporate regulation and environmental protection

Concerns were raised about corporate regulation where a majority of respondents felt that the details of agreements with mining companies and information on the taxes paid by large corporations was not shared with the public (mining agreements – 67.7% ‘No’; tax information - 45.2% ‘Partial’ and 51.6% ‘No’) and moreover that there may be inconsistencies in how the law is applied to foreign companies (67.7% ‘Partial’). The APRM also raised concern about the enforcement of labour laws and made recommendations in this respect (2013:302). This included a concern about the right of workers to unionise, a point that was disputed by the Government in their comments on the APRM report (2013: 353).

Most respondents in the survey felt ambivalent about whether the government was committed to improving environmental protection (61.3% answered Partial). There is some legislation in place including a new law that was enacted in 2011 to conform environmental laws to international requirements (2013: 358). However, the APRM recommended the strengthening of the Zambia Environment Council and the enforcement of the country’s environmental legal framework, including to the mining industry (2013:344, 356) especially in terms of human rights and environmental protection.

6.8 Combatting Corruption

Transparency International Zambia have partnered with the CHR Michelson Institute to undertake a study on corruption and anti-corruption in Zambia (Chene: 2014). This study characterises three forms of corruption, namely bureaucratic or petty corruption, nepotism and patronage and political corruption. Money laundering has also been identified as an important category for consideration. The problem of corruption is widely recognised, both internally and externally, to have been a major issue across both administrations and in all six presidencies in the past 15 years. This section presents information on the forms of corruption evident in Zambia, how this is perceived and how it is being addressed.

Table 6.7: Zambia - formal compliance on combatting corruption

✓	<i>Anti-corruption commission operational</i>	The Anti-Corruption Commission was initially established as early as 1980 under President Kaunda, now governed by the Anti-Corruption Commission Act 42 of 1996. Many interventions have been undertaken to address the scourge, including introduction of new legislation and strengthening of the institutional environment.
✓	<i>Government, media & civil society partnership</i>	They further work with 40 civil society organisations to fulfil this function.
✓	<i>Access to information & civic education</i>	The ACC is responsible for educating the public around corruption, their rights and their access to whistleblowing mechanisms. Campaigns have also been regularly run to denounce all forms of corruption and integrity committees have been established at the various tiers of government.
✓	<i>Declaration of assets for public servants</i>	Efforts have been made to secure some high-profile prosecutions, including of high level officials and people within serving governments.
✓	<i>Whistle blower protection law and reporting</i>	There is a Whistle-blowers/ Public Interest Disclosure Act.

The record of bribery and corruption in Zambia's civil service is pervasive, impacting service delivery especially in the police and justice sectors and then to a slightly lesser extent in the education and health sectors (various sources as quoted in Chene, 2014). There are many cases cited of high ranking officials, members of Parliament and politicians supporting friends and families or themselves directly through strategic appointments, procurement and fraud.

There is evidence which suggests districts and municipal areas supportive of the ruling party are rewarded with better service delivery while districts that are opposition run get fewer resources and "denied access to national

budgetary resources” (APRM, 2013:36). Money laundering is also a problem but one where some progress is being achieved (e.g., as described through the APRM, 2013: 171).

This commission is also supported by a number of other institutions including the Auditor General, the Ombudsman (Commission of Investigations), and the Director of Public Prosecutions. The public can report incidents of corruption in various ways including to the ACC, a hotline number. Legislation is in place (the Public Interest Disclosure Act, 2010) to protect the public for reporting such incidents, except where they do so through the media.

An example was cited of the costs of corruption to the nation, where roads were said to cost about ten times more to build in Zambia than in Botswana, a fact ascribed to the high levels of corruption in the awards and construction process in Zambia.

Real and perceived changes in corruption

In 2013, the APRM process concluded that corruption was “endemic or even systemic” (2013: 3). Public perception surveys show the feeling that corruption is increasing and being managed worse by government now than in the past (Transparency International and Afrobarometer as quoted in Chene, 2014). External parties have agreed, identifying it as the second most significant constraint to competitiveness in the Global Competitiveness Index in 2014 (quoted in Chene, 2014:3) which is especially notable given that Zambia was only ranked as 96 out of 139 in this index.

And yet, there is research that suggests improvements have been made in almost all governance metrics in the past decade including those specifically related to corruption (as per various World Bank Governance Indicators including Transparency International’s Corruption Perception Index and the WEF’s Corruption and Ethics Ranking as in World Bank, 2016; also various quoted in Chene, 2014). This disjuncture in research findings and perception is not fully explained by but can relate in part to the following:

- The public is experiencing corruption as a part of everyday life. One focus group participant raised a concern that a “culture of corruption” was being developed where “people are not even ashamed” of being involved in corrupt practices anymore.
- High profile cases receive significant attention in the media and amongst civil society. However, there was a suggestion that some of these corruption charges have also been used to settle personal vendettas or as a political weapon to discredit individuals or opposition leaders.
- Charges of corruption are very difficult to prove, considering the lack of transparency and challenges in accessing information. There is also considerable political influence which extends to the protection of some.

Even in cases where the ACC has targeted high profile cases, it was argued that few move to prosecution and of those few are successfully prosecuted.

There was some debate about whether corruption has worsened since the first republic (under Kenneth Kaunda). President Kaunda was reportedly very active in clamping down on any form of corruption in his government and introduced the Anti-Corruption Act as well as a set of leadership codes. There was some slippage in the Chiluba years, where it has been hypothesised by certain representatives of civil society that this may have been linked to the introduction of the more capitalist system.

While President Mwanawasa was known to be very active in the fight against corruption, there was a perception that this was relaxed during President Banda's short rule. Several significant cases and reports of corruption were brought against the executive as well as other high-profile leaders during this time including the 2008 oil and health scandals.

During this time, the 'abuse of office' clause in Anti-Corruption Commission Act was removed. The removal of this clause, empowering the police and the ACC to question public officers on the sources of their wealth, was generally considered a step backward and the clause was reintroduced under President Sata's administration in 2012. President Lungu's term in office has been too short to assess but there was a general feeling that corruption is on the increase.

One of the ways in which corruption is felt to have changed is that it has become more sophisticated; historically corruption was classed as theft where now it includes a range of forms including 'jobs for friends', nepotism in tender processes, currying favour or influence. One of the civil society representatives went further to suggest that "when you fight corruption, now it unfortunately fights back".

Given the focus on elections, civil society did reflect on the risk of corruption in this process. One of the key form of corruption mentioned during the research focused on the adoption process for candidates standing in the upcoming election where it was felt that this was open to considerable influence from rich individuals who support candidates in their campaigns with an expectation of paybacks later.

It was also observed that political parties are poor at resource mobilisation and that there is therefore often a risk of undue influence. More transparency around financing as well as other possible solutions (e.g., a political party fund) were recommended as ways in which to deal with this issue.

Efficacy of the anti-corruption strategies and programmes

As described above, there are multi-faceted strategies in place to deal with corruption. However, while there is legislation in place it was argued that

these are not effectively applied and interpreted. One of the few counterexamples identified was with respect to money laundering where it was felt systems were in place to address this, including through the banks and with the support of the Drug Enforcement Commission.

There are concerns about some loopholes which undermine the legislation (e.g., the anonymity of whistle-blowers is not protected if they report corruption charges to the media instead of through other defined channels such as the ACC). This, albeit that many of the charges of corruption are directed at the integrity of the leaders to whom charges need to be reported (e.g., the police, the ACC, etc.). The APRM, for example, levelled criticism at the ACC recommending a “strengthening [of] institutions through adequate legislation guaranteeing their constitutional independence and insulating them from political interference” (2013: 356).

In response to the criticism in the APRM report, President Sata acknowledged that the public has lost confidence in ACC. He responded that plans were put in place to restore public confidence through reinforcing the Anti-Corruption Commission Act through introducing stiffer penalties and reinstating the ‘Abuse of Office Clause’ (APRM, 2013: 358). Perceptions about the credibility of the anti-corruption commission were split evenly with 19% of survey respondents being of the opinion that it is credible, 19% of the opinion that it is not credible and the remainder were partial (EISA Survey 2016, question 48).

Legislation and government efforts are augmented by efforts undertaken with and through civil society and the media. They have showed high levels of interest in corruption cases and have become actively involved in anti-corruption campaigns. While in some cases this brings them into partnership with government, it also sometimes pits them in opposition with government where corruption is suspected amongst public officials or political leaders.

For the past 15 years, there has been a history of the media facing criminal charges and imprisonment for libel or defamation as well as harassment and intimidation, in particular in relation to their reporting around corruption (as described in various Freedom House reports over the years including Freedom House 2013).

Zambia’s role in the continent

The AU Convention on Preventing and Combatting Corruption requires not only a focus internally but also a focus externally on preventing and combatting transboundary corruption. Zambia has not played a strong role in promoting this to its neighbours and peers. Rather, there are cases where Zambia can even be seen to have been complicit in hiding or abetting corrupt practices (e.g., in the case of the Zambia National Farmers Union where international and local journalists were arrested for investigating a case

of corruption while many of those implicated in the corruption charges have managed to avoid penalty).

6.9 Conclusion

Zambia is one of only two southern African countries to ratify all the following African Union AGA instruments. This is in keeping with the (perceived) role they play on the continent of embedding a culture of constitutionalism. For example, under President Kaunda, Zambia was recognised for its

efforts in supporting liberation movements in Africa. Other presidents have also been seen to play an important role in promoting good governance on the continent (e.g., President Mwanawasa).

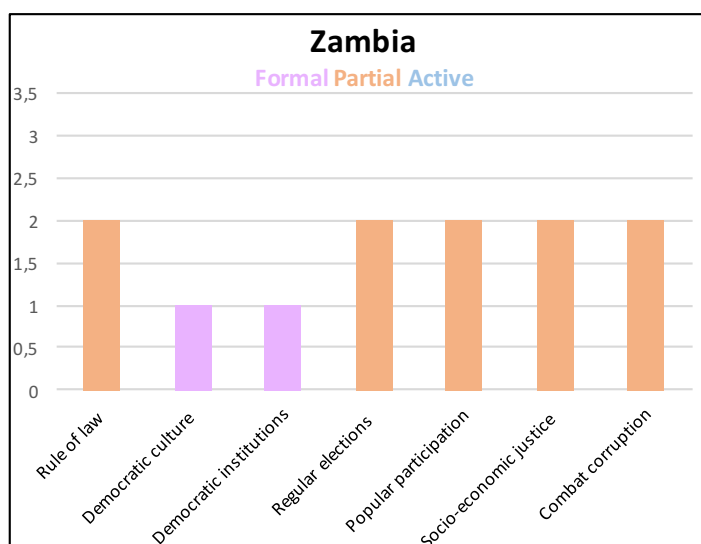
Zambia has also been cited as a model of mature electoral democracy in the continent due to its history of peaceful transitions in government. However, when one considers the record of implementing commitments, it also prompts questions about the quality of the commitment Zambia applies when signing the instruments, it ratifies (as described in the introduction, Zambia has a history of signing things and only considering the consequences later).

Civil society has suggested that “we have been lukewarm on meeting some of our international obligations under these frameworks”. This has been in part explained because of a lack of accountability related to insufficient measures to enforce implementation.

It was acknowledged that there has been limited need to account on compliance to AU instruments to external parties (e.g., donors), the AU itself or Zambian citizens and civil society. It was argued that “commitments (should) require consequences” and that “the political pressure is (currently) not sufficient to warrant government implementation”.

Civil society suggested that external pressure was often more effective to drive implementation than internal pressure but nevertheless recognised the role of civil society and citizens in providing internal pressure. To support civil

Figure 6.2: Zambia’s compliance capacity



society, serve this function would involve ensuring greater knowledge and awareness by both civil society and citizens of the commitments made.

It was felt that often commitments are made in international forums by government officials or politicians and that these are often not even communicated back to internal stakeholders. This points to a process consideration in future ratification processes where feedback mechanism should be included to ensure greater accountability going forward.

Turning to the findings of the assessment, a number of areas of formal and substantive non-compliance were highlighted. There are many important interventions that can and should be supported to augment existing structures to achieve better political governance and thus strengthen democracy. For example, while considerable progress has been achieved recently through the latest Constitutional Amendment (2016), concerns still persist about the process ('roadmap') necessary to achieve a 'people-centred constitution' that will 'stand the test of time'.

Civil society representatives suggested that the focus going forward would need to be on achieving greater constitutional stability through consolidating gains by developing subsidiary laws to support the amendments, considering the resourcing required for delivery (e.g., of social services to deliver on the rights contained within the bill of rights), addressing the perceived gaps and omissions in the Constitution over time through minor amendments in the Constitutional Court; and awareness raising around the importance of the Constitution, the rights contained within it. It was felt that debate around the more major amendments would continue but that there was a low likelihood of these being adjusted in the short to medium term at least.

While major amendments are not likely in the immediate future, members in the focus groups did note that the shift away from an overly centralised power in the executive can likely only be achieved if the citizens are ultimately given a greater role in ratifying key constitutional amendments. This will not be achieved until citizens start demanding leaders to account, which in turn is dependent on their levels of awareness and interest in political governance.

This requires more effective sensitisation as well as a strengthening of the independence of opposition parties, civil society and the media. The latter in particular can be used better to deliver informed, non-partisan content to citizens in a way that they would be interested to read and understand. In addition, it requires that the link between socio-economic development and service delivery and good political governance be re-established. This can be done through addressing corruption, educating people of their rights and addressing inefficient government delivery of services.

While this research has highlighted many significant concerns about the health of Zambia's democracy, it was nevertheless argued by more than one

of the participants in this research that the democratic project in Zambia was not in any material trouble. While these two positions at first seem at odds with one another, interrogating this tension suggests that there may be a wider set of contextual elements which are important to understanding the health and future of democracy in Zambia. As suggested by study participants, these include:

- The culture of the people (said to be largely peaceful/ non-violent);
- The low levels of activism in the nation (general passivity around political governance matters, especially outside of the urban centres)'
- The identity of the nation (notion of unity and 'One Zambia'); and
- The history from whence this nation comes (in particular, a deep-rooted commitment to multipartyism following many years of one-party rule).

These are not, however, static and so, to ensure sustainable and robust foundations for the democratic project going forward, there remains a need to nurture and support compliance to the more formalised structures and processes as guided by the AU instruments.

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<http://www.parliament.gov.zm/sites/default/files/documents/acts/Referendum%20Act.pdf>

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National Assembly: <http://www.parliament.gov.zm/>

7 South Africa

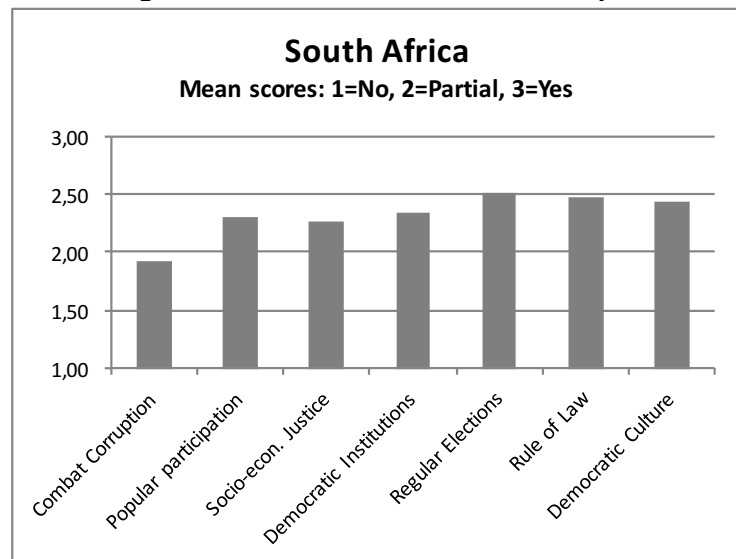


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7.1 Introduction

South Africa fulfils its formal commitments to the instruments through its democratic legislative frameworks and governance structures. The manifestation of what the instruments seek to achieve is not as clear-cut as it should be, especially when considering South Africa's standing as one of the strongest democracies on the African continent.

Figure 7.1: South Africa's mean compliance



A number of disparities can be identified in this regard, alluding to a trend in which the spirit of measures mandated by the AU instruments is undermined by key aspects of South African society. In relation to providing a check on power, for instance, South Africa's governance architecture is structured in a manner that allows for the executive branch of government to be brought in line by either the judiciary and parliament when it violates the law.

However, concerns have been raised over the extent to which this dynamic is effectively functioning given that the majority of the legislature is aligned with the executive (where the President of the country is also the President of his political party). Even though the judiciary may not be compromised in this way, the attitudes exhibited towards this democratic institution by state actors at times suggest a lack of willingness to adhere to its decisions.

Nevertheless, despite its shortcomings South Africa has managed to make significant strides in building a solid democratic system since the end of Apartheid. This is demonstrated by factors such as the occurrence of multiple free and fair elections as well as the existence of more substantial frameworks

for democratic principles such as equality and adherence to human rights. Although, it is important to note that a great deal of work is still needed to ensure that the gains and responsibilities synonymous with democracy permeate throughout the entirety of South African community; as evidenced from the continued existence of significant levels of corruption, socio-economic inequality, discrimination and citizen dissatisfaction.

According to the general perceptions of focus group participants, South Africa's signing and ratification of the three AU protocols is not surprising considering the country's involvement in their development. South Africa, for example, is one of the founders of the APRM and functions as the base for the organisation's secretariat. The country also wants to project itself as a leader and major proponent of the values embedded in these democratic instruments. Additionally, there is substantial overlap between these protocols and the South African Constitution and legislative landscape, even though it can be argued that as a result of this the country is complacent in reporting on compliance.

In general, the country has a well-structured constitution and legal framework. South Africa's political environment has fostered a multiparty system in which different political parties with both similar and dissimilar views have equal opportunities to contest in elections. Moreover, the country has had multiple free and fair democratic elections since the end of apartheid and these elections have been inclusive of stakeholders such as CSOs and external observers.

The democratic culture in South Africa is strong and is supported by a number of state institutions and laws that exist to guard against undemocratic practices such as human rights violations, discrimination and corruption. In the country's post-apartheid era, several different mechanisms have been implemented to include previously marginalised groups such as black South Africans in the country's socio-economic development endeavours. The state has made provisions to increase access to services that include healthcare, education, water and sanitation as well as housing. Furthermore, there are numerous platforms that facilitate communication and transparency between the state and the people in addition to laws and spaces for involving all citizens in the state's decision making processes.

While formal compliance is strong, South Africa faces significant challenges in ensuring a substantive level of compliance for the instruments that have been signed and ratified. For example, despite having laws in place to address issues such as gender based discrimination, a trend showing a disparity between legislation and its manifestation in general societal practices is evident in the country.

South Africa continues to experience gross socio-economic inequality as well as persistent and at times violent protests over service delivery, bringing

up serious concerns over the efficacy of the state's provisions for these issues. It should however be noted that South Africa's legal framework is particularly ambitious in the provision of socio-economic rights, and by comparison with other African states is significantly more progressive in this regard.

There is a disconnect between signing these protocols and the awareness and evidence of enactment by government to make the expression of these more tangible to South African citizens. While South Africa has significant participation and engagement before signing or contributing to the creation of the AU protocols, this mostly involves academics, well organised CSOs and similar institutions.

For general citizens however, the status of various AU instruments and the commitments under these is very low as there are no evident mechanisms through which these values are discussed in the body politic. There is also very weak reporting and monitoring of protocols, a reality that's made evident by the fact that stakeholders are not sure about reporting on compliance unless they are working on a specific protocol.

The general perception from members of civil society participating in this study is that the protocols were mostly adopted by South Africa during the Thabo Mbeki presidency and the lobbying process for current implementation is not extensively engrained in the present regime. The current administration has been relatively focused on domestic issues, while also tending to prioritising institutions such as BRICS over AU initiatives.

Country context and governance

Colonialism and apartheid have had a significant bearing on the structuring of South African society through promoting segregation and discrimination in the country's past. Institutionalised discrimination and segregation can be traced back to the 1910 creation of the Union of South Africa between the two independent Afrikaner Republics of the Orange Free State and the Transvaal, and the two British colonies of Natal and the Cape Province (South African History Online [SAHO], 2014). During this period non-white, and particularly the black population, were excluded from taking part in mainstream political activity. They were allowed to vote, along with coloured citizens, to have indirect participation through representative bodies, in the Cape (SAHO, 2014).

At this point, colonial rule also introduced measures such as the Mines and Works Act of 1911 and the Natives Land Act of 1913 (Government of South Africa, 2015). The purposes of such enactments were to facilitate cheap black labour, limit skilled work to whites and to subjugate the black majority by restricting their ownership of land to reserves which made up roughly 13% of the nation's land mass (Government of South Africa, 2015). The effect of this was compounded by the use of taxation schemes and pass laws that sought

to promote the interests of white settlers and more specifically, white owned mining companies at the expense of the black population (Institute for Democracy in South Africa [Idasa], 2012).

The election victory of the National Party in 1948 exacerbated South Africa's discriminatory societal structure in favour of the Afrikaner community through the policy of separateness commonly known as apartheid (Dubow 2014, 10). Racial discrimination was institutionalised with race laws negatively affecting every aspect of the lives of black people in the country. As a result, inequality became further entrenched.

One of the most fundamental features of apartheid under the National Party regime was that black people were assigned to Homelands according to their ethnic identity. This was facilitated by the Bantu Authorities Act of 1951 (SAHO, 2014). They were then restricted to the Homelands in addition to being denied permanent residential rights in urban areas (SAHO, 2014). Although they did not have the right to determine their own policies there, the Homelands were the only areas in which blacks were permitted to exercise political rights. However, the ability to exercise political rights continued to be prohibited for blacks in the broader South African society beyond the Homelands. Injustice and inequality for black people continued to be inherent in South Africa's superstructure.

Afrikaner rule officially came to an end when the Nelson Mandela led the African National Congress (ANC) to power after years of fighting for freedom and equality in the nation. Uprisings and collective action by different groups such as the ANC, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU) weakened the apartheid regime.

The effectiveness of resistance against the government gained even more momentum with outside support as the legitimacy of the National Party's rule became heavily criticised due to the lack of black representation and racial equality (Stultz 1969, 1). Eventually this culminated in what has become a pivotal turning point in 1994 when the nation held its first democratic elections with universal suffrage (Idasa, 2012). With the iconic Nelson Mandela at the helm, addressing the inequality that had become a defining aspect of the country became a dominant aspect of the new government's agenda (Mandela 1993, 86).

Post-apartheid South Africa features a multiparty political landscape which has developed peacefully since the transition from apartheid rule. The ANC continues to be South Africa's ruling party but it does not exist alone in the country's political landscape with a number of opposition parties growing in strength (Cook 2013, 5). It is worth noting that the South Africa's political landscape has been strongly influenced by the country's racial political

history, as a trend towards race based voting preferences can be identified in South Africa (Van der Merwe, Mbanjwa and Du Plessis, 2014).

The president of the ANC, Jacob Zuma, is also the head of state and is currently serving out his second term in office having been elected twice for the position (The Presidency, n.d.). Throughout his term, President Zuma has been leading the country in pursuit of the socio-economic goals that were set forth by the National Development Plan (NDP) initiated at the beginning of his incumbency (The Presidency, n.d.). Three of the most influential opposition parties, as indicated by votes garnered in the 2014 national and provincial elections, are the Democratic Alliance (DA), Economic Freedom Fighters (EFF) and the Inkatha Freedom Party (IFP) (Independent Electoral Commission [IEC], n.d.).

Post-apartheid South Africa experienced a positive change in governance that promoted democratic rule with universal suffrage and equal integration of all the peoples of the nation. A major achievement of this shift is the Constitution of the Republic of South Africa which was adopted in 1996. A significant hallmark of the Constitution is that it established the three spheres of government which are national, provincial and local government (Department of Planning, Monitoring and Evaluation [DPME] 2014, 22).

The spheres represent the levels of government functioning. This is reflected in the fact that the government machinery consisting of the Executive and legislature operate at different levels within the mentioned spheres to co-ordinate policy and law-making; to represent the public in policy approval; and to ensure the general realisation of government functions (Department of Public Service and Administration 2003 [DPSA], 14).

Another crucial aspect of South Africa's governance architecture is the Judiciary which is an autonomous structure of the state (DPSA 2003, 20). The courts are an essential attribute of the authoritative power in South Africa as they ensure the Constitution is respected and adhered to by the different organs of the government and all other groups or individuals in the country.

The Executive branch of government consists of the President, Cabinet and different government departments (DPSA 2003, 14). The Cabinet is headed by the President and includes the Deputy President, ministers and deputy ministers. The President appoints the other members of the Cabinet and assigns authorities and duties to them (Government of South Africa, 2015).

There are no restrictions to the number of National Assembly members that may be selected for the Cabinet but only a maximum of two ministers may be chosen from outside the assembly (Government of South Africa, 2015). The different members of the Cabinet are national political heads of the various government departments (DPSA 2003, 16). They also operate within the provincial as well as the local government spheres. At the provincial

level the Executive branch is represented by Premiers and at the local level it operates through Municipal Councils (DPSA 2003, 18).

Parliament makes up the legislature and consists of the National Assembly and the National Council of Provinces (NCOP). The National Assembly serves as a platform for legislation, a forum for public debate and is responsible for selecting the President of the country (Parliament of the Republic of South Africa, n.d.). The NCOP represents provincial interests in the national sphere of government. This representation occurs in the form of participation in legislative procedures and bringing salient issues of a provincial nature to the national forum (DPSA 2003, 17). The composition of the NCOP comprises of 10 delegates for each of the nine provinces and further subdivisions within the delegations (DPSA 2003, 17).

Despite doing comparatively well as a newly democratic country, South Africa has a dual economy with a high level of inequality and exclusion. The reality of inadequate wealth and income distribution has remained an ever-present feature of South African society despite a growing black middle class - which is now larger than the white middle class (Dayimani, 2015).

Such negative attributes have continued to exist, regardless of the socio-economic gains in education and increased average per capita incomes which have occurred since the end of apartheid (Cook 2013, 3). The country's government has made commendable efforts to put in place measures that deal with the negative effects of such challenges but these measures have not sufficed as a means of dealing with South Africa's problems particularly pertaining to high youth unemployment levels and poor service delivery.

In 1994, 60% of households had access to potable water, 51% had basic toilet facilities and 52% had access to electricity (Paton, 2013). This shows that substantial proportions of the South African population did not have access to basic services under the apartheid regime. Since the demise of apartheid, the provision of basic social services has increased significantly, especially with access to piped water going up to around 90%, general sanitation increasing to 83% and electricity at 76 and a half% (Paton, 2013). Other social indicators such as literacy have seen positive changes in the post-apartheid period, increasing from below 70% in 1994 to over 90% in 2014 (STATS SA 2014, 26; see also DPME 2012, 57).

7.2 Constitutionalism and rule of law

This thematic area is concerned with the role of South Africa's constitution and the manner in which it relates to the country's governance architecture and society in general. Aspects of the Constitution that foster democracy in the country's governance landscape are discussed, in order to determine whether the rights of all South Africans are equally protected; the

Constitution is respected as the supreme law of the land; and whether democratic constitutional amendment procedures are followed.

Table 7.1: South Africa - formal compliance to constitutionalism

✓	<i>The Constitution is the supreme law.</i>	Post-apartheid South Africa's democratically aligned Constitution was sanctioned in December 1996 and became operative from February 1997 (Government of South Africa, 2011). The Constitution is taken as the supreme law of the land and forms the basis for all legislation and policies.
✓	<i>Citizens are equal before the law.</i>	As described in section 7 of the Constitution, one of its most fundamental attributes is the Bill of Rights which provides a structural guarantee for dignity, equality and freedom for all people in South Africa.
✓	<i>Constitutional change is democratic.</i>	Changes to the Constitution are governed by a democratic procedure involving Parliamentary referendum and specific prerequisites must be fulfilled for an amendment to be valid.
✓	<i>Civilians control of the military.</i>	A civilian authority is in control of the military.
✓	<i>No unconstitutional changes or refusals to relinquish power.</i>	There have been no unconstitutional changes, nor has any incumbent President attempted to retain power. The state tends to condemn unconstitutional appointments of government in other countries.

Culture of constitutionalism

Post-apartheid South Africa enjoys a system of constitutional democracy that is rooted in the authority of its strong Constitution over all aspects of governance and citizenship in the nation (AfriMAP and Open Society Foundation for South Africa, 2005). This marks a positive transformation to an accountable form of governance based on rule of law rather than the doctrine of parliamentary sovereignty under which the apartheid regime ruled.

Provisions in the Constitution such as the Bill of Rights aim to address the nation's history of inequality and are often viewed as a foundation for preventing the injustices of the past from reoccurring (Heyns & Brand 1998, 153). South Africa has taken significant strides in fulfilling this ambition as reflected in the 2015 Rule of Law index which was released by the World Justice Project. The report showed that under the category concerned with Fundamental Rights, South Africa is highly ranked and recorded its best performance in the entire report (Corruption Watch, 2015).

However, stakeholders engaged in this study's focus group discussions argued against the Constitution's capability to protect the rights and agendas of all citizens; for instance, the issue of land dispossession and ownership is not being adequately addressed with some participants arguing that clauses

protecting the right to property tend to favour groups privileged under the apartheid regime.

When asked whether the constitution defends and protects the aspirations of all South Africans, participants remarked, “the South African constitution does not represent the country’s developmental goals - there is a rapidly dissipating rainbow” (EISA Focus Group, 2016). The Constitution is expected to create an enabling space for addressing inequality, which many have argued it is failing to do. A number of individuals in the focus groups pointed out that the idea of transitional justice is not dealt with enough by the Constitution (EISA Focus Group, 2016).

An interesting point mentioned was, “It has the intention but does not provide a precise framework for people to have access to their rights” (EISA Focus Group, 2016). On the other hand, a counterargument is that the Constitution’s role in this regard is misunderstood as it is primarily meant to set the rules of engagement that facilitate democratic legislation which is responsible for enforcing justice and ensuring equality.

Nevertheless, the extent to which the Constitution can protect the rights and interests of all citizens in the country is compromised to a degree by the fact that many South Africans simply do not know much about it and this can be attributed to several factors. For instance, accessing constitutional booklets has in the past proven to be a fairly onerous task requiring a formal request that can take up to a few months to be fulfilled (Jain, 2013). Learning about the Constitution is also hindered by a language barrier as copies of the document are mostly made available in English. Furthermore, information structures such as schools do not focus enough time on promoting constitution and rights-awareness (Jain, 2013).

In response to the problem, R73 million was provided by the Department of Justice and Constitutional Development in the 2015/16 financial year to raise awareness on the importance of the Constitution and the rights it represents (Jeffery, 2015). Other initiatives meant to aid rights-awareness include the ‘Know Your Constitution’ campaign and the ‘Access to Justice and Promotion of Constitutional Rights programme’ (Jeffery, 2015). The ‘Know Your Constitution’ campaign is of particular interest because it strives to build constitutional literacy through pushing for government to facilitate physical copies of the Constitution in all of South Africa’s official languages across numerous public spaces such as post offices, clinics, police stations and libraries (Hodgson, 2014).

The constitution and state power

Beyond safeguarding against human rights violations, the Constitution of South Africa is also designed to prevent general abuse of power by the country’s governing authorities. The executive, legislative and administrative

branches of the government in South Africa wield substantial authority in the state but are subject to the regulations of the Constitution. This fact is made clear in the founding provisions of the Constitution, under chapter one, which states that the Constitution is the supreme law of the nation (Constitution of the Republic of South Africa 1996, s.2). It is also supported by this study's survey results which indicated that 80% of respondents agreed that the constitution is the supreme law in South Africa (EISA Survey, 2016, question 1).

While the executive, legislature and administration have the responsibility of proposing and implementing laws and policy, the judiciary is obligated to ensure that these laws and policies adhere to tenets of the Constitution (AfriMAP and Open Society Foundation for South Africa, 2005). Therefore, should any law or policy be in contradiction of the Constitution the onus of declaring the law or policy invalid is on the courts. Hence in South Africa, the judiciary as an organ of governance protects the country's Constitution as the supreme law.

Thus, a competent judiciary is a vital aspect of constitutionalism and rule of law in the republic. The Constitution facilitates a process in which a diverse composition of qualified judicial officers is chosen from a broad selection pool that includes academics, lawyers and senior members of the bar association (Gordon and Bruce, 2007). However, the Judicial Services Commission (JSC) which is mandated with facilitating the appointment of judges has often been criticised for a lack of transparency and fairness in its nomination of candidates to positions in the judiciary (Evans, 2015).

Nevertheless, it can still be argued that the judicial system in South Africa manages to fulfil its role as an independent and impartial check on power. A strong example of this is a ruling that was delivered by Chief Justice Mogoeng Mogoeng in March on behalf of the Constitutional Court which found President Jacob Zuma guilty of violating the Constitution and ordered him to pay back some of the state funds that were illegally used to upgrade his home in Nkandla (Allison, 2016).

This judgement demonstrates that it is indeed possible for the Constitution to hold political leaders accountable, thus justifying measures that protect it from being influenced negatively from the country's authoritative bodies. In addition to being protected by the judiciary, it is also guarded against such influence by clear regulations concerning changes to the Constitution.

Since the adoption of the Constitution it has undergone 17 amendments that have generally been technical and additionally encompassed matters that are pertinent to judicial leadership appointments and tenures (De Vos, 2014). As a result, it can be argued that the Constitution has not experienced any changes in governmental aspects such as term limits which would have been

geared towards prolonging the tenure of any particular administration. However, it is worth noting that there has been controversy in the past concerning an unconstitutional attempt by Parliament to assign to the President, the authority of extending a Constitutional Court judge's incumbency (Harris, 2012).

While South Africa may have an admirable foundation for constitutionalism and rule of law on paper, it can be suggested that this has not entirely embedded itself in the country's societal reality. This was made apparent by the 2015 Rule of Law Index which showed the nation's overall performance concerning rule of law to be mediocre. According to the report, South Africa performs poorly in matters pertinent to rule of law such as the penalisation of government misconduct (Corruption Watch, 2015). This is a particularly important issue as a disparity often exists concerning what the Constitutional Court decides and the actions of the government.

Additionally, there is a tendency from government departments and officials to either ignore or appeal Constitutional Court rulings that are against them, rather than accepting the Court's final judgements. A good example of this is the instance in which the Constitutional Court ruled the South African government had violated the Constitution when it did not detain Sudanese President Omar al-Bashir in the country in 2015, as mandated by the International Criminal Court (ICC). The Department of Justice and Correctional Services challenged the Court's judgement by filing for leave to appeal instead of accepting it.

7.3 Democratic culture and political pluralism

The following theme focuses on the policies and legislation that enable an environment for a democratic reality to manifest in South Africa. This entails an assessment of the frameworks and conditions that are in place to influence the existence of multiple political parties; a society with an involved and informed citizenry; and equality as well as protected rights for all South Africans, including marginalised groups.

Political Pluralism

Since 1994 an inclusive electoral precedent has been established that has guided South Africa's elections over the years. This inclusivity is based on a system of proportional representation, whereby citizens vote for a party of their choice. Their choices are then reflected in Parliament where parties choose a list of candidates for the National Assembly in proportion to the percentage of votes received, thus ensuring that even the least popular parties have a chance at representation (Louw 2014, 3). Outcomes from the national and provincial elections of 2014 demonstrate how this system promotes a strong level of political contestation, with a total of 29 parties registering and

13 parties managing to muster up enough votes for seats in the National Assembly (IEC, 2014).

It is interesting to note that there is limited guidance in the constitution or other legislation regarding the running of political parties, however the Electoral Commission of South Africa does exercise some authority over the operations of political parties with regards to election related practices. Judge Kate O’ Regan (2010) touches on this in a keynote address when she points out that the Constitution does not have a significant number of regulations regarding the functioning of political parties.

Table 7.2: South Africa- formal compliance to democratic culture

✓	<i>Policies for citizen participation exist</i>	There are platforms that foster direct citizen participation in governance such as ward committees and public hearings. Ward committees enable involvement at the local level.
✓	<i>Political party formation and funding protected</i>	Political pluralism is facilitated and protected by the Constitution, with the right to form political parties being enshrined under chapter two in the Bill of Rights. Public funding of political parties is enabled by section 236 of the Constitution. Parties are additionally allowed to secure funding privately.
✓	<i>Conducive conditions for civic organisation</i>	Freedom of assembly and association is guaranteed in the constitution and there is a Public Order Act which should protect this right. Freedom of expression and of movement are also guaranteed.
✓	<i>Rights of minorities and vulnerable protected</i>	The rights of all citizens, including minority groups, are safeguarded and guaranteed by constitutional provisions such as the Bill of Rights and other forms of legislation which may be specific to certain groups of citizens.
✓	<i>Anti-discrimination laws in place</i>	Citizens are protected from discriminatory practices by law, e.g. the Promotion of Equality and Prevention of Unfair Discrimination Act.

Research on the manifestos of the country’s political parties indicates a pattern of pursuing issues that are relevant to South Africa’s socio-economic landscape. Parties have made promises to address youth unemployment, corruption, education, infrastructure development, healthcare, housing and equality (Merten, 2014). It has been argued that support for political parties has generally been determined by race and class lines. Results from a comparison of findings from Census 2011 and the 2014 national and local government elections indicate a pattern of race-based voting with 95 per cent of the ANC’ support coming from black voters (Van der Merwe, Mbanjwa and Du Plessis, 2014).

However, this trend is gradually changing as “voters’ solidarity” has been shifting throughout the country’s various election periods as demonstrated, for instance, by the decline in support for the ANC amongst blacks since 1994

from 75 per cent to less than 60 per cent by 1999 (Habib & Naidu 2006, 86). Habib and Naidu (2006) contend that the change in what seems like race-based party support is in actual fact an indication that substantial sections of the electorate have been voting according to rational choices based on the information that was made available to them (p.81).

Thus, it is postulated that a fundamental reason for voting patterns that seem to be race based is that election strategies by political parties identify the parties with certain racial and ethnic groups. An example of this is that the IFP has projected itself as being significantly aligned with promoting the interests of the Zulu people and does not employ adequate strategies to appeal to a broader spectrum of the electorate. (Habib & Naidu 2006, 86).

Representation of the people through the legislature is pivotal to South Africa's democratic system. Hence, a strong and capable Parliament is vital to the nation's governance landscape. As a result, initiatives have been established previously to strengthen the Parliament, with an example of this being different parliamentary capacity building programmes.

These programmes enable members of parliament to pursue academic courses and qualifications that are relevant to their policy making needs. However, these initiatives have not been adequate enough for the needs of the legislature, especially in terms of ensuring a high calibre of staff across the entire machinery of Parliament. The NCOP for instance, has not experienced as much capacity building as the National Assembly (PMG, personal communication, July 8, 2016).

Despite this vulnerability, the Parliament is strong in several areas with the inclusivity of women being worth noting. Before 1994 only about three per cent of the representatives in Parliament were women but as of 2013 the figure stood at 42 per cent, putting South Africa in fourth place globally for having the most women in Parliament (*Insight*, 2013). On the other hand, with a drop in the number of women as premieres from 55 per cent in 2009 to 22 per cent in 2014, it can be argued that the positive trend experienced in Parliament has not been consistent across all spheres of governance (Robinson, 2014).

Civic education and engagement

Besides allowing citizen participation through elected representatives, South Africa has several mechanisms that encourage further dialogue and involvement. Examples of such mechanisms are public hearings, ward committees, izimbiso and the presidential hotline. Public hearings are platforms where members of the public and civil society are meant to contribute verbal comments to legislature in relation to specific issues or legislation (Buccus 2011, 8). Ward committees are facilitated by the Municipal

Structures Act of 1998 and are meant to enable local communities to contribute to important municipal decisions (Buccus 2011, 7).

Civic engagement is also furthered by the fact that previous repressive laws such as the Riotous Assembly Act of 1956 and the Group Areas Act of 1950 were countermanded upon the advent of democracy in the country (International Centre for Not-For-Profit Law [ICNL] et al 2014, 4). Through post-apartheid legislation, South Africa has fostered an environment conducive to an active civic space with the Registration of Gatherings Act of 1993, for instance, making it possible for the public to openly engage government (ICNL et al 2014, 4).

While the progressive legislation and frameworks described thus far show a willingness to facilitate democratic values, the state can be found lacking when it comes to ensuring the citizenry is fully aware of its rights and responsibilities. One focus group participant mentioned, “People were often unaware of the responsibilities that come with democracy” (EISA Focus Group, 2016). The government’s support of civic education occurs primarily through the education system as civic education has been included as a necessary of the curriculum (Schoeman 2006, 130).

The National Department of Education as cited by Schoeman (2006), states that civic education as a part of the education system involves furthering the ideology of a democratic political community and constitutional order (p.132). Two noteworthy reforms introduced to the education system as a result are compulsory History in Grades 4 to 9 and Life Orientation in Grades 10 to 12 (Mattes, Denmark and Niemi 2012, 4).

This strategy has positive implications for civic education, however research has shown that it has not led to a greater appreciation of democratic principles in South Africa particularly with younger generations (Mattes, Denmark and Niemi 2012, 4). Most survey respondents answered “Partial” in response to whether the government’s education policy had an effective civic education component (53 per cent). More respondents answered “No” (27 per cent) than “Yes” (20 per cent) (EISA Survey, 2016, question 8). From its extensive engagement with communities at a grass roots level, the Human Rights Institute of South Africa (HURISA) has also found that communities often have to be taught about basic aspects of the constitution before they can be engaged with in matters concerning the ratification of AU instruments (HURISA, personal communication, July 11, 2016).

Communities do not comprehend the interplay between relevant governance structures and the socio-economic issues that they face such as poor service delivery. People feel like they are not at a level at which they can understand or participate in initiatives that focus on areas pertaining to good democratic governance especially in relation to the AU (HURISA, personal communication, July 11, 2016). Alternative civic education initiatives such as

the USAID funded Street Law “Democracy for All” programme have previously been found more effective in encouraging democratic processes and values (Mattes, Denmark and Niemi 2012, 4).

Rights and freedoms

When asked if South Africa’s laws and administrative measures guaranteed the rights of minorities and vulnerable groups in society, 60 per cent of participants responded “Yes”; 33 per cent were impatient; and 7 per cent answered no.

The notion of addressing the plight of vulnerable groups is particularly relevant given South Africa’s past experiences with segregation and discrimination. In terms of protecting women, for instance, the National Gender Machinery consisting of different government bodies has been established to protect women from discrimination and unfair treatment (Cherry, Morrow, Naidoo and Reitzes 2005, 134).

This legislative effort is commendable but the existence of the structures mentioned above does not always translate into affirmative practices throughout society. President Zuma is quoted by Jenni Evans (2015) confirming this fact when he mentions that discrimination against women is still a prevalent feature of South African society.

A disconnect between progressive legislation and its manifestation in society can also be found in relation to vulnerable groups such as children; the elderly; people with disabilities; immigrants; and the lesbian, gay, bisexual, transsexual and intersex (LGBTI) community. A report released by the Parliamentary Programme of the Community Law Centre (2014) shows that South Africa has, for example, ratified the African Charter on the Rights and Welfare of the Child (ACRWCp.12).

The country also has legislation in the form of a Children’s Act and provisions in section 28 of the Constitution for ensuring the wellbeing of children (Parliamentary Programme of the Community Law Centre 2014, 12). The efficacy of these measures can be validated by figures released by Statistics South Africa (STATS SA) (2016) indicating marginally declining levels of youth headed households and youth poverty but one important reality still exists. The majority of all South African children live in poverty (Parliamentary Programme of the Community Law Centre 2014, 16).

The interests of senior citizens are protected by legislation and policy through the Older Persons Act and the Older Persons Charter. Furthermore, the state has established structures such as the toll-free Halt Elder Abuse Line (HEAL). The purpose of these mechanisms is to protect the rights of the elderly by attempting to ensure they enjoy fair and equal treatment as respected members of society (Wareham 2015, 37). Regardless of these measures, older persons in the country are very much affected by issues such

as poor access to social security and abuse (Mavundla, 2015). The provision of care for older persons is also problematic, with a prime example of this being the existence of only eight state-owned old age homes as of 2015 (Mavundla, 2015).

The wellbeing of persons with disabilities is similarly addressed by several legislative measures. The Social Assistance Act 13 of 2004 makes provision for a disability grant and the Compensation for Occupational Injuries and Diseases Act enables a system for indemnifying those affected by occupational injuries and diseases (QuadPara Association of South Africa [QASA], 2009). Additionally, laws relating to employment equity, conditions of employment and education cater for the inclusion and support of persons with disabilities in the workplace as well as schools (QASA, 2009). Structures put in place by the state have fostered a positive environment for the fulfilment of the needs of the disabled.

However, several challenges continue to exist hindering the inclusion of disabled persons in different aspects of society. In relation to the labour market for instance, difficulties have been identified relating to ensuring appropriate accommodation at work; providing accessible public transportation; and changing negative perceptions that cause the discrimination of people with disabilities (Marumoagae 2012). Also in relation to people with disabilities, one focus group participant in the study suggested that “Disability rights have slipped off the government’s agenda and the needs and rights of disabled people become marginalised and classified as social welfare issues rather than human rights issues”.

Regarding immigrants, the Immigration Act 13 of 2002 forms the regulatory structure for matters relating to foreign nationals in the country. South Africa has also committed to fulfilling the refugee related ordinances of the 1951 United Nations Convention and the 1969 Organisation for African Unity Convention (Consortium for Refugees and Migrants in South Africa [CoRMSA] 2011, 9). Despite the existence of these frameworks, together with other legislative mechanisms, the country continues to struggle with immigration related issues.

Frequent occurrences of xenophobic attacks between 2008 and 2015 are a testament to this. Furthermore, problems with managing migrants have led to the government, in one particular instance, being found guilty of human rights violations. On August 28 in 2014 the Gauteng High Court ruled that the South African government, through the department of Home Affairs, violated the rights of 39 migrants when detaining them at Lindela Repatriation Centre (Human Rights Watch, 2015).

Constitutional democracy in South Africa introduced the concept of equal rights that are inclusive of all individuals regardless of sexual orientation. Section 9 (3) of the Constitution highlights that the state may not

directly or indirectly persecute or discriminate individuals according to sexual orientation, amongst several other factors (Ilyayambwa 2012, 51). Even though homophobic attitudes and actions are still prevalent and need to be countered, democracy has paved the way for laws to protect LGBTI citizens as well as ensure equality, for example, through permitting same-sex marriage (Everett, 2014).

The media

Another aspect crucial to promoting democratic culture in South Africa is the media. For post-apartheid South Africa, the media's role in this regard is currently governed by the Independent Communications Authority of South Africa (ICASA) Act of 2000 but was previously covered by legislation in the form of the Independent Broadcasting Authority (IBA) Act 153 of 1993 and the Broadcasting Act of 1999. According to the IBA Act, the IBA was established as an entity separate from the State for the purpose of regulating South Africa's broadcasting activities in the public interest.

Furthermore, section 4 of the IBA Act (1993) included policies that facilitated the provision of public commercial and private commercial television broadcasting licenses, thereby confirming the notion of a deregulated media system. This indicates an attempt by the state to enable the inclusion of a variety of stakeholders in the local media landscape. As indicated in its opening paragraph, the ICASA Act introduced ICASA as the new regulatory body of South African media, taking over from the IBA and also integrating the telecommunications sphere of media.

It is worth noting that having an open media market in South Africa has worked well in terms of providing a check on government power, however, negative publicity for the government and high profile officials has resulted in noticeable opposition from the country's authority figures. Leaders of the ANC such as President Zuma have proposed the establishment of a Media Appeals Tribunal in what they describe as an effort to increase accountability and positively change journalism by introducing a regulatory body (Marrian and Mashego 2015). Sceptics on the other hand view this move as an attempt to curtail the criticism of the country's leaders in the media by restricting the freedom of expression that journalists currently enjoy (Duncan, 2010).

7.4 Strong democratic institutions

This section aims to analyse the functioning of the Parliament; Judiciary; and oversight bodies of South Africa as institutions that support democracy and constitutional order in the country. It investigates the mechanisms that are set up to ensure the accountability, strength and effectiveness of democratic institutions as well as the factors that affect them negatively.

Table 7.3: South Africa - formal compliance with strong democratic institutions

✓	<i>Separation of powers legislated</i>	The Constitution provides for a separation of power at all levels of government. Only the judiciary retains it independence
✓ x	<i>Human rights commission operational</i>	There is a Human Rights Commission but it lacks sufficient resources and authority.
✓ x	<i>Parliament check on power of the executive</i>	Duties of the National Assembly include passing laws and scrutinising as well as overseeing the Executive. In practice, it is difficult to separate the executive and the legislature, due to the dominance of the ruling party.
✓	<i>Independent institutions project democracy</i>	The Constitution allows for a number of institutions that support South Africa's democratic order, particularly, under Chapter 9.
✓	<i>Strong supported independent judiciary</i>	South Africa does have a strong independent judiciary

The perceptions of survey respondents demonstrate that most participants believe that South Africa has independent constitutional institutions that serve to protect the democratic order (EISA Survey, 2016, question 20). 80 per cent agreed with this notion, 13 per cent disagreed and the remaining 7 per cent were “Partial” (EISA Survey, 2016, question 20). A higher percentage of respondents (67 per cent) agreed that the institutions are accountable to a competent national organ and only 7 per cent of participants disagreed with this (EISA Survey, 2016, question 20).

Chapter Nine institutions

One of the most important features of the Constitution of South Africa is the provision for the existence of institutions designed to nurture and promote the country's democratic standing. All Chapter nine institutions have a duty to promote democracy but each institution has a distinct mandate. The SAHRC, for instance, is obligated with overseeing human rights issues in South Africa with an additional special mandate concerned with monitoring socio-economic rights (Horsten, 2006).

As discussed by Horsten (2006), the SAHRC's duties include evaluating the efforts being made by different branches of the state to honour the tenets of the Bill of Rights and then submit an annual as well as a special report of any vital findings to the National Assembly. This role differs from the part played by the office of the AGSA which is instead mandated with auditing the books of the state and its multiple departments in addition to any other body required by legislation (Constitution of the Republic of South Africa, 1996, s.188).

The differences in mandates between Chapter Nine institutions do not necessarily mean that their goals are entirely separate. Examples of synergy between the different functions of these institutions can be identified, for instance, the remit of both the CGE and the SAHRC contribute to a greater level of equality in South African society.

Likewise, the Public Protector's mandate to safeguard democracy by overseeing investigations into the nation's administration can be linked with the purpose of the AGSA which also entails being a form of oversight for the administrative functioning of the state. Murray (2006) suggests that altogether these institutions work towards two overarching themes that pertain to "checking government and contributing to the transformation of South Africa into a society in which social justice prevails" (p.125).

The Chapter Nine institutions were established as independent bodies but while these institutions may be independent according to the Constitution, they are highly susceptible to being influenced by political actors. Langeveldt (2012) argues that senior positions in Chapter Nine institutions are largely appointed by the National Assembly which comprises of the elected representatives of political parties, thus, it is possible for a party such as the ANC to influence appointments in its favour due to its majority in Parliament.

This matter is especially important due to the fact that appointments of key staff in all the Chapter Nine institutions are determined by the President and based on the recommendation of candidates from the National Assembly (Asmal *et al*, 2007). It should however be noted that the appointment process does retain a certain amount of credibility in the sense that the National Assembly is a body set up to represent the public and there is further consideration of public interest through nominations from civil society (Asmal *et al*, 2007). Furthermore, the fulfilment of individual party ambitions by National Assembly members regarding appointments in these institutions is mitigated by the need for special majority agreement to when appointing a candidate and the same applies for dismissals (Murray, 2006).

Another appointment issue associated with Chapter Nine institutions has to do with the tenures of appointed individuals. Senior positions in these institutions range in duration from five to seven years, however there have been instances whereby the incumbency of a significant proportion of commission members in the individual institutions has ended simultaneously (Asmal *et al*, 2007).

This occurrence is detrimental to the institutions fulfilling their mandates as it can lead to a period of discontinuity as experienced with the CGE which at one point went for a year without Commissioners. In addition to staffing issues, chapter nine institutions also face challenges in terms of resources with

financial provision from the state being low despite the fact that most of the institutions are heavily dependent on the state for funding (Langeveldt, 2012).

Nevertheless, as seen with institutions such as the AGSA undertaking roles in the United Nations, these pivotal aspects of South Africa's democratic system have managed to build strong reputations internationally despite the challenges they face (Langeveldt, 2012). However, according to a study by Ramkissoo, Delany and Vilikazi (2007) locally there has generally been a disconnect between Chapter Nine institutions and the citizenry as the majority of South Africans have a minimal understanding of what the institutions are about or how they can engage with them. Furthermore, the general public perception regarding Chapter nine institutions was that they are not adequately fulfilling their different roles and obligations in exception of the IEC which has had significant public engagement through election processes (Ramkissoo, Delany and Vilikazi, 2007).

The Judiciary

At this point it is necessary to highlight that the role played by the democratic institutions mentioned is highly dependent on the effectiveness of other aspects of the state such as the Parliament and the Judiciary. Gareth van Onselen (2014) aptly describes this reality when he discusses how bodies such as the Public Protector play a crucial role with their investigations and subsequent reports but do not essentially have the power to pursue any further action in the form of prosecution. The mandate to enforce consequences based on the recommendations of Chapter nine institutions is meant to be taken up by other authorities, for instance, the judiciary and the legislature.

With reference to the judiciary, Justice Edwin Cameron (2010) asserts that the South African Constitution allows for both institutional and decisional independence. This protects the judiciary from the interference of other branches of government and facilitates the self-administration of the judiciary which in turn helps to provide security for the incumbency and compensation of judges (Cameron, 2010). Achieving accountability yet maintaining independence has been described as a problem area for ensuring confidence in the judiciary, leading to the drafting of a Judicial Code of Conduct and Register of Financial Interests, so as to ease the potential for abusing power within the judiciary (Mukadam, 2011).

Based on the description above, it can be postulated that the operational environment of the judiciary makes it conducive for them to be able to complement any recommendations by Chapter nine institutions which require prosecutorial action. A great example of the system working well in this manner can be found in the Nkandla saga. In this specific case, based on an investigation carried out by Thuli Madonsela, the Public Protector made a recommendation that President Jacob Zuma should pay back a portion of

the state money used to build certain unnecessary features of his homestead in Nkandla (Ferreira, 2016).

The President failed to comply with the recommendation and the Constitutional Court then fulfilled its mandate when it ruled in support of the Public Protector's report and commanded President Zuma to pay back some of the money (Elgot, 2016). More involvement from democratic institutions can be found in the fact the Auditor General has been mandated with working alongside the National Treasury to determine the amount of money that the President is meant to pay back.

The judiciary also does well in complementing the functioning of institutions such as the SAHRC through the sheer reach of its operations. It can be suggested from the existence of 10 High Court divisions and 14 Magistrate Court clusters across the country, that the court system is decentralised (DPSA 2003, 22). An implication that can be drawn from this is the judiciary has the resources to be engaged with in different parts of the country regardless of distances from the base of operations of the different Chapter nine institutions.

In addition, the duties of the courts are aided by other structures such as alternative dispute resolution systems (ADR). The Commission for Conciliation, Mediation and Arbitration (CCMA) deals with the resolution of workplace related conflicts and is a good example of an ADR structure (Okharenia 2011, 5). Incidents involving workplace discrimination, for example, can be addressed by the combined efforts of the CCMA and a body such as the CGE.

Parliament

While the Constitutional Court may have succeeded in proving its contribution to South African democracy with the Nkandla matter, Parliament was found wanting in this instance. It can be argued that in the legislature, the ANC's dominance aided the ruling party in undermining the Public Protector's findings. A culture of party loyalty exists in Parliament and this has the effect of at times compromising the role of the legislature as party interests take precedence over ensuring effective democratic practices. As a result, Parliament has been criticised as ineffective in its oversight role, a criticism that has been compounded by instances in which the ruling party's dominance has been detrimental to Parliament's ability to act as a check on the power of the Executive branch of government (PMG, personal communication, July 7, 2016).

Another negative trend is that selection processes of officers and senior staff in Parliament are not in reality credible and transparent as appointments are often a foregone conclusion determined by the ruling party (PMG, personal communication, July 7, 2016). Compliance with mechanisms that

are meant to ensure credibility and transparency in this regard seems to be more of a smoke screen rather than genuine efforts at fulfilling democratic processes. However, in spite of such shortcomings there have also been recent positive developments towards more democratic practices. An example of this is the precedent that has been set for selecting a new Public Protector, as the long list of candidates along with their CVs has been released to the public and the interview processes highly publicised. This, to a degree, can be attributed to Parliament having a will for facilitating accountability and the ruling party taking criticisms from opposition parties seriously (PMG, personal communication, July 8, 2016).

7.5 Regular democratic elections

In this focus area, the structures and social dynamics that pertain to electoral processes in South Africa are discussed. This entails analysing some of the laws and bodies responsible for elections in relation to how they promote accountability and fairness. Additionally, this section studies how the electoral environment in the country is impacting and being affected by citizen participation.

Table 7.4: South Africa - formal compliance to regular democratic elections

✓	<i>Regular elections</i>	South Africa has had 4 democratic elections since 1994 at national, provincial and local levels.
✓	<i>Independent EMB in place</i>	The IEC is in charge of elections in the state and has full authority over electoral procedures.
✓	<i>National mechanism for election disputes</i>	Sections 18 to 20 of the Electoral Commission Act provide for an Electoral Court to review decisions made by the Commission in addition to resolving any electoral disputes or appeals related to the IEC. The Judicial Services Commission suggests candidates for the Electoral Court to be appointed by the President.
✓	<i>Code of conduct for electoral stakeholders</i>	The Electoral Act 73 of 1998 and the Electoral Code of Conduct aid the IEC's efforts to ensure democratic electoral processes.
✓	<i>Equitable access to the media</i>	Media coverage for political parties during campaigns by law is reflective of the percentage of National Assembly seats held by each party.
✓	<i>Election observation conditions</i>	Electoral processes in the country have consistently allowed for the involvement of AU as well as other independent observer missions during election periods.

The Independent Electoral Commission

Elections in South Africa are governed by the IEC which is mandated by chapter nine of the Constitution to organise elections (Hendrickse, Olivier & Venter 2006). The majority of respondents in this study's survey felt the IEC has sufficient powers to effectively manage elections - 80 per cent agree with this statement, while only 13 per cent disagreed and the remaining 7 per cent answered "Partial" (EISA Survey, 2016, question 25). The IEC has enjoyed success over the years since the 1999 election period and has competently overseen four national and provincial elections in addition to local government elections. The IEC has additionally been able to oversee peaceful elections, as indicated by the survey in which 87 per cent of respondents believed that elections were peaceful while the remaining 13 per cent were impartial (EISA Survey, 2016, question 6).

The legal authority of the Commission is facilitated by legislation in the form of the Electoral Commission Act 51 of 1996 which as outlined in its preamble gives authority over national, provincial and local legislative body elections to the IEC. Section 3 of the Electoral Commission Act further establishes that the IEC is autonomous from government and subservient to the authority of the Constitution and the law.

As stipulated by section 6 of the Electoral Commission Act, the IEC is led by three Commissioners as well as a Chairperson and a Vice-chairperson. This structure includes one judge and consists of only South African citizens. Individuals with high political party profiles cannot be selected as part of the Commission.

Section 6 of the IEC Act also states that IEC members are appointed through a process which starts with a selection panel that is chaired by the President of the Constitutional Court and includes the Public Protector as well as representatives from the SAHRC and the CGE. The panel submits eight names to a National Assembly multi-party committee which then nominates candidates to be voted for by the entire National Assembly. The President of South Africa conducts the final appointments based on the National Assembly resolution.

Section 7 of the IEC Act states that the tenure for the positions mentioned above is seven years but the President of South Africa may extend a commission member's incumbency based on a parliamentary recommendation.

The administrative duties of the commission are handled by the chief electoral officer who is additionally tasked with the role of an accounting officer of the commission and can appoint officers or employees as needed by the commission. The IEC is responsible for its own budget and the distribution of its resources based on an allocation of funds determined by Parliament (Electoral Commission Act 51 1996, s.13).

According to Makhafola (2016) the IEC had a substantial budget of one and a half billion Rand for the 2016 local government elections. The institution's capacity to achieve its mandate has manifested further through the several accolades that it holds. An example of this is the Equality Award given to the IEC at the International Electoral Awards in 2013 (IEC, n.d).

The Commission has also been commended for efforts in civic education and its voter engagement endeavours that seek to promote the participation of South Africa's diverse electorate (IEC, n.d). In the 2011 municipal elections, for instance, the IEC held voter education events in all of South Africa's provinces and made use of 51 CSOs as part of a group of approximately 3500 support staff to directly educate just over three million people (IEC 2011, 24).

The IEC has also actively sought to promote the participation of all South African citizens as evidenced by the Commission's partnerships with organisations as diverse as the South African National Council for the Blind (SANCB) and the Deaf Federation of South Africa (DeafSA). This has led to greater disability sector involvement in elections as shown by the SANCB gaining election observer status and the adoption of voting innovations such as the braille and tactile ballot template for the visually impaired (IEC 2011, 24).

Although, this study has found that accessibility issues still exist for people with disabilities in relation to participating in elections (De Matos Ala, personal communication, July 12, 2016). Accessing transportation to voting stations is a problem, for example, as it is more expensive for people with disabilities to use public transport (De Matos Ala, personal communication, July 12, 2016).

In other matters pertaining to inclusion, the Commission has also been applauded for fostering an environment in which there is considerable involvement of women in voting processes as participants and as facilitators (EISA 2004, 20). According to the Commission's Vice-Chairperson, Terry Tselane, 54.9 per cent of the total number of registered voters is comprised of women (IEC 2015, 2).

It is worth noting that a fairly recent incident has brought the IEC's standing into disrepute and this relates to discrepancies revealed in separate investigations conducted by the Public Protector and auditors from PricewaterhouseCoopers (Corruption Watch, 2014). The enquiry pertained to the leasing arrangements of the IEC head office building in Centurion in 2009. It revealed that the IEC's expenditures on the building were excessively high and there had also been an unfair selection process for the lease, thus indicating gross misconduct from the IEC's chairperson at the time, Pansy Tlakula and her immediate subordinates (Corruption Watch, 2014).

The electoral playing field

It must be mentioned that the electoral process in South Africa is facing challenges in certain areas. Engagement with stakeholders in the field has revealed that there has been a decline in voter participation. The general sentiment is that people are beginning to doubt the value of voting as they question whether they are truly being represented by elected officials. Younger South Africans in particular do not feel the importance of the democratic system; they are not motivated and do not feel represented.

The youth are more open to voting for alternate political parties but they are also more likely to abstain from voting if they do not find favourable options. This can be gleaned from the voting patterns of 18-19 year olds and 20-29 year olds which show that the former has a voter turnout of roughly 38 per cent while the latter is around 64 per cent. This is not necessarily a reflection of a poor electoral system but more of a reflection of how leadership is perceived in the country. An interesting statement mentioned in the study's focus group discussions is that "Young voters are part of a 'now generation' that wants to see change immediately and if it does not happen they feel frustrated and are not inclined to participate" (EISA Focus Group, 2016).

It was also suggested in the focus groups that "For the younger generation, it seems as if the overall outcome of elections is certain and there is a perception that there is no point in voting" (EISA Focus Group, 2016). Poor youth participation could become an even bigger problem for electoral democracy in South Africa's future because of the country's significantly large youth population. One focus group participant argued that the regression of numbers in voter participation also suggests "The post-apartheid democratic bubble has burst", as the citizenry start to look at and question what the country's main liberation organisation is doing (EISA Focus Group, 2016).

A major talking point that came up from engaging with civil society was the notion that the current electoral format would have served better as a transitional mechanism for the change from apartheid to post-apartheid governance. Stakeholders suggest the closed list system for choosing representatives does not work – it assumes inner party accountability and democracy, when in actual fact it has the traits of a proxy labour market for access to jobs and rents rather than a democratic political system representing the will of the people. Violent protests in the run-up to the local government elections in June 2016 in Pretoria showed one of the major shortcomings of the closed list system as people vented their frustration with the ANC's nomination of a mayoral candidate unwanted by the citizenry.

Furthermore, there is a lack of coherence between citizen engagement in electoral processes at the national level and the local government level – as the national is very closed off while there is more direct engagement at the local level. For example, this report has found that the ANC has branch, then

regional meetings prior to the creation of national lists but the party machinery kicks into action at the highest level with senior party members supporting their own people. The DA seems to have a less transparent process with the party's Federal Council having the strongest voice and there being no indication of input from lower level processes such as branch meetings.

Other elections issues that have come up are concerned with the coverage of political parties. A specific example of this is the unequal representation of political parties in the media. Of the precisely 27 parties that contested in the 2014 national elections, five parties enjoyed the majority share of media coverage which constituted up to 85 per cent while the remaining 22 parties had to settle for 15 per cent (Media Monitoring Africa 2014, 1-2). One may contend that as mandated by regulation, this division of coverage was proportional to the seats held by the different parties in Parliament. However, this was not the case considering that the EFF held no seats in Parliament at the time but had the third highest proportion of media coverage (Media Monitoring Africa 2014, 2). Issues with matters such as freedom of expression at the SABC have led to some in civil society stating, "The background to free and fair elections is becoming increasingly problematic" (EISA Focus Group, 2016).

Additional elections problems arose when the credibility of the IEC suffered a blow after it disqualified five independent candidates in a by-election in Tlokwe. The candidates took legal action against the IEC and the courts ruled against the commission for unduly disqualifying them (Electoral Institute for Sustainable Democracy in Africa [EISA] 2014, 26). As a result, a significant proportion of the by-elections were postponed and the matter was rectified (EISA 2014, 26). The controversy did not end there, however, as allegations of voter fraud in the same municipality were brought up against the ANC by different parties claiming that a sum of 2500 registered voters were illegitimate.

The IEC was accused of working with the ANC to facilitate vote rigging, thereby ensuring the subsequent majority victory of the ruling party in Tlokwe (EISA 2014, 26). A lack of evidence resulted in these allegations not gaining much traction but it has been noted that the IEC faces a real challenge in local government elections. This is mostly in terms of preventing election fraud that results from individuals voting in municipalities other than the ones they actually live in (EISA 2014, 26).

Such incidents normally occur when political parties try to increase their votes in one particular area by bringing in additional voters from other constituencies. If the occurrence of these practices were to be proven, it would be one of the most noteworthy examples of a political party breaching South Africa's Electoral Code of Conduct. All registered political parties and their candidates are bound by this code as well as any other code that may be

deemed necessary by the IEC (Electoral Act 1998, s.1). The Electoral Code of Conduct seeks to promote free and fair campaign practices in addition to encouraging debate as well as peaceful engagements between members of the public and the various political parties (EISA, 2006).

Despite these instances of controversy, the overall management of South Africa's elections landscape has been successful. The electoral system has fostered an environment in which different actors can participate in the elections, particularly including stakeholders from civil society (IEC 2015, 34). The South African government has honoured its obligations to the 2002 Durban Declaration on the Principles Governing Democratic Elections in Africa, as well as the 2007 African Charter on Democracy, Elections and Governance (Government of South Africa, 2014). This is evident from the country's cooperation with external representatives from the AU Election Observer Mission in major election years such as 2014 (Government of South Africa, 2014).

Furthermore, under the authority of the IEC, South Africa's election system has proven to be inclusive of political actors, with almost 30 parties participating in the last national elections which were held in 2014 (Fakir and Holland 2014, 34). The Constitution of South Africa adds a measure of competitive equality for contesting parties by including provisions for proportional public funding of political parties, stating that it is a prerogative of national legislation to ensure that this occurs (O' Regan, 2010). Consequently, the Public Funding of Represented Political Parties Act of 1997 fulfils this stipulation (Fick, 1998). On the other hand, there is no regulation for the private funding of political parties, a reality which experts have criticised as being detrimental to the equality of parties and therefore democracy overall (Davis, 2014). In an attempt to mitigate the negative effects of this lack of regulation, interest groups such as My Vote Counts and Idasa have in the past unsuccessfully pushed for parties to disclose their sources of private funding (Davis, 2014). Davis (2014) argues that in this specific instance South Africa has failed to follow the examples of strong democracies such as Germany, Australia the United States and the United Kingdom.

7.6 Popular participation

This theme analyses how the general public and societal stakeholders such as CSOs are involved in the actions of public authority in South Africa by focusing on state transparency and the frameworks that are in place to govern the country's civic spaces. The analysis in this area also serves as a contribution towards the discourse concerning issues of accountability and honest governance in a democratic South Africa.

Table 7.5: South Africa - Formal compliance to popular participation

✓	<i>Law regulating the NGO sector</i>	Regulation for CSOs is governed by the Nonprofit Organisation (NPO) Act. The NPO Act states that the registration of NPOs is overseen by the Director of NPOs who is selected by the Minister for Social Development (ss 8-13). In the case of a refusal to register an organisation or a forced deregistration, the Director's decision can be appealed against through an Arbitration Tribunal.
✓	<i>Government CSO working partnerships</i>	Structures such as the National Development Agency provide platforms for government and civil society partnerships.
✓	<i>Access to & freedom of information law</i>	Section 3 of the Promotion of Access to Information Act (PAIA) states that in addition to encompassing the disclosure of information from public bodies, in some cases this act covers access to information from private bodies as well. Milo and Stein (2013) point out that PAIA also gives leeway for the refusal of an application to access information and the grounds for denial are generally the same. The South African Broadcasting Corporation (SABC) was established to entertain, inform and educate the people of South Africa. The SABC is required to be truthful, fair and impartial when broadcasting the news and related programming.
✓	<i>Budget consultations at all levels</i>	Ward committees, izimbizo and public hearings constitute some of the structures that are in place to involve citizens in governance. Platforms such as "Tips for Trevor" have been used in the past to include people in the country's budget making processes.

Access to information

Transparency between the state and individuals is an important feature necessary for the success of any democracy. The value that South Africa places on this is evident in the Constitution which necessitates the practice of making information held by the state accessible to all the people of the country (Constitution of the Republic of South Africa 1996, s.32(1)). The PAIA provides a foundation for transparency and accountability in South Africa but stakeholders in civil society have commented on how this constitutionally prescribed mandate is not being honoured in practice by the government.

According to a report released by a coalition of CSOs known as the PAIA Civil Society Network, out of about 300 requests submitted, 260 were forwarded to public bodies (Bailey, 2015). Only 51 records were provided out of the forwarded requests and there were incomplete records in 13 (Bailey, 2015). This shows that a large proportion of the requests to access information were not honoured.

The extent of this lack of compliance is worsened by the fact that only a fraction of the requests were responded to within the compulsory window of

time set by legislation (Bailey, 2015). Further investigation has revealed that the percentages of released information based on PAIA requests have been decreasing substantially since 2008 (Right2Know Campaign 2014, 3). Only a few public bodies have been identified as taking a proactive role in fulfilling the government's mandate for the PAIA.

This includes a number of municipalities and bodies such as the IEC and STATS SA which have taken measures to ensure that significant sums of important information are readily available as 'open data'. This means that information pertaining to these bodies can be accessed easily via their websites without need for applying (Right2Know Campaign 2014, 3).

In addition to the PAIA, legislation in South Africa strives to develop an informed citizenry through the existence of a public broadcaster. The SABC has certainly sought to fulfil its role as a public broadcaster in a number of ways, for instance, the broadcaster manages to disseminate content in all of South Africa's official languages (Kupe, 2011). This is not to say that the institution has not faced challenges as it has had to deal with the paradoxical reality of being controlled by the state while being an impartial source of information, even in instances that jeopardise the credibility of the government. Therefore, it is not surprising that the broadcaster has for example, been found guilty of unduly hindering access to commentators that it deems unfavourable thereby going against its mandate to uphold Constitutional values such as freedom of expression and critical public broadcasting (Kupe, 2011).

More recently, the SABC has been accused of unlawful self-censorship after its Chief Operating Officer (COO), Hlaudi Motsoeneng, announced a change in editorial policy that prevents the public broadcaster from airing violent protests (Phakathi, 2016). Motsoeneng is quoted as saying, "continuing to promote them (violent protests) might encourage other communities to do the same and the SABC would not assist these individuals to push their agenda that seeks media attention" (Phakathi, 2016). Allegations of political interference in the broadcaster's leadership structures have also plagued the SABC.

An example of this is the controversy surrounding Motsoeneng's appointment by the Minister of Communications as the SABC's COO. It has been alleged that Motsoeneng attained his appointment as a result of political ties which contributed to Communications Minister Faith Muthambi ignoring discrepancies concerning his legitimacy as a candidate for the COO position (Rantao, 2014). Motsoeneng has been linked with the ANC's top brass and it has been suggested that his appointment as COO was meant to ensure that the ruling party's interests are protected through the SABC's various media platforms (Rantao, 2014).

Public participation

In addition to ensuring that citizens are informed, participation entails the facilitation of mechanisms for civic engagement. The Constitution establishes a decentralised governing structure in South Africa, divided into central government, provincial government, district councils and municipalities (Konrad-Adenauer-Stiftung, 2016.). Central government is largely responsible for policy fields such as security affairs, national economic policy and social service departments (Konrad-Adenauer-Stiftung, 2016). Provincial government administers social services such as education, health and social grants (Konrad-Adenauer-Stiftung, 2016). District councils generally run bulk infrastructure such as water and sewerage and at times do not have a definite mandate. Municipalities each have a municipal council and play a crucial part in providing basic services (Konrad-Adenauer-Stiftung, 2016).

The main purpose for decentralisation is to minimise the gap between governing bodies and the citizenry. An example of how this is achieved for is through the Integrated Development Plan which is organised at the municipal level to foster participation from the community and its stakeholders in the development plans the state (Local Government Action, n.d.).

Additional structures for public participation that have been mentioned in the report include public hearings, ward committees and izimbizo. These involve mediation between the public and the state and constitute the “long route of accountability” (National Development Agency [NDA], 2015). It can be argued that the efficacy of this has not been guaranteed due to the prevalence of protests in the country which show citizens pursuing the alternative “short route of accountability” in which there is unmediated engagement with relevant state actors (National Development Agency [NDA], 2015).

A participant in the focus group discussions commented that, “Mechanisms themselves are becoming part of a system that is institutionalised and ineffective with top-down impositions” (EISA Focus Group, 2016). Tait and Marks (2011) explained the right that individuals have for airing different issues through the short route of accountability is protected by the Bill of Rights, the Constitution and the Regulation of Gatherings Act of 1993, given that protest actions do not violate the rights of others (p.15). Another statement worth mentioning from the focus group discussions is, “People are learning that you don’t get attention unless something is burning” (EISA Focus Group, 2016).

Building on the points raised regarding access to information and the right to freedom of assembly, it can be suggested that South Africa experiences a degree of difficulty in promoting absolute accountability and transparency despite having strong legislative mechanisms to promote these

democratic traits. It is important to note that the problem is not exclusively a lack of willingness by government to promote these democratic principles but there is also an immense capacity needed to execute effective policy measures that benefit the whole country.

The role of CSOs

CSOs are important as they can contribute towards lessening the severity of the government's load and become a vital resource to facilitating the Constitution's goals in areas such popular participation. CSOs have previously been treated as essential partners for development by government as shown by policy, for example, through the National Development Authority (NDA) Act which identifies the NDA as a platform for government-CSO cooperation (Coalition on Civil Society Resource Mobilisation 2012, 44). According to the Coalition on Civil Society Resource Mobilisation (2012), other policies such as the NPO Act make it clear that the different organs of the state are obliged to support the functioning of non-profit organisations (p.45). This suggests a collaborative relationship between civil society and government.

However, the nature of the relationship between the two is not in reality indicative of full cooperation as they are often at loggerheads with each other. On the part of the governing authorities, it has been argued that the role of CSOs has been undermined by the state's tendency to prefer them as conduits for their own endeavours rather than appreciating their duty as independent bodies that can contest, contradict and influence policy (Ranchod 2007, 5). Additionally, government officials are technocrats and most community CSOs are not aware of how to lobby or engage with them (Development Action Group [DAG], personal communication, July 8, 2016).

On the other hand, a further point relates to the capacity and technical skills of government officials to work with CSOs to foster citizen participation and community development. Organisations such as DAG are in some instances brought on to train government officials but they are generally unwilling to participate in learning through shared practice (DAG, personal communication, July 8, 2016). Thus, there is a need to integrate a social ethos for promoting social development and participation in the learning process for professionals that are to operate within and alongside government (DAG, personal communication, July 8, 2016).

7.7 Socio-economic justice and service delivery

The thematic area that follows analyses the outcomes of South Africa's efforts to promote socio-economic growth and equality. It investigates how the country has sought to fulfil its commitments to AU instruments pertaining to the provision of adequate education, healthcare, housing and sanitation.

This outlines the extent to which South Africa has measured up in terms of facilitating socio-economic justice and delivering basic services.

Table 7.6: South Africa - formal compliance to socio-economic justice

✓	<i>Free compulsory basic education to all</i>	The right to access basic education is mandated by section 29 of the Constitution (p.3). Schooling is compulsory but often of poor quality. There are no legislative mechanisms to ensure that education is free
×	<i>Measures of combat diseases</i>	Success has been recorded in lessening the prevalence of deadly diseases that contribute substantially to mortality rates, i.e. TB, HIV & AIDS. This in part has been influenced by increased healthcare access.
	<i>Company tax payments public</i>	Legislation in South Africa does not mandate public disclosure of company tax payments or profits and losses.
	<i>Regulation of foreign companies and mining</i>	Section 30 of the mineral and petroleum resources development act makes it possible for anyone to access information related to prospecting rights, mining rights and mining permits.
	<i>Government reduction of unemployment</i>	South Africa faces a challenge regarding an increasing unemployment rate as government has been unable to curb this negative trend.

Education

In a speech announcing the ANC's election victory on the 2nd of May in 1994, the newly elected President Nelson Mandela urged his countrymen to immediately start working towards building South Africa and highlighted the creation of better lives for all the country's people as the overarching objective of the new government (Mandela, 1994). With reference to education, through its endeavours, government managed to foster increased access, investment and enrolment to basic education within the first 10 years of democracy (Gumede 2013, 8). South Africa has also experienced increases in national literacy rates with figures going up from 91.9 per cent in 2010 to 93.4 per cent in 2014 (STATS SA 2014, 26).

The nation has realised commendable achievements in terms of making education more accessible but much still needs to be done to ensure the education is of a high quality (Gumede 2013, 11). Research by the Southern and Eastern African Consortium for Monitoring Educational Quality (SACMEQ) showed that in 2007, 27 per cent of South African Grade Six pupils were illiterate (Spaull 2013, 4). Compared to other countries South Africa also ranks poorly in mathematics and science (Spaull 2013, 4).

The poor quality of education has been attributed to several factors and these include: a lack of participation by parents in their children's education; the poor administrative capacity of School Governing Bodies (SGBs); and the

inadequate provision of basic resources (Modisaotsile, 2012). Other factors, specifically pertaining to teachers, are teacher absenteeism; and the need for more teachers as well as a teacher development system to improve their capabilities (Modisaotsile, 2012).

According to finance minister, Pravin Gordhan (2016), the government has also established plans to refurbish 510 schools, electrify 916 and ensure that 1120 schools will have access to water supply. It should be noted though, that South Africa's education spending has only increased by almost a single percentage point between 2011 and 2015 (World Bank, n.d.). This means the country is still lagging behind the AU's Continental Education Strategy which seeks to have member states increasing their education by 10 per cent over a 10-year period (African Union 2015, 35).

The level of inclusion in the education system is not absolute especially for children with disabilities as up to 70 per cent that are of school-going age are not in school (Donohue and Bournman 2014, 1). This negative reality is made worse by the fact that there is a great deal of segregation between the relatively few children with disabilities that are in school and other learners because the former of the two groups of learners are mostly put in 'special needs' schools (Donohue and Bournman 2014, 2).

Another problem area for education has been the unaffordability of tertiary studies for many South Africans. This became especially apparent in 2015 when there were countrywide student protests in the "FeesMustFall" movement as a result of tertiary students opposing increases in university fees. It is interesting to note that South Africa's education system has been experiencing the challenges mentioned despite substantial spending on education (Davis, 2015). In light of the 2015 university protests, R16.3 billion has been dedicated to higher education over the next three years.

Healthcare

In recent years, the deadliest diseases in South Africa in ranking order have been tuberculosis (TB), cerebrovascular diseases, diabetes, influenza and pneumonia and HIV (STATS SA 2014, 49). Despite gradually dropping in prevalence from the late 90's, TB has consistently been ranked as South Africa's deadliest disease since 1997 (Anton, 2014). Socio-economic conditions have contributed significantly to this phenomenon where a treatable disease has such a substantial negative impact. This is because in poorer areas, good healthcare services are not easily accessible and neither are vaccinations, while the cost of medical aid is beyond the means of most (Anton, 2014).

The state has taken considerable measures to strengthen as well as improve accessibility to healthcare and treatment of deadly diseases. The measures include providing free primary healthcare to all users of public

health facilities from 2006; as well as establishing the essential drugs programme in 1996 which published Standard Treatment Guidelines (STGs) and an Essential Drugs List (EDL) for making crucial medication more accessible to those in need (Harrisson 2009, 14).

Additional efforts entail the Clinic Upgrading and Building Programme (CUBP) in 1994; the Hospital Rehabilitation and Reconstruction Programme in 1998; and an upgraded, world class immunisation schedule in 1995 (Harrisson 2009, 16). More recently in 2012, South Africa initiated the National Strategic Plan for HIV, STIs and TB which implements key strategies such as decentralising healthcare for TB treatment (Soul City Research Unit 2015, 8). Furthermore, according to the World Bank, the country's spending on health has been at a figure of about 14 per cent over the period 2011-2015 (World Bank, n.d.). This level of health expenditure is well within reach of the 15 per cent threshold that was agreed to by South Africa at the signing of the AU's Abuja Declaration in 2001 (World Health Organisation, 2011).

Housing and sanitation

A National Housing Policy framework was initiated in South Africa as a result of negotiations between multiple political parties in the National Housing Forum (NHF) established in 1992 (Tomlinson 2015, 1). A new "housing subsidy scheme" was created to address the lack of adequate housing for those disadvantaged under the apartheid regime. This has resulted in the provision of over two and a half million houses and just over one million sites serviced for housing construction since 1994 (Tomlinson 2015, 1).

State spending on housing and amenities has increased from one per cent of GDP in 1994 to almost four per cent of GDP in 2015/16; an increase in expenditure much faster than in other areas of social protection or social grants (Tomlinson 2015, 5). However, the housing backlog over the last 20 years has increased from one and a half million to slightly over two million. The number of informal settlements has also increased from 300 to 2, 225 (Tomlinson 2015, 2).

A number of issues have led to the problems mentioned above. Firstly, a slow release of land has been identified between 1994 and 2004 (Tomlinson 2015, 4). Secondly, it has been argued that the housing subsidy together with section 26 of the Constitution which makes access to adequate housing a right for all, have led to a mentality of entitlement in which many are of the view that they have a right to a free house (Tomlinson 2015, 3).

Thirdly, pressure from politicians and communities has led to a scenario in which the government's focus has shifted from providing a basic standard of housing to as many people as possible to providing a higher standard which benefits fewer people (Tomlinson 2015, 4). This shift to depth rather than

breadth is evident from the increase of the housing subsidy from R12, 500 per household originally to R160, 500 per household as of 2014 (Tomlinson 2015, 4).

Another problem relating to housing entails the displacement of citizens from their homes. An example of this can be found in a Constitutional Court ruling from 2012. The court presided over a case where residents were meant to vacate a building referred to as Saratoga Avenue but had nowhere to go because the City of Johannesburg had not arranged temporary housing for them, as mandated by a previous court ruling.

In matters pertaining to water and sanitation, the 2011 STATS SA Census revealed that 85 per cent of households have access to RDP acceptable levels of water (SAHRC 2014, 38). Statistics further indicate that more than 70 per cent of all households have access to RDP acceptable sanitation (SAHRC 2014, 39). These figures are a positive reflection of efforts regarding water and sanitation but there are still a number of negative realities that exist in this area.

The level of access across all provinces is disproportionate with provinces such as Gauteng and the Western Cape recording much higher proportions of access than other provinces (SAHRC 2014, 39-40). Additionally, vulnerable groups including children, women and people with disabilities are impacted more strongly by lack of access to adequate water and sanitation. People with disabilities, for example, often have to use facilities that do not cater for their specific needs.

Government spending

The government's intention to continue stimulating key socio-economic areas and providing essential services can be observed from its commitment to allocate R870 billion over the next three years towards transport, energy, housing, health and water infrastructure. Further noteworthy aspects of South Africa's budget allocations show that the largest portion of funds are allocated to national government, with provincial government getting the second largest proportion and local government receiving the least. For the 2015/16, period the figures were 49.7 per cent for national, 43.1 per cent for provincial and the remainder going towards local government (Davis, 2015).

It is also interesting to point out that as shown by data from the World Bank (n.d.), government spending on the military does not take precedence over the socio-economic sectors discussed above with just one per cent dedicated to the military budget. However, the budget making process needs to be more inclusive as mechanisms that have been put in place to involve citizens in budget making processes such as 'Tips for Trevor' are weak and more of window dressing than legitimate participatory initiatives (Russell Lamberti, personal communication, July 7, 2016).

Constructive engagement between the National Treasury and stakeholders seems to generally involve elites such as big business and high ranking government officials without substantial grassroots participation (Russell Lamberti, personal communication, July 7, 2016). Thus, it can be argued that in practice, the National Treasury takes input from the markets, financial institutions and financial experts more substantively than ordinary citizens.

Despite money being dedicated to address key areas, South Africa is still suffering from the throes of inadequate socio-economic development and a few of the remaining issues are outlined as follows. The nation continues to face employment related challenges as the unemployment rate has increased between 2008 and 2015 from 23.2 per cent to 26.4 per cent (STATS SA 2015, 7). The increase occurred despite efforts by the government to maintain unemployment at 14 per cent or lower by 2014 (Gumede 2013, 7). The country's Gini coefficient showed that in 2011 South Africa had the highest levels of inequality in a group of 128 countries (DPME 2014, 16).

Taxation and corporate regulation

One of the main elements identified as contributing to inequality is unequal patterns of ownership for factors of production and financial assets (DPME 2014, 16). This phenomenon can be observed in the mining industry where the Department of Mineral Resources contends there is a grossly disproportional ownership pattern in favour of white males (Sguazzin and Vuuren, 2016). Frameworks such as the Mining Charter as well as the Mineral and Petroleum Resources Development Act 28 of 2002 seek to counter this reality by making the country's mineral wealth equally beneficial to South African society as a whole.

Nevertheless, regulation remains inadequate and factors such as transparency are poor with mining contracts generally being secretive and confidential in nature (Oxfam 2015, 4). When asked whether the details of mining agreements were made public only 13 per cent of respondents from this study's survey answered "Yes"; 33 per cent answered "No"; and 54 per cent answered "Partial".

This negative trend is also identifiable in laws for corporations in the extractive industry and in other sectors, which do not make it compulsory for companies to provide details of their tax payments and profits for public consideration (Oxfam 2015, 3). One of the effects of this has been the extensive use of tax havens by companies operating in South Africa, particularly in the mining sector, in order to avoid paying taxes.

It is essential that efforts to foster socio-economic development are accompanied by mechanisms to ensure that the private sector and the state are brought to account. The AGSA serves as one such mechanism, for

example, by conducting in depth audits of the financials of all government entities as well as any other institution as needed by legislation (Constitution of the Republic of South Africa 1996, s.95). Furthermore, the AGSA is mandated by the Constitution to make annual reports for Parliament detailing how these departments are performing financially, in addition to raising red flags should any discrepancies be found.

The AGSA's findings are available to the public and can be accessed via the institution's website. Nevertheless, many focus group participants felt that there is a big problem with economic freedoms in South Africa (EISA Focus Group, 2016). An interesting statement that came up stated, "There is no freedom, South Africa is politically free but without economic freedom we are not free" (EISA Focus Group, 2016).

7.8 Combatting Corruption

The final theme to be addressed in this paper has to do with South Africa's anti-corruption framework. It focuses on the institutions, legislation and strategies that are being implemented to prevent corrupt practices in the country. The challenges being faced by anti-corruption efforts, as well as the steps being taken to include different stakeholders are also articulated in this section.

Table 7.7: South Africa- formal compliance on combatting corruption

✓	<i>Anti-corruption commission operational</i>	The states' fight against corruption is not exclusively carried out by a single government body as an anti-corruption commission but instead involves a framework that entails legislation and various state institutions. This includes bodies such as the Public Service Commission, Public Protector, AGSA, National Prosecuting Authority (NPA) and the Directorate for Priority Crime Investigation (DPCI).
✓	<i>Government, media & civil society partnership</i>	The National Anti-Corruption Forum brings together government and different stakeholders i.e. civil society and business to combat corruption.
✓	<i>Declaration of assets for public servants</i>	Public Servants are required to disclose their financial interests in accordance with the Public Service Integrity Management Framework.
✓	<i>Whistle blower protection law and reporting</i>	Whistle-blowers are protected by the law because of the Protected Disclosures Act. Members of the public can report cases of corruption on the National Anti-Corruption Hotline.

In the 2015 Corruption Perceptions Index, South Africa was ranked 61st least corrupt country out of 168 countries (Transparency International, 2016). The country's position in this Transparency International report indicates an improvement from the previous year in which South Africa was in 67th place (Quintal, 2016). While the country's ranking on the index may have improved, it remains in the bracket of critically corrupt nations. Confirmation of this is that South Africa scored a 44 on a scale from zero to 100, where zero indicates the highest level of corruption and 100 being the lowest (Transparency International, 2016).

According to the Global Corruption Barometer, perceptions of corruption are also high with 83 per cent of citizens that were surveyed saying they thought the country had become more corrupt in a period of 12 months (Global Corruption Barometer 2015, 6). This put South Africa amongst the three worst performers in this regard for Sub-Saharan Africa (Global Corruption Barometer 2015, 6). Thuli Madonsela (2010) once suggested that corrupt practices in South Africa may be rooted in several factors including a will to counter the historical injustices of oppression that resulted in many current African leaders having very little in the past; and or the influence of various actors seeking to exploit bureaucratic and political weaknesses for their own gain (p.3).

Anti-corruption regulation

South Africa does not have a single body solely responsible for preventing corruption but rather has a framework of different anti-corruption initiatives, agencies and actors; some of which are involved because they promote good governance and therefore have corruption prevention as a part of their duties. The Public Service Commission, Public Protector and AGSA for example all have duties that ensure transparency, ethical practices and accountability in their mandates and thus act against corruption as part of their operations (Madonsela 2010, 8).

The fact that South Africa does not have a centralised anti-corruption commission is not necessarily detrimental to corruption prevention, as involving multiple institutions means anti-corruption efforts would not collectively unravel should one particular institution be weakened (Russell Lamberti, personal communication, July 7, 2016). For the purposes of this paper, the main institute focused on is the DPCI (also referred to as the Hawks) as it does not exist specifically for promoting good governance. Instead the DPCI exists to directly function against serious organised crime, commercial crime and corruption (Madonsela 2010, 9).

The DPCI was formed soon after the dissolution of the NPA's anti-corruption and organised crime unit, known as the Scorpions (Pillay, 2014). The Scorpions enjoyed full independence under the autonomous NPA and

examples of their successes include the arrest and prosecution of ex-National Commissioner of Police, Jackie Selebi, as well as 783 corruption charges being brought up against Jacob Zuma who was a deputy president at the time (Burger, 2016). Burger (2016) suggests that the very efficacy of the Scorpions may have led to them being dissolved by the Cabinet in 2008.

Since the founding of the new unit, the legitimacy and credibility of the Hawks has proven to be problematic for several reasons. The biggest issue from the onset has been the ability of the Directorate to carry out its duties. Court proceedings instituted by businessman Hugh Glenister and supported by the Helen Suzman Foundation (HSF) lead to a 2011 ruling by the Constitutional Court which determined that the establishment of the Hawks to combat crime and corruption did not appropriately fulfil the requirements of the Constitution (HSF, 2015). The DPCI was judged unable to adequately live up to its mandate because it lacked the requisite level of independence needed (Pillay, 2014).

It can be argued the independence referred to is compromised by the level of control that governmental actors have over the functioning of the Directorate, for instance the ability of the Minister of Police and the Cabinet to appoint individuals in positions such as the Head of the Directorate. Another example is the fact that the Minister of Police is also responsible for the removal of the Head of the DPCI from office (SAPS Amendment Act 2012, s.17DA (2)).

The negative effects of this authority to appoint and dismiss have as an example been revealed in the appointment of Berning Ntlemenza as Head of the Directorate. Ntlemenza was judged to be dishonest, biased and lacking integrity by Pretoria High Court Judge, Elias Matojane (Burger, 2016). Such an individual is not an appropriate candidate to be Head of the DPCI, thus making his appointment a violation of section 17CA of the SAPS Amendment Act (Burger, 2016).

Another scandal resulting from the DPCI's lack of independence can be found in claims that were made in the past concerning the Minister of Police exercising further influence over the unit. It is alleged that former Minister of Police Nathi Mthethwa stopped investigations into the dealings of Richard Mdluli who used to be in charge of the SAPS Crime Intelligence unit (Tamukamoyo and Mofana, 2013). It later became known that Mdluli had misappropriated almost R200, 000 from his unit's Secret Service Account for his own personal use (Tamukamoyo and Mofana, 2013). This particular incident shows that the DPCI does have the potential to effectively combat corruption but its efforts are likely to be negatively affected by state interference. As mentioned before, CSOs such as the HSF have taken legal action in an attempt to reform legislation concerning the DPCI through amendments in the SAPS Act, which would reduce the chances of

unconstitutional interference in the Directorate. Court Rulings in 2011 and 2014 have been in favour of a majority of these proposed amendments but the adoption of legislative action to this effect is still pending.

National anti-corruption efforts

It is important to recall that while it is a key component, the DPCI is not the only feature of South Africa's anti-corruption architecture. There exists a host of initiatives such as the Independent Complaints Directorate, the Public Service Anticorruption Strategy and the Anti-Corruption Coordinating Committee (Madonsela, 2010). The National Anti-Corruption Forum (NACF) is especially worth noting because it is an initiative established by the state to bring together civil society, business and government to work together combatting corruption (Camerer 2008, 8).

This is a good attempt at a concerted effort although the absence of the media as a stakeholder in the NACF leaves it missing an important player in the fight against corruption. The relevance of the media in matters pertaining to corruption is profound especially in South Africa because this social institution has been responsible for bringing instances of corruption to the public eye. The National Anti-Corruption Summit, first convened in 1999 was more comprehensive as it catered for inclusion of the media and a host of other stakeholders (Sangweni, 2005).

Other significant aspects of the architecture are policy and legislative mechanisms. An example of policy is the Public Service Integrity Management Framework's policy on the disclosure of financial interests. This states that an employee in the public service that may gain from a contract between his/her department and a person he/she knows is obligated to disclose the details of the potential gain and then refrain from participating in matters involving that contract (DPSA 2015, 10).

In terms of legislation, the Prevention and Combatting of Corrupt Activities Act is a good example because it encourages exposing corruption and makes it an offence to not report corrupt activities (Malunga 2015, 16). Also, vital in this instance is the Protected Disclosures Act as it protects whistle-blowers from being retaliated against in the workplace and the Witness Protection Act which makes provisions to keep witnesses of corruption from being harmed by means of a protective custody system (Malunga 2015, 16). An additional element of the anti-corruption system is a National Anti-Corruption Hotline that conveniently makes it possible for members of the public to anonymously report corrupt public sector activities through a toll-free, 24hr hotline (Corruption Watch, 2012).

Measures have also been put in place to curb the occurrence of corrupt practices in the private sector with government making it mandatory for companies to adopt the anti-corruption recommendations from the OECD

(Powell, 2012). The recommendations discourage bribery, extortion and practices geared towards gaining any undue advantages (Powell, 2012). The Companies Act of 2008 also establishes multiple safeguards against corruption with one being that a company's Social and Ethics committee should oversee the company's anti-corruption procedures (Powell, 2012). This then helps to enforce adherence to OECD recommendations.

Prosecution of corruption cases

On paper the extent and nature of anti-corruption legislation suggests an environment where corruption is not allowed to thrive. The reality of the situation is a different story as the legislation does not seem to translate into practice. A possible reason for this disconnect could be an overall failure to bring to book those that are responsible for corruption. The NPA's efficacy is questionable in this instance as it is responsible for prosecutions. Suggestions have been made of the NPA's inability to carry out its duties because of political interference (Tamukamoyo 2013, 14). The dismissal of Vusi Pikoli as National Director of Public Prosecutions (NDPP) as he was investigating the corrupt National Commissioner of the SAPS alludes to an effort by Thabo Mbeki to protect then Commissioner-Jackie Selebi (Tamukamoyo 2013, 15).

Overall the fight against corruption is an area of great contention in South Africa as there seems to be a subtle entrenchment of corrupt practices within the overall state apparatus that needs to be addressed (Russell Lamberti, personal communication, July 7, 2016). The focus groups discussed that the anti-corruption apparatus tends to focus on corruption at the executive level while it is a very wide spread occurrence (EISA Focus Group, 2016). It was also suggested, "Issues such as crime and corruption are seen as survival tactics by young people because of the precedent the government has set" (EISA Focus Group, 2016).

This can hinder anti-corruption initiatives from filtering to other groups in society such as the youth that are becoming more prone to tolerating corrupt practices in contemporary society as they think of it as a common practice they inevitably have to partake in at some point in order to succeed. Responses from this study's survey show that 53 per cent of participants were of the perception that the government does not fund programmes to educate members of the public about corruption. Only 7 per cent disagreed and 40 per cent of the respondents were "Partial" (EISA Survey, 2016, question 51).

7.9 Conclusions

In conclusion, it can be ascertained from the evidence provided in this report, that South Africa shows a high degree of formal compliance with the different requirements of the APRM, AUCPCC and the ACDEG. Most of the country's structures and legislation are in

line with the requirements of the AU instruments. Frameworks such as the Constitution facilitate the existence of different democratic bodies in the form of Parliament, the Judiciary, the Executive as well as Chapter 9 institutions and altogether, this sets a solid foundation for the country to advance in its efforts to ensure a strong quality of compliance to AU instruments.

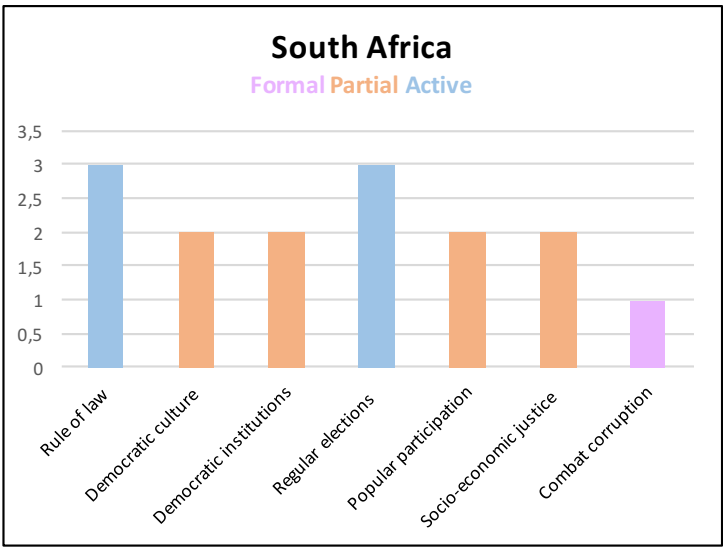
Acknowledging the strides made by South Africa in domesticating these instruments, this final section will identify the gaps remaining and the action required to facilitate substantive compliance. The gaps and actions needed are grouped per the different thematic areas that have been discussed in preceding sections of this paper.

The general sentiment regarding South Africa's compliance with AU instruments is that the current regime does not have the same level of technical capacity as previous regimes under leaders such as Thabo Mbeki. South Africa has immense capabilities that are not engaged and activated to improve and augment the country's participation in fulfilling international commitments.

Some of these capabilities lie outside government, for instance in CSOs and the private sector. South Africa needs to employ a more holistic approach and use the different bodies that already exist in the country. This would also help to avoid instances in which stakeholders do not support the implementation of mechanisms that the government may have committed to fulfilling.

Participants in focus group discussions argued that DIRCO is responsible for taking the AU's governance instruments forward but there is no visible coordination with other ministries; hence DIRCO may sign a protocol but

Figure 7.2: SA's capacity to comply



the relevant ministry involved in implementing may not be aware of the full application of the instrument. In terms of the national budget, for instance, there are no line-items geared towards ensuring substantive compliance with the APRM, ACDEG or the AUCPCC. There needs to be a cultivation of the sense that instruments committed to, are state obligations and not just DIRCO obligations.

South Africa needs a clear foreign policy to avoid instances in which it commits to fulfil AU obligations but does not do so as a result of focusing more on the objectives of other institutions such as BRICS. It would also be helpful for the government to introduce white papers outlining South Africa's commitment to international protocols such as the APRM, AUCPCC and the ACDEG. In matters pertaining to foreign policy the only noteworthy paper that DIRCO currently has available is the Ubuntu white paper, which is particularly lacking in detail.

Facilitating increased respect and appreciation for the Constitution's role remains problematic due to certain realities, thus suggesting a degree of weak compliance with the spirit of implementation of AU instruments. It would be prudent of state actors to strictly abide by decrees from the Constitutional Court and not foster a culture of questioning rulings that are against the government.

The low level of constitutional awareness in the country is also of particular relevance in this instance, as the state needs to employ more substantive mechanisms for getting the citizenry engaged with the Constitution and the different processes that pertain to it. The democratic culture and political pluralism thematic area discusses the state's incorporation of civic education as a component of South Africa's education system. This is a reasonable starting point for introducing the intricacies of the Constitution to the people but it has to go beyond simply creating formal structures such as Life Orientation and History classes.

A substantive curriculum needs to be introduced in these subjects, focusing on building the country's democratic culture by teaching about issues such as the rights and responsibilities of the citizenry and the different ways in which citizens can participate in governing the country. Greater collaboration in efforts to promote civic education between the state, civil society and members of vulnerable groups within respective communities would additionally be crucial to addressing issues such as discrimination and strengthening the spirit of democracy in South Africa.

The democratic culture and level of political pluralism in South Africa could also stand to improve from legislation that makes it mandatory for political parties to disclose their sources of funding. Such a move would be a positive step towards increased transparency and accountability in the state. However, it can be contended that South Africa's overall compliance in this

regard is commendable as shown, for instance, by several different legislative measures that are in place to promote a democratic multiparty system.

Parliament is need of more substantial programmes aimed at increasing its capacity. It is important this occurs across the entirety of the legislature and not just in favour of only a single aspect of the parliamentary body such as the National Assembly. South Africa's different spheres of government should also work towards stimulating the positive trend that has been identified in Parliament that demonstrates increases in proportions of women as members of Parliament.

The empowerment of women and vulnerable groups such as children, the elderly, people with disabilities and the LGBTIQ community needs to continue to be prioritised by the government. Initiatives that seek to improve the conditions for the groups mentioned should go beyond simply fulfilling legislation and aim to change the negative attitudes and prejudices of South Africans for the better.

The government needs to make sure bodies such as Chapter 9 institutions are all adequately funded in order to ensure they do not struggle to fulfil their mandates because of financial constraints. Political involvement in the appointment processes of positions in these institutions should be prevented by the state, in addition to the prevention of individuals with political affiliations from gaining tenure in bodies such as Chapter 9 institutions.

The legislature has recently shown an effort to ensure transparency and credibility in the selection process for Thuli Madonsela's replacement in the office of the Public Protector and this should be emulated across the board for all democratic institutions. Parliament has also been exemplary in promoting equality with its substantial inclusion of women in the legislature, whereas institutions such as the Judiciary must address the "boys' club" culture that still exists when choosing its officials. Another important intervention that is required pertains to the awareness that the public has of the roles and operations of democratic bodies such as the Chapter 9 institutions. Greater interaction between the public and the institutions is necessary in order for South Africans to be able to make use of bodies such as the SAHRC when needed.

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8 A note on method

Mark Orkin and Anne Mc Lennan

8.1 Research approach

The purpose of the research is to develop and test a tool that enables civil society perspectives on member state compliance with AU governance commitments to be documented. Compliance is a state of being in accordance with established guidelines, or the process of becoming so. This study explores the extent to which Member States meet the requirements of the AU approved governance instruments that promote democratic governance focusing on ACDEG, AUCPCC and APRM recommendations.

Compliance is different from effectiveness. Compliance is about adhering to the provisions in charters and accords, whereas effectiveness is about whether goals are met or not. Compliance operates at two levels – formal in the sense of putting the basics in place; and substantive in terms of active commitment. Compliance is usually voluntary with positive incentives to follow guidelines (such as inclusion, efficiency, engagement) or enforced (compelled to do comply).

Most AU commitments rely on voluntary compliance, hence the importance of civil society oversight in terms of identifying patterns of compliance to democratic governance, as well as areas for capacity development and support. In addition to formal compliance, capacity for compliance is important as it reflects commitment to institutionalising more diffused decision-making systems and democratic institutions. This research attempts to assess formal compliance, as well as capacity, to the extent that this is possible.

Table 8.1 provides a themed summary of compliance requirements extracted from the ACDEG, AUCPCC and APRM. These focus areas and related indicators were developed by CSOs during two two-day workshops in Kenya. The first focus area led to the identification of the 7 areas, and the second focused on validation and refinement of the criteria.

Table 8.1: Compliance focus areas

AREA	COMPLIANCE OBLIGATION
Constitutionalism and the rule of law	States openly support the constitution in their political organisation and the separation of power between the executive, legislature and the judiciary.
Democratic culture and political pluralism	States have the necessary legislative, social and policy frameworks to support and protect multi-party democracy, open debate and peace.
Democratic institutions	States have established public institutions, such as parliaments, electoral bodies, ombudsmen and independent commissions, to promote and support democracy and constitutional order.
Regular democratic elections	States hold regular, transparent, free and fair elections in accordance with the AU's requirements.
Popular participation	States enable citizen participation by ensuring that they are transparent; provide access to information; guarantee freedom of the press; and are accountable in the management of public affairs.
Socio-economic justice and service delivery	States institutionalise good economic and corporate governance through policies that promote the equitable distribution of the nation's wealth and natural resources.
Combatting corruption	States actively fight against corruption and related offences with the full participation of the media and civil society at large.

Research process

The research process enables CSOs to gather as much data and information as possible in a short time period with limited resources. Researchers are expected to use these tools in a comprehensive way, including the triangulation of findings.

1. **Collection and collation of existing data and desktop research (data gathering and preliminary assessment).** The desk review identifies the main information gaps to be covered and contrasted in follow up interviews or focus groups. Relevant qualitative and quantitative data, especially those related to the financial and human resources should be collected.
2. **A survey of a minimum of 15 in-country CSOs (more if possible).** The instrument is targeted at eliciting the opinion or 'gut' feel of the CSOs. The remainder of the questions will be addressed through a combination of desktop study and focus groups.
3. **Interviews and a minimum of four focus groups (engagements with stakeholders and informants).** Interviews or focus groups are required to fill in data gaps and the stakeholder engagements to assess capacity for compliance. It is essential to secure the participation of a core group of CSOs who were active in the APRM process and are engaged in the issues covered in the assessment.
4. **Diagnostic assessment (narrative report and analysis):** The tool provides the framework for the assessment of primary data in terms of

overall compliance. It maps out the strategic focus areas of the study, the logic and rationale for organising the data collected in this framework as well as possible sources of data to be explored.

8.2 Survey instrument and data analysis

A total of 116 questionnaires were filled in by NGO respondents in six countries, as follows (Table 8.2):

Table 8.2: Number of respondent NGOs, by country

	Frequency	Percent
Ethiopia	13	11.2
Ghana	22	19.0
Nigeria	24	20.7
Rwanda	11	9.5
S Africa	15	12.9
Zambia	31	26.7
Total	116	100.0

Zambia supplied nearly a quarter of responses; Ghana and Nigeria a fifth each; and the balance, about a tenth each, from Ethiopia, Rwanda and South Africa. We know from context that Ethiopia and Rwanda are autocratic, with possible implications for NGOs' responses. They may nevertheless, or may not, feel able to offer honest responses. This can be qualitatively assessed from the pattern of their responses in relation to the context, and to other countries' responses.

The questionnaire comprised some 66 separate questions arranged under seven "domain" headings, as conceived by the CSOs at the design stage. The headings are as in Table 8.3, with the abbreviations that will be used in the analysis. The full questionnaire is in Appendix A.

Table 8.3: The seven original domains of questions in the questionnaire

I RL	Rule of law
II DC	Democratic culture and political pluralism
III DI	Strong democratic institutions
IV RE	Regular democratic elections
V PP	Popular participation
VI SE	Socio-economic justice and service delivery
VII CC	Combatting corruption

There is some repetition among items between the domains: e.g. general questions on the quality elections 6(a) and 6(b) in II: Democratic Culture and with the more specific questions 25-32 on IV: Regular Democratic Elections. This will be relevant when the most salient grouping of the 66 separate items

is sought empirically. Each item was scored (1) Yes, (2) Partial, (3) No. Since it is more intuitive, e.g. on bar charts, to have “more is good”, the scoring was reversed (except for the five items that were phrased negatively, viz. questions 4(a) to 4(c).)

Descriptive statistics

As an initial summary, the mean (i.e. average) score was calculated across the several items in each domain (Figure 1.x). These means are displayed for each country in the bar charts, as well as the overall average score across the countries for that domain. An equivalent display, that allows more convenient comparative assessment, is to show the mean-score “profiles” of each country drawn across the seven domains, as in Figure 1.x.

The order of the domains was rearranged for clarity and to minimise overlaps, showing broadly increasing values from Combatting Corruption on the left up to Democratic Culture on the right. As before, the scale is 1=No, 2=Partial, 3=Yes.

Efficacy of the grouping of survey items for monitoring

In principle, the questionnaire items, organised into the original domains, could be used to track change in the countries year-by-year. For example, the new means for each country would be shown as adjacent bars, in each panel of Figure 1; or a new version of Figure 2 could be drawn, and compared profile by profile for each country.

However, we did not have an indication of how *effectively* the 66 items (the separate questions in the survey), as presently organised into domains and plotted per country, might allow the differences to be discerned. Given that we have only the first year of data, a helpful indication is to test how well one or other organisation of the items allow the *countries to be differentiated from each other*.

This involves a technique called discriminant analysis, which tests how well the categories of an outcome variable (in this case, the categories are the six countries) are differentiated by specified predictors. We try three approaches for predictors, and note for each approach the proportion of country-membership of the 116 CSOs it successfully assigns.

a) Items organised theoretically as the original seven domains

The first approach respects the way the seven original domains (shown in Table 8.3) group the 66 items, as shown in Appendix A. For each respondent NGO, the mean of its scores for each domain is calculated. These seven mean scores, calculated for each of the 116 respondents, furnish the seven predictors.

It turns out that these domain-level predictors correctly assign 60 per cent of CSOs to their countries. This is better than chance. But, in that the discriminant analysis involves only seven predictors, this is not yet a very efficient use of the available data.

In other words, were one to process the results manually in future, per country, by taking an average across each CSO's multiple answers per domain, and then averaging those across the NGOs in the country, one would be able to discern and assess such differences as arose year-by-year for each domain. But the averaging process would blur insightful differences, across countries and thus possibly year-by-year within a country.

b) Items organised empirically into 16 sub-domains

In trying to keep the number of domains manageable, the questionnaire design has evidently included, under some domains, "clumps" of questions that are evidently closely related to each other, but less so to other items in the domain. For example, under Rule of Law, the last four items on the legitimacy of regime change relate to each other more closely than to the first three items, which are on individuals' guaranteed equality before the law. Likewise, under Democratic Institutions, the last four items are on the independence of the judiciary, as against the earlier items dealing with accountability of the Executive to Parliament and of Parliament to the people. There are several other such instances.

The second approach accordingly uses a technique called factor analysis, which indicates how well variables "clump" *as a matter of fact*, i.e. when the "clumping" is informed by the patterning of the respondents' answers to the given questions rather than the conceptions of the survey-designers. For the moment, we apply the technique *within* each domain in turn: seeing empirically what are the significantly distinct clumps of questions, i.e. sub-domains, into which the domain may split.

The result for the seven domains is shown in Appendix C. It is seen that only the eight Regular Elections questions remain clumped "as is". Four of the domains are split into two clumps or sub-domains, namely Rule of Law, Democratic Institutions, Public Participation and Combatting Corruption; Democratic Culture splits into three; and Socio-economic Justice into four. This yields a total of sixteen sub-domains.

Thus, one sees in Appendix C that the original domain of Rule of Law is indeed an assemblage of two clear sub-domains, equality before the law, and legitimate political transitions. Likewise, Democratic Institutions comprises two sub-domains, independent judiciary and parliamentary powers. Socio-economic Justice comprises four sub-domains: national programmes, government financial accountability, corporate accountability, and educational access.

Generally, the sub-domains sensibly distinguish the evidently related “topics” that have been grouped under the seven original headings. However, there is a gain. The factor analysis also allows one to retain, for each CSO respondent, its “factor score” for each sub-domain, in which the contribution of each variable is *weighted* according to the importance of its contribution to the sub-domain. This is more refined than simply taking the mean scores of contributing items, i.e. giving them equal weight.

In the technical jargon, the sub-domains are called “latent constructs”, i.e. they reflect an underlying conception, of which the separate questionnaire items are taken to be weighted “indicators”. The nature of each such sub-domain or latent construct is construed from its two or three variables/questions with the greatest weights, or “loadings”.

When the sixteen factor scores for each respondent are used as predictors in a discriminant analysis, the analysis correctly assign 77 per cent of the CSOs to their correct countries – much more encouraging than the original domains. This is because the predictors are now internally homogeneous, and of course also because there are more of them to contribute to the differentiating. However, it is difficult to insightfully sustain an assessment across sixteen items.

c) Items organised empirically into new, unconstrained factors

In the previous section factor analysis was used to identify *within each of the original seven domains* how the variables split into evident sub-domains, sixteen in all, largely reflecting how the survey was compiled.

However, it was noticed earlier that there is some overlap of topics across domains, e.g. elections. The approach in section b) would not bring that into reckoning. And more importantly, it may be that respondents reveal, in the patterning of their answers, *their* understanding of how different aspects of democratic governance “clump”, and this unexpected linking of questions may occur *across* the original domains or sub-domains.

For example, it may be that respondents are perceiving women’s rights to participate in governance, and in elections, as reflecting single political value, women’s fundamental freedoms, even though the questions were asked in the original design as separate facets of Democratic Culture and Regular Elections. Likewise, it may be that sound national audits and protection of whistle-blowers are perceived as closely linked, rather than as separate illustrations of Socio-economic Justice and Combatting Corruption – as in the original design.

The third approach accordingly seeks to allow for cross-domain conceptual linkages, and whether this may be unexpectedly revealing of how democratic governance is conceptualised. It does so by including the 66 items

jointly in a single factor analysis, and seeing how they “clump”, into what we noted earlier are called factors or underlying latent constructs.

It needs to be noted here that factor analysis involves art as well as science, rather like identifying what may be major themes or minor nuances in a pile of qualitative interview transcripts. There is an extensive literature on choosing the optimal number of factors: the statistical intimations are not hard and fast, and as important is whether items are coming together meaningfully.

We are hoping for several factors that may be more than seven, since we saw that the seven domains contained some uneasy amalgams of topics (and thus did not “place” respondents well); but less than the sixteen sub-domains, which were each coherent but together too numerous for convenient assessment. A bonus will be if factors bring together questionnaire items in a way that is unexpectedly revealing of respondents’ thinking about democracy and governance.

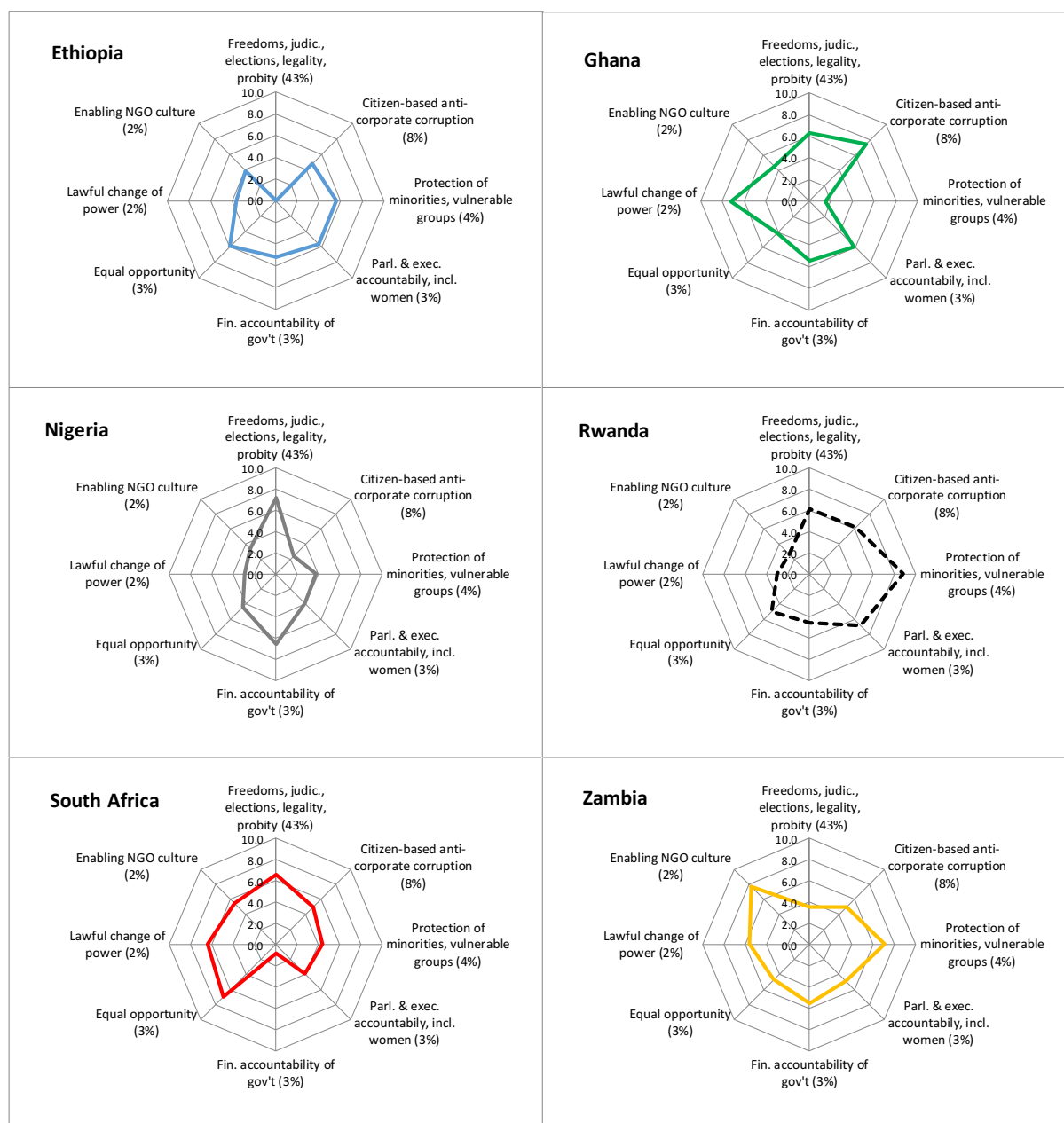
It turns out that while as many as thirteen statistically significant factors could be distinguished, the last five would add very little to our understanding of the important patterning in the data. Accordingly, seven- and eight-factor solutions were examined, and the eight-factor version turned out to be more insightful.

Appendix D shows the full table of the 66 variables arranged within the eight new factors. The meaning of the respective factors, or underlying constructs, is construed from the most strongly loading items. A feature of factor analysis is that the first factor typically explains the lion’s share of the variation in the data, but in Appendix D its ingredient items have been rearranged to show the predominant groupings within it.

These eight factors offer for consideration a defensible “take” on how respondents as a matter of fact are linking the 66 items in the patterning of their answers. When the factor scores are treated as predictors, correctly assign 78 per cent of NGOs to their countries. This is appreciably than the 60 per cent achieved by using the means of the seven original domain scores “as is” (in section 3.1), and much the same as the 77 per cent achieved by using the more obvious but less manageable sixteen sub-domains (section 3.2).

It may be seen that the first factor spans what respondents in effect identify as the core ingredients of *democratic governance*: fundamental freedoms; an independent judiciary; sound elections; and equality before the law. It accounts for 43 per cent of the variance in the data. Thus, countries’ weighted factor scores on this first factor indicated the extent to which they are democratic.

Figure 8.1: Polar diagrams of eight-factor scores, by country



democratic.

The other seven factors together account for 25 per cent of the variance. (The balance is said to be “unexplained”, and is an indication of some randomness among the answers.) The most important of them, the second factor (accounting for 8 per cent of the variance), suggests an interesting cross-domain linkage: of *public empowerment re corporate corruption*. The qualitative analyses will indicate the extent to which this is indeed a high concern among CSOs in the participating countries. The third factor (4 per cent) likewise links

constitutional protection of *minority rights and national programmes for vulnerable groups*.

The remaining five factors, shown in the table, may be construed as dealing with government accountability, including participation of women; government financial probity; equal opportunity; lawful change of power; and the role of independent CSOs. All but the last continue to comprise a mix of indicators from different domains.

The composite scores of each country on these eight factors may be illustrated in a profile. An alternative, that seems to assist holistic comparison, is to use the “polar diagrams”, shown in Figure 8.1.

For convenient discussion of the polar diagrams, the factor scores have been re-scaled to run from 0=No through 5=Partial to 10=Yes. One remembers that the top-most “twelve o’clock” point in each diagram is much the weightiest (43 per cent of variance explained), indicating country NGOs’ responses on the multi-part construct of overall “democratic governance”. Ethiopia fares worst at zero, followed by Zambia at 3.5 out of 10. On this factor the best is Nigeria, at 7.2, with the other three countries ranging from between 6.1 and 6.6. (The actual scores are shown in Table 8.4.)

The next vertex, reading clockwise in the polar diagrams, is the second-most important factor, tackling corporate corruption (8 per cent of variance). Here Ghana does best (7.4), followed by Rwanda (6.2). Nigeria is much the worst on this factor (2.4), with the other three countries near 5.

The ideal country profile would be a large, approximately round polygon indicating good scores on all factors, especially the top-most one. By contrast, it is illuminating to see which countries “collapse” on which attributes.

Table 8.4: Scores (and variance explained) from eight-factor solution

	Freedoms, judic., elections, legality, probity (43%)	Citizen-based anti-corporate corruption (8%)	Protection of minorities, vulnerable groups (4%)	Parl. & exec. accountability, incl. women (3%)	Fin. accountability of gov't (3%)	Equal opportunity (3%)	Lawful change of power (2%)	Enabling NGO culture (2%)
Ethiopia	0.0	4.8	5.6	5.7	5.2	6.0	3.6	3.9
Ghana	6.3	7.4	1.5	5.9	5.4	4.2	7.2	4.6
Nigeria	7.2	2.4	3.8	3.9	6.6	4.4	2.9	3.3
Rwanda	6.1	6.2	8.9	6.8	4.6	5.0	3.0	2.6
S Africa	6.6	5.0	4.4	3.9	0.8	7.0	6.4	5.5
Zambia	3.5	5.0	7.1	4.8	5.5	4.7	5.6	7.7

We have already noted how Ethiopia and Zambia are lowest on democratic governance. Ghana is lowest on protection of minorities, Rwanda on enabling NGO culture, South Africa on financial accountability of government, and Nigeria on anti-corporate corruption and lawful change of power.

Further variations within and across countries may be considered in conjunction with the qualitative reports.

A “lite” questionnaire relying on the more salient items

The original questionnaire, in which designers sought a consensus on the inclusion of items, is rather long. It comes at various issues, e.g. judicial independence, from several specialist angles that may not be highly salient to non-specialists. And there are a couple of repetitions of topic across domains, e.g. elections.

Using the loadings column (on the left) in Appendix D, one may select suitable “sentinel” indicators from among the items comprising the eight factors. Within each factor, one chooses items that have high-ish loadings and cover the domains involved; and also, are likely to be broadly meaningful across the range of respondent CSOs and interestingly distinct from the sentinel choices in the other factors.

One such likely choice, for a questionnaire of half the length, is displayed by the thirty-three items whose question numbers are shown in bold font in Appendix D.

This could an economical way to proceed in future, which could be done manually, if necessary, in each country. After applying the 33 -item “lite” version of the questionnaire, the scores for the fifteen questions in the first, “democratic governance” factor would be averaged for each respondent; then the scores for the three questions in the second factor, “anti-corporate corruption” would be averaged for each respondent; and so on down to the scores for just the two questions on “enabling NGO culture”.

Then, after averaging the eight “lite” factor scores across respondents, profiles for the participating countries could be more easily displayed as profiles.

The responses to a 66-item governance questionnaire by 116 NGOs in 6 countries turn out, notwithstanding the relatively limited number of respondent NGOs per country, to provide quite plausible by-country and across-country insights, when analysed with the multivariable technique of factor analysis. Three increasingly granular approaches are attempted, and the gains differentiation are measured by a further technique of discriminant analysis

The most demanding approach, not only yielded a more manageable number of “latent constructs” for discussion, but also allowed cross-domain linkages to emerge from the way the CSOs’ responses to the 66 questionnaire items are patterned. This yielded a revealing interpretation of the operative factors of governance in the eyes of the respondent CSOs.

As a by-product of the third approach, a “lite” half-length version of the questionnaire could be defensibly extracted, drawing on the statistically more salient questions within each construct, and allowing a spread from each sub-domain. In future, the scores on this reduced number of questionnaire items, grouped into the eight constructs, could be averaged by hand (rather than by using the more accurate but intricate factor scores), and graphed as shown. The trade-off is of course some loss of reliability compared to using the full range of 66 items.

8.3 Qualitative analysis

In addition to the survey, a qualitative analysis was undertaken by the CSOs based on a guideline for making assessments about capacity for compliance. This assessment uses a simple form of assessment to track progress and capacity. This involves making a subjective or qualitative judgment, based on the data available. The researchers used some or all of the guiding questions in Table 8.5 to structure this section of the research.

The purpose of this analysis is to provide an initial assessment of capacity to comply as well as identify opportunities for substantive compliance, in other words, to institutionalise democratic governance in context. This provides a basis for on-going learning about how to improve compliance over time. In addition, decision makers can use the tool to assess achievements and improvements.

Table 8.5: Capacity assessment guidelines

	The Member State has insufficient capability or will to comply. Citizens are dissatisfied.
	The Member State partially meets the requirement and has begun to address governance issues. Citizens are supportive.
	The Member State is actively compliant with most of the standards. Citizens are satisfied.

1. Constitutionalism and the rule of law	
Is there a culture of constitutionalism and rule of law in the country? Are the provisions of the constitution respected by the authorities, companies and citizens? Where they are not respected, are there effective sanctions in place and are those sanctions complied with?	
Is there a competent and independent court in place to adjudicate on matters of constitutional law? Is that court well resourced, independent, impartial and staffed with competent judges? Are there processes that ensure that judges are appointed in a manner that facilitates independent reflection and judgements	
Are any efforts being made to make sure that citizens of the country are aware of the importance of the constitution? Are copies of the constitution publicly available? Are they translated into local languages and made available through schools, local government and civic education initiatives? Is there a constitutional culture in the country and an appreciation for securing a constitution for future generations?	

When the constitution is amended or replaced in the country, how meaningfully are citizens consulted? Has the government allowed for a document based on consensus to result from these consultations? What have been the challenges inherent in these processes? Is there a tendency to use state power to overcome limits placed through Constitutional provisions?	
How firmly entrenched is the ban on unconstitutional changes of government in the country? What steps, if any, have been taken to guard against stolen elections or coups in future? What steps are in place to use legality to sustain unethical and un-democratic practices?	
2. Democratic culture and political pluralism	
Taken as a whole, how well do the laws of the country facilitate the development of a democratic culture and political pluralism? If there are repressive laws on the statute books, what steps, if any, has the government taken to repeal them or replace them with progressive legislation? Are law-making processes themselves reflective of a country that aims to promote a democratic culture?	
Do the laws and conditions in the country allow opposition political parties to play an effective role in the multiparty system? Are they able to propose legislation and influence government policy through a working parliamentary system? Do parties operate in a level playing field, where they can campaign for support free from interference and where campaigns are peaceful and based on a robust debate about competing party manifestos? How strong are Political parties and to what extent are they focused on substantive policy issues over personality and control over state resource issues?	
Are the weakest members of society able to play an effective role in the governance of the country? Are their rights protected? What particular groups are most at risk and what steps has government taken to correct this? How prevalent is discrimination based on race, ethnicity, religion, gender or sexual orientation? Is the government doing enough to tackle discrimination and promote tolerance and diversity?	
Does the government take active steps to educate citizens about their roles, rights and responsibilities in a democracy? Does civic education extend beyond elections to foster a culture of public participation and active citizenship? How well does government open the door to its citizens' participation in national or local level governance initiatives? Do civil society organisations operate free from government interference?	
Does the government have a good track record in respecting, protecting and fulfilling human rights and fundamental freedoms? Are human rights abuses independently investigated and are perpetrators brought to justice? Are citizens free to exercise all rights, including those that are political in nature?	
3. Strong democratic institutions	
To what extent can democratic institutions operate independently from the executive? How stringent and transparent are appointment procedures; or are those appointment procedures routinely subject to political interference? Are these institutions allowed to investigate abuses of power by state agents and are their findings taken seriously? Do prosecutions normally result?	
Are the country's democratic institutions vested with sufficient powers to enable them to fully realize their mandates? Where appropriate, have prosecutorial, investigative and oversight powers been bestowed on democratic institutions? How seriously are their findings or decisions treated by state agents?	
Do democratic institutions receive enough funding to enable them to achieve their objectives? Do they have autonomy to budget resources received? What roles do parliament play in reviewing and approving their budget request?	

To whom are these institutions accountable? Are they visible and easily accessible to the public? Do they submit regular reports and are those reports made publicly available? To what extent is there public confidence in the functioning and work of these institutions?	
4. Regular democratic elections	
How well is the EMB performing? Technically, does the EMB have the capacity to ensure an accurate voter register, and a predictable and transparent voting procedure on polling day? Does the public perceive the EMB to be impartial in the conduct of its affairs? Have there been any allegations of corruption, nepotism, mismanagement or manipulation of results or the voters register? Does the EMB do a good job at educating citizens about elections and preventing election-related conflict?	
Are election campaigns usually peaceful? What efforts has the government made to ensure that election candidates and political parties conduct themselves in a way that promotes tolerance and respect? Is media coverage of elections fair and balanced? Are electoral disputes dealt with speedily?	
Does the country open itself up to scrutiny from domestic civil society and regional and international observers before and during elections? Are conditions conducive for these observers to conduct their work without threat of violence or intimidation? Have the recommendations made in reports of observer missions been acted upon by the government of the country?	
What efforts have been made to create a level electoral playing field? Is state funding for political parties provided for in the constitution? How is funding to political parties during election campaigns regulated? Are parties required to publish the sources of their funding during campaigns? Does the incumbent party use state resources to fund its election campaign? Does the ruling party manipulate elections through the use of state resources just prior to elections?	
Has the government done enough to promote, fund and implement civic education campaigns related to elections? Is voter education and information systematically conducted and well-funded? Does the government partner with civil society organisations to provide this civic and voter education?	
5. Popular participation	
Does the government respect the role of civil society and provide all civil society organisations – including those that may be publicly critical of it – with the space they require to operate freely? Does the government enter into meaningful partnerships with civil society organisations and foster a spirit of collaboration between state and non-state actors? Is the law governing the NGO sector appropriate or is it in need of reform? If the law has been recently amended, have the views of citizens been properly taken on board?	
How openly does the government provide access to its information? Can citizens access a variety of media that allow them to develop informed opinions about matters of public interest? Is the state broadcaster editorially independent of government? Do citizens have the information that the need to be able to meaningfully participate in the running of the country?	
Has the government introduced a decentralization law or policy? Does that policy expressly provide for the inclusion of citizens and local community structures in the decisions made about development projects, allocation of resources and monitoring of performance? Do structures exist at the provincial or national level for citizens to influence policy or laws?	
Are citizens and groups of citizens able to freely associate and protest? Does the government restrict citizens' ability to gather in public places? Do the police or armed forces use force to prevent or disperse peaceful protests? Are critical civil society organisations ever placed under surveillance, harassed or attacked?	

6. Socio-economic justice and service delivery	
Is the government making sufficient efforts, within the constraints of the resources available to it, to guarantee the socio-economic rights of its citizens? Are those rights justiciable? If they are justiciable how has the government complied with court orders to provide for those rights in specific instances?	
How well does the government comply with AU guidelines for the allocation of a percentage of the national budget to the social sectors (in particular education, health, housing and water & sanitation)? Is the allocation of resources between sectors decided following consultation with citizens and civil society organisations? How are resources split between national and local government? Is local government sufficiently resourced? How much of the national budget is allocated to military spending?	
Are people with disabilities and special needs adequately provided for by the state? Are they included in mainstream education, do they have employment and economic opportunities equal to other members of society?	
Are there societal challenges specific to the country that are not being adequately addressed by the government? What are those and what attempts have been made to deal with them? Is the government involving civil society in an attempt to find solutions?	
How well is the corporate sector regulated in the country? Do big corporations pay a fair share of tax on their profits? Are corporations operating in the extractive sector properly regulated and supervised? Does the government ensure that the operations of the corporate sector is not damaging the environment and the viability of rural communities?	
7. Combatting corruption	
Is the anti-corruption commission actually able to fulfil its mandate? Does the commission have prosecutorial power and are its findings or judgments enforced, particularly against holders of high political office? How efficient is the anti-corruption commission? How many cases do they investigate per year, and what percentage of those concludes with a prosecution or conviction? Are cases involving high profile individuals likely to be treated differently than 'ordinary' cases?	
Is the fight against corruption a genuinely national effort, involving government, the private sector, civil society and the media? Is there an effort by the government to coordinate all anti-corruption initiatives in the country? Do political leaders set an example for the rest of society? Are media investigations of government corruption allowed to proceed and are journalists ever targeted for investigative work related to corruption? Are anti-corruption focused civil society organisations encouraged?	
Is the anti-corruption law in the country fit for purpose? Does it provide conducive conditions for acts of corruption to be reported by state employees and members of the public? Do whistle blowers face any physical or economic threats after they come forward with information? Is there anonymity protected in practice? Do members of the public feel secure when reporting acts of corruption? Do public servants actually declare their assets? Are penalties for those found guilty of corruption stiff enough?	
Are there particular government ministries, agencies, or economic sectors that are particularly prone to corruption? What drives corrupt practices in these areas and what, if anything, is the government doing to combat it?	
Has the government sought to cooperate on an international level with other governments and law enforcement agencies to combat transnational corruption? Have there been any noticeable successes?	
How is the corporate sector regulated from a corruption point of view? Do regulations in the financial services and extractive industries sectors in particular provide for mechanisms designed to root out corruption?	

8.4 Recommendations

In terms of the original purpose of this research, the tool has proved fit for purpose. The survey and qualitative data provided many insights that could be updated year on year to give a longitudinal view of democratic governance in Africa. This would enable AGA to track progress or identify potential hotspots.

If the tools are used again the following might be considered:

- If the seven-domain option is used, all duplication in the survey and capacity analysis should be removed. There is some slippage as a result of the design process. This is easily rectified.
- Using the 'lite' version with the eight domains might facilitate annual quick CSO surveys of the state of democratic governance in African countries.

Appendix A: Questionnaire with Variable Names

Var	RL	RULE OF LAW
RL1	1	Is the current Constitution the supreme law...?
RL2	2a	Are all citizens equal before the law?
RL3	2b	Are all citizens equally protected by the law?
RL4	3	Has the government taken steps to ensure civilian control of the military?
	4	In the past 15 years
RL5	4a	Have there been any unconstitutional changes of government?
RL6	4b	Has an incumbent government refused to relinquish power following national elections?
RL7	4c	Have term limits been amended to facilitate ...power... incumbent government?
RL8	5	Has your government “condemned...” unconstitutional changes of government?
	DC	DEMOCRATIC CULTURE AND POLITICAL PLURALISM
	6	Does your country’s electoral legislation promote
DC2	6a	Electoral legislation promotes Peaceful elections?
DC3	6b	Electoral legislation promotes Credible elections?
DC4	7	Is there legal provision for citizen participation in governance decision-making?
	8	Does the government’s education policy provide for an
DC6	8a	Education policy provide for Effective civic education component?
DC7	8b	Education policy provide for Public awareness of democracy?
	9	Are there legal provisions in your country relating to:
DC9	9a	Legal provisions re Political party formation?
DC10	9b	Legal provisions re Political party funding?
DC11	9c	Legal provisions re Public participation in political parties?
DC12	10	Platforms or opportunities for government-citizen dialogue in the country?
DC13	11	Are there anti-discrimination laws and policies in place?
DC14	12	Do laws ...guarantee the rights of minorities and vulnerable groups?
DC15	13	Does the law create conducive conditions for civil society to operate?
DC16	14	Are citizens and organisations able to assemble peacefully in public spaces?
DC17	15	State actively promote women’s rights to participate in governance?
DC18	16	Is media freedom protected by legislation in your country?
	DI	STRONG DEMOCRATIC INSTITUTIONS
DI1	17	Does your country’s HRC have sufficient powers to advance human rights?
DI2	18	Does your country’s Parliament effective check on the powers of the Executive?
DI3	19	Are parliamentarians accountable to their electorate?
	20	Does your country have
DI5	20a	Are there Independent constitutional institutions to protect the democratic order?
DI6	20b	Are independent constitutional institutions accountable to a ...national organ?
DI7	21	Does your country have an independent Judiciary?
DI8	22	In your opinion, are judges appointed through a credible process?
DI9	23	ADR mechanisms, including traditional justice institutions?
DI10	24	Is the Judiciary decentralised to allow main regional centres to access justice?

RE REGULAR DEMOCRATIC ELECTIONS		
RE1	25	Does your country's Elections Management Body (EMB) have sufficient powers...?
RE2	26	Are the leaders of the EMB appointed through a credible process?
RE3	27	Is the EMB transparent in reporting on its operations?
RE4	28	Is there a robust national mechanism able to resolve election related disputes?
RE5	29	Is there a working code of conduct for electoral stakeholders?
RE6	30	Do all parties and candidates have equitable access to state media coverage ...?
RE7	31	Are women able to fully participate in the country's elections?
RE8	32	Does the country provide conditions for AU election observation missions?
PP POPULAR PARTICIPATION		
PP1	33	Does the law regulating NGOs provide sole power to government to register NGOs?
PP2	34	Are there any legal restrictions on funding for NGOs?
PP3	35	Has the government formed working partnerships with civil society organisations?
PP4	36	Does your country have a Freedom of Information law?
PP5	37	Does government conduct meaningful consultations with citizens on policy issues?
PP6	38	Have structures been created at the local government level to involve citizens?
SE SOCIO-ECONOMIC JUSTICE AND SERVICE DELIVERY		
	39	Is basic education in your country
SE2	39a	Free basic education to a certain age?
SE3	39b	Free basic education Compulsory basic to a certain age?
	40	Is a thorough national audit function of all government ministries
SE5	40a	National audit of ministries Conducted regularly?
SE6	40b	National audit of ministries Conducted independently?
SE7	40c	National audit of ministries Released to the public?
SE8	41	Are the details of agreements signed with mining companies made public?
SE9	42	Citizens enabled to know tax is paid by large corporations operating in the state?
SE10	43	Do you believe that foreign companies comply with national laws?
SE11	44	Are your government's policies of job creation are effective?
SE12	45	Is the government committed to improving environmental protection?
	46	Does your government have national programmes to reduce the impact of the following?
SE14	46a	National government programmes for Malaria?
SE15	46b	National government programmes for HIV/AIDS?
SE16	46c	National government programmes for Child mortality? National government programmes for Maternal health?
SE17	46d	

CC COMBATING CORRUPTION		
CC1	47	Does the country have an anti-corruption commission (or equivalent institution)?
CC2	48	In your opinion is your anti-corruption commission credible?
CC3	49	Does a government, media and civil society partnership exist to combat corruption?
CC4	50	Are civil society and media able to access information related to corruption cases?
CC5	51	Does the government fund programmes to educate public about corruption?
CC6	52	Are whistle-blowers afforded any protections either under law or in practice?
CC7	53	In your opinion, is it easy for members of the public to report cases of corruption?

Appendix B: mean scores for the seven domains in each country

	Combat corruption	Popular participation	Socio-economic justice	Democratic institutions	Regular elections	Rule of law	Democratic culture
Ethiopia	1.76	1.45	1.95	1.71	1.66	1.83	1.75
Ghana	2.01	2.14	2.25	2.69	2.66	2.64	2.72
Nigeria	2.12	2.24	1.97	2.34	2.47	2.60	2.63
Rwanda	2.60	2.24	2.69	2.64	2.81	2.63	2.83
S Africa	1.91	2.30	2.26	2.34	2.50	2.47	2.43
Zambia	2.17	2.30	2.43	2.32	2.31	2.33	2.39
Average	2.09	2.16	2.25	2.36	2.41	2.43	2.48

Appendix C: 16 sub-domains extracted from the 7 questionnaire domains

Var.	Load	Qn
RL3	0.803	2b Are all citizens equally protected by the law?
RL2	0.785	2a Are all citizens equal before the law?
RL1	0.746	1 Is the current Constitution the supreme law...?
RL4	0.685	3 Has the government taken steps to ensure civilian control of the military?
RL8	0.516	5 Has your government "condemned..." unconstitutional changes of government...?
RL6	0.884	4b Has an incumbent government refused to relinquish power foll. national elections?
RL7	0.875	4c Have term limits been amended to facilitate ...power... incumbent government?
RL5	0.625	4a Have there been any unconstitutional changes of government?
DC9	0.861	9a Legal provisions re Political party formation?
DC11	0.851	9c Legal provisions re Public participation in political parties?
DC18	0.823	16 Is media freedom protected by legislation in your country?
DC15	0.820	13 Does the law create conducive conditions for civil society to operate?
DC12	0.805	10 Platforms or opportunities for government-citizen dialogue in the country?
DC4	0.709	7 Is there legal provision for citizen participation in governance decision-making...?
DC16	0.666	14 Are citizens and organisations able to assemble peacefully in public spaces?
DC7	0.660	8b Education policy provide for Public awareness of democracy?
DC10	0.648	9b Legal provisions re Political party funding?
DC13	0.836	11 Are there anti-discrimination laws and policies in place?
DC14	0.705	12 Do laws ...guarantee the rights of minorities and vulnerable groups?
DC3	0.641	6b Electoral legislation promote Credible elections?
DC2	0.586	6a Electoral legislation promote Peaceful elections?
DC17	0.833	15 State actively promote women's rights to participate in governance?
DC6	0.640	8a Education policy provide for Effective civic education component?
DI9	0.868	23 ADR mechanisms, including traditional justice institutions?
DI10	0.847	24 Is the Judiciary decentralised to allow main regional centres to access justice?
DI7	0.789	21 Does your country have an independent Judiciary?
DI5	0.783	20a Are there Independent constitutional institutions to protect the democratic order?
DI6	0.722	20b Are independent constitutional institutions accountable to a ...national organ?
DI8	0.695	22 In your opinion, are judges appointed through a credible process?
DI1	0.663	17 Does your country's HRC have sufficient powers to advance human rights?
DI3	0.894	19 Are parliamentarians accountable to their electorate?
DI2	0.779	18 Does your country's Parliament effective check on the powers of the Executive?
RE2	0.773	26 Are the leaders of the EMB appointed through a credible process?
RE4	0.735	28 Is there a robust national mechanism able to resolve election related disputes?
RE8	0.700	32 Does the country provide conditions for AU election observation missions?
RE3	0.700	27 Is the EMB transparent in reporting on its operations?
RE1	0.675	25 Does your country's Elections Management Body (EMB) have sufficient powers...?
RE6	0.675	30 Do all parties and candidates have equitable access to state media coverage ...?
RE5	0.675	29 Is there a working code of conduct for electoral stakeholders?
RE7	0.319	31 Are women able to fully participate in the country's elections?
PP5	0.850	37 Does government conduct meaningful consultations with citizens on policy issues?
PP6	0.837	38 Have structures been created at the local government level to involve citizens?
PP3	0.774	35 Has the government formed working partnerships with civil society organisations?
PP4	0.631	36 Does your country have a Freedom of Information law?
PP2	0.796	34 Are there any legal restrictions on funding for NGOs?
PP1	0.788	33 Does the law regulating NGOs provide sole power to government to register NGOs?
SE14	0.891	46a National government programmes for Malaria?
SE16	0.801	46c National government programmes for Child mortality?
SE15	0.800	46b National government programmes for HIV/AIDS?
SE17	0.759	46d National government programmes for Maternal health?
SE7	0.864	40c National audit of ministries Released to the public?
SE6	0.815	40b National audit of ministries Conducted independently?
SE5	0.783	40a National audit of ministries Conducted regularly?
SE11	0.778	44 Are your government's policies of job creation are effective?
SE9	0.716	42 Citizens enabled to know tax is paid by large corporations operating in the state?
SE10	0.697	43 Do you believe that foreign companies comply with national laws?
SE12	0.649	45 Is the government committed to improving environmental protection?
SE8	0.605	41 Are the details of agreements signed with mining companies made public?
SE2	0.855	39a Free basic education to a certain age?
SE3	0.756	39b Free basic education Compulsory basic to a certain age?
CC1	0.832	47 Does the country have an anti-corruption commission (or equivalent institution)?
CC3	0.758	49 Does a government, media and civil society partnership exist to combat corruption?
CC2	0.708	48 In your opinion is your anti-corruption commission credible?
CC4	0.707	50 Are civil society and media able to access information related to corruption cases?
CC7	0.879	53 In your opinion, is it easy for members of the public to report cases of corruption?
CC5	0.711	51 Does the government fund programmes to educate public about corruption?
CC6	0.666	52 Are whistle-blowers afforded any protections either under law or in practice?

Appendix D: 8-factor solution showing grouping and loadings of the 66 items

Load	Var.	Q.No.	Questionnaire item
F1 Freedoms, judic., elections, legality, probity (43%)			
.890	DC9	9a	Legal provisions re Political party formation?
.851	DC15	13	Does the law create conducive conditions for civil society to operate?
.840	DC18	16	Is media freedom protected by legislation in your country?
.825	DC11	9c	Legal provisions re Public participation in political parties?
.779	DC4	7	Is there legal provision for citizen participation in governance decision-making...?
.773	DC12	10	Platforms or opportunities for government-citizen dialogue in the country?
.742	DC16	14	Are citizens and organisations able to assemble peacefully in public spaces?
.718	DC7	8b	Education policy provide for Public awareness of democracy?
.601	DC2	6a	Electoral legislation promote Peaceful elections?
.581	DC3	6b	Electoral legislation promote Credible elections?
.573	DC6	8a	Education policy provide for Effective civic education component?
.544	DC10	9b	Legal provisions re Political party funding?
.753	DI7	21	Does your country have an independent Judiciary?
.730	DI8	22	In your opinion, are judges appointed through a credible process?
.724	DI10	24	Is the Judiciary decentralised to allow main regional centres to access justice?
.709	DI9	23	ADR mechanisms, including traditional justice institutions?
.606	DI5	20a	Are there Independent constitutional institutions to protect the democratic order?
.545	DI1	17	Does your country's HRC have sufficient powers to advance human rights?
.810	RE4	28	Is there a robust national mechanism able to resolve election related disputes?
.772	RE8	32	Does the country provide conditions for AU election observation missions?
.753	RE2	26	Are the leaders of the EMB appointed through a credible process?
.716	RE3	27	Is the EMB transparent in reporting on its operations?
.692	RE1	25	Does your country's Elections Management Body (EMB) have sufficient powers...?
.591	RE6	30	Do all parties and candidates have equitable access to state media coverage ...?
.712	RL4	3	Has the government taken steps to ensure civilian control of the military?
.651	RL2	2a	Are all citizens equal before the law?
.586	RL1	1	Is the current Constitution the supreme law...?
.472	RL3	2b	Are all citizens equally protected by the law?
.466	RL7	4c	Have term limits been amended to facilitate ...power... incumbent government?
.636	CC1	47	Does the country have an anti-corruption commission (or equivalent institution)?
.611	CC3	49	Does a government, media and civil society partnership exist to combat corruption?
.584	CC4	50	Are civil society and media able to access information related to corruption cases?
.651	PP3	35	Has the government formed working partnerships with civil society organisations?
.643	SE15	46b	National government programmes for HIV/AIDS?
F2 Citizen-based anti-corporate corruption (8%)			
.714	SE10	43	Do you believe that foreign companies comply with national laws?
.664	SE9	42	Citizens enabled to know tax is paid by large corporations operating in the state?
.598	SE11	44	Are your government's policies of job creation are effective?
.598	SE8	41	Are the details of agreements signed with mining companies made public?
.592	SE12	45	Is the government committed to improving environmental protection?
.650	CC5	51	Does the government fund programmes to educate public about corruption?
.558	CC7	53	In your opinion, is it easy for members of the public to report cases of corruption?
F3 Protection of minorities, vulnerable groups (4%)			
.711	SE17	46d	National government programmes for Maternal health?
.704	SE14	46a	National government programmes for Malaria?
.695	SE16	46c	National government programmes for Child mortality?
.582	RE5	29	Is there a working code of conduct for electoral stakeholders?
.487	DI6	20b	Are independent constitutional institutions accountable to a ...national organ?
.394	DC14	12	Do laws ...guarantee the rights of minorities and vulnerable groups?

F4 Parl. & exec. accountability, incl. women (3%)		
.482	DI2	18 Does your country's Parliament effective check on the powers of the Executive?
.646	DI3	19 Are parliamentarians accountable to their electorate?
.722	DC17	15 State actively promote women's rights to participate in governance?
.566	RE7	31 Are women able to fully participate in the country's elections?
F5 Fin. accountability of gov't (3%)		
.468	CC6	52 Are whistle-blowers afforded any protections either under law or in practice?
-.524	PP4	36 Does your country have a Freedom of Information law?
.715	SE7	40c National audit of ministries Released to the public?
.653	SE6	40b National audit of ministries Conducted independently?
.613	SE5	40a National audit of ministries Conducted regularly?
F6 Equal opportunity (3%)		
.640	SE3	39b Free basic education Compulsory basic to a certain age?
.442	SE2	39a Free basic education to a certain age?
.399	DC13	11 Are there anti-discrimination laws and policies in place?
-.484	RL5	4a Have there been any unconstitutional changes of government?
F7 Lawful change of power (2%)		
.654	RL8	5 Has your government "condemned..." unconstitutional changes of government...?
.481	CC2	48 In your opinion is your anti-corruption commission credible?
-.514	RL6	4b Has an incumbent government refused to relinquish power foll. national elections?
F8 Enabling NGO culture (2%)		
.763	PP1	33 Does the law regulating NGOs provide sole power to government to register NGOs?
.747	PP2	34 Are there any legal restrictions on funding for NGOs?
.467	PP5	37 Does government conduct meaningful consultations with citizens on policy issues?
.430	PP6	38 Have structures been created at the local government level to involve citizens?

WITS SCHOOL OF GOVERNANCE



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